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UNITED STATES DISTRICT COURT
District of Maine

Case No. 2:15-cv-00484-DBH

DAVID E. MURRAY,]
Plaintiff]
vs.]
WAL-MART STORES,]
Defendant]

**TELECONFERENCE DEPOSITION OF: BRANDIE PATTON
30 (b) (6)**

Taken before Melinda Gay Simon, Notary Public, in
and for the State of Maine, on **December 6, 2016**, at the
offices of Bernstein Shur, 100 Middle Street, Portland,
Maine, commencing at 10:41 a.m., pursuant to notice
given.

APPEARANCES:

FOR THE PLAINTIFF:	MAX I. BROOKS, ESQ.
FOR THE DEFENDANT:	RONALD W. SCHNEIDER, JR., ESQ. AMY SELLARS, ESQ.

Also present: David Murray

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1 for one second.

2 (Discussion off the record.)

3 **BY MR. BROOKS:**

4 **Q.** So I'm directing you to Exhibit 61, and I'm going to

5 direct you to the second page of that. So what

6 we're looking at is an e-mail from Deltrinae Tucker

7 to David Murray.

8 **A. Deltrinae.**

9 **Q.** How do you pronounce it?

10 **A. Deltrinae.**

11 **Q.** And for the court reporter, that's spelled D-E as in

12 elephant L-T-R-I-N-A-E. This is an e-mail where

13 she's telling Mr. Murray that she feels, "as if your

14 concerns should be best addressed by your divisional

15 human resource director. I have already spoken to

16 him this morning and provided him with your initial

17 concerns and the notes from our conversation

18 yesterday". So what she is saying is that without

19 asking Mr. Murray she has brought the details of his

20 complaint to someone in the divisional level. Is

21 that how you understand this e-mail as well?

22 **MR. SCHNEIDER:** Objection.

23 **A. Yes.**

24 **BY MR. BROOKS:**

25 **Q.** Now --

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1 **A. Sorry.**

2 **Q.** So that is a breach of the confidentiality policy

3 for open-door communications, correct?

4 **MR. SCHNEIDER:** Objection.

5 **A. I don't know that it's a breach of confidentiality,**

6 **but I would say that it is a misstep and probably**

7 **not how I would have proceeded.**

8 **Q.** Okay. So it did not follow Wal-Mart policy to send

9 this e-mail, is that correct?

10 **MR. SCHNEIDER:** Objection.

11 **A. That's not what I said. I said that according to**

12 **this e-mail it went to somebody within his division,**

13 **which is not what he would have preferred, but it**

14 **was still sent to someone who's in HR, and that**

15 **wouldn't have necessarily been a breach of**

16 **confidentiality in as much as a misstep in the best**

17 **possible way to handle it.**

18 **MR. SCHNEIDER:** Max, I don't want to stop you

19 too soon.

20 **MR. BROOKS:** Do you need --

21 **MR. SCHNEIDER:** Can we take a quick break?

22 **MR. BROOKS:** Sure.

23 **MR. SCHNEIDER:** Are you guys okay with a

24 quick break?

25 **MS. SELLARS:** Yeah, yeah.

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1 (A recess was taken.)

2 **BY MR. BROOKS:**

3 **Q.** So I'm going to -- we actually broke at a good point

4 because I wanted to also ask some questions about

5 kind of the investigations and investigators,

6 generally. Now some of the documents related to the

7 investigation, Brandie, list you as Brandie Patton,

8 CFI global investigator II, and I was wondering if

9 you could tell me what CFI means first.

10 **A. It means certified forensic interviewer.**

11 **Q.** Got it. So what does that mean, you are certified

12 by who?

13 **A. By the CFI organization, which is ran by Wicklander**

14 **and Zulawski.**

15 **Q.** So is that some sort of -- what do you have to do to

16 get the certification?

17 **A. Take a course and then pass a test.**

18 **Q.** Okay. And what does it mean that you're a global

19 investigator II?

20 **A. In global investigations we have three levels of**

21 **investigator, investigator I, investigator II and**

22 **senior investigator.**

23 **Q.** And can you explain how you moved from global

24 investigator to global investigator II?

25 **A. Your supervisor has to recommend you for a promotion**

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1 **and then it goes through a committee and they have**

2 **to determine whether or not they feel like you are**

3 **at the level to be progressed from a I to a II.**

4 **That's how it worked in 2013.**

5 **Q.** So how long have you been -- how long have you been

6 an investigator at Wal-Mart?

7 **A. About six years.**

8 **Q.** About six years. And what other kind of

9 qualifications do you have, do you have a B.A.?

10 **A. I do.**

11 **Q.** And do you have any post-baccalaureate -- I don't

12 know how you say that -- do you have any advanced

13 degree beyond a B.A.?

14 **A. I do, I have a juris doctor.**

15 **Q.** Okay. Got it. Now on some of the documents that

16 were provided related to your investigation there is

17 an entry that says "date of interview" and then

18 there will be a date, and then there will be an

19 entry that says "date of transcription" and then

20 there will be a date, and in most of those documents

21 I will represent to you it's a different date. Can

22 you -- is there a recording made and then later it's

23 transcribed?

24 **A. No, sir, it's hand-typed or handwritten notes that**

25 **are later put into a report of interview.**

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1 Q. So there's no recording made of any of these
 2 interviews?
 3 **A. That is correct.**
 4 Q. Now is it important to have a witness when you're
 5 doing an interview?
 6 **A. Our protocol is to have a witness present for
 7 anybody who is a reporter or who is the subject of
 8 an investigation.**
 9 Q. So a reporter would be the person who made the
 10 complaint?
 11 **A. Yes, sir.**
 12 Q. And the subject of the investigation would be not
 13 somebody who's going to support it with some
 14 evidence but somebody who actually might be
 15 implicated as a so-called wrongdoer. Is that fair
 16 to say?
 17 **A. Yes.**
 18 Q. Okay. And the protocol otherwise does not call for
 19 a witness to be present?
 20 **A. Correct.**
 21 Q. Why would you not tape record these interviews, can
 22 you just explain that?
 23 **A. Because our protocol within global investigations is
 24 that we do not record interviews.**
 25 Q. And do you know why that's the protocol?

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1 **A. I do not.**
 2 Q. Does it seem strange to you?
 3 **MR. SCHNEIDER:** Objection.
 4 **A. No, because -- sorry.**
 5 **MR. SCHNEIDER:** That's okay.
 6 **A. No, because it's been that way since I started
 7 within global investigations.**
 8 **BY MR. BROOKS:**
 9 Q. Have you ever done investigations for any other
 10 company?
 11 **A. I have not.**
 12 Q. So you don't know if any other company has a policy
 13 where they don't make recordings of important
 14 interviews?
 15 **A. I do not.**
 16 Q. All right. There are a couple of different kinds of
 17 documents that seem to come out of an interview, as
 18 I understand the documents that were provided to us.
 19 There's a document that seems to be created called a
 20 report of interview and then there is a separate
 21 document that seems to come out of the same
 22 interview that's generally titled Investigating
 23 Manager Interview Notes. Can you describe why those
 24 two separate documents are created and what the
 25 difference is between them?

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1 **A. The interview notes are taken during the interview.**
 2 Q. Okay.
 3 **A. The report of interview -- we call them different
 4 things now so bear with me. The report of interview
 5 is transcribed later into a paragraph-like
 6 transcription.**
 7 Q. Now you said that the interview notes are hand --
 8 well, maybe you didn't. Strike that. Are the
 9 interview notes, the investigating manager interview
 10 notes, are they typed or handwritten?
 11 **A. They can be both.**
 12 Q. They can be both.
 13 **A. I believe the ones for this investigation I typed.**
 14 Q. So you typed, and then this word transcribing or
 15 transcription in this case, it's not what I would
 16 think of necessarily as transcribing audio to an
 17 exact transcript, instead it's, if I understand you
 18 correctly, a process of kind of consolidating and
 19 making a narrative out of raw notes. Is that a fair
 20 characterization?
 21 **MR. SCHNEIDER:** Objection.
 22 **A. I would say that, yes, it is.**
 23 Q. Okay. Now there are -- when a document is created
 24 that's called investigating manager interview notes,
 25 can you say with confidence that that would record

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1 the entirety of the conversation or are there cases
 2 where you go off the record or there might be
 3 conversations at the beginning and the end that are
 4 not captured in the document titled Investigating
 5 Manager Interview Notes?
 6 **A. That is correct.**
 7 Q. So which -- sorry, why don't you read back my
 8 question again and maybe instead of saying that's
 9 correct, if you could explain what you mean. She
 10 will ask the question again.
 11 (Pending question read back.)
 12 **MR. SCHNEIDER:** And I'm going to object to
 13 the question.
 14 **BY MR. BROOKS:**
 15 Q. So my question now is you said that's correct. It
 16 was an either or question. If you could just
 17 explain what you meant by yes, correct.
 18 **A. So, sorry, I forgot the first half of your question
 19 and just answered the second half. Yes, there are
 20 conversations before and after that aren't
 21 necessarily recorded in the interview notes.**
 22 Q. Now are there times when you might go off the record
 23 in the middle of the interview that wouldn't be
 24 reflected in the notes?
 25 **A. Yes, yes, there are.**

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1 Q. Are there cases where things that are said off the
 2 record -- strike that. So the report of interview,
 3 which is I think -- I'm going to start over one more
 4 time, sorry. The report of interview would reflect
 5 only what's in the investigating manager interview
 6 notes, not what would be said off the record before,
 7 after or during the interview, is that correct?
 8 **A. No, that is not correct.**
 9 Q. So can you explain that -- why that is not correct?
 10 **A. Because we would also use the investigator -- or the**
 11 **witnessing manager's notes as well.**
 12 Q. But is it fair to say -- okay, strike that. You
 13 would not consider, however, things that were not
 14 taken down in notes but were said off the record
 15 before, after or during the interview, is that
 16 correct?
 17 **A. That is not correct. I would consider everything**
 18 **that occurred during the interview.**
 19 Q. And when you're saying you would consider that, you
 20 say you would consider that when you create the
 21 report of interview or you would consider it when
 22 reaching your conclusions at the end of the
 23 investigation?
 24 **A. I would consider it whenever I'm writing up the**
 25 **report of interview.**

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1 Q. So why do you go off the record?
 2 **A. I don't understand what you mean by off the record.**
 3 Q. Okay. That's a fair point. So why are there things
 4 that happen before, after and in the middle of an
 5 interview that in this otherwise very comprehensive
 6 looking document you would not put down in your
 7 investigating manager interview notes?
 8 **A. So in the beginning I give a preamble to everybody**
 9 **that we talk with and we talk about confidentiality,**
 10 **we talk about our retaliation policy and we talk**
 11 **about the importance of keeping our conversation**
 12 **confidential. Then in the end I normally thank them**
 13 **for their time, that sort of thing. I don't write**
 14 **those things down. In the middle, I'm hoping that**
 15 **I'm able to capture everything. It's not always**
 16 **possible. The other hope is that if I don't**
 17 **actually write it down that I have remembered it**
 18 **between the time that I did the interview and wrote**
 19 **the report of interview or that it's in my**
 20 **witnessing manager's notes.**
 21 Q. And this problem would go away, this memory problem,
 22 if the protocol allowed you to record the interview,
 23 is that correct?
 24 **MR. SCHNEIDER: Objection.**
 25 **BY MR. BROOKS:**

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1 Q. I'm not sure what memory problem you're referring
 2 to. Well, you were saying that you may sometimes
 3 leave things out accidentally and you hope you
 4 remember them later or maybe they're captured in the
 5 other person's notes. From where I stand, that
 6 sounds like a big workaround for just recording the
 7 whole thing, so I'm saying none of these things
 8 would exist as far as accurately capturing what was
 9 said if you just recorded the interview, is that
 10 correct?
 11 **MR. SCHNEIDER: Objection.**
 12 **A. I don't recall saying that there was a big memory**
 13 **issue. What I recall saying was that as I am typing**
 14 **it down sometimes I am not physically quick enough**
 15 **to get everything and that if I don't get it, our**
 16 **hope is that it's in our witnessing manager's**
 17 **interview notes.**
 18 Q. Now what did you do other than conduct interviews to
 19 gather information for this investigation? When I
 20 say you, I don't mean you personally, but what did
 21 Wal-Mart do other than conduct interviews to
 22 investigate this issue?
 23 **A. I also requested some ESI, which is electronically**
 24 **stored information, through our ISD department, and**
 25 **what I requested was Paul Busby's e-mails. I**

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1 **believe I also requested his text messages from his**
 2 **work-issued phone.**
 3 Q. And you said something about ISD.
 4 **MS. SELLARS: Information.**
 5 **A. Our Information System Services Division, ISD.**
 6 Q. Information Services Division. Okay. Now did you
 7 just request all of Paul Busby's e-mails and text
 8 messages or did you request a certain subset of his
 9 e-mails and text messages?
 10 **A. I requested a time period of his e-mails and text**
 11 **messages.**
 12 Q. And you requested all e-mails and text messages
 13 within that time period?
 14 **A. I did.**
 15 Q. And what was that time period?
 16 **A. I don't remember what the time period was listed on**
 17 **the request.**
 18 Q. Is that something you would be able to follow up on
 19 and find out?
 20 **A. Yes, that will be recorded on the request.**
 21 Q. So there's some sort of ESI request that you made to
 22 ISD on some sort of form?
 23 **A. I believe that's what we were doing at the time,**
 24 **yes.**
 25 Q. Okay.