

No. 12-315

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IN THE  
**Supreme Court of the United States**

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AIR WISCONSIN AIRLINES CORPORATION,  
*Petitioner,*

v.

WILLIAM L. HOEPER,  
*Respondent.*

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**On Writ of Certiorari to the  
Colorado Supreme Court**

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**JOINT APPENDIX: VOLUME ONE OF THREE**

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NOTICE

The following documents have been omitted from the printing of this Joint Appendix. They may be found in the Petitioner’s Appendix to the 12-315 Petition For A Writ Of Certiorari at the following pages:

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COLORADO DISTRICT & COUNTY COURTS  
CO DISTRICT & COUNTY – DENVER  
(DENVER DISTRICT)

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2005CV9967

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HOEPER, WILLIAM L

vs.

AIR WISCONSIN AIRLINES CORP ET AL

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Date Filed: 12/06/2005

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**RELEVANT DOCKET ENTRIES**

DATE	TIME	DETAILS
* * * *		
02/04/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/05/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/06/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836)

DATE	TIME	DETAILS
		Status: Hearing Held
02/07/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/08/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/11/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/12/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/13/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/14/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held



DATE	TIME	DETAILS
02/15/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/18/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/19/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/20/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/21/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held
02/22/2008	8:30 AM	Jury Trial Room: 5 Judge: Mcgahey, Robert Lewis (5836) Status: Hearing Held

DATE	TIME	DETAILS
02/25/2008	8:30 AM	Jury Trial Room: 5 Judge: MCGAHEY, Robert Lewis (5836) Status: Hearing Held
02/26/2008	8:30 AM	Jury Trial Room: 5 Judge: MCGAHEY, Robert Lewis (5836) Status: Hearing Held
02/27/2008	8:30 AM	Jury Trial Room: 5 Judge: MCGAHEY, Robert Lewis (5836) Status: Hearing Held
02/28/2008	8:30 AM	Jury Trial Room: 5 Judge: MCGAHEY, Robert Lewis (5836) Status: Hearing Held
		* * * *
02/18/2008		Minc Minute Order (print) * * * *
02/28/2008		Jtdl Jtrl Dispo - Split Verdict * * * *
05/16/2008		Ordr Order

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DATE	TIME	DETAILS
* * * *		
1	07/14/2008	Judgment Entered
* * * *		

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COA - Register of Action

Case#: 200BCA1358 07/16/13 08:06 AM  
Status: Certiorari Pending  
Type: Civil – Other

Hoeper, W v Air Wisconsin Airlines

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Event Information

efile	Status	Date	Code	Type	Action
N	Opinion	11/12/ 2009	Opinion	Affirmed	Opinion Announced

\* \* \* \*

## SC - Register of Action

Case#: 2009SC1050 07/16/13 08:05 AM  
 Status: Awaiting USA Supreme Court  
 Type: Cert Petition – to COA - Civil

Air Wisconsin Airlines v Hoepfer, William

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efile	Status	Date	Code	Type	Action
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N	Opinion	03/19/ 2012	Opinion		Opinion Announced
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N	Satisfied	04/23/ 2012	Order	Petition for Rehearing	Denied
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QDISTRICT COURT, DENVER COUNTY  
COLORADO

Court Address:  
1437 Bannock Street  
Denver, CO 80202

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Case No. 05CV9967

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Plaintiff:  
WILLIAM L. HOEPER

v.

Defendants  
AIR WISCONSIN AIRLINES CORPORATION, a  
Delaware corporation; MARK SCHUERMAN,  
individually; PATRICK DOYLE, individually; SCOTT  
OROZCO, individually, and JOHN DOES 1-10 whose  
identities are unknown to Plaintiff at this time

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Div. 5 Ctrm.:

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TRANSCRIPT OF PROCEEDINGS  
TRIAL TO JURY

\* \* \* \*

[391] Q Sir, earlier, you had – earlier, you had testified that, in June of ‘06, you had approximately 5300 pilot-in-command hours?

A Whatever – yeah. Whatever we came up with. I can’t remember. Yes.

Q And, sir, how many type ratings do you have?

A I have two type ratings and a second-in-command type rating in the Airbus 320.

Q And are you aware that Mr. Hoeper has six type ratings?

A No. I'm not.

Q Mr. Schuerman, do you know what an FFDO is?

A Yes, I do.

Q And what is that?

A It's a Federal Licensed Flight Deck Officer.

Q And would you please explain to the jury or spell out what the acronym FFDO stands for?

A I just said it.

Q Is it Federal Flight Deck Officer?

A Yeah. Federal Flight Deck Officer.

Q And what's your understanding of the process to become an FFDO?

[392] A My understanding is you go to Ar – well, there's a psych evaluation and then you go to Artesia, New Mexico, for a – I believe it's a five-day – they teach you close hand combat and hand-to-hand combat and, also, how to shoot a gun in close quarters. And I guess it's a pass-fail kind of thing. And then they issue a gun – issue a Federal gun at that point with ammunition. And it allows you to carry a gun in the cockpit of an aircraft.

Q And, sir, is it your understanding that this was a position that was created after 9-11 by Homeland Security as a way for pilots, as you just said, to be able to carry a weapon while they're flying in the cabin?

A That's correct.

Q And you learned that Mr. Hoeper was a Federal Flight Deck Officer on December 9, 2004; true?

A That's correct.

Q And you learned that from Pat Doyle; correct?

A That's correct.

Q And you were not surprised to learn that Mr. Hoeper was an FFDO; correct?

A Never thought either way about it. I mean, it wasn't that I was surprised or not surprised. [393] I just – I usually don't find out that somebody is an FFDO, usually, until the brief or when we get into the cockpit, they brief – the captain will brief that I'm an FFDO or the first officer will brief that, by the way, I'm an FFDO. That's when you first find out knowledge of it.

Q And when you learned – well, but on December 9, when you found out through Mr. Doyle that Mr. Hoeper was an FFDO, that wasn't in relation because you were going to be flying with Mr. Hoeper; true?

A No. It had nothing to do with that.

Q And, in fact, we've heard in the opening statements about December 8th, 2004; correct?

A Yes.

Q And that's the day that Mr. Hoeper was pulled off of an airplane; true?

A That's my understanding.

Q And you got that understanding from Mr. Doyle?

A That's correct.



Q And Mr. Doyle told you that Mr. Hoyer was an FFDO one day after he was pulled off the airplane; true?

A That's correct.

Q And when Mr. Doyle informed you that

\* \* \* \*

[396] A I was in Washington, D.C., at the PanAm International Flight Academy December 8, 2004.

Q And what were you there for?

A I was there to do training – additional training for Mr. Hoyer so that he could have a – I had training scheduled on the 7th and 8th, sim sessions, to be followed on the 9th for him to have a proficiency check the following day.

Q And before you could start the training with Mr. Hoyer, Mr. Hoyer had to sign a letter; true?

A I – I had no knowledge of a letter at all at that point. I did not have knowledge of that letter until after the fact.

Q But you knew Mr. Doyle called you before you started Mr. Hoyer's training and he told you that Mr. Hoyer needed to sign a letter; true?

A I didn't know if it was – he told me he needed to have some information faxed to the – to the fleet manager's fax machine. I didn't know if it was a copy of his medical, it was a copy of additional training forms, or whatever it was. I had no idea what the letter was. I wasn't upper management. Alls I was there to do was train.

Q But you knew that Mr. Hoyer had to sign something before you could start the training; true?

[405] Q And that's the right seat?

A That's correct. The nonflying pilot can be the right seat person or the left seat person when the first officer is flying. That's why it's more important to look at it as a pilot flying and the pilot not flying.

Q Well, in fact, Mr. Scharf was known as the monitoring pilot pursuant to the FARs?

A Well, Air Wisconsin changed the – the name of that. It's called pilot monitoring. At Frontier Airlines, we call it the PNF, pilot not flying.

Q And, during this training, Mr. Hoepfer became upset at you because he believed that you were not treating him fairly and overloading him; true?

A I don't know why he became very upset with me.

Q And Mr. Hoepfer slid his chair back and took off his headset and indicated that you got what you want or something to that effect; true?

A Slid his seat back, threw his headset off, threw it on the glare shield, and it startled me so bad, I jumped back. His exact words were – I'm not going to say it – I F'ing quit. Put the sim down off the motion. I'm calling ALPA legal. He hesitated. [406] And then he said, You got what you wanted. And then for a second there, he put his head down, and he goes, I'm done. I can't do this.

Q Now, Mr. Schuerman, you know that Mr. Hoepfer denies saying I F'ing quit; true?

A I don't know.

THE COURT: Hold on. Back to Mr. Reitz.

MR. REITZ: Your Honor, should I repeat the last question because of the sirens?

THE COURT: Go ahead.

Q (BY MR. REITZ) And, sir, you know that Mr. Hoeper disputes stating I F'ing quit?

A I don't know that. I have no knowledge of that.

Q Sir, would you get the plaintiff's exhibit book? That's your blue book that you had in front of you. I don't want to confuse the jurors. The jurors actually have black notebooks. The plaintiff's exhibits.

Mr. Schuerman, would you please turn to tab 19.

A There's nothing in there.

Q There's 19. Just put it in there. Thank you. Let me know when you're ready, [407] Mr. Schuerman.

A I'm ready.

Q Okay. Exhibit 19 is a letter from Dan Scharf concerning the training on December 8th, 2004; true?

A Yes.

Q And the – the first page, actually, of Exhibit 19 is Mr. Scharf's letter to Captain Orozco, who was the chief pilot in the December 2004 time frame; true?

A Yes.

Q And do you see in that first paragraph, Mr. Scharf indicates that's providing a synopsis of Mr. Hoeper's training as requested by Pat Doyle?

A I do.

Q And could you turn now to page 2, sir, of that document. And, sir, if you would go to the fifth paragraph on the page, where it starts with, "At this point." Do you see that?

A "At this point," okay.

Q And Mr. Scharf indicates, "At this point, Bill became visibly angered and I noted the sound of his seat sliding back and his seat belt came off. Bill said something like, You win. I have had it. I'm calling ALPA legal." Did I read that right?

[408] A That's what it says there.

Q And Mr. Scharf doesn't say anything in his letter regarding Mr. Hoeper saying I F'ing quit?

A It's not what it says there. That's his recollection.

Q Now, after Mr. Hoeper slid his chair back, you quickly realized that it wasn't a threatening situation; true?

A I thought he was going to hit me. When hat seat slid back, I thought he was going to hit me.

Q That was for a brief second; true?

A When – when he slid the seat back, it was so startling, it happened so fast that – I'm about 3 feet – I'm faced – his seat is over here. Dan – I sit behind Dan Scharf, the first – the first officer and I'm looking at CRT screens right here and I'm at a table. And when he slid the seat back, it startled me. And I honestly thought he was going to hit me. So I'm going to say I was scared at that point.

Q Sir, would you please turn to your deposition. Page 128.

A I'm there.

Q Please follow along with me, lines 1 through 6.

"Question: And so it sounds as though [409] you were startled by the seat being thrown back, but

then you quickly realized it wasn't a threatening situation. That's why you didn't dial 911; correct?

"Answer: That's correct."

Did I read that right?

A That's correct, but I also said in my deposition I thought he was going to hit me.

MR. REITZ: Your Honor, nonresponsive. Move to strike.

THE COURT: The answer is nonresponsive. The jury is instructed to disregard. Ask your question again.

MR. OTTO: I'm having a hard time hearing what you just said.

THE COURT: I'm sorry. I thought I had the mic close enough. The jury is instructed to disregard the last answer. It's stricken. Ask your question again, Mr. Reitz.

MR. AVERY: Are you asking him to reask the question?

THE COURT: I want him to reask his question because he got a nonresponsive answer.

Q (BY MR. REITZ) Mr. Schuerman, again, we're on page 128 – follow along with me – lines 1 through 6, and this is your sworn deposition testimony [410] on June 22nd, 2006.

"Question: And so it sounds as though you were startled by the seat being thrown back, but then you quickly realized it wasn't a threatening situation. That's why you didn't dial 911; correct?

"Answer: That's correct."

Did I read that right?

A Yes, you did.

MR. AVERY: Judge, can I ask, under the doctrine of the completeness, that the next question and answer be read?

THE COURT: If I had a copy of the deposition, I could tell you. Can I see it?

MR. AVERY: Do you want us to approach?

THE COURT: Sure.

(At the bench.)

THE COURT: Which question do you want to ask?

MR. AVERY: The very next question. It's at page 128, line 7 through 23.

THE COURT: I agree. I think that needs to be read to comply with the doctrine of completeness.

(In open court.)

THE COURT: Please read the next question and answer, Mr. Reitz.

[411] Q (BY MR. REITZ) "Question: Had you been – had you been physically threatened by Mr. Hoepfer rather than engaged in a fight or hand-to-hand combat with him, which you're much larger, but you don't want to risk losing your job, you would have called the authorities; right? You don't want to lose your job over it; correct?"

"Answer: I disagree with that. No. In fact, if he would have punched me, I'm not – I'm not going to go and call the authorities. I probably would remove myself from the situation like I did and I'd probably handle things exactly the same way. I

would have gone down downstairs and called Ole. I would have said – called Pat Doyle and say, Hey, this is what's transpired. What do you want me to do? I don't think I would have called 911.”

Did I read that right?

A That's correct. You read that right.

Q And you certainly didn't view him as being a threat enough to call 911; correct?

A Once I removed myself from the simulator.

Q Now, you completely understood why Mr. Hoepfer was upset during the training; true?

A I have no idea why he was upset.

[412] Q Sir, would you please turn to your page – to your sworn deposition testimony, page 129, lines 3 through 13. Are you there?

A Yes.

Q “Question: In fact, after the seat incident where he pulled the seat back, you didn't view him to be a physical threat to you at all; correct?”

“Answer: I was more upset, I guess, more just shaking. I was very nervous. I had just – I wouldn't say I didn't think he was going to come smack me around or anything like that, but I understood he was upset. And I understood why he was upset. Completely. I mean, the last thing – I'll just leave it at that.”

Did I read that right?

A Yes.

Q And, in fact, you told Mr. Hoepfer you could throw some of his training out; true?

A Some of the maneuvers I was trying to accomplish was satisfactory – was to visit so that his proficiency check would be successful.

Q So you admitted that you would throw some of his training out; true?

A Well, throw out training, I had said that meaning in reference to we had done maneuver after [413] maneuver after maneuver and I was going to have to – at that point, I figured we were going to have to schedule another sim session the following day.

Q During the December 8, 2004 training with Mr. Hoeper, you were both upset at each other; true?

A I wasn't upset. I was hurt. There's a difference.

Q Sir, would you please turn to your deposition, page 123.

A I'm there.

Q "Question" – are you on page 123, lines 21 through 25?

A Okay.

Q "Question: So you were getting upset, too; correct?

"Answer: I was upset at the fact that he would turn his back on me that way after I was there. I was his biggest cheerleader. I was his second biggest cheerleader because Pat Doyle's exact words to me were, quote, I'm his biggest cheerleader, Mark. Let's get him through this program, unquote. I was the second biggest cheerleader."

Did I read that right?

A That's correct.



[414] Q And you were both emotional after the training exercise; true?

A Very emotional.

Q And both of you were upset at each other; true?

A I think he was angry with me and I – I don't – I wasn't upset with him. I was more upset with the fact that I was the only success he had ever had in his training and he would turn on me.

Q Now, Mr. Schuerman, you kicked the back of Mr. Hoeper's first officer's chair, Dan Scharf, during the training session to signal Mr. Scharf not to assist Mr. Hoeper; true?

A That's not true.

Q And, in fact, your chief pilot, Scott Orozco, knew that you kicked the back of Mr. Scharf's chair; true?

A That's not true. The only thing I ever did was tap the back of his seat because Dan Scharf on session – on the 7th, not on the 8th – on the session on the 7th, he was leading and prompting Mr. Hoeper on – for checklists. And that was the whole – the beginning problem that I saw with Mr. Hoeper from my first evaluation flight with him was that I needed to develop an acronym for him to help him

\* \* \* \*

[420] [A] well in training. And some people – part of the instructing end of things is you – people deal with things different ways. Either they go into flight, they go into resignation mode, and I think he would – I think it was frustrated. I think he was probably resigned that things just didn't go well that day and they had gone well the day before. And they just hadn't gone well on the 8th.

Q So you believe he was justified in feeling frustrated; true?

A I don't know if he was justified or not. I just know I – I think he was – I think he was upset with the way things had turned out.

Q Sir, would you turn to your deposition again, page 136.

A Okay.

Q Sir, lines 7 through 10.

“Question: Anything else that you can recall?

“Answer: I can't do this. I'm done. And he was very frustrated. Justifiably so. Very frustrated.”

Did I read that right?

A Yeah. He was very frustrated.

Q Now, Mr. Schuerman, you just testified [421] earlier that you were Mr. Hoeper's second biggest cheerleader, trying to get through – in attempting to try to get him through the 146; true?

A Between Ole and I and Scott Orozco. Scotty – Scotty was actually elated when he found out training had gone well on the 7th.

Q Well, in – if you're the second biggest cheerleader, you testified before that Mr. Doyle claimed to be the biggest cheerleader; true?

A I think Ole went as far as he possibly could in being positive and doing everything possible to make things right.

Q Now, on December 8, 2004, you were in Virginia; true?

A I'm sorry. Say that again.

Q December 8, 2004 –

A Yes.

Q – the incident, you were in Virginia?

A Uh-huh. Yes.

Q And that's Eastern time?

A Yes.

Q And so the training session with Mr. Hoeper ended at approximately noon; correct?

A I honestly don't know the times. I – the simulator – I use my clock – my watch all the [422] time. The simulator has a clock in it that is – it's one of those clocks that's right like – even a broken clock is right twice a day. I think that's about what it was. It was – it was never accurate because there were always, you know – the simulator always went through – it's – the simulator is treated just like an airplane. If it has a write-up, it has to be fixed or it has to be deferred. And we have a maintenance logbook just like that.

So the airplane, every morning, has to go through two hours of maintenance and it has to be signed off to go for that day. Because the FAA comes in and certifies it and makes sure that it's – it's – it's a live document at all times just like the – like – if I was an aircraft mechanic for 12 years and – and in the aircraft maintenance, it's a live document. It's always constantly, you know, moving. Things are – you know, it's a real-time document, so when there's a write-up, everybody is aware of it.

Q Sir, would you turn to your deposition again, page 133. Line 16 through 18.

“Question: What time did the training with Mr. Hoyer on December 8 end?”

“Answer: Roughly noon.”

Did I read that right?

[423] A Yeah. It was roughly noon. It’s – to my best recollection, I’d say it was probably around noon. Yeah.

Q Thank you. Now, Mr. Hoyer was not threatening you on December 8, 2004; true?

A What do you mean, “threatening” me? I felt threatened in the simulator.

Q Well, after – you’ve testified that you – the seat slid back and you felt intimidated for a few seconds; true?

A That’s correct.

Q And then, after that, you realized that the situation was under control and Mr. Hoyer was not a threat to you; true?

A Once the simulator came down off motion and I removed myself from the area and I got myself into the FAA’s – I went behind a security sign-in sheet locked door, went through another locked door, and went into the FAA’s office. And I called Patrick Doyle from that point. And at that point, I – is when I started to feel like I had some control of the environment.

Q Now, you did not think that Mr. Hoyer was threatening other people on December 8, 2004; true?

A At the sim center?

[424] Q December 8, 2004, at the sim, Mr. Hoyer wasn’t a threat to anybody; true?

A I guess, other than in the simulator to me, no. Outside of the simulator, once I removed myself, no, he was not a threat to anybody else.

Q And – well, once you called – you called Mr. Doyle right around noon, also. When you got out of the simulator, you went to call Mr. Doyle; true?

A Yes.

Q And that was approximately noon; true?

A Some – within 5, 10 minutes – probably 5 minutes, I had to – I had to go upstairs and then – it's a simulator bay that holds six simulators and I had to – I went down some stairs and then back behind security and into the office, and that probably took me 5 minutes to get to the FAA's office to call Captain Pat Doyle.

Q Okay. So you – the training gets over with Mr. Hoeper roughly noon, and it takes you roughly 5 minutes to go call Captain Doyle; true?

A That's correct.

Q And then you called Captain Doyle and you told Mr. Doyle that the training had not gone well and that Mr. Hoeper was very angry at you; correct?

A That's correct.

[425] Q And Mr. Doyle responded to you by saying, quote, I don't want you there. I want you out of there. Don't say a word. Get to the airport. True?

A He asked me what had transpired. He asked me the particulars on what happened. And, in short detail, I told him, with training – what had happened, that Mr. Hoeper had blown up and he was angry at me, and – and then that's exactly what Mr. Doyle said. He said, I don't want you talking to anybody. I want

you to get out of there and get to the airport. Find somebody to take you to the airport.

Q And with regard to Mr. Hoeper's demeanors or actions, the only thing that you told Mr. Doyle was that, quote, He's very angry with me unquote. True?

A I don't recall – I don't recall if I gave him the specifics on what happened with the – in the training as far as the approaches or what was going on there. But I told him he had blown up and was yelling. I know – I know Ole knew I was – I was not going to go back out there and train with him. I was not.

Q Sir, are you done with your answer?

A Yes.

[426] Q Would you please turn to page 142 of your deposition. Lines 11 through 14.

“Question: Did you say anything to Mr. Doyle, other than, quote, he's very angry at me, unquote, with regard to Mr. Hoeper's demeanor or actions.

“Answer: I don't recall anything else.”

Did I read that right?

A Yes. Yeah.

Q In fact, sir, you did not tell Mr. Doyle that Mr. Hoeper was a threat to you; true?

A That's correct.

Q And you did not tell Mr. Doyle that Mr. Hoeper was a threat to the first officer, Dan Scharf; true?

A That's correct.

Q And you did not tell Mr. Doyle that Mr. Hoeper was a threat to Ben Seeger, who was also in the same simulator center; true?

A I never said anything about Ben, no. That's correct.

Q And you did not tell First Officer Scharf that you felt threatened by Mr. Hoeper; true?

A That's correct.

Q And you did not tell Mr. Doyle that [427] Mr. Hoeper was a threat to himself; true?

A That's correct.

Q And, in fact, your conversation with Mr. Doyle at roughly 12:05 was very brief; true?

A It was less than 5 minutes. It was very quick.

Q And you did not tell Mr. Doyle that Mr. Hoeper was unstable; true?

A No. I never said that.

Q And you did not – you did not tell Mr. Doyle that Hoeper – Mr. Hoeper should not be allowed to fly; true?

A I didn't know he was going to fly. I thought he was going to stay another day and do more training.

Q Sir, you did not tell Mr. Doyle that Mr. Hoeper should not be allowed to fly; true?

A That's correct.

Q And you did not tell Mr. Doyle that Mr. Hoeper could be a threat to a commercial flight; true?

A That's correct.

Q And in your conversation with Mr. Doyle, you were instructed to go home to Denver; true?

A That's correct.

[428] Q And so you were then going to the Denver airport; true?

A That's correct.

Q And you knew that Mr. Scharf was also going to the airport; true?

A No. I did not.

Q You saw Mr. Hoeper and Mr. Scharf in the parking lot of the sim center; true?

A I was outside. I – Ole told me to grab – Captain Pat Doyle asked me to find somebody to take me to the airport because we had two rental cars there. And when I walked out of the FAA's office, and I went back up to the Air Wisconsin – it's our – it's our little office where we do our – usually, our oral and do some of our training. I went back up there to look for somebody. I was going to even ask somebody at the PanAm Flight Center to take me to the airport.

I happened to walk by Ben Seeger. I said, Ben, can you please give me a ride to the airport? And he was like, What's going on? I said, Ben, I need a ride to the airport. Please just get me to the airport. And Ben said, Yeah, sure. Hang on a minute. He put – did something and he followed me out.

And Mr. Hoeper was saying – I passed him [429] and he was saying something to me and I just – I didn't even listen. He kept saying something to me and I didn't listen. Ben and I walked downstairs. Dan Scharf was following us. And we walked out the front door and we got over to my – my car happened to be parked next to Ben Seeger's rental car. And I took my bag out of my car and threw it in Ben's car.

And about the time that the trunk was about ready to close, Mr. Hoeper came out the door and he yelled



across the parking lot to me that Todd Hanneman and I were two of the most unprofessional people he had ever met. And I put my hand up and I said, Bill, I'm done talking to you.

And I got in the airplane – I'm sorry – in the car and Ben Seeger drove me to the Dulles airport. I was – I was at Dulles within 3 or 4 minutes.

Q And on December 8, 2004, you never felt that Mr. Hoeper was going to go do something stupid on December 8, 2004; correct?

A That's correct.

Q And when you left the parking lot, you deemed Mr. Hoeper perfectly safe to get on an airplane; true?

A If – if he would have displayed that – [430] could I put a caveat to that?

Q No.

MR. REITZ: Your Honor, I would –

THE COURT: Just answer the question. If there's anything else or any explanation, you'll get your – your counsel will, I'm sure, come back and talk about that.

A Behavior at the sim center, no.

MR. REITZ: Your Honor, under Rule 32, I'd like to have Mr. Schuerman read his deposition testimony into the record.

THE COURT: Well, from – from what point to what point, and can I see a copy, please?

(At the bench.)

MR. REITZ: From right there to right there.

THE COURT: Who is going to read the questions?

MR. REITZ: I'll read the questions. He'll read the answer.

THE COURT: Mr. Avery, you want to come up here so you know what we're talking about?

MR. AVERY: Sure.

THE COURT: I'll tell you, what Mr. – what Mr. Reitz wants to do is start at page 142, line [431] 11. Tell me when you get there. He wants to start at 142, line 11, and read the entire question and answer all the way to 144, 3. In other words, he's going to read the question and Mr. – and Mr. Schuerman is going to read the answers that he gave in the deposition.

MR. AVERY: As I read this, this has already been asked and answered. I mean, these are the exact questions that he just asked him.

MR. REITZ: He's given long, nonresponsive answers, long –

THE COURT: It hasn't – it hasn't been asked and answered in this format. It's – you know, I – philosophically, I've never understood the value of having someone deny that he said something, but I understand that it's part of the plaintiff's case and I think, under Rule 32, he can have him do that. Do you have any objection for the record?

MR. AVERY: My objection is merely it's cumulative. I believe the transcript will show some of these questions, he gave exactly the same answers. Under Rule 611 – you're in charge. It's your courtroom. It's your courtroom.

THE COURT: I don't think – I don't think it's cumulative enough for me not – for me to not allow it to be read. How's that? I'll allow it. [432] Make sure that – I'll instruct the – I'll instruct Mr. Schuerman on

what – what is going to happen here. All right? Because I don't want him to be – I mean, this is just a common response.

MR. AVERY: That's fine.

THE COURT: All right. Thank you.

(In open court.)

THE COURT: Mr. Schuerman, what's going to happen here – the objection is overruled. Mr. Schuerman, Mr. Reitz is going to refer you to a page and line in your deposition where a series of questions and answers started. He's going to read the question. You're to read the answer as it appears in your deposition. Just sort of follow along.

THE WITNESS: Okay.

THE COURT: All right. Give him the start point, Mr. Reitz.

Q (BY MR. REITZ) Mr. Schuerman, it starts at page 142, line 11.

A Okay.

Q “Did you say anything to Mr. Doyle other than, quote, he's very angry at me, unquote, with regard to Mr. Hoeper's demeanor or actions?”

A “I don't recall anything else.

Q “So you don't recall saying he's a [433] threat to me, being you? You did not say that?”

A “I did not say that.

Q “Did you say he's a threat to Mr. Scharf?”

A “No.

Q “Did you say he's a threat to Mr. Seeger?”

A "No.

Q "Did you say he's a threat to himself?

A "No.

Q "Did you say he's unstable?

A "No.

Q "Did you say he shouldn't fly?

A "No.

Q "Did you say that he – did you say that he could be a threat to a commercial flight?

A "No.

Q "When I asked you, you just kind of laughed a little bit when I said did you say he shouldn't fly. Does that seem preposterous to you that he shouldn't – that he wouldn't be able to fly after that?

A "No. I wouldn't. There is no reason – like we discussed earlier, if you had a blow-up at the house, does that mean I'm not going to let you get – [434] not – I'm sorry – not going to let you on the airplane? He was angry at me. It doesn't mean he's going to go and do anything stupid elsewhere. I never felt that he was going to go do something stupid. He was just angry at me.

Q "So you didn't believe that Mr. Hooper posed a threat in any way to anybody else at all; is that correct?

A "That's correct.

Q “And so you would deem him perfectly safe to get on an airplane and fly back to Denver from the training exercise? Is that accurate?”

A “That’s – that’s correct.”

MR. REITZ: That’s all, Mr. Schuerman. Thank you.

THE COURT: Would this be a reasonable place to – reasonable stopping point to take our afternoon recess?

MR. REITZ: It would. Thank you.

THE COURT: All right. Ladies and gentlemen of the jury, we’re going to take our afternoon recess. Please remember the admonition I gave you about discussing the case. If anybody wants to go outside to get a little fresh air or if you’re a person who needs to go outside because of things you

\* \* \* \*

[437] THE COURT: Sustained.

Q (BY MR. REITZ) Sir, when you left for the airport on December 8, 2004, you did not believe that Mr. Hooper was engaging in irrational behavior; true?

A That’s correct.

Q And you did not believe that he was engaging in disorderly behavior when you were leaving for the airport; true?

A When he came out into the parking lot, I felt that was not appropriate.

Q But it wasn’t disorderly behavior that caused you –

A No.

Q – to believe him to be a threat to a flight; true?

A That's correct.

Q Now, sir, you were in a rush to get to the airport because you had babysitting issues to take care of at home on December 8, 2004; true?

A Absolutely false.

Q Now, you were flying back to Denver on a different flight than Mr. Hoeper; true?

A I didn't know Mr. Hoeper was going back on a flight.

\* \* \* \*

[440] the – in a car to go to the airport on December 8, 2004; true?

A I have no knowledge of that. I was on my way back to Denver. I don't know.

Q But you didn't ride with Mr. Scharf to the airport; true?

A I left – I left my car – my rental car keys with Dan Scharf and – and instructed him to drive – to return the rental car whenever they were done and that they were supposed to go back to the hotel with Mr. Hoeper. Past that, I have no knowledge of what they did.

Q Sir, are you having difficulty understanding my questions? My question to you was –

MR. AVERY: Objection. Argumentative.

THE COURT: Absolutely sustained.

MR. AVERY: Ask that it be stricken.

Q (BY MR. REITZ) After the training session ended on December 8, 2004, you believe that Mr. Hoeper

would get additional training from another instructor; true?

A That's correct.

Q And, in fact, you believed that perhaps Mr. Seeger would pick up the training or that another check airman would take over; true?

[441] A That's correct.

Q And you honestly believed that Mr. Hoeper was going to get additional training with another check airman and then get the proficiency check ride that he was promised; true?

A I had no reason not to think that. That's correct.

Q Now, you mentioned that you spoke to Mr. Doyle on the evening of December 8, 2004; true?

A That's correct.

Q And Mr. Doyle contacted you to give you a professional courtesy call about Mr. Hoeper so that you would not hear it from anywhere else; true?

A That's correct.

Q And Mr. Doyle informed you that on December 8, 2004, Mr. Hoeper had been detained and taken off the airplane; true?

A That's correct.

Q And he also indicated to you that Mr. Hoeper was searched for a weapon; true?

A I don't recall – I don't recall if he ever said that. I'll – at that time, I was very tired and I just had a three-hour flight and been up since early that morning, training, and I don't – I don't recall if he said anything about a gun or anything. I

[443] A I don't know if he specifically said he was searched for a gun or – or what the specifics were, but that he was – that the flight had returned to –

Q And you were surprised when the flight – when you found out that the flight had been returned and Mr. Hoeper was taken off; true?

A Yeah. I was surprised. I mean, I – I mean, I – I never really thought about it, but I was surprised that something had happened, yes.

Q And – and you were surprised because you just knew that Mr. Hoeper wasn't a threat and that there was no reason that you thought he shouldn't be on the airplane; true?

A That's correct.

Q Now, in your conversation with Mr. Doyle on December 8, 2004, that evening, did he indicate to you that he would call you the next day to give you more information?

A I think he did. I think he said he was real busy with phone calls and I think he said it – he would give me a phone call the next day. I honestly – I can't recall exactly what he said, but it was something to that effect that he would be calling me.

Q But Mr. Doyle had provided you [444] information to the effect that he was really busy with phone calls that evening?

A Yes. He was busy. Yes.

Q And, in fact, sir, when you found out that security officials had been contacted regarding Mr. Hoeper, you were really surprised? In fact, shocked; correct?



A I was shocked. I didn't – I guess I – it was surprising to me, yes.

Q And after you found out that Mr. Hoeper had been pulled off the plane and searched for a weapon, you felt bad for Mr. Hoeper because that would be embarrassing for a pilot; true?

A It's – it – I'd feel bad for somebody, but post 9-11, I've been – a Delta captain and myself have been pulled out of line in security and almost strip searched. It comes with the territory. And it's something I have to accept. TSA has – they don't give time for second chances, so I understand they have things they need to do and so it comes with the territory of being in a position like that.

Q Sir, did you feel embarrassed for Mr. Hoeper or not?

A I felt embarrassed – I guess, yes, because I felt embarrassed when I had to be pulled out

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[453] CROSS-EXAMINATION

BY MR. AVERY:

Q Good afternoon, Mr. Schuerman. Mr. Schuerman, I want to begin my examination of you by taking you back to that portion of your examination where you were asked about all those questions or the statements that you either did or did not make to Mr. Doyle after the blow-up in the simulator had occurred and you make the phone call. Okay? All right? At that point in time, after you had seen him blow up, did you know – at that point in time, you're in the FAA's office – that he was a Federal Flight Deck Officer?

A I did not.

Q And if he was not a Federal Flight Deck Officer, there would be no way he could get on an airplane with a gun – presumably, no way he could get on an airplane with a gun undetected; is that true?

A That's correct.

Q But if he was, in fact, a Federal Flight Deck Officer and authorized to carry a weapon, he could have legal authority to have a weapon on his possession on the aircraft?

MR. REITZ: Objection. Foundation.

A That's –

[454] THE COURT: Pardon me. The objection is overruled.

A That's correct. He could have gone on that airplane with a weapon.

Q (BY MR. AVERY) Okay. So I want to talk to you about other things that you either did or did not have knowledge of on December 8th, 2004, during that conversation.

Did you know that there had been prior blow-ups between Mr. – Mr. Hooper had blown up at Mr. Doyle?

A No. In fact, when – when Pat – when Captain Pat Doyle called me and initially asked me to work and give Mr. Hooper – to work with him and give him what's called CPT, cockpit procedures training, he had told me at that point, Would it be okay if – you know, if you would work with him. I said, Sure. Can we do it at my house? Because it was my days off. And Captain Doyle told me, I will give Bill Hooper your number and you guys can get together.

And I went and asked my wife if she would mind if we could work downstairs and she could – she and my

new baby – I have a 4-year-old and 2-year-old – and she asked – I asked if she could do something else to where I could work with Mr. Hoepfer [455] and do CPT. And she said that was fine.

One thing Air Wisconsin and Pat Doyle did when he called me, they always insulated us check airmen from what was going on outside anywhere else. They put a buffer up. They didn't want any preconceived, anything going in as far as check rides, training, anything.

So when Captain Doyle called me and asked me if I would work with Mr. Hoepfer, I asked him what – what does he need to work on? His exact words to me were, I want a fresh set of eyes. I want you to just evaluate him. And I said, Okay. That's fine.

So I knew I was going to have to do CPT with him and I knew I was going to have to – the first sim session was going to be to evaluate him. So, to answer your question, no. I did not know.

Q Okay. Did you know that Mr. Hoepfer had asked that his training, as he transitioned from a ground school instructor to attempt to transition to a BAe-146 captain, had been delayed because of family issues that Mr. Hoepfer indicated were causing stress on his life?

A No, I did not. I knew nothing about that.

Q Did you know that after he failed his [456] proficiency checks in October and November, his type ratings – excuse me – and a proficiency check in October, November, that he then wrote a letter to Mr. Scott Orozco and told him that he had family issues that were causing stress in his life such that he'd like an extra chance? One more chance.

A Well, I guess that's kind of a compound question. Part of it is he did pass his type rating. I – I guess I don't understand the question.

Q Let me rephrase the question because –

MR. REITZ: Your Honor, I object. This is beyond the scope of my cross.

THE COURT: Overruled.

Q (BY MR. AVERY) And coming back to what you knew on December 8th, 2004, during that phone call or what you did not know, did you know that he had written a letter to Scott Orozco where he talked about illnesses and deaths in his family?

A No, I did not. I knew nothing. That was upper management stuff. I was training and checking. I had nothing to do with upper management.

Q Okay. Did you have knowledge that he had had three prior failures such that, under the collective bargaining agreement, he could have lost his job even before December 8th, 2004?

[457] A I knew he had – he had had a – had trouble as – as far as how many check rides he had had, I had no idea.

Q Did you know that he had entered into and signed what was – what is known as the last chance agreement?

A No knowledge of that. That's upper management.

Q All right. And so did you know that December 8th, 2004 phone call, by Mr. Hoeper's termination of the training that his employment with Air Wisconsin was in considerable question at that point?

A No. I had no idea.

Q Okay.

A I – I had no idea.

Q And what was your mind-set on December 8th, 2004, in that phone call as to when you thought he would actually – Mr. Hoeper would be getting on an airplane?

A I – my thought was he was going to get additional training, either with Ben Seeger or somebody else – I don't know who they were going to have come out – either the next day and maybe two sim – additional sim sessions. I had no idea. And then a [458] check ride. But I just knew at that point, I had no idea. When I went home, I went home with the understanding that Mr. Hoeper and I had a disagreement. There – he was angry at me. And at that point, I was not going to do any more training. I was not going to work with him. It just wasn't going to happen. And I had made my mind up when I walked out of that sim and he was that upset with me, I wasn't going to do any more training.

Q Okay. And then, in terms of all those questions that you were asked on your initial examination about did you think he was a threat to get on an aircraft, am I correct, then, in understanding you didn't even think he was getting on aircraft?

A I had no idea. I thought he was going to be there another day or two or three.

Q So when you answered all those about I didn't think he was a threat at that time to others, at an airport, getting on a plane, were you thinking they were even asking those questions about that day, December 8th, 2004?

A In that context, I had no idea. I thought the context was, you know, as far as was he a threat? To me, once I removed myself from the environment, no. And that's the context I took it as. [459] Whether he – if he displayed that behavior at an airport, it would be a different story. He wouldn't be getting on my airplane.

Q Tell us why, if that would be a different story if he were going to the airport and they were in an agitated state of mind, why you wouldn't allow him on your airplane?

A Without going into privileged information, I – I mean, I can't – anything more than disruptive behavior in a – in a – in an area of – a loading area, a ground security coordinator would not have allowed abusive language, abusive behavior, anger of that magnitude on an airplane.

We – we had – just the other day, I was in Las Vegas, and we had to pull a lady off an airplane from anger. And it's unfortunate. She started up in the gate area and, next thing you know, she got on the airplane and started being rude to the flight attendants and she wouldn't cooperate with what we had to say. And she had to be removed from the aircraft.

Q Okay. All right. So, since this lawsuit started, you've become aware of the information that was available to Captain Orozco, Captain Doyle, and Captain – I'm sorry, Captain Orozco, Captain

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[521] Q All right. Do you recognize this as the notes from Mr. Scharf that were produced following the December 8th incident?

A Yes, I do.

Q All right. I'd like to direct your attention, then, to the paragraph beginning No. 4. Do you see that?

A Yes, I do.

Q Okay. I – the first sentence of that exhibit, page 19, excuse me – Plaintiff's Exhibit 19, page 2, states, "After almost an hour and a half of intense training, the simulator flamed out the two remaining good engines due to a fuel imbalance. At this point in time, we were approximately 22 miles north of GRB VORTAC assigned as the holding fix."

Can you give the jury a sense of what that means in terms of what was going on in the simulator at that point in time?

A We're at the Green Bay airport and, at that point, we had done a missed approach out of – off of one of the approaches and the aircraft was heading north away from the Green Bay VOR. And this is just reference that it was 20 – he references 22 miles north of the Green Bay VOR. VOR is a land-based navigation. It's something that we use in reference to [522] give us horizontal situational awareness of where we're at.

Q Okay. And when you say we were 22 miles from Green Bay, that was what was being simulated on the screens is the Green Bay airport?

A That's correct.

Q The next thing that Mr. Scharf reported in his note was the instructor froze the simulator for a training discussion. Could you just tell us what that means?

A Well, at that point, we have three ways of freezing the sim. One of them is we can geographically stop the simulator as far as it moving through space,

but the actual simulator continues to operate. It makes noise. It – it's fully functioning and flyable. It's just you're not geographically moving through space.

And then there's also – the second form of freezing the sim is to actually freeze it to where the controls are locked up, there's no sound, there's – there's no input, you know, from the pilot. Cannot do any input to it.

And then the other form is just to put it off motion, and that's to bring the sim down off motion.

[523] Q Which of the three was this one?

A This one was in a – the actual freeze to where you couldn't hear anything, no control inputs because I wanted him to have more of a dialogue – a quiet dialogue to discuss what had gone on for the last 3 or 4 minutes.

Q Okay. And so where it says “for a training discussion,” did you, in fact, discuss what had been going on in the simulator for the last 3 or 4 minutes?

A Yes, I did.

Q Is that something that's common for a check airman? When you're doing training for a person who's practicing for their proficiency check, is that common to do?

A Yes. We want them to be able to focus on what we have to say. We don't want them to sit there and fly the airplane, so we freeze the sim to where they can turn around and chit-chat with us back and forth and we can explain, you know, what we need to look at. And sometimes we're just inquiring about their thought process. You know, what are you thinking, what's your – where are you going to go from here.



Q Okay. Mr. Scharf next records that [524] Bill – and that would be Mr. Hoep – that’s who we’re talking about. Mr. Hoep – “Bill began to exhibit some agitation over the fact that the FMS did not indicate passing the fix or show a hold entry.” Can you tell us what an FMS is?

A The FMS is flight management system and, basically, that was our primary means of navigation. The FMS, flight management system, is incorporated with what’s called GPS, global positioning satellite, and we use that as our primary means of navigation. And then our secondary and supporting instrumentation is our land-based navigation, which would be such as the VOR – the Green Bay VOR and things of that nature.

Q Okay. The next statement says, “Mark made an effort to calm Bill, stating something to the effect, look, we can throw some of this out.” Do you recall that Mr. Hoep was, in fact, becoming agitated at this point in time in the simulator?

A You know, Dan – Dan said that he was agitated at that point. I thought Bill was just more – more frustrated. I don’t think he was so much agitated with me at that point, stating I – let’s throw some of this out. Sometimes during training and something’s not going right, we have a tendency to fixate on the things that have not gone so well. So [525] what we try to do is clear their mind and say, Hey, look, let’s throw this out, let’s forget about it. Let’s – let’s work to get something positive out of this because the training event needed to turn positive.

And at that time, I mean, I had – I had still a lot of T’s and a lot of I’s to dot and I didn’t want to sit there and get bogged down with these little details. And I

just wanted him to kind of clear his head and let's keep going with the session so that it can be a positive training event.

Q So the idea of throwing something out, if you will, in the training session would have an advantage for the trainee? It's not something that he scored some points and you're taking the points away from him? It's exactly the opposite of that?

A Absolutely. It was made as a comment to – and – to make him feel more comfortable. I wanted him to feel comfortable, and let's – let's throw – Hey, Bill, I can throw some of this out. Let's forget about it. Let's move on. I was trying to make things comfortable for him.

Q The next thing that Mr. Scharf reported was that, quote, Mark had Bill turn to see the distance markers on the instructor's screen. Can you just [526] describe for the jury what that means?

A Like I said yesterday, I sit – I sit right behind the – the first officer. Right behind him. His seat comes to the – the left side of his seat comes to right about here. I'm situated this way with two computer screens that I'm looking at and then Mr. Hoeper is sitting right there. So what he had to do was I was pointing out there's a – a printout on the – you can actually see, real-time, a printout of – of the aircraft's track across the ground. And so what I was trying to do was show him where we were at geographically, you know, with reference to – to the airport. And this – the situation that we were in and I was questioning, you know, why we were there and what we needed to do from there. We needed to, you know, get back to the airport. We were low on fuel and we had two engines inop, and that was a situation that we had

always briefed that we would never be more than 15 nautical miles away from the airport, so I was bringing that to his attention, trying to get him to come back to the airport, No. 1.

No. 2, we had a situation of – of – for about 3 or 4 minutes, Bill kept canceling the master warning system. And we'll get into that later, but, basically, what was happening was he wasn't [527] allowing his nonflying pilot to identify or to cancel – identify and cancel what the problem was, why we kept getting this light. Bill kept canceling it himself.

When he's a flying pilot, he's not supposed to be doing that. The nonflying pilot is supposed to be doing that.

Q Mr. Schuerman, I do want to talk to you about that on – when we call you in our case-in-chief, so I want to hold off on some of that testimony. I want to really focus on Mr. Scharf and explaining to the jury some of these terms in his letter and his comments.

He states in that same paragraph, paragraph 4 at the end, "It was my sense" – that's in quotes for the purpose of the record – "that Mark was making an effort to work things to a positive conclusion." Were you, in fact – by saying, We'll throw some of this out, we'll go forward from here, were you trying to convert this to a positive conclusion?

A Absolutely. That's what I was there to do was training.

Q "Mark made some statements about doing three more approaches." Doing three approaches during [528] a training for a person who's scheduled to do a proficiency check, is that consistent with the training?

A That's correct. Yes. We were at that point – we had – we had used so much time in Green Bay – and my objective was to start in Green Bay, make it a 20-minute deal, and then go to Chicago-O'Hare. And when time started running out and I started saying that we hadn't done a lot of things, I was going to have to now stay in Green Bay and do just about everything –

Q Okay.

A – that I possibly could.

Q And going to the next paragraph, if you will, paragraph 5 of page 19, Plaintiff's Exhibit – page 2 of the Plaintiff's Exhibit 19. "At this point, Bill became visibly angered and I noted the sound of his seat sliding back and his seat belt came off."

Do you recall Mr. Hoeper's seat belt came off when that seat sliding incident occurred?

A Yes, I do.

Q And Mr. Scharf reports, "Bill said something like, You win. I've had it. I'm calling ALPA legal." And I think you testified yesterday that those were some of the statements he made of – among [529] others?

A That's correct.

Q Okay. And it says, "Almost simultaneously, I felt the simulator come down off the jacks and the gantry connection."

Explain what those words mean to the jury.

A Like I explained, there's a – the three ways of actually freezing the sim or putting it down off motion. This is a big box that's in the air, swinging around on

hydraulic rams that are 20, 25, 30 feet up in the air. It's pretty high up in the air.

So there's a microswitch on the door in the simulator that only I'm allowed to open the door because if somebody were to inadvertently open that door, the simulator would come crashing down and for fear that somebody might walk out of that door and go tumble off into a bay when you're 20, 30 feet in the air.

So what Mr. Scharf is referring to is when the simulator comes down off motion, there's a gantry, there's a bridge that comes down, and it takes roughly 30 seconds or so for that bridge to come down and actually lock into position to connect the building to the – the simulator. And then there's also a – a [530] gate that I have to unlatch and lift up to allow you to walk across the bridge.

So what he's referencing is – excuse me – is he heard the sim coming down off motion because it goes – it makes this kind of a sound. It goes (verbally indicating). It's the hydraulics. It's releasing all the hydraulics. And about that time, you'll hear a clunk, and that means you can hear the bridge start to release from the – from the wall. And then the sim, in that 30-second period, is in its – it's a real gentle settling motion down to where – and then, all of a sudden, the last thing you'll hear is clank, and that's the gate, jettisoning up against the actual simulator.

And then my job is to make sure I'm looking through the peephole and that the door – that the bridge is down and locked and that it is – it says off motion in the simulator. And then, at that point, I open the door and can let everybody out.

Q Okay. So you're in control of all of those events?

A That's correct.

Q So, by Mr. Scharf's recitation here that's been admitted into evidence, as soon as that seat flies back and as soon as these words are [531] exchanged – spoken by Mr. Hoepfer and this anger is demonstrated, you're immediately starting the process where you can get out of the simulator; is that correct?

A That's right. I mean, it was – it was – I wanted out of there.

Q Okay. And he ends paragraph 5 by saying, "After a few words, Bill left the flight deck and Mark asked if I would collect our equipment and vacate the simulator." Is that the way you recall it, as well?

A Yes. I – we have a – it's kind of a universal flight bag that the company keeps in our – in our office. And what it basically has is all the – the performance of the aircraft, the manuals, speed cards. We have speed cards that we use that we have to – to bug. And it has all – basically, all the QRH reference handbook, which is our checklist that the nonflying pilot utilizes when we have normal situations. In an anomaly, you can get into that checklist, and it'll tell you which way to go.

So it had all those kind of things, and I had instructed Dan to please pick up all the debris and – and get it to the office for me.

Q Okay. And, lastly, with respect to [532] Mr. Scharf's statement, going to paragraph 7 of that same exhibit, last line, it says, "Although I did not feel threatened, I can see why Mark may have." Do you see that?

A Yeah.

Q Was any of his – Mr. Hoeper’s anger directed at Mr. Scharf?

A No.

Q All of it was directed at you?

A Yes.

Q Okay.

A It was all . . .

MR. AVERY: Your Honor, at this time, I would pass the witness with the understanding we’ll be re-calling him in our case-in-chief to go through some of the simulator events.

THE COURT: I understand. Thank you. Redirect?

REDIRECT EXAMINATION

BY MR. REITZ:

Q Good morning, Mr. Schuerman.

A Good morning.

Q Do you still have Exhibit 19 open?

A Yes, I do.

Q And are you still on the second page of [533] that exhibit?

A Yes, I am.

Q Now, Mr. Avery just had you look at the paragraph – the second-to-the-last paragraph and the highlighted portion that said, “Although I did not feel threatened, I could see why Mark may have.” Do you see that?

A Yes.

Q And, yesterday, you testified that you did not indicate to Mr. Scharf that you felt threatened; true?

A I didn't – I never said anything to – to Dan about this.

Q All right. And you never spoke to Mr. Scharf after this day until you saw him almost a year later in the airport at Chicago; true?

A Said hello, and that was it.

Q Now, sir, yesterday, in response to it – some of Mr. Avery's questions, you talked about the term "commandability," didn't you?

A Yes, I did.

Q And, sir, do you have the check airman handbook up there with you? It's the white book.

A I have it.

Q And, sir, you're very familiar with that

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[571] Q And how many ATP or type ratings do you hold, sir?

A I hold five type ratings.

Q And can you tell me what they are?

A Yes. I'm type rated in the Avro RJ, the British Aerospace 146, the Bombardier Canadair regional jet, the CRJ. I just recently was type rated on the Dornier 328 jet. And I also hold a type rating on the Dornier 228 turboprop.

Q As a fleet manager, Mr. Doyle, you oversaw the training department of the BAe-146; is that right?

A That's correct.



Q And you had several check airmen working for you, didn't you?

A I had a vast number of check airmen. We had line check airmen and we also had simulator check airmen.

Q And they all reported to you?

A That is correct.

Q And you, in turn, reported to Scott Orozco?

A That's correct.

Q And Scott Orozco, in turn, reported to Kevin LaWare?

[572] A That's correct.

Q And Kevin LaWare was the V.P. of operations; correct?

A During the time frame, I believe that was his title; that's correct.

Q And Mr. LaWare reported to the CEO and to the owners of the company?

A That's correct.

Q And Air Wisconsin is owned by six individuals; right?

A It's privately held. I can't speak to whether or not it's six individuals. I know there were three owners that we used to deal with on an almost daily basis. I could not speak to the other owners of the company.

Q All right. Mr. Doyle, I'm going to come over here and get this org chart. Oh, it's right there.

MR. McGATH: Ladies and gentlemen, can you see that okay?

Q (BY MR. MCGATH) Mark Schuerman was a BAe-146 instructor pilot during the time that Mr. Hoeper was training; is that right?

A That is correct.

Q And Todd Hanneman was a BAe-146

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[574] wear two or three hats.

Q In the 2004 time frame, the POI for the BAe-146 program was MRay Glovatsky; correct?

A That's incorrect. Mr. Glovatsky was the assistant POI and the air crew program manager, to my recollection.

Q He was your superior, though, as to all matters related to training, checking, and flight safety from a Federal standpoint; correct?

A Actually, it would be the POI, who was George Dewey at the time. Mr. Dewey oversaw anything that Mr. Glovatsky did.

Q Now, you would agree with me that a simulator such as that involved in this case, the BAe-146, has great advantages in training over regular aircraft; correct?

A Yes, it does.

Q And one of the advantages that a simulator has is that you can put pilots into situations that are very dangerous without jeopardizing the plane, the pilot, or yourself as a check airman; isn't that true?

A That is correct.

Q And you would also agree with me that, because of that power that you have over the check [575]

airmen, you also have immense responsibility; isn't that true?

A This is true.

Q And one of the things that you need to be careful of is whether or not check airmen – simulator check airmen are biased against the pilots that are in training; isn't that true?

A That is correct.

Q And if you had a check airman who was demonstrating bias against a pilot who is in training, that would be inappropriate; isn't that true?

A This is true.

Q And if an air – AWAC check airman demonstrated bias against a training pilot such as Mr. Hoeper, for example, that would be a violation of Air Wisconsin's own operating procedures; correct?

A That's correct.

Q And it would also be a violation of the Federal Aviation Regulations; correct?

A I'm not sure that I could speak to a Federal Aviation Regulation that would cover that. I'm sorry.

Q In any event, it would be very bad practice?

A It would be bad practice.

[576] Q And, in this case, you've heard testimony that John Schuttloffel has testified that Mark Schuerman said that A-hole or asshole got his. You've heard that testimony; right?

A I've heard that testimony.

Q If that were true, that would tend to indicate bias on the part of Mr. Schuerman against Mr. Hoeper; correct?

A I don't believe it's true, but that is correct.

Q And if it were true, then that would be significant enough bias that Mr. Schuerman should not have been involved in training Mr. Hoeper; correct?

A If he had said that statement, that would be correct.

Q I want to talk to you a little bit about the training of Mr. Hoeper. And I want to talk to you about Air Wisconsin's procedures in that training. Okay?

A Yes.

Q Air Wisconsin, pursuant to its collective bargaining agreement, has a three-strikes-and-you're-out program; correct?

A That's what the ALPA contract allows for is three opportunities. If the applicant fails three [577] times in a row, then the employment is at the discretion of the company.

Q And because the employment is at the discretion of the company, that means that the pilot could be fired for any reason; correct?

A I don't know for any reason, but the employment is at the discretion of the company. It also means that continued employment is at the discretion of the company.

Q Certainly. A pilot who is put into a position where he has three failures – and we'll get into those failures in a minute – could be retained; correct?

A He could and more than – many opportunities, they have been retained, yes.

Q Okay.

MR. MCGATH: Your Honor, I need to get another board here.

I'm going to put this time line up and if you can't see it, I'm going to do something else. Okay?

THE COURT: What do you think, folks? Can you see that?

MR. MCGATH: Can you see it okay? I apologize, but we had the same date twice, so I used a

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[580] what's called flight proficiency training in the simulator before you even take a check ride; is that right?

A That's correct.

Q And that flight proficiency training, do you disagree that the failure to recommend would be a jeopardy event?

A Failure to recommend is not necessarily looked at as a jeopardy event.

Q Okay. So a failure to recommend doesn't count as a strike against the pilot?

A Not that I have seen in my past, no.

Q Now, you also have to take before – in Mr. Hooper's case, you've got what we'll call a P.C. type ride because, with a transition pilot like this, he's going to get both the P.C. and the type ride at the same time; true?

A That's generally the way it's done; that's correct.

Q Okay. And for that type of a pilot and for any other pilot who's doing this, there's also a very comprehensive oral exam; isn't that right?

A That's correct.

Q And that requires a great deal of effort to study for; correct?

[581] A That's correct.

Q And a very lengthy exam process; true?

A. A very what?

Q Lengthy exam. The oral exam, two to three hours at a time, perhaps?

A Generally two hours, yes.

Q And you would agree that's a taxing event?

A It is.

Q And you would also agree that the FAA, because that's a very taxing event, has indicated that that oral exam, if passed, is good for 60 days; true?

A That's correct. So long as that's – there's a caveat to that. And in this case, it has become an issue, I understand. In the case of me, working with Mr. Hooper, I had seen his oral examination and it was good, as far as I was concerned for the next 60 days anytime that I would work with him. That's correct.

Q All right. It was also good for the FAA; right? They didn't make him retest an oral on November 5, 2004?

A Right. The FAA was actually observing the oral that I did with Mr. Hoeper, so there was no reason for the FAA to observe him again.

[582] Q And you would agree that if you submitted him to an oral event during that 60 days, you've added another jeopardy event to him; is that right?

A If I personally added another oral exam during that 60 days, then yes.

Q If anybody added an oral event during that 60 days, that's an additional jeopardy event; true?

A Well, again, Mr. McGath, you could look at it as a jeopardy event or you could look at it as a possibility that you might shine. And in Bill's case, he did a really nice job on his oral, so, in some cases, if someone is struggling in flight training, we may throw out another oral just to get the person to kind of relax. And if they do a really nice job, it gets them in a mind-set of okay, I'm ready to go do this, I'm ready to put my fourth stripe on, put my captain's hat on, and let's get this done.

Q You just testified, though, yourself, you wouldn't have done that to Mr. Hoeper, didn't you?

A I didn't feel I needed to with Mr. Hoeper. He did a really nice job with his oral, and I didn't feel I needed to see it again.

Q So you wouldn't have done that to [583] Mr. Hoeper, would you?

A I didn't do it to Mr. Hoeper.

Q Todd Hanneman did?

A Todd Hanneman did, yes.

Q Okay. So he passes his oral here, and then Hanneman makes him take another oral here; right?

A That's correct.

Q And he does that within two weeks? Excuse me. Six weeks. That's true?

A That is true.

Q And your oral should have sufficed for that check ride; correct?

A Not necessarily. We brought in a new check airman into a situation that when a check airman signs off a pilot for a proficiency check, that check airman is able to re-examine anything that they would like to see. And in this case, Mr. Hanneman was not of the mind-set of taking my word on an oral exam. Six weeks had passed, he was coming up close to the 60 and he felt that it was prudent that he give Mr. Hoepfer an oral exam prior to the proficiency check.

Q So, again, Mr. Hanneman added an additional jeopardy event to Mr. Hoepfer's training that wouldn't necessarily have needed to be there; true?

A It is his prerogative to issue the oral [584] exam.

Q My question is slightly different. He added an event that wouldn't have necessarily needed to be there; true?

A True.

Q Thank you. Now, throughout this process, you were Mr. Hoepfer's biggest cheerleader; isn't that true?

A I believe I was one of Mr. Hoepfer's biggest cheerleaders, yes.

Q And you were his biggest cheerleader when he failed on his fourth try; true?



A I'm sorry. Repeat the question, please.

Q Mr. Hoeper failed this check ride, did he not?

A Yes, he did.

Q And you remained his biggest cheerleader after he failed that check ride; is that true?

A I believe I was.

Q Okay. And Mr. Hoeper failed his check ride here and you – you remained his biggest cheerleader; true?

A We talked after the – after the event. And I suggested to Mr. Hoeper that there was absolutely no reason that he could not get through this training [585] process.

Q Okay. And you remained his biggest cheerleader, as you previously testified; isn't that true?

A Yes. May I finish?

Q I'm sorry. I didn't mean to cut you off.

A After the event, I suggested to Mr. Hoeper that he had had previous type ratings in numerous aircraft. He had been an Air Wisconsin captain. The procedures that were available at Air Wisconsin for him were no different than they were in the previous aircraft, and I felt that he should continue because I felt that he could succeed and be a captain on the British Aerospace 146 jet.

Q All right. Now, Mr. Hoeper, however, after October 14th, began to have some concerns that there was some bias against him being demonstrated by the flight training department; isn't that true?

A That's what he indicated to me, yes.

Q And, because of that concern as expressed, Air Wisconsin decided that the next testing event would be overseen with the FAA so that Mr. Hoeper would get, in his eyes, a fair shot; true?

A Well, I think you're paraphrasing.

\* \* \* \*

[598] Mr. Schuerman was not the check airman on that flight that day. It was Mr. Glovatsky. So if anyone would have intentionally kicked a chair that day and had been briefed about it, it would have been Mr. Glovatsky to Mr. Miller, so, in my estimation, this would have been purely an accident on Mr. Schuerman's part, if he kicked the back of Mr. Miller's chair, because he was simply running the simulator that day.

Q You're also aware that Mr. Schuerman kicked the back of Dan Scharf's chair in the December 8th, 2004 training event which Mr. Schuerman had testified about in his testimony earlier today?

A I understand that.

Q Okay. And you agree with me that that was not appropriate in those circumstances; correct?

A Again, if it was briefed previously, then it would be appropriate. If it were not, then probably not.

Q Thank you, Mr. Doyle.

THE COURT: Can you get done what you've got to do next in six minutes, Mr. McGath?

MR. MCGATH: Your Honor, in light of the length of the day, perhaps, why don't we – we could – this would be a good place for us to stop.

THE COURT: That's what I was asking.

[599] MR. McGATH: I understand what you were asking.

THE COURT: All right. Ladies and gentlemen, we can either fill the next 6 minutes up or I can let you go home early, and I'm voting for letting you go home early.

Please remember the admonition that I've given you. Please be back in the jury room by about 8:20 a.m. tomorrow. We'll try again to get started as close to 8:30 as we can. Thank you for your hard work today. We'll see you in the morning.

(The jury exits the courtroom at 4:54 p.m.)

THE COURT: You might as well be seated, gentlemen. You don't have to stand up while the jury's exiting.

You can step down, Mr. Doyle.

The jurors have all departed. Anything we need to take up, gentlemen, before we leave for the day?

MR. McGATH: I think we've got some transcripts for you to take a look at, Your Honor.

THE COURT: All right. Let me see them.

And which witnesses are these?

MR. REITZ: Craig Christensen, Scott

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[642] Q Finally, you were asked some questions about bias.

A Correct.

Q I want to ask you just about that a little bit. When you were asked some questions about whether or not Mr. Glovatsky was present for a particular

session that was given to Mr. Hoyer, was there any bias from the perspective of Air Wisconsin as to the training and opportunities that have been given to Mr. Hoyer?

A I knew of no bias that existed.

Q As a matter of fact, the contract indicated that employment only remained after three failures at the discretion of the company; isn't that true?

A That's my understanding of the contract, yes.

Q And Mr. Hoyer was given four opportunities, was he not?

A Yes.

Q He was given an opportunity over and above what the contract said that had been agreed upon by the pilot group as well as Air Wisconsin; correct?

A Yes.

Q And he had proficiency checks and [643] training rides and type rides time after time, did he not?

A He had numerous training events and several checking events.

Q Was there any bias that was shown to Mr. Hoyer as he was given the opportunities between September of 2004 and December of 2004 to be able to qualify in the BAe-146?

A I don't know of any bias. In fact, I think he had one request that one instructor not be utilized, and we honored that request at his behest.

MR. MARK: That's all. Thank you.

THE COURT: Redirect?

## REDIRECT EXAMINATION

BY MR. McGATH:

Q Mr. Lesh, it was implied that Mr. Hoeper had failed a proficiency check in the D.O. – the Dornier 328; isn't that true?

A It was implied. Yes.

Q That's what you gathered from Mr. Mark's questions; isn't that true?

A Yes.

Q In fact, it's not uncommon for pilots to fail proficiency checks and be completely determined later by the FAA to be completely safe to operate an

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[697] unsatisfactory on the type rating ride on October the 14th, sir.

Q Well, you – you don't know whether or not many other items were passed, do you?

A No, I don't. I don't have a record of that.

Q And you didn't ask Mr. Glovatsky what items were passed, did you?

A I don't recall asking Mr. Glovatsky that. I'm not sure.

Q Okay. You don't – you can't tell the jury today from any notes that you have what items Mr. Glovatsky considered that he couldn't complete so Hoeper passed his proficiency check?

A I'm sorry. Every time you turn away, Mr. McGath, I can't –

Q I'm sorry. I'm trying to watch you and –

A I understand.

Q Okay. You didn't ask Mr. Glovatsky what specific items he had not had time to test in order to give Mr. Hoeper a proficiency check, did you?

A No. I did not.

Q All right. I want to talk to you a little bit about Mr. Craig Christensen. He's been an [698] Air Wisconsin employee for, I believe you said, a long time. Mr. Christensen shared with you his personal dislike for Mr. Hoeper, didn't he?

A Yes, he did.

Q And he shared with you his view that Mr. Hoeper was the single worst instructor that he had ever dealt with, didn't he?

A I don't know that he used those words. He and Mr. Hoeper certainly had had disagreement over this Powerpoint presentation, and it made it quite easy the day that I met Mr. Hoeper in my office in Appleton when Mr. Hoeper came in and asked not to work with Mr. Christensen during all of his training events. It was pretty easy for me to say okay, because I didn't particularly want Mr. Christensen working with him, either.

Q Okay. You did not actually know the degree of animosity, did you?

A No. And it didn't really matter because I didn't want Mr. Christensen working with Mr. Hoeper and, just as I said, Mr. Hoeper didn't want to work with Mr. Christensen, either, so it was a very easy way for me to get out of the middle of this because I just set it up so that neither one of them ever touched each other through the whole training process.

[704] Mr. McGath. I just disagree with it.

MR. McGATH: I understand.

THE COURT: So I'm – I'm going to maintain my previous ruling. We're not going to talk about that.

MR. McGATH: All right.

(In open court.)

Q (BY MR. McGATH) And with Mr. Hanneman as the instructor and Mr. Schuerman flying as the monitoring pilot in the right seat, Mr. Hoeper failed his check ride; isn't that true?

A That is true.

Q At that point in time, Mr. Hoeper's career with Air Wisconsin had reached a crossroads; isn't that true? He's now failed the three checks, and continued employment is subject to the company's discretion; isn't that right?

A That is correct.

Q Real briefly, I want to walk you back through a couple things that happened leading up to that.

In conjunction with this check ride, you had a discussion with Mr. Hoeper at the conclusion of the check ride, and Mr. Hoeper expressed concerns that what was going on was that perhaps he wasn't meant for [705] the airplane. Do you remember that testimony?

A I do remember that, yes.

Q Okay. You told him, did you not, that he should continue in his efforts; isn't that true?

A I did. Based on the type ratings that he had had, based on his experience in the Dornier 328 as a captain for Air Wisconsin and Mountain Air Express previously and his experience in the CL65 as a ground training instructor and as a pilot, I didn't see that this was insurmountable for him to not get through this program.

Q He had passed the written test? Yes?

A Yes, he had.

Q And he had passed the oral test?

A He had passed the oral, as well, yes.

Q And he had his five type ratings that you're talking about?

A I don't know what type ratings he had at the time. Whatever is on his resume or whatever we've talked about, yes.

Q And – and so you encouraged him to continue, even though he was talking about going back to the CRJ; isn't that true?

A We talked about it both ways. He was very dejected and he asked for my opinion. So I gave [706] him my opinion that we talked about the Denver domicile closing and what would be his options. His option was to commute if he were to continue to fly the CRJ to – to some location that he didn't want to go to.

He asked my opinion, and I felt that he still had a couple more opportunities and that he should put his captain's hat on, that he should put on his fourth stripe and fly the airplane like a captain, and let's get this done.

Q All right. Now, let's talk about the options that were available to him after he failed this first check



ride. First, he could resign from the company. That's an option; right?

A Sure. It's an option.

Q Probably not viable at that point in time?

A No.

Q Second, he could return to the CRJ, which is the plane that he was most recently familiar with; right?

A Correct.

Q Third, he could test to be a first officer in the BAe-146; true?

A He could.

Q And, fourth, he could continue on in his [707] quest to become a captain in the BAe-146; correct?

A That's correct.

Q And he had that option after each one of these failed check rides; is that right?

A I just need to think about this here for a second. Those options would have been the same after check ride No. 2.

Q Right. And he didn't fail anything here?

A Correct.

Q And so, after check ride 3, we're at the company's discretion; right?

A That's correct.

Q Okay. Now, after each one of these check rides, you take detailed notes of what's going on; right?

A Yes, I do.

Q And those aren't given to Mr. Hoeper, are they?

A No. They're not.

Q You have what's called a training folder, and the notes aren't put in that training folder; right?

A No. We have a discussion, a post-flight critique at the end of each check ride, and the student [708] may take notes at that point up to whichever they want to do. But we keep our own notes in a company training folder.

Q All right. And let's look here, just so that the jury is following us. Members of the jury, that's page 10. Excuse me. That's after the second ride. I apologize.

Mr. Doyle, would you please turn to Plaintiff's Exhibit 13. Page 4. Those are your notes following the events of October 4th, 2004; correct?

A The 4th and the 5th of October of 2004.

Q Okay. And what's the purpose of keeping those notes if they don't go to the pilot to assist him for his next ride?

A Well, the purpose is so that we know what exactly happened on that particular day. It gives me an opportunity to review things with the next instructor or the instructor that will be working with him the following training session, so that I can focus with that instructor on the things that Mr. Hoeper needs to work on to become successful to pass the next check ride.

Q Okay. And the next page of this exhibit, which, unfortunately, is not very well copied,

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[712] which is Exhibit 13, page 11, that we've been talking about. Is that right?

A Page 11. I'm just looking at the dates here. Yes. That's correct.

Q Okay. And then page 10 is your notes again, completed after the session was over; correct?

A That's correct.

Q All right. And, again, these notes are not given to Mr. Hoeper, so Mr. Hoeper has to rely on whatever you told him in the debriefing session?

A The notes he could have been taking during the debriefing sessions; that's correct.

Q Okay. But the notes don't go into his training folder, do they?

A No. Again, during the debriefing session, he is free to take notes on all of the items that we discuss on this page, on page 10.

Q A training folder is a very important piece of material that each pilot has as he goes through training; isn't that right?

A It's a company record.

Q Well, it's given to the pilot to handle, isn't it?

A As they progress through training, they are to take it to each of their next training events.

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[715] A I don't know that he was removed from management. You know, people move and cycle in and out of management jobs all the time. I did not know Mr. Hoeper until the day that he entered into my office. When he came in, I think it was September, the first couple days of his ground school. He showed up to me as a pilot that wanted to go through British Aerospace 146 training, and I basically knew nothing

of his history other than that he had been a ground school instructor for Air Wisconsin in general subjects and possibly on the CRJ. I don't recall.

Q And your testimony is you didn't know about the efforts of Craig Christensen to have Mr. Hoeper disciplined or removed from management?

A No. I don't.

Q Now, let's go to this event. Now, the bias that had been expressed and Mr. Lesh has testified is the reason Glovatsky is there is to eliminate the potential for any perceived bias; correct?

A I don't believe that was Mr. Lesh's answer exactly. Can we pull that up, possibly, so we can hear it again?

Q The jury will have to – well, I don't know. Judge?

THE COURT: No.

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[765] expletives and the statement "I quit" are not anywhere in Mr. Scharf's letter; isn't that right?

A I'd have to review Mr. Scharf's letter.

Q Well, let's do it again, Exhibit 19.

A In which –

Q Plaintiff's Exhibit 19. I forgot you 7 have the – may I – this one will be helpful to you here, Mr. Doyle. I've got the same notebook that the jury has in front of it so you're not handling a big, cumbersome notebook.

And if you look at the second page of Exhibit 19, Mr. Scharf's paraphrase of what happened is in the fourth paragraph. Do you see that?

A I do.

Q “It says Bill said something like you win, I’ve had it, I’m calling ALPA legal.” Is that right?

A I’m not sure I’m on the right – you said the fourth paragraph?

Q The fourth paragraph of the second page of this exhibit. I apologize. I missed two lines above it. It’s actually the fifth paragraph, Mr. Doyle. You’re right.

A Yes. I see it now.

Q Okay. Now, Mr. Doyle, Mr. Hoeper had [766] every right to contact ALPA legal at that point, didn’t he?

A Yes, he did.

Q And you wouldn’t have interfered with him contacting ALPA legal, which you understood was an ALPA attorney; correct?

A I would not have interfered.

Q And you wouldn’t have expected Mr. Schuerman to have interfered?

A No.

Q And that’s how the session ends; correct?

A That’s correct.

Q And that happens at about noon, Eastern Standard Time, 11:00 Central; correct?

A I believe so. Yes.

Q Okay. And just shortly after noon Eastern Time, Mark Schuerman called you and he reported what had happened; is that right?

A Yes.

Q And he told you that Mr. Hoeper was very angry at him, that he had slid his seat back, and that Mr. Hoeper was going to call ALPA legal; is that right? Something to that effect?

A Do you have Mr. Schuerman's statement, [767] please?

Q Do you disagree with me that that's what Mr. Schuerman told you?

A I don't really like paraphrasing the words without seeing them in black and white. That's all I'm saying.

Q All right. Let me help you. Please turn to your deposition, page 201, line 17-20. And, now, in that series of questions, we're talking about the telephone call coming in. Do you see that?

A I do.

Q Now, turn to page 202, line 11 through 17.

A Okay.

Q All right.

"And Mr. Schuerman told you what?

"Answer: He told me that Bill had blown up at him, slid the seat back, unbuckled the seat belt, threw his headset on the instrument panel, said, I fucking quit, take this thing off motion, you got what you wanted, I'm calling ALPA legal."

Is that what Mr. Schuerman, in fact, told you?

A Yes, it is.

Q At no point in time did Mr. Schuerman [768] ever communicate to you that he felt Mr. Hoeper was a threat, did he?

A I believe that, having known Captain Schuerman for quite some time and by the tone in his voice, I could tell that he was very upset and he said that he wanted to leave the simulator center immediately, and he was saying this from behind at least one, if not two locked doors at the time we were having the telephone conversation.

Q Now, I appreciate your answer. At no time did Mr. Schuerman ever tell you that he felt threatened by Mr. Hoeper, did he?

A I don't recall if he used those exact words.

Q In fact, he did not use those words, did he? Or any words to that effect?

A I don't recall. I know that he said that – exactly what we just talked about and that he wanted to leave the simulator center. We talked briefly about what had happened in the simulator, and I thought that the best way to defuse the situation was to let Mr. Schuerman leave for the airport and remove himself from the situation.

Q You told Mr. Schuerman to leave? That's right?

[769] A Yes, I did.

Q And you didn't ask to speak to Mr. Scharf, did you?

A No, I did not.

Q Now, Mr. Scharf was right there, sitting in the simulator or in that building, but you didn't ask to talk to him, did you?

A No, sir.

Q And you didn't talk to Mr. Hoeper, did you?

A No, I did not.

Q And so you didn't determine whether Mr. Hoeper had any legitimate beef with Mr. Schuerman, did you?

A No. Mr. Hoeper was on the phone with his attorneys at that point in time.

Q And at no point in time for the remaining four hours, up until approximately 3:00 Central, did you ever attempt to pick up a telephone and call Mr. Hoeper and find out what had happened; true?

A True.

Q And at no time did you ever ask Mr. Schuerman whether he felt threatened by Mr. Hoeper, did you?

[770] A I did not ask Mr. Schuerman if he felt threatened, no.

Q In fact, the next thing you did was go speak to Scott Orozco about what had happened; correct?

A That's correct.

Q And Mr. Orozco was on his way out the door for a meeting; right?

A I don't know where he was going, but he said that he would get back with me at around 1:30. I don't know if he was going to lunch or where he was going. I'm not sure.

Q So he was going to come back approximately two and a half hours later; right?

A I don't recall the time frame, but I remember him saying that, you know, we'll meet and we'll talk at around 1:30.

Q The call came in at approximately 11 Central. 1:30 is approximately two and a half hours later; true?



A Yes.

Q And the reason you gave that you didn't talk to Mr. Hoyer was that he was on the phone or was going to be talking to a lawyer; is that right?

A That's correct.

Q And you didn't feel it was appropriate [771] to talk to Mr. Hoyer because he was going to be contacting ALPA legal; correct?

A Captain Schuerman told me that Mr. Hoyer wanted to leave the simulator so that he could contact ALPA legal, and at that point, I didn't see that there was any reason that he should contact Mr. Hoyer. He stated he quit – he F'ing quit. And at that point, I didn't really know what else there was to do for Mr. Hoyer, considering all the opportunities he had had at that point. I felt it was better that I talk with Captain Orozco before I proceed.

Q Now, you knew at the time that the call came in at 11:00 that Captain Hoyer was a Federal Flight Deck Officer, didn't you?

A I did.

Q And you – you're claiming that you were fearful for – about anything that Captain Hoyer might do to you at that time; is that right?

A Yes, I was.

Q And you claim you were fearful of what Captain Hoyer might do to you, even though you were sitting in your office in Appleton and, in the best of all worlds, Mr. Hoyer was going to go from Dulles to Denver; true?

A Well, Mr. Hoyer can travel on his [772] company ID badge to anyplace that he wants to at any

moment's notice, so I didn't know if he was going to catch a jumpseat ride to Appleton or where exactly he would be going.

Q Well, Mr. Doyle, you actually booked Mr. Hoeper's flight shortly after the telephone call came in, didn't you?

A I booked his flight, but that doesn't mean that he has to travel on the tickets that he's been given. As airline pilots, you can walk up to any ticket counter and get a jumpseat ride to anywhere in the country. Just like Mr. Lesh testified to earlier here today, he travels from Colorado Springs to Appleton every week, riding in the cockpit jumpseat or riding as a nonrevenue passenger. It's a benefit that's afforded to airline pilots.

Q And you also are claiming that you felt fearful for Mr. Schuerman's safety; isn't that true?

A Yes, I did.

Q But you never contacted Mr. Schuerman and told him that you feared for his safety, did you?

A No. I told Mr. Schuerman to leave the simulator center immediately, get on the first flight that he could to get out of there, and that defused the situation right there.

[773] Q Well, not if Mr. Hoeper's capable of getting on any flight that he wants, because he could certainly have tracked down Mr. Schuerman, couldn't he?

A Well, not in the time frame that Mr. Schuerman was leaving to get to Dulles airport. Mr. Schuerman was going to get on the first flight out of Dulles – Dulles, yes, to travel back here to his home in Denver.

Q Now, you called Dan Scharf shortly after this telephone call to ask Mr. Scharf if he would take Mr. Hoeper to the hotel and take him to the airport on the flight that you had just booked him on; isn't that true?

A That's correct.

Q And you didn't tell Dan Scharf, who was involved in this, that you were fearful for Mr. Scharf's safety, did you?

A I wasn't fearful for Mr. Scharf's safety.

Q You didn't tell Mr. Scharf that you were fearful for anybody's safety, did you?

A Not at that point, no.

Q And you didn't ask Mr. Scharf what actually happened in the simulator ride, did you?

A No. I did not.

[774] Q And, in fact, for the first two hours from – two and a half hours, from 11 to 1:30, you did nothing to determine whether, in fact, Mr. Hoeper had his FFDO weapon, did you?

A No. I was waiting on Captain Orozco to return at 1:30, as he had directed me to do.

Q So – and you knew that if Mr. Hoeper was following FFDO protocol, he would have no reason to have his weapon, didn't you?

A If he were following protocol; that's correct. But we had –

Q And you had no – I'm sorry, Mr. Doyle. You had no reason to believe that Mr. Hoeper wasn't following FFDO protocol; isn't that true?

A I had no idea whether he was following protocol or not. We had had other pilots in the past not follow FFDO protocol and had shown up at the simulator center with their weapons in their possession.

Q That would be a complete violation of FFDO protocol, based on what you knew; right?

A That's correct.

Q And you'd never known Mr. Hooper to violate FFDO protocol in the past?

THE COURT: The fact is, I can't – I've [775] been through this before. It's – it's – our courtroom, it's the City's building, so I can't really do much about that. All I can do, again, is Mr. McGath, right into the microphone; Mr. Doyle, likewise.

THE WITNESS: Yes, sir.

THE COURT: And we'll do the best we can, folks. There's nothing I can do to get that to stop.

MR. MCGATH: Do you mind if I ask if there is something they have missed in the last exchange so I can go back and we can cover it?

THE COURT: Do you want Mr. McGath to go back a couple of questions? There's enough nods yes, Mr. McGath, why don't you go back.

MR. MCGATH: All right. Let's – I never use this – my voice carries pretty well, so let me see. Are we okay? I feel like a guy on – a talk show host.

THE COURT: I think you might want to go back to where you're talking about FFDO protocol.

MR. MCGATH: All right.

Q (BY MR. MCGATH) Mr. Doyle, you had no reason to believe that Mr. Hoeper was carrying a weapon, did you?

[776] A I had no reason to believe that, but I wasn't 100 percent sure whether he had a weapon with him or not.

Q And you had a fellow in your offices, Bob Frisch, who was an FFDO officer; correct?

A That's correct.

Q And you knew that Mr. Frisch would be able to contact people like the FFDO program manager, if need be; correct?

A That's correct.

Q And you knew that Mr. Frisch could determine whether or not Mr. Hoeper had signed in carrying his weapon in Denver; correct?

A I do not know that.

Q You didn't make any efforts to make that determination, did you?

A As I said previously, I was waiting on instructions from my boss when he returned at 1:30 p.m.

Q So even though you thought you had a man who was capable of doing harm to others and for whom safety, you were – excuse me – about whom you feared for your own safety and about whom you feared for the safety of Mark Schuerman, you did nothing for two and a half hours; isn't that true?

A I waited for my boss to return, as he [777] directed me, at 1:30 p.m.

Q Now, Mr. Hoepfer contacted Air Wisconsin to let you know that he couldn't make the initial flight; right?

A I don't know that for sure.

Q Well, you booked him on a second flight, one that was going to take off at about 4 p.m. Eastern time; true?

A I know he was booked on a 4 – I believe it was a 4:25 flight out of Dulles, yes.

Q Okay. And you had intended that Mr. Scharf transport Mr. Hoepfer to the airport; true?

A That's correct.

Q And Mr. Scharf, in fact, transported Mr. Hoepfer to the airport; true?

A Yes, he did.

Q And while this was going on, you made no effort to contact, for example, United Airlines to determine whether Mr. Hoepfer had a weapon, did you?

A No, I did not. They would not be the party that I would contact.

Q You didn't make any effort to contact local law enforcement to determine whether Mr. Hoepfer might be stalking Mr. Schuerman, did you?

A I wouldn't contact local law enforcement [778] in this particular case.

Q You didn't do it, did you?

A No. I did not.

Q And you didn't contact Mr. Orozco and actually advise him that you were fearful of Mr. Hoepfer, did you?

A As I stated earlier, I was waiting on instructions from my boss when he returned at 1:30 p.m.

Q When you first contacted Scott Orozco right before he left for lunch, you did not tell him I'm fearful for Captain Hoeper – of Captain Hoeper, I'm fearful for Mr. Schuerman, and Hoeper might have a gun? You didn't say that, did you?

A I did not say that.

Q You made no intimation to Captain Orozco that you had any fear of Mr. Hoeper?

A I did not. Mr. Orozco was in a rush. I don't know where he was going, whether he was leaving for lunch or whether he was going to a meeting. He said we would deal with it at 1:30 p.m., and that's what I did.

Q Now, 1:30 p.m. is 2:30 Eastern time; correct?

A That's correct.

Q You're aware from what you've read in [779] this case that Mr. Hoeper was not initially able to get ahold of ALPA legal, aren't you?

A That's what Mr. Hoeper claims.

Q Well, you're aware, are you not, that Mr. Hoeper, ALPA legal, and Scott Orozco all had a telephone call at approximately 2:30 p.m. Eastern time, aren't you?

A I understand that.

Q And, in that conversation, the communication went like this: Mr. Hoeper was on one pay phone out at Dulles and he had ALPA legal on that line; correct?

A I don't know that, sir.

Q Well, we'll hear that from Mr. Orozco, so I want you to assume this to be the case.

A Okay.

Q He had Mr. Orozco on another pay phone; correct?

A I don't know, sir.

Q All right. Make that assumption. He had a three-way call going between them. I want you to assume that; okay?

A Okay.

Q The topic of that discussion was whether or not Mr. Hoeper was permitted to leave the training [780] or whether leaving the training was going to be a jeopardy event that would put his career at issue. You understand that to be the case, don't you?

MR. MARK: That's objected to as a misstatement of the facts in this case.

THE COURT: It's sustained as argumentative. Go ahead.

MR. McGATH: All right.

Q (BY MR. McGATH) Did you learn that the purpose of the call was for Mr. Hoeper to determine whether it was okay with Scott Orozco that he go home and leave the training event?

A I was not party to this telephone call. I do not know what the intent of Captain Orozco, Mr. Hoeper, or ALPA legal was. I was not party to the call.

Q You do know, however, that, at 2:30, when that call took place, Captain Orozco made no inquiry as to whether or not Mr. Hoeper had an FFDO weapon?



A I was not on that telephone call, Mr. McGath. I'm sorry.

MR. MCGATH: If I could have a moment, Your Honor.

THE COURT: Certainly.

[781] Q (BY MR. MCGATH) Do you know whether Mr. Captain Orozco in any way attempted to determine whether Mr. Hoyer had his FFDO weapon?

A I was not on the call. I'm sorry.

Q Okay. Do you know whether there were any efforts by anybody at Air Wisconsin to contact Mr. Hoyer, other than this telephone call that took place at 2:30?

A From what I understand, that's the only telephone call that Captain Orozco had with Mr. Hoyer.

Q So nobody at Air Wisconsin ever made an attempt to contact Captain Orozco before – shortly before 4:00 – Captain Hoyer until shortly before 4:00; is that right?

A I thought you said the call took place at 2:30.

Q Other than that call. Between 2:30 and the time that his flight left the gate, no one at Air Wisconsin ever attempted to contact him; isn't that true?

A I don't know if others may have tried to contact him or not. I know that I did not, and that's – I can only speak for myself.

Q You're not aware of anybody making any efforts to contact him, are you?

[782] A Not that I know of.

Q Now, there was a – a meeting that Mr. Mark referenced in opening statement that was an extensive discussion about what you should do. Do you remember hearing Mr. Mark say that?

A What we should do?

Q Yeah. About what you should do next in conjunction with this issue with Mr. Hoeper. There was this meeting of several people in upper management of Air Wisconsin?

A Yes.

Q You were one of them; right?

A I don't consider myself to be upper management, but yes.

Q Okay. And in that meeting, which Mr. Frisch said lasted about 15 minutes, do you remember – or have you heard Mr. Frisch talk about the meeting and the length of the meeting?

A I have not.

Q Okay. It was a relatively short meeting, wasn't it, Mr. Doyle?

A I remember it to be longer than 15 minutes. I would say it was actually quite lengthy.

Q Participants in that meeting were Captain Orozco; right?

[783] A. That's correct.

Q Captain Frisch, the FFDO; right?

A That's correct.

Q And Kevin LaWare – we haven't met Captain Frisch, but Kevin LaWare is seated right here.

A Kevin LaWare was there, as well, yes.

And it was decided that you should contact TSA; right?

A That's is correct.

Q There was no discussion about contacting Mr. Hoeper; correct?

A There was discussion about it, but TSA is the owner of the FFDO program, and that's why we discussed calling TSA.

Q Prior to making the call, you hadn't re-called Mr. Schuerman to find out what his impression of Mr. Hoeper's demeanor was; correct?

A I couldn't have reached him. He was already on a flight home to Denver at that point.

Q You never made an attempt to contact Mark Schuerman again after the initial call that day; right?

A No. I directed Captain Schuerman to go to the airport, get on a flight, and go home to try to defuse the situation. He did exactly that. Made it to [784] the airport in record time, caught a flight, and was – he was well in flight by the time we had this meeting in Appleton.

Q Now, in the telephone call that you had with Captain Schuerman, Mr. Schuerman did not tell you that Mr. Hoeper was a threat to Mr. Scharf; correct?

A That's correct.

Q He didn't tell you that Mr. Hoeper was a threat to Mr. Seeger, who was also in Herndon, Virginia, at that time; correct?

A That's correct.

Q He didn't tell you that Mr. Hoeper was a threat to himself; true?

A True.

Q He didn't tell you that Mr. Hoeper was unstable; correct?

A Correct.

Q He didn't tell you that Mr. Hoeper was in any way a threat to anybody, did he?

A Not in those exact words, no.

Q And had you asked him those questions and had he responded truthfully as he did in his deposition, you would not have made the call to TSA, would you?

A I'm not so sure about that.

[785] Q In fact, you can't say whether or not you would have made the call based on the information that Mr. Schuerman would have told you had you asked him; correct?

A That's not true.

Q Please open your deposition to page 300, Mr. Doyle. Line 18 through 24.

“Question: Had you asked him those questions and had he responded truthfully as he did in his deposition, you would not have made the call to TSA, would you?

“Answer: I can't say whether we would have made the call or not.”

That was your answer on that day, wasn't it?

A My attorney objected to the question at that point.

MR. MCGATH: Your Honor, there's an objection to the form of the question is all.

THE COURT: Just go ahead and – you can ignore that.

MR. McGATH: All right.

Q (BY MR. McGATH) Your answer to my question was, “I can’t say whether we would have made that call or not”; isn’t that true?

[786] A That’s true.

Q It certainly wouldn’t – would have given you a lot more information from what – from which you could make an informed decision about whether to make the call; isn’t that true? Isn’t that true?

A I’m sorry. Is that a question?

Q That’s a question.

A Please – please restate the question. I’m sorry.

Q If you had called Mr. Schuerman and you had learned all the things that Mr. Schuerman testified about yesterday and testified about in his deposition that I was just asking you about, that would have given you a lot more information from which you could have made an informed decision about making the call; correct?

A As I stated earlier, I don’t know whether that would have had any impact on whether we made the call or not. Based on previous events from Mr. Hoepfer’s past, which we haven’t really gotten into here yet today, I felt, along with Captain Orozco, Captain LaWare, and Captain Frisch, that there was enough concern for passenger safety that we should place a call to the Transportation Security Administration in this case.

[787] Q It’s certainly possible, if you had contacted Mr. Schuerman and learned the information that we

just talked about, you would not have made the call; correct?

A I said we may or may not have made the all.

Q Mr. Doyle, please turn to your deposition, page 300, line 25.

A Line 23? Please –

Q Line 25. Continuing on to page 301.

“Question: It certainly would have given a lot more information from which you could make an informed decision about that” – meaning the call – “isn’t that true?”

“Answer: It’s possible.”

A It’s possible.

Q And had you asked Mr. Scharf about Mr. Hoeper’s attitude, you certainly would have had a lot more information from which you could make an informed decision before you called the highest security agency dealing with transportation issues in the land; isn’t that true?

A It’s possible.

Q But you didn’t contact Mr. Scharf, did you?

\* \* \* \*

[791] Q In addition to you.

A Yes.

Q Now, Kevin LaWare has much more knowledge about airline security issues than you do; right?

A Yes, he does.

Q And so does Captain Orozco; true?

A Yes.

Q And Bob Frisch has the intimate knowledge of what's going on in the FFDO program that you're not privy to; right?

A That's correct.

Q Yet, you were selected to make this telephone call, weren't you?

A Yes, I was.

Q And, in fact, you believed that the call had to be made in the interests of national security; right?

A I believed so.

Q And you believed that Mr. Hooper, in his mind state, was capable of unloading a weapon into a plane and shooting a lot of innocent people? Isn't that what you were concerned about?

A We were all concerned about it. It has happened before in the past with PSA Flight 1771 and [792] FedEx 705, where company employees have gained access to aircraft with their company ID badges, brought weapons on board the aircraft. In the case of PSA 1771, the aircraft was crashed into the ground after the pilots were killed. All people on board were killed.

And in the case of FedEx 705, all three crew members were bludgeoned so badly by the employee – the disgruntled employee that had gotten on board that they have all lost their medical certificates and can no longer fly.

Q Now, both of those involved attacks by a disgruntled employee against other employees with whom he was angry; correct?

A In the case of PSA 1771, the person that was on board that airplane. In the case of FedEx 705, Auburn

Calloway planned on bringing the airplane back into Memphis and crashing into the Memphis FedEx headquarters building.

Q So your concern based on the information that you had, which you had not verified in any way, was that Mr. Hoeper might be capable of crashing this airplane – commandeering the airplane and crashing it into Air Wisconsin’s headquarters; isn’t that what you told me?

[793] A We didn’t know exactly what could happen at that point. But we did know that Mr. Hoeper, with his credentials, could board an aircraft with a loaded weapon. He knew that he was probably going to be terminated the following day, according to the letter of agreement that he had signed with Captain Orozco and the union, and there was grave concern over what could happen. And we felt better safe than sorry, and that’s why we discussed making the call to the Transportation Security Administration.

MR. MCGATH: Your Honor, may I approach?

THE COURT: Sure.

MR. MCGATH: Don’t do anything with this yet, Mr. Doyle.

THE WITNESS: Okay.

MR. MCGATH: Your Honor, at this point in time, I move into evidence Exhibit 26, which are defendant Air Wisconsin Airlines Corporation’s responses to plaintiff’s first set of discovery requests.

THE COURT: You want the – the whole document, or is there a specific question you’re concerned about?

MR. MCGATH: Well, there are some – some real specific questions, Your Honor. But I want



[813] probably will be called during – break Mr. Doyle and put on the witness that we have.

THE COURT: That's fine.

MR. McGATH: I'll –

THE COURT: They already know when it's – that we take them out of order.

MR. McGATH: It'll be about 3:30 or so.

THE COURT: Go ahead, Ms. Steerman.

MR. RIETZ: It's an out-of-state witness.

(The jury enters the courtroom at 3:10 p.m.)

THE COURT: All right. Ladies and gentlemen, I apologize. You can be seated. I apologize for the delay. As I told you at the beginning of the trial, sometimes we've got to talk about stuff, and we had to talk about stuff. I think we've got it squared away. My apologies for the delay. We'll get back to examination.

You need Mr. Doyle back on the stand?

MR. McGATH: I do, Your Honor.

THE COURT: Mr. Doyle, if you would return to the stand, please. Please remember that you're under oath.

Q (BY MR. McGATH) Mr. Doyle, you were the [814] person at Air Wisconsin who had a communication with TSA on the afternoon of December 8th, 2004; correct?

A That's correct.

Q And you were the only person at Air Wisconsin that did so, to your knowledge; correct?

A To my knowledge, I'm the only person that was in contact with TSA.

Q Mr. Doyle, if you would please turn to Exhibit 11, the second page. Sometime shortly before 4:00, you called TSA and you notified them that you had a disgruntled company employee, an FFDO who may be armed who is traveling from IAD-Denver later that day and we were concerned about the whereabouts of his firearm and his mental stability at the time. Isn't that what you told them?

A That is not what I told TSA. I told TSA everything up until the final statement there about his mental stability at the time. These are my own notes that I used for Captain Orozco so that we could build a time line on everything that had occurred with Mr. Hoeper.

Q And you began to – to prepare these notes on December 9th, the morning after this incident occurred; correct?

A Sometime in that area. I don't recall [815] if it was exactly that day, but I was requested by Captain Orozco to build a time line, so shortly within the – the few days after that, yes.

Q Would you turn to your deposition, page 250, please. You actually began to prepare these notes the following morning, the following day?

A I may have. I just said sometime within the few days shortly thereafter, I did.

Q And the question I asked you was, "And you created Exhibit 1 on or about December 9 or beginning on or about December 9th; isn't that right?"

A What is Exhibit 1?

Q I'm sorry. Line 14, page 250 of your deposition.

A And you said Exhibit 1.

Q Right. Exhibit 1, just for the record, was the notes that we're talking about.

A That's correct.

Q If you looked –

A That's correct, yes.

Q And so while your memory was very fresh about the events that took place, you began to prepare these notes; correct?

A That's correct.

[816] Q And your testimony now is that you didn't say anything about Mr. Hoeper's stability or mental stability; correct?

A Not to TSA; that is correct.

Q And, in fact, you knew if you would have actually said those words that you would have caused Mr. Hoeper the potential for undue harm; correct?

A That's correct.

Q And that's why you were very careful in what you said to TSA, because the combination of words that you were using – man with a gun, about to board a plane, mentally unstable – could give rise to an emergent situation; correct?

A I didn't say there was a man with a gun.

Q Concern about the whereabouts of his weapon. That's what you said; right?

A I believe I said William Hoeper, a disgruntled company employee, an FFDO who may be armed, was

traveling from Dulles to Denver later that day, and we were concerned about the whereabouts of his firearm.

Q That's what I just said, isn't it? Concerned about the whereabouts of his firearm?

A I wanted to clear up the fact about a man traveling with a gun.

Q Okay. And, again, if you put that [817] together with any comment about the guy's stability, you knew that this could do him a great deal of harm; correct?

A I don't know about a great deal of harm, but I chose my words very carefully, yes.

Q And that's because, in your own words, it could cause him undue harm; correct?

A I don't know if I said undue harm, Mr. McGath. This has been a year and a half ago. If you know what the words are that I said, then please point me to them. I just don't recall. I'm sorry. It's been a long time.

Q That's all right. Please turn to your deposition page 258, Mr. Doyle.

A Which line, sir?

Q We're on line 12.

A Okay.

Q You're talking about your own notes.

A That's correct.

Q "I did not talk to him about his mental stability because I can't be a judge of his mental stability. I've talked about that before." That's what you told the jury; right?

A That's what I told you in the deposition, yes.

[818] Q And you've told the jury that you didn't make any comments about his stability; right?

A That's correct.

Q And then I was asking you questions about the stability of Mr. Hoeper and I said that you further said, quote, and that he wasn't stable. Isn't that right? Your answer was, "My opinion, my personal opinion, but I did not share that with TSA. I was very careful to word my words with TSA because I did not want to cause Mr. Hoeper undue harm. We had no intention of doing that. We just simply wanted to make sure that he did not have his weapon with him. I was very careful with the words that I used with him."

That was your testimony when I took your deposition in July of 2006; correct?

A I agree, yes.

Q And those – that combination of words – anything with a weapon and stability in this context – could damage Mr. Hoeper's reputation; true?

A I don't know about damaging his reputation. This – this event was done with Mr. LaWare, Mr. Frisch, Mr. Orozco, and myself. And I don't think this event would have caused Mr. Hoeper any undue harm had he not talked about it. Had he not talked about it to a lot of his friends, there would be [819] less than ten people in the world that know about this incident with TSA.

Q Okay. Now – I thank you for your answer. My question was: You knew because you knew that if you used these words in combination, that would cause him undue harm, that it would damage his reputation?

A I don't believe this would damage his reputation.

Q All right. We'll use your words, then, Mr. Doyle. It would cause him undue harm, whatever that might be. Okay?

A Whatever I said, Mr. McGath. Like I said, I'm not trying to dispute what I said in, you know, July of 2006.

THE COURT: Do you want to move, Mr. Mark, so you can see?

I assume this is a blow-up of another exhibit, Mr. McGath?

MR. McGATH: Yes. It's actually the cut-away exhibit that we used in openings. We're looking at Exhibit 11.

Q (BY MR. McGATH) Now, you spent the night after this telephone call to TSA and after Mr. Hoeper's plane was turned around and Mr. Hoeper was

\* \* \* \*

[823] THE COURT: That's all I wanted to make sure is that it wasn't being distracting.

MR. McGATH: Okay.

THE COURT: Go ahead.

Q (BY MR. McGATH) And you wrote down in your notes about an event which took place on October 14th, 2004, in the debriefing room; right?

A Yes.

Q And you wrote down that after heated discussion with Mr. Hoeper and due to concerns for my safety, you cut short the items on the notice of disapproval of the application, the FAA pink slip; isn't that true?

A That is true.

Q These all happened right here; right?

A October 14th.

Q Okay. And you testified or you – you’ve written down here that you were so concerned for your own safety that you failed to finally complete an FAA required form; isn’t that right?

A That’s correct.

Q That’s that notice of disapproval; right?

A That is correct.

Q And you testified that that was the [824] basis for Mr. Hoepfer’s type rating ride; right?

A That’s correct.

Q And you were so concerned about your own safety that you were willing to disregard any FARs regarding the completion of that paperwork, weren’t you?

A I was concerned enough for my safety after trying to discuss with Mr. Hoepfer the events of that day and he would not sit down after no less than six requests to please sit down and calm down so that we could talk about the events of that day, I chose to quit doing the paperwork and remove myself from the situation with Mr. Hoepfer so that we could try to cool things down, and we left the simulator center. That’s correct.

Q There are no notes anywhere in any of Air Wisconsin’s records, other than the notes you began to prepare on December 9th, to indicate these fears; isn’t that true?

A That’s true.

Q And, in fact, you continued to train Mr. Hoeper right along, didn't you? Air Wisconsin –

A I didn't train Mr. Hoeper.

Q Air Wisconsin continued to train Mr. Hoeper all along after this series of events that [825] you just described in which you left the simulator building for fear of your own safety; true?

A True.

Q And now, you testified in arbitration in this case – do you remember that?

A I remember the arbitration, yes.

Q And you testified in the arbitration – let me back up for a minute. I'm sorry.

You took no action whatsoever to notify anybody about your fear for your safety after the events of October 14th, did you?

A I shared the events of that day with Captain Scott Orozco, my supervisor.

Q Okay. And you didn't recommend for Mr. Hoeper that he get any anger management, even though, in your view, he was so terrifying that you had to leave the simulator building and stop short of Federally required documentation; correct?

A True.

Q You didn't recommend Mr. Hoeper for EAP, did you?

A No. I did not.

Q And you didn't recommend that Mr. Hoeper be evaluated by anybody, did you?

A No.



[826] Q You didn't contact law enforcement, did you?

A I didn't feel it required a call to law enforcement at that point in time.

Q You indicated to me that this event was so fearful – or such a traumatic event that you wouldn't ever forget it; isn't that right?

A I won't forget it.

Q And you won't forget the events surrounding it because it was so unusual; correct?

A It was highly unusual, yes. I've never seen a pilot react in such a manner after a failure of a check ride.

Q Now, safety – passenger safety is the No. 1 concern at Air Wisconsin, isn't it?

A Yes, it is.

Q And you wouldn't want anybody flying an aircraft that had displayed those kind of tendencies, would you?

A Again, I shared my concerns with Captain Orozco, my supervisor, and I'm not sure what Captain Orozco did with my concerns. I don't know.

Q That wasn't my question. You wouldn't want anybody who displayed the tendencies that you just described to us here today to fly an airplane, carrying [827] the lives of hundreds of people, would you?

A Probably not.

Q You didn't do anything to stop the training of Mr. Hoeper at that point, did you?

A No. Again, I passed my concerns along to my supervisor, and I'm not sure what he did with those concerns at that point.

Q You are aware, are you not, Mr. Doyle, that Air Wisconsin has admitted that it never viewed Mr. Hoeper as any type of a threat before the conversation which took place on December 8th, 2004? You're aware of that, aren't you?

A I'm not sure. Can you point me to the document that states that?

THE COURT: Will counsel approach?

(At the bench.)

THE COURT: I know exactly what the problem is. With all due respect, if this guy could give anyone a straight answer, we wouldn't have been here for all this time. So now what are we going to do? We're going to confront him with the exact documents that I didn't want to use and he gets to do it? Can you think of any reason, Mr. Mark, why that can't be done? Because I can't.

MR. MARK: If we're going to show him

\* \* \* \*

[829] Wisconsin, "Admit that plaintiff was never viewed as a security threat or risk by Air Wisconsin prior to December 8th, 2004." Do you see that?

A I do see it, yes.

Q And do you see where Air Wisconsin answered what's called this request for admission?

A Yes, I do.

Q Would you – can you read that? Not out loud. Can you read that from here?

A Yes. I can.

Q The answer is, “Air Wisconsin admits only that it did not view plaintiff as a security threat or security risk prior to December 8th, 2004.” Isn’t that what’s on this board?

A That’s what you just read. That’s correct.

Q Now, in this arbitration proceeding, you testified that what next happened was that you left the building; correct?

A Are we back to –

Q We talked about the arbitration – ladies and gentlemen, the arbitration took place – excuse me. The arbitration that took place in April of 2006, do you remember testifying there?

A Yes, I do.

[830] Q And you took an oath to tell the truth at that point in time, didn’t you?

A Yes, I did.

Q And you talked about the events which took place after this telephone call was made, didn’t you?

A Yes.

Q And then you talked about the events which took place back in October of 2004, didn’t you?

A Yes, I did.

Q And you talked about the fact – you took an automobile from there and you went to the airport? Isn’t that what you testified to?

A That’s what I testified to in that arbitration; that’s correct.

Q And despite the fact that you had all these concerns for Mr. Hoeper as a – as a threat to you, the person who was in the passenger seat of that car was Mr. Hoeper, wasn't it?

A I don't know if he was in the passenger seat or in the back seat. I don't recall. But it was my responsibility to transport him back to the hotel.

Q Well, Mr. – you told – you testified at the arbitration that you went to the airport, didn't you?

[831] A I understand that, sir.

Q All right.

A I also made a correction to that in our deposition in –

Q We're going to talk about that in a minute, Mr. Doyle. If you can stay on track with my questions.

A Yes.

Q Now, Mr. Hanneman was also there. We've established that he was the first officer; right?

A I believe that's correct.

Q Mr. Hanneman certainly could have taken Mr. Hoeper back to the airport if you were fearful of him, couldn't he?

A He could have. I just don't recall who had rental cars, who didn't have rental cars at the time. I can't – I'm sorry. I can't recall.

Q Okay. And then you hurried to the airport, you dropped Mr. Hoeper off, and you came back? Isn't that what you testified to?

A Well, again, I was incorrect in my testimony.

Q Isn't that what you testified to, sir?

A I believe it is.

Q Okay. And that wasn't the truth when [832] you testified at that time; isn't that correct?

A I just said I was mistaken in my testimony.

Q This event that was so traumatic for you, do you recall –

THE COURT: Hold on a second. Let's see if we – Ms. Steerman, can you see if we can get that blind to close?

THE WITNESS: Thank you.

THE COURT: It's an unfortunate occurrence in an old building. See if we can get – pull that down.

MR. McGATH: Your Honor, may I change the easel board?

THE WITNESS: Thank you, very much.

THE COURT: Can I see what you're –

MR. McGATH: It's the same document. A different version of the same document. Counsel, Exhibit 12.

Q (BY MR. McGATH) Now, Mr. Hoepfer got up in that arbitration and he testified to a different version of events, didn't he?

A Yes, he did.

Q And he testified after you, didn't he?

A Yes, he did.

[833] Q And he said what, in fact, happened was that you didn't appear to be afraid at all, you could see how – he could see how maybe you were – you thought he had blown up at him. Do you remember that?

A I don't recall the exact words, but something to that effect, yes.

Q And what actually happened then was that you and he went to the hotel together; isn't that true?

A I – I guess so. I believe so.

Q And then Mr. Hooper walked over to the restaurant known as the Bungalow Billiards; right?

A I don't know if he walked there or how he got there. I'm not sure.

Q Yeah. There was a restaurant close to the hotel; right?

A Yes, there was.

Q Where you and Mr. Hanneman, the first officer, were sitting down at a small round table, having drinks and some food; isn't that right?

A We were having dinner. I don't know whether it was a small round table. I couldn't tell you. But we did go for dinner that evening. That's correct.

Q And when Mr. Hooper came in, you invited him over; isn't that right?

[834] A That's false.

Q Mr. Hanneman invited him over?

A Mr. Hanneman pointed out Mr. Hooper as he walked into the front door of the restaurant. He asked if he could invite Bill over to sit with us. I told him I didn't really care to speak with Mr. Hooper that evening, but Todd, being a union representative here in the Denver domicile, seemed to have been friends with Mr. Hooper. And I said, If you want to invite Mr. Hooper over, feel free, but I wish not to engage in conversation with the man.

Q Okay. And Mr. Hoeper testified to those events in that arbitration; right? Something to that effect?

A Something to that effect, yes.

Q And he – that refreshed your recollection as to what you heard; correct?

A I'm sorry?

Q That refreshed your recollection about the events that happened after this trauma that occurred to you; right?

A Yes, it did.

Q But you didn't correct your testimony at the arbitration, did you?

A I spoke to our counsel, Charles –

[835] Q I don't want to know about what you spoke to your counsel about.

A You want the answer, don't you, Mr. –

Q If you want –

THE COURT: Stop. Mr. McGath, you get to ask questions. Mr. Doyle, you get to give answers. We're not going to sit here and arm wrestle between the two of you.

MR. MCGATH: Right.

THE COURT: That's not how a court trial works.

MR. MCGATH: Your Honor, I'm concerned about attorney-client issues, and so my point was I don't want to know what he told his attorney.

THE COURT: I understand that.

MR. MCGATH: I don't want to arm wrestle.

THE COURT: Gentlemen, what I'm talking about is what my grandmother used to say when she said, Bobby, I don't like your tone. That's what I don't like here. And I don't want – the jury doesn't have time to listen to arm wrestling between counsel and a witness.

MR. McGATH: Right.

THE COURT: Question, answer, question, [836] answer. Your turn, Mr. McGath.

MR. McGATH: Thank you, Your Honor.

Q (BY MR. McGATH) You did not correct your testimony in that arbitration, did you?

A I wanted to correct my testimony. I spoke with legal counsel –

Q Mr. Doyle, please.

THE COURT: If the objection is the answer is nonresponsive, the objection is sustained.

MR. McGATH: Thank you, Your Honor.

Q (BY MR. McGATH) Mr. Doyle, you did not correct your testimony, did you?

A I was unable to correct my testimony at that point in time.

Q You could have taken the stand again and fixed it, couldn't you?

A I asked counsel to do that and he said that it didn't matter at that point in time, so I did not retake the stand.

MR. McGATH: Move to strike. Nonresponsive, Your Honor.

THE COURT: I'm going to let that one in. The objection is overruled.



Q (BY MR. McGATH) Okay. So even though you had given incorrect testimony, your attorney [837] advised you not to correct it; is that right?

A That's correct.

Q All right. Mr. Doyle, you never told Todd Hanneman on October 14th or any point in time that Mr. Hoeper had constituted a threat to you, did you?

A No, I did not.

Q You didn't tell Todd Hanneman that Mr. Hoeper had caused you to fear for your own safety, did you?

A No. I told him I was uncomfortable being around him, but I never used those exact words.

Q Now, if you'd turn to Exhibit 13, let's look first at – page 9, please. There's a highlighted note on page 9 of the small book in front of you that says, "Letter to Scott Orozco regarding performance." Do you see that?

A I do.

Q That letter does not exist anymore, does it?

A I don't know.

Q You don't have a copy of that letter, do you?

A I don't.

Q If Mr. Orozco indicates in his testimony [838] that he doesn't remember receiving any such letter, would you have reason to doubt him?

A I would, because I wouldn't have written in remarks a letter to Scott Orozco regarding performance if I truly did not give him a letter.

Q And if Mr. Orozco has indicated that he looked through the files and he couldn't find such a letter, would you have any reason to doubt his testimony?

A If Scott Orozco said he doesn't have the letter in Mr. Hoeper's file, then I have no – no reason to doubt that.

Q Now, we talked earlier about the comprehensive notes you make following sessions. And the next page, page 10, of Exhibit 13 is the notes; right?

A That's correct.

Q There's nothing in this note indicating that Mr. Hoeper in any way caused you any issues; isn't that true?

A No. Because those notes were taken while we were still inside of the simulator.

Q And you've never talked to any of the other check airmen about Mr. Hoeper and advised them that Mr. Hoeper constituted any kind of a threat; is [839] that right?

A I was very careful to not have my check airmen deal with Mr. Hoeper with any presupposed notions about his performance or what kind of a person that he was. I always wanted my check airmen to treat the applicants as though they had never seen them or heard anything about them before, so that they all had a fair shake.

Q Mr. Doyle, let's talk about what the FA – the TSA says you told them. Page 20 – excuse me. Mr. Doyle, please turn to Exhibit 24. This is an FOIA request and a response by TSA to that FOIA request. And, Your Honor, can I explain to the jury what an –

THE COURT: That's what a witness is for. Let's ask him a question.

MR. McGATH: All right.

Q (BY MR. McGATH) Mr. Doyle, do you know what a FOIA request is?

A Freedom of Information Act.

Q Now, Air Wisconsin, after these events, didn't want to talk to Mr. Hoyer about what happened and how he got pulled off that plane, did you?

A It wasn't my position to speak with Mr. Hoyer about this.

\* \* \* \*

[842] Q It says, "Unstable pilot in FFDO program was terminated today." You were the only person that talked to TSA from Air Wisconsin, weren't you?

A I don't know.

Q You know of nobody else, do you?

A I'm not sure.

Q TSA got this information from somebody, didn't they?

A I don't know.

Q Mr. Doyle, I find it coincidental that this document produced to me in 2007 pursuant to the appeal contained similar language to the language that you want now to redact from your statement. Do you find that curious?

MR. MARK: That's objected to as argumentative.

THE COURT: It is argumentative. The objection is sustained.

Q (BY MR. McGATH) Mr. Hoeper was not unstable; correct?

A I don't know.

Q In fact, you've indicated that if you had said that, you would have been mistaken and you actually wanted to withdraw it from the notes; right?

A You asked me if I would – I forget how [843] you worded the question at the time. Again, we're going back a year and a half or so.

Q Let me try it again for you.

A Okay.

Q You wanted to withdraw the words or any reference to stability from the Air Wisconsin documents, didn't you?

A Yes, I did.

Q And you wanted to do that because you didn't think you were qualified to make any judgment about anybody's stability, didn't you?

A I kind of wish that none of this had ever happened and I didn't really care to be in Denver that day in a deposition over this whole case, so that was what I was referring to when I said if I would – if I could, I would change the words that were on the documents, yes.

Q Do you think maybe Mr. Hoeper wishes the words were changed on the document?

A I don't know. He's never spoken to me since the event.

Q Now, the document in front of us contained some other things. Mr. Hoeper had not been

terminated as of December 9th, had he? Or had he been? December 8th, excuse me.

[844] A He had not been terminated as of December 8th.

Q So to the extent it was represented to TSA that he had been terminated, that was untrue; correct?

A He had not been terminated at that point.

Q And Mr. Hoeper was not carrying a weapon on that day; correct?

A We found that out after the fact, yes.

Q And you could have found that out before you picked up the telephone call – if you had just called him; correct?

A If we would have been willing to take his word for it, I guess the answer is yes. But we don't run the TSA or the FFDO program.

Q Well, you didn't make that call to TSA until sometime after 3 p.m. Eastern Time; right?

A That's correct.

Q You had three and a half hours to attempt to contact Mr. Hoeper to determine whether he had his weapon, didn't you?

A Again, this is TSA's program, this is not Air Wisconsin's program, so we took the path that we felt was the best case and we contacted TSA.

\* \* \* \*

[871] arrested and indicted. It was Jimmy Cliff and the Oneness Band.

Q Mr. Winn, did you review in this case whether Mr. Hoeper was a threat or suspicious on December 8, 2004?

A I reviewed all the paper that I was able to read, and I do not consider him a threat.

Q Did – I was just going to ask, do you have an opinion as to whether Mr. Hoeper was a threat or suspicious on December 8, 2004?

A No. 1, he wasn't suspicious. And suspicion, in my mind, is somebody who does some kind of act, such as a passenger who approaches a ticket agent, profusely perspiring and it's an air conditioned situation and begins to not look at the ticket agent. Ticket agents are trained to look for body movements and facial expressions.

And then the person checks in and is given a boarding card and when he gets to the gate, decides he's not going to fly as the plane is being loaded. He walks up to the boarding agents and tells them he's not going to fly and, in fact, he's checked a bag.

There's a lot of things that begin to take place at that time, and one of them would be – [872] those are all suspicious acts and, therefore, the person wouldn't be allowed to get the bag back without being inspected and, of course, he would be interviewed – or she – by law enforcement.

Threat is when somebody actually writes or verbally threatens you or me with bodily harm or any other individual with bodily harm. And those criterias that I'm used to were not exhibited in this matter at all by Mr. Hoeper.

Q Mr. Winn, was there anything threatening or suspicious about Mr. Hoeper returning home from a

training assignment at the request of Air Wisconsin on December 8, 2004?

A No. He had been ordered by, indirectly, Mr. Schuerman, who had been his instructor, who was given an order by Mr. Doyle to tell him to go home. And, subsequent to that, due to his inability to make a particular flight, he called back to Chicago – to Appleton, Wisconsin, and he was told by another officer of the company that he would then get another opportunity to fly home or would be given a pass to fly home.

Q Mr. Winn, is there anything threatening or suspicious about stopping the simulator training event to call ALPA legal?

[873] MR. MARK: Objected to as lacking foundation, Your Honor.

THE COURT: Overruled.

A Would you repeat that question, please?

Q (BY MR. RIETZ) Sure. Mr. Winn, do you have an understanding in this case from your review of all the documents that Mr. Hoeper stopped the simulator training session on December 8, 2004, so that he could call ALPA legal?

A Well, he – he didn't stop the simulator. He stood up and apparently – words were exchanged with Mr. Schuerman and the simulation flight instruction stopped.

Q And then do you have an understanding that Mr. Hoeper went to call ALPA legal?

A It's my understanding that, eventually, he did, yes.

Q And is – in your opinion, is there anything suspicious or threatening about Mr. Hoyer exercising his right to call ALPA legal?

A No.

Q Was there anything threatening or suspicious about Mr. Hoyer when he went to the United ticket agent to get his ticket on December 8, 2004?

MR. MARK: It's objected to as lacking [874] foundation, Your Honor.

THE COURT: It's sustained.

A There's nothing recorded –

THE COURT: Excuse me. When I sustain the objection, it means you can't answer the question.

THE WITNESS: Sorry.

THE COURT: Not a problem.

Q (BY MR. RIETZ) Mr. Winn, I believe I heard you testify earlier about ticket agents provide a safeguard for threatening or suspicious passengers. Is that accurate?

A That's correct. Yes.

Q And, in this case, do you have – do you have an understanding that Mr. Hoyer went to receive his United ticket from a ticket agent?

A He did, yes.

Q And would there be anything suspicious or threatening about Mr. Hoyer going to get his ticket from the United ticket agent?

A No.



Q And do you have – do you have an understanding, sir, that Mr. Hoyer went through the security at Dulles International Airport?

A Yes.

Q And I think I heard you testify that [875] Dulles International Airport is one of the highest secured airports in the country; is that right?

A That's correct.

Q Would you explain to the jury why that is?

A Well, the reason for it is that it's in close proximity to what we call the seat of Government, SOG. It's a term used by Federal law enforcement agencies. And it has direct – some of its routings in and out of that airport are direct access – have direct access over the City of Washington, D.C., the nation's Capitol. Its security and the security at Reagan International Airport are two of the highest levels and have been since 9-11. Let me back up. They were higher before that, too.

Q And, sir, do you have an understanding that Mr. Hoyer went through security at Dulles International Airport with his person and two bags without incident?

A That's my understanding, yes.

Q Was there anything threatening or suspicious about that?

A No.

Q And then, sir, do you have an understanding that he waited in the gate area for his [876] flight to board and then depart?

A Yes. It's my understanding he waited for a considerable amount of time.

Q Is there anything threatening or suspicious about that?

A No.

Q And then, sir, do you have an understanding that Mr. Hoeper boarded the United flight without incident?

A Yes.

Q And, at that point in time, we have another safeguard, and that would be the flight crew; correct?

A That's correct.

Q And so if Mr. Hoeper were exhibiting suspicious or threatening behavior, the flight crew would take note of that; true?

A Yes. They are trained to observe passengers entering the airplane and look for any suspicious actions that passengers do.

Q And while Mr. Hoeper was also waiting in the gate area, there are – there are also employees of United that would have an opportunity to observe him; is that correct?

A That's correct.

[877] Q And in this particular case, no United employee came up to Mr. Hoeper and made any mention that he was acting in a peculiar manner; is that true?

A That's true.

Q Based on all of that, Mr. Winn, was there any reason whatsoever that an emergency call needed to

be placed to the TSA approximately three and a half to four hours after Mr. Hoeper's training session ended on December 8, 2004?

A No. There was no reason to make that call.

Q Despite the fact there was no reason to make the call, Mr. Winn, we know that, in fact, a call was made; true?

A That's correct.

Q And are you critical of the manner in which Air Wisconsin placed the call to TSA regarding Mr. Hoeper?

A I'm very critical of it.

Q Why are you very critical of that call?

A It created a dangerous situation involving both airline employees, crew members of a flight, United Flight 921, and also the passengers, which included women and children, and it placed all those people in an extremely dangerous situation.

[878] MR. MARK: Your Honor, I'm going to move to strike. It's completely irrelevant to the issues in this case.

THE COURT: The objection is overruled.

Q (BY MR. RIETZ) Mr. Winn, let's assume for a second that Air Wisconsin legitimately believed or had some reason to believe that Mr. Hoeper could have been a threat or was suspicious. Are you following me?

A Yeah.

Q What should Air Wisconsin have done instead of waiting three and a half to four hours to place an emergency call regarding Mr. Hoeper?

A Well, the first thing that should have taken place, if that was the case, was to make a phone call to United Airlines and – and stop the – the travel. But that can be done electronically. You can electronically arrange transportation which are called passes, whether it's nonrevenue status or it's a positive space pass, that can be terminated. I've seen that done when an individual needs to be drawn back to an office or they need to talk to them about something else. It may not be a security issue. It may be something else.

So there are a lot of capabilities that [879] can stop transportation from taking place before anybody even gets past the ticket counter. If they get past the ticket counter, there is the potential to stop that travel at the – at the boarding gate, as well.

Q So they could have stopped Mr. Hoeper's travel by, for instance, not even booking his flight; true?

A That's true.

Q And then if they had gone ahead and already booked his flight, what could they have done?

A Again, you'd stop it electronically with the computer system that's available with every employee, I'm sure the – the personnel at the headquarters for Air Wisconsin had that ability, and if not, you can pick up a phone and make a phone call and talk to your counterpart with the other airline and, in this case, the Air Wisconsin Corporation actually had a flight officer in Dulles. They also had a general manager at Dulles. Besides, the aircraft that Mr. Hoeper was going to be flying on would have been United and they have a flight officer and a flight office and also a general manager and staff.

Q And, sir, they – is it your opinion that Air Wisconsin then should have called United Airlines if they had already booked the flight?

[880] MR. MARK: It's objected to as repetitive.

THE COURT: I'm sorry. I didn't hear the objection.

MR. MARK: Repetitive.

THE COURT: It is cumulative. The objection is sustained.

Q (BY MR. RIETZ) Mr. Winn, in your opinion, who else could Air Wisconsin have contacted regarding Mr. Hoeper on December 8, 2004?

A Well, each airline has an operations center at their headquarters. And that operations center operates 24 hours a day, seven days a week. United Airlines has an operations center in Chicago. And that is called OPB. And that operations center has the capability to reach out to any one of its stations, 24 hours a day, seven days a week, and it is staffed with flight officers, flight attendants, supervisors, schedulers, weather specialists, and other operational scheduling people.

And all of those people have the capability to reach any station, any time, and inform them to do anything they want them to do. Air Wisconsin, I'm assuming, has the same capabilities, as they are a member of the Star Alliance with United [881] Airlines.

Q Mr. Winn, do you have any opinions as to whether Air Wisconsin should have contacted Air Wisconsin employees regarding Mr. Hoeper?

A Well, that would – again, would have been after putting a message out to stop his travel. You have the capability to reach to their own staff. Again, they have

a flight office and a flight manager in Dulles and they have a general manager in Dulles.

Q Should Air Wisconsin have contacted Mr. Hoepfer?

A You have that capability, as well. I mean, you can page the person. You had a situation where it's my understanding Mr. Hoepfer had talked – talked to Mr. Orozco and, during that conversation, there was no indication that his flying was to stop. In fact, he was rebooked on another flight, as he hadn't made the first flight. So, again, the conversations to reach to Mr. Hoepfer were available.

Again, this is several hours after this whole incident had begun. And so you have the ability to make a phone call to the PanAm center to start with, where they were training, and talk to Mr. Hoepfer there or, again, have him paged at Dulles.

Q Now, sir, when you're talking about [882] doing all these things, would you wait three and a half to four hours, or when would you do this?

A You would do it immediately.

Q And so are you talking about when Mr. Doyle gets off the phone at approximately 12:05 with Mr. Schuerman, these actions should have been taking place at that point in time?

A Well, they should have taken place right – immediately.

Q Sir, do you have an opinion as to whether Air Wisconsin promoted passenger safety by making the emergency call to the TSA in the manner in which it was made?

A No. There was no passenger safety – by making the call to TSA, it set in motion a very dangerous situation. And I described it before. But, basically, once you start the motion of the TSA and law enforcement response of emergency vehicles, a utility vehicle, snowplow, if you will, at night, responding to stop an airplane, have it returned to a gate, you’ve put all kinds of things in motion for the ground personnel that are working around airplanes. The individuals on the airplane, the pilots of the airplane are immediately – become very nervous, if you will. And their response, I’m sure, in their heads is why

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[884] the plane. What’s going through their head?

A Well, they have been presented with information –

MR. MARK: Your Honor, I’m going to object as to foundation. It’s totally speculative.

THE COURT: Sustained.

Q (BY MR. RIETZ) Mr. Winn, would you tell the jury what the risk is to a cabin full of passengers and crew when we have the emergency response that we had on December 8, 2004?

MR. MARK: That’s objected to as lacking in foundation. It’s also irrelevant.

THE COURT: Sustained.

Q (BY MR. RIETZ) Mr. Winn, we had testimony in this case about the PSA and the FedEx incidents. Are you familiar with those incidents?

A Yes, I am.

Q Let's start with the PSA incident. I believe Mr. Doyle testified to that today. What's your understanding of what the PSA incident is?

A The PSA incident was a BAe-146 airplane that left Los Angeles in 1987. And that situation was a disaster because an individual who had been terminated by an airline some days before the actual flight had retained his identification badge and had a [885] weapon and bypassed security in the terminal at LAX and gained access to the aircraft with – carrying the gun. He gained access to the airplane with a pass. He invaded the cockpit after he killed the flight attendant while the flight was in motion. He subsequently shot both pilots.

I was part of a team that – knew the director of security with PSA and I was very involved with the critique on that situation. The identity of the individual who caused it was made because one of his fingers was found at the crash site. The plane actually went at a 90-degree angle into a mountain at San Luis Obispo and killed all the people on the plane because there was no crew left. They had all been killed.

Q Is this case that we're here about today anything like the PSA case?

A No.

Q Why do you say that?

A That individual had made threats. It was known by the security people within PSA that he was a problem. It was at a time when US Air and PSA were merging and there was a lot of labor dispute in process.

And there could have been interdictory [886] things taking place to prevent that individual from flying.



No. 1, he was no longer employed, so he didn't have the right to fly. And, No. 2, he breached security with a – if you will, an altered badge.

Q Would you now tell the jury about the FedEx incident?

A The FedEx incident involved a disgruntled pilot who was flying on a pass on a DC-10, and after the plane was in the air, he gained access to the cockpit. He had a weapon, an ax. He assaulted the crew, critically wounding one of them. Very critical and subsequently wounded another one. But, in spite of the wounds suffered by the captain of the plane, he was able to turn the plane around and bring it back to Memphis. All parties survived. That individual, again, had a record of threats. There was some disgruntlement involved. I don't recall if he was terminated.

Q Again, is this case anything like the FedEx case?

A No.

Q Why do you say that?

A Because there were threats involved and there was suspicious activity that had taken place beforehand and the individual was known to be a

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[926] became employed by the TSA within five months after 9-11, 2001, when the TSA was formed; correct?

A I saw the name, yes.

Q Well, did you also learn that he served as an assistant administrator – as an associate administrator, and, for a period of time, as the deputy

administrator of the Transportation Security Administration?

A Yes. I saw he was a political appointee.

Q I didn't ask you that. What's the answer to my question?

A I saw that he was there, yes.

Q All right. Now, the TSA wanted all airlines to report any suspicious incidents after its formation, did it not?

A Yes, it did.

Q And it didn't want air carriers to wait to make a determination as to whether or not an incident was an actual security threat, did it?

A It did not want any delay.

Q And, as a matter of fact, the TSA policy was, when in doubt, report; correct?

A Yes.

Q Now, you've drawn some conclusions in

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[931] dissimilar to the incident that occurred on December 8, 2004. Was that your testimony?

A Yes.

Q The first one was a PSA Flight 1771, and that was a tragic crash that occurred in December of 1987; correct?

A Yes.

Q There were a number of similarities from that incident to the circumstances that were involved in the December 8, 2004 incident, weren't there?

A There might have been some similarities, but I don't see them, sir.

Q Understood. Well, ironically, it was the same kind of airplane that Mr. Hoeper was trying to train on, wasn't it?

A Yes.

Q And it also involved an employee who had lost his job, didn't it?

A He lost his job – pardon me – several days before the incident, sir.

Q About three days before, wasn't it?

A Yes.

Q And so that means that he had in that case, after losing his job, three days instead of just a matter of hours before he boarded the airplane; [932] correct?

A Yes.

Q There wasn't any suspicious behavior in connection with that individual, was there?

A There was.

Q Well, as a matter of fact, he was able to get on board the aircraft, wasn't he?

A He falsified his badge. I don't know where he got his pass to get that far on to the airplane, but the answer is yes, he did get on the plane.

Q Sure. And you told us yesterday about numerous checkpoints where somebody with suspicious behavior would be stopped; correct?

A I did, yes.

Q So whether it's at the ticket counter or going through security or at the gate or passing the flight

crew or passing the flight attendants, those are all checkpoints where a suspicious person could be stopped; isn't that true?

A That's correct, sir. But that was 1987, when there wasn't even a ground security coordinator training program. As a direct result of this incident, the Secretary of Transportation did a shut-down of the aviation security business for eight hours.

[933] Q Well, what happened –

A During that time, sir – I'm not finished.

Q Sure. Go ahead.

A And during that time, there was an – an immediate meeting in Washington, D.C., at which I was at and the Secretary of Transportation, the Assistant Administrator for Security, the director of ATA security, all the airline security directors were at that meeting. And, at that meeting, it was established over several – a period of days, three, four days – I don't remember the exact amount of days. A program was established, an agreement with the airlines and the FAA security that there would be a – an established security program for both domestic U.S. travel for the airlines and international. Domestic would be composed of approximately 28 hours. The international would be composed of in excess of 35 hours. And that was what was established immediately after that.

Profiling, interviewing of passengers all became a factor after that date in 1987.

Q Are you finished?

A I'm finished.

Q Thank you. Now, what was also established as a result of that tragic crash was that, [934] if an employee was terminated, he would have to lose his security badge immediately; correct?

A Well, there was a standardization program as part of that package that the airlines would establish a – an approved ID program. Up until that time, there was – there were different methods of identification as an employee to get on and off airplanes. After that was – after the GSC program and subsequent to those meetings with the Secretary of Transportation, a standard ID program was established for each carrier. It had to be approved by the FAA security group.

And this individual who created that crime, it was my understanding, had his badge taken away, but he had somehow falsified another type of badge to get to the point he did on the aircraft. But we know that he bypassed security.

Q And the answer to my question, sir?

A If you would repeat your question, I'll be happy to –

Q Sure. As a result of that tragic crash, part of the standards that were established was that the security badge of any individual terminated from employment with an airline would be confiscated?

A That's correct, yes.

[935] Q Thank you. And with respect to Mr. Hooper's situation, he still had his security badge on December 8, 2004, didn't he?

A Yes. It's my understanding he wasn't terminated yet.

Q And that would permit access to the aircraft, wouldn't it?

A Yes.

Q As a result of that incident, 42 innocent people lost their lives, didn't they?

A On the PSA flight, yes.

Q That's what we're talking about.

A Yes.

Q Would you agree with me that it's better to take precautions than to have a repeat such as the tragedy involved in that PSA flight?

A I would agree.

Q Now, you also mentioned FedEx 705. And that involved a disgruntled pilot who was about to be fired, didn't it?

A Yes.

Q And there were no prior threats from that individual, were there?

A Little pieces that I know from the security department at Federal Express, he had made [936] some threats in the past and there was some instability that had been noted. I don't know the whole package on that man.

Q All right. So you don't know what suspicious behavior there was that would have gotten by the various checkpoints that you told us about yesterday; correct?

A That's correct. But I may add to this, sir, that Federal Express operates in a different mode of operation than a passenger carrier does. They board

their flights on the ramp for nonrevenue passengers, which is an airline employee at their various hubs, next to their freight buildings. They have some screening and, in some cases, they do not. They do now. But at that time, I don't believe that they had screening because I've seen their operations in different locations.

So it was a trust matter of somebody who was going to be riding as a crew member – I'm sorry – as a nonrevenue passenger in a crew compartment, because, on those freighters, there's X number of seats that are behind the cockpit where an employee can ride.

Q What we know, Mr. Winn, is that it was a disgruntled pilot who was on board the aircraft that had the intent to crash the aircraft into the FedEx [937] headquarters in Memphis; isn't that true?

A That's true, yes.

Q And, since you've been there, you know that the FedEx headquarters in Memphis is a campus that has thousands of people working there, doesn't it?

A Yes, it does.

Q And if that disgruntled pilot had been able to succeed with his plan, there would have been a tremendous loss of life, wouldn't there?

A There would have been, yes.

Q And would you agree with me that it's better to take precautions than to have the kind of repeat of the tragedy that occurred with the FedEx flight?

A Yes.

Q Now, United Airlines is a – what they call a legacy carrier, isn't it?

A Yes, it is.

Q And is it the second largest air carrier in the United States?

A Sir, I wouldn't know right now. There's different figures by the day.

Q We know that it's certainly in the top three, isn't it?

A Yes.

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[962] this operations control center?

A Yes.

Q How far away from you were they?

A Not much more than from me to you.

Q All right. And can you tell us a little bit about some of the security incidents that you have responded to in your career.

A I have been involved in extortion plots, bomb threats, potential bombs on aircraft, aircraft incidents, breaches of security. Just about everything you can think of relative to a customer – unruly customers. Those kinds of things as well as responses to customers going out the wrong door, for example. Door alarms.

Q If United Airlines was to learn about a passenger who might present some kind of threat to an outbound aircraft, what steps can be put in place?

A It depends on how much time you have. If you're – if you are notified early enough, you would make sure that you've contacted your dispatch office, you've contacted the local authorities, and you've



contacted all of your key members. Again, depending upon the amount of time you have.

Q What can be done to intercede with a passenger who is coming to the airport who may be [963] perceived as a threat?

A Well, again, depending upon the time, from United's standpoint, we would designate in their passenger name record that at the first point of contact with any of our employees, that employee is to contact a manager. If they were using the self-service unit, that unit would have been designated to say "see agent." The agent would have then seen that they need to contact the manager. That – that would have been done before the security checkpoint, in most likelihood.

Q And for those of us that might not have flown recently, what is a self-service center?

A They are a kiosk in the lobbies of airports that allow the customer to check themselves in. Automated, using a credit card, for example. It will give them their boarding pass.

Q And is there a – a monitor that projects information back to the customer after he slides in his identification to obtain his boarding pass?

A Yes.

Q And did you indicate that a message would come up on that monitor?

A Yes. We can control those monitors to [964] say "see agent," meaning see the customer service representative.

Q So the person would be denied a boarding pass at that point?

A They would not have been issued one out of that machine. They would have had to see an agent somewhere in the airport to obtain their boarding pass.

Q Okay. What could next have been done, assuming that the person involved might have gotten past the initial point before United had been notified?

A If they had gone through the security checkpoint, for example, were out in the concourse somewhere, we would have made efforts to find that person. We would have already contacted the authorities, including if we thought there was a threat of some sort of – local P.D., we would have tried to find that person, talked to them, and possibly even searched their bag if we thought there was some circumstances we needed to follow up.

Q Have you had occasion to do that over your 18 years as a ground security coordinator?

A Several times.

Q And then what happens, based on your contact with them?

A We make a determination whether they be [965] allowed to board the aircraft or not.

Q And now, assuming that the person – let me strike that.

I want to change subjects with you. Were you the ground security coordinator and manager of hub operations on December 8th, 2004?

A Yes.

Q Did you learn about a pilot who was being pulled off of one of your airplanes?

A Yes.

Q How did you learn about that?

A The control center called me, asking me what I knew about the situation.

Q And what next happened?

A I advised them that I didn't know anything about the circumstances and wanted to know what they knew.

Q What were you told?

A They said they would call me back. Only that the TSA was involved. That the TSA had contacted them and had told them that there was a – an Air Wisconsin employee who had been sent away from training. He was on his way to Denver, probably to be terminated. They said they thought – the call said he was mentally unstable and that he very well may have [966] his weapon. He was an FFDO.

Q What was your reaction to this?

A Huge concern, because when he called back, he also told me that the plane is being called back to the gate, which I didn't know it had already departed.

Q And why did that cause you additional concern?

A Well, lots of reasons. One is that we've got customers on – on board that aircraft, I have employees on board those aircraft and around those aircraft – or that aircraft. And there was TSA already there as well as airport police.

Q Okay. And you mentioned you had concerns about customers on the aircraft. What were your concerns about the customers on the aircraft?

A Well, I didn't know what had been told to the pilot on why they are coming back. I didn't know what the reaction on board would be of customers if they knew why they were being brought back. And, you know, your instant thought is if you were on that aircraft, what would your thoughts be.

Q And what would your thoughts have been if you had been on that aircraft?

A Hugely concerned.

[967] MR. MARK: Lack of foundation, Your Honor.

THE COURT: Overruled.

A Hugely concerned.

Q (BY MR. MCGATH) Why do you say that?

A Because, you know, this was not that long after 9-11, and, you know, with the mind-set of most folks, concern. This would have been an alarm to me.

Q And did you have any concerns about the fact that the response, including armed security vehicles – excuse me – security vehicles, a snowplow, and armed officers was about to take place?

A Yes. Based on the limited information that I had, I obviously – this had to be treated quite seriously.

Q And what was your concern about that?

A Well, if I have armed officers in a loading bridge and I believe that there's a potential for an armed person on the aircraft, I've had no opportunity to check with anyone to see if there are Federal air marshals on board or anyone else that is designated – there could have been an LEO or law enforcement off-duty

aboard there with a weapon. I didn't know if anybody knows that or not.

[968] Q And why would that concern you?

A Well, I mean, you – you're hoping that no one is going to react to something or overreact on board of an aircraft, thinking that there is something going on.

Q What was your reaction when you learned that you had not been contacted about this?

A Well, my reaction was huge, again, concern. Generally, what happens is the airlines communicate to their dispatch offices. Again, dependent upon the amount of time that you have. Normally, United Airlines dispatch would have been contacted by both the TSA and the – the other carrier in this type of situation and they would have contacted me.

Q And did you talk to the Air Wisconsin representatives in the operations center?

A Yes, we did.

Q And what did you talk to them about?

A We asked them what communication they had and if they knew what the circumstances were and which – which they advised us they had not been contacted.

Q So you were told by Air Wisconsin's own people that Air Wisconsin had not contacted them; is [969] that right?

A That is correct.

Q Did that cause you concern?

A Yes, it did.

Q Why?

A Well, one, had we been communicated with early enough, we would have never boarded the – the flight. The second part was we'd have never closed the door. And the third part is we would have never pushed that plane back until this was resolved. If the TSA – if we had to call the TSA and they were off campus, which they were, it takes a few minutes for them to get them. We're going to stall so all the parties can get there and respond appropriately.

Q This aircraft did not belong to Air Wisconsin, did it?

A That's correct. It was ours.

Q And did that also cause you concern?

A Yes, it did.

Q What's that concern?

A Well, that is, again, that's our airline, you know, our passengers, and we're responsible for those. Me in particular as the overall chief of that particular airport. You know, I've got employees working in and around that aircraft. It just

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[978] A At the time that I was talking with Mr. Linnehan, he told me that they were called, that they responded because he had some people who happened to be on the grounds, and that they responded and that, again, they did not contact us because they believed we were called.

Q (BY MR. McGATH) Okay.

MR. MARK: Your Honor, I'm going to move to strike. It's hearsay.

THE COURT: Overruled.

Q (BY MR. McGATH) Would proper protocol have been for Air Wisconsin to have contacted you first?

MR. MARK: It's objected to as leading, Your Honor, and also –

THE COURT: That's sustained.

Q (BY MR. McGATH) What would proper protocol have been?

A Again, depending upon the circumstances surrounding the incident – I mean, you always want to let the appropriate agency know, but, in this particular case, the carrier should have been advised, as well.

Q And if the carrier had been advised – and I want to take you to a little time line here, [979] Mr. Clevenger.

MR. McGATH: Have we got a board? A chart?

Q (BY MR. McGATH) There's been evidence in this case – there's been evidence in this case that Air Wisconsin was initially contacted about the – the initial telephone call to Air Wisconsin from one of its employees that was the genesis of this event on December 8th that took place at noon Eastern or thereabouts. The gentleman was to depart at somewhere after 4 – I think it was 4:15 or 4:20. Tell us what could have happened along these lines between 12:00 noon and 4:15 had appropriate protocol been followed and United Airlines been contacted by Air Wisconsin about a security concern that Air Wisconsin had about a United Airlines airplane.

MR. MARK: I'm going to object on the basis of foundation and also surprise.

THE COURT: I think we're going to stop for a while here. It's about time for a recess anyway. Ladies and gentlemen, we're going to take our morning recess at this point in time. Please remember my admonition about discussion of the case and what the ground rules are for that. It's about 10 minutes till. We'll start at about 10 minutes after. Thank you.

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[984] jury.

(The jury enters the courtroom at 11:15 a.m.)

THE COURT: All right. You can be seated. The record should reflect the jurors have returned. We'll resume with Mr. Clevenger's testimony.

Mr. Clevenger, please remember that you are under oath. Mr. McGath.

Q (BY MR. MCGATH) Mr. Clevenger, I'll follow up with a question that was pending when we took our break in just one second. Excuse me, folks. Had you dealt with Air Wisconsin over the years on security issues?

A Yes.

MR. MARK: Objected to as irrelevant, Your Honor.

THE COURT: Overruled.

Q (BY MR. MCGATH) And did Air Wisconsin have – we talked about the representatives who were in the operation center on behalf of Air Wisconsin. Can you tell me who the contacts at Air Wisconsin would have been that you were most closely associated with?

A Chris McLaughlin was their director of operations at Dulles.



Q And did you say Chris McLaughlin – I [985] didn't hear you because –

A Yes. Chris McLaughlin.

Q And did you work closely with Mr. McLaughlin?

A Yes.

Q And where was he located, physically, at the Dulles airport?

A He had an office in our operation in the sterile side.

Q And did Mr. McLaughlin know at all times how to reach you or one of your associates?

A Yes, he did. He actually spent a lot of time in the SOC.

Q The SOC?

A Station operations control center.

Q Now, I was asking you questions earlier before we took a break. The question was if Air Wisconsin had followed appropriate protocol and called you throughout this process about their concerns for the security of your aircraft and the passengers on board your aircraft, what could have been done – and I'm going to walk you through a time line. Okay?

A Okay.

Q The call comes in that precipitates this event about noon Eastern from an Air Wisconsin employee [986] to Air Wisconsin in Appleton, Wisconsin. And I want you to assume that to be the case, Mr. Clevenger. The flight with Mr. Hoepfer is to depart somewhere around 4:00. I can't remember if it's 4:15 or 4, but it's somewhere in that area. Okay?

A Okay.

Q What steps could have been taken by United Airlines to avoid the return to the gate in a national security measure if a call had been placed earlier?

MR. MARK: Objected to as to being irrelevant, Your Honor.

THE COURT: I'll sustain the objection with regard to the characterization.

MR. McGATH: All right. Let me rephrase, Your Honor.

Q (BY MR. McGATH) What could have been done to prevent the need to return this aircraft to the gate if a call had been made earlier, using this time line, for example?

A You're referencing noon, I take it.

Q Yeah. 12 noon. High noon.

A Okay. Yeah. At that point in time, let's say that the call would have come to me or to our dispatch office. We would have contacted the TSA, [987] explained what – what information we have, and our dispatch office, along with the TSA and I would have had a call and we would have walked through what we – we were going to do. The TSA normally or often would say, Look, we're going to join you, and we would have tried to meet the passenger either in the lobby or when he checked in somewhere.

Q Okay. And so that would be before the passenger even gets to the ticket stand; right?

A Yes. I mean, they would have actually been at an agent at that time, because I didn't know who he was.

Q And you mentioned earlier that you could have put an electronic hold on that passenger's ticket; is that right?

A Yes.

Q And how is that done?

A Our control center could have done that, as well as our – our dispatch could have done that. They – on the self-service unit, it would have not been able to issue a boarding pass, period.

Q And what would the effect of that have been?

A It would have said see a ticket agent.

Q And in stopping that process there, [988] where is Mr. Hoeper at the Dulles International Airport?

A He's in the lobby.

Q Okay. Now, Dulles is a unique airport because there's ground transportation that actually takes you out to the gates; right?

A Yes. Mobile lounges.

Q Okay. Assuming that Mr. Hoeper had already received his boarding pass prior to a call, what next could have been done by United Airlines to prevent the incident that actually happened?

A Well, again, depending upon the time frame and if we're going to go with noon, then the TSA would have been involved. They would have checked to make sure that he had declared at the checkpoint. So they would have had that piece of information and they would have known if he had a weapon or not. If not, we would have had to grab him at a gate.

Q Let's – let's talk about the security checkpoint at Dulles International Airport. First of all, is it similar to the checkpoints that we've all seen at DIA?

A Similar.

Q Okay. Tell us how passengers get to the security checkpoint at Dulles.

[989] A Well, after they receive their boarding pass, they go out, they get in a queue. Dulles is rather narrow in the lobby area, so there's pretty long queues if you've traveled through Dulles and they wind their way through to the checkpoints. There's two different locations that – one for employees, which would have been at the far right-hand side of the checkpoint and those with weapons or officers needing or – they would be at the far left where there's a private area to screen them.

Q Okay. And what information is given to security officials that would cause an interception in – for example, this particular case, if United had been called timely?

A Well, this – again, we would have met the person and probably, most likely, they – the TSA, if they felt the need, would have walked him over to the checkpoint. But, at the checkpoint, the passenger would declare that they are carrying a – or they have a weapon.

Q Okay. And is it – can you put a hold on a passenger at that security checkpoint?

A Not that I know of.

Q Okay. In other words – well, how would you know if he got there?

[990] A I would know by he signs a log that he has a weapon.

Q Oh, I see. Is there any way to get through the ordinary security checkpoint with a weapon?

A Not without going through the x-ray machines and the magnetometers.

Q And, in your experience, can you get a handgun through the magnetometers at Dulles in light of the events of 9-11?

A Not that I'm aware of.

Q And so, if Mr. Hooper has a weapon, he's got to go through the alternative check-in area; right?

A Yes.

Q And is it my understanding – is my understanding correct that that's a point to the left of the general boarding line?

A That is correct.

Q What happens there if you have a weapon?

A They will take them to a little discreet area that's adjacent to the security checkpoint and they would have had a conversation with him. They would have actually gone through the luggage and any carry-on bags he had and looked for the weapon and matched it up. The same with any ammunition or anything else.

[991] Q Are there others – well, let me back up. What's the Federal air marshal program?

A Federal air marshal was implemented after 9-11 to put armed guards without notification to the public of where they are. They are to put them on selected flights throughout the country.

Q And do they also have to go through a security – the left-hand side of the security checkpoint?

A Yes, they do.

Q And that's because they can't get their weapon through the regular line; right?

A That's correct.

Q Does United keep or is United advised of the list of individuals such as air marshals or FFDOs as in Mr. Hoeper's case who would be traveling with a weapon?

A Yes.

Q Where is that information noted?

A For the Federal air marshals, it's in Apollo. Our control center knows and has access to a list. As far as an FFDO, our dispatch office would have that information. There would be an indicator when they – when they check in or when they book their flight, I believe.

[992] Q So if Air Wisconsin wanted to know whether Mr. Hoeper was carrying a weapon and had checked through the appropriate security gate, they could have simply called you; correct?

A Our control center.

Q And – and you have a list of everybody there; correct?

A Either there or our dispatch office in Chicago.

Q And that information is readily available; correct?

A Yes.

Q All right. Assume for a moment that, by some freak event, Mr. Hoeper was able to get past the security lines and did not register on the left-hand side

where he was supposed to go through if you've got a weapon – to get a weapon through. And now he's in the general holding area. The general gate area. Okay? Can you assume that with me?

A Okay.

Q What could United have done if a telephone call had been placed to United at that point?

A Well, again, we would have notified TSA and the proper authorities at the airport. We would have gone out and tried to meet the passenger and tried [993] to observe him for a minute or two to make sure that we felt comfortable approaching, and we would have approached him and introduced ourselves.

Q And tell me what that process would have been like in that gate area.

A We would have pulled him aside. We would have introduced ourselves and then asked – told him, you know, we would have acknowledged that we were representatives from United Airlines and we would have pulled him aside to another area, somewhere discreet and had a conversation with him, including telling him we would like to check his luggage.

Q And then what would have happened?

A Again, it would have been out of the sight of passengers. If we and the TSA and everybody felt comfortable with it, we would have at that point let him return back to the holding area.

Q To board the plane?

A Correct.

Q Just like everybody else who's there?

A Yes.

Q All right. If TSA had been called throughout this process, based on the protocols, what would have happened?

MR. MARK: Objected to as lacking [994] foundation, Your Honor.

THE COURT: Overruled.

A They would have contacted me immediately and asked if I knew about it, and then they would have told us what they thought we ought to do or, jointly, we would do this, and it would be the process I described.

Q (BY MR. McGATH) So it would have been the exact same thing, regardless of whether TSA had been notified or you had been notified; correct?

A Yes.

Q You indicated you were concerned about the action of Air Wisconsin in this process; is that right?

A Yes.

Q Did you do anything with those concerns?

A I advised my control center manager to get information –

MR. MARK: Your Honor, excuse me. I'm going to object on the basis of relevance, Your Honor.

THE COURT: Overruled.

A I advised my control center manager to get with all of the players involved and, in fact, talk to the TSA, find out what they – and turn this over to our corporate security for follow-up.

\* \* \* \*

[1003] Q So, in that situation – let's just say, hypothetically, an FFDO who is not in uniform but has



a valid credential can gain access to the cockpit of United Airlines airplane; isn't that true?

A Yes. We would introduce them to the pilot. We would walk them down and introduce them.

Q All right. Now, you testified regarding the information that you had received and I was curious about where that information came from. And I'm referring to December 8, Mr. Clevenger. How did you first receive notification that there was something going on involving Mr. Hoeper?

A I didn't know it was Mr. Hoeper, but I did know there was a circumstance that required a – attention and it came from my control center.

Q All right. So you were – were you called in?

A Yes, I was.

Q And you were called by somebody that then related information; is that it?

A Yes. My shift manager.

Q Okay. And what you wrote in an affidavit that you prepared was that you received notice and then you say that a pilot had failed training and that a United airplane was being brought [1004] back to the gate. In addition, it was reported that the pilot may have a weapon and that TSA had been contacted.

A Yeah. That's correct.

Q Okay. So that information came to you when?

A The plane – within one minute, I received a second call, and at that time, I was advised that the plane was already back in the gate and the customer was off.

Q All right. And that came also from your control center?

A Yes.

Q And, by the way, this affidavit, I presume that you met or spoke with the lawyers before it was prepared –

A Yes.

Q – for Mr. Hooper?

A Yes. I mean – I did.

Q Sure. And you – I presume they prepared it for you and then sent it for your approval?

A Yes. After phone conversations.

Q Sure. And did you make any changes to what they had prepared when they sent you this?

A I do not recall. I don't believe so.

[1005] Q All right. So what was prepared by Mr. Hooper's lawyers and sent to you, then, you executed and returned back to them; correct?

A Yes.

Q Now, after 9-11, the world changed in terms of a variety of things, but it certainly changed in terms of aviation security, did it not?

A Yes, it did.

Q And it's true, is it not, that aviation security was federalized after that date?

A Correct.

Q And the TSA was formed, was it not?

A Yes, it was.

Q And there was some legislation called the ATSA which was passed?

A Yes.

Q And are you familiar with 49 USC Section 44905 of that legislation?

A Not the numbers specifically, but –

Q How about the part that says an air carrier receiving information about a threat to civil aviation should notify TSA?

A Yes.

Q All right. And you know that that is in place in order to protect passengers; correct?

[1006] A Yes. For the most part, that is accurate.

Q And, as a matter of fact, TSA wants to make sure that an airline – all airlines report any suspicious activity or potential incidents that might interfere with transportation; true?

A That is correct.

Q And whether or not it was an actual security threat, TSA wanted to know about it; correct?

A Yes.

Q In fact, the TSA probably – the policy has been that when there's some doubt, you need to report; correct?

A I think the carriers share that.

Q All right. Now, you mentioned a couple of times that, in terms of this time line, that when you were speaking on behalf of United, we would have contacted United or we would have notified United. Do you

remember – I'm sorry. We would have notified TSA or contacted TSA; is that correct?

A Yes.

Q Actually, we had some testimony earlier today and I'll just indicate to you that Mr. Winn testified here this morning, Mr. Clevenger, and what he indicated is that you and he had had a conversation on [1007] February 22, 2007. Do you remember that conversation?

A Yes, I do.

Q All right. And, as a matter of fact, what he testified to was in that conversation, and he memorialized it with a – a memo. When he asked you about this incident – he called you, did he not?

A Yes, he did.

Q And he asked you about it and what he put in quotes was you said, quote, The last organization I would call is TSA, end quote. Do you remember making that comment to him?

A Yes, I do.

Q All right. Now, that would violate protocol, would it not?

A No.

Q Okay. Would you agree with me that passenger safety is first and foremost in terms of all air carriers?

A Absolutely.

Q And that's never to be compromised?

A That is correct.

Q Is it better to be cautious in terms of dealing with a situation than it is to be sorry?

A Absolutely.

Q And you agree with me that airlines

\* \* \* \*

[1012] DIRECT EXAMINATION (Continued)

BY MR. McGATH:

Q Mr. Doyle, I believe when we broke, we were talking about – one second, Your Honor – the events of October 14th, 2004. Do you remember those questions?

A I believe so, yes.

MR. McGATH: Okay. And, Your Honor, as a housekeeping matter, pursuant to our discussion off the record, I would like to tender Exhibit 26.

THE COURT: The redacted 26?

MR. McGATH: The redacted 26.

THE COURT: All right. Let me get someone to get those to the jury, please.

MR. McGATH: And we will give those to insert into the jury notebooks into the lunch break.

THE COURT: Give them to Ms. Bowles. She can give them to the jury.

The redacted 26 is admitted subject to previous objections.

MR. McGATH: Here are many copies.

Q (BY MR. McGATH) You indicated, Mr. Doyle, that you had told Mr. Orozco about your concerns that Mr. Hooper had presented a threat to you in the simulator session on October 14th, 2004. Do [1013] you remember that?

A I don't recall exactly using the word "threat," but we did have a meeting the following day or so after that. Captain Orozco, Captain Frisch, and I, and I did indicate my concerns, yes.

Q Mr. Doyle, in front of you, in Exhibit 26, are various questions that were asked to Air Wisconsin concerning Mr. Hoeper's status as of December 8th, 2004. Do you see that?

A Yes, I do.

Q Okay. Turn to request for admission No. 2 on – on this document, which is on the third page. This is the thing that I showed you in private earlier; correct?

A That's correct.

Q All right. And would you – I'm going to read the question and you read the response. "Admit that plaintiff was never viewed as a security threat or risk by AWAC prior to December 8th, 2004." Please read the response.

A "AWAC admits only that it did not view plaintiff has a security threat or security risk prior to December 8, 2004."

Q The word "has" doesn't make any sense in this. Do you agree with me that that should be "as"?

[1014] A Well, these aren't my words, so I can't really tell you –

Q Well, let's follow up.

A – what was meant.

Q Let's look at the nonpattern interrogatory, which is page 2 of Exhibit 26. No. 12, please. The question was, "State whether plaintiff was ever disciplined, sanctioned, reprimanded, viewed as a

security risk, or otherwise punished by AWAC prior to December 8, 2004.” And the answer was what, Mr. Doyle?

A The answer is no.

Q Okay. And then turn to the last page of this exhibit. And I'll represent to you that this is a page which is required under our Rules in which an Air Wisconsin Airline representative has to sign off to verify the accuracy of these documents. Okay?

A Okay.

Q And that's – do you recognize that signature?

A It's Captain Scott Orozco, yes.

Q And do you see the date on it?

A Yes, I do.

Q And so, on June 20th, 2006, Captain Orozco signed these questions, subject to the oath that you took; right?

\* \* \* \*

[1016] plaintiff's exhibit notebook right here. It's right here.

A No. 11, you said?

Q Yes.

A Yes, I do.

Q And you, again, began to compile those notes after you had spent a good portion of the evening talking to CIA, TSA, and FBI; true?

A Not true. As I testified earlier, I spent a few minutes on each of those conversations. I was on the phone extensively that night, but not with any of those organizations.

Q Mr. Doyle, isn't it true that you were on the phone pretty much all evening last night – that night, December 8th, with FBI, CIA, and TSA, trying to figure out a way to make something like this not happen again?

A TSA had questions as to how something like this could be prevented because they had no guidance in their manuals to deal with an FFDO in this particular case.

MR. McGATH: Objection, Your Honor. Nonresponsive.

THE COURT: Sustained. The answer is stricken and the jury is instructed to disregard it.

[1017] Q (BY MR. McGATH) Mr. Doyle, you spent the entire evening talking with TSA, CIA, and FBI on how such a thing could not happen again; correct?

A I spoke with CIA, FBI, and TSA that evening; that's correct.

Q It was the entire evening, trying to figure out how you had made this call that set this national emergency situation into motion, wasn't it?

MR. MARK: That's objected to as argumentative.

THE COURT: Sustained. The question is argumentative as framed.

Q (BY MR. McGATH) Mr. Doyle, you spent the entire evening talking with those agencies, discussing how not to have this happen again?

A That's correct.

Q And it was only after you spent the entire evening talking to TSA, CIA, and FBI about this incident that you reported for the first time in writing



anywhere the events which you claim happened on October 14th; isn't that true?

A That is not true.

Q In writing, Mr. Doyle. You did not report the events that happened on October 14th in writing anywhere; isn't that true?

[1018] A I don't recall whether I did it in writing. I know that I spoke verbally with Captain Orozco, but I don't recall whether I did it in writing or not.

Q I'll let your answer from yesterday stand on that, Mr. Doyle. I believe you testified yesterday –

MR. MARK: That's objected to, Your Honor, as the attorney is now testifying.

THE COURT: Sustained. No commentary, please, from anybody. Just ask questions and answers.

Thank you.

Q (BY MR. McGATH) It's not – your notes following this discussion of this event are not in your notes following the October 14th training session, are they?

A I'm sorry. Please restate the question.

Q A discussion of the events which took place on October 15th, which you're recalling in writing on Plaintiff's Exhibit 11, were not in your notes following the October 14th training event?

A That's correct.

Q They are not in Mr. Hoeper's personnel file, are they?

A I don't know what is in Mr. Hoeper's

\* \* \* \*

[1021] (In open court out of the presence of  
the jury at 1:34 p.m.)

THE COURT: Be seated. Anything before we bring  
the jury back in, Mr. McGath? Mr. Mark?

MR. MARK: No, Your Honor.

THE COURT: All right. Let's get them.

(The jury enters the courtroom  
at 1:35 p.m.)

THE COURT: The record should reflect the jurors  
have returned. You may be seated.

Captain, if you would come back to the witness  
stand and please remember that you're under oath.  
Mr. McGath.

Q (BY MR. McGATH) Captain Doyle, did you  
have a chance to look through Mr. Hoeper's personnel  
file and the flight department file to determine  
whether or not there was any references to the conduct  
of Mr. Hoeper such as you described it on October  
14th, 2004?

A I reviewed both of his files and did not find any  
documentation of that.

Q Thank you. Now, Captain Doyle, you prepared  
the document which is Plaintiff's Exhibit 11, begin-  
ning on the day of December 9th, 2004; right?

\* \* \* \*

[1023] Q Would you please turn to Exhibit 11, your  
notes on October 14th, and then compare and contrast  
that with the notes that you wrote down much later,  
which are Exhibit 12.

A I'm sorry, Mr. McGath. Can you direct me to –

Q I can direct you to the specific pages, Mr. Doyle.

A Okay. Thanks.

Q Please turn to Exhibit 11, the second page, which is AWAC 0129. And then look at Plaintiff's Exhibit 12, which is AWAC 0211.

A Okay.

Q Do you see that?

A Yes, I do.

Q Now, you added to this note that you had actually not really feared for yourself, but the safety of others in the simulator building; isn't that true?

A Yes. That's true.

Q And so the simulator building is a two-story building with many simulators in it. I think it has five or six; isn't that right?

A Somewhere in that area, yes.

Q And there are 40 or 50 other people that might be in the building because there's classrooms, as [1024] well?

A This is true.

Q And you were fearful for the safety of those other people who were in the building with you at that time; correct?

A I believe I was, yes.

Q Yet, you proceeded, after this event, to take Mr. Hoepfer to the hotel and then later sit down with drinks and some food; isn't that right?

A We've been through this, sir. I took him to the hotel and I went out for dinner with Captain Hanneman later that evening. Mr. Hoepfer came up

later while we were having dinner and Captain Hanneman asked if he could invite him over to the table.

And, again, Mr. Han – Captain Hanneman, being that he is an ALPA union rep, had had some sort of friendship with Mr. Hoeper because they were both based here in Denver, Colorado. And I told Mr. Hanneman that I didn't want to have any contact with Mr. Hoeper, but I understood that if he wanted to talk with – with Mr. Hoeper, that that was – you know, that would be fine, but I didn't want to have any contact with him that evening.

Q And I appreciate your answer. The answer to my question was yes; isn't that true?

\* \* \* \*

[1028] A Again, these were my notes, and I felt I was putting down everything as accurately as I could at the time.

Q In fact, Mr. Doyle, you probably shouldn't have written the words "mentally unstable"; right?

A Sure.

Q Because you had no ability whatsoever to assess his mental stability; true?

A That's true.

Q And because your position now is that you never said that; true?

A I never said it to TSA during the phone call; that's correct.

Q All right. Thank you. Now, following the events of December 8th, 2004 – taking you to the time that

Mr. Hoeper and Mr. Schuerman are in the simulator before the call was made, okay? Are you with me?

A We're at December 8th?

Q Right. And we're in the simulator with Mr. Hoeper, Mr. Schuerman, and Mr. Scharf; okay?

A Yes.

Q That session ends. And at that point in time, a telephone call comes in; right?

\* \* \* \*

[1054] MR. McGATH: Right.

THE COURT: – that that horse is long expired.

MR. McGATH: I understand.

(In open court.)

Q (BY MR. McGATH) You're not sure when you asked Mr. Hanneman to prepare those notes, and it may have been after December 9th; isn't that true?

A To recall five pages worth of notes, as I testified to –

MR. McGATH: Your Honor, please.

THE COURT: The answer is stricken. It is nonresponsive. Answer the question you're asked.

Q (BY MR. McGATH) You're not sure whether you actually asked Mr. Hanneman to prepare those notes after December 9th, are you?

A I'm not sure.

Q Now, I want to turn to those notes now. Would you look at Plaintiff's Exhibit 13, beginning on the handwritten page No. 20. Now, Mr. Doyle, if you could turn to page 24. See that?

A I do.

Q You had specifically asked Mr. Hanneman, after you made the call to TSA, to indicate that Mr. Hoeper was, quote, unstable during training events,

\* \* \* \*

[1058] Schuerman; is that correct?

A I did.

Q All right. And how long have you known Captain Schuerman?

A I had known Captain Schuerman since he was a new-hire with Air Wisconsin. I forget the date that he testified to, but we had been working side by side very closely for the last, probably, three or four years.

Q In the time that you had known him, Captain Doyle, had you ever heard him express the concerns that he was expressing in that telephone call on December 8?

A Never.

Q And describe what you heard in the voice of that airman, Captain Schuerman, when he made that call to you.

A I heard Captain Schuerman talking to me. He was obviously very upset. He had never had anyone react in that sort of a manner in a flight training session as had occurred that day. He asked to be removed from the situation. And I hesitated for a few moments and then I thought the best way to defuse the situation is just to get Captain Schuerman on his way to Dulles airport to get out of town.

[1059] Q Now, let's move ahead. Describe for His Honor and for the jury what the environment is in

Appleton, Wisconsin, on the afternoon of December 8th, when you received this information. What goes on in an airline headquarters regarding how you operate the company?

A Well, there's a lot that goes on. On a daily basis, we're operating up to 700 flights per day in and out of, you know, mountainous cities. We were pretty much a nationwide airline at that point in time. We were running 14 flights a day up and down the hill from Denver to Aspen, Colorado, five flights a day between Denver and Eagle, Colorado, as well as other cities all the way to the West Coast. And the CRJ was stretching its legs all the way to the East Coast. We were running nationwide.

We have personnel issues to deal with. People that are calling in sick. People that are not showing up for trips because – of whatever reason. We're recruiting pilots, which was one of my larger jobs during that point in time. We're trying to train pilots and retrain pilots in the case of failures.

We are dealing with systems operational control. We have airplanes that may be broken and need ferry flights or need our attention for some reason.

[1060] We're involved with daily operational meetings that generally lasted up to at least an hour, sometimes longer with all parties involved: Maintenance, dispatch, crew scheduling, the flight attendants, station personnel.

It's a very, very busy organization, and we operated 24/7, 365. Every one of us was on a pager or cell phone so that we could be in contact with upper management at any moment's notice.

Q Was William Hoepfer the only issue that you were dealing with on December 8, 2004?

A Absolutely not.

Q And did you set aside or did Air Wisconsin set aside all of the other issues, mechanical issues, crew problems, weather problems, whatever, to deal with this issue?

A No. We deal with the operation first because that's our first focal point of safety, obviously. Training tends to fall a little bit further down the ladder. We assume that, you know, training will get done at some point in time. If there's a broken simulator or something like that, we'll deal with it later, but the operation certainly comes first.

Q Now, we've heard a lot of acronyms. We're going to throw another one at you. AOSSP. What [1061] does that stand for?

A That is the aircraft operator standard security program. AOSSP is a book that is highly safety sensitive in nature. And it is a document that is put together between TSA, the FAA, and each individual airline.

Q Now, I'm not going to ask you anything else about that, because what you've indicated is it's a safety sensitive document, which means it's not for publication; correct?

A I – it's not for publication. The only people that have access to it generally are the pilots, the flight attendants, and only other upper management who have a need-to-know basis.

Q All right. And was that document consulted on December 8, 2004?



MR. McGATH: Your Honor, may we approach?

A Yes, it was.

MR. McGATH: May we approach?

(At the bench.)

THE COURT: Mr. Mark, we're not going to dance around this. I don't want to even hear about it. Because it's a – you know, at some point in time, the – I have to decide whether it's fair if we're – [1062] if we're going to talk about the existence of a document that was allegedly consulted in making this decision, but that – if it's too secret to show the jury, huh-uh.

MR. MARK: May I make a record again?

THE COURT: I know what the regulations say.

MR. MARK: We spent two hours on airline protocol and TSA protocol. Now I want to make an offer of proof. All I asked was the last question which was do you have a document that was consulted. It wasn't my intention to go any further. I don't want to violate this Court's order, but I don't think it's fair to have somebody come in and asked to talk about airline protocol and then not allow me to ask at least two questions about this.

THE COURT: Mr. McGath.

MR. McGATH: This is a highly controversial topic in this case, as Your Honor knows. I tried to get Air Wisconsin to turn this document over to me. They would not do it. They would not assist me. They would not assist in obtaining the document. And so to the extent they now want to hide behind it as a shield, I've not received it, I don't know what it says and I cannot cross-examine as to it.

[1063] MR. MARK: To respond, first of all, it would be a violation of Federal law for them to produce it. I've never seen it. I'm representing to the Court I've gone as far as I can to tender it. But I think it's incredibly unfair to allow a person to talk about protocol and then not allow us to respond.

THE COURT: Well, that much, you can do. You can cross-examine about the fact, Mr. McGath, that you can't get it. You haven't seen it. You don't know what it is. You can talk to the jury about that and let them decide. We're not – as long as that's the last question about that. So because – we've got enough issues to deal with in this case.

MR. MARK: Can we have the last question and answer read back? And – what I'm going – by way of representation, I'm going to ask whether or not it was produced.

THE COURT: You're going to lay – and then you can – Mr. McGath, you can come back and sit down and say I haven't seen it, either, so it's clear.

Okay. All right.

MR. McGATH: And I can deal with it on cross.

MR. MARK: Can we read the question back to the jury?

[1064] (In open court.)

THE COURT: All right. We're going to read the last question and answer back, please.

(The referred-to question and answer  
were read by the reporter.)

THE COURT: Back to you, Mr. Mark.

Q (BY MR. MARK) Let me just finish that area, Captain Doyle. That's not a document, first of all, that has been produced in this case, has it?

A No, it has not.

Q And none of the lawyers have seen it; correct?

A That's correct.

Q And that's because of the sensitive security nature of the document; correct?

A Absolutely correct.

Q And that document is not entitled to be published to anybody other than somebody that's connected – that certain group that's connected with the airline industry for their need to know; is that true?

A That's fair. It is – it is of the highest level of national security.

Q All right. Thank you, Captain Doyle. Now, let's talk about the discussion that occurred in [1065] Appleton, then, on the afternoon of December 8th. Can you tell us what that discussion consisted of and who participated in it?

A The December 8 meeting started with Captain Orozco and myself in his office. As time grew – as time went on, Captain Bob Frisch entered into the office and sat down and joined into the meeting. The three of us discussed Captain Hoeper, among other things, that day. And then, somewhere later that afternoon, Captain LaWare arrived and the four of us continued to discuss the events of that day.

Q All right. Let's talk about, again, we've heard, I think, a fair amount of testimony regarding the events themselves. I want to talk about the discussion as it

related to the various individuals that were involved and the topics that you discussed in terms of how to deal with the situation. Can you tell us about that environment.

A Yes. I – I shared with Captain Orozco and Captain Frisch the telephone call that I had received from Captain Schuerman. We got into a discussion about whether or not Captain Hoeper may have had his FFDO weapon with him at that point in time in Virginia. And we weren't sure.

There are two ways of getting into the [1066] Denver airport for employees. And I can't speak to those 100 percent, but Captain Frisch can and will. But there is an air side and a land side. And an FFDO can bypass security on the way into the Denver airport to report for work and there would be no way of anyone knowing whether or not that FFDO has his weapon on his person at that time or not.

So we discussed that. It was a well-known fact that some of the Denver FFDOs did bypass security. They are supposed to sign into a logbook if they bypass security, but that was not always done.

Q And why is that? Why would they bypass security?

A Well, it's certainly much easier when you get to the security lines. You know, we've all been through security where you have to take every last nickel out of your pocket. In addition to that, the FFDOs carry a weapon and I believe a badge, and there's just two more things that have to be disclosed either to the TSA agents or they may be taken aside and given a separate search. So it's – it's definitely going to delay your entry into the airport.

Q And when you say “bypass,” you’re talking about actually getting through security without anybody knowing that you’ve got a weapon?

[1067] A That’s correct.

Q And did anybody know on December 8, 2004, whether Mr. Hoeper had gone to this training session with a weapon?

A We did not know that for a fact.

Q Now, that’s a violation of the Federal law with respect to the FFDO program, is it not?

A I’ve come to understand that, yes.

Q All right. Have you had any situations at Air Wisconsin where pilots would come to training sessions with their weapon?

A We did.

Q All right. And in – were they supposed to do that?

A They are not. It is clearly outside of FFDO policy to show up to a training session with weapon in hand. TSA, when they built this in the post- 9-11 world, they admitted to me that they did not anticipate that a pilot would be split out of a trip. Let’s say a pilot goes off for a four-day trip and maybe on day two or day three, they are sent to the simulator center for a proficiency check. Well, they showed up with their weapon in hand on day one to act as a Federal Flight Deck Officer and a pilot, but, now, on day two or day three, they show up at the simulator [1068] center with the weapon and it was just something that – that the TSA never thought about it when they put the program together.

Q Was there any other discussion with respect to potential security breaches or problems that needed to be considered on December 8 surrounding Mr. Hoeper's situation?

A Well, there were. In my case, we had actually had one of our pilots show up to the simulator center very – a different situation than what I just described. He traveled from his hometown to the simulator center to take a proficiency check with his weapon and then returned back home and there was no reason for that pilot to have brought that weapon along.

When he was questioned about why did you bring your weapon to the simulator session when you were – when you knew full well that you were only going to do training, his answer was that I am the last mechanism of defense for the airline, so I carry my weapon with me everywhere I go and I elected to bring it to the training session, which is clearly outside of FFDO policies and procedures.

Q What other discussion occurred that afternoon with respect to making sure that there wasn't [1069] going to be an untoward situation towards either innocent passengers or – anybody that might have been in the area? Anything else that you recall?

A Yes, I do. I recall when Mr. LaWare arrived, we spoke of the PSA 1771 incident that you heard about earlier today and the FedEx 705 incident that you've also heard about. And in the end of the conversation, we all felt – we all agreed better safe than sorry for the sake of passenger safety.

Q And those two cases have come up again. They actually were discussed on December 8th?

A Yes, they were.

Q And they are fairly well-known cases in aviation parlance, are they not?

A They are very well known. The PSA was actually a British Aerospace 146 like we were flying at the time. It's not a well-known aircraft, so the Air Wisconsin pilots were generally pretty well aware of that situation. And it's certainly been talked about in many, many of our training courses along the way as far as safety and security of the cockpit for many years.

Q Now, did this conversation and dialogue occur, then, throughout the afternoon of 2004?

A December 8th, yes, it did.

[1070] Q Thank you. December 8. And I presume, at the same time, people were coming in and out and discussing other problems that typically arise on any given day?

A Absolutely. There were a number of interruptions throughout the meeting, as is typical in any meeting in Captain Orozco's office. He had a round table in the office that was away from his desk and it was kind of a colloquial meeting place for – for us to sit and chat and talk about issues that were going on. So, yes, there were many interruptions to the meeting that afternoon.

Q Now, was there finally a conclusion with respect to the Hooper situation?

A Yes, there was.

Q And you've told us about what was ultimately decided?

A Correct.

Q All right. And you were the one that then made the telephone call?

A Yes, I did.

Q And that call was made to TSA?

A Yes, it was.

Q Do you know specifically who you talked with?

[1071] A There were one of two people that I talked with on the first – on the call. Scott Biabos. I don't know how – really how to pronounce his name. Or that's how he pronounces it. I'm not sure how to spell it. Scott Biabos was one of them and the other agent was Monte Kleman.

Q Let me direct your attention to the document that has been labeled II, which would be in the – I believe it's the blue book.

A Okay.

Q Is that a daily operations report from Washington-Dulles International Airport?

A That's what I understand, yes.

Q And it's dated December 8, 2004?

A Yes. It is.

Q And if we look under the summary section of that document – and let me first ask this, Captain: Is this something that apparently has been produced in this case in connection with the Freedom of Information Act?

A I believe it was, yes.

Q And it's – it's got – we've talked about this earlier and His Honor defined "redaction" for all of us. It looks like it's got big black marks which takes out some sensitive information?

[1072] A That's correct.



Q Okay. Let's just concentrate on a line or two. Under the summary section, does that first line say – it gives a time 1622 and TSOW WO. Those letters stand for something, do they not?

A I believe it's transportation security operations center, watch officer.

Q Okay. Then there's a blank and then it says phone WO and there's another blank; correct?

A Yes.

Q It says to report that a pilot participating in the FFDO program may have had his right to carry a firearm terminated. Do you see that?

A Yes, I do.

Q All right. And once Mr. Hoeper's employment was going to be terminated, would he have also lost the right, then, to carry a firearm?

A Under the FFDO program; that's correct.

Q All right. And one of the things we talked about with respect to PSA was that there was actually national legislation that came out of that tragedy that said if you're a terminated airline employee, you lose your credential; isn't that true?

A Absolutely.

Q All right. But at the point that the [1073] call was made to TSA, Mr. Hoeper still had his credential; correct?

A Yes, he did.

Q And no one at Air Wisconsin knew whether or not he had his weapon; true?

A That's correct.

Q And then, if we go on at the bottom of this document, it says, "Investigation revealed that he was attending flight simulator training in northern Virginia in connection with his employment at Air Wisconsin and had failed the training on three previous occasions, which is grounds for termination according to Air Wisconsin policy."

Is that an accurate statement?

A Yes, it is.

Q And then if we go to the next page, the top line, "He was given an additional chance and walked out of the training session today, which will certainly result in termination of his employment with Air Wisconsin." Was that an accurate statement?

A Yes. It was accurate.

Q And is there anything in here that talks about mental instability with respect to Mr. Hoyer?

A Absolutely not.

Q Captain Doyle, on December 8, 2004, was [1074] there any intent to cause any harm to Mr. Hoyer?

A Absolutely not.

Q Was there any intent to embarrass Mr. Hoyer?

A Absolutely not.

Q Was there any intent to affect his rights, other than to make sure that the flying public would be protected?

A Absolutely not.

Q Now, I want to turn our attention to some other matters. First of all, you are currently working for the FAA; is that correct?

A Yes, I am.

Q You are no longer an Air Wisconsin employee; correct?

A That's correct.

Q You're not testifying here as a Government employee, are you?

A No, I'm not. I'm here because I'm named in the lawsuit.

Q As a matter of fact, am I correct in stating that you're prohibited from testifying as a Government employee in this proceeding?

A Yes, I am.

Q And would that hold true of any FAA

\* \* \* \*

[1095] this topic is is there something called a minimum equipment list or MEL?

A Yes. The minimum equipment list is what dictates to the pilots and to the maintenance controllers exactly how many days a system can be deferred for – for that particular aircraft.

Q And – and I should just ask for qualification purposes here, an MEL item would be these categories that you've described. So if an engine – or if an aircraft had an engine out, would that, typically, be an item that cannot be deferred before launching?

A Yes. An engine out would be a grounding item.

Q All right. But the FMS is not a grounding item?

A FMS is not a grounding item.

Q All right. Thank you. Now, let's talk a little bit about – there was some reference to Mr. Hooper being

removed, I think was the term, from the collective bargaining agreement, which is Exhibit AA in the blue book. And we've got a blow-up of it. But based upon your knowledge of that document, am I correct in stating that a pilot who is transitioning from one piece of equipment to another, pursuant to the [1096] contract between the Airline Pilots Association, the pilots, and the company, he would have three opportunities to make that transition in order to keep his position? Is that true?

A That's correct.

Q And am I correct in stating that the language says that if you're not successful after three opportunities, then the continued employment of that airman will be at the discretion of the company; correct?

A That is correct. Yes.

Q So you can validly fail a proficiency check or a type rating or even both, certainly, up to two times and still maintain your employment; correct?

A That is correct.

Q But if you fail three times in those, then you are at the discretion of the company?

A That's correct.

Q And am I correct in stating that the purpose of having that agreement between the pilots and the company is that if you can't pass it after three times, you shouldn't be flying passengers in revenue service; correct?

A That's correct.

Q Now, in Mr. Hoeper's case, he had the [1097] three failures that we've heard about; correct?

A Yes.

Q And we'll talk about this in a minute because I'm going to show you a document, Captain Doyle, but let's just put some framework on this. He actually was given a fourth opportunity; correct?

A Yes, he was.

Q And if we look at the time line, after his third failure, which occurred on November 13, under the collective bargaining agreement, Exhibit AA – by that document, his employment could and should have been over with at Air Wisconsin; isn't that true?

A He could have been at that point; that's correct.

THE COURT: Excuse me.

MR. McGATH: As to should, Your Honor, Mr. Doyle has testified previously –

THE COURT: What's your objection?

MR. McGATH: Objection as misstates prior testimony, misstates evidence.

THE COURT: The objection is overruled. You can proceed.

MR. MARK: Okay. I'm not sure if he was able to answer or not, Your Honor. Do you want –

THE COURT: Why don't you restate your [1098] question.

MR. MARK: Thank you, Your Honor.

Q (BY MR. MARK) Am I correct in stating that by November 13, after the third failure, under the collective bargaining agreement, Mr. Hoepfer could have been terminated from his employment?

A He could have been terminated as of November 13th; that's correct.

Q But, in his case, his employment at least continued through December 9, did it not?

A That's correct.

Q And in the intervening period of time, he was given more training?

A Yes.

Q More opportunity to complete the proficiency check?

A Yes.

Q And that was all done at the expense of Air Wisconsin?

A That's correct.

Q Now, I want to refer you – before we go through some of these training records, I want to refer you to some documents that you were asked about a little while ago. And, Your Honor, I'm going to refer the Court and the jury to Plaintiff's Exhibits 11 and

\* \* \* \*

[1130] Q All right. So if an aircraft is deviating below 1,000 feet, does that create a problem?

A It's encroaching on the airspace of a – potentially of another aircraft that's beneath it, yes.

Q And ATC looks very unkindly about that; correct?

A Yes, they do.

Q And I'm assuming the airlines do, as well?

A Absolutely.

Q All right. It also says, "very poor crew coordination." Tell us briefly what that refers to.

A That means that he and the pilot that he was flying just were not on the same page. That they were having trouble coordinating and doing things together as a crew.

Q All right. And then it says, "He does not believe that his performance is substandard. Everything is someone else's fault." And then it says, "The training department was instructed by flight management to fail him to a point of termination." And this is, I gather, a comment that was made by Mr. Hoepfer to Captain Hanneman; correct?

A That's correct. Yes.

[1131] Q And then he writes, "seems to be unstable during training events"; correct?

A Yes.

Q Now, following this session, there was further communication from Mr. Hoepfer; is that correct?

A I believe there was, yes.

Q And let me specifically direct you, Captain Doyle, to Exhibit CC.

A Okay.

Q This is a document that was sent to Captain Orozco and was cc'ed to you; correct?

A Yes.

Q And it was sent by William Hoepfer?

A Yes. And his union rep was also cc'ed in at the top. PANG is Carl Fleming, the union MEC chairman.

Q I'm sorry. Carl who?

A Carl Fleming.

Q Okay. And he's --we've seen the initials MEC. Is that a master executive council?

\* \* \* \*

[1155] Q And I'm not going to go through the specifics, but let's just talk about the things that he said, whether it was I quit or used profanity or he pushed the seat back or he took his seat belt off or he took the headset and threw it against the instrument panel. Have you ever seen a professional pilot do that in a simulator before?

A I've never seen a professional pilot act like that in my life.

Q So, on December 8, the differences were his behavior, first; correct?

A That's correct.

Q And the fact that this was a last chance for him, as well?

A Yes.

Q At that point, everybody knew that he faced the potential loss of his job, didn't he?

A That's correct.

Q Because he could have been let go back in mid-November?

A That's true.

Q Now, you were asked some questions with respect to his reputation and the aviation community being a small community, do you know how many air carriers there are in this country?

\* \* \* \*



[1197] THE COURT: Thank you. Redirect –  
recross, Mr. Avery or Mr. Mark?

MR. MARK: Thank you, Your Honor. Your Honor,  
I'll be very brief.

RECCROSS-EXAMINATION

BY MR. MARK:

Q Just one brief area, Captain Doyle. There were  
some questions of you on Friday with respect to  
promising a fourth proficiency check to Mr. Hoeper.  
And my question to you is: Was the proficiency check  
contingent upon successful completion of the training  
on December 8th?

A Yes, it was.

Q And in order to get the proficiency check,  
did Mr. Hoeper have to successfully complete the  
training?

A Yes, he did.

Q Did he have to obtain approval, then, from  
Check Airman Schuerman before he would be  
permitted to take the proficiency check?

A That is correct.

Q And if he stopped the training, then was he  
eligible for the proficiency check?

A No.

MR. MARK: That's all. Thank you.

\* \* \* \*

[1204] BAe-146 essentially been retired as a  
commercial passenger aircraft?

THE WITNESS: In the United States, yes.

THE COURT: All right. You indicated one of the reasons for the call to TSA. What other reasons would you have made the call to TSA other than Mr. Hoyer may kill people?

THE WITNESS: For the safety of passengers on his flight home that day.

THE COURT: Next question. Considering passenger safety, why was the call late and not paramount?

THE WITNESS: Because the discussion was ongoing between Captain Orozco, Captain Frisch, Captain LaWare, and myself. That started at approximately 1:30 in the afternoon our time, which was 2:30 Eastern time.

THE COURT: On December 8th, during your first conversation with Scott Orozco, what issue was addressed first?

THE WITNESS: The issue of Captain Hoyer quitting training.

THE COURT: All right. Next question, what led you to believe that Mr. Hoyer would be armed as he would be in an FFDO capacity, given that he was in a training situation?

[1205] THE WITNESS: There were two ways to get through security here in Denver: One with a weapon and one without. We had no way of ascertaining which method he had used when he left Denver, so he could have possibly been armed. We were unsure of the answer to our own question to ourselves, is Mr. Hoyer armed or is he not.

THE COURT: All right. Thank you. Follow-up to any of those questions, Mr. McGath?

MR. MCGATH: Yes.

FURTHER REDIRECT EXAMINATION

BY MR. McGATH:

Q Mr. Doyle, one of the conflict resolution forms that you have is an employee safety form; is that right?

A That's correct.

Q And you did not complete any employee safety form following the events you claimed happened on October 14th, 2004, did you?

A I did not.

Q And then if Mr. Hoeper had been carrying his weapon through what you have called the loophole in Denver, right –

A Yes.

Q – he would have been in complete [1206] violation of FFDO protocol; correct?

A This is true.

Q You had no reason to believe he had ever violated FFDO protocol before, did you?

A I did not.

THE COURT: Follow-up, Mr. Mark?

FURTHER RECROSS-EXAMINATION

BY MR. MARK:

Q In that discussion on the afternoon of December 8th, did anybody know whether or not Mr. Hoeper had his weapon?

A Not for certain. No one knew.

Q And what was it that caused the concern in the discussion as it had been reported to you regarding the state of mind of Mr. Hoeper?

A Well, the concern was that we knew that Mr. Hoeper was – his job was certainly in jeopardy at that point. He was most likely going to lose his job the following day. And if the possibility were there that he had a weapon with him, we were concerned for the safety of passengers on board his flight home.

Q And, in fact, did he lose his job the following day?

A Yes, he did.

MR. MARK: Thank you.

\* \* \* \*

[1275] to teach.

Q Then did you get Mr. Bauer involved in this conversation?

A Mr. Bauer was shocked.

Q And then what happened?

A Mr. Bauer directed – told Mr. Christensen he was out of line. To collect the letter, to collect himself, and to leave the sim center immediately.

Q What happened to your career at Air Wisconsin after this event?

A Three months later, I'm sent back to the line. The discretion of the company has been exercised and I'm being reduced to a line pilot.

Q Did you receive written directions for this?

A Yes.

MR. McGATH: Your Honor, may I approach?

THE COURT: Yes.

Q (BY MR. McGATH) Exhibit 52 is a letter you received in April of 2004, advising you that you were going to be returned to the line?

A Yes.

MR. McGATH: Your Honor, move into evidence Exhibit 52.

\* \* \* \*

[1277] Q (BY MR. McGATH) Mr. Hoeper, can you identify Plaintiff's Exhibit 53 as the pilot information file document that was generated shortly after you were moved from the line?

A I can. It has a control number that says memo 04, indicating it was issued in the year 2004, and there was the 144th memo issued for the pilots to read and sign.

MR. McGATH: Your Honor, move into evidence Exhibit 53.

THE COURT: Any objection to 53?

MR. MARK: No objection, Your Honor.

THE COURT: 53 is admitted. Ms. Perham.

MR. McGATH: May we also have your assistance in publishing this document? Thank you, very much.

Q (BY MR. McGATH) Mr. Hoeper, line 1 of Exhibit 53, beginning with Captains Bill Hoeper and Tony Neely. Can you read that into the record, please?

A "Captains Bill Hoeper and Tony Neely have informed me that they are leaving their ground instructor positions and returning to line flying."

Q Is that statement true?

A No.

Q Had you at any point in time indicated [1278] that you wanted to resign your position?

A No.

Q Did you have an occasion to talk to Mr. Bauer about this decision?

A When this letter was tendered to me in my office by John Everhart, we were on the speaker phone, talking to Mr. Bauer. Mr. Bauer said, Bill, I can no longer protect you, and your position is being eliminated.

Q Did you try and get an explanation as to what happened?

A Yes.

Q Were you given one?

A No.

Q Now, at this point in time, did you have any recourse to protest your removal from management?

A As I mentioned, I was at the discretion of the company. I was outside the contract for the pilots and my only recourse was to accept it. Go become a line pilot.

Q Now, you mentioned you were outside the recourse of the protection of the union contract. Why is that?

A Because I was a management employee. I was not line flying, covered by the ALPA contract.

\* \* \* \*

[1288] day on the back all your days off because you have to do that on your own time. Commuting is on your own time.

Q Okay. And did you elect, when you found out that the base was closing for the CL65, the two-engine fan jet, to pursue the BAe-146 program?

A Well, yes. First of all, I wanted to fly the 146. It was – it would have been a normal progression for my career. And I had some personal issues here in Denver that needed to have me close by, and I elected to do like other pilots and stay here.

Q And what personal issues, without getting too far into them, were you dealing with here at home?

A Well, the most important issue right then was my stepfather has Alzheimer's. It's a terrible situation. He had already completed his last level and he was in assisted living, but he really wasn't doing well. My mother's here in town and I'm my mother's support.

My father – probably just like your folks, one of them is disabled. My father is disabled and has been for many, many years. And I am my father's support. So, trying to be a good son, you do what you can. And I wanted to stay here.

\* \* \* \*

[1325] it was 60. Now, it's 65. It's just been changed.

Q That was just changed within the last couple of months, wasn't it?

A That's my understanding.

Q Thank you. All right. Now I want to take you back in time to October 14th, where we were about to start asking about this hashed line. Do you see that?

A Yes.

Q All right. Describe for us what happened in the debriefing session on October 14th, 2004.

A You have to picture that the Air Wisconsin room is very tiny. It's maybe 10 feet wide and maybe 12, 14, 15 feet long. And it has a – a door right next to the white board as you just walk into the door, and then there's a series of tables that have resource materials on them. There's a – a land line phone by the door, and there's a couple of chairs and a little desk.

Mr. Doyle and I entered into this room and I went to the far side of the little room and I was resting my butt up against one of the tables that was on the back wall. And –

Q And then what happened, Mr. Hoeper?

[1326] A Mr. Doyle began to debrief the session by writing on the white board. I must not have been paying attention because I was pretty frustrated over the check ride in which the airplane was just stalled, and I was in the course of receiving another pink slip, a notice of disapproval.

Q Okay. And that pink slip is in the exhibit book at Exhibit 13, and we've been over it a couple of times, Mr. Hoeper, but I believe it is –

A Page 5.

Q Exhibit 13, page 11; right?

A Correct.

Q Okay. So we find that in the plaintiff's book, Exhibit 13, page 11? That's correct?

A Yes.

Q Okay. Continue.



A I wasn't paying probably very good attention and I was frustrated at myself and I was exhibiting this frustration openly. At one point, Mr. Doyle turns to me and he tells me to sit down at this little desk, which would have made me come within 4 feet of him to sit down.

I had just been in a simulator for a couple hours and my legs are all cramped up from sitting and flying the simulator and I was just trying [1327] to stretch my hamstrings by leaning up against this and having my legs extended. And he goes, Come sit down. And I go, Look, I go, I'm trying to stretch my hamstrings because my legs are tense from being in the simulator. And he goes, Well, you need to calm down, because I was frustrated. And I go, Look, I don't understand how I've been flying all these years and I've flown all these testing events and I've never had any trouble ever in my career.

Out of nowhere, Mr. Doyle's face gets beet red. He takes the black marker that he's been marking on the board and he points it at my head and he goes, I've never failed anybody on purpose ever.

Q Did you ever express to Mr. Doyle that at that point in time, you thought Air Wisconsin was out to get you?

A I did not know where the comment came from, because it was a lead-in from myself. All I said was I just don't understand how come I'm not getting through these checks rides.

Q Okay. So did you make that statement? "I think Air Wisconsin is out to get me?" Did you say that?

A No. I didn't even allude to it. I was just alluding to that I didn't understand why I wasn't [1328] getting through these check rides.

Q All right.

A He then went on to explain that, in his DE career, he has never failed anybody on purpose, that the first person he ever gave a type ride P.C. to was an individual that wasn't his favorite person, but he gave one to him.

Q Okay.

A And that I better not ever revisit this.

Q Can you see how Mr. Doyle might have thought you were blowing up at him?

A Not really.

Q Okay.

A I was pretty frustrated at myself. And that frustration was only exhibited toward myself, and I was not making any movement for my butt to leave the corner of that table for any reason.

Q Did you know Mr. Doyle very well at that time?

A Like I had mentioned before, Mr. Doyle was of a different camp. The 146 group was a different group of individuals and I – this would probably only be about the fifth time that I've ever met him.

Q Are you guessing what was going on in his mind?

[1329] A At this point, the suspicions, little flags are now going up.

Q All right. What happens after you have this – what sounds like a relatively heated exchange?

A I don't know if it was heated, but I will tell you that Mr. Doyle's face was pretty red. And I was concerned why he said what he said.

Q All right. Then what happened?

A The hour is approximately 7, 8 o'clock at night. He gives me a little bit of a debrief, but he – he says, Well, let's go ahead and go. And he gives me my notice of disapproval, but he does not give me the items that I did – I didn't do very well on in the sim. He didn't give me the P.C. form with any marks. He said he'd give it to me later.

Q All right. And the P.C. form that you're talking about, Mr. Hoepfer, is that in Exhibit 13 at page 9?

A Yes.

Q Now, I notice that this form has Mr. Doyle's signature on it; is that right?

A Yes.

Q It does not have your signature on it?

A No, it does not.

Q Were you ever presented with this form?

[1330] A No. I was not.

Q And there's also a comment under the remarks section where it says, "Letter to Scott Orozco regarding performance." Do you see that?

A I see that.

Q Have you ever seen that letter before?

A No. I've never seen that letter.

Q Was this form – pilot proficiency check form supposed to have been given to you?

A Yes.

Q And would you have expected such a letter, if it existed, to also be in your training folder?

A Yes.

Q And do you know whether, in fact, such a letter has ever been produced by Air Wisconsin?

A No.

Q Now, at some point in time, Mr. Hoeper, do the – does the exchange calm down?

A Yes.

Q Okay. And then what happens?

A I can't – I don't remember how much longer Mr. Doyle gave me a briefing or not, but it's getting late. So we drive back in Mr. Doyle's rent-a-car and we go back to the air – to the hotel where we [1331] are both staying.

Q In the car or in the debriefing center, did Mr. Doyle suggest to you that you continue on in the training program?

A Yes. He was – he had mentioned the four options, which are always the same four options, and he – his comments in the car were supportive, that he would have expected me to go on. Because he asked me if I wanted to go back to the RJ and I used the term I didn't want to go back to the RJ Mafia. We have the good ole boys and we have the Mafia. It's just a term that we used jokingly about the two groups of people.

Q All right. And then what happened?

A He – we got to the hotel, parked the car, we both went into the hotel, and we each went to our separate rooms.

Q Okay. So he's dropped you off at the hotel now?

A Right. And I'm assuming he's going to his room.

Q How far of a drive is it from the simulator center to the hotel?

A With no traffic, I will estimate 20 minutes.

Q So did you have conversations during [1332] that 20 minutes?

A Yes.

Q And did you ever threaten Mr. Doyle?

A No, sir.

Q Did Mr. Doyle ever threaten you?

A No, sir.

Q Then what happened after you got back from the hotel?

A Well, we haven't – we've been at the simulator center for quite a few hours. I was a little hungry and they had a little Texas Roadhouse right across the street and then just a little bit further down, like 100 yards, there was a place called the Bamboo Billiards.

Q Is that the same place that we might have heard testimony about as the Bungalow Billiards?

A Oh, I – I take that back. It's the Bungalow Billiards.

Q And what happened at the Bungalow Billiards when you got there?

A It was a full night. There was a lot of people in there. When I walked in the door, my eyes immediately found Captain Doyle sitting with Captain Hanneman at a very small table and they were together.

Q Then what happened?

[1333] A Captain Hanneman raises his hand immediately and he goes like this and he motions for me to come over and join them.

Q And did you do that?

A Yes, I did.

Q Did you sit down at the table with them?

A Yes, I did.

Q And then what happened?

A They were either just finishing up eating or they were eating and I decided I was going to get something to eat, so I ordered something to eat. And I sat there and ate and consumed my drink.

Q Okay. Were these two gentlemen, Captain Hanneman and Captain Doyle, also having a drink?

A Yes.

Q And was there any indication that you shouldn't be there by either of them?

A No. They were both very cordial to me.

Q And did anybody express any concerns about the events that had taken place in the debriefing room?

A No. And as behavior goes in a bar, sometimes there was only two of us at the table at a time, whether Mr. Doyle left to leave the table or Mr. Hanneman left the table. Sometimes there would [1334] only be me and one of them and sometimes it was all three of us together.

Q Okay. And was there an occasion where you and Mr. Doyle were left at that table by yourselves?

A Yes.

Q And did you continue to have cordial conversation?

A Yes.

Q Now, Mr. Hoeper, let's go to the next training event in the series. Okay?

A Yes.

Q All right. This event was on November 5th, 2004, and we've heard testimony from Mr. Lesh that the event was going to take place with the FAA assistant principal operating inspector; is that right?

A Yes. Mr. MRay Glovatsky.

Q And before you got together with Mr. Glovatsky for this event, did you have training?

A I had, I believe, one session with Captain Schuerman.

Q And that's Captain Schuerman right here; correct?

A That's correct.

\* \* \* \*

[1348] how that day ended.

Q Now, where are you with regard to your career at this point in time?

A I have just done strike No. 3.

Q And what does that mean to you?

A That my employment with Air Wisconsin is at the discretion of the company.

Q Okay. And what did you next do?

A I called the union.

Q And did you get advice?

A Yes, I did.

Q And did you follow that advice?

A I also received a phone call from Pat Doyle, along with that advice.

Q What did Mr. Doyle tell you to do?

A Mr. Doyle and the union representative indicated that I needed to write a letter to – to director of operations Pat Doyle, so they would make a decision on the discretion.

Q And did you write the letter?

A Yes, I did.

Q Is that the letter that's been referred to previously in Mr. Doyle's deposition marked as part of Exhibit 13, beginning on page 25?

A I can't find it. It's in G?

[1349] Q It's in Exhibit 13, Mr. Hoeper.

A 13.

Q It's in the plaintiff's book, Mr. Hoeper.

A Yes. This is – this is the letter I authored.

Q What were you trying to do with this letter, Mr. Hoeper?

A Visiting this letter reminds me that at this time, I am three strikes, you're out. And I am fighting for my career. I'm trying to prove worthiness to Captain Doyle – Captain Orozco. That I deserve a fourth attempt and to put aside previous things. Without



raising any issues, without making any waves, I am begging for my job.

Q All right. Now, I want to turn to some of the portions of this letter, and I want to talk to you about them. Okay?

A Yes.

Q Now, you have indicated in this letter at the bottom that you do not find that – or you have found that check airmen do not act like true first officers during the testing events. Who were you referring to?

A Captain Hanneman and Captain Schuerman.

[1350] Q Did you know at this point in time that Captain Schuerman had kicked the back of Weldon Scott Miller's chair during your training?

A I did not know that.

Q Were you professionally embarrassed by what had happened?

A Yes.

Q And you indicate here you don't fault the instructors and feel they sincerely tried to assist you. Is that what you're saying?

A That's what I wrote.

Q Explain to the jury and His Honor your answer.

A At this time, I have no evidence that misdeeds are being done. I can't prove anything. I have to beg from an individual who doesn't know me very well to entrust that I am sincere in requesting a chance to save my career.

Q Okay. And the individual that didn't know you very well, who is that?

A Captain Scott Orozco.

Q And what happened after you wrote this letter?

A I first received a phone call from Captain Orozco at my residence here in Colorado, [1351] telling me that they are, in fact, going to give me a fourth attempt.

Q And at what point in time did that occur?

A That occurred on December 5th – December 3rd. I think it was a Friday. Friday afternoon.

Q And, prior to that point in time, were you in limbo?

A Because I really didn't have the four options available now, I'm at the discretion of the company, period. I was told to go home and wait for a phone call. And I waited until December 3rd.

Q Now, where was Captain Orozco, to the best of your understanding, when he called you?

A He was in Appleton, Wisconsin, to my knowledge.

Q And did you receive any conditions on the fourth opportunity?

A Yes.

Q What were the conditions?

A I was going to get a fourth opportunity, providing I signed the letter that we now call the last chance letter.

Q And is that letter beginning on the next [1352] couple of pages of Exhibit 13, starting on page 27?

A Yes.

Q What was your understanding of this last chance letter?

MR. MARK: It's objected to, Your Honor.

The letter speaks for itself.

THE COURT: Let's see if you can ask the question in a different way, Mr. McGath.

MR. McGATH: Thank you, Your Honor.

Q (BY MR. McGATH) Did you discuss with Captain Orozco what was going to be forthcoming in the letter?

A With Captain Orozco and with the union rep, it was obvious that I sign this letter and my employment will be at the discretion of the company and I will get a fourth P.C. attempt. If I do not sign the letter, the company's discretion is coming now and I will not be getting that attempt.

Q So how did you feel about this?

A Well, discretion and no chance to prove myself, discretion and a chance to prove myself. I signed the letter.

Q All right. Now, that takes us to the events which took place in December of 2004 that you heard Captain Schuerman and Captain Doyle testify [1353] about. Is that true?

A Yes.

Q All right. Before I get there, I want to talk to you about something else that's very important in this case. Okay, Mr. Hoeper?

A Yes, sir.

Q Now, at some point in time, you became what's known as a Federal Flight Deck Officer; isn't that true?

A Yes.

Q And can you tell the jury how that came about and what was involved?

A Because of Homeland Security and because of the incidents of 9-11, the issue was raised nationally about protecting the flight deck under similar situations. Congress passed and enacted legislation that pilots could be trained by the U.S. Government and carry a firearm on domestic flights within the United States.

Q So that explains the program. What is a Federal Flight Deck Officer?

A A Federal Flight Deck Officer is a highly scrutinized, trained volunteer that gives up one week of their life to go to Artesia, New Mexico, to complete a very rigorous training program so that they [1354] can take an oath to the country of the United States to defend her and to carry a firearm on the flight deck to defend.

Q How was it that you became involved in the FFDO program?

A From my prior testimony, with my security clearances, my law enforcement background, I was one of the first pilots to be selected to go to Artesia, New Mexico.

Q Okay. And who asked you to do that?

A I did that part on my own because I did not go to the training. I – I did not accept the appointment until February of 2004.

Q Were you asked by Air Wisconsin to join the FFDO program?

A Yes.

Q And did you complete that program?

A Yes.

Q And tell me what happens in Artesia, New Mexico, or tell me what happens before you even get there.

A You go on-line and you fill in an application of interest. They look at your application and they e-mail you back and they have you take a test. And you complete the test and they check the results. [1355] And then they tell you that you have to go to a psychologist for a professional evaluation.

After the professional evaluation, those results are sent somewhere, and you get notification that you've either been selected or not selected for the program.

Q And did you undergo that psychological screening?

A Yes.

Q And was that in the early 2004 time frame?

A I actually took it in 2003.

Q Okay. Then what happened after the psychological screening portion of the exam was completed?

A I was invited to go at my leisure to Artesia, New Mexico, to undergo the training.

Q And tell us about that portion of the training which you can talk about which is not classified.

A When it was apparent that it was okay with Air Wisconsin, at their request, I called and scheduled my training for early 2004. Approximately February. I went there and took a week off. And you have to pay to get yourself to wherever you're going to [1356] go.

Artesia doesn't have any commercial air service. You show up there and you have to pay for your room and your board and you undergo seven – six very intense days of training.

Q All right. And were you issued a Federal firearm?

A Well, on the sixth day, after practicing all these hours of hand-to-hand combat, law, lectures, firearms training, you have to take a written test. And you have to pass the test with greater than 80 percent.

Q Did you do that?

A Yes. It was the hardest test I've ever taken.

Q And did you then get deputized?

A I then went and, after passing the written test, we went out and qualified on the shooting range under very, very strict accuracy rules. And I qualified with the – with the weapon that the U.S. Government would issue and it was their weapon.

Q All right. And were you also issued any rounds of ammunition?

A We were issued 50 rounds of Government controlled special – just for the U.S. Government bullets.

[1357] Q All right. And, then, were you deputized?

A The very last date, we stood up, took an oath to our nation, and we received a credential which we were directed never to show anybody but TSA or law enforcement.

Q And were you advised during this training that there were only limited circumstances in which you could carry your weapon?

A Yes.

Q And is that confidential?

A Yes. Well, the gist of it is not.

Q Okay. What is the gist of the circumstances in which you can carry a weapon?

A I can carry the weapon on the flight deck if I'm on the flight deck. If I'm going to be the pilot, I can have the weapon with me on the flight deck. I can carry that weapon anywhere I need to carry it as long as I'm ending up as a pilot of an airplane.

Q That's one circumstance.

A That's one. If I am flying from Denver to Chicago to commute to catch my airplane, I can carry the weapon with me to Chicago because I'm going to go be a pilot on an airplane. That's 2.

You can transport the weapon to a [1358] location in which you're going to requalify because, every six months, we had to go requalify with our accuracy, our marksmanship, and you can carry the weapon.

The last time you can carry the weapon is if you're transporting it home from Artesia.

Q All right. So those are four very limited circumstances in which you can carry this weapon; is that right?

A Yes.

Q Okay. Did Air Wisconsin know when an FFDO can carry a weapon?

A Yes.

Q And –

MR. MCGATH: Your Honor, may we approach?

THE COURT: Yes.

MR. McGATH: There's been –

THE COURT: Wait. Wait for Mr. Mark. We need two lawyers.

(At the bench.)

MR. McGATH: Thank you, very much. There's been testimony in the case that's not disputed that Mr. Frisch is an FFDO. Typically, you're not supposed to identify who other FFDOs are, but, in this

\* \* \* \*

[1376] continue to hold on to it. I can't let go.

He leans forward out of his – his simulator instructor seat, which is higher than my seat, and he begins to yell in my ear. Taking his pen, he's pointing at the different lights that are on the master caution warning, which has over 70 lights. And he's explaining the lights. This one does this, this one does this, and he says that I should be catching this. That I should be aware of each and every one of those lights at this very second.

Q All right. As Mr. Schuerman is yelling at you, what are you thinking?

A Oh, I'm kind of taken aback here because I don't understand why he's so upset and I don't understand why he's out of his seat except to get closer to – to point at things with his pen. And he's just like a foot away from my ear so everything he says is very loud to me. And, at this point, I'm not learning. I'm just trying to hold on. And I'm not saying a word. I haven't said a word yet. I'm just holding on.

He then unfreezes the sim where we go back to flying and he gives me a heading. He goes turn to



heading such and such. I'm going to bring you back around for the approach. After I complete the turn to [1377] the heading, the two remaining engines flamed out.

Q What does that mean?

A It means they were starved of fuel.

Q Was that realistic?

A No.

Q Why not?

A Well, when we started the sim session, we had 8,000 pounds of fuel. We now have less than 2,000 pounds on board the entire airplane and it's only been 40 minutes. Somewhere along the line, Mark has changed the amount of fuel that's in the airplane because he wants me to run this airplane out of gas. He's trying to teach me a lesson.

Q And what do you do then?

A Well, when the engines flame out, I'm totally surprised and I look down and I see that the fuel has been changed. The fuel gauges right there. You can see them. They're right there. Because, now, I have a moment and I'm not flying, I can look at the fuel gauges and I know exactly what's wrong. There's no fuel to the engines that can work.

Mark immediately comes out of his seat and begins to rant and rave again.

Q Then what happened?

A Well, he blames me. I go, FMS is this. [1378] He goes, You should know better. You should catch this. At this point, when he's pointing out to me all this stuff. At this point, that's it. I take my headset

off and I toss it up on the glare shield. To give you an idea of what that is, this is my headset.

Q Okay. You toss that up on the glare shield. Then what happens?

A Mark and I exchanged words at the same elevated decibel level. Mine went something like this: This is a bunch of shit. I'm sorry. You are railroading the situation and it's not realistic. He goes, Oh, I can throw some of this stuff out. I need this sim session for my career. Are you trying to prove to me that you know more than I do? Because I know that you know more than I do. At some point, Mark quits talking because he realizes that I want some answers and I don't want excuses.

Q Then what happens?

A Well, Mark is sitting in his chair and I see him look at his watch. Looking at your watch is an insult because this is my time. And he's just wanting to see what time it is, but, to me, it was an indication that he's over.

And I make the next announcement. I go, I'm going to go call ALPA legal. I'm going to go call [1379] my attorney at the Airline Pilots Association. The only way I can accomplish that is he has to put the simulator down on all jacks and attach the gantry. And he does so.

Now, to back up just a moment here, when I tossed my headset up on the glare shield, I slid my seat back. The seat's on runners and it moves 6 inches. I did not intend, but it did come back quicker than I imagined, and it made a noise. And it did catch Mark off guard a little bit. It caught me off guard, but I slid the seat back on purpose.

So, as I'm sitting in the seat, waiting for the gantry to connect, I have the armrest down and the exchange of Mark and I is over in just a matter of seconds. Once the gantry connects and I'm allowed to leave the simulator, I exit the simulator, walking by Mr. Schuerman.

I go check the logbook, and Ben Seeger did not write up that the navigation needles for the copilot's side were not working and there was no entry in there about any trouble with in-flight usage of the FMS's.

Q Did you call ALPA legal?

A Yes, I did.

Q And where did you do that from?

[1380] A The AI – I did it from the Air Wisconsin briefing room.

Q And there in the simulator building; correct?

A Yes.

Q Did you reach ALPA legal?

A No. Because, right now, it's 12:00 Eastern time, 11:00 Central time, and they are in Minneapolis and they are at lunch.

Q All right. So did you come back to the simulator?

A I left a voice mail for my attorney and I came directly back to the simulator to find that the simulator had been vacated by both Mr. Scharf and Mr. Schuerman.

Q Did you talk to them later?

A About 15 minutes later, I found – I heard some talking in the hall and I went out into the hall and I

found Mr. Scharf walking to the – to the Air Wisconsin room and Mr. Seeger and Mr. Schuerman were about 30 feet away, talking next to the windows.

Q Did you approach them to find out what was going to happen?

A Well, I just came around the corner and as soon as I came around the corner, Mr. Schuerman was [1381] sitting there with his hands in his large overcoat and he looks at me and he says, Go home.

Q All right. Did you understand what that meant?

A Mr. Scharf said that Mr. Schuerman told him that he had called Pat Doyle, and Alicia Freeman was making our travel arrangements for us to both go home and for us just to go home.

Q Then what happened?

A Well, Mark Schuerman was already going home anyway. Today was his last day of responsibility. And he had arranged a ride with Ben Seeger to the airport.

Q Did you speak with him?

A Yes. Mark left out of my sight and Dan was retrieving his personal items and Mr. Seeger walks up to me and he puts his hand out and he shakes my hand. He says, Best of luck. And I go, Did you ever think that I was going to have any trouble with this training? His exact words, No, there was nothing that I saw.

Q Then go on.

A So Mr. Schuerman's already outside the building. Mr. Seeger's catching up. Dan has walked outside the building and I'm in trail of all three of [1382] them. As we're walking to our cars without veering – we're just walking to our cars that were at

least a planter and a space apart, I see Mr. Schuerman and I announced to him that I think that he and Mr. Hanneman are the two most unprofessional instructors that I've ever had to deal with. Mr. Schuerman takes his hand and puts it in the air, like talk to my hand.

He gets in the car without a statement that I can remember. Him and Ben leave.

Q All right. And do you ride back to the airport – where do you go? They have left in one car. Did that leave you and Scharf in another car?

A Yes, sir.

Q And did you discuss with Mr. Scharf, while you were driving, the events?

A Mr. Scharf and I still were expected to stay an additional day. So we went to the hotel, gathered our things, checked out. And on the drive to the airport, we had a conversation about the day's events. And one statement that was said, Mr. Schar –

MR. MARK: It should be objected to as hearsay, Your Honor.

THE COURT: Sustained.

Q (BY MR. McGATH) Okay. Did you have any cordial conversation?

[1383] A Mr. Scharf and I had no problems. We went and turned the car in. We took the rent-a-car bus up to the upper level at Dulles International, which is right in front of the United ticket counters. He shakes my hand. Says –

MR. MARK: Objected to, Your Honor, as to hearsay.

THE COURT: Sustained.

Q (BY MR. McGATH) A hearsay objection means you can't talk about what Scharf told you.

A He shook my hand.

Q Okay. That's fair. Now, prior to this point in time, had you had any threatening comments directed towards Mr. Schuerman whatsoever?

A No.

Q Okay. And did you learn that you were to be booked on a flight that was traveling at about 1:30 or so?

A While we were discussing and being cordial and reviewing the events, Mr. Scharf indicated that I wasn't going to make my flight.

Q Okay.

A That he felt my flight was going to be at 1:30.

Q Did I understand correctly – I may have [1384] misheard you. Did you have to drive to the hotel first?

A Yes.

Q Okay. And, from there, you were driving to the airport?

A Yes.

Q All right.

A So I called Alicia Freeman on my cell phone and told her that it's 1:20. We're not – we're not quite to the – anywhere near the airport. Please rebook my flight. She rebooks my flight on the – I think now I'm recalling it was like a 4:30-ish flight out of Dulles to Denver direct and I would have to wait a couple of hours, and I said that would be fine.

Q Okay. Now, when you got to the airport, did you have to get your ticket?

A Yes. Because my ticket was made via e-mail to United Airlines, I walked up to the ticket counter, showed them my crew ID, and they issued me the ticket that Alicia Freeman had booked in my name.

Q Okay. And did you understand that Ms. Freeman was getting instructions from Patrick Doyle on booking the flight?

A That was my understanding.

Q Then about what time is that when you [1385] first arrive at the airport?

A I'm going to guesstimate about 2.

Q Okay. Did you speak with ALPA attorneys at any point in time while you were at the airport?

A After receiving my check – my ticket and my seat assignment, I went to the security line. At the security line at Dulles, there's a bank of pay phones. And I used the pay phone to call ALPA with a 1-800 number.

Q And did you reach one of the ALPA attorneys?

A Yes. Ms. Jane Schraft.

Q Were you directed to contact Air Wisconsin?

A She says, Have you talked to – I told her what had happened and she goes, Have you talked to Scott Orozco? And I said, No. She goes, You need to talk to Scott. She goes, Don't talk to Doyle. Call Scott and make sure that you're allowed to leave and go home. Otherwise, they could claim you were AWOL.

So I immediately – had her on the phone, dialed Air Wisconsin's 1-800 number, and I talked to Scott Orozco.

Q And did that call take place at approximately 2:30 Eastern?

[1386] A Yes, it did.

Q And what were you directed by Mr. Orozco?

A I said, Scott, this is Bill Hoeper and I'm on the line with the attorney, Jane Schraft, and she wants to verify that I'm supposed to go home. He goes, Yes, Bill, you are supposed to go home. And I go, Okay, I'm at the Dulles airport. He goes – he goes, I will call you tomorrow.

Q All right. Did Mr. Orozco at any point in time ask you whether you might have your FFDO weapon?

A No. The conversation was professional.

Q Did he ask you at any point in time what your mind-set was?

A No.

Q How long did this conversation last with Mr. Orozco?

A Just a few minutes.

Q Did you then proceed through the security checkpoint?

A Yes.

Q Describe that for us.

A Well, as stated before, Dulles has a very thorough security process. And I had to take my

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[1404] (At the bench.)

MR. McGATH: This has to do with the directions that he's given to retrieve his weapon, which happens immediately. It's not offered for the truth of the matter.

THE COURT: It's not given for the truth of the matter, but to explain the actions of the – actions of the defendant that followed – the plaintiff that follow?

MR. McGATH: Absolutely.

MR. MARK: I think it's – it's going to get into areas that are clearly objectionable and they are not planning on bringing a claim, so I can't cross-examine him.

THE COURT: I understand that. I'm assuming that, or we wouldn't be doing this.

MR. MARK: Exactly.

THE COURT: Keep it limited, Mr. McGath, to what he was instructed to do with regard to his weapon, but – I think it's admissible for that purpose, but I don't – I don't know what the other testimony – it's hard for me to say –

MR. McGATH: That's all we're talking about.

THE COURT: Keep your questions narrow, [1405] and I think we'll be all right.

MR. McGATH: Okay.

THE COURT: Thank you.

(In open court.)

Q (BY MR. McGATH) Did TSA Agent Kleman – first of all, did this gentleman identify himself?

A He identified himself as the Dulles-Washington FFDO program manager, Monte Kleman, with an identification which was similar to mine with credentials.

Q Did he provide you with some instructions as to what you might do with your weapon?

A He realized I did not have my gun. It's obvious I don't have my Government-issued weapon. It was his suggestion that he needed to have that weapon for my benefit.

He inquired whether it was possible for me to turn in that weapon. And I said of course. He goes – I said I could take him to my house when I land in Denver and I will meet somebody or whatever and I will give them the weapon. He says, no, he wants the weapon now. Is there anybody at your house? And I – I said, My wife is at my house.

He provided to me a name of an agent who he identified as a Federal Marshal and his last name [1406] began with a G. And it was kind of Italian like. Galatti, Gilotti. Said this gentleman would be going to my house to collect my service – my service weapon.

So I called my wife on my cell phone and I said, I can't explain right now, but you need to go to the certain area of the house where the weapon is hidden as per protocol. I gave her the combination to open to verify that the weapon was in there with two clips full of ammunition. Where the credentials were. That this Federal Marshal would be coming to the house. Give him the weapon.

Q Now, Mr. Hoeper, under FFDO protocol, were you required to turn the weapon in at that point?

A No.

Q How long would you otherwise have had to turn in your weapon?

A I had – I had to be notified that I was terminated first, and then I had a set period of time listed in my book, and this was nowhere near the situation I was in, because I had not been terminated yet.

Q Okay. So what happened?

A I closed my cell phone from talking to my wife. And, in a matter of a few moments, she called me back and said that the Federal Marshal has been to [1407] the house, he identified himself. He knew the combination to the metal box, verified that the weapon was in there, took my credentials, and left.

So he was at my residence, waiting for this information.

Q What next happened with Mr. Kleman?

A I had mentioned something to Mr. Kleman about the events, and it turns out that he is – he is a furloughed United pilot. And he intimidated to me –

MR. MARK: It's objected to as hearsay, Your Honor.

THE COURT: It's going to be, yes. The objection is sustained.

Q (BY MR. McGATH) Mr. Hoeper, how did it make you feel to learn that you were in a situation in which a marshal was already camped on your house and you were going to turn in your weapon?

A I – I'm pretty embarrassed, because my wife doesn't quite know what's going on yet.

Q Were your children at home?

A Yes.

Q Did you feel for them?

A Yes. They were only 9 and 13, maybe, at the time.

Q Did Officer Kleman – or Agent Kleman [1408] leave you?

A Yes. But he did provide for me his contact information on the back of Scott Biabos' business card. And told me – I asked if I could get a copy of the report with this information on it. And this card was supposed to assist me in getting that report.

Q Did Officer – or excuse me – Agent Kleman and/or the man in the blue suit stay with you until they were certain that your weapon had been returned?

A Yes.

Q What happened when they left?

A Well, I – I feel kind of shipwrecked here because I know I can't leave the concourse and I just wait for the flight that's going to happen later that night, around 9:30 or so.

Q Did you feel that you could leave while these officers were there, waiting for your weapon to be turned in?

A No.

Q So what's going through your mind after these two gentlemen procure the weapon and you're left all alone?

A Well, I attempted to call the union [1409] attorney, and it's too late. She's gone home. I then called my wife and explained the best I could what transpired. I then, needing a friendly ear, called a 146

captain who's a very good friend of mine, and I told him what had happened. More to vent and pass time. And tried to collect my thoughts and trying to find some, you know, sense of equilibrium.

Q Did you eventually get onto a United flight?

A Later that night, I boarded a United flight, and that airplane departed as normal and brought me to Denver. And I left that flight and went to my car and drove home.

Q Now, the first flight that you were booked on that was turned around and that you were pulled off of, was that a 777, Mr. Hoepfer?

A It was a 737, with approximately 140 people.

Q What's the difference between those two types of airplanes?

A One is large. A million pounds compared to about 174,000 pounds, I'm going to guess.

Q To the extent that Mr. Doyle wrote down that you were pulled off of a fully loaded 777 in his notes, that's not true, is it?

[1410] A No. It's not.

Q Okay. What happened as you were contemplating where you were over the next 24 hours?

A Well, what's going through my mind is that this situation has gone external of the airline and is now a national incident, possibly. And I can – I have visions of my career just being flushed down the toilet.

Q What time did you get back to your home?

A Pretty close to midnight.

Q And the next day, did you speak with anybody from Air Wisconsin?

A Scott told me we would be talking, Scott Orozco, and, sure enough, there was a phone call when I had left my house briefly, and I returned his phone call and found him to be in Appleton.

Q Did you speak with Mr. Orozco when you returned that call?

A When I told him, Scott, this is Bill Hoeper, he said, Bill, in light of yesterday's incidents, he goes, you're being terminated.

Q Did Mr. Orozco in any way apologize to you for what had just happened to you over the last 24 hours?

A No. And when I asked him if he wanted

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[1436] NetJets?

A Because of the discrepancy between the information, they thought that I was lying and they said they could no longer use my services. So I asked them if they would be kind enough to send me a letter, and they sent me a letter that said that my separation was due to a failure to complete initial ground training.

Q Okay.

A Probationary training.

Q Mr. Hoeper, did anybody at NetJets indicate to you that they might consider you as having resigned your position?

A That is the information that has come to light.

Q Mr. Hoeper, we've talked a little bit about the arbitration that took place in April of 2006. You've testified about that?

A Yes.

Q And we've also heard Mr. Doyle talk about some of the testimony he gave in that arbitration; is that right?

A Yes.

Q You were asked in April of 2006 whether you thought Pat Doyle was in some way out to get you. [1437] Do you remember that question?

A Yes.

Q And how did you answer the question?

A No.

Q Okay. If you were asked that question now, would you answer the question differently?

A Yes.

Q And why would you answer that question differently, Mr. Hoeper?

A I contacted my attorneys to file this lawsuit in December 2005. After it has come to light that they're reporting to potential employers that I was a training failure, I had just received, by the Freedom of Information Act, the four redacted sheets of paper that we've all seen, and it was all blacked out.

Q Okay. Mr. Hoeper, rather than go through a laundry list of details, I'll ask you some questions about that. Have you gained additional information since 2004 – excuse me – April of 2006 that would cause you to change your answer?

A Yes. Because there was no discovery process for the arbitration. Air Wisconsin did not have to provide me any documents and they did not. And there was no way for me to get all of this information that we have.

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[1451] Q You also heard him say he thought that you owe him an apology; isn't that true?

A Yes.

Q Do you think you owe Air Wisconsin an apology?

A Absolutely not.

Q Why is that?

A I don't believe that I should apologize for being a victim and having all this perpetrated on them in any manner. And they shouldn't have done it to me and they should never do it to anybody.

Q Do you believe that Air Wisconsin acted justly in having you pulled off that flight?

A No. I never threatened anybody. In my entire life, I've never threatened anybody.

Q Now, Mr. Hoeper, did you think that Air Wisconsin could have called you at any point in time throughout that day?

A Everybody had my cell phone number. I was standing right next to the Air Wisconsin offices. I was sitting in that waiting area for way over an hour. I was right there by the podium in plain view for everybody to see. I was not participating in any threatening behavior. The incident between Mr. Schuerman and myself lasted 3 seconds.

\* \* \* \*



[1521] A Yes.

Q If you're put on reserve and you're not called to fly the entire month – which is possible, isn't it?

A I – I guess so.

Q All right. You're still going to get paid for 75 hours of flying, aren't you?

A Per the contract, that's correct.

Q Sure. Now, let's talk about your transition to the 146. That was a voluntary request made by you; correct?

A That's correct.

Q You could have flown the CRJ, which you were actually qualified to fly; true?

A Yes.

Q You chose not to do that?

A That's correct.

Q And the reason was is because the 146 was based in Denver, and that's where you wanted to stay?

A That's correct.

Q Now, there are pilots that will commute from a duty station to where they live; true?

A That's correct.

Q That's fairly common, isn't it?

[1522] A Yes.

Q As a matter of fact, we heard testimony in this case, I think about a pilot that was in Guam flying for Continental. And that would require a commute, wouldn't it?

A No, sir. Guam is – has a base for Continental.

Q Okay. In any event, let's talk about Air Wisconsin pilots. There are a number of them that have to commute to the duty base in order to get to the aircraft that they are going to fly; isn't that true?

A That is true.

Q You chose to want to stay close to home?

A That is true.

Q And the reason was because of the condition of your parents, as I understood it; correct?

A Personal matters, that's correct.

Q Now, if you take a look at Exhibit F, Mr. Hoeper, I'd like to ask you a question about that. And that should be in the blue book.

A I apologize because this isn't working very well. AWAC Bates stamp 3372?

Q Correct.

MR. McGATH: Your reading glasses are in your pocket, Mr. Hoeper.

\* \* \* \*

[1555] suggested that it would help – help me with the systems. That's all.

Q Well, you say, "I believe the shortfall of my training was the group CPT session."

A I would agree with that.

Q All right. And so you're saying it wasn't fair to you to be mixed in with seven other pilots?

MR. McGATH: Objection. Argumentative, Your Honor.

THE COURT: I'll sustain the objection as argumentative.

Q (BY MR. MARK) And then you say you felt comfortable with Captain Seeger as your instructor?

A Yes.

Q Now, you knew at this point in time that if you were to fail the third test, pursuant to the union contract, your continued employment would be at the discretion of the company; correct?

A Yes.

Q If you would turn to Exhibit V, please, Mr. Hoepfer.

A As in bravo? B as in bravo?

Q No. As in Victor. V.

A Air Wisconsin 0144?

\* \* \* \*

[1579] A Yes.

Q And you were operating on the assumption that you could handle this stress; correct?

A Yes.

Q But you previously testified that you were not handling the stress as well as you thought you could; correct?

A That's what I previously testified to.

Q Now, you were given a number of extra chances by Air Wisconsin regarding those matters. We've talked about that. But you were given an extension for your training to handle family matters; correct?

A No.

Q As a matter of fact, didn't you testify earlier that you were appreciative of "everything that Air Wisconsin has done for me"?

A I did author that.

Q And, as a matter of fact, you previously testified that Air Wisconsin could have terminated your employment after the third P.C. failure; correct?

A Yes.

Q And, as a matter of fact, you've previously testified under oath, quote, It was very, very wonderful of Captain Orozco to give me another [1580] shot, end quote.

A That's what I wrote at the time.

Q Now, if you take a look at Exhibit CC, Mr. Hoeper, you were asked questions about this document yesterday and I'd like to inquire a little bit further. First of all, this is a document authored by you; correct?

A Yes.

Q And it was sent to Captain Orozco; correct?

A Yes.

Q And it was cc'ed to Captain Doyle?

A Yes.

Q And it was a request by you; correct?

MR. MCGATH: I think he's waiting, Your Honor, until the -

MR. MARK: I'm sorry, Your Honor.

THE COURT: Go again, Mr. Mark.

A The last question, please.

Q (BY MR. MARK) It was a request by you?

A Yes.

Q And it was asking for an additional attempt at your 146 proficiency check?

A Yes

Q And then you talked with Captain Carl

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[1585] they sincerely tried to assist me.”

Q Was that an accurate statement when you made that statement to your employer in this document that you sent to them, Mr. Hoyer?

A At that time, that was a –

Q And at that time, you felt that your instructors had sincerely tried to assist you to get through this program?

A That’s what I testified to.

Q And we know that your instructors and the company had spent a tremendous amount of effort, as well as money, trying to accomplish that?

A Yes.

Q And then you go on to say, “I feel I owe a satisfactory performance not only for myself, but to the company and the individuals that have stood behind me during this uncomfortable and embarrassing time”; correct?

A Yes. Because, on many occasions, I was told I had cheerleaders and supporters who were the check airmen.

Q Not only were you told that, but that’s the truth because that’s exactly what happened; correct?

MR. McGATH: Objection. Argumentative, [1586] Your Honor.

THE COURT: Sustained.

Q (BY MR. MARK) And then you go on to say, "I understand that Air Wisconsin is not under any contractual obligation for any further expense." Do you see that?

A Yes.

Q Was that statement accurate?

A Yes, sir.

Q And, as a result of that letter, you were then given an opportunity beyond what normally is given to any other airman under the same contract, to have a chance to prove yourself one last time; correct, Mr. Hoyer?

MR. McGATH: Objection. Misstates evidence, Your Honor.

THE COURT: Overruled.

A I don't know that to be true because I've heard it testified that other pilots received the same consideration.

Q (BY MR. MARK) Isn't it true that this was a special consideration for you based upon the performance that you had already shown to the company?

MR. McGATH: Objection. Argumentative, Your Honor.

[1587] THE COURT: Overruled.

A This was special consideration for me. That is true.

Q (BY MR. MARK) And there was no obligation under the contract for this to be given to you?

A That's correct. It wasn't.

Q And the company didn't have to spend any more time or any more money or any more resources to deal with this situation if it chose not to; true?

A True.

Q When you got your ATP, Mr. Hoeper, were you aware of the requirements to receive that certificate?

A Yes.

Q And that's an airline transport pilot certificate, is it not?

A Yes.

Q And is one of the requirements not only do you have to show competency; correct?

A Yes.

Q Proficiency; correct?

A Yes.

Q But also high moral character; correct?

A Correct.

\* \* \* \*

[1593] A That was out of respect, yes.

Q All right. And then we see down in about the fourth – the fifth paragraph again discusses regarding your request for the proficiency check; correct?

A Yes, sir.

Q Now, I'm not going to go through Exhibit DD again. I think we've all seen it enough. But you're

aware of the fact that this is what has been referred to as the last chance agreement; correct?

A Yes, sir.

Q And this is a document that you understand the company had no obligation to give you; correct?

A Yes.

Q The company could have fired you at that point without giving in to you?

A Yes.

Q You were being given an opportunity for a fourth attempt at a proficiency check?

A Yes.

Q But, at that point, you agree that the company had abided by the contract; correct?

A Yes.

Q Now, Exhibit DD, you reviewed?

\* \* \* \*

[1597] be more happening; correct?

A Yes.

Q This session went quite badly for you again, did it not?

A Yes.

Q In fact, the engines flamed out, did they not?

A Yes.

Q And we heard a lot of discussion yesterday about the cross-feed, and that has to do with making sure that fuel is supplied to the running engines; correct?



A That's correct.

Q And while you were pilot-in-command during these sessions, these engines that were running actually starved of fuel; correct?

A Yes, they did.

Q There was fuel on board the airplane. It just wasn't getting to the running engines?

A There was very little fuel, but there was fuel on the airplane, yes.

Q And, as pilot-in-command, you had the responsibility of making sure that the cross-feed was open so that the running engines would get fuel?

A That's correct.

\* \* \* \*

[1600] been misoperating.

Q And you blame that on being responsible for why you flew 22 miles past the Green Bay VOR?

A That, and the fact that the copilot had no navigation. Those two items together are why we flew by the Green Bay VOR.

Q And that – neither one of those were your responsibility; correct?

A That's correct.

Q Now, this session caused a lot of frustration for you, did it not?

A That's what I testified.

Q And we know about the many family problems that you were experiencing in this same time frame; true?

A I think they have been steady all along, yes.

Q All right. You testified yesterday and you testified previously under oath that you slid your seat back quickly; correct?

A Yes, sir.

Q There was still 40 minutes remaining in the simulator?

A That's a misstatement.

Q All right.

[1601] A There was more than 40 minutes. It's only noon.

Q Okay. In any event, there wasn't any reason to slide your seat back quickly with more than 40 minutes left if you intended to complete the training session, was there?

A I would have to disagree.

Q Well, you've testified previously that you were the one that stopped the simulator session, haven't you?

A Yes, I did.

Q And then you became confrontational with Captain Schuerman?

MR. McGATH: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

A I disagree.

Q (BY MR. MARK) You raised your voice?

A To his level, that's correct.

Q You said words to the effect that, "You win"?

A I did.

Q You said that, "I've had it"?

A I said, "That's it."

Q You said, "I'm calling ALPA legal"?

[1602] A That was the very last statement I said.

Q And, before that, you actually used profanity?

A I used the S word. That's correct.

Q And then you exited the simulator to call Jane Schraft, who was a lawyer with the Airline Pilot's Association?

A That's correct.

Q And then you, subsequently, while holding the phone, as I understood it yesterday, talking to Ms. Schraft on one line, called Captain Orozco on the other to verify what your lawyer was telling you, whether you were supposed to go home?

MR. MCGATH: Misstates prior testimony, Your Honor.

THE COURT: Let's try and rephrase that.

Q (BY MR. MARK) Were you talking to the ALPA lawyer Schraft at the time that you subsequently called Captain Orozco?

A Would you tell me the time because, right now, I thought we were in the simulator building.

Q You've exited the simulator. You've now exited and gone.

A Approximately two and one-half hours later, I did call Jane Schraft and have a two – [1603] actually, a three-way conversation with Captain Scott Orozco.

Q All right. And you did that at, I gather, her urging?

A Yes. Because she wanted to make – to go over Pat Doyle’s authority to get the ultimate authority for my permission to leave.

Q And you hadn’t called Captain Orozco prior to that time?

A No.

Q Incidentally, Mr. Hoeper, this was not the first time that – the sequence of events in trying to transition to this other piece of equipment was not the first time that you had had a proficiency failure, was it?

A I had an on-line proficiency failure earlier in 1998.

Q The records that are at least with Air Wisconsin indicate that you failed a recurrent proficiency check in the simulator on April 19, 1999, and I believe that was with the Dornier 328 aircraft. What is the one that you’re referring to, then, in 1998?

A I was off. I didn’t realize it was in April. That was with Augie Foriginal (phonetic) and

\* \* \* \*

[1617] the Court’s order.

THE COURT: I’ll allow that question, but I think we’re – we better be careful from here on out. You can answer.

A At the time that I testified, that was my testimony.

Q (BY MR. MARK) All right. And you also testified that you didn't blame Captain Doyle for any of your failures; correct?

A At that time, that was my testimony.

Q And you testified that you didn't blame Captain Orozco for any of your failures?

A At that time, that was my testimony.

Q And at that time, your testimony was under oath that, quote, Captain Doyle was not out to get me. And keep in mind that Captain Doyle gave me the first two type rides. In no way did Captain Doyle influence the outcome of that ride by his performance in the sim. In no way. In no way do I believe that Captain Orozco directed Pat Doyle to do anything or anybody to do anything to me. These two men are not to blame for the fact that I did not and am sitting here before you today, end quote.

Is that what you testified to under oath before the arbitration board in your arbitration in the [1618] spring of 2006?

A Yes. That was my testimony at that hearing.

Q And you also testified that Todd Hanneman was not out to get you under oath; correct?

A That was my testimony in that hearing.

Q And you also testified that Mark Schuerman didn't – did not enter the simulator with the intention of things not working out; correct?

A That's how I testified in that hearing.

Q And you testified that Captain Schuerman was tough, but fair, under oath, did you not?

A That's how I testified.

Q Now, let me ask you about the FFDO program. You became a member of that program in February of 2004, you testified?

A That was my completion date from the training.

Q All right. Now, nothing identified you as an FFDO within the company, did it?

A I had to inform certain people.

Q Limited people?

A Yes, sir.

Q All right. But the general population certainly didn't know about your status, did they?

\* \* \* \*

[1627] A During the arrest, Scott Biabos was the only person, yes.

Q And he was the only person who – that was questioning you during the event from the airplane to the jetway to the gate?

A There were other questions like where are your bags, but Mr. Biabos was in charge of the interrogation, yes.

Q All right. Now, in terms of being held, you've testified under oath previously that you were only held by the officer by the arm for the first couple of minutes. That's a direct quote; true?

A Yes.

Q You've testified previously that the search was cursory; is that true?

A Yes.

Q You've testified that, in your words, the search lasted less than 10 to 15 seconds. Is that true?

A Per person. That's correct.

Q And that the search caused you no physical injury?

A No.

Q I'm sorry?

A The answer would be no. No physical [1628] injury.

Q And the officers did not act unprofessionally?

A I did not believe so. They did not.

Q And neither United nor the officers were unprofessional in escorting you off the aircraft?

A No, they were not.

Q And there was nothing unprofessional about the bag search?

A No. There was not.

Q All right. And I think you talked about being on your hands and knees – actually, you testified that the TSA put the items back in the bag, didn't they?

A They couldn't zip up the zipper, so I had to get down on my hands and knees to correct the situation.

Q But they put the items back in your bag after they checked it?

A Yes. But they weren't folded.

Q All right. Now, I think you used the word "arrest" yesterday, and I want to make sure we're clear on that. You didn't mean to say that, did you?

A Yes, I did.

Q As a matter of fact, you were never [1629] placed in handcuffs, were you?

A No, I was not.

Q You were never told you were placed under arrest, were you?

A I was not told I was under arrest.

Q You were never read your Miranda rights, were you?

A That's correct.

Q And those are those things that we see on TV all the time about you have a right to remain silent; correct?

A This was not TV, and I agree.

Q You never got those Miranda rights read to you, do you?

A No.

Q No weapons were ever unholstered, were they?

A No.

Q No members of either law enforcement or United ever asked you anything that was improper?

A No. They did not.

Q Once the gate area was cleared, you never saw those police officers again, did you?

A No, I did not.

Q And you never saw agent – TSA Agent [1630] Biabos again, either, did you?

A No. But his – his shadow bodyguard, I did.

Q Now, you took a later flight from Dulles, and you boarded that flight without incident?

A That's correct.



Q And you took off without incident?

A Yes.

Q And you got home without incident?

A Yes.

Q And you didn't discuss it with anybody on the flight home; correct?

A No.

Q Now, the reason for being detained was that, first of all, you expected to receive notification of your termination, did you not?

MR. MCGATH: Objection to the form of that question, Your Honor.

THE COURT: Let's see if we can rephrase, please.

Q (BY MR. MARK) Sure. During the time that you were being questioned by the TSA, who was taking the lead on it, you indicated that you knew you were expecting to receive notification of your termination based upon the previous afternoon's events [1631] and the failure to complete the training session; correct?

A That's what Agent Biabos said, yes.

Q And you have testified under oath that you were expecting to receive that notification?

A Only after Agent Biabos said it, yes.

Q And that's the reason you didn't need any explanation as to why you were being detained; correct?

A I didn't need an explanation because they detained me. And I was paying attention. And I was scared to death.

Q Well, what you've testified to under oath is that it was obvious, quote, unquote, as to why you were being detained; correct?

A After the line of questioning, yes.

Q And you testified, "I probably had a pretty good idea that the accusations being made any time of anybody on an airplane of this nature would be alarming." That's what you testified to?

A Yes.

Q Now, Agent Biabos never once mentioned Mark Schuerman's name during this episode that occurred at Dulles, did he?

A No.

\* \* \* \*

[1640] A Yes.

Q As a matter of fact, I think you testified you even studied that case, didn't you?

A And I actually taught it to my crew members.

Q And that also involved a disgruntled employee who was able to do mayhem in the cockpit of an aircraft; correct?

A That was true, but under an extremely different set of circumstances.

Q We've heard testimony in this case, Mr. Hoeper, that, as an FFDO, you have jumpseat privileges; correct?

A An FFDO does not give you jumpseat privileges. Being a certified airman in an airline gives you jumpseat privileges.

Q Sure. But an FFDO is normally a certified airman, isn't he or she?

A The FFDO does not allow you to be the jumpseater. The certification of an airman allows to you be the jumpseater.

Q Okay. Let's do it your way then. You can jumpseat if you're a certificated pilot; correct?

A Yes.

Q And if you're an FFDO, that means you [1641] can jumpseat carrying your weapon; correct?

A Yes.

Q And that means you can be in the cockpit with a weapon; correct?

A Yes.

Q You've dealt with problem passengers before, have you not?

A Yes.

Q And there have been instances where you wouldn't let a passenger on board the aircraft?

A Yes.

Q And that's occurred when they pass by the counter and then they went through security and then they went by the gate agent and they went by the flight attendant and they got on board your airplane; correct?

A I don't know what their predisposition was, except they were at my plane.

Q All right. And when they got there, you didn't want them on the airplane?

A That's correct.

Q All right. So you would agree with me that the pattern of behavior regarding people that shouldn't be flying can vary, can't it?

A That's correct.

\* \* \* \*

[1686] Q Your termination occurred on December 9 of 2004?

A Yes.

Q You made the application to NetJets in July of 2005, you were hired for a period of time in August of 2005, and then you were terminated in September of 2005; correct?

A Item No. 9, I was told that I was – their offer of employment was being rescinded.

Q All right. And thank you for that correction. And you were also told that it was being rescinded because there had been a misrepresentation as to your departure from your last job.

A That's – that's what their consideration was, yes.

Q And they were concerned about you saying one thing about your departure when, in fact, that wasn't true; isn't that accurate?

MR. McGATH: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

A They were concerned that they were getting two sets of information. That's what he told me.

Q (BY MR. MARK) Actually, they were

\* \* \* \*

[1704] Mr. Hoeper, who knew that you didn't have your weapon; isn't that true?

A I disagree.

Q What's the answer to my question, sir?

A No.

Q All right. After it was determined that you did not have your weapon, you were released, were you not?

A Not for some time. And I was contained in the concourse for hours.

Q Well, you weren't contained there. You were actually interrogated, you had testified previously, for 20 to 30 minutes. And once you were left alone, you went to have something to eat. And nobody said you had to stay in the concourse; isn't that true?

A I did not feel I could leave the concourse, but no one told me that I could not; that's correct.

Q Thank you. And then you ultimately ended up returning home on a flight the same evening; correct?

A That's correct.

Q Now, just a few more questions, Mr. Hoeper. The – we've established that the 146 is

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[1708] Q Now, all of the facts about what your capabilities were as a law enforcement official and an FFDO officer were known by Pat Doyle at noon on December 8th, 2004; isn't that true?

A Yes. And those would be similar to the one million other law enforcement officials that must be in the United States today.

Q But particularly with respect to you, Mr. Doyle knew you were an FFDO at noon when the call came in from Mr. Schuerman; isn't that true?

A Yes.

Q And he knew that you had been a former law enforcement officer; true?

A Yes.

Q He also knew, did he not, based on his testimony, that the incident with Mark Schuerman lasted only a matter of seconds; isn't that true?

A I believe so.

Q And had he asked Mr. Schuerman, he would have known that you weren't a threat; do you remember that?

A Yes.

Q Skipping around a little bit, did anyone at Air Wisconsin Airlines ever comment to you that they were in any way concerned about your stability?

\* \* \* \*

[1710] you'll turn to Defendants' Exhibit Z. Get the defendants' exhibit notebook. Z.

A Bates stamp 7? Z.

Q Z. Do you have it?

A Yes.

Q And put your reading glasses on.

A Bates stamped 0148.

Q All right. These are the notes that have been represented as Mr. Hanneman's notes; is that right?

A Yes.

Q Were these notes ever provided to you at any point in time before you began to train in December of 2004?

A No. I never saw these notes in 2004.

Q And do you believe that these notes were somehow prepared to help you?

A I don't believe so.

Q Okay. Air Wisconsin has a policy which says that all of the notes regarding events in a training session or a check ride are to be put in the pilot's training folder; isn't that true?

A Yes.

Q These notes never made it to your training folder, did they?

[1711] A No.

Q Do you believe that these notes were prepared after the events of December 9th, in order to buttress Air Wisconsin's case?

MR. MARK: Objected to as leading and argumentative, Your Honor.

THE COURT: Sustained.

Q (BY MR. MCGATH) There are notes in here about stability. Do you remember that?

A Yes.

Q Did Mr. Hanneman ever suggest to you at any point in time that you were somehow unstable?

A No.

Q Did Mr. Doyle ever suggest to you that, Well, Mr. Hooper, we ought to not be training you anymore because you're unstable?

A No.

Q In fact, after these notes were purportedly written, you were offered another opportunity to pass a check ride; isn't that true?

A Yes.

Q And the notes of Mark Schuerman, which are Exhibit I in the defendants' notebook – can you turn to those, Mr. Hooper?

A Bates stamp 158? Is that it?

\* \* \* \*

[1823] look at how that person may actually attract that kind of a thing or if they've done something to the perpetrator that the perpetrator may want to retaliate. Any one of those issues.

So we look for that, as well. And finally, we look at the environment itself. Does the environment produce a situation where somebody would become violent? Is it a place where violence occurs? Does it allow violence to happen?

All those issues are what I'm looking at. And certainly, in this case, it now is looking at specifically Mr. Hooper.

Q Dr. Corcoran, let me stop you there. Let's break this down to make it easier.

A Okay.

Q So you've talked about the three factors. And the first factor is looking at the alleged perpetrator?

A Yes.

Q Did you look at that factor in this case?

A Yes, I did.



Q What did you find?

A I found no evidence that this individual had the potential towards violence [1824] outside of the workplace.

Q What did you base that on?

A Again, I based it on the total package of connecting the dots and looking at everything completely. You can't just look at one little segment.

Q And Dr. Corcoran, before you rendered your opinions in this case, you reviewed documents, materials in this case; is that fair?

A Yes, I did.

Q And you reviewed the report of Dr. McElhaney?

A Yes, I did.

Q And you reviewed the deposition of Mr. Hoyer?

A Yes, I did.

Q And you reviewed documents provided by Air Wisconsin concerning Mr. Hoyer?

A Yes, I did.

Q And you reviewed the depositions of Kevin LaWare, Robert Frisch, Scott Orozco, Mark Schuerman, and Patrick Doyle?

A Yes.

Q And so from the review of those materials, you then assessed Mr. Hoyer as a

\* \* \* \*

[1877] him, correct?

A Correct.

Q That is a unique set of circumstances that had never, to your knowledge, in all of your reviews of those types of cases, presented itself since 9/11/2001, correct?

MR. MCGATH: Objection; argumentative, Your Honor.

THE COURT: Overruled.

A Correct.

Q (By Mr. Avery) No potential for violence, there's no connection between the victim and Mr. Hoeper and that this environment is safe, as a general proposition.

If we change that to include, we have a dissatisfied person whose dissatisfaction is increasing; who has said that he thinks the company is not treating him fairly and is out to get him with training; that his language has gotten increasingly abusive; that he's got family stress from illnesses; that he has the potential for losing his job as a result of what occurred in the hours earlier; that he's on a plane that is partnered with his own company; that there are, in fact, Air Wisconsin personnel on the plane; that [1878] there's a concern that this could be a repeat of FedEx 705; and he is uniquely situated to have the potential for a gun; he has credentials; he might have a gun on the airplane without tickets; and he could jump-seat, that connects the dots, doesn't it, sir?

A In my opinion, it doesn't for this case.

Q It does not?

A That is correct.

Q You don't see this as a risk, if people sat around and discussed all of these events, that they should have considered him to be a risk?

MR. MCGATH: Your Honor, argumentative.

THE COURT: Sustained.

Q (By Mr. Avery) Do you, sir, see a person in these circumstances as constituting a potential risk?

A Again, you're looking at – I can't say yes or no, because you're looking at individual segments. You can't do that.

You have to put them all together and then say, Is this something that is potentially [1879] violent. And there are a lot of other things that you've left out that I had to consider, as well.

So no, I cannot say, categorically, yeah, that elevates the potential.

Q Let's do it this way, sir: It's December 8, 2004. It's 3:30 in the afternoon. You get a phone call as a threat assessment guy, and the phone call says, We've got somebody who we're concerned about because he just walked out of a training situation, it was significant enough that we got a phone call telling us how angry he was, he's using abusive language.

He also had an act of aggression, which was throwing his headset on a glare shield. We know that the guy has some family situation that's been going on for him.

We know that he's unhappy with work and thinks he's being washed out or has suspicion of being washed out. He's had three strikes against him under the collective bargaining agreement, and this may very well result in his termination.

We've booked him on a flight with one of our flight partners, but we're aware of what happened with FedEx 705, and we have concerns that [1880] this

could be a repeat, and he is in the unique situation of being able to get on an aircraft, possibly armed, with credentials and sitting inside this area that only the pilots can sit in as a jump-seater, and you would say to those people, there's no risk to those passengers or to the public at large?

Would that be your recommendation to management?

MR. MCGATH: Objection; incomplete hypothetical, argumentative.

THE COURT: Overruled.

A If they called me with the set of facts that you described, I would tell them, If he's away from the workplace and he's away from the potential victims, then I consider him to be low to no potential for violence.

Q (By Mr. Avery) And if they said, Should we call the authorities that have control over that environment, in this case TSA, your answer would have been no?

A My answer would have been: I'll leave it up to you, you decide what you feel comfortable with.

Q So it would have been Air [1881] Wisconsin's decision as to what to do, correct?

A Correct.

Q And with all that information, you certainly, then, wouldn't fault them for calling the agency that has responsibility for airport security, correct, airline passenger security?

MR. MCGATH: Objection; foundation, Your Honor.

THE COURT: Overruled.

A The problem is with the time line.

Q (By Mr. Avery) I'm not asking you about the timing.

A I have no problem.

Q So you have no problem with the fact that they called TSA?

A Correct.

Q While you may disagree with what's on the board, you do agree that, if you can connect the dots, the potential for violence exists, the threat exists?

A The more you can connect the dots, the higher the potential, absolutely.

Q The more dots you connect, the higher the risk?

A Absolutely.

\* \* \* \*

[1892] had that in my mind as I was doing the report. And unfortunately I got that date confused with the December 8th date.

Q Does that change any opinions in your report?

A No, it does not.

Q Now, Dr. Corcoran, Mr. Avery had written up on the board some hypotheticals, which you seemed hesitant to accept.

Do you recall that?

A Yes, I do.

Q What was your hesitancy for?

A This goes right to the heart of the matter of a threat association that I was trying to describe before, that unless we look at the whole picture, unless we

look at all the facts, we can't just pick and choose which facts to look at, you have to look at all of them in order to come up with an assessment, otherwise, you come up with false positives, and that's exactly what I try to guard against most emphatically, because a lot of threat assessment experts have the propensity of doing that, and I want to be sure that I don't do that. Consequently, I need to look at all the real facts.

[1893] Q What other facts would have been important?

A Well, certainly Mr. Schuerman said in his deposition that he didn't feel threatened, he felt he could go – he felt Mr. Hoeper could get on the airplane.

Mr. Schuerman indicated in a letter that he was with Mr. Hoeper while they were going to the airport, they dropped off the car, he didn't feel threatened and, in fact, he felt Mr. Hoeper was at peace.

Certainly showing the time line of potential violence was diminishing if, in fact, even there. Then you have the issue of Air Wisconsin buying the ticket for Mr. Hoeper.

If, in fact, they believed he was a national security person – incident ready to happen, why would they put him in that environment, where they now are saying, Oh, my goodness, now it's a danger?

And we know that Mr. Hoeper bought a ticket, and with the ticket went through the regular TSA security line in Dulles Airport. Come on, that's one of the most secure TSA spots in our country because of its relationship and proximity [1894] to the capitol. So it just smacks – there's a bunch of missing facts.

Q Given the complete facts, does your threat assessment change in this case?

A No.

Q And given the complete facts, back to Dr. McElhaney's question, did Air Wisconsin respond correctly on December 8, 2004?

A No.

Q Why not?

A Because if they truly had that belief, even if we just looked at what the hypothetical is, which I always have problems with anyway, it begs a question of why was there such a delay in the reporting of this.

And in fact, why would Mr. Doyle book a flight for this individual if he feared that he was going to be a danger? It just doesn't make sense.

MR. REITZ: Thank you.

THE COURT: Recross?

MR. AVERY: None, Your Honor. Thank you.

THE COURT: Do any of the jurors have questions for Dr. Corcoran?

\* \* \* \*

[1928] compound emergency. But if you're doing that, you should have the support pilot. And the support pilot means exactly that, he's there for support. He's not there as a potted plant in the airplane. He's there to provide support.

So if you're going to overload somebody, the chances are that those stressors that are induced in these compound emergencies are going to force that pilot to

be overloaded and just – they can't remember their own name.

Q Captain Hulse, there's been some testimony that a simulator operator who has the intent can fail any airman on any day.

Do you agree with that?

A Yes.

Q And you consider yourself to be a fairly good pilot, or at least you were when you were flying; is that right?

A I would consider my career and my background in aviation, the things that I've done, that I was a good pilot, yes.

And we're – you can take anybody, I don't care who he is, whether it's Chuck Yeager, Kathy Boington, or any pilot going, and if you want to, in the simulator, you overload him, get him in [1929] a solo flying position, and you can fail him. That is wrong. I could be failed easily.

Q Do you believe that if one of these two gentlemen right here wanted to fail you in the simulator, that they could?

MR. MARK: Object to lack of foundation, Your Honor.

THE COURT: Sustained.

Q (By Mr. McGath) So you believe that you could be failed by a simulator operator if that was the intent of the operation?

MR. MARK: Objection; it's cumulative, Your Honor.

THE COURT: Sustained.



Q (By Mr. McGath) Captain Hulse, I asked, upon behalf of Mr. Hoeper, for you to look at whether you – I asked you to assess whether or not Air Wisconsin engaged in misconduct in the training and testing of Mr. Hoeper in the BAe-146; is that right?

A That's correct.

Q Do you have an opinion in that regard?

A I do.

Q Can you tell us what the opinion is?

\* \* \* \*

[1950] Q I thought you said the oral was good for two hours. Did you mean to say it was good for 60 days?

A 60 days. My apologies.

Q Do you believe that Dr. Hoeper was subject to additional unnecessary jeopardy in that November 14, 2004 check ride?

A That's the only way you can look at it. It's not required to have another oral.

Q Do you have concerns about the November 13, 2004 ride itself?

A Yes. I would have – I would look at the November 14th ride, where you have a fully qualified instructor performing support.

That fully qualified instructor should be well-versed in support, in crew resource management. He should not be sitting there as a potted plant. He should provide the support.

It bothers me that that ride, I believe, was somewhere in the neighborhood of two and a half

hours, and there was a whole bunch of unsatisfactoriness given, and there's no explanation for it.

Q Did you have an opportunity to review the notes which Captain Hanneman generated [1951] sometime, we're not sure when, but following that ride?

A Following that ride, my understanding of the notes, the five pages of notes, is that –

Q First of all, did you consider those notes? Just answer my question, because I'll get them for you.

A Yes, I considered those notes.

Q And are they found in the Exhibit 11 No. 13 beginning on page 20?

A Yes.

Q Did you come to believe, based on these notes, that proper ride-seat support was not provided?

A Based upon my background and a lot of the – the training that I have done in the simulators and on the line, I see no evidence to support here by Mark Schuerman.

Q There's been testimony from, I believe it was Mr. Hoeper, that Captain Hanneman had indicated to him that he had crashed into an industrial park, and Captain Schuerman had indicated that he had landed on the wrong runway.

Do you remember seeing evidence of [1952] that in this case in the documents that you reviewed?

A Yes.

Q Is there any reference in these notes anywhere to that happening?

A I have not seen that happen. I have not seen that in the notes, pardon me.

Q Would that be something you would expect would be in notes like that if, in fact, it occurred?

A I not only expect that it would be in their notes, but these notes would have been given immediately to Captain Hoyer.

But if Mark Schuerman is flying support and if Air Wisconsin is trying to convince me that Mark Schuerman, as an instructor pilot, would let this happen, something is wrong.

Q You are aware that this was counted as a failure against Mr. Hoyer, correct?

A Yes.

Q Now, are you aware that Air Wisconsin eventually agreed to allow Mr. Hoyer a fourth check ride?

A Yes.

Q Are you aware that there was a [1953] letter that was referred to as a December 3, 2004 last-chance agreement?

A Yes.

Q And Captain Hulse, if you could turn to Exhibit No. 13, page 27, please.

A Yes.

Q Does the existence of this last-chance letter bear on your opinions as to whether or not Mr. Hoyer was treated fairly?

A In my opinion, there was no reason to have this last-chance letter.

Q Can you explain why there would be no reason for this letter?

A Air Wisconsin could have easily given him the other proficiency check, the training that they eventually ended up starting to do in December, but there was no reason.

The only reason that Scott Orozco comes up with is that it would take away any of Hoeper's right to recourse under the collective bargaining agreement with the union.

MR. MARK: That's objected to as exceeding the scope of the opinions asked. I'd ask that it be stricken, Your Honor.

THE COURT: The answer is stricken, [1954] objection sustained. Next question.

Q (By Mr. McGath) Why was this last-chance letter unnecessary?

MR. MARK: That's irrelevant, too. It's lacking in foundation.

THE COURT: Sustained.

Q (By Mr. Avery) Captain Hulse, do you have concerns about the events that happened in December with Mr. Hoeper?

A Very much.

Q And can you tell us about your concerns regarding the December training?

A The December training started out with the 7 December ride where Schuerman had said things went well. The December 8th ride greatly concerned me as I read Mark Schuerman's deposition and the transcript.

Q Why is that?

A It concerned me that here you've got an instructor pilot – and I'll pick it up with the point that Mark Schuerman issues a holding clearance. And from that holding clearance, he comes out and gives Hoepfer a localizer bad-course approach to Runway 2-4.

Q You may have to help us out here.

[1955] A A localizer approach is a type of approach – it's a nonprecision approach, localizer bad-course. Basically, what a nonprecision approach means is you don't have glide-slope guidance. You have course guidance but no glide-slope.

Q What is glide-slope guidance for those of us that don't fly?

A Glide-slope guidance would provide the crew who's flying the airplane, the crew that's flying the airplane, to come in and successfully land the airplane.

Q Is it an electronically generated beacon?

A Yes. On a precision approach, for example, an ILS, an instrument landing system approach, you would have an electronic glide slope as well as course guidance, precision versus nonprecision.

The localizer approaches are identified in the TERPS manual, where they construct these, as being – there's a caution issue to them regarding the sensing of the course as you get in close to the runway. He's flying with an engine out. He's given the weather of 601.

[1956] Q What does that mean?

A Basically, it's an altitude there for the clouds and one-mile visibility. You need a visibility to commence an approach, that's what you need.

Now, with this nonprecision approach that he's making, it was Schuerman's stated testimony that he wanted him to land out of this approach; however, his approach speed was 128 knots, because he's got an engine out.

What that means in the airman information manual under the Federal Aviation Regulations is that puts him in what they call a category C airplane. On the approach plate, you need a mile and a quarter to make that approach.

Q Mile and a quarter what?

A Mile and a quarter visibility. That's what you need to make the approach. I'm using a lot of aviation stuff.

Q That's okay. I'll try to catch up with you if there's things I don't understand.

A My apologies if I'm confusing everybody. I hope you ask questions.

In any event, Hoepfer comes down, he doesn't see it. The course sensing is really [1957] sensitive, but he sees it for a second and he makes a command decision, I can't make this, I'm too steep, I'm not going to have a stabilized approach.

Q Is that the proper decision to make?

A Absolutely. That's a judgement call, and I'd give him above average in headwork for that. So he does the right thing, he executes a missed approach. Schuerman did the wrong thing by missetting the simulator visibility.

Q Then what happens?

A The comedy continues here.

MR. MARK: I'm going to move to have that stricken as an improper comment.

THE COURT: The objection is sustained.

THE WITNESS: My apologies.

Q (By Mr. McGath) Just try to stick to a factual description, Captain.

A My apologies. He is then vectored around for an ILS approach to Runway 2-4. That's fine. You make an ILS approach, and remember, like I said, with an ILS approach, you have glide slope, the guidance – it was course guidance, the instrument landing system.

He's given a visibility. And it was [1958] Schuerman's stated testimony that he wanted to have him shoot the engine out, ILS approach down to 100 feet and a missed approach, perfectly legitimate.

When he gets down there, Schuerman has, once again, misset the simulator. Hoeper sees the runway. What does he do? You land. That's what you're supposed to do. He lands.

Now, Schuerman, from the back seat, is yelling, No, go, go, go. So he – and he removes the visual presentation.

Q What do you mean by that?

A When you look out the windows on the simulator, you can see the visual presentation of the runway and, depending upon the quality of simulator, you can see buildings, you can see – on a good simulator, you can see all kinds of stuff.

Basically, it's a depiction of what the real world is. So now Schuerman, in the back, he's not acting like air traffic control anymore, he's acting like Instructor Schuerman, Go, go.

What does Hoeper do? He's confused. So he says, Okay. Puts the power up to it and makes the three-engine takeoff with the visibility removed, with no visual presentation. Now we get into where, on the missed approach, some [1959] 3-, 400 feet, Schuerman fails a second engine.

Okay. Hoeper now has got two engines out on one side and he's struggling with it, and he's climbing on up. And Dan Scharf is sitting there faced with, What am I going to do. And Hoeper is punching out lights.

And I submit, if you're looking there and you see a lot of lights in front of you and you're trying to keep, you know, the blue side up, supposedly, what you're going to do is you're going to punch out those lights, they're a distraction. Distractions cause accidents.

He executes the miss and he says, I want to come back. What does Mark Schuerman say? He says, Go to the hold. Meanwhile, Dan Scharf is sitting there providing no support, none.

Q Why is that?

A Because he had his chair kicked.

Q Then what happened?

A Hoeper proceeds out probably 20, 21 miles, and he's got this fuel imbalance going. No first-officer-in-support is going to let that happen, you just don't do that.

You've got to have some semblance of crew resource management to take care of those [1960] abnormals



and report to the flying pilot from the monitoring pilot, The checklist is complete, we're all done, we're ready to come back.

Two engines out in a four-engine airplane is an extreme emergency. You would never, ever tell a guy to go to a holding pattern. That's an abuse of your authority.

Q Then what happened?

A Then what happens is the engines start flaming out and Hoeper says, Hey, enough of this, I want out, I quit, I want to call my ALPA representatives, I believe is what he said, I'm going to call ALPA legal.

So as he does that, he slides his chair back. Now, Mark Schuerman is a pretty good-sized guy.

MR. MARK: I'm going to object. It's nonresponsive.

THE COURT: Sustained.

Q (By Mr. McGath) Captain Hulse, did you believe that what was going on in the simulator on December 8, 2004 was fair to Captain Hoeper?

A It was absolutely unfair, unfair.

Q Do you believe that Mark Schuerman had interfered with appropriate crew resource [1961] management?

A To the extent that he didn't allow it, and I can't see where he allowed any of it, he violated his trust, he violated the FARs, and he should have allowed the support that Hoeper needed.

MR. MARK: I'm going to object as nonresponsive.

THE COURT: Sustained. It's nonresponsive. The jury is instructed to disregard it, it's stricken from the record.

Q (By Mr. McGath) Captain Hulse, in your opinion, was Bill Hoeper a training failure?

A No.

Q Can you explain your answer briefly?

A The biased training that he received by Air Wisconsin pilots, management pilots, the fleet manager, do not reflect proper training of a pilot.

Q Do you have an opinion as to whether or not, when the words “training failure” were written on his discharge form, Air Wisconsin knew that Mr. Hoeper was not a training failure?

They had to know. There’s no other explanation for it. You have – well . . .

\* \* \* \*

[2457] jury – if the jury chooses to believe Mr. Avery, that Captain Schuerman kicked the back – believes this seat kicking business and that Schuerman was not helping him appropriately or assisting him when he was flying – flying in the – in the right – right seat, and the involvement – and that he was involved in all of this other flowing from Craig Christensen’s hatred conspiracy to get rid of Bill Hoeper, I think they can find that to be outrageous conduct. But I think – I will tell you I think that evidence is pretty thin, but I don’t think it’s so thin as to be nonexistent.

And if you’d like to make a record on that, you may, but I’m – I’m going to deny your motion as to the outrage – emotional distress claim.

MR. AVERY: Okay. Well, give me a chance here, Judge.

THE COURT: I know.

MR. AVERY: All right. Judge, let's look at the requirements for the emotional distress claim at the outset. And, in our brief, we set forth what the case law is under Virginia for how – what the conduct must – what level of conduct rise to and the effect it has on the plaintiff. It has to be severe emotional distress.

At this point, here's the evidence that

\* \* \* \*

[2526] Mr. Doyle has testified that you, Mr. Frisch, and Mr. Orozco met at approximately 1:30 Central, 2:30 Eastern to discuss Mr. Doyle's concerns about Mr. Hoeper. Do you remember that testimony?

A I – I believe that was Mr. Doyle's testimony. Yes.

Q Okay. Do you disagree with that testimony?

A I think when I testified, I put it to mid-afternoon at some point.

Q You don't recall what time?

A I think I've stated between 2 and 3:00 Central time is my recollection.

Q So you would put it an hour later, approximately; correct?

A I'm saying that it happened mid-afternoon, approximately.

Q Right. And your testimony in your deposition was that you believed that that conversation took place actually at about 2:30 or so Central time; correct?

A I'm saying my recollection is mid-afternoon, and I think that it's – in talking with others, I have said

between 2 and 3 o'clock in the afternoon Central time, yes.

[2527] Q So approximately 2:30?

A Somewhere in between 2 and 3 o'clock in the afternoon.

Q All right. An hour later than Mr. Doyle has it happening; correct?

A Did you tell me Mr. Doyle was at 1:30?

Q Yes.

A Okay. Half an hour to an hour to an hour and a half, I suppose, are the parameters that you could put around it.

Q And, as I understand it, Mr. Doyle and Mr. Orozco were having a conversation and you happened to walk in on the conversation; is that right?

A That is correct.

Q So no one had brought the situation to you at any point in time or your attention at any point in time prior to 2:30 Central Time; correct? If that's when it happened?

A I became aware of the situation when I met with them. Time frame still to be determined. Okay?

Q All right. And no one had brought that to your attention prior to that time?

A No.

Q That's correct?

[2528] A That is correct.

Q And, at that point in time, did you elect not to call Mr. Schuerman?

A Yes.

Q Okay. And you didn't attempt to contact Mr. Scharf?

A That is correct.

Q And you didn't call Mr. Hoyer?

A No, we did not.

Q And you didn't call Ben Seeger?

A No.

Q You didn't call United Airlines?

A No.

Q You could have called United Airlines; correct?

A I could have called United Airlines.

Q You didn't feel it necessary to talk to Mr. Schuerman because Mr. Doyle had already talked to Mr. Schuerman; true?

A Yes. That's correct.

Q And Mr. Schuerman, as you later found out, testified that he did not believe Mr. Hoyer posed a threat in any way to anybody at all?

A I have heard that testimony.

Q And you have no reason to dispute that [2529] testimony; correct?

A No.

Q That's correct?

A That is correct.

Q And Mr. Schuerman testified that he deemed Mr. Hoyer perfectly safe to get on an airplane and fly

back to Denver from the training exercise. You heard that; right?

A Yes.

Q And you have no reason to dispute that testimony; right?

A That's correct.

Q But that's not how Pat Doyle articulated it to you on the afternoon of December 8th, is it?

A No.

Q Now, you didn't know that Captain Hoeper had spoken to Captain Orozco approximately 2:30, prior to boarding the flight; correct?

A I don't recall if I knew that at the time we were meeting. I do know now that Mr. Orozco had spoken to Mr. Hoeper at some point and given him the authorization to go home.

MR. McGATH: May I approach, Your Honor?

THE COURT: Yes.

Q (BY MR. McGATH) Mr. Doyle, this is one [2530] of the things with a cotter pin, so we have to be careful with this one.

MR. McGATH: The record should reflect that I'm handing Mr. LaWare his sworn deposition testimony from – I believe it was April 17th of 2007.

THE COURT: All right.

Q (BY MR. McGATH) Mr. LaWare, would you please turn to page 64, line 14.

A Okay.

Q Are you there?

A Yes.

Q And I asked you the question – actually, you were asked the question:

“And, in fact, Captain Orozco spoke to Captain Hoeper on December 8th, 2004, prior to boarding the United flight. You understand that, don’t you?”

“Answer: No, I don’t. I am not aware of that.”

That was your testimony at that time?

A At that time, yes, sir.

Q And your memory about events was better back in April than it is now; right?

A Well, I’ve heard a lot of testimony [2531] here –

Q I understand.

A – over the last 11 days, so . . .

Q Sure. Sure. And so you did not know at that time that Captain Orozco had spoken to Mr. Hoeper before you got involved in this conversation; correct?

A That’s correct.

Q And had you known that, it might have made a difference to call TSA; isn’t that true?

A I don’t know that for sure.

Q It certainly could have been a factor in your decision as to whether to call TSA; correct?

A It – it’s possible.

Q All right. Now, did you know by the time that you walked into this conversation with Mr. Doyle and Mr. Orozco that Mr. Doyle had sat back for at least two and a half hours, if he’s to be believed, or perhaps three

and a half hours, if you're to be believed, without doing anything?

MR. MARK: That's objected to as argumentative, Your Honor.

THE COURT: Sustained.

Q (BY MR. McGATH) Were you aware that Captain Doyle had sat – or had the information that he was concerned about beginning at noon?

\* \* \* \*

[2534] those things, that also would have impacted your decision as to whether to call TSA; correct?

A I – I don't know, because I was really the one who started asking questions and I'm not sure that Mr. Doyle or Mr. Orozco at the time had – had contemplated a lot of these things, so . . .

Q Okay. And, in fact, as best as you can recall, shortly before 4:22 p.m. Eastern, 3:22 p.m. Central, you directed Pat Doyle to call TSA; correct?

A Well, based on the testimony that I gave in my deposition, I believe that was my statement because you had shown me a document that had suggested 1622, I think, which, in layman's terms, is pilot language for 4:22 in the afternoon. I've since seen documents that may suggest that that happened earlier.

Q And, in any event, you directed Mr. Doyle to make a call?

A That is correct.

Q And you would agree with me that you were better qualified to make that call at that time than Mr. Doyle; correct?



A Better qualified, perhaps.

Q You had more security information and knowledge than Mr. Doyle at that time; correct?

A From a qual – from a – from a [2535] qualification standpoint, yes, correct.

Q And Mr. Orozco had more information and knowledge regarding security protocol than Mr. Doyle; correct?

A Overall security protocol, yes.

Q And both Captain Orozco and you were, in fact, better qualified to make this call to TSA; correct?

A From the knowledge of our security and the in-depth of the security information that we probably had, yes. But to make a telephone call on a notification, I didn't deem Mr. Doyle to be unqualified to do that.

Q And Mr. Frisch was also present in this discussion; correct?

A Yes. From – from time to time. And for a good portion of it.

Q And you would agree with me that Mr. Frisch, as an FFDO, would be more qualified to contact TSA about any concerns with an FFDO; correct?

A Well, Mr. – Mr. Frisch was a qualified FFDO, so he's familiar with the protocol and so he would be qualified, also, to have made that call.

Q More qualified than Mr. Doyle from that standpoint; correct?

[2536] A Again, the making of a call was – was a simple notification process, so when we talk about qualifications, we may be talking about overall

knowledge of all the security things, but, in my mind, at that particular time, a manager or a chief pilot or a managing director all had the qualifications with which to be able to pick up the phone and make a phone call.

Q In your mind, Mr. LaWare, this call was supposed to be an inquiry call; correct?

A I'm sorry?

Q An inquiry call, similar to what Mr. Orozco testified in his deposition; correct?

A My intent was to call the TSA and explain to them the concerns that we had that came from the number of questions and issues and thoughts that I brought up in our conversation.

Q Now, at any point in time during the approximately three to four hours before you got involved in this, somebody could have called Mr. Hoeper; right?

A Yes.

Q And that didn't happen, at least in regards to inquiring about his state of mind or his FFDO weapon; correct?

[2537] A As far as I know, that is correct.

Q So you had no understanding of his mental state of mind at the time that the call was placed; correct?

A I'm sorry?

Q You had no understanding of his frame of mind at the time the call was placed; correct?

A I had an understanding of his frame of mind as it was articulated to me by Captain Doyle.

Q Well, all you knew was that Mr. Hoyer was angry with Mr. Schuerman; right? That's one of the things you knew?

A That's one of the things that I knew.

Q And you also knew that he had stopped the simulator to call his airline pilot – excuse me – airline pilot union attorney; correct?

A That's an additional thing that I knew.

Q All right. And, before December 8th, you had never heard anything about Mr. Hoyer acting in any kind of an angry fashion towards any other Air Wisconsin employee; isn't that true?

A Well, at the time of this meeting, part of the things that Mr. Doyle had expressed and articulated to me was not only this event that occurred on the 8th of December, but an event that had [2538] occurred with him in a previous training or checking session with Mr. Hoyer.

Q Now, my question was slightly different.

A Okay.

Q Prior to December 8th, you had never heard anything about Mr. Hoyer acting in an angry fashion towards any other Air Wisconsin employees; correct?

A Prior to this meeting that took place on the 8th, that is correct.

Q All right. And you weren't present when Mr. Doyle made the telephone call, were you?

A Mr. Doyle left our presence and made the telephone call, if you're referring to the one to the TSA.

Q I am referring to the one to the TSA.

A Yes. He excused himself from our presence and made a telephone call.

Q And did you know, when Pat Doyle made the call, that he thought it had to be made in the interests of national security?

A My guidance after the discussion with those other three individuals was that we had enough information that we couldn't fill in the blanks and that it – that I felt that we had an obligation to [2539] make a notification to the TSA.

Q Okay. Did you know that Mr. Doyle, in his mind, was making the call, from his viewpoint, in the interests of national security?

A The notification to the TSA was in accordance with the security notifications that go along with – I don't know if I'd call it national security, but aviation security.

Q Okay. Did you know, sir, however, that Mr. Doyle, in his mind, believed that that call was essential to be made in the interests of national security?

MR. MARK: Well, for the third time now. It's argumentative, Your Honor.

THE COURT: Sustained.

Q (BY MR. McGATH) Okay. Did you know what was going through Mr. Doyle's mind at that time?

MR. MARK: It's objected to as irrelevant. Lacking in foundation.

THE COURT: It also calls for speculation. The objection is sustained.

Q (BY MR. MCGATH) Did you know that Mr. Doyle believed that Mr. Hoeper was capable of turning a gun on the people in the airplane that was bound for Denver that afternoon?

[2540] MR. MARK: That's objected to as irrelevant, Your Honor. It's also speculative.

THE COURT: It also calls for speculation. Objection sustained.

Q (BY MR. MCGATH) Now, you hadn't read the depositions of the other witnesses in this case when you were deposed on April 17th, 2007; isn't that true?

MR. MARK: Objected to as repetitive, Your Honor. Asked and answered.

THE COURT: It's foundational. The objection is overruled.

A Would you please ask the question –

Q (BY MR. MCGATH) You hadn't read the other witnesses' testimony in this case, including Mr. Hoeper, Mr. Doyle, and Mr. Schuerman, when you were deposed on April 17th, 2007; isn't that true?

A That is correct.

Q In fact, you – you hadn't read any of the depositions that had been taken in the case prior to that time; correct?

A That is correct.

Q And when you were questioned in your deposition, you learned for the first time that Mr. Doyle may have told TSA he was a mentally unstable [2541] FFDO that may be armed; isn't that true?

A I believe in my deposition, yes, I did.

Q And that is not something that you wanted communicated to TSA by Mr. Doyle in that call, is it?

A Those weren't the words that I would have anticipated being articulated.

Q And if you were a pilot on a plane and you learned that that report had come in and it was reported to you that way, that would cause you serious concerns; correct?

A As the pilot of that aircraft, yes, it would.

Q And that would convey to you an actual threat to the flight; correct?

A Potential threat to the flight; that's correct.

Q And that would cause you great concerns about the safety of your crew and the safety of the passengers on that flight; correct?

A That is correct.

Q I want to ask you some questions about Air Wisconsin's policies and procedures when dealing with, let's say, anger management issues with respect to its pilots. Okay?

[2542] A Okay.

Q If a pilot is becoming angry and upset and losing his composure during training, Air Wisconsin would take action; isn't that true?

A Yes. I believe we would.

Q And, at the very minimum, you're going to intervene and talk to that pilot; correct?

A Yes. I think that would be a proper approach.

Q And if an employee of Air Wisconsin was threatening the safety of other employees, that would be a big concern to you; correct?

A That is correct.

Q And if you had a – a pilot or a check airman who was concerned not only for his own safety but the safety of others in a simulator building in which somebody had gotten angry, that would be a great concern to you, as well; correct?

A Yes. That would be a concern, as well.

Q And if a training pilot was threatening the safety of others or a training pilot believed that his safety was being threatened, you would immediately stop the training of that pilot; isn't that true?

A I'm sorry. Would you rephrase the question? I'm lost with what a training pilot is. Is [2543] that an instructor, or is that the training pilot, or the training applicant?

Q It was a poor question, Mr. LaWare. Let me back up.

A Please.

Q If you became aware that a pilot in training was engaged in threatening behavior towards a check airman, you would immediately stop that training, wouldn't you?

A Yes, I would.

Q And you wouldn't continue to train that pilot, would you?

A Not until we could conduct some sort of an inquiry as to what was driving that particular type of behavior.

Q Okay. And, as Mr. Orozco's superior, if Mr. Orozco learned of that, you would expect him to report those safety concerns to you, as well; correct?

A Yes.

Q And if Mr. Orozco had concerns about a pilot, who was an FFDO, demonstrating extreme anger issues, that would be something that you would expect him to bring to your immediate attention; correct?

A Yes.

Q And if Mr. Doyle became aware that a [2544] pilot, who was an FFDO, was demonstrating extreme anger, that would be something that you would expect Mr. Doyle to immediately bring to your attention; correct?

A Yes. I would.

Q Now, I want to ask you some questions about the arbitration and grievance process briefly. Okay?

A Okay.

Q As the vice president of Air Wisconsin air operations, you are familiar with the arbitration process that pilots go through; correct?

A Yes, I am.

Q And you are familiar with the grievance hearing process; correct?

A Yes, I am.

Q A pilot is entitled to a grievance before any arbitration; isn't that true?

A A pilot can file a grievance at any particular time.



Q And, as part of the collective bargaining process, the grievance hearing is very important; true?

A Yes. There is a grievance hearing, and it is important.

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[2566] A As vice president of operations, I have overall responsibility for all the flight operations that are conducted with Air Wisconsin, the in-flight – this is in October of '98 – the in-flight department, which are the flight attendants and the safety training that they – that they go through; the maintenance department, which is all the maintenance and engineering that's performed on our aircraft and their inspections and continued airworthiness; the dispatch and systems operations control center, which includes our dispatch office; our crew scheduling office; and maintenance control office.

Q All right. Now, over the past nine and a half years, have those responsibilities changed?

A To some extent. The –

Q Go ahead.

A The in-flight department has been moved under customer service. Different airlines handle it different ways. Sometimes because the regulations are similar for flight attendants and pilots and training requirements, they – they put them under the auspices of that – that side of the company. That got moved to the customer service side of the organization about three and a half, four years ago. And I – and I also picked up the – so I gave that up.

[2567] And I also added to my responsibilities the crew planning function, and that's the group of individuals who put all of your flights that your major

partner – in this case, US Air – gives you and says, Here’s all the flights we want you to fly for the month of March of 2008. And these individuals would try to put all those flights together in a set of pilot trips that had the most productivity. And that – that created the pilot’s monthly bid lines that they would – that they would bid on.

And, also, the – the airline planning side of the house, which is the group that interfaces with, in this case, US Airways in today’s world, US Airways’ master scheduling department and coordinates that group of 500 flights that they want us to fly every day. And that changes seasonally. It changes by day of the week. And it can change monthly.

Q All right. Who do you report to, Mr. LaWare?

A Currently, I report to the chief executive officer and president of the company.

Q All right. And your total time as a pilot?

A Roughly 8,000 hours.

Q And, at least in the past ten years, I

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[2579] My initial reaction was one of disappointment. And I said, Okay, you know, how bad was it? And, you know, Pat said, Well, it was kind of a unique thing. The simulator training session did not go well. Mr. Hoepfer abruptly stopped the training session. Threw his headset up against the dashboard. And that Mark Schuerman had called Pat and said that he was – he had been – you know, quite – quite concerned. And I think at that point, my reaction was, Well, you know, if it wasn’t going well, you know, that’s kind of a – a fairly significant outburst. I hadn’t seen that before.

And I said, All right. Well, you know, we – we tried to do what was – what was right and if he had stopped at the – the sim session, it pretty much exhausted what we had tried to attempt to do.

And – and then Scott, I believe, said, Well, there's a little bit more to it than that. And I said, Okay. What's that? And Pat indicated that this wasn't the first time that Mr. Hoeper had expressed some displays of anger in a training session and that it had occurred to him in a previous – as part of this 146 qualification process, and I acknowledged that.

Q All right. And that's information you hadn't been provided previously?

[2580] A No.

Q Now, he had – Mr. Hoeper had been in a nonflying status for several years with Air Wisconsin, had he not?

A Yes, he had.

Q And there hadn't been any reports about anger or behavioral problems in connection with his teaching duties; correct?

A No. There hadn't.

Q But we know from testimony in this case that he did go to a training/flying status in the fall, then, of 2004; correct?

A Yes. In September of 2004 to qualify –

Q All right. And we've come to learn that there were a variety of family issues that were weighing on Mr. Hoeper in the fall of 2004, as well; correct?

A We have come to learn that.

Q All right. Now, in connection, then, with the discussion that you were having with Mr. Orozco and Mr. Doyle, then, what was discussed next in terms of information that was being gathered?

A Well, again, Pat had expressed that this had been the second occurrence. That he had felt somewhat intimidated and/or threatened, and I – you [2581] know, I don't think I really gave, you know, much more weight to it. I was thinking of the fact that, you know, here, we had given this fourth opportunity and Mr. Hoepfer was no longer going to – you know, his employment was – it was a given that Mr. – Mr. Hoepfer's employment was now going to be terminated.

At that point, Mr. Orozco said, Well, he's also an FFDO.

Q All right. What's the significance of that?

A Well, I mean, it was just adding another item to, okay, he failed. Okay. We had some – some displays of anger and/or aggression – all right – during – during the training that had intimidated two individuals. Okay. Now, he's an FFDO. I said, Okay. Let's get Bob in here because he's an FFDO.

Q Who is "Bob"?

A Bob Frisch.

Q All right.

A He was the assistant chief pilot at the time.

Q And he reported to Captain Orozco?

A That is correct.

Q All right.

A So Bob came in and we said, Bob, what is [2582] the protocol for an FFDO in a training event? And Bob

explained to us the three or four different scenarios in which an FFDO may have his or her weapon with him.

I said, Okay. So he's not supposed to have his weapon with him. Is there any way we can confirm that? Because he would have had to have checked it through at Denver on his way out to Dulles. And I don't remember whether it was Bob Frisch or Scott Orozco said, Well, that's another problem.

Q What was that problem? How was that articulated?

A That problem was that there was this ability, if you had – if you were a crew member and you had an airport badge issued by the airport authority, you could access what is known as the air side of the airport and bypass security just by using your metallic or your – your ID to get through a turnstile and you would find yourself on the secure side of security.

Q Which airport were you talking about?

A Denver.

Q All right.

A Okay. So I'm going, All right. So what you're telling me is that there's no way for me to confirm or us to confirm that Mr. Hoeper had his weapon [2583] with him, even though he's by – by policy, he's not supposed to have it with him.

Q Now, were there any other issues that were raised during that afternoon as the discussion ensued as to how to handle this situation?

A Well, we talked about – and I'm not saying that this was a two-hour conversation. I – this – I mean, I had walked in and boom, boom, boom, I'm getting these – these little things. And then I started asking

some questions, you know, myself. I said, Okay, wait a second. You know, let's talk about – remember, we had some issues with PSA and there was issues with Federal Express. You guys remember that. And those guys having a history of aviation that was as long as – well, in Scott's case, as long as mine –

Q Did you bring those issues up?

A Yes, I did.

Q All right. And you remembered those, too?

A Right.

Q And we've heard a lot about that, but those are two well-known breaches of the cockpit by a disgruntled employee or former employee; correct?

A That is correct.

[2584] Q And we know on the PSA situation, 37 innocent people died as a result of that cockpit being taken over by an employee that had been fired two or three days earlier; correct?

A I don't remember the number. I thought it was closer to fifty or mid-fifties.

Q I think there were five crew members and 37 passengers. But, in any event, no one survived that; correct?

A No.

Q And that was an individual that calmly and collectedly boarded the aircraft using an airline security badge, shot his supervisor who was seated on the aircraft, shot the two pilots, and then dove the airplane into the ground exceeding supersonic speeds; correct?

A That is correct.

MR. McGATH: Objection. Argumentative, Your Honor.

THE COURT: I'm sorry.

MR. McGATH: Objection. Argumentative, Your Honor.

THE COURT: Sustained as asked.

Q (BY MR. MARK) That's an incident that was well-known to a lot of people in the aviation [2585] community; correct?

A Yes.

Q All right. Describe for us, then, as you discussed those incidents, what the next step was in terms of handling this situation.

A Then I asked – I asked Bob Frisch, I said, okay, because Bob is – was an FFDO. I said, Bob, what is the policy for an employee when – an FFDO who is leaving the – the program? How are they supposed to turn in their weapon? What's the time frame? How does that work?

And Bob indicated that it was a 24-hour window with which to return your weapon to the agency that issued it to you. In this case, the TSA. I then asked Bob, I said, Okay, Bob, is that policy based on resignation or retirement or if you're leaving Air Wisconsin and going to work for United Airlines? You know, you're no longer with United – or Air Wisconsin, you had to turn it in and if you want to file it again, you can go over here. That was the policy as it was articulated to me.

I then asked Bob, I said, Okay, Bob, what is the policy for an employee who is going to be forcefully terminated, i.e., you know, it's not a resignation, it's

not a retirement? And Bob said, I'm [2586] not aware of one.

And I think at that point, I kind of just said to the guys, I said, Look, we've got an employee whose termination is impending. All right. And he – he knows it. All right. Because we're outside the bounds of the contract. It was a last chance situation. We've got an employee who you're telling me has displayed anger and emotion on one or more occasions to the point of intimidating individuals. We can't confirm whether he has or does not have his weapon with him because of the security difference in Denver versus in Dulles.

And we talked about the history where there have been occasions where people who were going to be disciplined or who had been disciplined or lost their jobs had acted in a very bad manner and caused a lot of harm and/or death. I said, Guys, look, I – I think you just need – I think we need to make a call to the TSA and say here's – here's the status and let them know, you know, that. And it was not – it was not debated any – any further than that.

Q And when you made that decision, was it then given – the assignment then given to Captain Doyle to make the call to TSA?

A As I recall, the – it was like, Okay, [2587] who should make the call? And my recollection is that Pat Doyle said, Look, I have the number for TSOC, which is the transportation security operations center. All right. I can make the call. It's easy enough to do.

And I don't know whether Bob had left yet or – at this point. He may have because I had asked him the questions that were relevant to the FFDO program. So Pat took his leave and went and made the phone



call. And it's really – I mean, this is – this is over probably no more than 15 or 20 minutes.

I mean, it was just this – this – this compounding of different issues and with the – the heightened security and sensitivity that we had, you know, it was just – it just made sense to me that, at a minimum, we should make a phone call to the TSA and let them know what – you know, what our concerns were.

Q And when you say “heightened security,” in December of 2004, we were closer to 9-11 than we are today; correct?

A Yes.

Q Was the environment different – you say heightened – at that point in time for airline operators?

A Well, it – yeah. Obviously. It – it has been. I mean, I think everybody here has traveled [2588] and there's been changes in policies about, you know, whether you can take nail clippers on and now it's how many ounces of fluid you can take. You know, toothpaste or gels or liquids and those types of things in unchecked baggage.

So there's been a constant flow, but there was, obviously, a heightened sense of security in 2004. It's been heightened ever since 2001, and it's wavered from, you know, orange to red back to orange, and it's been fairly stable for – I don't know how long now at orange. But it's still represent – if you listen to those announcements at the airport, they talk about it's continued to be a heightened sense of security.

THE COURT: All right. Ladies and gentlemen, we're going to take our morning recess at this point in time. Please remember that you've not heard all the

evidence yet, so it's too early to be making decisions on what are or are not the facts. Please also remember my admonition about only talking about the case during – having predeliberation discussions when you're all together in the jury room. We'll take about 15 minutes and start back up at a quarter till.

(The jury exits the courtroom at

\* \* \* \*

[2590] with respect to jumpseating and we've heard that that means that a pilot with the proper credential can actually sit in the cockpit in a small seat that is located behind the flight crew. Is that correct or an accurate description?

A Yeah. That's correct. There's – sometimes there's multiple seats.

Q Okay. Do they fold? Is that why they are called a jumpseat?

A They – they – they are stuck – they are not the most comfortable seat on the airplane. That's – but it's a method of getting to work if you need to.

Q Okay. And is it true, then, that an FFDO, who is also a properly credentialed pilot, then, would have access to a cockpit, potentially, with his or her weapon?

A That's correct.

Q All right. Now, your expectations after contacting TSA were what, Mr. LaWare?

A We had provided the TSA with the information that we thought was appropriate, that we had this question. There was a security question that we had. It may or may not have been acted on by the TSA, but

the fact that we presented it to the TSA, we [2591] felt that our obligation had been met.

MR. McGATH: Your Honor, objection. Speculation. He doesn't know what was communicated.

THE COURT: Excuse me. No speaking objections. The objection is sustained without more foundation.

Q (BY MR. MARK) Did you ever hear back from the TSA?

A No. We did not.

Q Did they ever direct you or anybody at Air Wisconsin to do anything further?

A No. They did not.

Q Did they ever ask for any further information with respect to Mr. Hoyer?

A No. They did not.

Q Did Air Wisconsin have anything to do with directing the manner in which Mr. Hoyer was interrogated while at Dulles?

MR. McGATH: Objection. Calls for speculation, Your Honor.

THE COURT: Sustained on lack of foundation.

Q (BY MR. MARK) Did the TSA ever call and ask for direction in terms of conducting an interrogation of Mr. Hoyer?

\* \* \* \*

[2611] Q (BY MR. MARK) If he had elected that option that was presented to him, to go back to the CL65, are you aware today of any reason why he couldn't have continued his employment with Air Wisconsin?

A No.

MR. MARK: That's all. Thank you.

THE COURT: Thank you. Redirect?

MR. McGATH: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. McGATH:

Q Since you were not concerned that Mr. Hoeper could have continued on as a CL65 captain if he elected to do so, you obviously did not have concerns about his mental stability, did you, Mr. LaWare?

A No. I did not.

Q And it caused you great concern that Mr. Doyle may have said that to TSA; correct?

MR. MARK: It's objected to as argumentative, Your Honor.

THE COURT: Let me see if we can rephrase the question.

Q (BY MR. McGATH) You are aware that Mr. Doyle has written a document in which he indicates that – something along those lines may have been

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[2614] Q Yeah. He did not know initially whether Mr. Hoeper would receive additional training; true?

A I think I recall Mr. Doyle testifying to that, yes.

Q You heard Mr. Schuerman testify to that, as well; correct?

A I – I believe so.

Q Mr. Hoeper actually did not know whether his training would continue after the events of December 8th, 2004; isn't that true?

A No. I – I – I really don't – I don't – I don't believe that.

Q You have no way of knowing one way or another, do you?

A Well, Mr. Hoeper, in the last chance letter, was provided with a fourth opportunity to successfully pass a proficiency check. That fourth opportunity, that fourth failure was as a result of him not being signed off for the proficiency check, which is spelled out in the collective bargaining agreement. So, to me, Mr. Hoeper knew exactly what his status was going to be, having stopped that simulator session and walked out on it.

Q Well, Mr. Hoeper left the simulator session to call ALPA legal; correct?

\* \* \* \*

[2621] A Somewhere in that area. 4:30, yes.

Q And you also knew that Air Wisconsin could call and have a hard hold put on his ticket; correct?

A Yes. I suppose we could do that.

Q Okay. And you knew or Air Wisconsin knew who the security directors were at United Airlines; correct?

A Are you talking about Winn, or are you talking about Clevenger?

Q No. I'm talking about the fact that Air Wisconsin had two operators sitting in the United – or

the operations center at Dulles right next to United Airlines; correct?

A We had – we had our Dulles systems operations control center in – in Dulles. Air Wisconsin's SOC.

Q And Air Wisconsin was a customer of United Airlines; correct?

A That's correct.

Q And so if you had wanted to contact United Airlines, that would have been a very simple thing to do; correct?

A It would have been easy to call United Airlines; correct.

\* \* \* \*

[2625] Q Air Wisconsin didn't have access to the maintenance records with respect to the simulator facilities?

A I have no knowledge of whether they did or not.

Q Then, finally, Mr. LaWare, have you ever heard of any pilot stopping a simulator session with time remaining to call ALPA legal?

A I have never run across that in – in my years of being in charge of flight operations, no.

MR. MARK: Thank you, Mr. LaWare.

THE COURT: Thank you. Do any of the jurors have questions for Mr. LaWare?

Counsel, approach.

(At the bench.)

THE COURT: Would a temporary leave of absence have been an option for Mr. Hoepfer before his failed check rides due to outside stress?

That question has been asked of other witnesses but not this one. So we'll ask that.

Could Hoeper have taken the ground position at Appleton if he had agreed to move?

Is it standard procedure to have the instructor/simulator operator and evaluator all be the same person?

\* \* \* \*

[2638] therein.

Q And so does the ops spec or the operations specification require that the chief pilot be named on the document so the Federal Government knows who that is?

A Yes. The – the chief pilot is a required position for the airline.

Q All right. Now, as the chief pilot since the fall of 2006, tell us briefly what your duties are in that capacity.

A In the chief pilot role, my responsibility was to oversee all the line pilots. I had three domiciled chief pilots that reported to me in our – in our bases. In return, the pilots answered to them. So my duties were to oversee them, the hiring process, any disciplinary actions that took place, and handling leave of absences, vacation programs. Stuff of that nature.

Q All right. And how many pilots are you currently responsible for?

A I think we have about 750 on the seniority list right now.

Q If we go back in time to your tenure with Air Wisconsin, what position was it that you held in the fall of 2004?

\* \* \* \*

[2646] seated. The record should reflect the jurors have returned. Good afternoon, ladies and gentlemen. We're ready to resume with Captain Frisch's – Mr. Frisch's direct examination.

Mr. Frisch, if you would remember that you're under oath. Thank you. Mr. Mark, you can proceed.

MR. MARK: Thank you, Your Honor.

Q (BY MR. MARK) Captain Frisch, when we took the noon recess, we were about ready to embark on the topic of being an FFDO. Let's just talk briefly about what the duties and responsibilities of an FFDO are.

A FFDOs are deputized by the Transportation Security Administration to be able to carry their weapons as a last line of defense to a cockpit.

Q All right. And we've heard some testimony. You have to go someplace in New Mexico to undergo training; is that correct?

A That is true. The training facility is – it's a Federal Government training facility located in New Mexico; that's correct.

Q And you underwent that training?

A I did.

[2647] Q Is it commonly known who FFDOs are on a given airliner or air carrier?

A I don't know if it's commonly known. I mean, a number of individuals do know that I'm an FFDO. I



don't keep that a secret. The TSA does keep the names of their FFDOs confidential and highly classified.

To what extent the pilots on the line choose to share with each other whether or not they're an FFDO, I don't know. It's – it's not common knowledge, from my perspective, that the pilot group knows who the FFDOs are among the group.

Q All right. Now, who administers the FFDO program?

A The Transportation Security Administration. TSA.

Q And who is responsible for that program going forward?

A The – the TSA.

Q And if there's any issue involving an FFDO, who's responsible or should be contacted?

A The TSA.

Q With respect to the carrying of a weapon, we've heard some testimony in this case regarding the certain circumstances under which that's [2648] permitted. Are you familiar with those?

A Yes, I am.

Q And the circumstance is – I think we've heard in this case, typically would be when an FFDO is in revenue service or actually flying; is that correct?

A Yeah. That would be one of them.

Q And then, going to training, that would be another circumstance?

A That's correct.

Q All right. In your experience and in the experience of Air Wisconsin, have there been occasions when FFDOs have come to training sessions with their weapons?

A Simulator training sessions?

Q I'm sorry. Simulator training sessions, yes.

A Yes, they have.

Q Now, is that permitted under the FFDO guidelines or requirements?

A It depends if the – if the training that the pilot is going to has a – has a reason to be transporting it in accordance with the – the SOPs, the FFDO SOPs. One example being myself. I went down to our training facility in Charlotte. I did transport my weapon down there while I was there, taking a check [2649] ride.

The very next day – I stayed over, did my requalification, and flew back to my – my base, which was in Appleton, Wisconsin.

Q And was that a permitted use or carrying of the weapon in that circumstance?

A Yes, it was.

Q Have there been situations at Air Wisconsin where pilots – FFDO pilots have come to the sim training facility where it wasn't permitted, but they still had their weapon with them?

A I'm aware of one.

Q All right. So it – I gather that it's dependent upon the individual FFDO in terms of interpreting when and where they can carry their weapons; is that true?

MR. RIETZ: Objection, Your Honor. Foundation.

THE COURT: Overruled.

A Could you restate the question?

Q (BY MR. MARK) Sure. Is it dependent upon how the individual FFDO interprets the rules or the regulations as to whether or not they bring their weapon to a simulator training session?

MR. RIETZ: Speculation, Your Honor.

[2650] THE COURT: Overruled.

A Yes, it would be. I mean, the – each individual pilot has their SOPs. They have been trained in the SOPs and they know the SOPs. Just by the fact that we know that there is an individual that has taken his weapon to a simulator – it was actually a checking event and it was a recurrent proficiency check in that situation. He had it with him. There was no reason we know of that he should have had it with him because he wasn't on a flight assignment and he wasn't doing a requalification event at that time.

Q (BY MR. MARK) All right. And you used the letters "SOP" several times. What does that refer to?

A Yeah. That's standard operating procedures for the FFDOs.

Q Okay. Now, we've heard testimony in this case, Captain Frisch, with respect to jumpseat authorization. Let me just very briefly ask you about that. Jumpseat authorization is a – a reciprocal agreement where a pilot – a credentialed pilot can actually sit in the cockpit of an aircraft and go someplace, even though he or she is not flying the aircraft; true?

A Yeah. That's correct.

[2651] Q Okay. And as an FFDO who is also a credentialed pilot – would an FFDO then be able to enjoy that same privilege?

A Yes.

Q And if an FFDO so desired, would that individual be able to gain access to the cockpit with his or her weapon?

A Yeah. He – yeah. The individual traveling with his weapon needs to – needs to keep it in his possession so if that person was occupying the cockpit jumpseat, he would have it with him.

Q And it would be entirely legal under those circumstances for an FFDO pilot to gain access to the cockpit with his or her weapon; is that correct?

A Absolutely.

Q All right. Now, I just want to go through very briefly some of the testimony that we've heard, particularly as it related to you as being an assistant chief pilot during the time frame of the fall of 2004. There is an exhibit book in front of you, the blue one. I'm going to refer to some of these exhibits, Captain Frisch.

First of all, turn to Exhibit F, if you would, please. You're familiar with the fact that Mr. Hoeper was seeking to do some transition training

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[2666] Q And what is that reason?

A The reason is evidenced by, No. 1, the contract. The contract says he has three opportunities, and if he fails in those three opportunities, his employment will be at the discretion of the company. He knew that. He sent a request to us, asking for a final opportunity to

be successful. After lengthy discussions, that was agreed to. It was signed by him, it was signed by Scott Orozco, and it was signed by Carl Fleming.

It was clear at that point that that was going to be a fourth and final opportunity for him to be successful. If he was not going to be successful, he was not going to be retained as a pilot for Air Wisconsin Airlines.

Q Now, let me turn in a different direction, Captain Frisch. We've gone over all of the training that he received. Did he receive training over and above what the typical airman would receive when transitioning from an aircraft such as a CL65 to the BAe-146?

A Yes. He received quite a bit more training.

Q And did you review the records and analyze the costs involved in connection with that

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[2678] wide. It had several little round dials. Twice as many engine gauges because of the four engines as compared to two. And plus the flight instruments were displayed around – around the cockpit. In the CL65, you have, essentially, TV screens in the front for all practical purposes and, on each screen, everything is really condensed and it's there in one nice area. So it doesn't take a big scan and there's not much interpretation that really needs to be done.

Q Now, let me direct your attention to the sim training that occurred on December 8, 2004. Was it reported to your office to you as well as to Captain Orozco that Mr. Hoeper had stopped the training before the simulator session had expired?

A Yes. On – on the December 8th –

Q Yes.

A – simulator session? Yeah. That's – that's correct. We had – we had heard that during the training, that Mr. Hoepfer had ended the simulator session, told the instructor to take it off motion, slammed his seat back, and had thrown his headset and wanted to get out of there. He said he was done. He had quit.

Q Now, in your experience, have you ever witnessed or observed or heard of that sort of behavior [2679] occurring during a sim session?

A No, I had not.

Q Now, I assume that there are occasions when pilots do become frustrated in training sessions?

A Sure.

Q Have you ever heard of an Air Wisconsin pilot ever behaving in the manner in which Mr. Hoepfer behaved on December 8, 2004?

A No. Not at all. I mean, when a pilot has – has difficulties in training, gets a little frustrated, usually, they're – you know, something went a little wrong or they – they missed a turn here or something and they get frustrated with themselves, but they keep it together. And we work through it and get the pilot back on track and learn from the mistake and move forward.

Q Is the behavior that was reported to your office appropriate for a professional airline pilot?

A No.

Q Have you ever, in your experience, had a professional airline pilot stop a sim session before it was over and order the instructor to take it off motion?

A No.

\* \* \* \*

[2682] A Yes. B1B?

Q Yes. B1B. Thank you. Is that a section that applies to a training session as being a – a failure event if it's not successfully completed?

A Yes. What that paragraph talks to is – is when the pilot has reached his program number of simulator sessions plus two additional training sessions and fails to secure a recommendation for a check ride, that's deemed a training failure under the bargaining agreement.

It goes on to state that, after that, if the pilot elects to receive additional training and is still unable to secure the recommendation, that will be deemed an additional failure.

Q So, in the case of Mr. Hoeper, in order to even get to the point where he had to – where he was permitted to take the proficiency check, he had to first complete the training successfully; correct?

A That's correct.

Q And then he had to receive a recommendation from the check airman; correct?

A That's correct.

Q And that – those two events, then, would get him to the proficiency check on December 9; [2683] correct?

A That is correct.

Q And then he still had to successfully complete that; correct?

A Yes.

Q And all of these events were dependent upon his ability and capabilities, were they not?

A Absolutely.

Q All right. In his situation, he never got beyond the first step, did he?

A No. He chose to end it.

Q All right. Now, I want to direct your attention to what occurred after the failed training session on December 8, 2004. We've heard discussion about that, and what we'd like to know is what role you played in connection with that discussion.

What do you recall about the afternoon of December 8 and what was your involvement in that regard, Captain Frisch?

A Yeah. On December 8th, that was the – that was the day of the final training session. Just to put it into a little bit of context, my office sits right next to Scott Orozco's office, who was, at the time, the director of operations, chief pilot. Typically, we would get together in his office for a [2684] number of reasons throughout the day just to catch up on things and to be a gathering area where we could – everyone could keep up to speed on the day-to-day operations.

Somewhere during that day, we became aware of the – a situation in Dulles with – with Mr. Hoeper's training. I think, initially, at the time, it was – everyone was a little surprised because the check ride wasn't supposed to happen for – until the next day. It quickly turned to disappointment because we – we found out what had happened, that he had ended the simulator session and – and thrown his headset and stated that he quit and – and left.



So, at that point, that was – I think I had gotten called out of that meeting or – or that discussion to handle some other day-to-day business that would go on.

The next thing I remember, I was brought in to a discussion with regards to FFDOs and how to verify whether or not someone would have their weapon with them. Specifically, the discussion shifted to the Denver airport and the Dulles airport, two airports that I had traveled through with my weapon so I was very familiar with.

Q Let's talk about why that was [2685] significant. Why was it significant that it shifted to those two airports and, particularly, the Denver airport?

A Well, when I was asked the question, I mean, with the – with regards to the airports, it made me believe that we were referring to Mr. Hoepfer and his situation. The discussion with the Denver airport was a little unique because when you go through airport security, as an FFDO, there's check-in procedures. We go through and we check in with the TSA and there's documents to sign.

However, in Denver, that's one of the airports where a number of our pilots had been SIDA badged. And when you park airside parking and you're SIDA badged, you have your fingerprint. You can actually go through the turnstiles. It's a little different way to go through security and get to your gate. There is no checking in with the TSA at that point.

However, I walked – I don't remember who the discussion was with, whether it was with Captain Doyle or Captain Doyle and Captain Orozco and Mr. LaWare or who it was with, but I do remember having

that discussion and explaining that – the procedures and the protocols of those situations.

[2686] Q Now, you used yet another acronym, SIDA. What is that?

A Security identification display area. At an airport, when you're on the back side of security, that's called the sterile area. Everybody in that area has been screened and you know they have been through the TSA checkpoint. The SIDA area is really beyond the sterile area.

When you're in the gate, you're in the sterile area. However, when you – you can – properly badged individuals and employees can swipe their badge at a door and step out onto the ramp by an airplane, by the baggage carts or whatnot, provided you have authorization to be there.

Q And then I gather the discussion was that it would have been possible for Mr. Hoeper to have left his duty base of Denver without anybody knowing that he was bringing his weapon with him? Is that true?

A Yeah. That's true.

Q All right. So tell us, then, where the discussion went at least in terms of your involvement and participation with it on the afternoon of December 8.

A Yeah. My involvement at that point, we [2687] got into some questions about when an FFDO can and cannot transport their – their weapon. I walked through the scenarios there. At that point, I don't recall much, except for shortly before I left for the day, I became aware that the TSA had been notified that – of the situation.

Oh, I was asked one other question. I was asked the question of if we terminated an FFDO, what are

the procedures, and I didn't know. They are not documented, so I had no idea.

The – then the next thing I remember after that, shortly before we left for the evening, I received an e-mail from – from John Everhart out in Denver, which was a correspondence about him touching base with a TSA agent. They were planning on meeting an aircraft once it arrived in Denver with Mr. Hooper.

MR. RIETZ: Objection, Your Honor. Hearsay.

THE COURT: Overruled.

A And the – the reason was is the TSA wanted to meet Bill and our Denver domicile flight manager, John Everhart, who reported to me he thought it would a better idea for him to meet Bill first and bring him back to the crew room with the TSA agent present. And that's how we left that evening.

[2688] Q (BY MR. MARK) Mr. Everhart is no longer employed by Air Wisconsin?

A No, he's not.

Q All right. You said that TSA is – at that point in time had not documented how to terminate an FFDO. So there was no proscribed procedure in connection with the situation that you were addressing then on December 8; is that true?

A Yeah. That's true.

Q All right. Was there any other discussion that you can recall? Specifically, let me direct it towards a couple of cases that we've heard a lot about. Was there discussion about the PSA flight as well as the FedEx flight?

A Yes. There were some discussions that day about the – the PSA aircraft, which was the 146

aircraft, that had an employee attack the cockpit, and it did end up crashing the airplane. And then there was the FedEx aircraft where an employee who knew he was going to be terminated tried to gain access to the aircraft and do the same thing.

Q Were you directly involved in the ultimate decision to contact TSA, Captain Frisch, or were you simply providing additional information as the discussion ensued that afternoon?

[2689] A I provided information. I do not recall any one person making the decision, so I don't believe I was in the room if there was a – a decision made at that moment. But I was – the discussions were fluid throughout the day, so I participated in them as I could and – and answered any questions that I could.

Q Are there also security programs in place at airlines with respect to the handling of issues involving potential breaches of security?

A Yes, there are.

Q All right. And there were such programs in place at Air Wisconsin, as well?

A Yes.

Q And we know the sensitive nature of that, but, essentially, were those programs then examined and complied with on this particular date?

A Yes.

MR. RIETZ: Objection, Your Honor. Relevance.

THE COURT: I'm sorry. I didn't hear.

MR. RIETZ: Foundation and relevance.

THE COURT: Overruled.

Q (BY MR. MARK) Now, we've heard something earlier in this case – actually, when the plaintiff chose to read some of your deposition [2690] testimony, Captain Frisch, with respect to the no-fly list. Would you explain to the jury what that is?

A A no-fly list, the TSA has a list of names that are published not to the air carriers but it's an internal record-keeping thing that they have. That when a passenger is booked on a flight, then that name and a reservation is cross-referenced to this list, and if your name pops up on the list as a match, then there's extra security that's required in order for you to board the aircraft.

Q Have you, at Air Wisconsin, had occasions where certain Air Wisconsin pilots would, for whatever reason, be examined because their name is either on the list or it's a similar name?

A Yes. We would.

Q And what happens in that situation?

A What happens are the pilots that – they are in uniform or however they are traveling. They go up to get their ticket and if they are notified that they are a selectee, they have to go through extra screening. Their bags will get searched. They will get searched and hand wanded, and once they are deemed clear, then they will proceed on board the aircraft.

Q And if an individual is identified on that list, who handles the things you've just

\* \* \* \*

[2896] this tank.

Now the engines start running the fuel off of the 400 pounds that's remaining in the right tanks. Well, two

engines can't run on 400 pounds for seconds. Maybe 30 seconds to a minute.

Q So what happened?

A The engines flamed out. All engines flamed out.

Q Now he has no engines on the airplane?

A No engines on the airplane.

Q And the reason that the two on the right side flamed out were because of whose conduct in the simulator?

A Mr. Hoeper never called for the appropriate fuel asymmetry checklist. It's his job.

Q And what – and what happened at the point that we now have the crosshairs on Exhibit FF 223?

A I – at that point, the – the simulator – we were going to hit because we were only a couple thousand feet above the ground. 2600, 2500 feet above the ground. And the simulator hits very hard. When it crashes, it'll – it'll throw me out of the seat.

Q So when you say we were going to hit, [2897] what was happening was –

A We were descending.

Q – a simulator crash in the simulator itself?

A Yes.

Q Okay.

A So that's when I – I froze the airplane. The sound of the airplane is still going, but I froze the sim from hitting the ground. In other words, the motion is not going to cause a boom, to hit. And that's when –

Q The events happened that we heard about?

A Right.

Q All right. Is there anything on these particular documents, before I take them down, that show the fuel imbalance?

A No, there's not. It's –

Q That would have been all in the gauges in the simulator?

A Yeah. It doesn't have that.

Q Okay. At this time, Mr. Schuerman, you can resume your seat.

THE COURT: Thank you. We need to shift the microphone back.

Thank you.

[2898] Q (BY MR. AVERY) Mr. Schuerman, as you were describing the circumstances of an engine being out and so forth, you said that that was a standard procedure in the testing; is that true?

A Yeah. Yes, it is.

Q Did you do anything to overload Mr. Hoeper in that training session –

A No.

Q – that you did?

A Absolutely not.

Q Was everything that you did on that training session of December 8th in conformity with training that you had provided other Air Wisconsin pilots trying to upgrade to the BAe-146?

A The same. I – I do that for every P.C., check ride, training event.

Q Okay. And then with respect to Mr. Hoeper – we’ve heard in detail what occurred previously. I won’t go into that, but I do have this question for you. Have you ever, in all of the airmen that you have trained in that simulator, the BAe-146, ever had an airman respond the way that Mr. Hoeper did?

A I’ve never, never, ever had anybody react that way.

MR. AVERY: If I may have just a moment,

\* \* \* \*

[2934] your contention that the P.C. was not performed due to the unavailability of time; is that true?

A That’s correct.

Q Mr. Schuerman, you talked about whether or not you believed that the training that you provided to Mr. Hoeper was fair. Do you remember talking about that in response to some of Mr. Avery’s questions?

A Yes, I do.

Q And you knew, did you not, that if Mr. Hoeper was not recommended for a check ride at the conclusion of the December 8 training session, he wouldn’t get a check ride; right?

A I never knew that. I never knew that until I saw the letter, and that wasn’t very long ago. I never even knew there was a last chance letter. So that’s incorrect.

Q And you knew that the check ride was to be performed by Ben Seeger the following day; correct?

A That’s what Ole had told me. It was either Saturday or Sunday. Initially, Ole – and I don’t remember Ole’s exact words, but he told me that he



was going to check into having Ben Seeger perform the P.C. after I was done with his training. And – and whatever happened after that, I have no idea. I don't know what happened. I guess there was a change [2935] in plans.

Q You knew that Ben was going to be giving the P.C. That's what you were told by Mr. Doyle; correct?

A That's correct.

Q And you knew that, in order to get a P.C., he had to be passed as proficient by you in conjunction with the December 8th, 2004 training ride; correct?

A He had –he needed to – just like with any P.C., you have to be recommended. Yes, I would have to have recommended him for the check ride.

Q And so if you didn't recommend him for the check ride, he wasn't going to get a check ride; correct?

A That's correct.

Q And then what happened afterwards was that shortly after the events of December 8th that we've already heard about, Mr. Seeger came and picked you up in his car and his luggage was in the car; correct?

A Mr. Seeger didn't pick me up. I – I went – after I got off the phone with Ole, I had gone downstairs behind – actually, went to the FAA's office. Bob Dunlap is the FAA guy who keeps the

\* \* \* \*

[2953] The printouts don't appear dated or initialed by the trainer. How are these documented? Per date, per pilot, or per first officer?

THE WITNESS: As far as dating, I'm not sure if there is a date on them. Once I snapshot these photos,

I go out to a printer that's re – that's out – just outside the sim door of the – the gantry and it's specific to that – to that simulator. They – they have got a co-located printer with that simulator.

THE COURT: All right. Next question, were equipment problems noted or reflected for documentation?

THE WITNESS: There's a – there's an MEL book that's documented outside the simulator next to the printer. And there was no write-ups.

THE COURT: Next question, how far into the training session's two-hour time frame did all the engines flame out?

THE WITNESS: I believe it was an hour and 20 to an hour and 30 minutes. Somewhere around there.

THE COURT: All right. At the point of the flameout of all engines and with other inaccuracies of the training, would you, Captain Schuerman, have [2954] been able to give Mr. Hoeper a recommendation for a proficiency – the proficiency check on December 9th?

THE WITNESS: No.

THE COURT: After the flameout on December – next question. After the flameout on the December 8th simulator training session, would it have been possible, or would there have been sufficient time available for Mr. Hoeper to show sufficient competency to earn a recommendation for a P.C. on December 9th?

THE WITNESS: I don't think in those 40 minutes.

THE COURT: All right.

THE WITNESS: No.

THE COURT: Any follow-up, Mr. Avery?

MR. AVERY: No, Judge. Thank you, very much.

THE COURT: Any follow-up, Mr. McGath?

MR. McGATH: I have just one or two questions.

RECROSS-EXAMINATION

BY MR. McGATH:

Q Mr. Schuerman, if there had been a problem with the FMS, that would have been something that you would have wanted to note in the sim log so

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[3105] after you exited the simulator?

A I had to finish up their oral exams and finish up the required paperwork and send that in to – in to company headquarters.

Q Were you actually conducting the oral exams after the sim session?

A Yes, sir.

Q All right. And is that accepted?

A It is.

Q Now, during the time that you were then working with them after 11 a.m., did you have occasion to first come in contact with Captain Schuerman?

A Yes.

Q And do you recall, first of all, around what time that was?

A It would have been around 12:30 p.m.

Q All right. And where did you come in contact with Captain Schuerman?

A In the company office.

Q And can you describe for – for us what the state of Captain Schuerman was when he came into the company office.

A He was visibly upset. He was mentally – he looked mentally and physically worn out. It looked like it was a – a poor sim session for them.

[3106] Q And did you have a discussion with him as to what had occurred?

MR. McGATH: Objection, hearsay, Your Honor.

THE COURT: Overruled.

A I can answer?

Q (BY MR. MARK) You may.

THE COURT: You can answer.

A I did have a discussion. He said that Mr. Hoepfer had essentially quit. He had asked – he had said I was done. This is over. I'm calling my lawyers. And he had asked to put the simulator down off motion.

Q (BY MR. MARK) All right. Then, at some point thereafter, did you have an encounter with Mr. Hoepfer?

A I did. I saw him briefly.

Q All right. Where did you see Mr. Hoepfer?

A I saw him briefly in the company room, the company office. I also saw him in the lobby area and outside the sim center.

Q And is the lobby area a public area at the sim center?

A It is.

[3107] Q And describe for us Mr. Hooper's behavior when you saw him.

A He was very unprofessional. He was talking in a – a raised voice. Not necessarily yelling, but he was – he was aggressive and he was using profanity.

Q All right. Now, I don't want to embarrass you – you can use initials if you like – but what kinds of words was he using in this area of both the office as well as the public area of the lobby of the sim center?

A Excuse my language, but he – he – I remember him specifically saying that this is fucking bullshit.

Q And how long did this go on that you observed?

A We were at the sim center for approximately 15 minutes before we left to go to the airport and I wasn't in contact with Mr. Hooper the entire time or Mr. Schuerman. But it – it lasted – the few times that I saw him, it lasted the entire 15 minutes.

Q Did you make any attempt, Captain Seeger, to calm Mr. Hooper down?

A I had a brief conversation with him. I [3108] just, you know, said that I was sorry that it didn't go well and – and I was trying to find out what happened in regards to the training and why it didn't go well.

Q During the time that you tried to engage him, did he ever calm down?

A No, sir.

Q Were your students with you when this behavior was going on?

A Yes, sir.

Q And how did you feel about what the students were seeing in connection with his behavior?

A I was kind of embarrassed for Mr. Hoeper's actions.

Q Captain, have you ever seen a professional pilot behave the way Mr. Hoeper did –

A No, sir, I have not.

Q – on December 8?

A No, sir.

Q Now, did you eventually, then, leave the simulator center?

A Yes, sir.

Q And did you leave with anybody?

A I took Mr. Schuerman – Captain Schuerman to the airport.

Q All right. And did you have any [3109] discussion, then, about what had occurred?

A We briefly discussed why – just the fact that Mr. – he hadn't even failed or unsatted Mr. Hoeper. He had just said that things were going poorly and Mr. Hoeper resolved to, basically, quit.

Q All right. And then, finally, Captain, there's been some testimony in this case by at least one witness with respect to targeting of pilots at Air Wisconsin. What I'd like to ask you is as a professional pilot at Air Wisconsin, as an instructor pilot, as an FAA designated instructor pilot and a check pilot, were you aware of any targeting of pilots going on at Air Wisconsin while you were employed there?

A No.

Q Have you ever heard of that?

A No, sir.

Q Did you ever target any pilots?

A No, sir.

Q Did anybody ever tell you that they were targeting pilots?

A No, sir.

Q Did anybody ever tell you that they were targeting Mr. Hoyer?

A No, sir.

\* \* \* \*

[3124] A I'm not sure if I said those exact terms, but I – I saw no reason why Mr. Hoyer, with additional training, should not pass a type rating.

Q All right. Now, you are aware of Air Wisconsin's policy that an instructor who has expressed bias of any kind against a student should not be training that student; right?

A Yes, sir.

Q And that's because of the ability of the instructor to be unfair to the student if he has that bias; correct?

A That's correct.

Q And all of the events as you've related to this jury, other than the discussions you had with Mr. Hoyer, were based on what Mr. Schuerman told you about the events of December 8th, 2004; correct?

A I'm sorry. Repeat the question.

Q Strike that. Bad question. Your understanding of – of the events from Mr. Schuerman's perspective came from Mr. Schuerman; right?

A That's correct.

Q And you didn't – you weren't there; right?

A I was not in the simulator with him.

Q Now, you weren't qualified to fly the

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[3191] MR. McGATH: Thank you, Your Honor.

THE COURT: Cross-examination?

### CROSS-EXAMINATION

BY MR. McGATH:

Q Captain Hanneman, good afternoon – or I guess it's still morning.

A Good morning, sir.

Q Thank you. You seem to have a very good recollection of the events which took place on the training – the checking ride of November 13th, 2004; isn't that true?

A Yes, I do, from my notes.

Q It appears to me, Captain Hanneman, that, based on what you're telling me, that Mr. Hoepfer did not execute proper control of emergency procedures; is that right?

A That's correct.

Q And he did not execute proper control of landings; correct?

A That's correct.



Q In fact, it doesn't appear that he did very much right in conjunction with this check ride; isn't that true?

A There was a few correct things, but there was a number of unsatisfactory things, sir.

[3192] Q And, in fact, he unsatisfactorily handled the pre-flight checklist; right? Didn't you indicate that his use of his checklists before flight was unsatisfactory?

A Yes.

Q Okay. And, Captain Hanneman, these notes that you prepared, they were prepared specifically at the request of Captain Doyle, weren't they?

A No, sir. Anytime we have an unsatisfactory, I prepare notes that I give to the company.

Q Well, they were prepared specifically for Captain Doyle after the event of December 8, 2004; isn't that true?

A When I did his proficiency check, they were prepared one or two days after the proficiency check.

Q The notes aren't dated, are they?

A No. I never dated any notes.

Q Okay. We'll come back to these notes in a minute. I want to talk to you about some other things before we get there. All right? Captain Hanneman, let's turn to Exhibit G for a moment. That's in the Plaintiff's exhibit book. Excuse me.

\* \* \* \*

[3196] I don't know any of the situations.

Q But his entire time in the simulator is noted, even though he's not getting any training at all; is that true?

A I don't know what happened in the simulator.

Q Okay. Captain Hanneman, if your recollection of the events of October 14th – by the way, do you have a clear recollection of the events of October 14th?

A From reviewing my notes, yes.

Q Okay. And you testified about those events of October 14th, and what took place in the restaurant; right?

A Yes.

Q And you have a clear recollection of that because you reviewed your notes; right?

A Those weren't in my notes.

Q Okay. But that's something that, given the context of this case, you're going to have a good memory of; right?

A I do remember the situation in the restaurant.

Q All right. Well, the fact of the matter is, when Mr. Hoepfer came into the restaurant, you [3197] actually asked him over to your table; isn't that true?

A Mr. Hoepfer waved to me and I waved back to him.

Q You waved him over to the table, didn't you?

MR. MARK: It's objected to as asked and answered, Your Honor. It's repetitive.

THE COURT: Overruled.

A When he waved to me, I waved back to him.

Q (BY MR. McGATH) You invited him to come and sit down with you, didn't you?

A If you consider waving to him as inviting, yes.

MR. McGATH: May I approach, Your Honor?

THE COURT: Yes.

MR. McGATH: The record should reflect that I'm handing Captain Hanneman his sworn deposition testimony in the form of a transcript dated November 27th, 2007.

Q (BY MR. McGATH) You actually waved Captain Hoepfer – Mr. Hoepfer over to the table, didn't you, Captain Hanneman?

A I waved to him.

Q Please turn to page 79, line 15.

[3198] "Question: And you waved him over to the table?" Your answer, "Yes."

Wasn't that your testimony from November 27th, 2007?

A Yes, sir. Yes, it is.

Q And then Mr. Hoepfer accepted your invitation to come over and sit with him, didn't he?

A Yes. He sat down with us.

Q He accepted your invitation to sit with you; isn't that true?

A By sitting down at the table, yes, he did.

Q And that's because you had invited him; right?

A He waved to me and I waved back to him.

Q Captain Hanneman, please turn to page 79, line 25.

“Question: And do you recall, then, Mr. Hooper accepting your invitation to come over and sit with you?”

“Answer: Yes.”

Wasn't that your sworn testimony just a mere three months ago?

A Yes.

Q All right. And, in fact, you had a very [3199] cordial conversation with Mr. Hooper and the group was cordial; isn't that true?

A Mr. Hooper and I had a conversation. I don't recall, but that was just it.

Q It was a cordial conversation, wasn't it?

A Yes.

Q And Captain Doyle participated in that cordial conversation, didn't he, Mr. Hanneman?

A No.

Q What's that?

A I don't believe he did.

Q Okay. And Mr. Doyle had a beer with the two of you, didn't he?

A We had a beer when he approached the table.

Q And Mr. Hooper had a beer with the two of you, didn't he?

A I don't remember if he did or not.

Q And you had some food together, didn't you?

A My recollection is that we were done with our meal when he came to the table.

Q And there was nothing inappropriate about what went on in that restaurant at all, was [3200] there?

A Not that I observed.

Q And Captain Doyle didn't indicate to you in any way that he felt uncomfortable, did he?

A Nothing was said to me at the table.

Q Now, I want to talk to you a little bit about this training event now. During this process, Mr. Hoyer never gave you the indication – we're talking now about the checking event on November 13th, 2004. Okay? You know where we are? The checking event that was –

A Yeah.

Q That was Mr. Hoyer's last failure. Do you remember that that was, in fact, his last failure?

A No. I believe it was not his last failure.

Q You think he failed something else?

A I know, in December, he went back on for some more training, so that could not have been his last failure.

Q You knew that it was his third failure under the contract; correct?

A That's correct.

Q The one that you failed him on; correct?

A That's correct.

[3201] Q Okay. Now, the – the notes that you made, you didn't go over those notes with Mr. Hoyer, did you?

A No, I didn't.

Q You didn't give them to Mr. Hoeper, did you?

A No.

Q And even though lots of things in here which would indicate – well, Mr. Hoeper might improve on, you never made the notes available to him, did you?

A No.

Q That's correct?

A That's correct.

Q All right. Now, Mr. Hoeper at no point in time had indicated to you in any way that he was threatening, did he?

A Not to me.

Q And, in fact, he's never given any indication to you at all during the course of the interactions that you had with him that he was in any way threatening, has he?

A He was never threatening to me.

Q He's never given any indication to you that he was threatening to anybody; isn't that true?

A That's correct.

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[3203] A It's a violation to train him and do a type check; not a proficiency.

Q So you can train him and then do a proficiency check; is that right?

A Yes.

Q And if Mr. Schuerman had been in a simulator session with him on November 5th, 2004, he could

have conducted a check ride, even if he had trained him earlier that – just before the event; correct?

A Proficiency check. Not a type check.

Q Now, let's look at what you actually wrote about emergency procedures in this form, which was completed simultaneously. There's a – a box for emergency procedures that is the second from the bottom of this form. Do you see it?

A Yes.

Q Okay. This form was actually completed on the day when this was all going on; correct?

A Correct.

Q And you've indicated here that he was satisfactory in dealing with emergency procedures, haven't you?

A Let me see.

Q Second from the bottom.

[3204] A I guess I'm looking at the wrong proficiency check form.

Q We need to look at page 19 of Exhibit 13. I'll help you. The things in handwriting.

MR. McGATH: May I approach, Your Honor?

THE COURT: Yes.

A Okay.

MR. McGATH: Have you got it?

A Yes.

Q (BY MR. McGATH) Okay. This is a proficiency check form that you actually filled out the day that this check ride took place; correct?

A That's correct.

Q You indicated in the line second from the bottom that, in fact, Mr. Hoeper had satisfactorily performed emergency procedures, didn't you?

A That's correct.

Q And you indicated at the top that he had, in fact, satisfactorily performed the pre-flight checklist; correct?

A That's correct.

Q That's not what you testified to just a little while ago, is it?

A That's correct.

Q Now, Captain Hanneman, you believe that [3205] the training you conducted with Mr. Hoeper was fair, don't you?

A Yes, I do.

Q And that was the essence of the comments you were making to Mr. Mark about not targeting airmen; right?

A Yes.

Q All right. You've known Craig Christensen since prior to 1994, haven't you?

A Yes, I have.

Q And he was a personal friend of yours; isn't that true?

A Yes.

Q You had a conversation with Craig Christensen in the early 2004 time frame or late 2000 (sic) time frame at the Appleton airport where you made the following statement to Mr. Christensen about Mr.



Hoeper: Quote, We should have fired him when we had the chance?

MR. MARK: Your Honor, that's objected to as exceeding the scope of the Court's previous ruling.

THE COURT: Overruled.

Q (BY MR. McGATH) You made that statement, didn't you?

[3206] A No, sir, I didn't.

Q You'd agree with me that if you made that statement, you should have never been involved in this man's training; isn't that true?

A If I made the statement.

Q You made that statement in the presence of Tim Adams; isn't that true?

MR. MARK: That's objected to, Your Honor. Improper cross-examination based upon this Court's earlier ruling.

THE COURT: Overruled.

A No, sir.

MR. McGATH: That's all the questions I have for you, Captain Hanneman.

THE COURT: Do you have any redirect?

MR. MARK: It will be very brief, Your Honor.

THE COURT: All right. Everybody all right with going ahead and trying to finish up with this witness?

MR. MARK: I'll be fast.

REDIRECT EXAMINATION

BY MR. MARK:

Q Just two quick areas, Captain. Let's make it three. Let's start with the last one. Did you

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[3281] administrator. Again, both of them are senior executive service level appointments and they would be occupied by permanent career Government civil servants.

The fifth ranking position in the agency was the assistant administrator for transportation security policy, which was the successor to the associate undersecretary position I first held.

Q Okay. So it looks like it kind of goes most important, so to speak, position, second most important, these two positions are kind of tied for third, if you will, and then this is the fourth most important position within the agency?

A That's correct.

Q All right. So you were the – in – at the point in time we're talking about right now, in this – the director or the assistant director undersecretary for this position?

A In 2004, I occupied the transportation security policy post until the late summer, at which time I was named chief support systems officer.

Q Okay. Tell us what your responsibilities were, then, when you were the director of the transportation security policy office.

A I continued to be the – what we refer to as the stakeholder liaison. Worked closely with the [3282] airlines and airports and the groups that I mentioned. We had responsibility for making amendments and – and doing interpretations of the AOSSP. That's

the aircraft operator standard security program. We drafted and coordinated security directives which amended that and put regulatory-like requirements on the air carriers and the – and the airports. And we had a significant role in explaining our policies to the – to the U.S. Congress and to other outside groups in Washington and across the country.

Q Okay. And I will tell you the jury has heard about the AOSSP throughout the course of this trial. Your – that position as transportation security policy director, the AOSSP came out of that office?

A That's – that's correct. We had responsibility for administering its provisions, interpreting what the regulations meant and for making amendments to it. Now, we did that in full coordination not only with external groups but with other partners inside TSA.

Q Okay.

A As well, we had to lead to accomplish those things.

Q All right. So at least with respect to

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[3287] of TSA and was eventually confirmed as the administrator of TSA this would have been during all of 2004. He instituted a practice where he convened his senior staff every morning at 8 a.m. And the purpose of that meeting was two-fold. One, we received an intelligence brief and, secondly, we had a direct secure link to TSOC – at that time Transportation Security Operations Center – and we reviewed with the personnel at the TSOC, the command duty officer, who was the lead person for incident response and management, and his or her staff every single security incident that occurred

across the entire U.S. aviation system during the previous 24 hours.

Q Okay. Would you describe for the jury the evolution of TSOC and the evolution of reporting incidents to TSOC. In other words, what security system had been in place before 9-11, how did that evolve after 9-11, and how did TSOC deal with it?

A Prior to 9-11, aviation security was administered by the Federal Aviation's office of civil aviation security. It was done strictly as a regulatory program. The AOSSP in a – in a predating TSA version existed and it required the airlines to perform security functions at the airport. They had to pay for the screeners. They had to put the equipment [3288] out there. And the role of the FAA was to inspect that, oversee it, and make sure the airlines were doing as they were required to do on a regulatory basis.

The No. 1 policy shift after 9-11 was that we federalized aviation security. We took it away from the private sector as a direct responsibility. And we – we made the screeners Federal employees. We created an agency. And we put resources behind making that a 100 percent Federal function.

We continued to regulate the airlines, but, in fact – and the airports through the AOSSP, but in fact, there was, in effect, a new sheriff in town.

Now, in order to be able to implement that, we had to have a mechanism so that we could understand and analyze what was going on across the U.S. aviation system day in and day out. We needed to have – I think I referred to this, what's called situational awareness. We can't be responsible for security incidents, security breaches, and bad things

happening if we don't have the knowledge of what's going on out across the system.

In order to do that, we had to create the Transportation Security Operations Center, which was a way to have visibility into the aviation sector. Where are the flights, how we communicate with our [3289] field commanders, our Federal security directors, how do we gather threat information, how do we gather intelligence, how do we relate to law enforcement, and how do we relate to other Federal agencies that have a role in – in aviation security. We needed a nerve center in order to be able to carry that out.

And that's why we created the TSOC as a robust operational command center.

And an important aspect of that is we were no longer as leaders of this agency willing to rely on the air carriers to provide us threat information. We were the ones that were going to be responsible the morning after a bad thing happened, and if we're going to be responsible for it, we're going to have our own personnel and our own assets and our own analysts and we're going to make our own threat determination and we're not going to rely on people that we relate to simply by regulation to do that job for us anymore.

That's the guts of the – of the lesson of 9-11. That's what we were doing immediately after that and it's what the – the essence of the Aviation Transportation Security Act says we must do.

Q Was there – excuse me – was there resistance by people that were in the security arena [3290] under the FAA's guidance when this transition took place?

A Well, I think if there was great concern. I think that you have to remember the thing – the things that we were – we were doing. In airports, we were literally tearing them up to put in new explosive detection system equipment. That was very disruptive to airports.

Airport police authorities wondered what's the role of the new Federal security director that's come here? Do I work for them? Do I work for the police chief?

Airlines wondered what extent we were going to have to – what extent the authority we were going to use, and we had very broad-based authority to require them to undertake things that would cost them significant amounts of money.

So, yes, there was certainly a great deal of concern about whether or not we were going to cost the airlines a great deal of money by our actions, whether we were going to disrupt airports and whether or not we were going to be a very authoritarian agency that would take away the traditional system of managing issues in the aviation sector.

Q Okay. As a result of the Homeland [3291] Security Act, was the authority for aviation security fully vested in the TSA?

A Yes.

Q So with respect to any sort of transportation or certainly aviation security incident or potential incident, the ultimate authority with the absolute responsibility was the Transportation Security Administration?

MR. McGATH: Objection. Leading, Your Honor.

THE COURT: Overruled.

MR. AVERY: It's foundation.

MR. McGATH: All right.

A Yes. The TSA had that responsibility.

Q (BY MR. AVERY) Okay. Now, you started to talk before I interrupted you before about the Transportation Security Operations Center or TSOC and the desire to have this information come in daily. Could you tell us how the – that evolved over time.

A Prior to the time that TSA was created and prior to the time that – that the TSOC was created, threat information in the aviation sector was routinely analyzed by airline personnel or airport personnel, for that matter. They would be regulated and required to make reports to what's known as their [3292] principal security inspector about threat information or dangerous situations that would come up.

Now, following the – the creation of TSA, that specifically was – was stopped. We no longer wanted the airlines making the threat assessments. We wanted to do the threat assessments ourselves. And we were having a problem in getting the airlines and the airports, for that matter, to move away from that pre-9-11 mind-set.

In other words, they – they – they wanted to continue to do the analysis and to make the reports in their own time and in their own way as they always – as they had always done. This led us to believe that we were having some resistance in getting the full reporting from across the aviation sector that we believed that we needed.

This began to increase as we picked up and during the spring of 2004, Admiral Stone and the others of us that were senior leaders of TSA, we began to get

concerned because we would get reports that were a week late and – and the airline would have gone through their own threat assessment and determined there wasn't anything there. And then they would come along and hand us the report.

And we also began to get anecdotal [3293] information from flight attendants and other players in the aviation sector that there were suspicious incidents and things of a security nature going on that were not being reported.

So we began to think, look, we have a major responsibility here and we're not getting the information that we need. And – and we're being put in a position where we have to rely on people that are not Federal people, are not trained in our – in our way of doing things, don't have access to the intelligence, don't have access to events going on across the aviation sector, and they are making threat assessments, and it's our responsibility. We have better information and better capability to do it. And we were concerned that we were not being able to perform at the level that we were charged with performing because there was underreporting or nonreporting by airlines and airports, particularly by – by airlines.

Q What did you do or what did TSA do that cured what they perceived as a problem of underreporting?

A The first thing that I – I did personally, as I did often, I met with the security directors of the major airlines and the security [3294] director of the – security directors and senior management of the – of the regional airlines. I would do this routinely throughout the Regional Airline Association and the Air Transport Association where I would meet with



the security committees of both of those associations and we'd discuss issues.

During this period of time, during the late spring and summer of 2004, I was sharing what I just said with the airline industry. We're worried that you're underreporting. We're not getting reports as – as soon as we would like. We have capabilities that you don't have. You need to start giving us more and more fulsome reports and to – and to move more quickly than you are.

And – and we began the dialogue about saying, Look, we want to know about what we think are suspicious incidents. We don't know just about a real threat, necessarily. We want to know about the suspicious incidents so that we can analyze and compare that against the information that we have as managers, intelligence that we have, incidents going on at other airports. We want to know all of that.

And I indicated to the industry, through – primarily, through these trade associations and other interactions, that it was entirely possible [3295] that Admiral Stone would order that a security directive be developed and that they would be ordered to – to do this reporting if they didn't on their own, in a more voluntary way, begin the process of incident reporting.

Of course, it was our view that the airlines were somewhat concerned, you know, there's more reporting, then there's going to be more engagement, there's going to be more orders, there's going to be more time-consuming aspects to providing aviation security.

Q Was there any sort of message that was sent to the industry, if you will, then what to do if there was doubt in a situation? Was there any sort of message

that was sent to the industry as to what to do in case of doubt?

A We began to tell them that we did not want them to just report threats that they termed to be a threat. We wanted to know about suspicious incidents and that we would be the ones to conduct the threat assessment and decide whether or not the threat was real or not. That that was not their responsibility. We wanted them to when in doubt, report. That – that was the policy that we began to communicating in 2004. When in doubt, report. We'll take it from there.

[3296] Q Okay.

MR. AVERY: Your Honor, I would move to have Mr. Blank qualified as an expert on aviation security, Transportation Security Administration policies and procedures, and the FFDO program.

MR. McGATH: Your Honor, I would accept Mr. Blank as an expert in the TSA policies. I don't think there's been a proper foundation as to aviation security issues. I think he's probably qualified to make some comments about the FFDO program.

THE COURT: I didn't hear –

MR. McGATH: I think he's probably qualified to make some comments about the FFDO program, but from my – that's my position.

THE COURT: All right. The objection is overruled. The witness will be accepted as an expert in the fields in which – fields in which he was offered and permitted to render opinions in that regard.

MR. McGATH: Your Honor, may I voir dire as to aviation security then?

THE COURT: All right.

MR. AVERY: Let – if this would save time, aviation security within the parameters of the aircraft operators standard security program, AOSSP, [3297] which he developed.

MR. McGATH: May I voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. McGATH:

Q Okay. Mr. Blank, you had no involvement whatsoever before you were appointed to the TSA in any security issues at all; isn't that true?

A That's true.

Q You have never been involved in law enforcement?

A That's true.

Q You have never even fired a weapon in the course of employment; true?

A True.

Q Never owned a weapon in the course of employment?

MR. AVERY: Objection to the relevance.

THE COURT: None of this goes to his qualifications as an expert.

MR. McGATH: Okay.

THE COURT: The objection is sustained.

Q (BY MR. McGATH) Mr. Blank, prior to this point in time, your background had been as a lobbyist; isn't that true?

[3298] A Not entirely. But some, yes.

MR. McGATH: That's all the questions I have as to voir dire, Your Honor.

THE COURT: Do you maintain your objection?

MR. McGATH: I do.

THE COURT: The objection is overruled. As noted, Mr. Blank will be accepted as an expert in the fields in which he was offered and permitted to render opinions in those fields.

I think we're going to go ahead and take our afternoon recess. Would this point be a reasonable time to do it?

MR. AVERY: I was going to suggest that, Your Honor.

We'll start up about 20 minutes till, ladies and gentlemen. Please remember the admonitions that I've given you before. We'll be in recess until about 20 till.

(Jury exits at 3:21 p.m.)

(The Court was in recess at 3:21 p.m.)

(In open court out of the presence of  
the jury at 3:44 p.m.)

THE COURT: What time do you think we're going to get the evidence done tomorrow? I'm inclined

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[3306] was the lesson of 9-11.

The lesson of 9-11 was that we – we didn't lack strategic intelligence. We knew what was going on in the big picture. We lacked tactical intelligence. We didn't know what was going on in the aviation domain

real time. So our challenge was to be able to understand evolving threats, suspicious behaviors, evaluate them, use the Federal Government resources to further analyze the information that's coming from all around the aviation sector and determine what kind of a response, if any, was warranted.

Q Okay. And one of the things I wanted to touch upon, you said that you didn't want the airlines involved in threat assessment because you had access to more information. Could you give the jury an example of a situation that perhaps you confronted when you were at TSA that might not have been viewed as a threat by an airline but would be significant to the TSA.

A Well, one of the things that we were worried about was if something that was innocuous that might be seen to, say, an airline maintenance worker, if that wasn't reported, we would have been not able to say, gee, we've had three specific instances of that same kind of maintenance issue. Maybe there's [3307] something going on here. And I'll give a specific example of that.

In the summer of 2004, we were very concerned about the fact that our aviation security machine had been penetrated by a fellow named Nathaniel Heatwole. And Nathaniel Heatwole was a student from Maryland who wanted to test and probe aviation security. Therefore, he came up with some improvised explosive –

THE COURT: Hold on a second, Mr. Blank.

A – explosive devices –

THE COURT: Go ahead. I'm sorry.

A He came up with improvised explosive devices. They were simulated and he sneaked them through security. He took them aboard Southwest Airline flights. He went in the bathroom and he pulled a panel off and he secreted these – these improvised explosive device elements inside that panel to see whether or not it could be found.

And what we found was that we were having a situation where, you know, Southwest across its system knew that they were having a problem from time to time with panels being loosed in bathrooms, but that didn't get reported.

What did get reported was that Heatwole [3308] called up that customer service line that I mentioned and he self-reported that he had done this. And, unfortunately for TSA, our customer service line was not robust enough and the people answering the phone were not well enough trained to be able to understand that they had threat information that was coming in over the telephone and coming in on the e-mails.

And that caused us to radically revamp and understand that we are an agency that can receive threat information from very, very, very many aspects. Not only the TSOC, not only Federal security directors. Not only from airlines making reports and airports, but also from the general public who is going to tell us about suspicious incidents or make reports about thing that are going on out there. And it raised to us the fact that we needed to be ever more vigilant and we did, in fact, make a more robust capacity at the Transportation Security Contact Center so that the people answering those phones understood a reportable communication, understood how to relate to the TSOC, and recognized potential threat information.

Q (BY MR. AVERY) Okay. We now have Exhibit 25 in front of us. Would you turn to page WH50 for a moment and I'll ask you to give us some interpretation or some description, I guess I should

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[3314] Is that how it's dated?

A Yes. Yes, sir.

Q All right. And there's one other thing I think I failed to ask you about. After the Heatwole incident and before December 8th of 2004, was there any sort of special directive or emergency directive that was issued by the Transportation Security Administration?

A In late November of 2004, we became concerned enough about suspicious incident reporting that we did issue a security directive, which constitutes an order. We had very broad authorities. And we defined in that order – it laid out a requirement for the carriers – the air carriers as to what they are now required to report to the Transportation Security Operations Center.

Q Was that directive, itself, classified?

A That directive itself was classified and what I'm not prepared to testify to is precisely what defines a suspicious incident, or the – or any other precise definitional issues that would be in that particular security directive.

Q (BY MR. AVERY) All right. When you say you're not prepared, you mean you can't testify about those things?

[3315] A I would be precluded from testifying because that's classified information.

Q Without violating any classified information, can you at least express to the jury what that directive did, if anything, with respect to increasing the desire for reporting by TSA or changing the manner for reporting that TSA required?

MR. McGATH: Objection, Your Honor. To the extent the – may I approach?

THE COURT: Sure.

(At the bench.)

MR. McGATH: Okay. My problem with this he's going to talk about what they are supposed to do and I can't cross-examine him as to what they are required to do or not do. You know, it – we're at a problem here.

MR. AVERY: He's not just going to reveal the definitions or anything. He's going to say increased reporting requirements. You can cross-examine him on that to your heart's content.

THE COURT: Without using – without using the book.

MR. AVERY: No. We're not going to talk about –

THE COURT: I think – the problem is [3316] going to be, what if Mr. McGath, in five minutes, walks up here and shows me something that directly contradicts something that came out of this guy's mouth?

MR. McGATH: I'm not talk – two things, Your Honor. First of all, I don't have the AAOSP.

THE COURT: Nobody does.

MR. McGATH: We have the issue about what Air Wisconsin has in its book and which you indicated that I can't cross as to.



THE COURT: We're not – we're not going to run down that rabbit hole. We're – you be careful.

MR. AVERY: We're increased the requirement. That's all.

(In open court.)

THE COURT: The objection is overruled.

Q (BY MR. AVERY) The question that I had asked you, Mr. Blank, was with respect to this particular directive that was issued in late November, without saying anything about classified information, can you tell us generally whether that increased reporting requirements or airlines, decreased reporting requirements, or caused them to stay the same?

A What it was was the embodiment of the policy change that was going on at TSA that I [3317] previously testified to. We wanted to know about suspicious incidents. We – we did not want to have the carriers any longer as they did prior to 9-11 doing the investigation, the assessment of – of potential security matters that came to their attention.

And we were trying to move them away from that and to assert the fact that, as a matter of policy, we are the people who will take that responsibility on. We are the ones who will execute that responsibility. It is no longer for the air carrier to take on that – that kind of responsibility. The security directive, without saying specifically what they had to report, because that would help the bad guys, took the – took the – the policy of reporting of suspicious incidents into an actual regulation and a requirement for the air carriers.

Q Okay. So it codified, basically, what had been an unwritten policy before?

A Correct.

Q All right. Continuing on with WH51, in the first numbered paragraph, it says CDO notified. Is that the same acronym that we heard before about the command duty officer?

A Yes.

Q Okay. And the – let's go, then, to [3318] page WH52 for the moment. All right. And this is a document you've seen before; is that right?

A Yes.

Q And approximately an inch and a quarter down, it identifies Charles Phucis, P-h-u-c-i-s, TSA operations. Do you know who that individual is?

A I know his name. I'm not personally acquainted with him.

Q Do you know what his role was at TSA at that time?

A He worked at the TSOC and he was an operations officer as it – as it says there.

Q Okay. And could you describe for the jury what WH52 is of Plaintiff's Exhibit 25.

A It's – I've referenced a number of times that we received a – a daily report each morning at 8:00 that was prepared by the TSOC. This is the excerpt, this is the incident report from that daily report that the senior people in TSA received every day on the – on the incident involving Captain Hoeper.

Q Okay. And does this describe in the body of the report what occurred that afternoon, beginning with the phrase at 1622 hours?

A It describes what was going on at the TSOC during the period of time that they were

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[3329] is that correct?

A That's correct.

Q All right. Would you tell the jury what your opinion is – well, first of all, do you have an opinion to a reasonable degree of probability as to whether or not Air Wisconsin Airlines Corporation, under the directives and policies that were in place on December 8th, 2004, had an obligation to report the incident?

A Air Wisconsin clearly had an obligation to report the incident. It would have been driven by the security directive that was in place at that particular time. And it would have been driven by the policy of when in doubt, report.

Q Okay. And the report that that – once the report was made, do you have an opinion to a reasonable degree of probability as to who was then in charge or who had the responsibility for investigating the situation?

A Once that –

MR. McGATH: Objection, Your Honor. 26(a)(2). And may I approach?

THE COURT: Sure.

(At the bench.)

MR. McGATH: Based on what's here, I

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[3335] a candidate's emotional stability?

A It does not have to do with that. For that, we would rely on the FAA processes that would make that determination. We would be looking, however, for somebody that may be a little too zealous in their capacity to take a human life.

Q Okay. Was there any requirement on Air Wisconsin Airlines in December 8th, 2004, to know whether or not Mr. Hooper was in possession of his weapon on that day at the training center?

A No, there was not.

Q Knowing what you know from the materials that you've read, did Air Wisconsin respond appropriately to the situation by calling TSA?

MR. MCGATH: Objection. Foundation. Same objection as earlier, Your Honor.

THE COURT: Overruled.

A Air Wisconsin responded to the situation precisely as the Transportation Security Administration would have wanted them to.

MR. AVERY: If I could have a moment, Judge.

THE COURT: Sure.

MR. AVERY: I have no other questions at this time, Your Honor.

[3336] THE COURT: Cross-examination?

MR. MCGATH: Yes, Your Honor. I just need a moment to gather some things.

CROSS-EXAMINATION

BY MR. MCGATH:

Q Mr. Blank, I asked you a question earlier about – by the way, good afternoon. We've been going at this for quite some time.

A Good afternoon.

Q Thank you. I asked a question earlier about whether you're a lobbyist, and you indicated that you have done that in the past; right?

A I do it currently, as well.

Q Okay. And Wexler & Walker, the firm that you're involved with, is a political lobbying firm; right?

A It's a public policy firm, yes.

Q It's one of Washington's top lobbying firms, according to your own website; true?

A We consider it so, yes.

Q And your clients are fee corporations, trade associations, state and local government, and coalitions; right?

A Yes, sir.

Q And you believe that you can reach the [3337] highest level of power – Republican or Democratic – and influence results favorably for your clients; correct?

A We do.

Q And one of the things that you do at Wexler & Walker is form political action committees; correct?

A No. We do not provide that service.

Q You do represent political action committees in their lobbying efforts; correct?

A I'm not aware that we do.

Q Okay. You know what a political action committee is; right?

A Yes, I do.

Q If the second or third page of your website says that, “Finally, we are a one-stop shop. Our collective experience and expertise in a wide variety of public policy arenas, lobbies, grass roots, public affairs, coalition building and PAC formation and utilization” – if it states that information, would you agree with me that, in fact, you do work with PACs and help form PACs?

A The firm does. I have not undertaken that activity.

Q And, before going to TSA, you were the [3338] president of the fund for the Capitol Visitors Center. Is that what you testified?

A Yes, sir.

Q And you lost that job because of the events of 9-11; true?

A Well, we put the entity – we dis – we put the entity – we – I didn’t actually lose the job. The entity was put to – put to sleep because it was no longer needed.

Q And then you were – you received a political appointment to your position at TSA; correct?

A That’s not true.

Q You previously at one point in time were the co-chair of the Texas Financing Committee for George W. Bush, Presidential Exploratory Committee; isn’t that true?

A Yes.

MR. AVERY: Objection to the relevance.

THE COURT: Sustained.

Q (BY MR. MCGATH) Now, Mr. Blank, as we talked about, you had no prior involvement before getting involved with TSA in any kind of law enforcement activities; correct?

A That's true.

Q And you had no prior involvement in any [3339] type of security activity; correct?

A That's true.

Q And what you became was a – a communications liaison for TSA, representing TSA's interest in the – what you called, I believe, stakeholders that were involved in the process; true?

A I think it was more substantive than the general understanding of the word "communications."

Q You were a public relations person for TSA; right?

A No.

Q Now, in this capacity – go to this side and turn this way a little bit. In this capacity, Mr. Blank, you were really coordinating information that was going to be generated by those people who were involved day-to-day security – excuse me. Who had expertise in day-to-day security and providing that information to the TSA stakeholders such as airlines, et cetera; right?

A I don't think that's exactly correct. I would say that – that we were the place that synthesized the information from the operational personnel and the external personnel to try and find a policy that would

underpin a regulation and a process that was sustainable and workable for aviation [3340] security.

Q Okay. And I think you mentioned FSD's. And can you tell me again what that was?

A Federal security director.

Q Those are people who have – would have had much more involvement in the day-to-day handling of security events; correct?

A Yes.

Q And those are people who are actually very knowledgeable about security issues; correct?

A Yes.

Q Okay. And they are coordinating with the airlines in such places as Dulles as a hub; correct?

A Yes.

Q And the person there was Jon Linnehan; correct?

A Yes.

Q And he had communications directly with representatives of various airlines at Dulles; correct?

A Yes, he did.

Q And he was very knowledgeable about the policies and procedures of TSA; correct?

A Yes.

Q And he imported that knowledge to the

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[3346] A I'm not offering an opinion in that regard.

Q You don't have one, do you?



A No, I don't.

Q Okay. Now, you drafted multiple versions of your report in this case, didn't you?

A Yes, sir.

Q And this is what's in your report about when in doubt, report; right? That comes from the report which you – you provided to defense counsel who, in turn, provided it to me; right?

A Very good. Yes.

Q And this is what you told us was the informal directive, initially; right?

A Yes, sir.

Q And then you told us that it was confirmed in some type of written directive sometime in the late 2004; isn't that true?

A Late November of 2004, yes.

Q Okay. Now, what happened, actually, in this case was you drafted a version of the report, you contacted Air Wisconsin's attorney, you communicated with him about what was in the report, and then you changed the report; correct?

A That's not correct.

[3347] Q Your initial draft of your report was given to Air Wisconsin's counsel on or about December 19th, 2006; isn't that right?

A That sounds right to me, yes.

Q Okay. And you asked for input into the report from them; true?

A I did.

Q Okay. And at that point in time, you had discussions about what actually happened in the case; correct?

A No. I did not. And – and I asked them for some feedback on the early draft –

Q All right.

A – as to the length of it.

Q Okay.

A And the only feedback that I got from them was as to the length of it.

Q All right. Well, this is what – this is actually what your first draft of the report said with respect to when in doubt, report, didn't it?

A Yes. It is.

Q The difference is you removed the words “don't wait to do so.” Didn't you?

A Yes.

Q I want to talk to you a little bit about [3348] this concept of suspicious incident that you – you've used that word numerous times today; right?

A Yes.

Q Okay. You wanted it – air carriers to report suspicious incidents; right?

A We required them to do so.

Q But you didn't want them to determine whether the incidents were, in fact, suspicious; isn't that true?

A That was our job.

Q Well, I don't understand the circuitry of that. You indicated –

MR. AVERY: Just – I know he hasn't gone through the question –

THE COURT: Sustained.

Q (BY MR. McGATH) Just so I'm clear here – hang on.

You want to report suspicious incidents; right?

A Yes.

Q But you don't want them to determine whether they are suspicious?

A That's precisely right. May I give you an example?

Q I'm just asking you some questions, sir.

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[3359] it; isn't that true?

A I don't understand the question.

Q Well, you indicated that they are not even supposed to make the threshold determination as to whether somebody is suspicious, but they are supposed to turn it over to you; isn't that right?

A They are – we expect that, through common sense, they will recognize a suspicious incident. They are not supposed to verify whether, in fact, it is a suspicious incident, a suspicious activity that constitutes a viable threat to aviation security. That, they are not supposed to do.

Q So they have got to include the words you just used, common sense; isn't that right?

A Yes.

Q And you don't want false reports being made, do you, Mr. Blank?

A If there were false reports made, we would take – TSA would take action against the individuals making false reports.

Q You made no determination in this case or TSA made no determination in this case as to whether Air Wisconsin was justified in believing Mr. Hoyer was mentally unstable, did you?

A TSA –

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[3366] weapons that would not use them in the event or would hesitate to use them in the event of a – of a – of a cockpit breach. So that was one thing that was on our mind.

Secondly, we did not want to have people who might be too – too ready or too easily to use that – that weapon and not perhaps pay close attention to the use of force policy that we had put in place for armed pilots.

Q Okay. Mr. Blank, you were asked a question about the reporting of suspicious incidents. You said would you like me to give you an example. And I'd like to give you the opportunity to give the jury an example.

A Yes. The – in the – in the Heatwole incident, what we knew that Southwest Airlines was finding and not reporting loose panels in lavatories. Well, loose panels in lavatories, in and of itself, may not sound like much, but we would expect airline mechanics, airline security personnel to know panels in lavatories in airliners are not supposed to be loose. They are not that easy to get – to get loose, to take out. That's something that should arouse some suspicious.

And if we had a – a culture of [3367] awareness where loose panels in lavatories were understood to be suspicious and we had that report coming in without any further evaluation by the airline, unless they wanted to take it off and – and see what's behind it, and we find going across the system in our daily reports that we're getting that we have airliners, three or four a day or even three or four in two weeks where we have panels loose in lavatories, we know we've got a problem. We've got to go out there and figure out what's going on because that's a great place to hide an IED component, and it's a great indicator that probing is being done. Is somebody testing to see whether or not we're going to pick up on this? Can I put an IED on there and then have another passenger go in that same lavatory and bring another component, and a third passenger go in there and assemble a bomb?

So, in this particular instance, we wouldn't – we wouldn't necessarily say that a – an individual airline is going to see that as a suspicious incident. At the time we're trying to create this culture of awareness, but we at TSA – if we see that a number of times, we're going to know what they have a real threat going on that we better do something about.

Q Mr. Blank, I want to show you another

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[3426] A Okay. I'm with you.

Q All right. And, Mr. Johnson, I'm going to be asking some very general questions later and I want to ask you about some specific things that were actually testified to in this court yesterday.

A Yes.

Q Mr. Blank testified that an FSA cannot cause an airplane to return to the gate if it's outbound without activating the domestic event network. Do you remember reading that when I asked you to look at it in the trial transcript?

A Yes, I did.

Q Is that true, Mr. Johnson?

A No. I don't believe that's true at all.

Q Can you explain to the jury why that would not be true?

A When – shortly after the TSA was created, the – the law gave the administrator of the TSA the authority to cancel flights if there was a security issue, delay a flight from leaving the gate, return a flight even if it was airborne, and reroute a flight. It also gave him the authority to evacuate terminals, close airports. There's a lot of authority given to us under the law.

Shortly after TSA was created, the first [3427] administrator delegated that authority to the Federal security directors. And that was a show of – this new sheriff in town comment we were making before. I had all of that authority. And, in fact, I – I – I exercised that authority in shutting down the airport on one occasion. Returning an aircraft to the gate. I did not have to seek permission from – from any network or anything else. So that's why I don't think that's a true statement.

Q All right. Mr. Blank testified that the AOSSP dictated that Air Wisconsin should have taken the action that it did in this case. Do you remember that?

A Yes, I do.

Q And is that true?

A The security directive kind of trumped the AOSSP. There was a section in the AOSSP saying that air carriers were responsible for –

Q We're into a sensitive area, so I don't want you to talk about sensitive security matters.

A Okay.

Q – but if you can give us a general idea of what's involved.

A The – the guidance that was to be used on that day was in the security directive; not in the AOSSP.

[3428] Q All right. And Mr. Blank testified about a security directive that came out in the fall of – fall of 2004. Do you remember reading that testimony?

A Yes, I do.

Q The security directive was actually when in doubt, report, and don't wait to do so. Isn't that true?

A That's what I recall, yes.

Q It was not simply when in doubt, report; correct?

A That's correct. I believe the verbiage was "immediately," if I do recall.

Q The verbiage was actually "immediately"?

A I believe so.

Q All right. How do you know what's involved in the AOSSP, Mr. Johnson?

A Well, it was – it's been the guiding document for air carrier security since the early seventies, I believe the first one was written. When I assumed the responsibility in 1988 of the – of the FAA security division, I assumed the responsibility for all updates

to that document. So I not only read it many, many times, I revised it, and had a staff that revised the revisions over the course of almost ten years.

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[3437] if they had not made that phone call? And I said, I definitely have an opinion on that. So it was the – literally the last page of the – of the document that I sent in.

Q Okay. Well, let's walk through some of these opinions. Do you believe, sir, that Air Wisconsin acted responsibly in the situation reporting the situation with Mr. Hoeper to TSA?

A No. I don't believe that at all.

Q And do you believe, sir, that – we're going to get to the basis of your opinions in a little bit. Giving Mr. Doyle – just let me back up in time I'm going to represent to you that there's been testimony in this case in which you, I believe, read in your deposition that Mr. Doyle believed at noon that Mr. Hoeper constituted a – a threat to himself and to Mr. Schuerman and came to the conclusion that Mr. Hoeper may be a threat to national security. Did you read that in his deposition?

A That was the gist of what I read, yes.

Q All right. If that, in fact, were true, based on the TSA directive, what should Mr. Doyle have done and when?

A Well, if he sincerely believed that Mr. Hoeper constituted a threat to – to anyone [3438] involved in civil aviation, he should have reported that – he was required to report that to TSA immediately.

Q If he had done that, what would have happened?



A Well, the events of the day certainly would not have happened. What would have happened was that TSA would have been notified. Just whoever the watch officer was would have started the notification process that I mentioned. Mr. Hoeper would have been pursued vigorously in Dulles airport by the airport police operated by the metropolitan Washington Airport Authority. He would have been subjected to questioning at that time. His bags would have been searched even prior to going through the screening checkpoint. They would have questioned him about the whereabouts of his weapon because that was the big deal was where's your gun, Captain. They could have verified that easily through, one, him not having it, two, sending somebody to his house to confirm that it was at his house if need be. There were just so many opportunities to – to – to alleviate all of the actions that went on that day, it was just incredible that they took the actions that they did.

Q All right. Mr. Johnson, you were [3439] unaware that the security directive required that suspicious activity be reported to TSA by an air carrier; correct?

A That's correct.

Q Now, Mr. Blank also indicated that you have to use common sense in dictating what's a suspicious activity?

A Well, obviously. There's a lot of suspicious activity going on at every airport every day, every hour. There is a box that's laying in the middle of the terminal. There's a suitcase that nobody seems to be attending to it. There's – I found bullets in my so-called sterile area. That was suspicious, who had those bullets and how did it get into the sterile area.

People running around taking pictures. You need to check that out.

There are suspicious activities going on at every airport in this country every day, almost every hour, so common sense dictates you do have the responsibility to filter out the garbage and report really suspicious incidents to the Government agency responsible to respond to it.

Q And what would happen if all of these suspicious incidents that you described were actually reported without investigation?

[3440] A The phone system would go dead. I mean, there's not enough lines.

Q All right. This was what he said yesterday: "You report suspicious incidents, but you don't investigate to determine whether they are suspicious." Does that make any sense?

A No. It makes no sense at all. There's clearly an obligation by professionals in this industry to filter out the – the low – the low noise from – from what's significant. That's why they get paid the money they get paid.

Q All right. Mr. Johnson, do you believe that TSA should have been notified in this case?

A Not based on the information available to me, no. They should not have been notified.

Q All right. And based on what do you reach that conclusion?

A Because of the ample opportunity to determine Mr. Hoyer had neither the capability to do any harm to anyone that day – he had no gun and that could have been cleared up with one phone call at noon. Nor

did he exhibit any – or evidence any intent to harm anyone. And I just gave you the classic formula for determining threat. Capability plus intent equals threat.

[3441] Q What avenues were available for Air Wisconsin if it chose to exercise common sense to make this determination?

A Well, as soon as Mr. Doyle became concerned, he had approximately four hours. In that four hours, he could have called Mr. Hoeper himself. Where is your gun? It's all about the gun, ladies and gentlemen. It's all about the gun. Where is your gun? If you couldn't get ahold of Mr. Hoeper, he had an employee – Mr. Doyle had an employee at Dulles airport in an office with a phone number. Go find Bill Hoeper. Ask him where his gun is.

Failing that, he could have called United Airlines' station operations center. Hey, this Bill Hoeper guy is on your airplane. You've got a piece of this. Go find Bill Hoeper. Four hours to make a 5-minute phone call. It would have been over. And he didn't.

Q Did you also read in the depositions that there were other people that he could have contacted but didn't do so? For example, did you read that he could have contacted Mr. Schuerman to determine what Mr. Schuerman's attitude about Mr. Hoeper was?

A Of course. I mean, Mr. Schuerman was probably in the best position at the time to determine [3442] Mr. Hoeper's intent to do harm to anyone. Clearly, after reading everything, there was none.

Q All right. Now, did you – do you believe that Mr. Hoeper in any way was suspicious?

A No more so than every other passenger on that plane. They were just going home.

Q You're aware that Mr. Hoeper stopped the training to call his attorney. Does that indicate any indication of suspicion to you?

A No. As I said, there were probably two or three other people on that airplane who had talked to their attorney that day.

Q Okay. You indicated that Mr. Hoeper – excuse me – there's been testimony in this case that Mr. Hoeper was following his employer's direction to get on a flight and go home. Do you believe that that's suspicious?

A No, sir.

Q There's been testimony in this case that Mr. Hoeper called Mr. Orozco at about 2:30 and had a discussion with Mr. Orozco. Do you believe that's suspicious?

A No.

Q Would that have also been an opportunity for Air Wisconsin to intervene and make a determination [3443] as to whether or not Mr. Hoeper constituted a viable threat?

A It would have been another opportunity, yes.

Q Okay. Along those lines, if Air Wisconsin had concerns that Mr. Hoeper was suspicious or threatening, should they have booked his flight not once but twice?

A That would not seem logical at all, would it?

Q All right. Now, Mr. Johnson, you also were asked – let me just back up for a second. Mr. Blank

testified that through this telephone call that was made to TSA, a potential threat to aviation security was mitigated. Do you remember reading that testimony?

A Yes, I did.

Q Do you share that opinion?

A Well, I have an opposite view. That the threat situation was exacerbated by that call due to the lateness of it.

Q And what do you base that on?

A Well, the – the actions that would clearly be put into place when a call like that occurs. The response to a suspicious hijacking hasn't changed [3444] in 30 years, except for after 9-11, we've – we want to block the airplane and do some other things. But the basic response has not changed in 30 years. Any senior aviation security official would have known what was going to happen.

And what was going to happen was that aircraft was going to be brought back to the terminal or to a remote area of the – the airport called a hot spot, it would be surrounded, the suspicious persons would be hauled out of that airplane by armed individuals.

In the meantime, you were retaining a aircraft from an active taxiway to a gate in the middle of a major bank of aircraft departures at a major international airport. That, in itself, creates a little bit of concern. You're blocking the large airplane with a – with a dump truck or a snow plow. That's not a normal procedure. You've got people on board that aircraft who, for physical or mental reasons, can't handle that kind of stress.

I mean, a lot of things could have gone wrong. And they were all very easily avoidable.

Q All right. Now, what's the attitude of officers that you've been involved with when they are called to respond to a suspicious incident that could [3445] be a hijacking in progress?

A If you've got a description of an individual who may be armed, who is acting in a bizarre fashion, who is disgruntled, who – I mean, there were several qualities there that reminded me of a domestic violence call that police sometimes get. Might be armed. Very upset. Want to do harm to somebody. And when officers respond to that, at least in – in my understanding, they are on edge to respond to that threat. And I can tell you that the officers who went on board that aircraft should have been on edge, based on the information they got on Mr. Hoeper here.

Q Does that enhance the risk of danger?

A Well, stuff happens. You know the old saying. I mean, if somebody – for example, there could have been other armed law enforcement officers on that plane. If Mr. Hoeper would have gotten up in an aggressive fashion, even though he was tired and, you know, not trying to take on these guys, but for some other – if he would have acted in a manner they felt threatened, of course, they would have taken very, very physical action. Someone else armed on that aircraft could have gotten involved. We call that blue on blue. They didn't know what was going on, Federal air marshals or other law enforcement officers on that [3446] plane. There were ample opportunities, because of the way this was mishandled, for a lot of harm to come to a lot of people.

Q All right. Finally, Mr. Johnson, Mr. Blank testified that, in his view, if Air Wisconsin hadn't made this call, Air Wisconsin could have been subject to regulatory action, including perhaps fines. Do you have an opinion as to whether or not that's true?

A Yes, I do.

MR. AVERY: There's no basis for this opinion. No foundation.

THE COURT: Let's lay some foundation.

Q (BY MR. MCGATH) Mr. Blank, you were – excuse me. Mr. Johnson. Sorry.

Mr. Johnson, you were involved in the interpretation and writing of those very same regulations; correct?

A I wrote and enforced most of them.

Q All right. And you had to interpret them as part of your role as a Federal security director; correct?

A That's correct. And other positions.

Q And you had to interpret them and actually enforce them in your role with the FAA; [3447] correct?

A That's correct.

Q Do you have an opinion, sir, as to whether or not Air Wisconsin would likely face adverse action if it did not make this telephone call?

MR. AVERY: Your Honor, the only foundation that's been made is that he did this at the FAA, not in the post 9-11 era, so I still think there's inadequate foundation.

THE COURT: The objection is overruled. It goes to weight.

A Yes, I have an opinion.

Q (BY MR. McGATH) What's that opinion, sir?

A The call should never have been made. Therefore, there would have been absolutely no violation. If the proper action would have taken place in the four hours available to them, there would have been no regulatory requirement because there would have been no threat. It's as simple as that. No harm, no foul.

MR. McGATH: All right. Just one second.

Mr. Johnson, thank you for taking the time to come here today and express your opinions. I

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[3508] MR. McGATH: All right. Thank you, Your Honor.

Q (BY MR. McGATH) Hypothetically, under the facts of this case, would it have been available for a snowplow to have been brought into place?

A Well, yes. I mean, we had a call from a senior aviation company official, saying that there was an employee who may be armed. We were concerned about whether or not he had his firearm. He was described variously as an unstable individual, upset and angry, disgruntled, displaying unstable tendencies, exhibiting bizarre behavior. Might have a gun. Absolutely. You have – you treat that as a suspect hijacking in progress.

And as I said earlier in my testimony, the only thing that differentiates that from an honest-to-God hijacking that you know is going on is that aircraft was brought back to the gate. And if it – if they knew that a hijacking was going on, they would have moved



it away from the terminal area. That's the only difference. Otherwise, they surrounded that aircraft until they got that issue resolved. They thought they had a problem.

Q All right. Now, by the time Carrie Riley starts dictating her summary or printing out her

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