

APPEARANCES:On behalf of the Complainant:

LEE SEHAM, ESQ.
Seham, Seham, Meltz & Petersen, LLP
199 Main Street
White Plains, NY 10601
914-997-1346

On behalf of the Respondent:

AMANDA BROWN, ESQ.
Morgan Lewis Bockius
1717 Main Street, Suite 3200
Dallas, TX 75201-7347
214-466-4115 214-466-4001 fax

IRA G. ROSENSTEIN, ESQ.
Morgan Lewis Bockius
101 Park Avenue
New York, NY 10178-0060
212-309-6960 212-309-6001 fax

LINCOLN O. BISBEE, ESQ.
Morgan Lewis Bockius
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004-2541
202-739-5807 202-739-3001 fax

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WITNESSES:DIRECTCROSSREDIRECTRECROSSALJ

James C. Graham

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EXHIBITS:IDENTIFIEDRECEIVEDREJECTEDJOINT

(None identified, nor received.)

COMPLAINANT

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RESPONDENT

(None identified, nor received.)

P R O C E E D I N G S

1 (9:05 o'clock a.m.)

2 JUDGE MORRIS: On the record.

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

6 It's my understanding that Mr. Graham is going to
7 be the next witness, is that correct?

8 MR. ROSENSTEIN: That is correct. We call Captain
9 Jim Graham.

10 JUDGE MORRIS: All right.

11 Mr. Graham, would you please stand, turn and face
12 me, raise your right hand.

13 Whereupon,

14 JAMES COLE GRAHAM

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

17 JUDGE MORRIS: Please take your seat. After you've
18 taken your seat, please provide your full name and contact
19 business address?

20 THE WITNESS: James Cole Graham. The address for
21 Delta Air Lines is 1050 Delta Boulevard, Atlanta, Georgia
22 30320.

23 JUDGE MORRIS: All right. And sir, would you tell
24 me what is your current position at Delta, and after that if

1 you'd give me a brief background of your aviation history,
2 specifically including your FAA certifications and ratings,
3 if you have any?

4 THE WITNESS: Yes, sir. My current title is Senior
5 Vice President Flight Operations for Delta Air Lines. My
6 aviation background, I actually started flying sailplanes at
7 the age of 14. I highly recommend that as the way to start
8 flying, it teaches you stick and rudder skills like you can't
9 learn in a power aircraft. I continued with my ratings and
10 certificates through my private instrument, commercial and
11 flight instructor through college. Upon graduation from
12 college, I worked at a local fixed base operator, and
13 actually during college, as well, trading off fueling
14 airplanes for flight time. I graduated in March of 1981, and
15 that was the exact same time that President Reagan decided to
16 take action on the air traffic controllers, not a good time
17 to try to get to the airlines, however, that was my goal.

18 I did secure a job with a company called Express
19 Airways, out of Sanford, Florida, flying Beech 18s, Twin
20 Tail, Tail Dragger. We flew Class A explosives for the
21 government, and it was a very eye opening experience, Part
22 135 operation. But if you've never had to taxi to the far
23 end of the airfield, just in case there's an accident, you
24 don't hurt anybody else, that was certainly a big experience.

25 Having talked to many of the chief pilots at other

1 airlines, to understand what it would take to get to the
2 airlines, they all recommended that I consider the military.

3 And I was considering that at that time. I applied and was
4 accepted into the Navy's Aviation Officer Candidate School,
5 in August of 1981. And got my wings in October of 1982.

6 I flew the T28 and the T44, and Primary Flight
7 Training. And then proceeded to the P3 RAG in Jacksonville
8 for the Fleet Replacement Squadron. Joining my first active
9 duty squadron in Jacksonville in 1983. I deployed three
10 times with my sea-going squadron BP45, qualified as a plane
11 commander, as a post maintenance check pilot and also as a
12 flight training instructor. I was actually the NATOPS
13 officer, which is the standards officer for the squadron.
14 And upon completion of my tour, sea tour, moved over to VP30,
15 which is the Fleet Replacement Squadron that trained all the
16 P3 pilots as they came from Primary Flight Training, before
17 they went to the Fleet Squadron.

18 Upon entering VP30, they sent me to Aviation Safety
19 School in Monterey, California, the Navy's postgraduate
20 school. And I came back and was also the NATOPS instructor,
21 and also the wing safety officer in Patrol Squadron 30.

22 Upon my end of tour at VP30, I moved into the
23 Reserves and VP62, and was the squadron NATOPS officer,
24 Operations officer and Maintenance officer, and retired from
25 the Reserves in 1998, as a commander.

1 In 1988 I was hired by Delta Air Lines as a 727
2 second officer and remained on that aircraft for,
3 approximately, a year, then moved to the DC9. From the DC9 I
4 went to the L1011, as a flight engineer. And in 1996, after
5 working as a check second officer on the L1011, they asked me
6 to go to Orlando and open up the Delta Express base in
7 Orlando, the 737-200. I bid the 737-200 captain, was awarded
8 that bid and started flying as a captain in October of 1996.

9 As soon as I had the requisite hours, I was asked
10 to join the Line Check Pilot Program and moved through the
11 line check pilot ranks to become the chief line check pilot
12 on the 737, not just Orlando -- or the 737-200 -- but all the
13 737s at Delta in 1998.

14 In 2002, shortly after 9/11, May of 2002, I was
15 asked to take over as the head of the Pilot Standards
16 Department, and I qualified on the 757 and 767. And also as
17 a line check pilot. And that's the airplane I'm currently
18 qualified on now.

19 JUDGE MORRIS: Total time?

20 THE WITNESS: Approximately 15,000 total, military
21 and civilian.

22 JUDGE MORRIS: How many in jets?

23 THE WITNESS: Approximately 10,000.

24 JUDGE MORRIS: Okay.

25 Go ahead.

1 as we went into bankruptcy.

2 Another very challenging time, as we powered
3 through bankruptcy, trying to keep everyone focused on the
4 safety of the operation and making sure that they understood
5 that we were certainly under tremendous scrutiny from the FAA
6 at that point. And I'm extremely proud of the pilot group
7 and how they pulled together to make sure that we actually
8 had our lowest incident rate, ever, during our bankruptcy
9 period. So, that was a testament to the mindset and the
10 drive of the Delta pilots and their focus on safety.

11 In 2006, after we emerged from bankruptcy, I was
12 asked to come back to the Flight Operations Program in the
13 general offices, as the director of Flight Operations and the
14 chief pilot for the airplane. And I was named the Part 119
15 chief pilot on the certificate.

16 Compared to the head of Flight Standards job, the
17 director of Flight Operations position encompassed not just
18 the Standards Group, but also the administrative oversight of
19 all the pilots, and the operational oversight of Delta's, at
20 the time, approximately, 3,000 flights per day. That
21 included not just administrative oversight of the pilots, but
22 also the line operation, which you can think of that as from
23 the time that a pilot steps into the airport, through their
24 flight and into the airport on the other side at the end of
25 their day, and then goes to the hotel. So, Flight Planning,

1 Performance Engineering, worked with other departments,
2 Airport Customer Service, In-flight Service, Maintenance as
3 well as Air Traffic Control, Air Space Design, Technical
4 Equipage on our aircraft for cockpit use, to be able to
5 operate anywhere in the world, that all fell underneath my
6 purview as the director of Flight Operations and chief pilot.

7 In late 2006, early 2007, I was promoted to vice
8 president Flying Operations and chief pilot, and was placed
9 in charge of the Flight Operations part of bringing Delta and
10 Northwest together under a single operating certificate.

11 So, I brought both Flight Operations teams together, brought
12 us under one set of policies and procedures, and we were able
13 to attain our single operating certificate within 12 months.

14 That was in 2008. I remained in that position through
15 September of last year and I was promoted to senior vice
16 president of Flight Ops.

17 The expansion of duties as the senior vice
18 president of Flight Ops encompasses the additional support
19 teams in Flight Operations, which included Crew Resources,
20 the Flight Training Group, the Simulator and Flight Training
21 Device Group, Quality Assurance and Compliance, as well as
22 dotted lines with Flight Safety, Finance and Labor Relations.

23 Q Is that the position you currently hold?

24 A It is.

25 Q When you took that position, the last position, who

1 did you report to?

2 A I'm sorry, when I took?

3 Q When you took the position prior to -- let me ask
4 you this way. In 2016, who did you report to?

5 A To Captain Steve Dickson, Senior Vice President of
6 Flight Ops.

7 Q And what was Captain Dickson's role at the time?

8 A He was the senior vice president of Flight
9 Operations.

10 Q And did you succeed Captain Dickson in that role?

11 A Yes, I did.

12 Q Had Captain Dickson appointed you to the position
13 reporting to him directly?

14 A Well, he told me that I had been promoted, however,
15 that was a decision that was made through the executive team
16 at Delta.

17 Q Are you friends with Captain Dickson?

18 A Captain Dickson and I have -- certainly are
19 friends. We have worked together for many years. I wouldn't
20 say that we're social friends, that sort of thing. I mean I
21 do consider him a friend, yes.

22 Q Okay. You said that -- I think I remember you
23 saying there were 5,200 pilots in the Atlanta base, largest
24 base in the world. Am I remembering your testimony
25 correctly?

1 A That's correct.

2 Q How many pilots does Delta have overall, currently?

3 A We are just north of 14,500. And the reason I
4 don't have an exact number is we're hiring anywhere from 20
5 to 60 pilots per month.

6 Q Who do you report to, in your current position?

7 A I report to Bill Lentsch, Executive Vice President
8 of Air Operations.

9 Q And do you know who Mr. Lentsch -- and Lentsch is
10 spelled L-e-n-t-s-c-h, correct?

11 A That's correct.

12 Q And do you know who Mr. Lentsch reports to?

13 A Yes. To Gil West, the chief operating officer.

14 Q Are you currently the most senior executive within
15 the Flight Operations Department?

16 A I am. And my title has changed on the Delta 119
17 certificate, I'm now the director of Operations.

18 Q Just briefly, if you can, can you just walk us
19 through the organizational structure of the Delta Flight
20 Operations Group, so we know now who you report to, give us
21 an understanding of how the department is organized?

22 A Certainly. So, I have there direct reports. I
23 have the vice president of Business and IT Support, Captain
24 Ryan Gumm. And underneath Ryan is Crew Scheduling, also IT
25 Support. And under IT Support we have the Simulator Group

1 and the Quality Assurance and Compliance Team. Underneath
2 Captain Patrick Burns, who is the managing director of Flight
3 Operations, he has the administrative oversight of the pilots
4 and also the Flight Standards Group, which actually we call
5 Fleet Operations now, because it encompasses both Flight
6 Standards and our manual systems, so our Publications Group.

7 The third direct report is captain -- actually just now
8 chanted to Captain Chris Frederick, who is the director of
9 Flight Training. And he is responsible for all the fleet
10 training programs. So, essentially, everything that has to
11 do with ground training for our pilots, indoctrination for
12 our new hire pilots, and any initial and continuing upgrade
13 and transition qualifications. So, that will be
14 qualifications up to going to the actual aircraft, and then
15 they turn over to the Standards Department.

16 Q And describe what the regional chief pilots do at
17 Delta?

18 A So, the regional chief pilots, we actually call
19 them regional directors and chief pilots, and our
20 administrative oversight for the pilot group is broken down
21 into regions. We have five regions. Atlanta is its own
22 region. Detroit is its own region. New York is its own
23 region, but that encompasses Laguardia, Newark and JFK. The
24 Central Region is comprised of Minneapolis and Cincinnati.
25 And then the West Region is comprised of Los Angeles, Salt

1 Lake and Seattle. Each of the bases had their own chief
2 pilot and assistant chief pilot, and the mix depends on the
3 size of the base. So, we tried to -- with the exception of
4 Atlanta -- we tried to have a regional director for,
5 approximately, a total group of between 1,800 and 2,500
6 pilots. And we run a pilot manager ratio of about 320 to 1.

7 Q Who is the current regional director chief pilot
8 for the Western Region?

9 A Captain Mike Levis.

10 Q And how long has he been in that role?

11 A I believe Mike has been in that role about two
12 years.

13 Q Who did he succeed in that role?

14 A He succeeded Captain Phil Davis.

15 Q And how long was Captain Davis in that role?

16 A I don't know the exact date, the exact time-frame.
17 I think a little over four years.

18 Q Okay. And as you're going through the operational
19 structure, the regional directors, do they have direct
20 reports, as well?

21 A Yes, they do. Well, actually, all the pilots
22 directly report to the regional director, but they have staff
23 that are both chief pilots and assistant chief pilots in each
24 base.

25 Q So, if I was to run it on a chart, the regional --

1 who would the regional director report to -- who would that
2 report be?

3 A The regional director reports to the managing
4 director of Flying Operations, Captain Wayne Cochran.

5 Q And Captain Cochran would report to you?

6 A He reports to Captain Patrick Burns.

7 Q And Patrick Burns reports to you?

8 A Yes.

9 Q Okay. And then going down from that, the regional
10 -- the regional director has a direct reporting relationship
11 with a group of chief pilots, correct?

12 A That's correct.

13 Q And then there's assistant chief pilots, as well?

14 A That's correct.

15 Q Okay. And then are there any other executive
16 functions within the group or the other pilots, pilots not
17 with any executive roles?

18 A That's correct, no executive roles. We do look at
19 our line check pilots as, certainly, assets for the Chief
20 Pilot Office to be able to use, because the Chief Pilot
21 Office really serves two functions, the primary is the
22 administrative role for our line pilots, but then they are
23 also the operational interface. So, they work with the hubs
24 that they report to, as well as they typically have several
25 out stations that they also have underneath their umbrella

1 for operational support.

2 Q Okay. You mentioned line check pilots and I think
3 in the description of your own experience you said that you
4 were, for a quite a period of time, a line check pilot, am I
5 remembering that right?

6 A Yes, I was.

7 Q Okay. Describe what a line check pilot does at
8 Delta Air Lines and if it's changed over time tell us?

9 A We use the term "line check pilot" at Delta, if you
10 look in the FARS it's actually designated as "line check
11 airmen," and you're an FAA designee to carry out the
12 qualification and the standards for the airline. So,
13 essentially, that's a deputized group of pilots that are
14 responsible for maintaining the standard and operational
15 safety of the airline.

16 Q How do they do that?

17 A They do it through several ways, but the two
18 primary are via line checks, which is a flying segment with a
19 captain that takes a look at normal procedures and how that
20 captain is able to execute a flight segment. They also
21 perform operating experience, and by FAR there is a
22 requirement, when you finish in the simulator, to have time
23 with a check pilot before you're signed off to be able to fly
24 revenue customers on your own. So, the line check pilots
25 perform that operating experience.

1 In addition to that, we also have theater
2 qualifications and special airport qualifications. And the
3 line check pilots are also qualified to do that work, as
4 well.

5 Q Can you walk us through Delta's process for
6 conducting line checks, how pilots are selected and then how
7 a line check is supposed to be operated by the line check
8 pilot?

9 A Yes. We have a vetting process for pilots that
10 would like to be in the line check pilot program. We also
11 have a program that when the line check pilots, or any pilot,
12 sees someone that they think is very, very astute and good at
13 their job, that they can make a recommendation. But everyone
14 goes through the same vetting process to be able to take a
15 look at their background, to understand what type of
16 operational experience they have. And then once selected,
17 they go through a Principles of Instruction School, and they
18 also go through a simulator portion to have them qualified,
19 prior to going out and getting their right seat experience
20 and their final sign-off from the FAA. Every FAA -- ever
21 line check pilot is signed off by an FAA inspector on a
22 flight segment, or two.

23 Q And then do you have knowledge as to how pilots are
24 selected for line checks at Delta?

25 A Well, a pilot can submit their name or they can

1 also be identified by someone who is flying with them that
2 says, you know, this is someone that we think has the
3 qualities that would be supportive of our values, and we
4 think that they would be a good fit for the Line Check
5 Program. However, they all go into the exact same vetting
6 process and are looked at through a bunch of different
7 parameters, before the final selection comes out.

8 So, putting aside how you select -- how Delta
9 selects pilots to be line check airmen, can you describe how
10 a line check airman conducts their duties at Delta Air Lines?

11 A Yes. So, I think it's probably important you
12 understand the Line Check Program first, and how we execute
13 that at Delta Air Lines. It's actually in our AQP, and it's
14 out of subpart (y). We have -- it's called a "Random Line
15 Check Program." It really is not random by any stretch of
16 the imagination. However, under the strict definition of a
17 Line Check Program, under the FAR, every pilot, every
18 captain, must have a check ride every 12 months. We
19 submitted a program to the FAA that was accepted -- gosh, I
20 think it was back in 2003 -- that allowed us to expand that
21 very limited view to also encompass being able to take a look
22 at the entire operation. So, we expanded the time-frame that
23 a captain could go, prior to being required to have a line
24 check, to 24 months. However, in a rolling 12-month period
25 we have to have 50 percent of our captains receive a line

1 check. What that does for us is, it allows us to target
2 operations that we want to be able to put focus on, such as,
3 as we go into de-icing season, we want to go ahead and launch
4 line checks into those cities that we know are going to be
5 faced with de-icing, so we can see the entire operation.

6 So, it's not just about looking at the pilot and
7 normal procedures, it's about looking at pilots in normal
8 procedures, going into the more challenging areas that we are
9 faced with. That would include having, essentially, a theme
10 every quarter, for the types of operations that we want to
11 see. Some would be our more mountainous terrain, some could
12 be different theaters that we think that we're seeing some
13 concern in over how we're able to operate.

14 So, we're able to really put the focus in the right
15 place and still manage the Line Check Program. And quite
16 honestly, if you're going out to see normal procedures, this
17 shouldn't be an issue for a captain, whatsoever. It's more
18 of a testament to take a look at our policies and procedures,
19 and validate that the captain is able to execute normal
20 procedures.

21 JUDGE MORRIS: Now, is this requirement, this
22 change -- we'll call it the expansion from the 12-months to
23 24 months, that you mentioned, is that in the Flight
24 Operations Manual, is it in your Ops Specs, where?

25 THE WITNESS: It's in AQP.

1 JUDGE MORRIS: Wait a minute, hold on. But your
2 AQP has to be identified somewhere in your Ops Specs.

3 THE WITNESS: Yes, in our FOM, yeah, Flight
4 Operations Manual.

5 JUDGE MORRIS: Okay. So, you've got your Ops, but
6 I forget where it's going to be, it's either in A or B of
7 your Ops Specs.

8 THE WITNESS: Correct.

9 JUDGE MORRIS: And you've got your FOM. And then
10 within your FOM is the AQP?

11 THE WITNESS: That's correct.

12 JUDGE MORRIS: Okay.

13 MR. ROSENSTEIN: I think the FOM is in the
14 exhibits.

15 JUDGE MORRIS: I doubt that.

16 MR. ROSENSTEIN: Yeah?

17 JUDGE MORRIS: It's a pretty thick document. I
18 mean I may be wrong, but --

19 MR. ROSENSTEIN: Well, maybe sections of it are in
20 the exhibits. I'm not sure if it's the section that covers
21 what his testimony was, but we have testimony.

22 JUDGE MORRIS: Obviously, I'll let the witness
23 testify, but in my experience, from a 21 operator, that those
24 can be pretty thick.

25 MR. ROSENSTEIN: Right. Okay. Thank you.

1 BY MR. ROSENSTEIN:

2 Q Are line checks punitive in any way?

3 A No.

4 Q Given the description that you just gave, would it
5 be unusual for a pilot or captain to be checked more
6 frequently than once every two years?

7 A Well, if that particular captain happens to be --
8 and we don't give line checks to first officers, the captains
9 are the ones that we track, and that's what the FAR is. So,
10 it's important to note that if a captain is flying a
11 particular route that puts him or her in a situation that
12 we're focusing on for that particular quarter, then they
13 could find themselves in a situation where they did receive
14 an additional line check in a shorter amount of time. But
15 it's all set up through our OE and Flight Training Planner
16 schedulers that work for prescheduling. So, the line check
17 pilots don't get an opportunity to say -- I want to get on
18 this particular flight. They are handed a schedule of the
19 people that need to be done, and they are designated on to a
20 flight by the scheduler.

21 Q You testified that you were promoted into your
22 current role in, I think you said, 2018, is that right?

23 A That's correct, September.

24 Q And who took on the role that you had previously?

25 A Captain Patrick Burns.

1 Q Delta pilots are covered by a Collective Bargaining
2 Agreement, correct?

3 A Yes, they are. We call it the Pilot Working
4 Agreement.

5 Q Are you generally familiar with that document?

6 A Generally.

7 Q Okay. Do you get involved in contract
8 negotiations, personally?

9 A I certainly have a role in contract negotiations.
10 I don't sit at the table for every negotiation, no. However,
11 I do know what's going on in the contract negotiations.

12 Q So, how would you describe that role -- perhaps you
13 just did, but --

14 A Supervisory.

15 Q Okay. Are you generally familiar with Section 15
16 of the Pilots Working Agreement?

17 A Generally.

18 Q Describe your understanding of Section 15?

19 A Well, I think you have to look at Section 14 and
20 Section 15 together. And Section 14 is actually the section
21 that outlines when a pilot does not think that they're fit to
22 execute their First Class Medical. So, that would put them
23 in a sick status. Section 15 is when the pilot thinks that
24 they may be able to execute their First Class Medical, but
25 the company has a concern that that may not be appropriate.

1 So, it lays out a methodology to have an assessment done, to
2 determine one way or another whether the First Class Medical
3 can be executed.

4 Q What's your understanding of that methodology?

5 A Well, first of all it has to be executed by our
6 director of Health Services. And the director of Health
7 Services actually runs the program for the assessment. And
8 many times it ends with the director of Health Services doing
9 the assessment. Sometimes, the director of Health Services
10 asks for subject matter experts to also step in and give
11 their opinion. So, it could go to a subject matter expert,
12 it really just depends on the situation.

13 Q And if the director of Health Services implements
14 the process, what's your understanding of how it would
15 proceed?

16 A Well, the final determination as to whether the
17 First Class Medical can be executed comes from the director
18 of Health Services. So, the pilot is either returned to work
19 or they are not. And if the determination comes back to be
20 returned to work, then there's no more -- nothing else has to
21 happen. The return to work process is engaged and the pilot
22 comes back to active flying. If the director of Health
23 Services cannot return the pilot, the pilot does have an
24 option to go and then have a pilot medical examiner do an
25 examination and upon receiving the results of that, if it is

1 contrary to what the director of Health Services and the
2 company medical examiner have deemed the diagnosis, then you
3 would go to a neutral medical examiner for the final
4 determination.

5 Q And what role do you play, in your position, in
6 that process?

7 A I don't play a role, at all.

8 Q Can you -- if the neutral medical examiner states
9 that the pilot can return to work, and the pilot otherwise is
10 qualified by the FAA, do you have the ability, under the
11 contract, to take a contrary position, to your knowledge?

12 A I'm not sure I followed all --

13 Q Can you disagree? Do you have the ability to not
14 follow the instructions of the neutral medical examiner?

15 A No, I do not. And that really is the -- those were
16 the safeguards that were put into the contract, that we feel
17 very strongly have to be followed. And it always is set up
18 such that the tie goes to the runner for the pilot.

19 Q Is the Section 15 process a disciplinary process?

20 A No, not by any stretch. The pilot is given full
21 pay during the entire evaluation. And they are pulled from
22 the line. Certainly you're pulled from the line because we
23 want them to be able to focus on the assessment and be
24 available, but also there is a question as to whether or not
25 they can execute their First Class Medical. So, as we work

1 through that, then it's most appropriate to have them off the
2 line.

3 Q Why is it most appropriate?

4 A Because there is a question as to whether or not
5 they can execute their First Class Medical.

6 Q Over the period of time you've been at Delta, how
7 many times have you been involved in a Section 15 referral?

8 A Not often. I would say less than 10.

9 Q And out of those 10 times, how many times have you
10 been involved in a Section 15 referral based on concerns for
11 mental health of the pilot?

12 A Only two.

13 Q Does that include the case that you're testifying
14 in here?

15 A Yes.

16 Q Can a involved return to duty after a Section 15?

17 A Absolutely. We actually expect that to happen.

18 Q Why?

19 A Because the majority of the assessments come back
20 that there is a way to return the pilot to the cockpit. So,
21 that's the goal of the director of Health Services.

22 Q We've spoken quite a bit about safety. Have you
23 heard the term "Safety Culture," used in connection with your
24 roles at Delta?

25 A Yes, I have.

1 Q Can you describe for us, if you can, what that
2 means to you?

3 A Well, Safety Culture is really a mindset. It's a
4 mindset of the employees that they understand that the
5 foundational values of the company embraces safety as the
6 number one priority. And I think that, very clearly, Delta
7 Air Lines has that at the top of the list. But it really
8 goes to a mindset throughout the entire work group at the
9 entity, it doesn't matter what it is, that safety is part of
10 their foundational values.

11 Q Are you familiar with a program called "SMS,"
12 "Safety Management System"?

13 A Yes. SMS, Safety Management System is really the
14 mechanism to execute a safety program. And really, this is
15 the next evolution of safety from, I think, a very sound
16 methodology the FAA has taken forward, that started off with
17 threat and air management, moved crew resource management and
18 now has progressed to an SMS system. And the SMS is really
19 based on the ability to identify safety concerns, to have a
20 very robust reporting of any safety situations that are out
21 there, have a methodology to action those and then to trend,
22 track and educate, as necessary, through the rest of the
23 company what actions are being taken. And it really starts
24 at the top. It starts with the CEO, it starts with the
25 senior leaders who have to embrace a Safety Culture

1 throughout the organization, and Reporting Culture. But the
2 front line employees have to feel engaged, so that they can
3 report. And this is where I think that we really have a
4 robust system at Delta, through the two primary programs we
5 have, which are ASAP and FOQA, but also our FCR, which is our
6 Flight Crew Report, and the ability to step in and talk to
7 the chief pilot, our Flight Safety and our Corporate Safety
8 hotlines. There are so many avenues for a pilot to be able
9 to report, or any employee to be able to report. And Flight
10 Operations, specifically, our ASAP program now has, for the
11 year 2018, we were just over 25,000 reports that were brought
12 forward from our pilot group.

13 Q I'm sorry, how many?

14 A Over 25,000.

15 Q Since you really haven't described what ASAP is, I
16 know that the room probably has a general familiarity, but
17 can you briefly describe Delta's ASAP program?

18 A Absolutely. It's the Aviation Safety Action
19 program, and it is executed in conjunction with the FAA and
20 with the Airline Pilots Association, which is the group that
21 represents the pilots at Delta. The ASAP program is a
22 methodology or a program that allows the pilot to send in a
23 report, that has to be timely and really recount the
24 situation that happened to them. And when you hear me say
25 25,000 reports, one thing that may jump into your mind is

1 that's a lot of reporting, and is there a reason that pilots
2 would report that much. Fully 60 percent of the reports that
3 we get at Delta are reports from pilots that say -- I
4 expected this to happen and it didn't happen that way, and
5 you need to make sure that you warn other pilots about this.

6 We go into what's called the Event Review Committee
7 every week, to review the ASAP reports. And we have groups
8 that have broken down into wide body and narrow body, and
9 international and domestic. And they review these reports in
10 very much detail, and bring forward recommendations where we
11 need to improve either our operation or our policies, or our
12 procedures, or educational levels. Sometimes it refers to an
13 individual pilot that they think may need to get some
14 individual training, but more often than not it goes to
15 systemic issues and things that would either come back to the
16 company or require the company to work with outside entities,
17 such as the FAA or with particular airport authorities.

18 Q And is ASAP part of SMS?

19 A ASAP is an integral part of SMS.

20 Q Why?

21 A Because that really is the basis of the front line
22 employees making their reports to identify issues that they
23 see in the operation. And it doesn't have to do with just
24 simply the operation. It could be anything at all. We have
25 ASAP programs in each one of our departments. So, if the

1 flight attendants or the gate agents, above wing or below
2 wing, or a mechanic sees something that they think is a
3 concern, then they can send in an ASAP report.

4 Q Are ASAP reports -- is the pilot identified when
5 they send in an ASAP report?

6 A No. It's a confidential report that is sent in
7 that actually is identified to everyone except for the Safety
8 Department.

9 Q Why?

10 JUDGE MORRIS: Counsel, I don't need to hear any of
11 this. I am intimately familiar with the ASAP program and how
12 it works.

13 MR. ROSENSTEIN: Okay.

14 JUDGE MORRIS: And why it works. And what are the
15 benefits and consequences.

16 MR. ROSENSTEIN: We heard a lot of negative
17 testimony, on day one of this case, from pilots and I want
18 you to not have that be the only information that you walk
19 away with about Delta's commitment to safety here, but I will
20 move on to another area.

21 JUDGE MORRIS: Unless there's something unique, the
22 MOUs are templated, for the most part.

23 BY MR. ROSENSTEIN:

24 Q Describe for us how the SMS program at Delta was
25 implemented?

1 A Well, actually, it started as early, as I recall,
2 as 2004. The FAA, at that time, had identified four levels
3 to be able to achieve, to start through the SMS system.
4 However, there really was no qualification at that time. So,
5 Delta started each one of those levels, and attained Level 4,
6 but the FAA had not established the certification, yet.

7 So, certification was clarified in 2015, Delta
8 immediately applied and was given their SMS certification in
9 2017, well ahead of the 2018 mandate.

10 Q And was that -- how did that compare to the
11 industry in general?

12 A Delta was one of the first two to receive that
13 certification, and we were the absolute first to reach the
14 first four levels of SMS compliance.

15 Q What was the status of Delta's SMS program in 2016?

16 A 2016, we had applied for the certification, so we
17 were at the top level, we already had a very mature and
18 robust SMS system.

19 Q In 2016, was the SMS program being reviewed by the
20 FAA?

21 A Yes, it was.

22 Q You had described a reporting structure within
23 Flight Operations, in response to earlier questions, and gone
24 through different levels. Is that a chain of command or is
25 that another word, would you describe that in another way?

1 A Well, you could certainly call it a chain of
2 command. It's really a leadership structure that allows us
3 to be able to handle the concerns of the pilots at the lowest
4 level. The goal is to be able to have the pilot in,
5 arguably, what is really a workforce that very rarely sees
6 their supervisor, have a place that they can go and sit down
7 and talk on as regular basis as they want to have. And not
8 feel like they're disjointed, just because they are,
9 essentially, deployed all the time, they're always flying
10 their trips.

11 Q We've heard some discussion in this case about
12 Delta's open door policy. First of all, is that a term that
13 you're familiar with?

14 A Absolutely.

15 Q Can you describe your understanding of Delta's open
16 door policy, as director of Flight Operations?

17 A Well, the open door policy really means that any
18 employee has access to anyone in a leadership position. Now,
19 certainly, the reason that we have a leadership structure is
20 so that we can handle things immediately for that group that
21 has that leader, and we expect them to be able to do that,
22 but it doesn't prohibit an employee from going to another
23 leader to discuss whatever the concern might be.

24 Q Is the concept of an open door policy consistent or
25 inconsistent with the concept of there being a chain of

1 command within Delta, or an organizational structure, as you
2 described it?

3 A Oh, it certainly is consistent and complimentary.
4 You know, the term "chain of command" and "leadership
5 structure," I think could be used interchangeably. It's just
6 a matter of being able to understand that we do, we always
7 have an open door policy and there's no prohibition, at all.

8 Q How did you first come to meet Ms. Petitt?

9 A Well, actually, I believe I received an e-mail back
10 in 2010.

11 Q Can you take a look at the binder in front of you
12 that's marked R-4, Volume 4, and turn to Tab RX-12?

13 A Yes, I'm there.

14 Q And can you describe -- starting with the page
15 that's marked 12-002, if you can, can you identify that
16 e-mail?

17 A Yes. I received this e-mail on Christmas Eve of
18 2010, from First Officer Petitt. And it was an apology for
19 what I believe was asking for a holiday party room for a
20 layover in Honolulu.

21 Q And it starts off saying: "Please, accept my
22 apology for e-mailing Richard Anderson." Do you see that?

23 A Yes.

24 Q Had you asked Ms. Petitt for an apology prior to
25 that?

1 A No, I had not.

2 Q And did you know what she was apologizing for,
3 before you received this e-mail?

4 A Actually, no. I had no idea.

5 Q In other words, had anybody told you that she had
6 e-mailed Richard Anderson, before you got this e-mail, did
7 you receive that information from another source?

8 A No, I didn't know that.

9 Q Can you turn the page up to 12-001?

10 A Yes.

11 Q Is that your response to Ms. Pettitt?

12 A Yes, it is.

13 Q Okay. And you wrote: "So, Karlene" -- on the last
14 line of the first paragraph you wrote:

15 "So, Karlene, neither of us thinks an
16 apology is in order, nor was any
17 expected."

18 Do you see that?

19 A Yes, I do.

20 Q Why did you write that?

21 A Really because I felt like she had been in contact
22 with her supervisor, they had talked about, you know, how we
23 want to try to take care of things for our pilots, and there
24 really should not have been a need for her to go directly to
25 Richard Anderson, her chief pilot should have been able to

1 take care of what her concerns were right there. So, you
2 know, I didn't feel like there was any additional question,
3 at that point, and so really no need for an apology.

4 Q Who was the other person that you were referring to
5 when you said "neither of us"?

6 A Steve Dickson, who at the time was the senior vice
7 president of Flight Ops.

8 Q Were you aware that she had sent a similar -- or
9 did you have a belief that she apologized to Captain Dickson,
10 too, at that time?

11 A Well, I think that -- I can't remember, exactly.
12 When I saw it, I think I just responded on behalf of Steve,
13 that there was really no reason to have to apologize.

14 Q Did you have further contact to her after -- in the
15 years following this interchange in 2010?

16 A Well, we did. It wasn't for several years.

17 Q Okay. Were you ever aware that Ms. Petitt had
18 received a letter of counsel in 2011?

19 A Not at the time, I was not.

20 Q You subsequently became aware of that?

21 A Yes, I was.

22 Q Are you familiar with Delta's social media policy?

23 A Yes, I am.

24 Q Would you just take a look at -- I can't believe
25 this -- it's RX-6, it may be in the fire binder, RX-6?

1 MR. SEHAM: So, that would be Volume 3?

2 MR. ROSENSTEIN: That would be 2 or 3.

3 MR. BISBEE: I believe it's Volume 2.

4 BY MR. ROSENSTEIN:

5 Q And can you turn to page 582. Sorry to disappoint,
6 but RX-6 is the Flight Operations Manual, is it not, or at
7 least sections of it?

8 A Yes, it is.

9 Q And could you turn to page 582?

10 A Yes, I'm there.

11 Q Okay. Can you identify what is on page 582?

12 A Yes. This is our Social Media Policy.

13 Q Okay. And I see this is from 2014. Do you have
14 any awareness as to whether that policy has changed, in a
15 material way, in either the five years preceding or the five
16 years since?

17 A I don't believe that it has.

18 Q You said that you hadn't heard from -- about or
19 directly from Ms. Petitt, for several years after your
20 interchange in 2010, am I remembering that testimony correct?

21 A Yes, I believe that's correct.

22 Q What was the next issue that you, personally,
23 became aware of, that involved Captain Petitt, if you can
24 remember?

25 A It was another e-mail and I'm not recall exactly --

1 Q The time-frame?

2 A -- what the issue was.

3 Q Sure. Did you become aware, in the fall of 2015,
4 of an interchange between Captain Petitt and Captain Davis,
5 related to her reporting off-duty activities to Captain
6 Davis?

7 A Yes, I did.

8 Q Tell us how you became aware of that?

9 A Well, I received an e-mail from First Officer
10 Petitt that essentially was asking to bring to light a
11 concern that she had with a supervisor.

12 Q Take a look at Respondent's Exhibit 16?

13 A Yes, I'm there.

14 Q And can you turn to the page that's numbered page 3
15 on that?

16 A Yes.

17 JUDGE MORRIS: RX-16?

18 MR. ROSENSTEIN: RX-16.

19 BY MR. ROSENSTEIN:

20 Q If you look at the bottom page, can you identify
21 this e-mail?

22 A Yes. This is an e-mail sent to me from First
23 Officer Petitt, that copies in her ALPA rep and Captain
24 Davis, and Captain Johnson, who were her regional director
25 and chief pilot, asking for a meeting with Captain Dickson

1 and me at the earliest convenience we have in December.

2 Q Okay. And did you have any understanding about
3 what Ms. Petitt was concerned about, in or about this
4 November 9th, 2015 time-frame?

5 A It's interesting she noted here:

6 "Please know that I have followed the
7 chain of command in an effort to solve
8 the problem."

9 And she felt like meeting with Captain Dickson and
10 me would be the next step. And didn't really give any more
11 context to it. So, I asked if she wanted to give me any more
12 on that, or should I just talk to Captain Davis or Captain
13 Johnson.

14 Q Okay. And had you talked to Captain Davis or
15 Captain Johnson about First Officer Petitt, prior to
16 receiving this e-mail, to your recollection?

17 A No, I had not.

18 Q Were you aware, when you received this e-mail, that
19 First Officer Petitt and Captain Davis had been involved in
20 an exchange related to her reporting to Captain Davis of
21 outside activities that she had been involved in?

22 A No, not at that point. I subsequently asked about
23 he background.

24 Q Did you know who the individual was, within the
25 management team, to whom Ms. Petitt was referring in her

1 November 9th e-mail, when you received it?

2 A Not at that time.

3 Q Okay. Did you write back to her -- the e-mail
4 above, is that your e-mail?

5 A Yes, it is.

6 Q Okay. Did you then -- what did you do next, after
7 you received the e-mail?

8 A The next thing I did was I reached out to Captain
9 Miller, who was the managing director of Flying Operations at
10 the time, and asked him to fill me in on whatever he knew.

11 Q Is that OC Miller?

12 A Correct.

13 Q Tell me, again, what was his job at that time?

14 A He, at the time, was the managing director of
15 Flying Operations.

16 Q So, remind me, again, on the organizational
17 structure, where that fits?

18 A So, he would be a direct report to my old position,
19 as the vice president of Flying Operations. And then the
20 managing director of Flying Operations was an immediate
21 report. And below the managing director of Flying Operations
22 were all the regional directors.

23 Q So, a regional director, like Captain Davis, would
24 be reporting to Captain Miller at that time?

25 A That's correct.

1 Q Okay. And do you recall what Captain Miller told
2 you in that time-frame, give or take?

3 A Yes. Essentially, he filled me in that First
4 Officer Petitt had been at a conference where she overheard
5 Richard Anderson, and was --

6 Q Overheard Richard Anderson or heard Richard
7 Anderson?

8 A Heard Richard Anderson speak.

9 Q Okay. Go ahead.

10 A Good point. But Richard Anderson was keynote
11 speaker, evidently, at this conference that she was
12 attending. And essentially, he was reporting that she had a
13 conflict with the way she had been treated by Captain Miller
14 when he was the regional director.

15 Q Did you speak to -- I see that above your e-mail,
16 at 8:59 o'clock a.m., on November 9th, where you wrote that:
17 "Captain Dickson and I are certainly amenable and available
18 to meet with you," Ms. Petitt wrote, perhaps within six
19 minutes, given the time difference -- oh, no, I've got that
20 wrong -- but she wrote to you afterwards that: "Jim, can you
21 give me a call."

22 Had you spoken -- did you eventually take her up on
23 that and talk to her over the phone?

24 A Yes, I did.

25 Q And when you talked to her over the phone, was that

1 before or after you had spoken to OC Miller?

2 A I think that was before I spoke to OC Miller.

3 Q So, the first step you took was calling Captain
4 Petitt, is that right?

5 A Yes.

6 Q Okay. So, tell us about that call, what do you
7 remember -- I know it was awhile ago, but what do you
8 remember about that November 9th call?

9 A Well, I think the thing that stands out to me is
10 that she mentioned that she felt like she was being singled
11 out and treated differently. That Captain Miller had
12 specifically required her to do things, as far as reporting
13 when she was going to be engaging in any social activity,
14 whether that was speaking or presenting at any venue, and
15 also that he had given her direction that she had to get
16 clearance prior to going to any of those venues, if she was
17 going to wear her uniform or wanted to wear her uniform.

18 Q Okay. And did you know about those issues in
19 advance?

20 A I did not.

21 Q What do you recall saying to her?

22 A Well, what I recall saying was that, you know,
23 certainly we should sit down and talk about this, but the big
24 thing to understand here is that Delta has a brand that is
25 very, very important to the company, and if there is

1 something that needs to be protected at Delta, it is the
2 brand. So, any person that steps out and identifies themselves
3 as a Delta pilot, we are very protective of that. It doesn't
4 matter if you're a Delta pilot or mechanic, or anyone else,
5 if you're stepping forward and saying: "I represent Delta,"
6 that could be taken as Delta's particular stance. So, it's
7 very important that we understand how important that is to
8 protect the brand.

9 Q Can you describe your view of the tenor of that
10 conversation, was it cordial, was it angry, was it combative,
11 how would you describe it?

12 A No, I would certainly say it was cordial. And the
13 concern there was that she felt that she had been given a set
14 of parameters that was different than anyone else. And that
15 because of her engagement in, for lack of a better term,
16 extracurricular activities, her presentations and so forth,
17 that she felt like she was being, essentially, censored,
18 unnecessarily.

19 Q Was that word used?

20 A I think that it was used, yes.

21 Q Did she mention the subject of a retaliatory line
22 check during the call?

23 A Not that I recall.

24 JUDGE MORRIS: Before we move on from that. So, I
25 understand your testimony, is it Delta's view that it can

1 regulate one of its employee's conduct to give a presentation
2 if Delta is not mentioned?

3 THE WITNESS: No. So, I'm sorry, I guess I have to
4 ask you to restate the question.

5 JUDGE MORRIS: Your testimony caused me to pause,
6 in the sense that you talked about had to notify -- if she's
7 going to give a presentation -- in advance, that she's going
8 to give a presentation. Well, if she's not going to talk
9 about Delta, what is Delta's authority to interject itself
10 into her private affairs?

11 THE WITNESS: If she's using Delta proprietary
12 information, and that's the basis for her knowledge, and
13 she's bringing forward -- or anyone is bringing forward, I
14 shouldn't say "she," that's not appropriate -- if anyone is
15 bringing forward that the information that they have gained
16 from Delta's proprietary knowledge base, and they're
17 representing themselves as a Delta employee, then Delta
18 certainly retains the right to not allow that presentation to
19 go forward.

20 JUDGE MORRIS: Okay.

21 BY MR. ROSENSTEIN:

22 Q Is it your view that Delta can limit its employees
23 use of Delta's logo, brand and uniform, when they are
24 speaking out in the public, on issues related to the air
25 industry?

1 A Yes, it is.

2 Q And why is that?

3 A Well, once again, it goes to brand protection. And
4 to understand that if there is someone that is standing in
5 front of a group and they're in a Delta uniform, then that
6 implies that this is what Delta's philosophy is.

7 Q Is that a position that is described in the Flight
8 Operations Manual, under the Social Media Policy?

9 MR. SEHAM: I'm going to object, because there's
10 been no foundation laid that this witness has substantial
11 knowledge of the Social Media Policy at Delta and is
12 qualified to testify on those issues.

13 JUDGE MORRIS: Well, counsel, if you want to go
14 ahead and ask a couple of questions to this vice president,
15 you may.

16 MR. ROSENSTEIN: Well, he's already identified that
17 he's aware of the Social Media Policy, and I showed it to
18 him, so I'm not sure what else I could do to identify. I
19 could ask him the same question: "Are you familiar?"

20 BY MR. ROSENSTEIN:

21 Q Are you familiar with Delta's Social Media Policy?

22 A I am. I'm also familiar with the Flight Operations
23 Manual that restricts the use of the uniform.

24 Q In your role as the head -- senior most employee of
25 Flight Operations, are you familiar with general Delta

1 policies?

2 A Yes.

3 MR. ROSENSTEIN: Is that sufficient for a
4 foundation?

5 MR. SEHAM: I'd like three or four questions to
6 voir dire.

7 MR. ROSENSTEIN: I think that's outrageous. Could
8 we just move on?

9 JUDGE MORRIS: Yeah, I'm going to --

10 MR. ROSENSTEIN: I should say I've been very
11 patient with Mr. Seham, but that is ridiculous.

12 JUDGE MORRIS: Your comments are not needed.

13 MR. ROSENSTEIN: That's fair. He's interrupting
14 the flow of my examination. I'm upset about it.

15 JUDGE MORRIS: It happens at every trial.

16 Your objection is overruled.

17 You may continue with your questions.

18 MR. SEHAM: And just for the record, I think that's
19 the first time I've spoken in an hour.

20 BY MR. ROSENSTEIN:

21 Q Does the position that Delta has on the use of its
22 brand, was that something that applied only to Ms. Pettitt or
23 is that something that applies to all Delta employees?

24 A It certainly is a uniform policy across the entire
25 company.

1 Q After you spoke to First Officer Petitt on November
2 9th, did she follow up with you?

3 A Yes, she did.

4 Q How so?

5 A She forwarded me an e-mail from Captain Davis.

6 Q Is that the e-mail that begins on page 16-001?

7 A Yes, it is.

8 Q And did you read that e-mail at the time?

9 A Yes, I did.

10 Q What was your reaction to it?

11 A That I certainly had a situation that we needed to
12 understand with regard to the relationship between First
13 Officer Petitt and Captain Miller, and it looked, at that
14 point, as if it may be escalating, somewhat, from what I
15 would term a personality conflict, possibly, into what could
16 be more determined as a possible harassment or unequal
17 treatment situation.

18 Q What's your general practice when you receive a
19 report of unequal treatment or harassment?

20 A Well, that is -- the first thing that I think is
21 that we need to have a neutral party take a look, which I
22 considered to be our Human Resources Department at Delta Air
23 Lines. We have a specific group that I think is very
24 appropriate and expert at handling conflicts of interest, and
25 knows how to come in and assess the situation. So, I

1 immediately thought that we should go ahead and contact HR.

2 Q Do you see, in the first paragraph on page 002,
3 first full paragraph, it states:

4 "Richard's entire speech completely
5 contradicts what OC has been doing to
6 me...a letter with multiple false
7 accusations, then the secret file that
8 still holds that letter."

9 And it goes on to say:

10 "His reaching an arm into my personal
11 life with my motivation book, his
12 ordering I couldn't go to Corporate
13 Communications to ask them about putting
14 a Delta plane on the cover" -- and talks
15 then about "censorship" -- and then
16 "requires" her to speak to Captain Davis.
17 Am I paraphrasing that accurately?

18 A Yes, you are.

19 Q Did you know what she was talking about, when you
20 read that section?

21 A I did not. I did not.

22 Q Are you aware of "secret files" that Delta keeps?

23 A No. We don't keep any secret files.

24 Q In the third paragraph there's a sentence that
25 says:

1 "This all started because I violated
2 the mandated unwritten chain of command
3 policy and was subsequently ordered to
4 write letters of apology to three senior
5 pilots, all because of a Christmas party
6 for crews, no less."

7 Did you know what that referred to?

8 A I did not know what that referred to, because I was
9 not aware of any requirement to write an apology.

10 Q Okay. Had First Officer Petitt written a letter of
11 apology to you in 2010, because of a Christmas Party for
12 crews?

13 A She had written me that e-mail that we previously
14 referenced.

15 Q Okay. And so did you have an understanding as to
16 whether that was what she was referring to in this letter, or
17 did you not connect those two, at the time?

18 A I wasn't sure about the three senior pilots, you
19 know, the Christmas party part, I did dial in on, but I
20 didn't fully understand who else she was talking about.

21 Q Okay. What did you do -- what did you do next,
22 after you received this?

23 A I believe that I immediately reached out to HR and
24 also talked to Captain Miller and Captain Dickson.

25 Q Okay. Can you take a look at the Complainant's

1 binder 7.

2 JUDGE MORRIS: CX-7 or Binder 7?

3 MR. ROSENSTEIN: Sorry. CX-7, Binder 1.

4 BY MR. ROSENSTEIN:

5 Q Are you there?

6 A Yes.

7 Q If you turn to the page that's 7-003, the last
8 page?

9 A Yes.

10 Q You're copied on this e-mail from Ms. Pettitt to
11 Phil Davis. Do you recall First Officer Pettitt asking for
12 positive space in a hotel, in order to meet with you and
13 Captain Dickson on December 1st?

14 A Yes, I do. I mean at this point I thought, you
15 know, she had asked to be able to sit down and meet with
16 Captain Dickson and me, and we were trying to get that set
17 up.

18 Q What did you think you would be meeting about?

19 A Well, I really thought that we were going to be
20 meeting about her conflict with Captain Miller at the time.

21 Q Did you consider that that was a safety issue?

22 A No, no, not at all.

23 Q Can you -- the next e-mail on November 16th, m above
24 it, seems to be your response. Is there a reason you
25 responded and not Captain Davis?

1 A Well, because the question of positive space travel
2 and a hotel, and so forth, had been brought forward, and
3 because there wasn't anything that was really required out of
4 this, it wasn't a company meeting, we typically didn't do
5 trip drops or anything else for those types of meetings. So,
6 we would set that up and certainly have time available for
7 her. But I was just informing her that we would be very
8 happy to meet with her, however, we typically didn't do the
9 positive space or the hotels, and so forth, for something
10 that was not a company required meeting.

11 Q In your letter to her -- which you copied also to
12 her union representative, Jud Crane, correct?

13 A Yes.

14 Q Okay. It says -- you wrote:

15 "In your statement below, you have
16 highlighted a significant difference than
17 what you conveyed to me on the phone last
18 week. There is a big difference if you
19 are saying you are or have been harassed.

20 You indicated to me a difference of
21 opinion on censoring use of Delta
22 information and access to Delta work
23 areas. If this is a formal accusation,
24 we are in a different place and you will
25 need to also have a discussion with a

1 representative from our HR team, who will
2 help coordinate appropriate next steps."

3 Why did you -- what was it that she had written to
4 you that caused you to have that opinion?

5 A That was actually in response to the e-mail that
6 she sent to me, after talking about the scheduling
7 constraint. And she essentially said that she had been
8 singled out and threatened. So, that moved us out of the
9 conflict of interest and probable personality situation, into
10 what to me looked like now we were into more of a harassment
11 and a direct threat environment.

12 Q And the last sentence, the next to last sentence,
13 you reference something called "EOC," do you know what you
14 meant there?

15 A That's our Equal Opportunity Group that essentially
16 is part of the HR team, and they are the experts that come in
17 and really evaluate the situation.

18 Q Okay. You communicated this exchange to your boss,
19 Captain Dickson, is that right?

20 A I did.

21 Q Why?

22 A I felt like he needed to understand that this was
23 taking on a different flavor at this point, so we weren't
24 really talking about just a personality conflict anymore.

25 Q And in the e-mail you sent to Captain Dickson, you

1 said:

2 "Here we go, just FYI, and I will
3 brief HR and handle this with kid
4 gloves."

5 Do you see that?

6 A Yes.

7 Q Why did you write that?

8 A Because I felt that the way that the e-mail was
9 written that there was certainly a threat of escalation past
10 the harassment to possibly a lawsuit. So, I felt like we
11 needed to not only have HR involved, but also, probably,
12 Legal at that point.

13 Q And then you wrote:

14 "She could be a candidate for a Section
15 15 after this goes through. She
16 continues to see herself as the victim
17 and refuses to accept that she cannot
18 just use Delta proprietary information as
19 her own, as well as Delta pictures
20 (aircraft, QRH, Volume 1, et cetera) and
21 intellectual knowledge. Will keep you
22 informed."

23 Q Why did you write that?

24 A This was actually after my discussion with Captain
25 Miller, also. And he explained to me the interactions that

1 had taken place with First Officer Petitt, going back to a
2 blog that she had participated in, that she was counseled
3 about, the articles that she had published, her interactions
4 with her presentations and so forth, and the numerous times
5 that she had been talked to, with her chief pilot, to try to
6 understand the policies and why it was so important for Delta
7 to be able to protect the brand. And it really wasn't
8 singling anybody out, it was a uniform policy, but she really
9 didn't grasp that. and I was trying to understand why she
10 wouldn't grasp that. You know, we hadn't see any operational
11 issues at that point, and so it is something that went
12 through my mind, that maybe this isn't her fault, maybe she's
13 not remembering this correctly or whatever. So, why would
14 that happen if there are no operational aspects to that, as
15 well.

16 Q But why Section 15?

17 A Well, Section 15 is just -- it's an assessment to
18 understand whether or not you're fit to fly the airplane.
19 And I didn't have any indication that there was an
20 operational issue, however, if you're not able to process
21 this -- what is really a pretty simple doctrine, a pretty
22 simple policy -- then would that transfer to the airplane or
23 not? So, there was a question in my mind about that, but I
24 didn't see any operational issues. So, even though I wrote
25 this at the time, I really didn't think much of it after

1 that.

2 Q Well, what would be -- what would make you connect
3 First Officer Petitt's inability to follow or claimed
4 inability to appreciate the position that had been relayed to
5 her on social media or other issues, with fitness to fly?

6 A Well, it really goes to predictability in the
7 cockpit and being able to follow policies and procedures that
8 we train in the simulators, day in and day out. The one
9 thing that is most dangerous, I think, in a cockpit, is
10 something different happening than what you expect. So, if
11 you're in a situation where you have trained and you have
12 practiced a particular way of handling a situation and it
13 doesn't come out that way, because someone didn't follow
14 procedures, that tends to startle you. We don't handle
15 startle very well in the airline business. So, we try to
16 keep everything as defined as we can, and on a very steady
17 track. So, if this were to go into the cockpit, then that
18 would be a concern.

19 Q In your mind --

20 JUDGE MORRIS: Wait a minute. I'm having a hard
21 time following the logic here. You've got no indication from
22 any of the check rides, or any complaints from any of the
23 lines, that this manifests itself anywhere. Yet, you think
24 it rises to the level of grounding this pilot for a Section
25 15.

1 THE WITNESS: No, sir. At the time I didn't have
2 the understanding of the operational -- of her operational
3 performance, at that time. All I had was the information
4 from her interaction with her chief pilot.

5 JUDGE MORRIS: I'm still not understanding. Why
6 got VFR direct to a Section 15?

7 THE WITNESS: Well, I'm not saying go VFR direct to
8 a Section 15. I'm saying that she could be a candidate, if
9 that were to be present in her operational performance. What
10 I found out is that it was not.

11 JUDGE MORRIS: Again, I'm still trying to
12 understand -- and again, I don't run your business, I'm not a
13 super HR department, but it seems -- it would seem to me that
14 there are a lot of other things that you could check your
15 traps on, as I call it, before you immediately come to a
16 conclusion that a Section 15 might be something that should
17 be considered.

18 THE WITNESS: Well, I think you have to take a look
19 at the history dating back to 2010 and the numerous
20 interactions that she had had with her supervisors in that
21 time-frame. So, the fact that I say that she could be a
22 candidate for a Section 15, doesn't mean that I was actually
23 pushing to go in that direction. What I said was, if this
24 methodology or this inability to be able to process that
25 policy and that understanding of what needed to take place

1 was as a result of something else, that wasn't her fault,
2 then that could be a situation that we would need to consider
3 a Section 15.

4 BY MR. ROSENSTEIN:

5 Q Were you considering Section 15 as a punishment,
6 because of First Officer Petitt's interactions with Captain
7 Miller?

8 A No, not at all. As a matter of fact, it was
9 exactly the opposite. I mean there is a -- to me, it didn't
10 really register why she couldn't understand what the policy
11 was. So, it didn't relate to just being stubborn, it didn't
12 relate to the fact that she just didn't -- was just going to
13 block it out. Because what was relayed to me was that every
14 time she left the office, and meeting with her supervisor,
15 she understood the policy, but then continued to not be able
16 to follow that later on. So, that's really where the basis
17 was.

18 Q And the source of your information was Captain
19 Miller?

20 A Captain Miller, yes.

21 Q Did you speak to anyone other than Captain Miller
22 about interactions with First Officer Petitt, during that
23 time-frame?

24 A I don't recall that I did.

25 Q Did Captain Miller express to you his views of

1 Captain Petitt's personality, as well as her operational
2 responsibilities and duties?

3 A Yes, he did.

4 Q Generally, what was your impression?

5 A Well, that there was -- that she was a very social
6 person, you know, loved to be engaged in outside activities.

7 And I think that that's correct. And that when she would
8 come in, obviously her intentions were good. The question
9 is, you know, at what point did it veer from a good intention
10 to something that could be misconstrued as being a Delta
11 position, and that was the concern.

12 Q Was your statement that she could be a candidate
13 for Section 15 related in any way to any safety complaints
14 that First Officer Petitt had made to that point?

15 A No, absolutely not. As a matter of fact, I mean
16 there was no discussion, at all, of the operation or her
17 ability to operate the aircraft.

18 Q Did you eventually follow up on Captain Petitt's
19 request for a meeting?

20 A Yes, we did.

21 Q And did you take any further steps with regard to
22 considering her a candidate for a Section 15, during that
23 time-frame?

24 A No. That was dismissed.

25 Q Take a look at C-22, CX-22.

1 A Yes, I'm there.

2 Q Okay. If you turn to the page CX-22-002 -- and I
3 realize we've strayed a little bit from it -- but is that the
4 response to your November 16th e-mail, where you suggested
5 that there would be a need for First Officer Petitt to talk
6 to HR or EOC?

7 A Yes. I mean essentially, at this point, we really
8 needed to take it into the HR group, to be able to go through
9 the review of the situation between First Officer Petitt and
10 Captain Miller. And now she's writing back and saying --
11 well, actually, what I'd like to do is put all that on the
12 back burner and come down and talk to you about her
13 perception of Safety Culture.

14 Q Did you consult with anybody as to what to do next?

15 A Well, I did talk to Captain Dickson about it.

16 Q Okay. And if you turn to the page 435 -- excuse me
17 -- 22-001?

18 A Yes.

19 Q Is that e-mail from you to Ms. Petitt your response
20 to her?

21 A It is. And at that point, what I realized is that
22 -- and I shouldn't say at that point I realized, because it
23 had been something that I had been, obviously, on both my
24 mind and on Captain Dickson's mind, about this whole
25 escalation to harassment and unequal treatment. And the way

1 that she had written the previous e-mail certainly rose a
2 question in my mind as to whether or not there was going to
3 be something further coming forward, and you know, could that
4 be a legal issue or not. The standard practice for us is to
5 bring in HR, Labor Relations and Legal into those
6 discussions, so I went ahead and ordered that for that team.

7 Q Okay. And is that the e-mail that's above, that's
8 sent by you to a group on Wednesday, 11/18, at 4:19 o'clock
9 p.m.?

10 A Yes, it is.

11 Q Okay. Without testifying as to any legal advice
12 that you may have received, it says in this e-mail:

13 "I will ensure Steve is briefed that
14 we do not see any harassment
15 substantiation or correspondence, so we
16 find no basis to start an investigation
17 into her singular claim. We also do not
18 find any identified safety threat to the
19 company or the operation, only her
20 assertion there is a Safety Culture
21 concern. While this does not drive an
22 immediate reaction to give her an
23 audience, it is believed a meeting is the
24 best course of action. We'll hear her
25 concerns and address them, will provide

1 immediate corrections, as necessary.

2 Also, while not required, we will allow her to

3 book and provide a hotel."

4 I'm paraphrasing the last paragraph. Were those
5 your thoughts at November 18th?

6 A Yes, they really were. Because although she
7 inappropriately uses Safety Culture, because it's really not
8 about Safety Culture when you have a conflict with your
9 supervisor, that doesn't drive to the operational concern, in
10 my mind. Certainly, we want to sit down and hear what she
11 has to say.

12 Q So, explain what you meant by that, that in your
13 mind her complaint did not involve Safety Culture, despite
14 her use of that term?

15 A Well, because this really was 100 percent on the
16 administrative side of the house. This was dealing with a
17 company policy on how you conduct yourself when you're off of
18 company property. And that really is not something that I
19 see that ties back into a Safety Culture. If there was a
20 concern that she felt like she couldn't report a safety
21 concern when she was flying in the operation, or something
22 that she identified, then that would be a different story.
23 But that was not brought forward, at all, in any of our
24 discussions.

25 Q Why did you want to meet with her again?

1 A Because you can't overlook an HR issue. I mean
2 this is something that we needed to go ahead and sit down and
3 understand. And she took the singular issue off the table,
4 or so she said that she was going to, but still, you know,
5 there was a question in my mind as to whether or not that was
6 going to be the case.

7 Q Okay. You had talked a bit earlier about your
8 conversations with OC Miller about Captain Petitt, do you
9 recall that?

10 A Yes.

11 Q And you said that he had reflected some concerns, I
12 think you said about her cognitive ability -- if I'm not
13 remembering that right, tell me -- not her operational work,
14 but her cognitive work, is that right?

15 A Cognitive ability to understand the policy and be
16 able to understand the reasoning behind it.

17 Q Okay. And just take a look at Claimant's 11?

18 A Yes, I'm there.

19 Q Okay. This is an e-mail from -- it starts out as
20 an e-mail from OC Miller to you, which attaches the same
21 document that we've seen before --

22 JUDGE MORRIS: CX-11?

23 MR. ROSENSTEIN: CX-11, yeah. Page 002.

24 JUDGE MORRIS: Okay.

25 MR. ROSENSTEIN: Sorry.

1 BY MR. ROSENSTEIN:

2 Q Beginning at the bottom of 002 -- well, really
3 beginning on 003, Captain Miller attaches a version of that
4 same e-mail that Captain Petitt had sent about her meeting
5 Richard Anderson, that we've gone through, you'd agree it's
6 the same thing there?

7 A Yes.

8 Q And you spoke to him, as you said, on that day, is
9 that right?

10 A Yes.

11 Q Okay. And you weren't sure whether that was before
12 or after you had your conversation with Captain Petitt --
13 First Officer Petitt, is that right?

14 A I can't remember, exactly. I think it was after.

15 Q Okay.

16 A Yeah.

17 Q And in that, you write in here -- among other
18 things:

19 "We have never stopped her from
20 bringing forward a safety issue, never
21 censored her input about safety concern,
22 never second guessed a slowdown or halt
23 in the operation for safety reasons."

24 And then goes on to say:

25 "I also think we should consider

1 whether a Section 15 is appropriate."

2 That's the same phrase that you used when you spoke
3 to Captain Dickson, correct?

4 A Yes, it is.

5 Q Okay. And was there a reason you were telling OC
6 that, at the time, as well?

7 A Just that it didn't make any sense to me that, you
8 know, this whole understanding of self-promotion versus what
9 the company is trying to do, I couldn't understand why she
10 couldn't understand that.

11 Q And you wrote:

12 "While I'm sure she would find issue
13 with that course of action, if she cannot
14 embrace and understand the reasons behind
15 our actions, it stands to reason she
16 might not be able to make appropriate
17 decisions for the safe operation of a
18 flight as a crew member."

19 Do you see that?

20 A Yes, I do.

21 Q Were those your thoughts at the time?

22 A Yeah, they really were.

23 Q Did you have any other reason to consider whether a
24 Section 15 was appropriate?

25 A No.

1 Q And as you testified, did you do anything beyond
2 these e-mails in the early November time-frame, with regard
3 to implementing the consideration of the Section 15 process?

4 A No, I did not, because I didn't have any
5 information that said that there was an operational issue, at
6 all.

7 Q Could you --

8 A Nothing in training, nothing that anyone had to say
9 that was a concern, at all.

10 Q Could you implement this Section 15 process on your
11 own, or is that something that someone else would have to do?

12 A Certainly that is not my call. That is the call
13 for the director of Health Services.

14 Q So, when you say the process or begin the process,
15 what are you referring to?

16 A That would be to have the director of Health
17 Services get briefed and understand what the situation is,
18 and then have him start through his deliberations on whether
19 an assessment is appropriate.

20 JUDGE MORRIS: At that time, did the director of
21 Health Services report to you?

22 THE WITNESS: No, he did not.

23 JUDGE MORRIS: Who did he report to?

24 THE WITNESS: He reported up through the HR group,
25 which is the -- pardon me for not knowing the exact title --

1 but it comes up through the HR team.

2 JUDGE MORRIS: But did they ultimately -- through
3 the quote/unquote "management organization," the "chain of
4 command," if you follow the wire, does it come up to you at
5 that point in time?

6 THE WITNESS: The dotted line?

7 JUDGE MORRIS: Yes.

8 THE WITNESS: There is a dotted line for the
9 director of Health Services to the senior vice president of
10 Flight Operations, not to my position at the time, but yes.

11 JUDGE MORRIS: Okay. And the senior vice president
12 of Flight Operations then was whom?

13 THE WITNESS: Steve Dickson.

14 JUDGE MORRIS: Okay.

15 Continue.

16 MR. ROSENSTEIN: Thank you.

17 BY MR. ROSENSTEIN:

18 Q So, I think you testified there was no further --
19 to your recollection -- discussion of those issues, but you
20 did agree to convene the meeting with First Officer Pettit,
21 is that right?

22 A Yes.

23 Q Okay. So, take a look at Respondent's now, RX-17.
24 Tell me when you're there -- take your time.

25 A Yes, I'm there.

1 Q Okay. And again, we have a little bit of
2 repetitive e-mailing, but on 17-02 we see the November 16th
3 e-mail from Ms. Petitt to you. Is that your response on
4 November 18th?

5 A Yes, it is.

6 Q Okay. And at that point you agreed that you would
7 set up a jump seat for her to come down the night before, as
8 she had requested, is that right?

9 A That's correct.

10 Q Okay. Why did you ask if she would have anything
11 to pre-read?

12 A Because I wanted to make sure we were totally
13 prepared. And she had talked about some of the things that
14 she was doing, when we were talking on the phone. So, she
15 had mentioned a couple of articles that she had written. But
16 essentially, I just wanted to make sure that we were totally
17 prepared for the meeting.

18 Q Okay. And did she write back to you then?

19 A Yes, she did.

20 Q And what happened next?

21 A Well, actually, when we had initially set up, I
22 believe, the December 1st meeting, when she came back she
23 said that she had finals that were due on November 29th, and
24 I would not be able to get the documents that she wanted us
25 to pre-read by the 27th. And she looked at pushing back the

1 date to actually meet. So, I offered up an opportunity to
2 contact -- be contacted by phone and go through it, because I
3 felt like if this was a very significant event, she would
4 want to talk about that immediately and why would we wait,
5 let's just go ahead and have that discussion. And she
6 declined and pushed to the end of January.

7 Q And was that acceptable to you?

8 A Well, I didn't really have -- to me, at that point,
9 if it was a very serious situation, I would have assumed that
10 she would have wanted to get in front of us now, and she felt
11 very comfortable pushing to the end of January.

12 Q Okay. Take a look at Respondent's RX-19?

13 A Yes, I'm there.

14 Q Okay. Can you identify what this chain e-mails was
15 about, January 14th, start with just the pages RX-1 and RX-2
16 -- we don't have to go to RX-3?

17 A Yes. I believe this was -- in setting up for the
18 meeting in January, this was setting up the time-frame and
19 then who would be invited.

20 Q Got it. And it says at the top of page RX-1, from
21 Ms. Pettitt to you: "Can we invite John Laughter to the
22 meeting?" L-a-u-g-h-t-e-r.

23 A That's correct.

24 Q Who is John Laughter?

25 A John is the senior vice president of Corporate

1 Safety, Security and Compliance, CSSC.

2 Q Okay. And is he also the accountable executive
3 under the SMS program, to your knowledge?

4 A He is.

5 Q And why is he the accountable executive on the SMS
6 program?

7 A As the senior vice president of CSSC, all the
8 safety programs actually roll up underneath is directorate
9 and he reports directly to the CEO. So, he has control of
10 the safety and the audit programs.

11 Q Do you know when he became the accountable
12 executive?

13 A I don't.

14 Q Is it necessary -- if you know -- is it necessary
15 for the chief executive officer to be the accountable
16 executive under SMS?

17 A I don't know that it's necessary. It's certainly
18 acceptable. And I think that it really comes down to
19 accessibility. Just to have a name of someone who is the
20 named executive, I think, is a little bit hollow, that's just
21 a name on a piece of paper. The question is, is the SMS
22 program embraced from top down, and it is.

23 Q Is Mr. Laughter a pilot?

24 A He is a pilot, however, he's not a Delta seniority
25 list pilot.

1 Q Is the current CEO of Delta a pilot?

2 A No, he's not.

3 Q Was the prior CEO of Delta a pilot?

4 A No.

5 Q Take a look at Respondent's 20, and, again, RX 20,
6 if you'd read from the bottom down, starting at the bottom of
7 page 1 and continuing to page 2, can you identify what those
8 documents are?

9 A This is noting that First Officer Petitt had
10 included two documents to review during our meeting, and I
11 believe that she authored both.

12 Q And what did you do with those documents?

13 A I actually sent them over to my subject matter
14 expert team, the head of Training, the head of Standards, and
15 the head of Quality Assurance and Compliance, along with our
16 Human Factors head.

17 Q Why?

18 A Well, just looking at the titles, as I saw, you
19 know, "Pilot Training and Safety Culture, SMS and Next Gen
20 Demands," and "Structural Redesign of Pilot Training," I felt
21 like there is, you know, a part of this that we need to
22 understand. If there's, you know, something that we want to
23 try to improve, I want them to take a look at this and
24 understand that, so that I can talk intelligently to it when
25 First Officer Petitt showed up. So, I wanted them to go

1 ahead and review the documents, so that we had a working
2 knowledge.

3 MR. ROSENSTEIN: This would be a good time for a
4 short break, if that's okay.

5 JUDGE MORRIS: I was going to ask --

6 MR. ROSENSTEIN: We're right there.

7 JUDGE MORRIS: All right. Let's take -- well -- 14
8 minutes. We'll meet at five of, five of the hour.

9 (Off the record at 10:41 o'clock a.m.)

10 JUDGE MORRIS: Back on the record.

11 All parties present when the hearing last recessed
12 are again present.

13 Captain Graham is on the witness stand.

14 MR. ROSENSTEIN: Thank you.

15 DIRECT EXAMINATION RESUMED

16 BY MR. ROSENSTEIN:

17 Q If you could just have JX-B handy, because we'll
18 get to that eventually, just so that we don't have to
19 scramble for the binders.

20 We were talking about the lead up to the meeting
21 that you had with First Officer Petitt on January 28th. Tell
22 us what happened at the meeting, what's your recollection?

23 A Well, I think both Captain Dickson and I thought we
24 were going to be talking about the articles and then, also,
25 about a perception of Safety Culture. And part of what we

1 talked about, right off the bat, was the philosophy that was
2 used to merge the two airlines together, Northwest and Delta.
3 That seemed to be, you know, something that was, I would say,
4 probably not very well understood by First Officer Petitt, at
5 the time.

6 But essentially, as we got into the meeting, First
7 Officer Petitt brought forward a report and put it in front
8 of Captain Dickson and me, and said: "I'd like to go" --

9 Q Before you talk about the report, was the meeting
10 scheduled for a particular length of time, to your
11 recollection?

12 A It was. It was scheduled for 90 minutes.

13 Q And this was a meeting that the two most senior
14 employees, executives in Flight Operations, were both
15 attending?

16 A Yes.

17 Q Okay. Is that -- was that something that was
18 typical, that you'd spend 90 minutes with an individual pilot
19 over -- both of you together?

20 A Well, I wouldn't say that it was typical, in any
21 way, shape or form. I would say that I think that the
22 seriousness with which we took this investigation or this ask
23 for the meeting, was such that we needed to both be there.

24 Q Well, why was it serious to you?

25 A Well, because certainly there was a question of a

1 senior supervisor and a conflict between an employee and the
2 senior supervisor. So, that's no matter that I think should
3 be looked at lightly.

4 Q Were you interested in Safety Culture?

5 A Absolutely.

6 Q Was that something that you expected to be
7 discussed?

8 A Yes.

9 Q Why are you interested in Safety Culture and follow
10 up, why were you interested in hearing First Officer Petitt's
11 views of it?

12 A Safety Culture is the basis of everything that we
13 do. And I think I said, when we first started talking about
14 Safety Culture and the SMS, my safety background goes back to
15 my days in the Navy and continued up when I first got to
16 Orlando as a new captain, I was the base safety rep for the
17 Airline Pilots Association. I was also on the Incident and
18 Accident Committee. I was named to the 737 Incident
19 Committee, right after the initial hard over rudder on the
20 737s, and was part of that group. As, essentially, the
21 safety officer of Flight Operations in my job in Standards
22 and then, also, as the vice president of Flying Operations.
23 I felt like that is the key to everything for us. We always
24 tell our pilots safety is the only thing out there, it's the
25 number one priority. If you don't have the ability to say

1 that you can operate that flight safely, you don't operate
2 that airplane. And as soon as you determine that you can
3 safely do that, then it's about risk mitigation and you
4 mitigate the risk the best that you can, to the point that
5 you say that you're not safe.

6 Q Well, other than Safety Culture, were you aware of
7 any specific safety operational issues that were going to be
8 discussed, in advance of the meeting?

9 A No.

10 Q And so tell us -- you were talking about general, I
11 think, concepts of safety, is that the same view that you
12 have of Safety Culture, as an issue?

13 A Well, when you say --

14 MR. SEHAM: I'm going to object to leading.

15 JUDGE MORRIS: Overruled.

16 THE WITNESS: Safety versus Safety Culture, I think
17 that we have to make sure that we keep them in their
18 perspectives. Is there a Safety Culture issue when you have
19 a conflict between a supervisor and an employee? I'm not
20 sure that there is a Safety Culture issue there. As a matter
21 of fact, I don't think that there is, unless it translates
22 into the airplane. You wouldn't want to have those two
23 flying together and you wouldn't want to have those two in
24 the simulator together. So, we need to take that
25 administrative issue and handle that, but it doesn't go to an

1 unsafe situation.

2 So, as we talk about Safety Culture, it really is
3 the understanding that safety is first and foremost, and that
4 goes for the whole, that goes for all the pilots, all the
5 Flight Operations support people, and the entire airline.

6 Q Okay. So, you were describing the January 28th
7 meeting and I stopped you at the point where, I think, First
8 Officer Petitt handed you a report of some sort, is that
9 right?

10 A That's correct.

11 Q So, continue describing the meeting as you recall?

12 A Well, as she handed us the report she said:
13 "Actually, I want to talk about this," and she put the report
14 in front of us. And she stepped through it, with particular
15 detail in certain areas, and I would say that she certainly
16 felt passionate about the report. She said that it was a
17 Safety Culture report or, you know, it led to issues that she
18 thought that we had with our Safety Culture and Flight
19 Operations, and she tried to point out the difference between
20 what she felt was the corporate safety mindset versus what
21 she thought Flight Operations safety mindset was, Safety
22 Culture mindset.

23 Q And turn to JX-B?

24 A Yes.

25 Q The title of it actually is: "Assessment of Delta

1 Air Lines Flight Operations Safety Culture," correct?

2 A That's correct.

3 Q Okay. How long did you discuss the report before
4 the meeting ended, approximately?

5 A I don't recall, specifically.

6 Q Did you have time to go through all -- it's
7 relatively long -- did you have time to go through all of it
8 during the meeting?

9 A You know, I don't think that we hit on every single
10 piece. I think that there were certain parts that she wanted
11 to make sure that she talked about. And certainly they
12 started, you know, many years ago, when she first came back
13 into her NDOC at Delta Air Lines.

14 Q What was your initial impression of the meeting?

15 A My initial impression of the meeting?

16 Q Yeah. How did you feel -- how did you react once
17 the meeting was over, what was your impression?

18 A Well, I can tell you that whenever I am handed
19 something that someone says, you know what, this is a safety
20 concern -- and certainly this one says "Safety Culture" --
21 but I take it very seriously. And as we were going through
22 some of these situations, the first thing in my mind is that
23 we have to investigate everything in this report.

24 Q Why?

25 A Because they're concerns of hers and understanding

1 the perceptions, understanding the issues that were on the
2 table, there were several things that were very concerning to
3 me, as she brought them forward in this report.

4 Q Did you find First Officer Petitt to be credible
5 during the meeting?

6 A Yes.

7 Q Did you consider, at that point, her cognitive
8 abilities to be impaired in some way?

9 A No.

10 Q Did you discuss the concept of a referral to
11 Section 15 after the meeting?

12 A No.

13 Q Take a look at Respondent's 23, please, and
14 Respondent's 23 are handwritten notes, but then pursuant to
15 the Tribunal's instructions, there's a typed version of what
16 we believe to be those handwritten notes. But I'm asking you
17 to look at the handwritten section?

18 A Yes.

19 Q Can you identify that?

20 A Yes. Those are my notes, taken during the
21 interview.

22 Q Okay. And could you just read the typed version
23 and tell us whether -- read them together -- just take a few
24 seconds and let us know if we got that right?

25 A I think that the seventh bullet that says -- starts

1 with: "Lee Ann," is not "Lee Ann." I think that is "Albain."

2 Q Okay. I agree. Sorry about that.

3 A And I think that: "IA to fly to HRG," should be
4 "HKG."

5 Q Okay.

6 A Yes.

7 Q The rest is accurate?

8 A Yes.

9 Q Okay. And were these notes that you took
10 contemporaneously, while she was with you?

11 A Yes. I was just jotting down things that stood out
12 to me immediately.

13 Q Got it. So, if First Officer Petitt had said
14 something that you thought was important to keep track of,
15 you would write it down, am I understanding you correctly?

16 A Well, actually, there were some things that just
17 came -- that popped out at me, that I thought, you know, I'm
18 trying to understand why either she would think that or, you
19 know, what is driving to the meat of the investigation. And
20 I'm trying to understand the tone. And so really, that's
21 really what it's all about.

22 Q In the bottom it says: "Bill Palmer direct contact
23 with KP." Do you recall or does that refresh your
24 recollection of any comments that were made at the meeting?

25 A Well, on that particular point, I believe she was

1 talking about her posting on the A330 Air France situation,
2 and she made the comment that Bill Palmer had reached out to
3 her directly and told her that that was a good post. And
4 Bill Palmer is a line check -- I guess he still is -- a line
5 check pilot on the A330, and someone who certainly, I think,
6 is a subject matter expert on the aircraft.

7 Q Got it. And then it says: "IA to fly to HKG, book
8 D to fly." Do you recall what you meant by that, when you
9 wrote it?

10 A Correct. As I remember how the explanation went,
11 First Officer Petitt had been in Daytona Beach and the phone
12 rang, picked up the phone, crew scheduling on the other line,
13 "You've been inversely assigned to fly out of Seattle to Hong
14 Kong." And then they booked her a ticket directly to Seattle
15 to fly the inverse assignment.

16 Q And that was something that First Officer Petitt
17 told you about during the meeting?

18 A Yea.

19 Q And then it says: "Meet with JT, ES, S. Dempsey on
20 SMS issues." What did you mean by that?

21 A That's Jon Tovani, Ed Sternstein and Steve Dempsey,
22 my head of Training, head of Standards and head of Human
23 Factors Working Group.

24 Q What did you mean by "meet with"?

25 A Well, to go through the document, in other words

1 let's take a look at all the SMS issues that are contained
2 within the report and have them assess and take a look,
3 critically, at the way they were operating right now, what
4 are our philosophies and compare and contrast.

5 Q Was this something that you were writing for
6 yourself to do, was it something that First Officer Petitt
7 said, or was it something that you were going to have First
8 Officer Petitt do, or something else?

9 A No, this was actually me already starting to
10 process how I'm going to be able to review and action items
11 out of this report, because to me some of the items in there
12 were significant and needed immediate attention.

13 Q So, this was an instruction to yourself, was this
14 something that somebody said?

15 A Correct.

16 Q Okay. And then it says: "Review 45-page doc,
17 forward to LP and Legal, set up investigative process."
18 Correct?

19 A That was me making a note to myself.

20 Q Got it. And LP stands for?

21 A I think actually it's LR.

22 Q Okay.

23 A That's what I meant.

24 Q See, I called you.

25 A Yeah.

1 Q And LR is Labor Relations?

2 A Yes.

3 Q Okay. And what did you mean by: "Set up
4 investigative process"?

5 A To take a look at the -- there were specific pilots
6 that were identified in her report, and some of the things,
7 the accusations that were made in the report were very
8 concerning to me, and if they were in fact true, then we
9 needed to take some action. So, it would be a combination of
10 a review and an investigative review of particular parts of
11 the report.

12 Q Okay. Did you tell First Officer Petitt that you
13 would get back to her or respond in any way?

14 A Yes, I did.

15 Q What did you say?

16 A I told her I would immediately go through the
17 report and then get back with her on how we were going to
18 take it forward.

19 Q Did you do that?

20 A Yes, I did.

21 Q Could you take a look at RX-24?

22 A Yes.

23 Q There's an e-mail, February 5th. To your
24 recollection, was that your first response back to her?

25 A Yes, it was.

1 Q And what did you decide to do, in or around after
2 reading her report?

3 A Well, in terms of the investigation, the report,
4 quite honestly, kind of bounced around quite a bit, and I
5 needed to break it down into a format that we could really
6 truly investigate. So, looking at this, almost constantly
7 during the time-frame between when we finished the meeting
8 and before I reached back out to her on the 5th, I broke it
9 down into three areas. And the first one, obviously, was the
10 safety concerns that she had out there. And those needed to
11 be broken into two streams. The first one would be an
12 assessment within Flight Operations of several items. And
13 the other would be a view of what our Safety Culture was in
14 Flight Operations. And that needed to be handed off to a
15 third party to come in with an unbiased view and really give
16 us a good, you know, shine the light on Flight Operations and
17 tell us what they see.

18 So, the goal was to hand that off to Corporate
19 Safety, Security and Compliance, and have them do that. The
20 other was to have the internal assessment. And at the time I
21 thought it might be appropriate to have First Officer Petitt
22 come in and present to the team, also, on her concerns.

23 Q Before you go on, why have her present to the team?

24 A Well, because I think it's important for them -- it
25 was going to be important for them -- she was, I would say,

1 very invested and emotional in her meeting with Captain
2 Dickson and me. And that was something that needed to be
3 seen by the department heads that were going to be looking at
4 this report. So, having her come in and explain what went
5 into the report and what her perception was, as well as the
6 things that she noted, I thought was important for them to
7 see.

8 Q Did you mean emotional in a positive way or
9 negative way, or neutral, what do you mean by that?

10 A Well, I would say that -- I don't know that I can
11 term it as positive or negative. I would say that, you know,
12 it was -- she was emotional in that she felt very strongly
13 about the things that were reported here. Whether or not
14 they were totally attached to the issues that she had with
15 the pilots, which was actually the third piece, right, the
16 accusation of the pilots and their treatment of her when she
17 was either in training or out on the line, or whether it was
18 tied to the safety piece, I tend to go with the former, as I
19 recall, but definitely there was an emotional side to it.

20 Q And feel free to disagree with this effort at a
21 synonym, but would you describe her as passionate about the
22 issues that she was raising?

23 A I would say yes.

24 Q Okay. So, in the February 5th e-mail, it doesn't
25 say much more than that you're looking to have a phone call

1 with her, would you agree -- if you look back at 24-01?

2 A Actually, this was an update phone call to let her
3 know where we were, yes.

4 Q And did you arrange for that phone call or did you
5 have that phone call?

6 A I believe I did, yes.

7 Q And did you tell her that you wanted her to address
8 others or was that one of the subjects you spoke about?

9 A I think that we did talk about that here, I'm
10 pretty sure we did.

11 Q Okay. Turn the next page, 02, there's another
12 reference to phone calls, this is not necessarily a document
13 that you would have seen before, in this exhibit, there's a
14 description that states:

15 "Jim Graham called me on a Saturday night, per
16 his request, on my Boston layover, and he
17 simply asked if I would be willing to
18 give a safety presentation. I said yes,
19 and he said we would talk when I
20 returned."

21 Does that statement appear accurate, based on your
22 recollection of communications in early February with First
23 Officer Petitt?

24 A Yes, I would say so.

25 Q Now, you were describing, before, your efforts to

1 parse out some of the subject matter that was in the report
2 that First Officer Petitt gave you on January 28th. Is that
3 a fair description of your prior testimony?

4 A Yes. It really came down to three buckets, if we
5 can use the term "buckets."

6 Q We can.

7 A The first one was the safety concerns. The second
8 was the individual accusations that she was bringing forward,
9 about either the way that she had been treated or things that
10 she saw that were not appropriately proceduralized, such as
11 her coming back into the simulator. And then the third was
12 really there were several things in the report -- items in
13 the report, that were policies or parts of the Pilot Working
14 Agreement, that were not accurately reflected. And it showed
15 that there was a knowledge base gap of really understanding
16 how the process worked and what our rules were, as per the
17 Pilot Working Agreement, or within either the AQP itself, or
18 the Flight Operations Manual, Policies and Procedures.

19 Q Would you turn to Joint Exhibit?

20 A Yes.

21 Q Can you -- again, there's a typewritten section.
22 On this one, I think I'm not going to walk you through it
23 right now, just in the interest of time. But can you
24 identify what the handwritten sections are?

25 A Yes. So, the handwritten section, I believe, that

1 starts on 001, this is my initial breakdown as I went through
2 the document. And it was my first attempt to try to get the
3 buckets clarified and set that up for investigation.

4 Q And it says -- I'm looking at the handwritten, on
5 the first page 01, you've underlined: "Clarification." Is
6 that consistent with your prior testimony?

7 A Yes, it is.

8 Q Okay. And then on the second page, you have a
9 heading called: "Safety." Is that also consistent with your
10 prior testimony?

11 A Yes. So, this would be either to be discussed
12 within Flight Operations, to the department heads, or it
13 would be handed over to Corporate Safety, Security and
14 Compliance.

15 Q And then on page 4, I see the next heading it says:
16 "Accusations." Is that the third bucket that you were
17 describing?

18 A Yes, it is.

19 Q Okay. Flipping to Joint -- oh -- approximately
20 when did you prepare this -- I'm not looking for the specific
21 day, but approximately what time-frame?

22 A Well, I believe once I reached out to First Officer
23 Petitt on the 5th, it was very shortly after that.

24 Q Okay. And take a look at Joint Exhibit D?

25 A Yes.

1 Q And can you identify what that document is?

2 A Yes. This is the final document that was used to
3 move forward with the review of the report and investigate as
4 necessary.

5 Q Did you work with anyone else to take your
6 handwritten plan and turn it into the typed plan that is
7 Joint Exhibit D?

8 A I actually typed this myself.

9 Q Okay. Did you consult with anyone else?

10 A You know, I briefed Captain Dickson and I sat down
11 with our HR team, and I believe I also talked to Legal at the
12 same time, just to review the notes. Because we were
13 stepping into a situation that could have some very serious
14 consequences for pilots.

15 Q In your -- I'm going to call it an "Action Plan,"
16 is that an appropriate description of what this is?

17 A Yes.

18 Q Okay. In the section that is on page -- starting
19 on JX-D-003, there's a heading that says: "Harassment and
20 Unequal Treatment Concerns," do you see that?

21 A I'm sorry, JX-D?

22 Q JX-D-3.

23 A Three, yes.

24 Q Is that the accusation section or is that some
25 other section from the original?

1 A This is a --

2 Q Or is it a new section?

3 A This is actually an augmented section from the
4 original, because the original was just trying to get things
5 bucketed, and I came back to put it into this format, in
6 final format, and there were several things that needed to
7 move -- I shouldn't say several -- a couple of things that
8 needed to move in the final.

9 Q Got it. And it says, underneath that heading:

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

13 What caused you to direct these points to EO and
14 Legal for an independent investigation?

15 A Well, these were issues with particular pilots that
16 were named in her report. So, as part of that, we needed to
17 set up an arm's length investigation to go through each one
18 of these and see if they had merit.

19 Q Did you have a view as to whether these issues,
20 under: "Harassment and Unequal Treatment Concerns," would
21 involve an investigation into safety issues?

22 A This really did not have to do with a safety piece,
23 at all. This really was getting to whether or not these
24 pilots had acted appropriately.

25 Q Does EO conduct safety investigations at Delta Air

1 Lines, if you know?

2 A No, they don't have any function in safety at all.

3 Q Is EO part of the Flight Operations group?

4 A They are not. They're part of the Human Relations
5 team, Human Resources team.

6 Q Were there other parts of the Action Plan that deal
7 with a review of safety issues?

8 A Yes.

9 Q Can you point us out to those?

10 A Yes. Starting -- actually, it's the "SMS
11 Concerns." So, that would be Corporate Safety, Security and
12 Compliance. Those would all be contained within that part of
13 the document.

14 Q Okay. And who was going to handle that phase of
15 the Action Plan?

16 A So, as I said, there were two avenues for that.
17 For the culture piece and to take a look at Flight
18 Operations, and some of the items that were part of that
19 process, that would be Corporate Safety, Security and
20 Compliance. And then having to do with how our programs were
21 set up, that would be with the department heads themselves,
22 Training, Standards and Quality Assurance and Compliance, and
23 Flight Safety.

24 Q Did that process proceed after you completed the
25 Action Plan?

1 A Yes, it did.

2 Q Did it ultimately conclude?

3 A Yes.

4 Q Did Delta take any steps, as a result of the review
5 of safety issues that First Officer Petitt had raised?

6 A Yes. I mean the key to maintaining a Safety
7 Culture is always trying to improve the way that you
8 currently operate. And if you're not willing to improve,
9 then you are sending a very strong message. So, there were
10 several parts of this review that I think were taken back and
11 said, you know, this does have merit and how do we continue
12 to blend them with what we're currently doing now, and create
13 a stronger overall training footprint and, also, safety
14 mindset.

15 Q Can you recall any things that Delta did,
16 specifically as a response to what was raised by First
17 Officer Petitt?

18 A Well, you know, I would have to take a look
19 directly at each individual one, but what I would say is that
20 it really was a focus on trying to make sure that every pilot
21 had a very strong knowledge base, and that we needed to come
22 in and assess were we reaching the pilots with the
23 information appropriately, and was it understood
24 appropriately.

25 Q Did you engage with any experts to help you assess

1 Safety Culture?

2 A Yes, we did.

3 Q Would you describe what you're talking about?

4 A Well, that actually was part of the Safety Culture
5 review done by Corporate Safety, Security and Compliance.
6 They actually recommended that we bring in an outside team to
7 do an assessment for us and tell us where they thought that
8 we were in our -- well, I should say have them give us an
9 unbiased view and then tell us where they thought that we
10 were doing well and areas that we thought we could improve.

11 Q Take a look at -- it's a different binder, but --
12 Respondent's 101?

13 JUDGE MORRIS: In Volume 6.

14 BY MR. ROSENSTEIN:

15 Q Let me know when you get there?

16 A Yes, I'm there.

17 Q Do you know what this is?

18 A Yes. This is actually the report that we were
19 given back from a company called PRISM, who was employed by
20 our Corporate Safety, Security and Compliance team, to do the
21 deep dive into Flight Operations Safety Culture.

22 Q Was this deep dive authorized by you?

23 A Yes.

24 Q And was it, at least in part, as a result of the
25 call -- of the meeting that you had with First Officer Petitt

1 or was it just coincidental to that?

2 A Well, as I said, I think it's always good to take a
3 look introspectively and understand what we can do better.
4 But this was definitely a specific item out of her report,
5 that I felt like we needed to have right at that time.

6 Q So, take a look at page 4 of the document, it
7 should start with the word: "Engagement" -- if I got the
8 pages right?

9 A Yes.

10 Q Does that accurately reflect what PRISM was engaged
11 to do?

12 A Yes, it is. I actually had CSSC come up with the
13 five objectives, going through the report that First Officer
14 Pettitt had submitted, and give them -- give PRISM the areas
15 that they thought were most appropriate as part of that
16 Safety Culture.

17 JUDGE MORRIS: What's CSSC, again?

18 THE WITNESS: Corporate Safety, Security and
19 Compliance.

20 JUDGE MORRIS: And that is?

21 THE WITNESS: That's our corporate safety and audit
22 group.

23 JUDGE MORRIS: And the person in charge of that is
24 whom?

25 THE WITNESS: Captain -- not captain -- John

1 Laughter, Senior Vice President.

2 JUDGE MORRIS: John Laughter.

3 THE WITNESS: Yes.

4 JUDGE MORRIS: Okay. And if I understand your
5 testimony, he's responsible for the SMS program for Delta?

6 THE WITNESS: Yes, he is.

7 JUDGE MORRIS: Okay.

8 BY MR. ROSENSTEIN:

9 Q How would you characterize the report that you
10 received back from PRISM, in general terms?

11 A I would say overall, very positive. They certainly
12 pointed out areas that we can improve and we took those
13 seriously.

14 Q Now, you said that you were going on multiple
15 tracks after your meeting with First Officer Petitt, in terms
16 of your Action Plan, is that a fair assessment of your
17 testimony?

18 A Yes. I mean there was no reason not to parallel
19 track. These things were items that could, or, you know,
20 they were buckets that could be run simultaneously.

21 Q Did you communicate with First Officer Petitt on
22 both of the EO investigation track and the safety
23 investigation track, in mid February 2016?

24 A Yes. I mean the initial discussion with First
25 Officer Petitt -- actually, I should take that back, I'm not

1 sure it was the first, but in discussions with her I noted
2 that we were going to try to do that presentation, and she
3 had agreed to do that. And that, also, we needed to have the
4 arm's length investigation into the issues that HR was going
5 to look at. So, as part of that, we had HR and Legal, who
6 were dialed in, and then an HR representative would also be
7 reaching out to her, to understand, you know, her concerns
8 and so forth, as it related to the report.

9 Q And turn to Respondent's 26. You can put away the
10 other binder, we're not going to -- we may not come back to
11 that again. And if you turn to page 1 of R-26?

12 A Yes, I'm there.

13 Q We were there before. There's another one of those
14 notes at the middle of the page, that you wouldn't have
15 necessarily have seen before, but it says:

16 "Jim Graham called" -- it looks like
17 -- "on February 17th, and we spoke for a
18 little over 90 minutes. He told me what
19 to ask the divisional leaders during the
20 presentation."

21 And then it says:

22 "This is when he said he wanted to
23 meet with the HR Safety investigator, and
24 this is a directive of the Legal
25 Department, because Flight Operations

1 could not investigate themselves."

2 Do you see that?

3 A I do.

4 Q Do you recall speaking to First Officer Petitt in
5 or about mid February 2016, on the general subject of her
6 planned report to divisional leaders and a potential meeting
7 with HR?

8 A I do, but this is not accurate the way it's written
9 here.

10 Q Well, that's fine. But what do you remember from
11 that conversation?

12 A Yeah. So, from that conversation, essentially I
13 told her that I was happy that she was going to make the
14 presentation. When we discussed what, you know, she should
15 put in the presentation, I said:

16 "You know, the core function, the core
17 issues that you have in your report are
18 the ones that you want to bring forward.
19 And so anything having to do with the
20 Training Department, anything having to
21 do with the Standards Department, how we
22 run the SMS at the airline, that really
23 is appropriate to talk about in this
24 venue and with this group, because they
25 can action that."

1 I also told her that certainly HR would be reaching
2 out to her. They are under the umbrella of the Legal team,
3 and that's just by design at Delta, that we always have Legal
4 and HR tied together. But that an HR representative would be
5 reaching out to her.

6 Q Did you use the term: "HR Safety Investigator"?

7 A No, I did not.

8 Q How can you be so sure of that?

9 A First of all, safety is not part of HR's
10 department, and truly it's administration and that's really
11 what we're getting to in the heart of the investigation about
12 these accusations.

13 Q Did you mention anybody particular in Human
14 Resources who you might be talking to?

15 A Well, I probably mentioned Melissa Seppings.
16 Melissa Seppings is the person that was really my
17 counterpart.

18 Q What do you mean by counterpart, as you're using
19 it?

20 A The primary HR person who would have been taking
21 this report and the breakdown, and then actioning it out.
22 Now, I didn't have any idea if she would be doing that
23 personally, if she would be, you know, handing it off to
24 another representative, but she was the one that was in
25 coordination and she was my direct contact to where the

1 investigation was at any given time.

2 Q And do you recall telling First Officer Petitt that
3 Melissa Seppings would be the person that you would be
4 reaching out to?

5 A I think I did, yes.

6 Q And if you look at the e-mail below, on page 1, do
7 you recall receiving an e-mail from First Officer Petitt,
8 saying that she had not heard from Melissa or anyone in HR?

9 A Yes. And actually, that did not sit well with me.
10 I was hoping that we would have already had that interaction.

11 Q Why didn't it sit well -- did it to sit well with
12 you because you were upset about anything that First Officer
13 Petitt had done?

14 A No, not a bit. I wanted our HR team to be moving
15 forward at a quicker pace. And you know, we're running these
16 in parallel, so you know, as we're moving forward with the
17 review from Corporate Safety, Security and Compliance, this
18 is not something that we could allow to lag out there, at
19 all. I mean these accusations were serious. So, I wanted to
20 see some action.

21 Q Was HR investigating First Officer Petitt?

22 A No.

23 Q Did you describe to Melissa Seppings any concerns
24 that you had about First Officer Petitt's prior behaviors?

25 A No, not at all.

1 Q Do you recall what you told Melissa Seppings about
2 what she would be tasked to do, or someone on her team would
3 be tasked to do?

4 A I actually didn't say that she needed to interview
5 First Officer Petitt at all. I handed that over to HR and I
6 said: "I do want you to go through an investigation of these
7 pilots." And they are the ones that said: "This is the group
8 that we plan to interview," and her name was in that group.

9 Q Take a look at Respondent's --

10 MR. ROSENSTEIN: I haven't said yet, sorry. Now I
11 know why I'm not finding it. I'm in the wrong binder.
12 Sorry.

13 BY MR. ROSENSTEIN:

14 Q Take a look at Respondent's 33, please? Sorry
15 about that.

16 A Yes, I'm there.

17 Q Can you identify what this was?

18 A Yes. This was a note from me to Melissa Seppings,
19 asking where we are with the investigation.

20 Q Okay. And why did you choose to reach out to her
21 on March 2nd?

22 A Because I hadn't received any response from her
23 prior to that, to let me know exactly where we were, and I
24 wanted to make sure this was absolutely moving forward.

25 JUDGE MORRIS: You're referring to RX-33, correct?

1 MR. ROSENSTEIN: Yes. Oh, was he in the wrong
2 document?

3 JUDGE MORRIS: I just wanted to make sure.

4 THE WITNESS: Yes, sir.

5 MR. ROSENSTEIN: Okay.

6 THE WITNESS: 33-001.

7 BY MR. ROSENSTEIN:

8 Q And it says -- you wrote in here: "As I feel
9 certain she is tracking our time to respond." Do you see
10 that?

11 A Yes.

12 Q Why did you include that?

13 A Because I had told her that we were going to be
14 moving forward very quickly on this. So, you know, I wanted
15 to impress upon Melissa Seppings that this is not something
16 that we were going to sit back on, and certainly First
17 Officer Petitt would not expect us to sit back and waste time
18 on this either.

19 Q Okay. And take a look at Respondent's 31, flip
20 back?

21 A Yes, I'm there.

22 Q Okay. Is this an e-mail where you responded to
23 First Officer Petitt, asking -- telling you that she hadn't
24 heard from Melissa or anyone in H -- the e-mail at 6:00
25 o'clock p.m., in the middle of the page?

1 A (No verbal response.)

2 Q Do I have the wrong one?

3 A No, you do -- I'm just reading it.

4 Q Oh, okay.

5 A Could you restate, please?

6 Q Yeah, sure. Is this -- is the e-mail, from 6:00
7 o'clock p.m., from you a response to First Officer Petitt
8 writing to you earlier that day, that she had not heard from
9 Melissa or anyone in HR and was following up to see where we
10 are and on schedule?

11 A Yes, it is.

12 Q And you told her that you would check in with
13 Melissa this weekend, correct?

14 A That's correct.

15 Q But you didn't do that, actually, until March 2nd,
16 is that right?

17 A That's correct.

18 Q Okay. Could you take a look at Respondent's 34?

19 A Yes, I'm there.

20 Q Okay. And at the bottom of that page is an e-mail,
21 March 5th, Saturday, from you to Steve Dickson, correct?

22 A Yes.

23 Q And you say:

24 "Steve, Melissa Sepping's team reached
25 out to Karlene on Monday and is traveling

1 to meet her in Seattle next week."

2 JUDGE MORRIS: That's on page 2.

3 MR. ROSENSTEIN: Yes. Thank you.

4 JUDGE MORRIS: The first page is pretty much blank,
5 so it threw me.

6 MR. ROSENSTEIN: Sorry, my mistake.

7 BY MR. ROSENSTEIN:

8 Q Are you there?

9 A Yes.

10 Q Did I read that correctly?

11 A Yes, you did.

12 Q Okay. And then you say:

13 "This is the EO and Legal
14 investigation into her harassment and
15 unequal treatment claims."

16 Do you see that?

17 A Yes.

18 Q Was that accurate at the time?

19 A Well, it's not an investigation into her, it was an
20 investigation about her accusations and the concerns that she
21 had. So, there was no investigation of First Officer Petitt,
22 it was around the report that she had.

23 Q Got it. And then you wrote:

24 "I talked to her Friday, March 26th,
25 to explain that we needed a two-prong

1 reply to her document."

2 I've asked this question before and gotten in
3 trouble for it. Would you concede that March 26th is after
4 March 5th, the date of this e-mail?

5 A Yes. And I'm assuming that -- I actually think
6 that was February 26th.

7 Q So, that's a typo, in your opinion, and you meant
8 February 26th?

9 A Yes.

10 Q Okay. Other than that, is that sentence accurate?

11 A Yes, it is.

12 Q Okay.

13 "The first was an independent review
14 of the accusations, the second would be a
15 presentation to our core group, Standard
16 Training, Human Factors and Flight
17 Safety, along with a Corporate Safety
18 representative, in order for her to
19 present her concerns from a culture
20 standpoint. So those two will be running
21 in parallel."

22 Do you see that?

23 A That's correct.

24 Q Was that accurate at the time that you wrote that?

25 A Yes.

1 Q Was the Corporate Safety representative going to
2 participate in the EO investigation?

3 A No.

4 Q Did you know who would be traveling to Seattle to
5 meet with First Officer Petitt the following week?

6 A No. That was not discussed, nor was it any of my
7 business, quite honestly.

8 Q Did you eventually learn who did that -- had that
9 contact?

10 A Yes, I did.

11 Q And who did you learn it was?

12 A Kelley Nabors.

13 Q And did you know Ms. Nabors?

14 A I had not met Ms. Nabors before, no.

15 Q Did you speak to Ms. Nabors before she met with
16 First Officer Petitt?

17 A No.

18 Q Did you direct anyone to speak to Ms. Nabors,
19 before she spoke to First Officer Petitt?

20 A No. As a matter of fact, I had no information of
21 her travel plans, whatsoever.

22 Q Do you know if anyone on your team directed -- in
23 Flight Operations -- directed -- I'll leave that one. Sorry.

24 Did you come to learn about Ms. Nabors'
25 interactions with First Officer Petitt on the day of their

1 meeting?

2 A I came to learn of those -- not at the time.

3 Q Do you recall how you came to learn of it?

4 A Actually, in a discussion with -- a phone call from
5 Chris Puckett and Meg Taylor.

6 Q And in that initial contact, what were you told?

7 A I was told that Ms. Nabors had met with First
8 Officer Petitt and that she had some concerns about the
9 discussion and the interview, and that they had some things
10 they were working through and they would get back to me.

11 Q When you said: "She had some concerns," who were
12 you referring to -- Ms. Nabors or First Officer Puckett
13 (sic)?

14 A Ms. Nabors.

15 MR. SEHAM: First Officer Petitt.

16 THE WITNESS: I'm sorry.

17 MR. ROSENSTEIN: First Officer Petitt.

18 THE WITNESS: Yeah.

19 MR. ROSENSTEIN: We've all done that a few times in
20 this case, promoted Chris Puckett into this office status or
21 captain status.

22 BY MR. ROSENSTEIN:

23 Q Have you -- did you know anything else, other than
24 that information that you relayed?

25 A No.

1 Q What's the next information that you learned about
2 Ms. Nabors' interactions with First Officer Petitt?

3 A It was about a week later and I received word that
4 Ms. Nabors had some very troubling -- received some very
5 troubling comments from First Officer Petitt, and they were
6 deeply concerning to her.

7 Q And was anything done as a result of that -- those
8 communications?

9 A Yes, there was.

10 Q What was done?

11 A We called for a meeting to be able to get the
12 information from Ms. Nabors directly.

13 Q And did you learn that that information -- who did
14 you learn that information that Ms. Nabors had some deeply
15 troubling information about her interactions with First
16 Officer Petitt, from whom did you learn?

17 A From Labor Relations and from Legal.

18 Q Did you speak to any doctors at that point?

19 A No, I did not.

20 Q Did you get specifics about the concerns, at that
21 point?

22 A No, I did not.

23 Q Did you speak to Ms. Nabors, at that point?

24 A No.

25 Q Did you speak with anyone else in HR?

1 A No.

2 Q Did you agree to have the meeting?

3 A Absolutely.

4 Q Did you decide who would be attending the meeting
5 or did someone else decide that?

6 A No, that was actually decided by Labor Relations
7 and Legal.

8 Q And we've identified that that meeting took place
9 on March 17th, in this case. Would you agree that that's
10 your recollection, as well?

11 A Yes, I would.

12 Q Around what time was that meeting?

13 A Approximately 5:00 o'clock p.m., in the afternoon.

14 Q So, describe for the Tribunal your recollection of
15 what happened during that meeting?

16 A Well, there really were a couple of different
17 meetings that occurred. So, the first was bringing Ms.
18 Nabors in, along with several members of the Legal team,
19 Labor Relations team, and Corporate Communications. And we
20 heard from Ms. Nabors directly, about her interview with
21 First Officer Petitt. The points that were brought forward,
22 that were very concerning to Ms. Nabors were that she felt
23 that, first of all, First Officer Petitt was quite emotional
24 about the interview and the things that were contained in the
25 report. And that she was -- she expressed to her that she

1 had actually taken the report and put it into her mother's --
2 and I can't remember if she said "safe deposit box" or
3 "safe," at her home. She didn't feel that she could leave it
4 at her own home, with her husband, but that if anything ever
5 happened to her, that her mother had been told to take the
6 documents directly to the press. And I can't remember if she
7 said "press" or "CNN," but it was the same thought process on
8 that. And that Ms. Nabors asked her if she thought that, you
9 know, was there a concern that something would happen to her,
10 and First Officer Petitt said, yes, that something would
11 happen to her, that Flight Operations was out to get her.

12 The exchange troubled Ms. Nabors so much that on
13 her way back she relayed to us that she couldn't sleep that
14 night and the next morning she woke up and called both her
15 direct supervisor and Legal to talk through it. And she felt
16 that there was a significant concern with First Officer
17 Petitt flying an airplane.

18 Q Did you find -- what was your impression of Ms.
19 Nabors' credibility on that call?

20 A Well, certainly, you know, Ms. Nabors has a
21 distinguished reputation at Delta Air Lines, and she came off
22 as nothing less than totally professional. I believe that,
23 you know, the way that she went through her recount was very
24 clear and concise, and detailed, and it got the attention of
25 everyone at the table.

1 Q What was your reaction to it?

2 A Well, my reaction was that we needed to understand
3 more about this and, certainly, you know, the person to do
4 that for us would be the director of Health Services.

5 Q How is that situation different, that you were
6 hearing from Ms. Nabors, from what had been thinking about in
7 November, based on your conversations with OC Miller, if it
8 was, at all?

9 A It's truly apples and oranges.

10 Q Why?

11 A Because what I looked at back in November was a
12 concern with being able to follow policy and procedure. This
13 was -- this, to me, was purely a concern over mental state
14 and whether someone had the mental capacity to be in the
15 airplane or not. And that is a far different situation and
16 separate from what was experienced in November.

17 Q Did you have operational concerns?

18 A Yes, absolutely.

19 Q Describe that?

20 A Well, there are certainly a number of examples in
21 recent history where mental health is a factor in an incident
22 or an accident. And understanding that Ms. Nabors had such a
23 strong reaction to the interview, I had to take that at face
24 value and continue to explore that.

25 Q Did you know whether or not First Officer Petitt

1 was fit or unfit to fly, after listening to Ms. Nabors's
2 report?

3 A Absolutely not, I'm not a doctor, and I don't --
4 that's not my call to make.

5 Q Did you consider interviewing First Officer Petitt
6 before you made any decision?

7 A No, that wasn't my place, either. This was an
8 investigation that was brought forward by HR, that included
9 an interview with First Officer Petitt. So, you know, that
10 really -- I needed to keep that in the same place that we had
11 started it.

12 Q Did you think someone should talk to First Officer
13 Petitt?

14 A Well, as we went through the discussion, we felt
15 that if anyone was going to reach out to First Officer
16 Petitt, it should be Ms. Nabors.

17 Q Okay. Anyone else, besides Ms. Nabors, that you
18 thought should speak to First Officer Petitt, as part of the
19 evaluation of her mental health?

20 A Oh, I'm sorry, I thought that you meant as far as
21 talking to her about, you know, the interview itself. The
22 director of Health Services is the person that is designed,
23 in a proceeding, to do an evaluation.

24 Q So, you thought that Ms. Nabors should reach out
25 and you thought that the director of Health Services should

1 reach out, but that you should not reach out, if I'm
2 understanding your testimony correctly?

3 A That's correct.

4 Q What happened next in the meeting, you said that
5 Ms. Nabors presented to a group, including lawyers, did the
6 lawyers remain?

7 A No. The lawyers left and the director of Health
8 Services came in.

9 Q So, when Ms. Nabors presented, the director of
10 Health Services was not in the room at that point, to your
11 recollection?

12 A No, he was not.

13 Q By the way, who is the director of Health Services,
14 because we all know, we might as well use his name?

15 A Dr. Tom Faulkner.

16 Q Okay. So, Dr. Faulkner arrived after the lawyers
17 left, is that what you're saying?

18 A Yes, he did.

19 Q Okay. And tell me what happened next?

20 A Well, Dr. Faulkner had had a conversation prior to
21 the meeting with Labor Relations and Legal, and as he came in
22 he said that he would like to get a subject matter expert on
23 the phone, and so he called the doctor.

24 Q And at the time, did you know who that doctor was?

25 A At the time I did not. He was a subject matter

1 expert and Dr. Faulkner is our director of Health Services, I
2 trusted him to bring in whoever he felt that he needed, as we
3 discussed the situation, and he gave me a recount of what his
4 deliberations had been.

5 Q Do you now know who that subject matter expert was?

6 A I do.

7 Q Who was it?

8 A Dr. Altman.

9 Q Did you know -- now that you know who it was, had
10 you met -- did you know Dr. Altman before this event took
11 place?

12 A I had never seen Dr. Altman before. I had heard
13 his name, but that was the extent.

14 Q Okay. And in what capacity had you heard his name?

15 A You know, Dr. Altman was also involved in an other
16 Section 15 evaluation.

17 Q Okay. Had you heard anything positive, negative or
18 indifferent about Dr. Altman, did you have an opinion about
19 him?

20 A No. I had not heard anything one way or the other
21 about him.

22 Q So, after Dr. Altman joined the call or joined the
23 meeting by phone, and Dr. Faulkner joined the room, what
24 ensued after that?

25 A It really was more of a discussion between Dr.

1 Faulkner and Dr. Altman. And it reviewed Ms. Nabors' recount
2 of the responsible with First Officer Petitt, and a medical
3 discussion that ensued around whether an assessment would be
4 appropriate. And the final answer that was brought forward
5 to me was that hey recommended that First Officer Petitt be
6 sent for an assessment.

7 Q Who brought forward that recommendation to you?

8 A Dr. Faulkner.

9 JUDGE MORRIS: During this meeting?

10 THE WITNESS: Yes.

11 BY MR. ROSENSTEIN:

12 Q And was Ms. Nabors present when Dr. Faulkner made
13 that recommendation, or had she left, as well?

14 A She had left the room, yes.

15 Q Did you accept that recommendation?

16 A I did. I mean I as I said, the director of Health
17 Services, when he brought forward his deliberations and his
18 thought process on whether or not this was the appropriate
19 path to go down, after talking with what I found out to be
20 Dr. Altman, if they recommend that they have an assessment,
21 that's not something that I can overturn.

22 Q Why do you say that you can't overturn it?

23 A Because I'm not qualified to. There is really no
24 -- there's no justification for me not to take their
25 recommendation. And certainly it's something that you can't

1 take lightly. So, you know, our process is meant to be a
2 process that is very pilot friendly, and cooperative. So, in
3 that vein, it stood to reason that it's appropriate that if
4 they bring that recommendation forward, that we need to go
5 through that process before we return a pilot to the cockpit.

6 Q At the time that you accepted that recommendation,
7 did you have any knowledge as to what the ultimate results of
8 a medical evaluation of First Officer Petitt would be?

9 A No. I had, you know, an understanding of prior
10 Section 15 assessments, but I actually fully anticipated that
11 we would be able to go through this and there wouldn't be any
12 issues going forward, because I felt very confident in the
13 doctors that we had that were looking at the situation.

14 Q Did you -- you say that you felt that you had no
15 choice but to follow the director of Health Services,
16 recommendation, am I describing your testimony fairly?

17 A That's correct.

18 Q Did you agree with it?

19 A Yes, I did.

20 Q Why?

21 A Because essentially the recommendation came forward
22 from him. So, my goal is to make sure that we maintain the
23 highest level of safety at the airline.

24 Q Well, how would doing this help maintain the
25 highest safety concerns at Delta Air Lines?

1 A Because we could assuage off all question as to
2 whether or not there was a mental health issue with First
3 Officer Petitt.

4 JUDGE MORRIS: Wait a minute. So I'm understanding
5 your testimony, is in November you sent an e-mail where you
6 were thinking about a Section 15, before this e-mail from Ms.
7 Nabors. And you're saying that you didn't even ask or
8 suggest about a Section 15 after hearing what Ms. Nabors had
9 to say?

10 THE WITNESS: That's correct.

11 JUDGE MORRIS: Okay.

12 THE WITNESS: Yeah. And I'll --

13 BY MR. ROSENSTEIN:

14 Q You could explain what was the timing of your
15 learning of Ms. Nabors -- how soon after Ms. Nabors made her
16 report did Dr. Faulkner make his recommendation, in terms of
17 time?

18 A Ten minutes.

19 Q So, you would have had to come up with your own
20 conclusion --

21 A I had no knowledge up to that point --

22 Q -- in the 10 minutes time?

23 A -- at all.

24 Q So, it was -- all of this was happening, sort of,
25 in real time, is that fair?

1 A Yes.

2 JUDGE MORRIS: And you, being the senior person in
3 this meeting, never made a suggestion to Dr. Faulkner --
4 maybe we should do a Section 15?

5 THE WITNESS: Your Honor, that's not my place. And
6 I have to say that we follow our director of Health Services'
7 guidance, that's the reason that we had him there.

8 JUDGE MORRIS: I understand that. But you were
9 thinking about it in November, before this egregious conduct,
10 and you're saying that in this meeting, where you're informed
11 about this information with a doctor, you did not even
12 suggest that -- as the leader of this group -- is that your
13 testimony?

14 THE WITNESS: Yes, sir it is.

15 JUDGE MORRIS: All right.

16 BY MR. ROSENSTEIN:

17 Q And you agreed with it immediately, correct?

18 A I did.

19 Q Okay. And if there had been more time and Dr.
20 Faulkner asked for your opinion, would you have offered an
21 opinion in that situation, hypothetically?

22 A Well, I mean if we had sat back to take a look at
23 this, after he had talked to me about it, I mean I accepted
24 it from face value, I had no reason not to, and certainly it
25 was the safe course of action for the airline.

1 Q Did First Officer Petitt's behaviors, that had led
2 you to consider beginning the Section 15 process, influence
3 or factor into your decision to accept Dr. Faulkner's
4 recommendation?

5 A No. They were -- as I said, they were apples and
6 oranges. I mean when you're talking about your behavior in
7 an extracurricular activity versus someone who is now saying
8 that they think someone is out to get them, and do them
9 bodily harm, those are drastically different. And I can say,
10 without a doubt, that in November I absolutely put away any
11 concern that I had for a Section 15.

12 Q In November, would you have contacted -- you talked
13 about initiating a process, describe, again, how that Section
14 15 process would be initiated?

15 A It would have to be initiated by Dr. Faulkner.

16 Q So, what role would you have played, if you had
17 pursued further a Section 15 issue in November, what role
18 would Flight Operations play, either through you or through
19 someone else in Flight Operations?

20 A The first thing we would do is contact Dr. Faulkner
21 and have Dr. Faulkner then reach out to First Officer Petitt.

22 Q And that never happened?

23 A It did not.

24 Q And in March, you did not reach out to Dr.
25 Faulkner, correct?

1 A No, I did not.

2 Q And do you know who did?

3 A I believe that it was -- I don't know exactly, but
4 the HR team, in conjunction with Labor Relations and Legal,
5 reached out to Dr. Faulkner.

6 Q Did you consult with the HR team, Legal and Labor
7 Relations in November, about a Section 15 process?

8 A No.

9 Q Was Phil Davis at the March meeting that you just
10 described?

11 A No, he was not.

12 Q Was he involved in any way in the decision to begin
13 the Section 15 process?

14 A No.

15 Q Were you aware that Captain Davis had met with
16 First Officer Petitt on March 15th, about an issue involving
17 wearing of lanyards?

18 A No.

19 Q Had Captain Davis reported to you any concerns he
20 had with First Officer Petitt in the March time-frame?

21 A No.

22 Q Eventually, Captain Davis executes the letter,
23 which informed First Officer Petitt that she would be removed
24 from duty, with pay, while there was medical evaluation of
25 her, correct?

1 A That's correct.

2 Q Okay. And why was that?

3 A That's standard practice from the Pilot Working
4 Agreement.

5 Q Explain?

6 A Well, the process is that there's a letter that is
7 issued to the pilot and it explains the process that they'll
8 be going through. It explains that they'll be removed from
9 line flying to participate in the evaluation, and that they
10 will be pay protected for the time that they're in the
11 evaluation.

12 Q Okay. Do you know what knowledge Captain Davis
13 would have had about the Section 15 initiation, when he
14 signed the letter and met, eventually, with First Officer
15 Petitt?

16 A He would not have any knowledge. The only thing he
17 would be exposed to is the letter that he was about to
18 present, and it does not contain any information about the
19 assessment or the circumstances behind it.

20 Q Is that letter different in form than a letter that
21 one would send if there was discipline, or is it the same
22 process?

23 A No, it's -- first of all, it's not disciplinary, at
24 all. This is an evaluation for the company to be able to
25 ensure that they have a pilot that's able to execute their

1 First Class Medical. So, it's written in a different way,
2 but with the understanding that the pilot understands they're
3 fully protected, both under the Pilot Working Agreement for
4 pay, and for their time away from the aircraft.

5 Q The letter that Captain Davis delivered doesn't
6 describe sort of the basis of the decision for the medical
7 evaluation. Is that something that surprises you or do you
8 understand --

9 A It's by design.

10 Q Why is that?

11 A Because we don't want to have that -- anyone else
12 -- this is a confidential situation, it's not something that
13 we want other people to get information on. It's not privy
14 to anyone else. You know, it's -- this is a very personal
15 thing with a pilot, so we want to respect that and it's not
16 appropriate for anyone except the pilot and the director of
17 Health Services to have knowledge of what the assessment is
18 going to entail.

19 Q What were your personal views towards First Officer
20 Petitt in this time-frame?

21 A I thought that she had some very good points that
22 she brought forward to us in this report. And certainly we
23 needed to follow up on those. And her passion around it, I
24 felt like was very strong. So, my thought, to be able to
25 take that forward and expeditiously do that, was appropriate

1 and was something that I would want to have if I were in her
2 situation.

3 Q Did you want the information that First Officer
4 Petitt had raised to be suppressed or presented to others, or
5 some combination?

6 A Well, absolutely the safety concerns and so forth
7 needed to be raised up and talked about throughout. The
8 accusations against other pilots needed to be handled very
9 deftly, because if there were some inappropriate actions by
10 those pilots, we were going to have to take some significant
11 action.

12 Q Did you take any steps, after the referral, to give
13 First Officer Petitt air or credit, or an opportunity to
14 present those issues internally?

15 A Well, I felt that if she was okay with proceeding
16 with the presentation to the directors, then we should go
17 ahead and go forward with that. Because certainly, you know,
18 these are issues that needed to continue to be moved forward.
19 So, while there was an assessment that was going to have to
20 take place, that shouldn't stop any of the other part of
21 either the assessment of the Safety Culture or her ability to
22 make a presentation to the directors. But I wanted to
23 respect, also, you know, where she was personally,
24 understanding that she was going to go through this
25 assessment.

1 Q Did you take any steps to prevent her from sending
2 her report or versions of her report to others within Delta?

3 A No.

4 Q Did she do that, to your knowledge?

5 A Actually, yes, she did.

6 Q Did you send versions of her report to other people
7 in Delta, as well?

8 A Well, the only person that I sent the report to was
9 John Laughter in Corporate Safety, Security and Compliance.

10 Q And did you excise First Officer Petitt's name from
11 that, so he wouldn't know who it was coming from?

12 A I don't know that I did.

13 Q You wanted him to know that it was from First
14 Officer Petitt?

15 A Yes.

16 Q Did your decision to accept Dr. Faulkner's
17 recommendation on Section 15 have any connection, at all,
18 with the January 28th report?

19 A No.

20 Q Did it have anything to do with safety?

21 A No.

22 Q Did it have anything to do with trying to discredit
23 the issues that First Officer Petitt had raised about safety?

24 A Absolutely not.

25 Q Take a look at Respondent's 43?

1 A Yes, I'm there.

2 Q Do you recall this exchange with First Officer
3 Petitt on March 16th?

4 A Yes, I do.

5 Q Do you know whether you were aware that there was
6 going to be a meeting on March 17th to discuss a potential
7 Section 15 evaluation -- on March 16th -- based on this
8 letter?

9 A I had no idea that there was going to be a
10 discussion. I was moving forward with trying to set up the
11 presentation.

12 Q But you knew that there was going to be a meeting
13 on March 17th, correct?

14 A I did, yes.

15 Q Okay. After Captain Davis informed Ms. Petitt of
16 the removal from duty, as part of the Section 15 process, did
17 you have an opportunity to speak with First Officer Petitt,
18 again?

19 A I did.

20 Q Can you take a look at Respondent's 52?

21 MR. SEHAM: What's that?

22 MR. ROSENSTEIN: Fifty-two.

23 MR. SEHAM: Is that in a different -- okay, I've
24 got it.

25 MR. ROSENSTEIN: Okay.

1 JUDGE MORRIS: What volume is that?

2 MR. BISBEE: It must be five.

3 MR. ROSENSTEIN: Oh, we're getting into five, yeah.

4 JUDGE MORRIS: Counsel, it's 12: 10 o'clock p.m.,
5 you know, when you get to a break.

6 MR. ROSENSTEIN: I am almost done with the direct.

7 JUDGE MORRIS: We'll break after that then.

8 MR. ROSENSTEIN: We could break after that and then
9 maybe I'll reserve a chance to talk to my co-counsel to see
10 if I left anything out, is that okay?

11 JUDGE MORRIS: That's fine.

12 MR. ROSENSTEIN: But we can all go to lunch and if
13 I have anything else, I'll just come back after lunch.

14 BY MR. ROSENSTEIN:

15 Q Did you go forward -- take a look at 52, that's
16 where we were, right?

17 A Yes, sir, I'm there.

18 Q And do you recall this conversation with -- did you
19 have a conversation with First Officer Petitt on or about
20 March 22nd, or March 23rd? I'm referring to the bottom of
21 the page 52-001, where there's handwriting that says:

22 "Phil Davis told me to contact Jim
23 Graham, because he still wanted me to
24 have that meeting. I called Graham the
25 next day."

1 A Yes.

2 Q Is that consistent with your own recollection?

3 A Yes, it is.

4 Q Tell us what you talked about on March 22nd?

5 A Well, first of all, was she still okay to go
6 forward with the presentation, and her answer was yes.

7 Q Was it a cordial call, was it a difficult call,
8 what was the tenor of it?

9 A I felt it was a very cordial call. I felt that we
10 talked through some of the items that I felt like that she
11 should understand about stepping in to talk with this group.

12 And I had an understanding, from information that I had from
13 her, on what she was going to present. And looking at her
14 previous report, I said:

15 "You know, it's probably best to take
16 names out, to reference titles and things
17 like that, instead of stepping in --
18 because the people that you're going to
19 be talking to are going to know the
20 people that are in the report. So, if we
21 can do that, I think it's going to be
22 better received and not looked at as so
23 much of stepping in to call particular
24 personalities in question. We want to
25 stay with the things that she sees within

1 the realm of the Training Department, the
2 Standards Department, and how we run the
3 operation."

4 Q Given your concerns that you just expressed about
5 First Officer Petitt's operational capacity, why go forward
6 with this meeting?

7 A Because, truly, safety is safety, and why would we
8 not go forward with it if these are things that really need
9 to be addressed and understood. So, my bigger concern was
10 her head in the game for this or was she preoccupied with the
11 assessment that was about to happen. And as long as she was
12 okay with moving forward, then I was all for it.

13 Q Did you know how long Dr. Faulkner would take to
14 make an assessment as to whether or not First Officer Petitt
15 should be flying?

16 A No. I mean the process itself starts with the
17 pilot meeting with the director of Health Services. And
18 that's where the initial assessment is. And it can end right
19 there and the pilot can be returned to work, and you go
20 through the return to work process.

21 Q Hypothetically, is it your understanding that if
22 First Officer Petitt had met with Dr. Faulkner and said --
23 convinced him that there was no reason for further review,
24 the process could have ended even before the scheduled
25 meeting that you had?

1 A Without a doubt.

2 Q And have you ever heard of -- well, I'll leave it
3 for argument.

4 Continuing through Respondent's 52, are these
5 additional e-mails that are in preparation for First Officer
6 Petitt's presentation?

7 A Yes, they are -- discussing who would be in
8 attendance as well as, I believe I made the suggestion that
9 she also invite ALPA, head of Safety and head of Training.
10 They declined to attend, but I thought that would be a good
11 add.

12 Q And just Sternstein, Tovani, Klein, Ragogna,
13 Dempsey, very briefly, these are all senior leaders in Flight
14 Ops?

15 A Yes.

16 Q And they all have some role in safety?

17 A Yes.

18 Q Did you attend the meeting when it took place?

19 A I did not.

20 Q Did you introduce her at first?

21 A I did.

22 Q How come you introduced, but didn't attend?

23 A Because I wanted to be able to make sure that, as
24 she walked in with the presentation, that they understood the
25 gravity of what they were about to receive. And the

1 presentation was one that, as I said, the thought that went
2 into this, and so forth, was very significant. So, I wanted
3 to make sure that I set the stage correctly.

4 Q Did you speak to her after the presentation that
5 she gave?

6 A I did. It was a bit of an impromptu meeting,
7 actually.

8 Q Tell us what happened?

9 A Well, when she finished the presentation she came
10 into my office and we started discussing the presentation.
11 And she handed me a copy of what she had presented. She also
12 handed me a sealed envelope that she said was a bill. And I
13 said: "What's this?" And she said: "It's a bill." And I
14 said: "That's really not appropriate." As I looked at the
15 report, it actually had, at the bottom, her consulting
16 company name on it. And I said:

17 "I need to make sure that you
18 understand that you're not being brought
19 in as a consultant, you're being brought
20 in as a line pilot and, as such, any line
21 pilot would get an opportunity to present
22 the same way that you are. So, this
23 isn't something that you'll be
24 compensated for. This is something that
25 every line pilot would get an opportunity

1 to do."

2 And then she discussed the fact that, you know, she
3 should never work for free, and that other pilots have been
4 brought off the line to do reviews like this, and been paid
5 for that, and that she should be paid, also. And I said:
6 "That's not the case here."

7 Q Take a look at Tab 54, RX-54?

8 A Yes.

9 Q Can you identify what these are?

10 A Yes. Actually, I was quite taken aback by our
11 discussion afterwards. I felt that it was appropriate that I
12 should sit down and document our discussion.

13 Q Were these contemporaneous notes?

14 A They are.

15 Q On page 54-02, under bullet points it says: "Threat
16 of a lawsuit," do you see that?

17 A Yes.

18 Q And can you describe what that was all about?

19 A Well, this really was the first time that I
20 received any idea that she thought that the Section 15 was
21 retaliatory. And she mentioned that she thought that it was
22 for bringing up safety concerns, and that took me back, as
23 well, I was quite surprised.

24 Q What was your response to that?

25 A It certainly is not retaliatory. And, in fact, a

1 Section 15 is to ensure that -- as the Part 119 chief pilot,
2 and the chief safety officer -- that I can guarantee that a
3 pilot that's getting back into the cockpit is 100 percent
4 ready to go and fly. That means they can execute their First
5 Class Medical and they are qualified to fly the aircraft.

6 JUDGE MORRIS: I have a question. You made
7 contemporaneous notes when you met with her and Captain
8 Dickson in -- was it January of 2016?

9 THE WITNESS: Yes.

10 JUDGE MORRIS: And you made contemporaneous notes
11 in this meeting in March of 2016. Did you make any
12 contemporaneous notes about the meeting where the decision
13 was made to refer her to a Section 15?

14 THE WITNESS: No, I did not.

15 JUDGE MORRIS: Any reason why you didn't make notes
16 in that occasion?

17 THE WITNESS: Well, I don't specifically recall. I
18 was taking input from the director of Health Services and the
19 subject matter expert doctor on the phone.

20 JUDGE MORRIS: Did anybody take contemporaneous
21 notes, that you recall?

22 THE WITNESS: I don't recall.

23 JUDGE MORRIS: Continue.

24 BY MR. ROSENSTEIN:

25 Q Under the next bullet point it says: "Threat to

1 send the report directly to Ed Bastian." What was that all
2 about?

3 A It was, once again, you know, when I say that it's
4 a "threat," she indicated that she was going to send the
5 report directly to Ed, which she certainly has an opportunity
6 to do. What I explained to her was that if Ed received the
7 report, the first thing he would do is call Steve Dickson and
8 me, and say: "Are you guys aware of this?" And: "Go ahead
9 and start working it." So, let's go ahead and work through
10 the report and if you don't feel that we're hitting on the
11 right notes or we're taking this seriously, I certainly would
12 want you to take it up to Ed Bastian, but give us a chance to
13 work this first.

14 I didn't feel like I had been lackadaisical in
15 actioning the report or taking steps to move it forward. So,
16 I was actually somewhat taken back by that, too.

17 Q Okay. Do you know if she did send her report to Ed
18 Bastian, subsequently?

19 A Yes, she did.

20 Q And do you know what happened to that document?

21 A It was sent to Steve Dickson and me.

22 Q After the March 27th meeting, did you take any
23 further action with regard to the EO investigation that was
24 going on?

25 A Well, I asked to receive a report when it was

1 complete.

2 Q And did you participate in any other way in that
3 part of the investigation?

4 A No.

5 Q Do you know whether it continued after First
6 Officer Petitt was placed into the Section 15 process?

7 A Yes, it did.

8 Q Were you involved, in any way, in speaking with Dr.
9 Faulkner or Dr. Altman, once the Section 15 process began?

10 A No.

11 Q Did you describe to Dr. Faulkner or Dr. Altman your
12 own interactions with First Officer Petitt going back to
13 2010?

14 A No. I never exchanged information with Dr.
15 Faulkner at all.

16 Q Did you describe your view of considering a Section
17 15 evaluation in November, based on your communications with
18 OC Miller and with First Officer Petitt --

19 A No.

20 Q -- Dr. Faulkner or Dr. Altman?

21 A No, I did not.

22 Q Did you direct anyone to provide any specific
23 information to Dr. Altman or Dr. Faulkner?

24 A No.

25 Q Do you know what information was provided by Delta

1 to Dr. Altman or Dr. Faulkner?

2 A I do not.

3 Q Did you have a view as to the outcome of the
4 investigation, Section 15 investigation of First Officer
5 Petitt -- in other words, do you have a preference for the
6 outcome of that?

7 A I always want a pilot to be returned to the
8 cockpit, but I wanted the process to work through.

9 MR. ROSENSTEIN: This would be a good time to
10 break. I might be done. I might have one or two, I say one
11 or two, it could be more, but --

12 JUDGE MORRIS: I won't hold you to the one or two.

13 MR. ROSENSTEIN: Thank you.

14 JUDGE MORRIS: All right. Let's take a break. How
15 about a quarter after the hour we'll reconvene.

16 Sir, please do not discuss your testimony with
17 anyone, since you're still on the stand, all right?

18 THE WITNESS: Yes, sir.

19 JUDGE MORRIS: This hearing is in recess.

20 (Whereupon, at 12:24 the hearing was recessed for
21 lunch.)

22 --o0o--

23

24

25

1 AFTERNOON SESSION

1:16 O'CLOCK P.M.

2 JUDGE MORRIS: Go back on the record.

3 All parties present when the hearing last recessed
4 are again present.

5 Captain Graham is still on the stand.

6 Do you have anymore questions, counsel?

7 MR. ROSENSTEIN: I just had one or two.

8 JUDGE MORRIS: Okay.

9 DIRECT EXAMINATION RESUMED

10 BY MR. ROSENSTEIN:

11 Q Captain Graham, there have been some discussions
12 during the morning session about the March 17th meeting, and
13 I just wanted to clear up one thing. You knew, going into the
14 March 17th meeting, the general subject matter of that
15 meeting, correct?

16 A Yes, I did.

17 Q You knew that it would be attended by lawyers,
18 doctors and Ms. Nabors, correct?

19 A Yes, I did.

20 Q Did you have a sense that it might involve a
21 Section 15?

22 A I certainly had an inkling that there was going to
23 be something that was very serious to be talked about. And
24 the initial is it's very troubling news, then yes, it did
25 cross my mind.

1 Q And I wasn't sure I understood, but when you heard
2 Kelley Nabors report, before Dr. Faulkner came in and made a
3 recommendation, did that create any view in your mind about
4 the potential of a Section 15?

5 A Well, certainly it raised a question in my mind as
6 to mental stability. And I'm not certain that I truly
7 thought Section 15 or not, but it was concerning that there
8 would be, you know, a concern over mental state to be able to
9 be in the cockpit. So, I'd have to say yes.

10 Q And that was before Dr. Faulkner made his
11 recommendation and Dr. Altman had the medical discussion,
12 correct?

13 A Right. I mean there's really no way to hear Ms.
14 Nabors' testimony and not think that there could be an issue.
15 And really, the only way to solve that would be a Section 15.

16 Q Okay.

17 MR. ROSENSTEIN: That's the only questions I have.
18 Thank you.

19 JUDGE MORRIS: Cross?

20 MR. SEHAM: Yes.

21 CROSS-EXAMINATION

22 BY MR. SEHAM:

23 Q The FAA requires the implementation of an SMS
24 program by AIR-21 carriers, correct?

25 A Correct.

1 Q And once implemented, the carrier is required, by
2 law, to comply with its SMS program?

3 A It's designed --

4 Q I'm asking you yes or no question, so if you can
5 answer yes or no?

6 A You can repeat the question then.

7 Q Yes. And once implemented, the carrier is
8 required, by law, to comply with its SMS program?

9 A Yes.

10 Q In January 2016, Delta had already implemented an
11 SMS program, correct?

12 A Yes.

13 Q And so in January 2016, the FAA required Delta to
14 comply with that program, correct?

15 A We did not have certification at that point.

16 Q My question is -- and I'm asking for a yes or no
17 response -- the FAA required Delta to comply with the SMS
18 program it had in place in 2015-2016, correct?

19 A With the SMS program it had in place, yes.

20 Q Now, would you agree that SMS requires a program
21 that embraces, from the top down -- I'm sorry -- that
22 embraces Safety Culture from the top down, starting with the
23 CEO?

24 A Yes.

25 Q And the SMS program required the development of a

1 Reporting Culture, correct?

2 A Yes.

3 Q And under the SMS program, it was Delta's
4 obligation to maintain a robust Reporting Culture, to promote
5 communications from its rank and file employees, correct?

6 A Yes.

7 Q Now, would you agree with me that at Delta,
8 normally, a Section 15 evaluation comes as a result of what
9 management observes in a pilot's operational performance or
10 training performance?

11 A I don't know that I can agree with that.

12 Q Have you been involved in, approximately, 10
13 Section 15 referrals, correct?

14 A I don't know the exact number. I would say less
15 than 10.

16 Q Okay. And you were the person responsible for
17 making the initial Section 15 referral, correct?

18 A I was the person who was asked to accept the
19 recommendation, yes.

20 Q But it was your decision to make, correct, the
21 Section 15 referral?

22 A It was my decision to move the pilot into the
23 safety process.

24 Q Okay.

25 MR. SEHAM: Would this be, Your Honor, 200?

1 JUDGE MORRIS: Two hundred, yes.
2 (Complainant Exhibit No.
3 200 was marked for
4 identification.)

5 MR. BISBEE: I have a copy that says: "Judge Morris
6 Copy," would you like that, Your Honor? I think it's one of
7 the exhibits, is why.

8 JUDGE MORRIS: That's all right. I'll take it.

9 MR. BISBEE: Well, I'm not sure it does -- it might
10 be the exact same, but --

11 JUDGE MORRIS: I'll give you back that one, I had
12 written on it, but I'll re-mark this one 200.

13 MR. BISBEE: For some reason it's larger.

14 JUDGE MORRIS: Because I'm old and need it for my
15 eyes.

16 BY MR. SEHAM:

17 Q Now, sir, you were deposed on December 18th, 2018,
18 in this matter, correct?

19 A Correct.

20 Q And you took an oath to tell the truth, correct?

21 A Correct.

22 Q And you were advised, at the time, that the
23 transcript might be used in Court?

24 A Yes.

25 Q And you were represented by Mr. Ira Rosenstein, at

1 that deposition, correct?

2 A Correct.

3 Q If I could direct your attention to page 28 of this
4 deposition. And then direct you, therein, to line 19 -- or
5 actually, I guess starting at line 13, where it reads:

6 "Question: Is that typically how a
7 Section 15 Mental Health Evaluation gets
8 initiated, that the DHS makes a
9 recommendation?

10 "Answer: It's not.

11 "Mr. Rosenstein: Objection to the
12 form. Go ahead.

13 "Answer: It is not typical to have a
14 Mental Health Evaluation, so normally an
15 evaluation comes as a result of what we
16 see in operational performance or
17 training performance."

18 Did you give that testimony from lines 19 to 22?

19 A Yes, I did.

20 Q Okay. And do you consider that testimony to be
21 factually inaccurate?

22 A No, I do not.

23 Q Okay. Now, you say Dr. Faulkner made a
24 recommendation that Ms. Pettitt be referred for a Section 15
25 Mental Health Evaluation?

1 A Correct.

2 Q And did Dr. Altman, also, have some input?

3 A Dr. Faulkner and Dr. Altman talked on the phone and
4 the recommendation came from Dr. Faulkner.

5 Q And would you agree that Dr. Altman based his
6 recommendation, in part, on memory issues that had been
7 brought up with respect to Ms. Petitt?

8 A I don't recall his exact language on the phone.

9 Q Well, do you recall the issue of deficiencies in
10 Ms. Petitt's memory, being referenced by either Dr. Altman or
11 Dr. Faulkner?

12 A I'm not sure if I recall memory or cognitive
13 issues.

14 Q Okay. Well, how did the cognitive issues relate to
15 what Ms. Nabors had reported?

16 A I'm not sure that they did. What I recall was the
17 concern over the attitude that someone was out to harm her.

18 Q Well, didn't the reference to cognitive issues
19 relate to information provided to the doctors that Ms. Petitt
20 had violated social media and uniform use policy?

21 A No. Those were not connected, at all.

22 Q They weren't connected, at all, to the Section 15
23 discussion?

24 A No.

25 Q Would you agree that Dr. Faulkner, in making his

1 recommendation, considered the set of circumstances that led
2 up to Ms. Nabors speaking with First Officer Petitt?

3 MR. ROSENSTEIN: Objection.

4 JUDGE MORRIS: Basis?

5 MR. ROSENSTEIN: How can the witness be testifying
6 about what Dr. Faulkner considered? He can ask him what he
7 heard Dr. Faulkner say.

8 JUDGE MORRIS: Rephrase your question, counsel.

9 BY MR. SEHAM:

10 Q Was there any -- well, let me ask you, did you form
11 an opinion as to whether Dr. Faulkner's decision was based on
12 the set of circumstances that led up to Ms. Nabors speaking
13 with First Officer Petitt?

14 A No, I did not.

15 Q Now, would you agree that part of your takeaway
16 from Ms. Nabors' report was Ms. Petitt's view that Flight
17 Operations was out to harm Ms. Petitt in some way?

18 A Yes.

19 Q And from your perspective, that was the biggest
20 concern, correct, that Ms. Nabors report to that effect?

21 A No. My concern was that Ms. Nabors, as she talked
22 to First Officer Petitt, had a very, very strong reaction to
23 Ms. Petitt's mental state. So, while those different items
24 were brought forward as points of discussion, it was really
25 my reaction to Ms. Nabors and really how she viewed the

1 discussion with First Officer Petitt.

2 Q Isn't it true that Dr. Faulkner identified that
3 with respect to his recommendation, the biggest concern was
4 that Flight Operations -- was Ms. Petitt's reference to
5 Flight Operations being out to harm her in some way?

6 A I don't recall him saying that.

7 Q And if you could look at your deposition testimony
8 at page 29?

9 A Yes.

10 Q And starting at line 9:

11 "Question: In the Protack case, Dr.
12 Faulkner expressed an opinion to you that
13 there might be a mental health issue with
14 Captain Protack, right?

15 "Answer: Yes.

16 "Question: And had did take the same
17 position with respect to Ms. Petitt?

18 "Answer: He made the recommendation
19 that we should consider a Section 15,
20 yes.

21 "Question: What reasons did he give
22 you?

23 "Answer: For who?

24 "Question: For Ms. Petitt, for
25 suggesting that he might consider a

1 Section 15 for Ms. Petitt?

2 "Answer: He took the input from the
3 EO person that spoke with Ms. Petitt.

4 "Question: Who was that?

5 "Answer: Kelley Nabors.

6 "Question: So, he took her input?

7 "Answer: He took her input and
8 reviewed the set of circumstances that
9 led up to Ms. Nabors speaking with First
10 Officer Petitt, and came forward with a
11 recommendation that there may be concerns
12 here that we need to have reviewed,
13 before she returned to the cockpit.

14 "Question: What facts did he identify
15 for his recommendation?

16 "Answer: Well, the biggest concern,
17 really, was the concern that Flight
18 Operations was actually out to, in some
19 way, harm First Officer Petitt."

20 Now, looking at the top of page 30, starting at
21 line, you state:

22 "Answer: He took her input and
23 reviewed the set of circumstances that
24 led up to Ms. Nabors speaking with First
25 Officer Petitt."

1 Did you provide that testimony?

2 A I did, and I may have mis-spoken there, or it's
3 not --

4 Q Well, I didn't ask you that. I asked you did you
5 provide that testimony?

6 A I believe I did.

7 Q And now you consider that to be factually
8 inaccurate?

9 A I don't think --

10 Q I'm asking you yes or no, do you consider that
11 testimony now, today, to be factually inaccurate?

12 MR. ROSENSTEIN: Objection, that's beyond the
13 appropriate interruption and badgering. That type of
14 question is the type of question that the witness needs to be
15 entitled to answer, as opposed to a simple yes or no
16 question. I understand that counsel is trying to elicit just
17 yes or no, and leave things for redirect, but the type of
18 question that he asked about whether a witness is being
19 accurate in deposition testimony versus the questions that
20 are being asked now are those that cannot be answered yes or
21 no. He should be allowed to explain.

22 JUDGE MORRIS: Overruled.

23 BY MR. SEHAM:

24 Q Now, if I could direct your attention to starting
25 at line 9 -- well, starting at line 7, actually:

1 "Question: What facts did he identify
2 for his recommendation?

3 "Answer: Well, the biggest concern
4 really was the concern that Flight
5 Operations was actually out, in some way,
6 to harm First Officer Petitt."

7 Did you provide that testimony during your
8 deposition?

9 A Yes, I did.

10 Q Okay. Do you now consider that testimony to be
11 factually inaccurate?

12 A No.

13 Q Okay. Now if you could turn to page 79 of your
14 testimony?

15 JUDGE MORRIS: Again, this is CX-200.

16 MR. SEHAM: Yes. Thank you.

17 BY MR. SEHAM:

18 Q And I'm going to refer you to line 1:

19 "Question: But you had previously
20 considered referring Ms. Petitt for a
21 Section 15 referral?

22 "Answer: I wouldn't say that I had
23 considered referring her for a Section
24 15."

25 Did you provide that testimony during your

1 deposition?

2 A Yes.

3 Q And would you consider that, today, to be factually
4 accurate?

5 A I still consider that accurate, yes.

6 Q Okay. If you could turn with me, please, to CX-11.
7 Would you agree with me --

8 MR. BISBEE: One moment, I'm sorry.

9 MR. SEHAM: Sure. Just let me know when you're
10 ready.

11 MR. BISBEE: CX-11?

12 MR. SEHAM: Yes.

13 MR. BISBEE: Okay. Thank you.

14 BY MR. SEHAM:

15 Q Now, I'm going to refer you to the third paragraph.

16 A I'm sorry, I'm only seeing --

17 Q Oh, I'm sorry -- CX-11 at 002.

18 A Yes.

19 Q Okay. And at the third paragraph, the first
20 sentence -- well, let me give you a second. You wrote this
21 three-paragraph e-mail on November 9th, 2015, is that
22 correct?

23 A Yes, I did.

24 Q Okay. And the last paragraph -- I'm going to refer
25 you to the last paragraph, the first sentence reads:

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

19 Now, IAASS stands for what?

20 A I don't know.

21 Q Okay. And at this point were you considering
22 referring Ms. Petitt for a Section 15, through the Section 15
23 process?

24 A I was --

25 Q I'm asking you yes or no, were you considering

1 referring her for a Section 15 process?

2 A I had it under consideration.

3 Q And could you explain why you had it under
4 consideration?

5 A Yes. I think I explained that originally, but I'll
6 be happy to go over it again.

7 Q Yes, please, sir?

8 A Yeah. The fact that she had had multiple meetings
9 with her chief pilot and her regional director, as to
10 behavior with respect to Social Media Policy, with respect to
11 her social engagements, speaking engagements and
12 presentations. Every time she left those meetings, the
13 feedback that I got was she had -- she understood the
14 direction. Yet, time and again, she did not follow that
15 direction. So, as a result, if you can't follow directions
16 with that type of interaction with your supervisor, in
17 something that I consider to be an extracurricular activity,
18 could there be a chance that that could happen when you're in
19 the cockpit. And if so, that would be an unsatisfactory
20 circumstance.

21 Q So, the categories of -- is it a proper term
22 "misconduct" or "policy violations" -- what are you most
23 comfortable with?

24 A Inability to follow the direction, the rules.

25 Q The rules, okay. So, in terms of categories of

1 rules, one category related to Social Media, correct?

2 A A policy, yes.

3 Q Social Media Policy. And another category of
4 either rules or policies related to in-person presentations,
5 is that correct?

6 A Use of company material in presentations.

7 Q Oh. Any other categories?

8 A I'm not sure.

9 Q So, your source of information concerning her
10 repeated violations of these policies was what?

11 A Her supervisors.

12 Q Which supervisors?

13 A Captain Miller and Captain Davis.

14 Q And as of November 9th, you had spoken to both of
15 them concerning the rule violations?

16 A I'm not sure I had spoken to Captain Davis. I had
17 spoken to Captain Miller.

18 Q Okay. So, what did Captain Miller tell you,
19 exactly?

20 A That he had had several meetings with First Officer
21 Petitt about the various situations and that they continued
22 to recur.

23 Q So, when was her first Social Media Policy
24 violation?

25 A The first that I became aware of, I believe, was a

1 -- and I may not recount this exactly right -- a blog that
2 she participated in. And I don't remember the exact year or
3 timing.

4 Q And when was her second Social Media violation?

5 A I can't recall specifics.

6 Q Was there a second Social Media violation?

7 A I was told that there were more than one, yes.

8 Q Did you ask him to identify any other violation?

9 A I asked him to explain where he was with his
10 interaction with First Officer Petitt, and that was the
11 response that he gave me.

12 Q So, he did identify the -- was it the Air France
13 blog?

14 A I don't recall specifically what the blog was.

15 Q Okay. So, he identified one blog and he didn't
16 identify any other Social Media Policy violation with
17 particularity?

18 A I don't recall specifics.

19 Q Okay. And with respect to the use of company
20 material in presentations, what were the violations he had
21 identified?

22 A Well, what I was told that the posting of a Delta
23 page from our Quick Reference Handbook on a non-sponsored
24 Delta forum.

25 Q And what was the next violation of use of company

1 material?

2 A I don't recall.

3 JUDGE MORRIS: On that front, was it the fact that
4 it identified itself as Delta or the fact that the contexts
5 was a QRH?

6 THE WITNESS: Because it specifically said Delta
7 Air Lines on the page, and it was referenced as a Delta Air
8 Lines manual, and that exposes Delta Air Lines to a
9 liability, that if someone else were to take that and execute
10 that procedure, there's no way for us to be able to control a
11 document and how it's going to be used. If someone
12 incorporated that into their own procedures, and they didn't
13 have the same equipment or they didn't have the same
14 enunciations, they could be in a much, much different
15 situation than the way that we use it at Delta Air Lines.
16 So, that is definitely something that we are very, very
17 careful about.

18 JUDGE MORRIS: Okay. So, it's your testimony then
19 that 737 QRHs change significantly between airlines?

20 THE WITNESS: It's my testimony that many airlines,
21 including Delta, specialize their pages in the QRH, because
22 the Boeing manuals -- it doesn't matter what manufacturer
23 you're talking about -- they produce their Quick Reference
24 Handbooks, or their manuals, to a standard with which they
25 operate. So, airlines operate differently. We utilize

1 single engine taxi, we utilize reduced thrust takeoffs, there
2 are a myriad number of ways that we differ from the
3 manufacturer. And we typically go out and ask for a no
4 technical objection from the manufacturer, or we ask if this
5 is appropriate to the FAA. And if the FAA gives us the
6 approval, then we modify our manuals appropriately.

7 JUDGE MORRIS: So, at Delta is single engine
8 taxiing part of the QRH?

9 THE WITNESS: No. But it drives to a different
10 answer, if you have an issue and you are single engine
11 taxiing, and you lose a generator, than if you're dual engine
12 taxiing.

13 JUDGE MORRIS: Okay.

14 Okay, Mr. Seham.

15 MR. SEHAM: Okay.

16 BY MR. SEHAM:

17 Q Now, so the sum total of rule and policy violations
18 you can identify, as you sit here today, is one blog related
19 violation and one QRH publication, correct?

20 A Correct.

21 Q Okay. Do you know -- Ms. Pettitt has never been
22 disciplined in all of her years at Delta, correct?

23 A Not to my knowledge.

24 Q Okay. And did she ever get even a formal written
25 warning, with respect to either of these rule violations?

1 A I believe she did get -- and it wasn't -- it was a
2 letter of counsel that was outlining the appropriate behavior
3 that we discussed in the -- I shouldn't say "we," I wasn't
4 present at the time -- but was discussed between her
5 supervisor and her.

6 Q Did OC Miller tell you of this letter of counsel?

7 A I believe he did.

8 Q Okay. And the letter of counseling is not a
9 disciplinary event in the view of Delta, correct?

10 A Correct.

11 Q And a letter of counsel is not something that she
12 could grieve and have arbitrated as to its validity, correct?

13 A Correct.

14 Q So, other than that -- okay.

15 JUDGE MORRIS: Well, wait. How long does a letter
16 of counseling stay in a pilot's personnel file?

17 THE WITNESS: I believe two years.

18 JUDGE MORRIS: And then they're removed?

19 THE WITNESS: Then they're expunged.

20 JUDGE MORRIS: They're expunged?

21 THE WITNESS: Yes, sir.

22 JUDGE MORRIS: And they're not to be used for any
23 reason?

24 THE WITNESS: Not to be used, no, sir.

25 JUDGE MORRIS: All right.

1 Go ahead.

2 BY MR. SEHAM:

3 Q Would you agree that this letter of counsel
4 referred to an event in 2010?

5 A I believe know.

6 Q Isn't it true that in terms of reaching his
7 recommendation, Dr. Faulkner referenced Ms. Petitt's lack of
8 understanding of policies and procedures?

9 A I don't know that I recall that, specifically.

10 Q That might have come up?

11 A I can't recall.

12 Q Isn't it true that Dr. Faulkner relied on
13 information that you provided him -- or Dr. Faulkner
14 identified information that you had provided him concerning
15 her policy and procedures violations that you had obtained
16 from Captain Davis and Captain Miller?

17 A No, I don't recall that.

18 Q Didn't Dr. Faulkner identify, as a factor in his
19 Section 15 referral, that Ms. Petitt suffered from a
20 behavioral anomaly based on her inability to release things
21 from the past?

22 A I never saw his report.

23 Q Didn't he reference that this was -- in your
24 presence -- that this was part of his consideration in terms
25 of reaching a Section 15 referral decision?

1 A I don't recall.

2 Q Didn't you discuss with him that Ms. Petitt has an
3 inability to release things from the past?

4 A I don't know that it came up in that discussion.

5 Q In the Section 15 discussion?

6 A Correct.

7 Q I'd like to refer you to your deposition at page
8 30, and starting at line 7:

9 "Question: What facts did he identify for his
10 recommendation?

11 "Answer: Well, the biggest concern really was
12 the concern that Flight Operations was
13 actually out to, in some way, harm First
14 Officer Petitt. There was also the lack
15 of understanding of very, what I would
16 consider to be, simple policies and
17 procedures. And lastly, I would say the
18 harboring or the inability to release
19 things that happened in the past, that
20 drove a behavioral -- I don't know how
21 quite best to say -- a behavioral
22 anomaly."

23 Did you provide this testimony at your deposition?

24 A Yes.

25 Q Is this testimony factually accurate, in terms of

1 the references that Dr. Faulkner made in the Section 15
2 decisional process?

3 MR. ROSENSTEIN: Objection to the form of the
4 question. This is not a quotation from Dr. Faulkner.

5 JUDGE MORRIS: Yeah, rephrase.

6 BY MR. SEHAM:

7 Q Yeah. In terms of the facts that Dr. Faulkner
8 identified supporting his recommendation, is your testimony
9 from lines 9 to 16 factually accurate?

10 A To the best of my knowledge, yes.

11 Q Okay. If I could refer you to your deposition at
12 page 32, starting at line 21? Are you there?

13 A I'm sorry, what line?

14 Q Line 21?

15 A Yes.

16 Q "Question: I am confused. As I recall,
17 you identified three different components
18 underlying Dr. Faulkner's Section 15
19 recommendation and that they were:

20 1: Her expression of concern that
21 Flight Ops was going to harm her.

22 2. Issues related to policies and
23 procedures.

24 3. A harboring and inability to
25 release things from the past.

1 "Did Dr. Faulkner bring up those
2 information in those three categories, in
3 terms of justifying his Section 15
4 referral?

5 "Answer: Yes, he did."

6 Did you provide that testimony at your deposition?

7 A Yes, I believe I did.

8 Q Okay. And is that testimony factually accurate?

9 A I believe it is.

10 Q Were there other factors, other than the three that
11 were just referenced there?

12 A I don't recall.

13 Q I could refer you to your deposition testimony at
14 page 30, line 17, starting at line 17:

15 "Question: These are -- all those
16 three elements that you have just
17 identified, those are all the things that
18 Dr. Faulkner brought to your attention as
19 the reason why he was making his
20 recommendation?

21 "Answer: Those -- that's not a
22 complete list. You asked me what were
23 the major things that he asked for and
24 that's to -- as I think back on the
25 specifics that we talked about -- those

1 were the first three things."

2 Does that refresh your recollection, at all, as to
3 there being other factors beyond the three that were just
4 referenced?

5 A No, the discussion was centered on his direct
6 interaction with Ms. Nabors.

7 Q And also information that you provided him
8 concerning Ms. Petitt's violations of policies?

9 A No.

10 Q You did not provide him any information concerning
11 her past violation of rules or policies?

12 A I did not.

13 Q You're quite certain of that, sir?

14 A I believe I am.

15 Q Now, Dr. Faulkner made his recommendation without
16 any prior interview of Ms. Petitt, correct?

17 A I believe that's correct.

18 Q And you would agree that his Section 15 decision
19 was not based solely on the information received from Ms.
20 Nabors, correct?

21 A I can't say that that's true, no.

22 Q Well, did you not just identify as factually
23 accurate, that Dr. Faulkner brought up three items, her
24 expression of concern that Flight Ops was going to harm her,
25 issues related to policies and procedures, and her harboring

1 and inability to release things from the past?

2 A Yes.

3 Q So, would you not agree, sir, that Dr. Faulkner did
4 not rely solely on the information he received from Ms.
5 Nabors?

6 MR. ROSENSTEIN: Objection, same objection.

7 JUDGE MORRIS: I'm sorry, I was writing a note.

8 Ask the question again.

9 BY MR. SEHAM:

10 Q The question is, based on your testimony that it's
11 accurate that Dr. Faulkner identified three items for his
12 Section 15 referral:

13 1. Ms. Pettitt's expression of concern that Flight
14 Ops was going to harm her.

15 2. Issues related to policies and procedures.

16 3. Her harboring and inability to release things
17 from the past.

18 Would you not agree that Dr. Faulkner did not rely
19 solely on information received from Ms. Nabors?

20 MR. ROSENSTEIN: Objection, same objection. He can
21 ask Dr. Faulkner what he relied on. The witness can't answer
22 a question about what some other person relied on. He can
23 only answer what he heard and what was said, which he has.
24 That's fundamental.

25 JUDGE MORRIS: Counsel?

1 MR. SEHAM: We just had testimony where he
2 confirmed the accuracy of his deposition testimony, which
3 states that Dr. Faulkner -- I'm not going to read it word for
4 work, unless the Tribunal desires so -- but that Dr. Faulkner
5 identified to him those three different areas. And so the
6 follow-up question, which follows with the force of
7 synergistic logic, isn't it true then that Dr. Faulkner did
8 not rely solely on information from Ms. Nabors?

9 JUDGE MORRIS: Overruled.

10 MR. ROSENSTEIN: May I be heard?

11 JUDGE MORRIS: No.

12 BY MR. SEHAM:

13 Q Do you recall the question?

14 A I do recall the question and I think the naivety of
15 it --

16 Q I'm asking you a yes or no question, sir. Could
17 you say yes or no as to whether Dr. Faulkner, in terms of how
18 he expressed himself to you, would you agree that he did not
19 rely solely on information from Ms. Nabors?

20 A Do you agree that he did not rely solely?

21 MR. ROSENSTEIN: I'd state my objection again, to
22 the new phrasing.

23 JUDGE MORRIS: Noted.

24 THE WITNESS: I do not agree that he did not rely
25 solely on Ms. Nabors.

1 BY MR. SEHAM:

2 Q I'm not sure I understand the answer and that might
3 be my fault.

4 A I'm kind of confused on the question now, too.

5 Q He relied on information that he received from
6 sources other than Ms. Nabors, isn't that correct?

7 A I disagree.

8 Q So, you're saying that Ms. Nabors gave him
9 information about the rule and policy violations?

10 A I believe know. What I know is that she talked to
11 him about more than the first point that she brought forward.

12 Q Do you have any recollection that Ms. Nabors spoke
13 to Dr. Faulkner about rule and policy procedures?

14 A I don't know.

15 Q Do you know if Ms. Nabors ever spoke to Dr.
16 Faulkner about Ms. Pettitt's failure to release things from
17 the past?

18 A I don't know.

19 Q Would you agree that Captain Phil Davis -- what was
20 his position at the time?

21 A Captain Davis was the regional director and chief
22 pilot of the Western Region.

23 Q And what was Captain Millers position?

24 A Managing director of Flying Operations.

25 Q Would you agree that the Section 15 decision was

1 based, in part -- well, let me back up.

2 Captain Davis and Captain Miller, at that time,
3 were part of Ms. Petitt's leadership structure, correct?

4 A Correct.

5 Q And would you agree that the Section 15 decision
6 was based, in part, on information received from Ms. Petitt's
7 leadership structure?

8 MR. ROSENSTEIN: Objection to the form, again. My
9 objection is to the use of the Section 15 decision. Who's
10 decision? This witness' decision or other people's decision?

11 JUDGE MORRIS: Rephrase, counsel.

12 BY MR. SEHAM:

13 Q Isn't it true that Dr. Faulkner received
14 information from Ms. Petitt's leadership structure, in the
15 context of his Section 15 decisional process?

16 A I do not believe that's true.

17 Q Okay. If you could refer to your deposition --
18 well -- hold on.

19 Would you agree that part of the basis for Dr.
20 Faulkner's Section 15 decision was his knowledge of Ms.
21 Petitt's interactions with Phil Davis and OC Miller?

22 MR. ROSENSTEIN: Objection.

23 JUDGE MORRIS: Sustained.

24 BY MR. SEHAM:

25 Q Did Dr. Faulkner identify reliance on knowledge

1 that he had acquired from Phil Davis and OC Miller?

2 A Not that I recall.

3 Q I'd like to refer you to your deposition at page
4 30, starting at line 25?

5 A Yes.

6 Q "Question: At the time he made his
7 recommendation, he had not yet spoken to
8 Ms. Petitt, correct?

9 "Answer: I do not think he had spoken
10 to her at that point."

11 "Question: So, the source of his
12 information was exclusively Ms. Nabors?

13 "Answer: Ms. Nabors and also the --
14 anyone who had been in her leadership
15 structure, I believe. I don't recall if
16 he specifically referenced anyone else.

17 "Question: Well, then why would you
18 say it was anyone else in her leadership
19 structure?

20 "Answer: Because you asked me about,
21 specifically, and I am thinking back to
22 the conversation, and I don't have the
23 fine recollection of the exact points
24 that he made as far as who he talked to.
25 However, I do believe he talked to people

1 in leadership positions.

2 "Question: Prior to making his
3 recommendation?

4 "Answer: That's correct.

5 "Question: And you can't identify any
6 of the persons he spoke to?

7 "Answer: I do know that he had
8 discussions with, I believe, the managing
9 director of Flying Ops, OC Miller, as
10 well as regional director Phil Davis.

11 "Question: So, part of the basis for
12 his recommendation of a Section 15 for
13 Ms. Petitt, were his conversations with
14 Captain Miller and Captain Davis,
15 correct?

16 "Answer: Well, I wouldn't say
17 conversations with them, I would say his
18 knowledge of interactions with First
19 Officer Petitt."

20 Did I read that accurately?

21 A You read it accurately.

22 Q Okay. And was that the testimony you gave on
23 December 18th?

24 A It was and it's incorrect.

25 Q Okay. And so in what regard is it incorrect?

1 A That I do not believe he spoke with anyone in the
2 leadership structure.

3 Q So you have any idea how he obtained information
4 that would have originated from OC Miller or Phil Davis?

5 A I don't.

6 MR. ROSENSTEIN: Object to the use of that they --
7 the partial use of deposition transcripts for this, in
8 particular, because the witness corrected that testimony in
9 the deposition. So, it's misleading to use that deposition
10 testimony for impeachment purposes.

11 JUDGE MORRIS: And you can identify that to the
12 Tribunal when it comes your time for redirect.

13 BY MR. SEHAM:

14 Q Didn't you discuss with him, with Dr. Faulkner
15 directly, Ms. Petitt's repeated violations of company
16 policies?

17 A No, I did not.

18 Q If you can refer to your testimony, deposition
19 testimony at page 34?

20 A Yes.

21 Q Actually, I have to give context. I'll have to
22 backtrack to 33, line 22, which reads:

23 "Answer: You have mis-characterized
24 it, the way that you stated it, so
25 essentially it was policies,

1 administrative policies on when you could
2 and could not utilize your stature at
3 Delta Air Lines in the public
4 environment, and the guidelines that had
5 been given to First Officer Petitt, that
6 he heard were not being followed
7 appropriately, even after being reviewed
8 several times with what the policy was.
9 So, inability to follow guidance even
10 though it had been reviewed several
11 times. So, while you say it might be
12 those particular points, that totally
13 mis-characterizes what the overall
14 recommendation came forward on. It was
15 her inability to be able to cognitively
16 follow those directions or be able to
17 remember them and execute them after
18 being told several times.

19 "Question: When did -- and Dr.
20 Faulkner got this information regarding
21 those issues from Captains Miller and
22 Davis?

23 "Answer: We discussed her history in a
24 meeting prior to the -- as the
25 recommendation came forward, as Ms.

1 Nabors was recounting the -- the
2 interview that she had had with First
3 Officer Petitt."

4 Did you provide this testimony during your
5 deposition?

6 A Yes, I did.

7 Q And isn't it true that you discussed, sir, with Dr.
8 Faulkner, Ms. Petitt's history, in terms of non-compliance
9 with workplace policy?

10 A I actually think that I misstated that.

11 Q So, that's additional testimony you gave that was
12 inaccurate?

13 A I believe so.

14 Q Okay. Didn't Dr. Faulkner solicit information from
15 you?

16 A I don't recall that he did solicit information. I
17 think he had the input from Ms. Nabors and the discussion was
18 mostly between Dr. Faulkner and Dr. Altman.

19 Q Did you have many conversations with Dr. Faulkner
20 after March 17th?

21 A No.

22 Q Did you have any conversations with him concerning
23 Ms. Petitt?

24 A I don't recall.

25 Q If I could refer you to your testimony starting at

1 the bottom of page 34, line 22:

2 "Question: So, I am trying to
3 understand your testimony. So, when
4 there was a discussion about Ms. Nabors'
5 encounter with Ms. Petitt, there were
6 other participants who brought up these
7 issues relating to Social Media and
8 uniform usage, and interaction with the
9 press?

10 "Answer: Dr. Faulkner asked me if
11 there were any issues prior to this point
12 with First Officer Petitt, and I gave him
13 a recount of what the interactions had
14 been with Captain Miller and Captain
15 Davis."

16 Did you provide that testimony during your
17 testimony?

18 A I did.

19 Q And is this, as well, inaccurate, sir?

20 A I honestly do not recall him asking me that.

21 Q Have you had any illness between the time of the
22 deposition and today?

23 A No.

24 Q Now, you met with Ms. Petitt on January 28th, 2016,
25 to review her report -- January 28th, 2016, you met with her

1 face-to-face, correct?

2 A With Captain Dickson, yes.

3 Q Yeah, I'm sorry -- yes, correct.

4 Do you recall that in her report there was a
5 repeated reference to the phrase: "Said Pilot"?

6 A Yes.

7 Q And would you agree that your understanding that
8 the references to "Said Pilot," were references to Ms.
9 Petitt, herself?

10 A I believe so.

11 Q And there were several references -- I mean there
12 were numerous references to this phrase: "Said Pilot," going
13 throughout the report, correct?

14 A Correct.

15 Q So, you were aware that many of the incidents
16 reported in that report concerned Ms. Petitt, directly?

17 A Yes.

18 Q And did you have any reaction -- did you consider
19 it odd that Ms. Petitt had experienced that number of safety
20 related incidents?

21 A First off, I'm not sure that I would characterize
22 them as safety related incidents. I would say that they were
23 in her report that was titled: "Safety Culture." But the
24 number of events that she recounted, I did think was somewhat
25 unusual, yes.

1 Q So, it struck you as odd that so many things could
2 happen to a particular pilot, is that right -- that struck
3 you as odd?

4 A That --

5 Q I'm asking a yes or no question. Did it strike you
6 as odd that so many reported events, that are recounted in
7 her report, happened to a particular pilot?

8 A Yes.

9 Q It did strike you as odd?

10 A (No verbal response.)

11 Q And did you reflect back on that oddity during your
12 decisional process in the Section 15 context?

13 A No.

14 Q Didn't even occur to you to think about her report,
15 as you were making your Section 15 decision?

16 A The report was a report on --

17 Q I'm asking a yes or no question.

18 A No.

19 Q It did not occur to you. I'm going to ask you to
20 refer to page 85 of your deposition, starting at line 6, and
21 it reads:

22 "Question: Was there anything in her
23 comportment during that January meeting
24 between you and Captain Dickson and her,
25 which contributed to your Section 15

1 referral decision?

2 "Answer: I wouldn't say at the time,
3 no.

4 "Question: But later -- at the time
5 in January, you did not make a safety
6 referral decision?

7 "Answer: That's correct.

8 "Question: But when you made the
9 Section 15 decision in March, did you
10 reflect back on her comportment during
11 the January meeting, in terms of
12 substantiating the need for a Section 15
13 referral?

14 "Answer: I think that certainly as I
15 reflected on what Dr. Faulkner said, some
16 of the concepts that lead to a mental
17 capacity that needs to be assessed, I was
18 able to say yes, I did think that I saw,
19 in the meeting, and certainly it was
20 evident in the report.

21 "Question: In the report she gave
22 you at the time?

23 "Answer: Yes."

24 Was that your testimony during the deposition?

25 A It is.

1 Q And is that testimony, is that sworn testimony
2 factually accurate?

3 A It is. However, it's not the question you asked
4 me.

5 Q Sir -- thank you for your answer. Now, Ms. Nabors
6 reported that Ms. Petitt was afraid that she would be subject
7 to retaliation for reporting safety issues to Flight
8 Operations, correct?

9 A That's my understanding.

10 Q Well, you didn't hear Ms. Nabors directly?

11 A I did.

12 Q Okay. So, is that consistent with your
13 recollection that Ms. Nabors reported that Ms. Petitt was
14 afraid that she would be subject to retaliation for reporting
15 safety issues to Flight Operations?

16 A What I recall Ms. Nabors saying is that she was
17 scared that Flight Ops was out to get her. So, to say that I
18 can say that retaliation was part of that, I don't recall.

19 Q If you can refer to your deposition testimony at
20 page 35, and I'm going to direct you to line 18:

21 "Question: What is this, the issue about Flight Ops harming
22 Ms. Petitt?

23 "Answer: Ms. Nabors was very clear
24 that as she recounted the interview with
25 First Officer Petitt, that First Officer

1 Petitt felt there would be some harm
2 coming to her over the fact that she
3 would bring forward any type of safety
4 report or safety issues to Flight
5 Operations."

6 Is that testimony that you gave during your
7 deposition?

8 A It is.

9 Q And is that an accurate recounting, to the best of
10 your recollection, as to your understanding with respect to
11 what Ms. Nabors was reporting?

12 A Yes.

13 Q Did you ever reach out to Ms. Petitt to reassure
14 her that no harm would come to her for reporting safety
15 issues?

16 A At what point?

17 Q After you heard Ms. Nabors communicate to you that
18 she had that fear?

19 A No.

20 Q Had Ms. Petitt -- well, let me take that back.
21 Ms. Nabors told you that part of her concern was
22 that Ms. Petitt had left a safety report with her mother,
23 correct?

24 A I wouldn't say that was a concern. I would say
25 that was a point that she brought forward.

1 Q Well, was it a point that contributed to Ms.
2 Nabors' recommendation that Ms. Petitt be removed from the
3 cockpit?

4 A I can't testify as to what Ms. Nabors thought at
5 the time. All I can tell you is that when she came forward,
6 she gave us her overall impression and the recount was that
7 Ms. Petitt had taken her report and given it to her mother.

8 Q Well, did you have any reaction to hearing that
9 from Ms. Nabors, that Ms. Petitt had left a safety report
10 with her mother?

11 A I certainly thought it's interesting that she
12 thinks that she has to have a neutral or, you know, I guess
13 lack of a better term, a safe haven to be able to put her
14 report.

15 Q Was that the first time that you heard Ms. Petitt
16 refer to the fact that she was going to leave her safety
17 report with her mother?

18 A I think it was.

19 Q If you could turn your deposition to page 37, and
20 starting at line 6:

21 "Question: And had Ms. Petitt ever
22 communicated to you -- excuse me -- had
23 Ms. Petitt ever communicated to you that
24 she was fearful of harm coming to her
25 from the Flight Department?

1 "Answer: I wouldn't say that she came
2 out and told me she was fearful of that.
3 She did indicate to me that she had
4 given her mother a copy of the report. I
5 didn't really think much of it at the
6 time."

7 Is that your testimony during your deposition?

8 A Yes, it is.

9 Q Is that factually accurate testimony?

10 A Yes.

11 Q Now, you communicated with Captain Dickson, with
12 respect to the Section 15 referral for Ms. Petitt -- I'm
13 sorry -- Captain Dickson was your superior at that time,
14 right?

15 A Correct.

16 Q And did you communicate to Captain Dickson, after
17 you had made the Section 15 referral decision?

18 A I did communicate with him, yes.

19 Q Okay. Did you explain the reasons lying behind the
20 Section 15 decision?

21 A I don't recall if I did.

22 Q Is there any published chain of command policy at
23 Delta that subjects a pilot to reprimand for not respecting
24 the chain of command?

25 A Not that I'm aware of.

1 Q And you would agree that there's an open door
2 policy at Delta, correct?

3 A Correct.

4 Q And pursuant to Delta's open door policy, an
5 employee can approach anyone in management, at anytime,
6 correct?

7 A Correct.

8 Q And the open door policy is a component of SMS,
9 correct?

10 A Um --

11 Q It's a component -- let me ask -- the open door
12 policy is a component of Reporting Culture, correct?

13 A Yes.

14 Q And a robust Reporting Culture is required by SMS,
15 correct?

16 A Yes.

17 Q Are you familiar with the references in Dr.
18 Altman's report to Ms. Petitt's communications with CEO Ed
19 Bastian?

20 A I don't know that I am.

21 Q You, in your communications with Ed Bastian, refer
22 to him as "Ed," correct?

23 A Correct.

24 Q Did you ever have communications with CEO Ed
25 Bastian regarding Ms. Petitt?

1 A No.

2 Q Would you agree -- did you ever make a
3 representation to anybody that you would brief Mr. Bastian
4 with respect to Ms. Petitt?

5 A Yes, I did.

6 Q But you never did brief him?

7 A I did not.

8 Q Did you ever forward -- did you ever get
9 communications from Ed Bastian that related to Ms. Petitt?

10 A Yes, I did and I responded back to him.

11 Q I'm sorry, you?

12 A And I responded back to him.

13 Q Oh. So, you did correspond with him with respect
14 to Ms. Petitt?

15 A No, there was no correspondence, I just
16 acknowledged the fact that I had received his e-mail and we
17 had it in work.

18 Q Is it your testimony that as of January 28th, 2016,
19 in your meeting with Ms. Petitt, that you were not aware of
20 any pilot performance issues in her history?

21 A Correct.

22 Q Okay. And did that continue to be the case up
23 until March 15th, 2016, that you had no information, you've
24 not received any information related to poor pilot work
25 performance by Ms. Petitt?

1 A No. She self-reported, in her report, that she had
2 been placed into special training and checking.

3 Q Okay. Other than that, had you received any
4 information, up until March 15th, 2016, concerning deficient
5 pilot performance by Ms. Petitt?

6 A No.

7 Q Okay. Now, Ed Bastian is responsible for defining
8 -- let me take that back and de-personalize it. The CEO of
9 Delta Air Lines is responsible for defining the scope of
10 Delta's SMS policy, correct?

11 A I would say basically that's true.

12 Q And during this time period, he was also listed in
13 the SMS program at Delta Air Lines, as the accountable
14 executive, isn't that correct?

15 A I don't know.

16 Q Okay. Now, your job -- I believe you testified on
17 direct -- requires you to have some familiarity with the
18 Pilots Collective Bargaining Agreement?

19 A Generally.

20 Q Now, Delta has the right to remove a pilot from
21 duty during the pendency of a disciplinary investigation,
22 correct?

23 A Remove the pilot from duty with pay?

24 Q Yes.

25 A Yes.

1 Q And would you agree with me that this type of
2 removal of a pilot with pay, during the pendency of a
3 disciplinary proceeding, would be for the purpose of allowing
4 the pilot to have the time and ability to participate in the
5 investigation, as needed?

6 A No.

7 Q Would you agree with me that during the pendency of
8 a disciplinary investigation, it's prudent to remove a pilot
9 from duty because it could impact on his mental health in a
10 way that could impact flying?

11 A Possibly.

12 Q I want to refer you to your deposition page 41,
13 line 22?

14 A Yes.

15 Q "Question: Is a pilot ever removed
16 from duty during the pendency of a
17 disciplinary investigation?

18 "Answer: Yes, there are cases when
19 that -- yes -- that we have removed a
20 pilot during a discipline investigation.

21 "Question: So, would the rationale be
22 for -- and that person is removed and
23 continues to receive pay during that
24 removal period?

25 "Answer: That's correct, full pay.

1 "Question: And that's in order to
2 provide an ample period of time for the
3 company to investigate the underlying
4 facts, prior to taking the disciplinary
5 action?

6 "Answer: There are several reasons
7 for it. So, one of them is certainly so
8 that the pilot can have the appropriate
9 time and the ability to participate in
10 the investigation as needed. There's
11 also concern that if there is a
12 disciplinary issue on the table, that the
13 pilot might not be in a mindset to be
14 able to focus on their job when they are
15 out flying the aircraft."

16 Is that your sworn testimony at this deposition?

17 A That's correct.

18 Q And is that testimony factually accurate?

19 A It is.

20 Q And you -- from the time you were first notified of
21 a meeting to hear Ms. Nabors' information, until the time of
22 the issuance of the Section 15 letter, you had no contact
23 with Ms. Petitt, correct?

24 A Correct.

25 Q From the time you had the meeting with Dr. Faulkner

1 and Dr. Altman, until the time of the issuance of the Section
2 15 letter, there was no additional investigation into whether
3 a Section 15 letter should be issued, correct?

4 A Correct.

5 Q Now, aside from you not having contact with Ms.
6 Petitt, did any Delta management representative -- was any
7 Delta management representative authorized by you to contact
8 Ms. Petitt to hear her account of what transpired with Ms.
9 Nabors?

10 A No.

11 Q Do you know if, prior to the issuance of the
12 Section 15 letter, Dr. Faulkner made any contact with Ms.
13 Petitt concerning the Section 15 decision?

14 A Not to my knowledge.

15 Q And the Section 15 decision -- the Section 15
16 letter required her to meet with the DHS, correct?

17 A That's correct.

18 Q The Section 15 letter goes out on Flight Department
19 stationery?

20 A It goes out on the supervisor's stationery.

21 Q Okay. So, the Section 15 decision, insofar as it
22 refers the pilot to the DHS, is a Flight Department decision,
23 correct?

24 A Correct, as driven by the Pilot Working Agreement.

25 Q Okay. And at that time, you were the one who had

1 the authority to make all Section 15 decisions, correct?

2 A That's correct.

3 Q Now, the teleconference during which the Section 15
4 decision was discussed, that was less than an hour, correct?

5 A Correct.

6 Q And Dr. Altman was on that call for about half of
7 the duration of that call, correct?

8 A I believe that's correct.

9 Q And at some point Dr. Faulkner asked Dr. Altman if
10 the Section 15 referral had merit, and Dr. Altman said, yes,
11 correct?

12 A State, again, the question?

13 Q Dr. Altman was asked for his opinion as to whether
14 a Section 15 referral was appropriate and he agreed that the
15 Section 15 referral was appropriate?

16 A To the best of my knowledge, yes.

17 Q And in explaining his position, he referenced
18 memory issues, correct?

19 A I don't recall.

20 Q You don't recall any rationale provided by Dr.
21 Altman?

22 A To be honest, it was a fairly medical discussion
23 and no, I did not follow it.

24 Q And the decision to refer her for Section 15 letter
25 was made at the conclusion of a March 16th teleconference, or

1 was it March 17th?

2 MR. SEHAM: I actually would reach out, I just want
3 to get this right. Can we stipulate whether it was March
4 16th or March 17th?

5 MR. ROSENSTEIN: What's the --

6 MR. SEHAM: The teleconference --

7 MR. ROSENSTEIN: What's the question?

8 MR. BISBEE: I don't know. Just curious, the
9 meeting the decision was made, he's calling it a
10 teleconference and I don't know if that's exactly right.

11 MR. SEHAM: Meeting -- meeting is fine.

12 MR. ROSENSTEIN: I think Mr. Seham knows that it
13 was March 17th, so I don't want to --

14 MR. SEHAM: Okay.

15 MR. ROSENSTEIN: So, I don't know why he's asking
16 and I don't want to participate in that, so.

17 MR. SEHAM: All right. Okay. It was intended as a
18 courtesy.

19 BY MR. SEHAM:

20 Q Was it March 17th, when you had a meeting including
21 the participation of Dr. Altman by teleconference?

22 A Yes.

23 Q Okay. And by the end of that meeting, the Section
24 15 decision had been made, correct?

25 A Correct.

1 Q And it was also decided, at that meeting on March
2 17th, that she would be subject to a psychiatric evaluation,
3 correct?

4 A I don't know that that had been determined at that
5 point.

6 Q If I could refer you to your testimony on page 76?

7 A Yes.

8 Q Starting at line 2:

9 "Question: So, at the time of this
10 meeting, that I've described -- I'm just
11 trying to understand Dr. Faulkner's
12 authority -- was it determined, at that
13 meeting, that there would be a
14 psychiatric evaluation of Ms. Pettitt?

15 "Answer: It was agreed that she would
16 be put into the Section 15 process for
17 psychiatric evaluation, and the letter
18 was dated immediately after.
19 Essentially, the letter was written at
20 the conclusion of the meeting. So, while
21 you may have said March 8th, 9th, or 9th
22 or 10th, I'm not sure, I believe that
23 actually the meeting was actually on the
24 17th, and then we wrote the letter on the
25 17th. So, the process then becomes that

1 Dr. Faulkner has control of the process
2 going forward, so he would make the
3 determination and he would bring in the
4 appropriate people.

5 "Question: And had it beendetermined
6 that it would be Dr. Altman that would
7 perform the psychiatric assessment?

8 "Answer That's correct."

9 Did you provide this testimony during your
10 deposition?

11 A I did and it's incorrect.

12 Q In fact, the decision that Dr. Altman would be the
13 psychiatrist was made about a week and a half later?

14 A Dr. Faulkner made that, after meeting with First
15 Officer Petitt.

16 Q But he made it -- he notified you of that decision?

17 A No, I did not know, at the time.

18 Q But your recollection would be that it was about a
19 week and a half later, correct?

20 A My recollection is that the First Officer Petitt
21 was to meet with Dr. Faulkner. And I misinterpreted your
22 question when you said: "psychiatric evaluation." Dr.
23 Faulkner did perform the initial evaluation. And it's my
24 understanding that after meeting with First Officer Petitt,
25 Dr. Faulkner then referred First Officer Petitt to Dr. Altman

1 for the psychiatric evaluation.

2 JUDGE MORRIS: Counsel, I'm going to interrupt.

3 What page were you reading from?

4 MR. SEHAM: I was reading from page 76.

5 JUDGE MORRIS: Seventy-six. All right, thank you.

6 BY MR. SEHAM:

7 Q Okay. Actually, if you can refer to the next page
8 of the transcript, 77, this appears to be the partial
9 correction. If you look at 13:

10 "Question: So, it was understood, at
11 the close of the teleconference, that I
12 understand now to be March 17th, that Dr.
13 Altman would be the CME?

14 "Answer: No, I don't believe we made
15 a determination there, at all, because
16 that's not up to me to decide. That is
17 up to Dr. Faulkner as the DHS to decide.

18 So, it would have been his decision on
19 who to use.

20 "Question: Did you have any concern
21 about -- so when did you learn that Dr.
22 Altman had been selected by Dr. Faulkner
23 as the CME?

24 "Answer: I don't recall.

25 "Question: Was it months later, weeks

1 later?

2 "Answer: No, I would say within a week
3 or week and a half.

4 Did you provide that testimony at your deposition?

5 A Yes, I did.

6 Q And is that testimony factually accurate?

7 A I believe that it is.

8 Q Would you agree with me that Ms. Pettitt's conduct
9 prior to March 2016 solidified your decision to proceed with
10 a Section 15 referral?

11 A No.

12 Q I'd like to refer you to your deposition testimony
13 at page 80, starting at line 16. It reads:

14 "Question: But nonetheless, this pre-
15 March conduct was part of the reason you
16 decided a Section 15 referral was
17 appropriate, correct?

18 "Answer: It gave me a concern to see
19 that what I had assumed to be behavior
20 that I would call more -- I'm not sure of
21 the correct term to use here, I guess
22 'peculiar' -- because we typically find
23 that pilots absolutely understand the
24 guidelines that are given to them. They
25 perform procedures, they perform non-

1 normal procedures, they have memory
2 items, they have to execute flawlessly.
3 So, we typically don't find that pilots
4 don't understand the policies --
5 consistently don't understand the
6 policies. And what I had experience with
7 First Officer Petitt, via the word that I
8 got back from her supervisors, was that
9 although they had taken several
10 opportunities to try to work through
11 these administrative policies, that there
12 was still a lack of understanding of
13 that, and that, to me, was outside the
14 norm for what I had seen for the majority
15 of my pilot group, and I would almost say
16 the entirety of the pilot group. So,
17 moving to this place where there was
18 actually concern that harm would be done
19 to her, made me believe that there was a
20 condition that may be escalating and,
21 therefore, I felt like Section 15, based
22 off of Dr. Faulkner's recommendation, had
23 solidified my decision that we should go
24 ahead and have the Section 15."
25 Is that testimony that you provided during your

1 deposition?

2 A My decision to be made, yes.

3 Q Pardon?

4 A My had been made when Dr. Faulkner --

5 Q My question was --

6 A -- made his recommendation.

7 Q -- did you provide this testimony during your
8 deposition?

9 A Yes, I did.

10 Q And is this testimony factually accurate?

11 A I don't believe it is 100 percent accurate.

12 Q You don't believe it's 100 percent accurate, okay.

13 Now, prior to your meeting on January 28th, she had
14 sent you lengthy articles that she had written, correct?

15 A I don't know that I'd call them "lengthy." She
16 sent me two articles, yes.

17 Q Okay. If you could look in Volume 6 of the CX
18 volumes --

19 MR. BISBEE: What would the exhibit number be, Lee?

20 MR. SEHAM: Yes, I'm sorry. I should do that --
21 I'm keying in on 173 and 175.

22 THE WITNESS: I'm sorry, restate the numbers?

23 MR. SEHAM: 173, 175.

24 THE WITNESS: Yes.

25 BY MR. SEHAM:

1 Q Do you recall, in your direct testimony, testifying
2 to the effect that she sent you written material prior to the
3 meeting?

4 A Yes, she did.

5 Q Okay. And would you agree with me that -- if you
6 can look at CX-173 and CX-175, that those were articles that
7 she sent you prior to the January 28th meeting?

8 A I believe that's correct.

9 Q And she had also advised you, by phone, that she
10 wanted to discuss issues she had with respect to Delta
11 training and indoctrination classes, correct?

12 A I don't specifically recall that.

13 Q Now, her written safety report presented issues
14 related to fatigue, SMS violations and training protocol
15 violations, correct?

16 A Restate?

17 Q The report that she presented you on January 28th,
18 2016, presented -- reported incidents related to -- well, let
19 me break it down.

20 Her January -- the report she presented to you on
21 January 28th, reported incidents related to pilots flying
22 when they were fatigued, correct?

23 A Yes, one instance.

24 Q And her report referenced SMS violations, correct?

25 A I would have to look at the report.

1 Q Her report alleged training protocol violations,
2 correct?

3 A Correct.

4 Q If you could turn to -- I think it's JX-D?

5 A Yes.

6 Q This was the investigatory plan that you organized
7 in terms of responding to Ms. Petitt's report, correct?

8 A Correct.

9 Q And if you could turn to page 3, the caption under
10 "Harassment and Unequal Treatment Concerns"?

11 A Yes.

12 Q These were the issues that were ultimately assigned
13 to Ms. Nabors for her investigation, correct?

14 A I believe that is correct.

15 Q Okay. If you go down to the second bullet point,
16 it says:

17 "Pilot quotes several statements,
18 supposedly made by senior FOP managers,
19 the two most egregious: 'At Delta we have
20 the power to do what we want,' 'You're
21 not the first to receive multiple
22 retaliatory line checks.'"

23 Would you agree with me that comments such as these
24 might constitute a violation of Delta's SMS policy?

25 A If made by managers, yes.

1 Q And if you move down to the last bullet point,
2 which reads:

3 "Flight Training Instructor Albain,
4 during A330 training, did not give oral,
5 showed up 10 minutes prior to SIM box
6 entry time, falsified documents
7 concerning items satisfactorily
8 completed, texted continuously during SIM
9 training session."

10 Now, one or more of these would constitute a
11 violation of Delta's Training Manuals, correct?

12 A Not necessarily.

13 Q If you can move to the next page, you see the first
14 dark bullet point:

15 "Fleet Captain Doyle, after being
16 notified about issues with pilots' 330
17 training experience, as noted above,
18 responded in the following manner:

19 'Did not allow pilot to return to
20 training when alleged inadequate training
21 brought to his attention.'

22 'Dismissed her assertion stated to him
23 that she might not be safe.'"

24 Let me ask you, when a pilot who has completed SIM
25 training states the position that he or she does not consider

1 himself or herself adequately trained, is there a process
2 that should be followed?

3 A No. The assessment is made by the flight training
4 instructor, at the time. And we operate to a set of qual
5 standards. The qual standards were -- if they're met, then
6 the flight training instructor assumes that the student is
7 satisfactory and can return to line flying.

8 Q So, if the pilot, him or herself, simply disagrees,
9 that's not taken into consideration?

10 A Well, I think that as pilots, we're very hard on
11 ourselves as far as our performance goes. So, I think every
12 pilot, when they finish their training, says: "I could have
13 done that better." And the question is, do you do it to
14 perfection or do you do it to a qual standard that says that
15 you're satisfactory and you're able to be flying the line?
16 And the answer is it's the latter.

17 Q So, there's no -- if a pilot states to his or her
18 instructor: "I don't consider myself to be adequately
19 trained," there's no process that Delta has, that is required
20 to be followed?

21 A Certainly.

22 Q What process?

23 A The process is essentially an assessment that is
24 brought forward in a discussion between the fleet captain, I
25 guess, in this case, and the student, to understand if

1 there's a basis for that. And if there is a concern, then
2 there is an opportunity for additional training, in some
3 cases. And if not, then we would convene a Flight Operations
4 Review Board.

5 Q Is there a policy of social promotion at Delta,
6 pursuant to which pilots who significantly under perform in
7 their SIM training are still put on the line?

8 A Significantly under perform?

9 Q Yes.

10 A No.

11 Q Under those circumstances the instructor would be
12 required to do what?

13 A Well, there was -- if you don't meet the qual
14 standard, then you receive an unsatisfactory, and you're
15 retrained.

16 Q And that's in accordance with the Flight
17 Instruction Manuals?

18 A AQP.

19 Q Now, Nabors conveyed Ms. Petitt's concern that Ms.
20 Petitt had expressed that Ms. Petitt had a target on her
21 back, correct?

22 A I think generally that was the recount, yes.

23 Q Have you ever heard that expression before, having
24 a target on one's back?

25 A I think that that -- I'm actually the one that said

1 that, in my deposition. However, I don't know that those
2 were the specific words that were used.

3 Q Well, did Ms. Nabors -- and so you're not certain
4 that Ms. Nabors actually used that language, "target on the
5 back"?

6 A No, I'm not.

7 Q But she conveyed something that you understood to
8 fall within the meaning of those words?

9 A Yes.

10 Q And you understood that, to use the metaphor, that
11 Ms. Pettitt considered that it was the Flight Department that
12 had placed that target on her back?

13 A Correct.

14 Q Okay. And did that consideration or did that
15 communication from Ms. Nabors contribute to your Section 15
16 decision?

17 A The recommendation that came forward from Dr.
18 Faulkner was essentially encompassed all the discussion that
19 Ms. Nabors had had with First Officer Pettitt. So, as part of
20 that entire conversation, it was, yes.

21 Q I'm specifically -- more specifically in terms of
22 your decision, did Ms. Nabors' communication to the effect
23 that Ms. Pettitt felt she had a target on her back, did that
24 contribute to your decision to issue the Section 15?

25 A No.

1 Q Could you turn to page 89 of the transcript?

2 A Yes.

3 Q I'm going to refer you to line 17:

4 "Question: Did Ms. Nabors convey to
5 you that Ms. Petitt was worried that she
6 had a target on her back?

7 "Answer: Yes.

8 "Question: Did that contribute to your
9 Section 15 determination?

10 "Answer: Yes."

11 Did you provide that testimony during your
12 deposition?

13 A I did.

14 Q Is that testimony factually accurate?

15 A In this specific statement, yes.

16 Q And yet, you never asked Ms. Petitt if she had used
17 that expression, correct?

18 A No.

19 Q And this is one of the things, the concept of
20 Flight Department retaliation, is that one of the things that
21 you assigned to EO to investigate?

22 A I'm not sure I understand what your question is.
23 Are you going to point me to a particular part of the Action
24 Plan?

25 Q No. I'm asking can you recall whether you had

1 asked that there be an investigation of Ms. Petitt's concern
2 that she was subject to retaliation by the Flight Department?

3 A No, that was not brought forward at the time.

4 Q But you did ask them to investigate whether Captain
5 Albain had been targeting Ms. Petitt, correct?

6 A No, I did not.

7 MR. SEHAM: Is it an acceptable time for a five or
8 10-minute break?

9 JUDGE MORRIS: Yeah. Let's take 10 minutes. See
10 you at five after the hour.

11 MR. SEHAM: Thank you.

12 (Off the record at 2:56 o'clock p.m.)

13 JUDGE MORRIS: Back on the record.

14 All parties present when the hearing last recessed
15 are again present.

16 You may continue your cross.

17 CROSS-EXAMINATION RESUMED

18 BY MR. SEHAM:

19 Q Could you turn to JX-B.

20 A P as in Pappa?

21 Q B as in Bravo?

22 A Yes.

23 Q Okay. And then if you could turn to page JX-B-8.

24 Well, first of all, let's make sure -- if you look at --

25 starting at the second page, this is the 45-page report that

1 you received from Ms. Petitt on January 28th?

2 A Yes, I believe it is.

3 Q And if you can turn to -- and you read this entire
4 report, correct?

5 A Yes.

6 Q If you could turn to JX-B-8, which is page 7 of her
7 report?

8 A Yes.

9 Q And I'm going to refer you to the: "Training
10 Standards," section, which references, in the first sentence:

11 "A training checked airman left a
12 message for the two pilots to show up at
13 a recurrent training 10 minutes prior to
14 that event."

15 Do you know whether or not a greater period of time
16 for the briefing is required -- than 10 minutes?

17 A I know that there's one that's designated for a
18 longer period of time than that, yes.

19 Q Okay. And does the training instructor have the --
20 and is that provided for in the Training Instructor Manual?

21 A I believe that -- we have the sessions set up that
22 way, I'm not exactly sure where it says that.

23 Q Okay. Do you know whether a training instructor
24 has the discretion to hold the briefing for a shorter period
25 of time?

1 A Yes.

2 Q And you're saying that he does have the discretion?

3 A I'm saying that the instructor has to be able to
4 complete the lesson plan prior to going into the simulator.
5 And so there is no requirement to stay for the entire
6 time-frame that's allotted.

7 Q And there's a reference in the next sentence to a
8 "required oral." Do you know what an "oral" is?

9 A Yes.

10 Q Is that some form of examination?

11 A It is.

12 Q And would it be a violation of Delta's manuals not
13 to provide -- not to conduct the oral?

14 A The instructor would have to be able to establish a
15 knowledge base appropriate for what they were about to do.
16 So, I believe that there is an oral that can be used as part
17 of that, yes.

18 Q Well, if an instructor did not conduct an oral, but
19 entered into the training record that he had, would you agree
20 with the characterization contained in this paragraph, that
21 that would constitute falsification of training records?

22 A Yes.

23 Q Now, this was -- would you agree that you
24 considered this a very significant safety and compliance
25 issue?

1 A Yes.

2 Q And you did not investigate this issue, correct?

3 A No.

4 Q And this is one of the issues that you assigned to
5 the EO investigator?

6 A I believe that that was part of it, yes.

7 Q And you never got a written report back, with
8 respect to this compliance issue, correct?

9 A No.

10 Q Turn to CX-20.

11 MR. BISBEE: I'm sorry, I was getting the binder,
12 and I know it's in one, but --

13 MR. SEHAM: CX-20 -- yeah, CX-20.

14 MR. BISBEE: Okay.

15 BY MR. SEHAM:

16 Q You sent this e-mail to Chris Puckett. Chris
17 Puckett is a lawyer in Labor Relations, correct?

18 A Yes.

19 Q And Meg Taylor is an attorney for Delta?

20 A Yes.

21 Q And is Brendon Branon another attorney?

22 A No longer.

23 Q Okay. But he was an attorney at Delta, correct?

24 A Yes.

25 Q And here you're forwarding to them the article, the

1 two articles that Ms. Petitt had written and sent to you:
2 "The Structural Redesign of Pilot Training," and "Pilot
3 Training in the Safety Culture," correct?

4 A Yes, that's correct.

5 Q And why were you sending these documents to the
6 company attorneys?

7 A Because, essentially, this was part of our process
8 to make sure that we understood what was going on through the
9 documents.

10 Q I'm sorry. You sent it -- why did Labor Relations
11 have to know that you were obtaining these operational
12 documents?

13 A Because of the concern that she had brought forward
14 with the interaction with her supervisor. And so I wanted
15 them to have all the material that we were going to have in
16 the meeting.

17 Q Okay. Now, you delayed providing the Section 15
18 letter from March 17th until March 22nd, correct?

19 A Yes.

20 Q And you delayed it in order to make it possible for
21 Captain Davis to hand-deliver it to her, correct?

22 A Correct.

23 Q And that was your decision. It was your decision
24 to have Captain Davis sign the letter?

25 A No, that's standard practice for us.

1 Q And you didn't tell Captain Davis the reasons
2 behind the Section 15 letter, correct?

3 A I did not.

4 Q So, what was the reason for -- what was the
5 importance of providing for a hand delivery of the Section 15
6 letter?

7 A Because when you're stepping in to have an
8 evaluation done, we want to make sure that we take care of
9 the pilot. So, that's not something that you do long
10 distance, at least it certainly doesn't seem to me that
11 that's the position thing to do.

12 Q Now, with respect to the checking event, that we
13 were reviewing a minute or so ago, your understanding was
14 that the training, in which there was a 10-minute briefing --
15 she alleged a 10-minute briefing, and she alleged no oral was
16 conducted, that was a training conducted by Captain Albain,
17 correct?

18 A I believe so, yes.

19 Q And she conveyed to you that she considered the
20 training she received from Captain Albain to be inadequate,
21 correct?

22 A Yes.

23 Q And one of the things she complained about was that
24 Captain Albain was texting in the simulator during the
25 training event, correct?

1 A Correct.

2 Q And it's your position that at Delta trainers, such
3 as Captain Albain, are not prohibited from texting in the
4 simulator, correct?

5 A Correct.

6 Q Do you know if prior to January 28th, there was any
7 investigation of this Albain training event?

8 A Not that I'm aware of.

9 Q And in fact, this Albain training event occurred in
10 the year 2011, correct?

11 A I'd have to look at my notes, but it sounds about
12 right.

13 Q And she advised you that at that time she had
14 complained to several Delta management representatives,
15 correct?

16 A No. She had told me that she talked specifically
17 to the fleet captain.

18 Q To the fleet captain?

19 A I believe so.

20 Q Okay. And did you ever -- and who would that have
21 been?

22 A Captain Doyle.

23 Q Was an investigation conducted at that time, in
24 2011?

25 A I believe know.

1 Q Did you ever ask Captain Doyle whether there was an
2 investigation conducted at that time in 2011?

3 A I directed EO to start into the investigation, that
4 would have been up to them.

5 Q In terms of your -- I mean you have oversight of
6 Delta's Training Program, correct?

7 A Correct.

8 Q Is it troubling to you if no one investigated these
9 allegations in 2011, is that troubling to you?

10 A I did know, at the time, that it had not been
11 investigated.

12 Q But when it came to your attention that it hadn't
13 been, can you explain why you didn't investigate the failure
14 of Delta to conduct any investigation at that time?

15 A I did conduct an investigation. I handed it off to
16 EO. And if you're asking me did Captain Doyle conduct an
17 investigation, my answer is I don't know. I'm assuming that
18 he carried out whatever he needed to, to ensure that First
19 Officer Petitt was qualified. So, I assume that he did his
20 job.

21 Q And with respect to this issue, you never got a
22 written report back from EO?

23 A No.

24 Q Okay. At Delta Air Lines, the company observes a
25 policy of progressive discipline, correct?

1 A Correct.

2 Q And could you describe what your understanding of
3 that policy is?

4 A Progressive discipline tries to start with the
5 lowest level of discipline. And then if repeat incidents
6 occur, then you would continue with increased discipline up
7 to and including termination.

8 Q So, in terms of the hierarchy, where does it start?

9 A Letter of warning.

10 Q And then progresses to what?

11 A Up through potential discharge.

12 Q There might be multiple letters of warning before
13 -- let me strike that.

14 There could be a suspension in there, somewhere, as
15 an intermediate step?

16 A Yes.

17 Q And before the step suspension, there might be more
18 than one warning letter?

19 A Yes.

20 JUDGE MORRIS: Is this progressive discipline a
21 published document anywhere for Delta?

22 THE WITNESS: It's recognized in our Pilot Working
23 Agreement.

24 JUDGE MORRIS: Okay.

25 BY MR. SEHAM:

1 Q And Ms. Pettitt never even got a written warning for
2 any policy violation, correct?

3 A Not to my knowledge.

4 JUDGE MORRIS: Some organizations have, basically
5 what I'll call a "Table of Punishments," for a given act.
6 I'll use the railway industry as very similar and does that a
7 lot. Do you have any such "Table of Punishment" or
8 equivalency?

9 THE WITNESS: No, Your Honor, we don't. We,
10 essentially, go in and take a look at every situation
11 independently. We take a look at past precedent. We take a
12 look across the rest of the company, to see how it was
13 handled. And then make a decision at that point.

14 JUDGE MORRIS: All right. Thank you.

15 BY MR. SEHAM:

16 Q When did you acquire your knowledge as to the
17 existence of a Social Media Policy?

18 A Well, I can't say, exactly. I've known about a
19 Social Media Policy for quite a few years.

20 Q Let's turn to page 121 of your deposition?

21 A I'm sorry -- the page?

22 Q Page 121.

23 A Yes.

24 Q I'm going to refer you to line 24, which reads:

25 "Question: How many times did Ms.

1 Petitt violate Delta's Social Media
2 Policy?

3 "Answer: I don't recall.

4 "Question: And you referred to, I
5 think, involvement in other activities,
6 how many times did her involvement in
7 other activities violate Delta policy?

8 "Answer: Well, I'm not sure that
9 there's a -- that I would specifically
10 talk about it as a violation of Delta
11 policy, as much as I would say that after
12 being given direction on the guidelines
13 to ensure that Delta was brought into the
14 loop for various things that she was
15 participating in, she did not follow
16 those guidelines."

17 When you testified about -- was that testimony that
18 you provided at your deposition?

19 A I believe it is.

20 Q And when you were referring to guidelines, what
21 were you -- as opposed to a policy -- what subject matter
22 were you referring to?

23 A Actually, I think that it's the Social Media Policy
24 itself, and I think I was just referring to guidelines as how
25 that Social Media Policy is stated.

1 Q So, would you agree that at the time of the
2 deposition of December 18th, 2018, you did not know that
3 there was a Social Media Policy at Delta?

4 A That's false.

5 Q No harassment investigation related to Ms. Pettitt
6 was initiated until after the January 28th, 2016 meeting,
7 correct?

8 A (No verbal response.)

9 Q Is that correct?

10 A Yes, that's correct.

11 Q Now, you and Captain Dickson agreed that you would
12 be the one to investigate the issues raised in Ms. Pettitt's
13 January 28th report?

14 A Correct.

15 Q And you agreed that you would brief him, correct?

16 A Correct.

17 Q Did you tell him that Ms. Pettitt had raised FAA
18 compliance issues of significance?

19 A He was in the report -- he was in the review of the
20 report on the 28th. He already knew that.

21 Q Okay. So, you both concurred that she had raised
22 FAA -- significant FAA compliance issues?

23 A I wouldn't say that they were significant FAA
24 compliance concerns. I would say that there were concerns
25 and they were tied to an FAA doctrine or regulations.

1 Q And what form did your -- and you say you did brief
2 him?

3 A Yes. I kept him up to date on where we were with
4 the investigation.

5 Q So, you never gave him a written report?

6 A No.

7 Q Would you agree with me that pilot fatigue plays a
8 role in aviation incidents and accidents?

9 A Fatigue can play a role, yes.

10 Q And would you agree with me that there's constant
11 operational pressure on pilots?

12 A Yes.

13 Q And in your experience, would you agree that among
14 pilots there's a self-imposed pressure that the pilots put on
15 themselves to complete their assigned missions?

16 A On some pilots, yes.

17 Q Now, you -- the pilots, they have a Collective
18 Bargaining representative referred to as ALPA, correct?

19 A Correct.

20 Q And ALPA and Delta are partners with the FAA in an
21 ASAP program, correct?

22 A Correct.

23 Q Have you had a cooperative relationship with ALPA,
24 with respect to safety?

25 A Yes.

1 Q Would you consider ALPA to be a responsible partner
2 with respect to safety and compliance issues?

3 A Yes.

4 Q Do you agree that pilots are required, under the
5 FARs, to identify themselves as fatigued and remove
6 themselves from an assigned flight when they're fatigued?

7 A Yes.

8 Q And you were aware, in January 2016, that Ms.
9 Petitt had made references in one of her books to having
10 flown when she was fatigued, correct?

11 A Yes.

12 Q Did you ever reach out to her to reassure her that
13 Delta policy provided for no retaliation with respect to
14 pilots who remove themselves on the basis of fatigue?

15 A It was my understanding that when she --

16 Q I'm asking a yes or no question. Did you ever
17 reach out to her, knowing that she had flown fatigued, did
18 you ever reach out to her or ask anyone to reach out to her
19 to communicate to the pilot that Delta wanted fatigued pilots
20 to remove themselves from service?

21 A No.

22 Q Are you familiar with the term: "Pilot Pushing"?

23 A Yes.

24 Q And what does that term mean to you?

25 A It can mean different things.

1 Q What are those different things?

2 A Well, I think the first one that comes to mind is a
3 request to continue to fly.

4 Q And that sometimes arises in a situation where a
5 pilot feels fatigued?

6 A Well, it's a perception from the pilot that
7 they're being asked to extend into a situation that they feel
8 that they might not want to extend.

9 Q Has ALPA ever raised concerns with respect to
10 Delta's "Pilot Pushing" or alleged "Pilot Pushing"?

11 A Yes.

12 Q Who in ALPA has raised those concerns?

13 A I don't recall.

14 Q Did the persons -- do you recall the persons
15 raising those issues, did you consider them to have mental
16 health issues?

17 A No.

18 Q Did you investigate those issues when ALPA
19 identified examples of "Pilot Pushing"?

20 A We looked at the circumstances, yes.

21 Q Are you familiar with 14 CFR Part 117?

22 A Yes.

23 Q And could you just tell me, generally, what your
24 understanding of Part 117 is?

25 A It's an establishment of flight blocked time and

1 duty time, as it relates to rest requirements for 121
2 operations.

3 Q And have you -- are you familiar with the term:
4 "Deadheading"?

5 A Yes.

6 Q Does deadheading -- please, tell the Tribunal
7 what's your understanding of "Deadheading"?

8 A "Deadheading" is a leg that the pilot is not
9 flying, they're riding on the aircraft instead.

10 Q And under what circumstances should deadheading be
11 contribute towards calculation of Part 117 maximum duty
12 limitations?

13 A If it is built into the rotation for the pilot,
14 then it should always be counted as under Part 117.

15 Q And Ms. Pettitt raised issues about Delta's practice
16 of not counting deadhead hours towards maximum duty limits
17 under 117, correct?

18 A She raised a concern of what she perceived to be
19 deadhead, yes.

20 Q Well, did it ever come to your attention that her
21 allegation had been substantiated?

22 A I did not receive word that it had been
23 substantiated, no.

24 Q If you could -- it may take me awhile to find it,
25 but I'll refer to you to CX-4. So, CX-4 is a letter on FAA

1 letterhead dated September 8th, 2016. Have you seen this
2 letter before?

3 A I had not seen this letter before, no.

4 Q Well, you saw it at your December 18th deposition,
5 correct?

6 A Correct.

7 Q And did you make any inquiries with respect to what
8 issue the FAA had substantiated, with respect to Ms. Pettitt's
9 whistleblower action?

10 MR. ROSENSTEIN: Objection. Is he asking him since
11 his deposition has he made inquiries?

12 MR. SEHAM: Yes.

13 JUDGE MORRIS: Yes.

14 MR. ROSENSTEIN: Relevance.

15 JUDGE MORRIS: Counsel?

16 MR. SEHAM: It has to do with the testimony
17 elicited on direct, that this is an airline that's focused on
18 safety, SMS, and has a robust Safety Culture. And if a
19 senior Flight Department manager receives notice of a
20 substantiated FAR violation, and two months later, or three
21 or four months later doesn't know what it is, we think that's
22 relevant.

23 MR. ROSENSTEIN: I'd stand by my objection. You
24 can't have a -- this isn't an opportunity for Mr. Seham to be
25 picking -- cherry-picking -- current issues with Delta Safety

1 Culture. This is a case that involves whether First Officer
2 Petitt was placed into Section 15 in 2016, because she made a
3 complaint about safety. It's not about the actions of Delta
4 management in 2019. That's my objection.

5 JUDGE MORRIS: Overruled.

6 BY MR. SEHAM:

7 Q So, did you make any effort to inquire as to the
8 basis for the FAA's substantiation of one of Ms. Petitt's
9 allegations?

10 A Actually, I read through this report and --

11 Q You mean this two-paragraph letter?

12 A No. I actually never received this from the FAA.

13 Q Okay. I'm sorry. On December 18th, you received
14 this, you saw this letter, correct?

15 A Yes, that's correct.

16 Q So, what efforts did you make after that to find
17 out what the underlying substantiated violation was?

18 A I did not.

19 Q Okay. Now, you eventually were given -- if you can
20 turn to RX-138 --

21 JUDGE MORRIS: That would be Volume 4.

22 THE WITNESS: Sorry, did you say 138?

23 MR. SEHAM: 138.

24 THE WITNESS: That's Volume 7?

25 MR. SEHAM: Correct.

1 JUDGE MORRIS: I have Volume 4. You said CX or RX?

2 MR. SEHAM: I meant to say RX, it's Volume 7.

3 JUDGE MORRIS: Then I'm wrong.

4 MR. SEHAM: I don't know, I might have mis-spoke.

5 BY MR. SEHAM:

6 Q Have you reached RX-138?

7 A Yes.

8 Q Do you see the date there, in terms of this FAA
9 memorandum, is July 26th, 2016?

10 A Yes.

11 Q When did you first see this report?

12 A I believe in preparation for this hearing.

13 Q Okay. And if you can turn to page 15, and I'm
14 going to refer you towards the top -- when I say 15, it's
15 RX-138-015 -- to the reference here of:

16 "Corrective Action AIR No. 2016SO650014 was

17 initiated in accordance with FAA

18 compliance philosophy."

19 Did you have any knowledge of this AIR Corrective
20 Action prior to this year?

21 A I did not.

22 Q Turn to JX-B, page 14.

23 JUDGE MORRIS: I'm sorry, what was that?

24 MR. SEHAM: JX-B-14.

25 JUDGE MORRIS: Okay.

1 BY MR. SEHAM:

2 Q Now, you see this reference under -- I'm going to
3 refer you to the third paragraph, I guess, under:

4 "Leadership." It starts: "When a manager," do you see where
5 I am?

6 A Yes.

7 Q "When a manager of scheduling told an
8 indoctrination class: 'Never call in
9 fatigued at Delta, that is the other F-
10 word,' that spoke volumes for bypassing a
11 safety net."

12 Now, would you agree with me that a statement like
13 that, from a manager in an indoctrination class, would caused
14 concern that there might be non-compliance with Delta's FAA
15 approved Fatigue Program?

16 A I do not, because there's no context around how
17 that was said.

18 Q Did you ever investigate the context?

19 A I did not. It was handed over to our EO team.

20 Q If you could turn to page 151.

21 JUDGE MORRIS: Of what?

22 MR. SEHAM: I'm sorry -- the deposition, CX-200.

23 JUDGE MORRIS: CX-200.

24 BY MR. SEHAM:

25 Q Page 141, line 19:

1 "Question: My question is, if a
2 manager in a Delta training class told
3 his class: 'Never call in fatigued at
4 Delta, that is the other F-word,' would
5 that cause a concern for you that there
6 might be non-compliance with Delta's FAA
7 approved Fatigue Program?

8 "Answer: Certainly."

9 Is that testimony that you gave during your
10 December 18th, 2018, deposition?

11 A You read a singular line and if you're going to use
12 a singular line, that's fine.

13 Q I'm going to ask that you answer the question. Did
14 you give that testimony?

15 MR. ROSENSTEIN: I'd object to this entire
16 exercise, because what Mr. Seham is doing is unfair to this
17 witness. I've objected at the beginning and over my strong
18 objection you allowed it to continue, but I'm going to make
19 the statement on the record, again, that when a party is
20 trying to use deposition testimony and not allowing the
21 witness to explain the answer and just answer yes or no, and
22 only using partial information in the deposition, they are
23 misleading. They're creating a record, a public record, that
24 is inaccurate and it's simply not right. It's not right to
25 the witness. It's not right to anyone. It was not done on

1 direct in that way, at all, and it shouldn't be done here.
2 And the witness is not being allowed to explain why there's
3 differences between the testimony here and not allowed to
4 provide any information. And there's so many of these, and
5 it is 4:00 o'clock p.m., that we are not going to be able to
6 get through that on redirect in an appropriate way. And I
7 just think the ruling -- I take exception to the initial
8 ruling on it and I make the same objection that I made
9 originally.

10 JUDGE MORRIS: Your objection is noted and you can
11 cure that on redirect. If you recall, when you were asking
12 questions in examination of Complainant, I applied the same
13 criteria to her as I'm going to apply to this witness. Mr.
14 Seham was not allowed to interrupt your questions, but was
15 allowed to cure those areas that he thought was necessary.
16 And what's good for the goose is good for the gander.

17 MR. ROSENSTEIN: I note my exception, again, that
18 there's a vast difference between my examination technique
19 and what is happening in this examination. I appreciate and
20 understand the ruling.

21 JUDGE MORRIS: All right.

22 You may continue, Mr. Seham.

23 BY MR. SEHAM:

24 Q If you could turn to JX-B, page 4. Hold on. No,
25 I'm sorry. Let's go to JX-B-006. I'm going to refer you to

1 the five bullet points prefaced by the statement:

2 "Statements from Delta senior Flight
3 Operations management indicating essence
4 of Delta culture include:

5 'If there is a better way, Delta would
6 already be doing it.'

7 'Stop writing e-mails, there is nothing
8 you can say that they don't already know.

9 You should stop all this writing and
10 drink more beer.'

11 'At Delta we have the power to do what
12 we want.'

13 'You're not the first person who gets
14 multiple retaliatory line checks.'"

15 Now, it's your position that these statements do
16 not present a violation of SMS Safety Culture, correct?

17 A It's my position that I can't tell anything more
18 than what we have in a quotation at a single bullet point
19 item.

20 Q And did you ever conduct any investigation as to
21 who made these statements?

22 A I did not.

23 Q And did you assign anyone to conduct an
24 investigation to determine who made these statements?

25 A I assigned Corporate Safety, Security and

1 Compliance to take a look at the overall Delta culture, and
2 that included a focus from the PRISM company to take a look
3 at all of Flight Operations.

4 Q So, do I understand correctly that you never
5 assigned anybody to an effort to identify who made these
6 statements and in what context, is that correct?

7 A I did not.

8 Q After January 28th, 2016, did you ever discuss Ms.
9 Petitt's January 28th safety report with her?

10 A Yes.

11 Q And when did you do that?

12 A I believe I went through the Action Plan for how we
13 were going to access and take a look at all the points that
14 she had brought forward. And I can't remember how many times
15 we briefed that, we talked about it, but was more than one.

16 Q You gave her an overview of how the investigation
17 was going to take place, is that it?

18 A Yes, I did.

19 Q Did you ever ask her any substantive questions
20 about the incidents that she reported in her safety report?

21 A I took it at face value.

22 Q At the January -- and just to be clear, at the
23 January 28th meeting, you didn't ask her about who had made
24 any of these statements on JX-B-006, correct?

25 A I did not.

1 JUDGE MORRIS: When you get to an appropriate break
2 in your train of thought, let me know.

3 BY MR. SEHAM:

4 Q And would you agree with me that you never had a
5 basis for asserting bad faith with respect to any of the
6 compliance issues raised in Ms. Petitt's January 28th report?

7 MR. ROSENSTEIN: Objection. I think all of this
8 has been covered extensively, and we're now at the point
9 where questions are taking a very long time to articulate and
10 are going over already trod ground and issues that are dealt
11 with either through the stipulation on protected activity or
12 through prior testimony, or are simply not relevant to the
13 case. And I'm not sure what value any of these questions are
14 to the determination of the Tribunal.

15 MR. SEHAM: I don't know -- there's a way -- if I
16 may -- there's a way to shortcut that and remove a number of
17 questions if Respondent is going to stipulate -- because we
18 have stipulated there's protected activity in the January
19 28th report -- my question was would he agree that none of
20 the incidents -- there is no evidence that any of the
21 incidents reported were reported in bad faith. If Respondent
22 is willing to stipulate to that, then that could eliminate a
23 number of questions.

24 MR. ROSENSTEIN: What's the relevance to this case
25 of that? It's not -- we've never proffered anything even

1 close to suggesting that Complainant raised the issues in the
2 January 28th letter in bad faith, that's never been part of
3 the defense in the case, it's never been part of the case, at
4 all. So, why do I have to stipulate to something that's not
5 relevant or has not been articulated in the answer, nor does
6 it go to the prima facie case.

7 MR. SEHAM: Only as a means of reducing the
8 questions about which counsel is complaining. They've made
9 an objection, so I'll wait for the ruling.

10 JUDGE MORRIS: Well, are you waiving any objection
11 later on if all of a sudden it's determined to be relevant?

12 MR. ROSENSTEIN: If what -- I'm sorry -- if what's
13 determined to be relevant? I just want to know what I'm --

14 JUDGE MORRIS: He just asked for a stipulation that
15 all of the allegations that were made were in bad faith. If
16 somehow it is determined to be relevant, are you going to
17 waive that?

18 MR. ROSENSTEIN: If it were somehow -- I'm still
19 confused. If it were somehow determined to be relevant that
20 she made -- whether or not she made the allegations in bad
21 faith?

22 JUDGE MORRIS: Her claims of protected activity are
23 bad faith. One of the things that jumps out to my mind is 49
24 USC 42101(e), that if it's, I believe, done intentionally in
25 bad faith, there's a \$1,000.00 fine for it.

1 MR. ROSENSTEIN: Okay. I believe that we could
2 agree that there is no evidence, nor have we proffered any
3 defense that First Officer Petitt raised the issues in her
4 January 28th safety -- what she calls "safety report," in bad
5 faith. Is that satisfactory?

6 JUDGE MORRIS: Counsel?

7 MR. SEHAM: That there's no evidence?

8 JUDGE MORRIS: That she did not.

9 MR. SEHAM: Oh, that she did not. Yeah, okay,
10 yeah, that would eliminate a number of questions.

11 JUDGE MORRIS: That she did not raise these issues
12 in bad faith. Is that the stipulation?

13 MR. ROSENSTEIN: Let me just glance at my client to
14 make sure -- yeah, that's no problem.

15 JUDGE MORRIS: Okay. So established.

16 All right. Can we break now?

17 MR. SEHAM: Yeah, this would be a good time.

18 JUDGE MORRIS: All right. And we're going to stay
19 on the record for this. It is now five minutes of 4:00
20 o'clock p.m. I have concerns about whether or not we're
21 going to finish with this witness today. Are we?

22 MR. SEHAM: I think almost certainly not.

23 MR. ROSENSTEIN: You've got to be kidding me.
24 Delta is an airline and trying to operate as an airline, they
25 can't have the head of their Flight Operations here

1 indefinitely answering questions in this case. Captain
2 Graham has been here for days. He's sat here through
3 interminable questions of pilots that were completely
4 irrelevant and, also, very, very lengthy direct examination
5 and very lengthy redirect examination. Counsel needs to ask
6 the questions and be done with this witness today. That's
7 our position. Otherwise, it's beyond -- it's not a fair
8 process for the airline.

9 JUDGE MORRIS: Any other reason? You're the one
10 that called him.

11 MR. ROSENSTEIN: Well --

12 JUDGE MORRIS: You had other witnesses who were
13 lined up. Do you want to see if I can continue past 5:00
14 o'clock p.m.?

15 MR. ROSENSTEIN: I think that Mr. Seham is doing
16 this in bad faith, in order to purposely harm Delta Air
17 Lines. I believe that.

18 JUDGE MORRIS: The Tribunal has no evidence to
19 indicate that. It has been a length hearing, I will grant
20 you that, but sometimes that's what happens. We can continue
21 with the cross. What my thoughts are -- here's my concern --
22 is we still have this witness on the stand, we've still got
23 to close up and pack all this stuff and get out of this
24 facility, so I have some serious concerns about are we going
25 to finish this today.

1 MR. ROSENSTEIN: Well, Captain Graham is not going
2 to be able to come out here for quite a long time, if we are
3 going to continue his testimony, so we're not going to be
4 able to --

5 JUDGE MORRIS: April 29th to May 1st is when it's
6 going to be.

7 MR. ROSENSTEIN: Well, Captain Graham is not
8 available on those days.

9 JUDGE MORRIS: Well, that's the decision you have
10 as to whether or not I will accept his testimony, since it's
11 incomplete. That's a decision that you will have to make.

12 MR. SEHAM: As long as there's colloquy, could we
13 just take a five-minute break or would you rather not?

14 JUDGE MORRIS: We'll go off the record for five
15 minutes.

16 (Off the record at 3:57 o'clock p.m.)

17 JUDGE MORRIS: Back on the record.

18 All parties present when the hearing last recessed
19 are again present.

20 It's my understanding that the parties want to
21 raise matters as far as scheduling. The Tribunal, before we
22 went on recess, expressed concerns about being able to
23 complete this witness' testimony. Who wants to go first, to
24 be heard?

25 MR. ROSENSTEIN: I'd like to make a couple of

1 comments.

2 JUDGE MORRIS: Certainly.

3 MR. ROSENSTEIN: Thank you.

4 First, I do want to retract my statement that Mr.
5 Seham acted in bad faith. I also don't have evidence that he
6 acted in bad faith in questioning the witness today, in terms
7 of timing.

8 I do want to state that I believe that the
9 objections that we made on the inability of the witness to
10 respond to impeachment questions, on his transcript, were
11 prejudicial and unfair, and that unfairness and prejudice is
12 exacerbated by the inability for us to complete the case
13 today, since that testimony, which is misleading, is now not
14 going to be able to be dealt with until the witness is able
15 to be recalled. But I do believe that that's something that
16 and will be done when he is called on redirect. And I'm
17 disappointed that we could not do that.

18 There is a difference between -- although the
19 Tribunal made the comment about "what's good for the goose is
20 good for the gander," and we do understand that, there's a
21 big difference between having the witness only answer yes or
22 no to fact questions versus impeachment questions. And I
23 think that, again, we took exception to that ruling,
24 respectfully, and respectfully disagree with that decision.
25 And I do want to make that statement and I hop you take it as

1 our position and not as a matter of disrespect to you.

2 JUDGE MORRIS: I've not taken it at all as
3 disrespect, it's the nature of litigation.

4 MR. ROSENSTEIN: Okay. Thank you, Your Honor. I
5 appreciate that. That's always -- yeah, it's appreciated to
6 be able -- for attorneys to be able to respectfully disagree,
7 without consequence and I appreciate that.

8 In terms of scheduling, it is a tremendous hardship
9 to have had Captain Graham, in his position, out here. It
10 was the intention for him to testify yesterday, we held that
11 off until today. We started him first thing and changed the
12 order, because we expected that he'd be able to be completed
13 in a full day. And it's disappointing that we're not going
14 to be able to accomplish that, apparently.

15 And I do think that there has been great leeway
16 given to extraneous testimony on the Complainant's case, by
17 all witnesses, including Complainant herself on direct
18 examination, very lengthy responses that were not directed at
19 the questions presented, that has caused this prejudice to
20 Respondent, respectfully. But it is what it is.

21 We've talked about potentially, in light of all
22 those things, continuing Captain Graham's testimony in some
23 other format, either by telephone or by video, or perhaps in
24 a different location in Seattle, which is a very lengthy trip
25 for Atlanta based witnesses. My hope is that we can agree on

1 one of those options. We appreciate that Mr. Seham has
2 raised that as a possibility, at least telephonic testimony.

3 We'd ask that because he is still in the middle of his
4 testimony, if there is agreement on that, that there be no
5 discussion or use of the current testimony in any way until
6 that testimony is complete -- by either side, of course. And
7 hopefully, we can work out a schedule over the next few
8 minutes, that will be accommodating to everybody. And if we
9 can't, then we would agree to inform the Tribunal at the
10 first opportunity, as to an agreement between counsel on
11 continuing Captain Graham's testimony.

12 Thank you.

13 JUDGE MORRIS: I'll say, as a preliminary matter, a
14 couple of things.

15 One is that if Captain Graham can't get out here to
16 Seattle, I am receptive to, first and foremost, a video,
17 whether it be Facebook, FaceTime, something of that nature,
18 telephonic is another option. I will tell the parties, I
19 can't, quote/unquote call it a "gag order," but you're not
20 to use his transcript in any fashion, even if one is to be
21 produced, except for these proceedings, until the conclusion
22 of his testimony. It would be fundamentally unfair to not
23 have him give -- to cure any perceived inconsistencies that
24 need to be ameliorated on redirect and recross. So, you're
25 not to use his testimony in any fashion, except for trial

1 preparation, of course, until he has completed his testimony.

2 And these are public proceedings, and at the appropriate
3 time, that's fine, but not before he has completed his
4 testimony.

5 MR. ROSENSTEIN: Does that order extend to the
6 public in the room?

7 JUDGE MORRIS: Yes. Well -- I don't think I have
8 authority to do that.

9 MR. SEHAM: I don't think it's an issue, I really
10 don't. We'll tell her mom that she's got to cool it.

11 JUDGE MORRIS: Yeah. I don't have the power over
12 the public. I do have the power over the parties. I would
13 ask the public not to, because I will tell you, in my view,
14 that is unfair to -- one or both parties -- to do that.
15 Because you may think -- ah ha, there might be something out
16 there, and then something comes up which would totally blow
17 that preconceived idea up. And I would implore you not to do
18 that. But for the parties, for sure.

19 MR. SEHAM: I've got to admit, I'm a little
20 fuzzy-headed, being the end of a trying week, but I wasn't
21 sure if I heard about an accommodation for this witness or
22 whether it was directed towards the hearing as a whole, but
23 certainly we have proffered that we'd be willing, in view of
24 his position, to have his testimony continue, however,
25 telephone, video, whatever allows him to remain in Atlanta.

1 Beyond that, we're planning on coming back to Seattle for the
2 remaining witnesses. Is that --

3 JUDGE MORRIS: We're still coming 29 April through
4 1 May, as needed.

5 MR. SEHAM: So, I would assume that on the 29th we
6 complete Captain Graham's testimony via telephone or video,
7 however, and then we proceed to Ms. Nabors and to whoever
8 after that. Is that what counsel is proposing?

9 MR. ROSENSTEIN: That's possibly what could happen,
10 but that's why I said we needed to talk to Captain Graham,
11 among others, on the actual dates and schedules.

12 JUDGE MORRIS: Do you want to do that now, off the
13 record?

14 MR. ROSENSTEIN: We could do that off the record.
15 If -- I'm just throwing out there -- if Captain Graham cannot
16 be available on those three days, even by some other means
17 than being physically present here in Seattle, would we be
18 able to go forward with other witnesses and then schedule
19 Captain Graham at a time that can be conveniently arranged
20 for everybody, is that an option?

21 JUDGE MORRIS: Regardless, we're going forward on
22 the 29th and the 1st.

23 MR. ROSENSTEIN: Understood.

24 JUDGE MORRIS: The only exception I would make is
25 to Captain Graham -- and I'm going to want to know, with some

1 specificity, as to why he cannot be available. But if the
2 parties want to work that out, I'm assuming we would pick up
3 on the 29th with him, to finish his testimony, because,
4 frankly, it's a little hard for Captain Graham, who I am sure
5 is a busy person and has other things to do, to have this
6 hanging over his head, as well. So, I want to get it done
7 and knock it out.

8 MR. SEHAM: I must say, from our perspective, we
9 have some reservations about interrupting this testimony and
10 having Nabors or Davis, or Faulkner in the inter --

11 JUDGE MORRIS: All right. So, why don't we take a
12 break in place and you can talk to Captain Graham about the
13 29th to the 1st.

14 MR. ROSENSTEIN: Okay.

15 JUDGE MORRIS: Do you have something else?

16 MR. SEHAM: No, no, I also may have gotten ahead of
17 my client a little bit, so I would like a few minutes to talk
18 to her. So, can we all --

19 JUDGE MORRIS: All right. We'll go off the record
20 so you can talk to her, and you can talk with Captain Graham.

21 MR. ROSENSTEIN: There's a final, maybe not final,
22 but there's another point. I don't know how long Complainant
23 intends to continue the cross-examination, but now we are
24 getting to the point where every witness has been far longer
25 than anybody reasonably anticipated. And I have concern that

1 we still -- we will not finish, at this rate, even with three
2 days on the 29th, 30th and 31st.

3 JUDGE MORRIS: Who do we have left?

4 MR. ROSENSTEIN: Captain Graham, Kelley Nabors,
5 Chris Puckett, Dr. Faulkner and Captain Davis. That's five
6 witnesses. And so far we've not been able to get through
7 more than one witness in a day and, generally, not even that.

8

9 JUDGE MORRIS: Well, not quite true, because the
10 first day we knocked out three or four.

11 MR. ROSENSTEIN: Fair, but --

12 JUDGE MORRIS: -- but the major ones, I agree.

13 MR. ROSENSTEIN: Okay. So, I -- despite what I
14 have -- I mean there's -- again, the Tribunal runs the case,
15 we don't. But I think that if it proceeds at this pace,
16 there's a possibility that we still won't be finished.

17 MR. SEHAM: I'm sorry, you have five more
18 witnesses? We have Nabors --

19 MR. ROSENSTEIN: Well, they're your witnesses, too.

20 MR. SEHAM: Yeah.

21 MR. ROSENSTEIN: But there are five more witnesses
22 that have been called by both sides, and there's also
23 rebuttal case and there's also, potentially, Mr. San Souci.
24 So, depending on how testimony comes out. So, there's a real
25 problem with that and I don't know how to solve for it, other

1 than, again, perhaps -- well, I throw it out there, I don't
2 know, I don't know how to solve for that. I don't think that
3 anybody wants to make two trips out here to finish the case,
4 we want to make one trip to finish this case. And it didn't
5 sound like the Tribunal has a four or five day stretch until
6 the fall, in continuous, so that's --

7 JUDGE MORRIS: Well, I do, but some of the other
8 parties -- like, for example, the week of June 8th and there
9 was a July -- I forget -- 13th -- but we'll cross that bridge
10 when we get there. Let's take what's in front of us now as
11 far as Captain Graham.

12 MR. BISBEE: Would it be possible to have a
13 reminder of Your Honor's schedule?

14 JUDGE MORRIS: Certainly.

15 MR. BISBEE: Because I do think the parties are
16 reluctant to do three days and then come back. If there's a
17 way to do five or something, that's probably preferable.

18 MR. ROSENSTEIN: I don't know, we'll have to talk
19 about it, but the information would be very good.

20 JUDGE MORRIS: The dates that I have right now are:
21 April 8th through 10th --

22 MR. SEHAM: I'm sorry -- April?

23 JUDGE MORRIS: April 8, 9 and 10.

24 MR. SEHAM: Eight, 9 and 10.

25 JUDGE MORRIS: 25th, 26th, 29th, 30th, 31st, and

1 1st. The week of 20 May.

2 MR. ROSENSTEIN: May -- April -- there are four
3 days in that week -- 29th, 30th, 31st and 1st? There's only
4 30 in May, right, so it's 29th, 30th and 1st.

5 JUDGE MORRIS: All right, 29th, 30th and 1st. I
6 know Monday, Tuesday and Wednesday.

7 MR. ROSENSTEIN: Got it.

8 JUDGE MORRIS: I have a case that there is a
9 pending motion for summary decision on. If that happens,
10 that would open up the rest of that week and the following
11 week, but I cannot make a representation as to -- I'm
12 actually working on that motion and I would hope -- it's
13 going to be a couple weeks before I have a decision on that
14 particular point. But anyhow, in May I've got the week of
15 the 20th. In June, I have the week of the 10th. And I have
16 June 20th and 21st. And in July, I have the week of July
17 8th.

18 MR. BISBEE: Okay. Thank you.

19 MR. SEHAM: Thus far, I don't appear to have as
20 many conflicts and we don't have witness issues, but I do
21 have an AIR-21 trial the week of May 2nd, so I'm not
22 available that week.

23 MR. ROSENSTEIN: We'll have a brief conversation.

24 JUDGE MORRIS: All right. We're off the record.

25 MR. BISBEE: Thanks, Your Honor.

1 (Off the record at 4:28 o'clock p.m.)

2 JUDGE MORRIS: Back on the record.

3 All parties present when the hearing last recessed
4 are again present.

5 The parties have discussed this, we are going to --
6 we need the witness back, I need to give him an admonition.

7 MR. BISBEE: I'll get him.

8 JUDGE MORRIS: Captain Graham, if you'd take a
9 seat, please. I apologize for not having my robe on. It's
10 getting warm in here.

11 All right. We've got all the parties present,
12 including Captain Graham.

13 Captain Graham, we're going to suspend your
14 testimony at this point in time. It's my understanding that,
15 per the parties' consultation and agreement, that we're going
16 to reconvene for your testimony, by remote means, on April
17 25th. In the interim, you are not -- I repeat -- you are not
18 to discuss your testimony with anyone. You may discuss your
19 testimony as far as you procedural matters, like, you know,
20 how I pick up the phone, that kind of stuff, because you're
21 basically in suspended animation as a witness. You're not to
22 discuss your testimony with anyone until you have concluded
23 your testimony, which will be on the 25th.

24 His testimony, I'll tell you right now, I'm not
25 going to allow to go beyond April 25th, absent extraordinary

1 circumstances.

2 Do you have any questions about that, sir?

3 THE WITNESS: No, sir.

4 JUDGE MORRIS: All right. You are excused from
5 these proceedings. I will hear or see you on April 25th.

6 THE WITNESS: Thank you, sir.

7 (Witness excused.)

8 JUDGE MORRIS: All right. As for the remaining
9 matters, it's my understanding that the parties have agreed
10 to establish -- preferably by video teleconference, a strong
11 preference for video teleconference, on April 25th. It's my
12 understanding, just conceptually, that Captain Graham will be
13 testifying, and in all likelihood, probably from the East
14 Coast, and the Respondent's counsels will be on the East
15 Coast. I will be on the West Coast.

16 And Complainant and Complainant's counsel -- are
17 you going to be on the East Coast, West Coast, do you want to
18 defer where you're going to be?

19 MR. SEHAM: Yeah. I'm going to have to defer. I'm
20 just going to be where she tells me.

21 JUDGE MORRIS: Okay.

22 The rest of the case will be on the Monday, Tuesday
23 and Wednesday, being April 29th, 30th and May 1st. We will
24 finish by close of business on May 1st. The parties are on
25 notice that if I have to ratchet down -- I fully recognize

1 that these are administrative proceedings and I have allowed
2 in a lot of hearsay, but we've also gone five days and I
3 expect the parties to work together to try and get a general
4 idea on how long that's going to take. You are both on
5 notice that if need be, and we start running into time
6 constraints, I will limit you to your direct or your cross,
7 to a certain amount of time period, if that's what it needs.

8 We are not going to go past May 1st.

9 I find, given the facts that I've received already,
10 that eight days of testimony is more than adequate for me to
11 make a decision. These are to be expedited proceedings and
12 that's why I've put, believe it or not, an acetylene to get
13 to these proceedings and I want to be able to get to
14 conclusion, so I can get to some sort of decision, whichever
15 case that may be. Again, part of my rationale and philosophy
16 is to give the parties as much leeway as I can on both sides,
17 but I'll also tell you, hearsay evidence is not going to
18 carry a lot of weight with me. I'm going to look at the
19 evidence that's corroborated by the documentary evidence,
20 other witnesses' testimony, and things of that nature.

21 So, it's my understanding, in addition to Captain
22 Graham, we have four more witnesses, is that correct?

23 MR. ROSENSTEIN: Four and possibly five, we have
24 one rebuttal witness, but at this point I don't intend to
25 call him, so probably four.

1 JUDGE MORRIS: If you do know, I do not -- do not
2 even waste your time preparing a closing argument, I don't
3 want to hear it, it's going to be done by brief.

4 Is there anything else that we need to talk about
5 on the record?

6 MR. ROSENSTEIN: No.

7 MR. SEHAM: Just, again, the 29th, 30th and 1st,
8 and that's going to be here with all the parties present.

9 JUDGE MORRIS: That's going to be here with all the
10 parties.

11 MR. ROSENSTEIN: No, nothing else.

12 JUDGE MORRIS: Nothing else?

13 MR. SEHAM: Nothing else.

14 JUDGE MORRIS: All right. This hearing is in
15 recess until April 25th, at 9:00 o'clock a.m. or 9:30 o'clock
16 a.m. East Coast time. Okay.

17 MR. SEHAM: Thank you.

18 MR. ROSENSTEIN: Thank you.

19 JUDGE MORRIS: This hearing is in recess.

20 (Whereupon, the proceedings adjourned at 4:52
21 o'clock p.m.)

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REPORTER'S CERTIFICATE1
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TITLE: Petitt vs. DELTA AIR LINES, INC.,

CASE NUMBER: 2018-AIR-00041

OWCP NUMBER: n/a

DATE: March 29, 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.

SIGNATURE OF REPORTER_____
DATE