

Tuvell/Mandel Phone Call

Nov. 17, 2011



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May 30, 2013

Document History

Rev.	Date	Author	Remarks
1.0	Nov. 17, 2011	Walter Tuvell	First version ("how I did it" and transcript)
2.0	May 30, 2013	Walter Tuvell	Second version (added verbatim transcript)

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1 Introduction

On Thursday, November 17, 2011, Russell Mandell delivered to me, via telephone call, the sham “findings” of his “investigation” into my (“Old”) Corporate Open Door Complaint (a.k.a. Internal Dispute Resolution, Concerns & Appeals). See Old Complaint, Add. V, Sec. 56.

This document presents the original notes I took of that phone call, in its raw form.

In v. 2.0, the verbatim transcript in section 4 has been added, and also section 5 on “Notes and Complaints”.

2 How I Did It

To take notes at the Mandel phone call of Nov. 17, 2011, I relied upon advice from such sources as http://www.ehow.com/how_3815_minutes-business-meeting.html, <http://www.meetingwizard.org/meetings/taking-meeting-minutes.cfm>, and <http://careerplanning.about.com/cs/communication/a/minutes.htm>. These advise use of a “tape recording device initially (for speed/accuracy), then transcribing a written record soon afterwards”.

To comply with the laws of “all-party notice/consent of eavesdropping/wiretapping” (Mass. and Conn. [note Federal law is only single-party notice/consent]), I recorded *my side of the conversation only*. This is perfectly legitimate/legal: I neither had the intent, nor did I in fact, record any of Mandel’s communication/speech/sentences/words/utterances whatsoever, not even a single syllable.

Specifically, I used my cell-phone, in “normal mode” (that is, “non-speaker-phone mode”, so that Mandel’s voice went directly into my ear, not into the surrounding air), while recording my own voice on my laptop computer’s microphone (using the Audacity audio mixer/editor, running on Linux). I sat 3-5 feet away from the laptop. Thereby, his voice signal (if any) reaching the laptop’s microphone was lowered/attenuated/muffled/garbled below the level of intelligibility/comprehensibility/audibility. *Commonwealth v. William R. Wright*, 61 Mass. App. Ct. 790, 2004, at 794 (definition of “communication” as “speech”, and intention to record speech). Thus, no sound (much less any “communication”/“speech”) on the audio recording can be authenticated as coming from Mandel himself.

I very carefully informed Mandel many times during the phone call that I was making very precise/detailed notes. He was thus notified, and he consented, to the note-taking — hence he has no privacy right to the content I thereby orally recorded. I accomplished my oral note-taking by repeating/“reflecting” Mandel’s words throughout, “for the record”. Within the first 2-3 minutes of the recording, I’d gotten the hang of this technique. My repetition/reflection is very obvious on the recording. As a consequence, the recording sounds like no other one-sided phone call you’ve ever heard — providing proof that I did indeed conduct the recording in the manner I am claiming here. (IBM’s best argument to try impugning/impeaching the recording would be to claim that I sat alone in front of my laptop, alone, with no cell-phone at all, just inventing this whole report on the fly. Good luck with that: the intonation/emotion/passion exhibited on the recording can’t faked, beyond any reasonable doubt.)

Immediately following the phone call, I reviewed the audio recording, further post-processing it to apply a “silencing” filter (total literal “dead silence”, no audio signal whatsoever) at the places of “background noise” where I knew or suspected Mandel was speaking (this is now detectable by a very narrow visual band on Audacity’s audio mixer’s waveform display), thereby removing any possible scintilla of the sounds he made that may have accidentally/inadvertently been picked up by the laptop microphone. (But I didn’t “silence” any of my own utterances.)

The goal was, of course, to ensure Mandel’s right-to-privacy (as expressed in anti-wiretapping/eavesdropping laws) insofar as possible, against even forensic attack. This silencing activity accounts for some noticeable “choppiness” on the recording. I was painstakingly scrupulous about doing this. None of Mandel’s speech was discernable at normal volumes. I did once, out of curiosity, within the first minute of the recording (only),

try turning up the volume/gain very high (but not all the way up, because I didn't want to "accidentally" hear any words/speech), to see whether any of Mandel's speech could potentially be discerned at a (near-)forensics level. I was able to detect a "far-away unintelligible muffled mumble", but not any actual words/speech. This gave me some concern that a forensics expert might be able to pull a stray word or two from the recording, and hence re-confirmed my resolve to apply the silencing filter. Beyond that one (mild and unsuccessful) experiment, I did not try listening to (much less succeeding at), parsing or deciphering any of Mandel's speech/words/communication.

After all this editing, I exported the recording to standard MP3 disk format, then destroyed all other copies/formats (to "remove all temptation" so-to-speak). All this clean-up work was completed within 1-2 hours following the phone call. I then immediately set to the task of transcribing it (the non-verbatim version), while the conversation was still fresh in my mind, for accuracy, finishing the first draft that same evening.

I am confident no utterance of Mandel's exists anywhere (on my laptop or elsewhere), in any form that I, or anyone else, could ever have access to. I am not an expert in audio engineering or forensics, but I do know something about computer security, and in my opinion it would take very deep forensic expertise, together with laboratory-grade equipment (law-enforcement, military, academic), to retrieve any sound signals whatsoever from the laptop or the recording that are even probabalistically attributable to Mandel. I didn't "scrub/shred/zeroize" the disk at that time, but I did do so when I returned the laptop to IBM, months later.

Because of the application of the aforementioned silencing filter to stretches of background noise, any retrieval of Mandel's speech now would be even theoretically possible only in those places where Mandel forced me (by "giving me the bum's rush") to speak simultaneously "over top of" his speech. But even then, any such capture/retrieval would clearly be protected by the "unintentional recording" clause.

However, forensic analysis would probably (hopefully!) be able to determine whether the "recording story" I'm telling above (about how I used cell-phone-plus-laptop) is true or not. I'd welcome such an analysis, of course.

3 Transcript

I produced this transcript immediately after the phone call on Nov. 17, 2011, and later incorporated it into Old Complaint, Add. V, Sec. 56.

TIME	CONTENT
00:00	<p>PRELIMINARY MATTERS.</p> <p>Phone call starts, just after 2:00 PM EST.</p> <p>Mandel asks me if (i) I’m recording/eavesdropping/wiretapping our conversation; or if (ii) anybody else is doing so; or if (iii) anybody else in the room with me. I answer (truthfully) “No” to his 3 questions. He reminds me that to do so would be a violation of IBM BCG (Business Conduct Guidelines); I didn’t know about that, but I remind him it would actually be a violation of Mass. and Conn. (but not Federal) laws (which trumps BCG, to say the least).</p> <p>He doesn’t ask me if I’m taking notes (presumably because that’s not contrary to IBM Law, or to any other laws either for that matter), but I decide to volunteer that information anyway, that I am indeed taking very accurate notes; and I explicitly repeat this notification several times throughout the course of the phone call. My technique for getting accurate notes is that I ask him to slow down his speech, asking him to repeat what he’s saying if/as necessary, and then I “reflect” back to him what he’s said, for verification, as many times as required to get him to agree I’ve reflected his statement correctly, thereby guaranteeing that I do indeed accurately report what he’s saying. This is somewhat non-trivial, because he tended to thwart my technique (seemingly intentionally) by speaking rapidly, trying to disallow me to reflect his speech for the record, and resisting repetition/clarification of his position. In some cases, I actually had to speak/reflect simultaneously “on top of” him, because he refused to give me a chance to get a word in edgewise.</p> <p>Mandel informs me about some/various stuff, some of it boilerplate I guess (I don’t recall it all now, it must not have seemed very important/exciting to me at the time since I didn’t repeat/report it). He informs me he has actually read my full Complaint (400+ pages).</p> <p>He informs me what the format/agenda of this call is going to be: He’s investigated four items that he’s going to go over with me: (i) Formal Warning Letter (Wed, Aug 3); (ii) “impossible” project planning (June 16 - July 6), before I went out on STD/Vacation (which was July 7-31); (iii) work (re)assignment, a.k.a. “switcheroo with Sujatha” (Fri, June 10); (iv) yelling incident with Fritz (Wed, June 8). This is the first I’d learned what the detailed agenda for this phone call would be, even though I’d asked for an agenda previously.</p> <p>Mandel asks if I have anything else I’d like to talk about, and I object very strongly that indeed I had stated many, many (“dozens and dozens”) additional complaints in my Complaint (mostly in the Lists of Particulars, especially involving retaliation/bullying/harrasment/blackballing) that I wanted to be addressed. He explicitly tells me he refused to investigate anything else at all, because “nothing else was eligible for investigation by IBM”.</p> <p>[I’m starting to get upset at this point, but I’m not quite “losing it” (yet).]</p> <p>He asks if I have any additional “factual background” (beyond what I’d already submitted in</p>

TIME	CONTENT
	<p>my Complaint) to add to the 4 issues he’s investigated, and I say I don’t.</p> <p>So he says he’s going to go ahead and take me through his findings on his 4 issues. He tells me he’s going to go through them in chronological order (opposite of the order than he’d listed them, above), which is fine with me.</p> <p>But first, he says he’s going to re-explain to me, and reinforce, his role in IBM C&A investigations (which I already knew, but I guess this is protocol).</p> <p>He reminds me that Lisa Due did an initial investigation, that I appealed, and the case came to him in his role as the head of the C&A Program. He emphasizes that the instant investigation/report is the <u>very, very final</u> step in the C&A process within IBM involving my case. For example, he states that every time I’ve tried escalating beyond him in the past (e.g., Corporate Officers, Trust and Compliance Officer, both of which are advertised in IBM Law as complaint/appeal avenues), it gets “kicked-back” to him (or “referred-back” as he insisted on calling it, claiming it had some “legal” meaning [I’m guessing he was thinking I intended “kick-back” in the sense of bribery, but I didn’t, I only meant it in the sense of “kick the can down the road”]) — even though, as I pointed out, I’d objected many times (as documented in the Complaint) to him being in charge of the case, because I thought he was compromised in his investigative role, since he was a named/charged party.</p> <p>Mandel states he’s interviewed 6-12 other people; he names Dan and Fritz, but refuses to name anybody else.</p>
<p>08:31</p>	<p>YELLING INCIDENT. Wed., June 8. Complaint, Part I, Sec. 6, pp, 21-24.</p> <p>Mandel states his investigation does not support that Fritz did anything wrong at all during the yelling incident. And in fact, if anyone did anything wrong (“acted inappropriately”) during that incident, it was me!</p> <p>[It’s at this point I do indeed “lose it”, at the same level which I “lost it” during the yelling incident itself (“Fritz, get off my back”), but less than during the pseudo-yelling incident in Dan’s office on Aug. 3 (“Now wait a minute, Dan”) — namely, not yelling at all, but raising my voice (“not-too-much”), due to having difficulty containing myself because of the extreme frustration of encountering such absurd/outrageous behavior from IBM. I also “lose it” several subsequent times during this phone call. But Mandel never complains (during this phone call, or any other time) that I “yelled” at him.]</p> <p>Namely, Mandel says “somebody” claims I (not Fritz) was the one who “raised my voice”, and that I used profanity. This was the very first time I’d heard anything about profanity during the yelling incident (even Fritz didn’t use profanity, to my recollection). Initially, Mandel refused to tell me what the profanity was that I was accused of using, but upon my objection that I had a “desperate need” to know, he relented, and told me I was accused of saying “goddamn it” and “shit” (only those bare words, he didn’t specify the context, verbal or social, in which I was accused of using those words, even though I tried to find out). I told him (correctly, to my certain recollection) that this accusation of profanity was “absolutely false” and a “lie”. (Who in their right mind would swear at their boss, no matter how badly provoked?) I asked Mandel who, in light of this conflict of evidence, he was believing/crediting, me or the “other person(s)”. He refused to say who he “believed/credited”, instead merely saying “the evidence did not support that I was treated unfairly by</p>

TIME	CONTENT
	<p>Fritz”.</p> <p>As for “yelling”, Mandel said Fritz certainly <u>did not</u> yell at all (first Mandel said “somebody ‘may’ have said Fritz yelled”, but then he later said that “nobody” said Fritz yelled), but that I certainly <u>did</u> yell (he said one person reported that I “yelled”, and a different person reported that I “raised my voice”). Which is false on its face — because Fritz himself self-admitted on-the-record that he indeed “raised his voice” at me (in Fritz’s words, but that was a euphemism [given that Fritz has an abnormally loud voice under the best of circumstances], and what Fritz did reall was “yelling” to any “reasonable person” standard). Complaint, Part I, App. I.b, email of 06/10/2011, p. 120. [Come to think of it, if I’d sworn profanities at Fritz, don’t you think he’d have mentioned them in that email?] Despite my plea for clarification/details, Mandel refused to tell me the words, I was reported to have yelled, much less the context.</p> <p>(At the end of this segment, I heard a “beep” on the line, and I asked Mandel if he was recording the phone call, but he said he wasn’t, and that the beep I heard was coming from his Lotus Notes Sametime.)</p>
<p>14:13</p>	<p>WORK (RE)ASSIGNMENT. Fri., June 10. Complaint, Part I, Sec. 6.1, pp. 24-26.</p> <p>After some preliminary clarification of terminology (Sujatha’s name/title/pronunciation, and my salary designation of “Band 8”), Mandel said I was not “demoted” because I was a Band 8 both before and after the yelling incident. That’s true, and obvious, and I’ve never claimed otherwise.</p> <p>Mandel harped on the “fact” that “work assignments are regularly shifted among employees at IBM”, as if that were some magic elixir to salve all wounds of this sort. But of course it’s not. Indeed, as I’ve already pointed out, IBM official policy <u>defines</u> “significant tangible adverse employment action” by the wording “such as dismissal, firing or an undesirable reassignment” (Complaint, Part II, p, 20, top of page) — not necessarily “demotion” in the sense Mandel was maintaining. In fairness, though, I must admit that Mandel did, towards the end of this segment, magnanimously concede that if I’d been reassigned to “clean the toilets” (literally!), though remaining at Band 8 and at the same salary, that would indeed have been considered inappropriate. And who said IBM doesn’t have a heart/conscience? [The point being, that Mandel/IBM does indeed recognize that it is possible for an “adverse job action/reassignment” to exist short of a “demotion”.]</p> <p>Mandel stated that he agreed with Dan’s action. Which, as I pointed out, wasn’t surprising, given that he had already (see above) blindly bought into the falsehoods that were being perpetuated about what happened at the yelling meeting of June 8.</p> <p>Mandel also said that he “had evidence” that I had not been providing all the support to Fritz that Fritz required. In fact, Mandel proffered no such “evidence” — only “reports” from his interviews (presumably of Fritz and/or Dan, since nobody else would/could have any inkling of such information, unless ultimately told so by Fritz or Dan — which “other sources” Mandel claimed do exist, though he refused to tell me who such “other sources” were). I objected that any such reports had to be false, and that here was again an example of where Mandel was arbitrarily choosing to credit “someone else” and to discredit me. But again, he refused to go into further detail. [There are only 2 potential types of “insufficient support” that I can think of (“Excel graphics” and “PerfBar numerics”, Complaint, Part I,</p>

TIME	CONTENT
	<p>Sec. 4-6), and a close inspection of the actual evidence is inconsistent with claims of “insufficient support”. For example, in the “Excel graphics” case, if Fritz had asked me to produce Excel graphics in the late afternoon of Tue., May 17, and had expected me to produce them in time for his meeting the next day at midday on Wed., May 18, how does it happen that he himself had gone ahead and produced said graphics overnight?)</p> <p>So, Mandel’s conclusion was that I was “treated fairly” with respect to the work-reassignment issue. Of course, he never addressed the discrimination angle I’d raised at all (namely, that the work-reassignment was due to age/sex/race discrimination). [And, as we know, the whole areana of (discrimination-)retaliation was somehow “ineligible for IBM investigation”, even though the BCG & Friends are chock-full of guarantees that retaliation of any kind isn’t tolerated — unless that retaliation is of the undocumented HR-supported retaliation-enabled variety, I guess.]</p>
<p>25:49</p>	<p>IMPOSSIBLE PROJECT PLANNING. June 16 - July 6. Complaint, Part II, Sec. 13, pp. 13-16.</p> <p>Mandel points out that other people in Dan’s group have been asked to produce project plans (I only know of Ashish and Felix, Complaint, Part II, App. S-T, neither of which is remotely comparable to the “impossible” project planning Dan had ordered me to do), and other people at IBM have been required to product project plans — “especially in cases of employees such as myself who is resistant to providing status reports”! This is the first I’d heard of any such “reason” for requiring the “impossible” project plans (Dan never mentioned it; this “reason” was clearly invented for the purposes of this phone call only).</p> <p>The purported “status reports” I’d been resistant to provide were the “transition reports” with Sujatha, Complaint, Part II, Sec. 11, pp. 9-12. Mandel stated I’d been asked on 2 occasions, June 10 and June 15, to provide transition reports, but had refused to do so. That was factually false. I had been asked on June 14 to provide transition reports, so I started doing so immediately. Later, on June 15, Dan decided to change the format in which he wanted to receive the transition reports (he wanted to receive them individually from me and Sujatha, instead of combined together), so I immediately started doing that.</p> <p>Mandel’s comment about “others required to make project plans” completely misses the mark, on 2 counts (which of course Mandel doesn’t address at all): (i) the legal/rational standard is not what “others” at IBM or in Dan’s group might have been required to do, but the “differential treatment” I’m subjected to do in (discrimination-)retaliation for submitting a complaint; (ii) the precise type of project plan I’m subjected to (“detailed day-by-day plans, for 3 weeks, for 4 new-to-me technologies/projects, independently of any consultation with Dan/Sujatha, on 1 day’s notice”) is far-and-away bullying/retaliatory/harassing, and indeed “impossible” by any reasonable standard (as argued in my Complaint).</p> <p>Mandel also stated that my comments about the transition reports were that they were “absurd”, so I submitted the transition reports “begrudgingly”. That is correct, because the “individual” transition reports were indeed absurd: there was no reason whatsoever for “individuality”, because the transition was a mutual endeavor between Sujatha and me, so our transition reports on any day had to be identical, tautologously. A combined/joint transition report was completely sufficient (and standard in the industry); “individuality” was absurdly unnecessary (an arbitrary/frivolous/capricious abuse of power, which I correctly</p>

TIME	CONTENT
	<p>saw as Dan’s attempt at blackballing/harassing/retaliation/bullying). Nevertheless, I did provide all the required transition reports (mostly there were “empty”, because nothing happened on the transition front on most days).</p>
<p>30:23</p>	<p>FORMAL WARNING LETTER. Wed., Aug. 3. Complaint, Part II, Sec. 20, pp. 25-27.</p> <p>Mandel says it would be “not at all uncommon at IBM to provide a FWL to an employee ‘such as myself’ — who exhibits an escalating set (or ongoing pattern) of unprofessional and inappropriate comments and behaviors in disregard for management direction”. He cites the examples: (i) the “confrontation” (as Mandel called it) with Dan on May 18, regarding the Excel graphic incident, where I threw the 2 pieces of paper I’d taken into the meeting into Dan’s recycling bin (Complaint, Part I, Sec. 4, p. 18); (ii) the meeting with Fritz on June 8 where he yelled at me (Complaint, Part I, Sec. 6, pp. 21-24); (iii) the phone call, meeting with Dan, email and weekly report of June 9-10 (Complaint, Part I: Sec. 6.1, pp. 24-26; App. I.b; App. A.dd), where I called Fritz a bully and liar, and conjectured Fritz may be going insane or may be threatened by me, and was making nonsensical and worthless comments; (iv) denigration of the work of my peers, calling Sujatha’s work on capturing virtual tables an “unbelievably poor solution” (Complaint, Part II, p. 63 06/30/2011 07:22 AM), and data she’d reported was “suspicious/unreliable until proven innocent” (Complaint, Part II, p. 64, top of page), and Devesh’s idea of increasing the size of a ring buffer beyond 16 MB (Id.); (v) characterizing Brian Maly’s behavior as “stonewalling” (Complaint, Part II, App. Y, p. 132 07/06/2011 08:39 AM); (vi) the “lazy” scandal (Complaint, Part II, App. A, pp. 134-136).</p> <p>Obviously Mandel is here throwing at me a laundry list of “dirty” laundry, thinking this exhibition of “damning” evidence will frighten me from further pressing my case. Nothing could be further from the truth (but then, every time I think such of IBM, they surprise me and surpass themselves with their ability to deviate from the truth). But I won’t go into a detailed rebuttal of every piece of laundry here, just limiting myself to the topics discussed on this phone call.</p> <p>I pointed out that “almost all” of this (indeed, literally <u>all</u>, with the sole exception of including Garth Dickie on the “lazy” emails) happened during the process of the official C&A process “in-the-large” (by which I mean “not just the ‘formal’ part of the process which includes HR, but also including the preceding complaints to immediate management that formed the precedent to escalation to formal HR process”, precisely as specified by IBM Law) — where candor of the sort exhibited above is quite necessary to provide adequate notice-of-accusation to the accused, hence utterly ineligible for punishment/retaliation via Formal Warning Letter, thus must be set aside as beyond the bounds of any sane investigatory process. To that comment of mine, Mandel states that “just because I make a complaint about my management, that doesn’t give me free reign to say anything you want”. I stated I didn’t “say anything I wanted”, but rather “stated true facts everywhere along the line”. In particular, with regard to the “denigration” of peers, I pointed out that I didn’t “denigrate” (“ad hominem”) anyone, but rather had correctly stated that “the work they did was bad” (which it was). Along that line of “denigration”, I stated (truly) that Dan himself had called the work of Joseph Shkolnik (another person my Dan’s group, a peer or mine) work “shit”. I don’t think Mandel had ever heard that before (I was the only person present when Dan said it, and it’s not written up in my Complaint). While I said it was inappropriate of Dan to speak that way to me about another person in his group, I defended</p>

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	<p>Dan’s comment as properly targeted to Joseph’s work (and not to Joseph himself, “ad hominem”).</p> <p>What I wasn’t able to dredge up at the time was that Mandel’s items (i)-(v) could not possibly be the reason for issuance of the Formal Warning Letter (leaving only item (vi), the “lazy scandal”, as the only possible reason). Namely, see the email exchange of July 5-6 at Complaint, Part II, App. Y, pp. 131-134; and Dan’s earlier letter of June 30 at Complaint, Part II, p. 65 — all of which precede Mandel’s items (i)-(iv). There, Dan states rather clearly that I’ve done “nothing wrong”. As for item (v), Dan himself had an immediate chance to remark upon that (p. 133, 07/06/2011 09:20 AM), and he didn’t do so — which clearly indicates he’d abandoned that argument, right? In short: Mandel’s list (esp. items (i)-(ii)) is a ruse/pretext, a back-formation attempting to disguise that fact that the Formal Warning Letter was nothing but a tactical weapon, whose real/sole purpose was (discriminatory-)retaliation/bullying/abuse/harassment/IIED/etc.</p>
<p>35:48</p>	<p>WRAP-UP.</p> <p>Mandel began his wrap-up comments warning me that I should: (i) “not try to find out what peers said about me during his investigation process”; or (ii) “do anything that could be interpreted as trying to ‘intimidate my peers’” — i.e., retaliation (notwithstanding that IBM had done nothing but retaliate against me since June 10, but none of that was “eligible for investigation by IBM”); or (iii) “manipulate the investigation”.</p> <p>Upon my inquiry what “manipulate the investigation” meant, he refused to reply, merely stating that “I should not do anything which would lead him to the conclusion that I was attempting to manipulate the investigation”. I protested that such an wide-open non-definition was impossible for me to observe (the classic blackballing technique), for example I could come into a building and sneeze in the wrong direction, and that could be considered to an “attempt to manipulate the investigation”. He responded that “he expected me to use reasonable judgment”, to which I responded that no reasonable judgment had been used by IBM to date on any of this.</p> <p>Mandel then reminded me, yet again, that he personally was the final escalation point within IBM. I asked why he found it necessary to remind of this yet again, in particular, was he telling me this to prevent me from telling anyone else in the whole company about what had happened to me, or indeed any else in the whole wide world (meaning, “world-wide-web”). He then said that “all he meant is that it would come back to him anyway”, i.e., that there was no further recourse within IBM, period. When I tried pressing him about whether I could indeed publish my Complaint (on either IBM intranet, or external internet, or New York Times), he said he couldn’t stop me from doing things like that, but he refused to say whether or not such activity would be considered a “manipulation of the investigation”, or otherwise a punishable offense. He did say that “he would have a problem with” my posting my Complaint on the IBM intranet, “almost solely” because of “possible” misuse of IBM systems/resources, though he did say I would not otherwise be retaliated against (though I didn’t/don’t trust that, and when I asked if I’d be fired or demoted, he refused to answer).</p> <p>As a concluding remark, Mandel says that someone at IBM (not him) will be contacting me regarding ongoing “interactive dialog” concerning “ADA reasonable accommodation”. He</p>

TIME	CONTENT
	also commented that generally speaking, IBM non-lawyer employees (such as HR) talk to employees, while IBM lawyers talk to lawyers (and other non-employee representatives of employees), to which I had no objection.
46:33	END. And that was very well that.

4 Verbatim Transcript

Editorial conventions:

- *Italics* = comment
- Underline = emphasis
- ... = silence (Mandel speaking, background noise)
- - — = pause/delay/break in speech, such as stammering
- «» = my verbatim/“for-the-record” repetition/reflection of Mandel’s words

TIME	CONTENT
00:00.0	<i>(Recording starts, shortly after 2:00 PM EST, Nov. 17, 2011.)</i>
00:00.1	<i>(Phone rings.)</i>
00:03.9	<i>(Phone answered.)</i>
00:04.4	Hello, Russell. <i>(This was our prearranged time for the phone call,¹ so I assumed it was Mandel who was calling.)</i>
00:04.9	...
00:06.9	Yes. <i>(Responding to Mandel’s query if this was me who had answered the phone.)</i>
00:07.2	...
00:10.1	Right. <i>(Acknowledging Mandel’s announcement that it was he who was calling.) (Keyboard noise.)</i>
00:10.8	...
00:18.6	Yes. <i>(Acknowledging Mandel’s statement that he was calling per our prearranged agreement, to discuss his investigation.)</i>
00:18.8	...
00:23.9	I am not. <i>(Responding to Mandel’s question whether I was «recording this phone call».) [I had previously asked him for that permission, even offering to give him a copy of the recording, but he refused.² I was well-aware that both Massachusetts and Connecticut are “all-part-consent” states, so I couldn’t legally record the two-sided conversation without his consent. Without his consent, I was reduced to the next best thing: I recorded <u>only my side</u> of the conversation, as an “oral note-taking” technique. This is perfectly legal, even without providing notice; but out of an abundance of precaution I did proactively alert Mandel many times during this conversation that I was indeed taking very precise, very detailed notes. My recording equipment consisted of Audacity running on my Linux laptop. To ensure that none of Mandel’s side of the conversation was captured on the recording, I used a cell-phone (in “normal” mode, that is, not “loud-speaker” mode), with its speaker pressed tightly against my ear, at a distance of 3-5 ft. from the laptop’s microphone. In this manner, I succeeded in avoiding capturing any of Mandel’s speech on the recording.]</i>
00:24.4	...

1· Old Complaint, Add. V, App. AAA, pp. 60, 61.

2· Old Complaint, Add. V, App. AAA, pp. 60, 61.

TIME	CONTENT
00:25.5	<i>[It was at this point that it started dawning upon me I needed to “reflect” Mandel’s words verbatim (asking him to repeat himself if necessary), “for the record”, otherwise they wouldn’t get placed on the recording. I’d never used this technique before, so I had to get the hang of it. That’s why there are a few stretches during the first 2½ minutes of this phone call where I didn’t reflect Mandel’s words. No significant content was missed thereby, just some uninteresting/unexciting conversational boilerplate, which I didn’t reflect, and promptly forgot.] I — y- y- (Stammering; unintelligible.) ... I am taking notes, and I want to make sure that I understand everything you say, and I get it down correctly. So you asked if I was «recording this call», and the answer is No.</i>
00:35.9	...
00:44.2	BC ... BCG? ... <i>(Mandel tells me that recording the conversation would be a breach of IBM’s Business Conduct Guidelines.)</i> OK, well it would also be ... it would be Massachusetts law and Connecticut law violation as well. ... Both of those are “all-party-consent” states.
00:54.9	...
00:59.7	OK.
01:00.1	...
01:03.7	Not that I know of, unless they are wiretapping somewhere off in the ether. <i>(Responding to Mandel’s question if I knew of anyone else listening in on the conversation.)</i>
01:07.3	...
01:37.8	OK, so you’ve read ... «you’ve[I’ve] read the full Complaint», all 400-and-some-odd pages. Good.
01:42.1	...
01:45.9	Yes, yes.
01:46.5	...
02:18.3	OK.
02:18.7	...
02:20.8	OK, so y[ou] ... I’m just taking notes. So you’ve «investigated» 4 things. <i>[I had asked Mandel for the agenda of this phone call,³ but he refused to tell me. So this is the first I’ve heard of the “charges against me”, giving me no time to prepare.]</i> OK, go ahead. ... Yes.
02:26.3	...
02:32.6	Yes, the «Formal Warning Letter», ⁴ that’s Number One.
02:35.0	...
02:44.9	OK, so you’re talking about ... yes. <i>(Sigh.)</i> ... Whether I was «treated fairly regarding that[the] project plan» ⁵ about ... «before I[you] went out» ... «on Disability». OK. Yeah.

3· Old Complaint, Add. V, App. AAA, p. 60.

4· Old Complaint, Part II, Sec. 20 and App. AA.

5· Old Complaint, Part II, Sec. 13.

TIME	CONTENT
02:55.0	...
03:05.9	OK, so «the change of work assignment», ⁶ as you put it — or the “demotion” and/or “transfer”, as I would put it ... of me with Sujatha. OK, that’s Number Three.
03:14.4	...
03:27.8	OK, so Number Four is «the incident ⁷ with [Mr.] Kna[be] [and other day-to-day interactions ⁸ with you]» ... he pronounces it with a “K”, so “Knabe”... uh —
03:33.9	...
03:37.3	Yes. ... OK, so those —
03:38.9	...
03:42.8	OK, so those are the <u>only</u> ... things that you’ve investigated. (<i>Incredulous.</i>) I had <u>many, many, many</u> more things than those four in all of my 400 pages. You have apparently not — y- you’re telling me right now you have <u>not</u> investigated those <u>at all</u> ?
03:55.0	...
03:39.1	OK ... so that is indeed what you’re telling me, that you’ve not investigated anything else at all, «because it was not eligible for investigation by IBM». ⁹ Correct?
04:07.2	...
04:10.6	OK, y- you (<i>chair creaks</i>) — you just said, «That is true». I’m taking notes, thank you. Continue.
04:14.1	...
04:19.1	<u>Yes!</u> (<i>Outraged.</i>) <u>Dozens and d[ozens]</u> (<i>stammering</i>) — I — You just asked if «I[you] have anything else to add to those four issues», and the answer is Yes. I had dozens and dozens, all of which — not <u>all</u> of which — <u>most</u> of which, as I wrote to you, are written down in the ... um, oh, I forget, the List of Particulars, that’s what I called it ... uh, many, many things ... yes ... many, many things, that you just told me — yes — so I, I totally object to your ... uh, refusing to investigate those.
04:44.8	...
04:51.8	OK, so you asked if «I[you] had[have] anything too add to those four issues, relative to factual background». ... The answer is, I do not. (<i>Chair creaks.</i>)
04:59.5	...

6· Old Complaint, Part I, Sec. 6.1.

7· Old Complaint, Part I, Sec. 6.

8· Mandel enumerates his (and Dan’s) so-called “other day-to-day interactions” later in this phone call, under the phrases “notes and complaints” (at 20:32.9) and “comments and behaviors” (at 31:16.1). Unfortunately for IBM, all these so-called “day-to-day interactions” are a *complete lie*: they were in fact not ordinary day-to-day interactions at all, but instead were actually extraordinary communications conducted during the course/context of official C&A and (Corporate) Open Door processes — hence they were *per se* legally protected from exactly the kind of (discrimination-)retaliation IBM visited upon me.

9· Mandel officially reaffirmed that these were the *only* four items investigated by IBM, in his formal follow-up letter. Old Complaint, Add. V, p. 62.

TIME	CONTENT
05:05.6	OK, go ahead, «take me through your[my] findings on those four issues». <i>(Resignation in voice, recognizing that Mandel's "investigation" was a complete sham, because he limited it to only 4 superficial issues which he could "plausibly" [in his view] lie about, while completely failing to even acknowledge the "dozen and dozens" of truly serious wrongdoings I'd complained about.)</i>
05:08.4	...
05:10.5	<i>(Keyboard noise.)</i> All right.
05:11.1	...
05:15.9	OK, yeah.
05:16.6	...
05:27.8	OK, so, uh ... so «you[I] are[am] now going to explain to me[you], and reinforce, your[my] role with respect to IBM Open Door investigation». OK, go ahead.
05:39.1	...
05:52.1	OK, so you're right, «Lisa Due did», uh, do — <i>(spelling, stammering)</i> "do-i-d" "d-[o]" "d-u-e" — did do «an original investigation. I[you]» did «appeal[ed], and it came to you[me] as the head of the C&A (<i>Concerns & Appeals</i>)» uh Department. ... Or «Program», or whatever it's called.
06:08.5	...
06:14.0	Yes, and «you[I] are[am] the final appeal point within IBM». You've explained this to me before.
06:17.8	...
06:26.8	Right. So you just said that «every time I've[you've] tried to escalate it even further», such as the corporate officers or, the — what'd they call him — the Trust and Something-or-Other Officer ... uh, they always kicked it back to y[ou] ... Trust and Compliance ... yes, Trust and Compliance, yes — they kicked it back to you. ... Even though I pointed out —
06:45.3	...
06:49.9	OK, yeah, fine, so a- refer uh ... to a ... to a kickback, or however you want to call it there. ... But they did always —
06:57.0	...
07:00.0	I h-, uh, OK, fine, and, and I don't know that legal meaning [<i>Mandel was objecting to usage of the word "kickback", but I was not attempting to refer to bribery or anything like that, I was just using it in the sense of "kick the can down the road"</i>], but fine. So, uh ... «they referred it back to you[me]», and even though I did object to that, because — all of which is very well documented. OK.
07:13.2	...
07:17.7	Right. ... Right.
07:18.3	...
07:43.9	Oh ... yes, I would like to have those on record. So you've just told me that «you've[I've]

TIME	CONTENT
	interviewed, in addition to m[e][you]» ... well, actually, this is the first interview of me, so to speak — but ... uh ... «you’ve[I’ve] interviewed» ... a, «a half-a-dozen to a dozen others, included among which are [Mr. Feldman and Mr. Knabe]», uh, Dan and Fritz.
07:59.3	...
08:01.6	Yes, and you d[o] — to go ahead and tell me —
08:03.7	...
08:06.1	Oh, you s[aid] — oh, I thought you said you’re not go[ing] — I thought you said you were going to provide me the rest of the names. Now you’re saying —
08:10.4	...
08:25.1	OK, so you just told me «that there were others», but you’re «not providing me with those names». ... OK. ... Right.
08:30.8	...
08:41.4	Uh ... uh no, it’s (spelling, pronouncing) “K” — “K...Knabe” — it’s a hard “K”. ... So ... he does indeed ... uh, OK ... yes ... yes, yes ... that’s non-ambiguous. “Fritz” is fine. [Seems strange that Mandel spent so much time interviewing Fritz, but never learned how to pronounce his name, doesn’t it?]
08:56.5	...
09:14.9	O ... OK, so let me get this down. ... You just told me that, uh, your inter-, or «your[my] investigation does <u>not</u> support that Fritz did anything wrong <u>at all</u> during that» investigati-, during that «incident» ¹⁰ of that [unintelligible], and «in fact, if anyone did anything», uh “wrong” or whatever the right phrase would be there, then it was <u>me</u> Is tha[t] is ...
09:38.3	...
09:40.6	«Acted inappropriately», OK. So, «if anyone acted inappropriately, it was me[you]». OK. Can you tell me how I in- “acted inappropriately”?
09:46.8	...
09:52.7	<u>Wait a minute!</u> (Outraged.) W-, OK. (Sound of chair creaking, as I get agitated with Mandel’s lies about the yelling incident, and start fidgeting in my chair.) You just told me that I «raised my[your] voice» — er somebody told you I raised my voice — and «I[you] used profanity». What was the profanity?
10:03.1	...
10:05.2	(Sound of chair creaking.) You’re not gonna — you’re telling me that somebody claimed I used profanity, but «you’re not gonna[going] to tell me[you] what profanity I[you] used». Is, is that what you just told me?
10:13.3	...

10· Old Complaint, Part I, Sec. 6.

TIME	CONTENT
10:15.2	I need to write [<i>the word “write” was an inadvertent slip of the tongue, committed in the “heat of battle”, not an attempt to mislead (though, under the conditions, lying to Mandel would have been completely justified, in the interests of justice)</i>] this ... (<i>sound of chair creaking</i>) OK, you’re — OK. ... You answered «Yes», that you did just tell me that, b- and you —
10:20.7	...
10:24.4	I <u>do</u> have a des- ... (<i>Mandel tells me he won’t tell me the “profanity” I was alleged to have uttered, unless I have a “desperate need” to be told.</i>)
10:25.3	...
10:28.9	<u>Yes!</u> (<i>Outraged by Mandel’s sham.</i>) I absolutely «have a desperate need (<i>sound of chair creaking</i>) to want to know those words». I am taking extremely detailed notes here. So please tell me those words.
10:36.6	...
10:40.8	OK. So «part of it was “goddamn it”» and «part of it was “shit”». That’s what you’re telling me. ... That ... OK — That is <u>absolutely false</u> . I have now got that on record coming from you, from some source. That is a <u>lie</u> And I will continue to support that anywhere and everywhere. ... No ... OK, yes — I w- yes. Absolutely. (<i>Very animated; incensed by Mandel’s lies.</i>) Now, what was this yelling?
11:02.3	...
11:14.2	OK, you- you’re reporting «that’s what you[I] found». You’re not giving me any chance to confront these people. And you’re also telling me that you’re you’re you’re you’re absolutely believing them instead of me. That’s right?
11:25.5	...
11:27.7	Oh! You didn’t say that?! OK, then who <u>are</u> you believing in this case?
11:30.5	...
11:40.1	OK. So, so — «you’re[I’m] not saying who you[I] believe». But what you’re saying is that, «the evidence does not support that I[you] was[were] treating unfairly by Mr. Knabe». That’s what you said. OK. I now have that on record. Now — w- you mentioned a «yelling incident». ... In — what manner did I — er, and you’re claiming it was by <u>me</u> — and <u>not</u> at all by <u>him</u> . Th- is that correct? ... He did not yell at all, and I did, is that what I hear you telling me?
12:07.5	...
12:16.1	OK. So you’re telling me «there were multiple» —
12:18.2	...
12:19.2	Uh, «reports, of what occurred», and you’re claiming that he did nothing wrong at me. Did he <u>yell</u> at me?
12:25.3	...
12:31.1	OK. So your claim is that <u>nothing</u> that anyone told you here —

TIME	CONTENT
12:35.6	...
12:37.0	Oh! So somebody « <u>may</u> have said that I (<i>stammering</i>) that Fritz yelled», but you're — disbelieving them and choosing to decide that there is absolutely no evidence that Fritz did any ye[lling] ...
12:49.9	...
12:52.8	OK. Then let me ask you again. Did — do you find that Fritz yelled at me that day?
12:57.5	...
12:59.0	You «find that Fritz did <u>not</u> yell» me at day (<i>stammering</i>) — at that day. That's what you just said.
13:03.2	...
13:04.0	OK. Now, but wh- but what also you told me just ... a moment before that, was that there were «multiple» ... uhm ... multiple «reports of what happened that day», and I'm asking you: Did <u>any</u> of those reports state that Fritz yelled at me that day?
13:18.8	...
13:21.7	OK. You're claiming «there was absolutely no such report». I now have that on record. <i>[Mandel is obviously lying — first saying somebody "may" have said Fritz yelled, then saying "there as absolutely no such report".¹¹]</i> Thank you very much. Now, tell me ... now tell me, in what manner ... that it was reported that I yelled — which is what you told me earlier, that I yelled.
13:35.4	...
13:43.7	OK. It was reported by one person that I «raised my[<i>your</i>] voice, and by a different person that I[<i>you</i>] yelled». And, what were the words that I “yelled” — or “raised”?
13:51.4	...
13:55.0	OK. We're not — you just said «we're not going into any more detail», and that «you're[<i>I'm</i>] done with this subject». ... But ... but — OK. ... OK. You just said, «Absolutely». Fine. I now have that on record. Please continue.
14:06.5	...
14:07.0	Wait a minute. I just heard a “beep” on this line. Are you recording this?
14:10.3	...
14:12.0	OK. (<i>Mandel explains the beep I heard came from Sametime, the Lotus Notes instant messaging program.</i>)
14:12.4	...
14:16.6	All right. Fine.
14:17.2	...

11· Which was false on its face, since Fritz had already self-admitted on-the-record that he “raised his voice” (i.e., yelled) at me. Old Complaint, Part I, p. 120.

TIME	CONTENT
14:23.7	OK. S- so now we're moving to work assignment entry[?]. This means the switch with Sujatha. Correct?
14:28.4	...
14:29.5	O ... K.
14:30.3	...
14:35.6	Yes, we're speaking of the same person. You call her "Miss" — "Ms." Mizer, she [unintelligible] married, I'm not sure if she uses "Miss" or "Mrs." or "Ms.", but I think "Ms." is considered (<i>chair creaking</i>) appropriate for all of those cases. And I — I'll — I'll just call her Sujatha. But go ahead, this is the same person.
14:52.2	...
14:54.5	We are.
14:54.9	...
14:59.0	OK.
14:59.4	...
15:00.6	Wait a minute. Wh- a-
15:01.4	...
15:04.0	Wait a minute. ... Wait a minute. Wait a minute. Oh, «Band 8». (<i>Chair creaking.</i>) You're calling it (<i>spelling</i>) "B-a-n-d — Band" 8. (<i>Chair creaking.</i>) And that — OK. So you're saying I w- — you're claiming that «I[you] was[were] not demoted, and that I[you] remained a Band 8» . I never claimed I was changed from a Band 8.
15:18.0	...
15:18.6	OK. Y- OK. Continue.
15:19.9	...
15:22.8	Fine, go ahead. Yeah.
15:23.6	...
16:00.1	OK. W- — Y-
16:01.7	...
16:12.4	OK. Now, now ...
16:13.4	...
16:15.3	OK. ... OK. ... You just said an awful lot of things here, and as you know I'm trying to get a clean record of all of it, since you wouldn't let me record it. So, could you please repeat those, so I can get 'em all on the record.
16:26.5	...
16:31.8	You're « <u>not</u> going to repeat it»? (<i>Amazed. Angry.</i>)
16:32.8	...

TIME	CONTENT
16:36.4	I <u>do</u> «want you[me] to say it again», and I'm going to try to repeat it as fast as I can while you're saying it. (<i>Disgusted. Resigned.</i>) Go ahead.
16:41.6	...
16:44.5	You said «I[you] was[were] never demoted» — th- that I «stayed a Band 8».
16:47.4	...
16:49.5	«I[you] started out as a Band 8. I[you] remained a Band 8.»
16:52.0	...
16:54.0	Yes. All this —
16:54.7	...
16:56.1	That was —
16:56.4	...
16:57.1	That was before ... uh, and after, I «exchanged work assignments» with, uh, Sujatha.
17:03.0	...
17:06.2	«Work assignments are regular- ly in- shifted among work employees at IBM.» Is that what you — Work — work assignments are — amongst employees at IBM. ... OK. Uh, and — and they're — and they're done just totally on the spur of the moment, like this? With any — with — with absolutely no warning? In fact, I asked D- Dan when I went in that day, as you very well know, because you read my Complaint, Dan said that he could think of 2 alternatives. ¹² One was to switch with Sujatha, and I asked him what — I- I knew that was a terrible assignment. And I asked him what the second one was, and he refused to tell me. He said, "I just want to go with the — with the — with the the first one". So, uh, even though you're telling me they're «regularly shifted», is[misspeak] it also regularly happen that there may be some magical thing in a — in a — in a manager's mind that he just won't tell the employee? Is that a regular thing at IBM?
17:58.2	...
18:05.1	OK. So you said «you[I] would agree with Dan". ... Uh, given that you have no idea what happened there, because all you did was just now tell me that lies were appar- — there was somewhere — somebody is telling falsehoods about what actually happened on that meeting ... of June 8 th ... yeah, that's not surprising you would have done the same, because — because y- th- falsehoods are being told hood[misspeak] —
18:24.9	...
18:26.6	OK. So — ... OK. So keep going.
18:29.1	...
18:31.9	«You[I] have evidence» ... «that I[you]» —
18:34.4	...
18:38.1	OK. So: «You[I] have evidence that the support I[you] was[were] providing to Mr. Knabe

12· Old Complaint, Part I, p. 25.

TIME	CONTENT
	was not all that he was after.» Now have you — y- as you said, you’ve read my Complaint. <u>That is false.</u> That is totally false and incorrect. I did indeed supply him every bit of support that he asked me to do. He did have s- — he was making things up, ¹³ and so — y- — here again is an example where you’re disbelieving my story and you’re totally ... buying into his story. ... Correct? ... That’s what you said — ... Right?
19:08.4	...
19:09.7	That’s not what you said? Then what <u>did</u> you say?
19:11.4	...
19:18.9	OK. You said ... «you/[I] did not» per- «find» ...
19:21.3	...
19:31.5	OK. So. Now you just said that «your/[my] finding is that I/[you] did not support him with the» — uh — «support that he» — «required» — and that it’s «not simply believing» me versus him, it’s «information coming from other sources» as well. What are the other sources?
19:50.2	...
19:51.7	You’re «not gonna/[going to] go into detail»?! OK! So you’re keeping some information from me that that’s totally — You’re giving me conclusions without giving me reasons. This is something I really, really object to.
20:01.2	...
20:05.5	OK. «You’re/[I’m] not giving me/[you] the names of people who supported the other side of this», is what you just said. ... And ... OK. And yes, «Absolutely», that’s what you just said. I — I now have that on record. Please continue.
20:16.4	...
20:25.9	OK. ... OK. So — so: «The ongoing set» —
20:29.3	...
20:32.9	OK, so «the ongoing set (<i>chair creaking</i>) of notes and complaints I made about Mr. Knabe». ¹⁴ Now, to my knowledge, the only ones that happened there ... in real-time was to my manager, Dan, so they were totally appropriate for me to send that information to Dan ... uhm, and and you’re saying that «those provided a good reason» for me s- to s- be ... and y- —. What was the quote: «separated from Mr. Knabe»? Is that what y- — Is that the wording? OK.
21:01.1	...
21:02.9	OK. ... You’re — you’re saying like ... Yes, y-
21:05.3	...

13· Referring to Fritz’s whole-cloth lies about the Excel graphics incident and the yelling/PerfBar incident. Old Complaint, Add V, Sec. 57.5 and 57.6.

14· This was the first time I’d heard anything about these so-called “notes and complaints”.

TIME	CONTENT
21:09.1	Yes. ... You're saying that «I[you] called him [Fritz (when I was speaking to Dan)] a "liar" ... and a "bully", and that he» ...
21:13.6	...
21:14.5	OK. N[ow]-. ... Yes.
21:15.5	...
21:16.3	Yes. OK. So you just pointed a bunch of things, out of, uh, that stream of things, such as that I, uh, thought ... Uh that I called him (<i>stray sound</i>) a "bully", and a "liar". ¹⁵ I did, at various times, all of which (the times) are ex- exactly (<i>stray sound</i>) documented, in all of my, um, Complaints. (<i>Stray sound</i>). Uhm, that he was «possibly going insane». ¹⁶ I did indeed say that, b- because Dan <u>pushed</u> me. He said, «Why do you think Fritz would be doing these things to you?» And I was searching my mind, trying to think of (<i>stray sound</i>) something, (<i>chair creaking</i>) and that was one possibility. It was, um — it was, a, um — what you call — a — "brainstorm". So ... yes, I did say that. (<i>Chair creaking</i> .) Uhm — and that he was — ah — uh — well, whatever other words you said. [<i>I don't recall now what "other words" Mandel specified (as usual, he was giving me the "bum's rush", and in this instance I wasn't able to repeat/reflect his words quickly enough).</i>] Yes, I stand ...
21:53.2	...
21:54.1	I- (<i>stammering</i>) I — OK. You are correctly quoting from the letters and things that, that I wrote, and said <u>to Dan</u> — and <u>to no one else</u> at the time, until it got put into my Complaint. ... So, uh, so I have no quarrel that you (<i>chair creaking</i>) are indeed quoting my things there correctly. What I have the quarrel with is, that you are p- apparently — you're saying that «I[you] needed to be separated from Mr. Knabe» ... uhm, without my side of it being credited. Uh, in other words, the fault here ...
22:23.9	...
22:24.7	U- u- (<i>Stray sound</i> .) You're saying that ... OK, heh, heh (<i>stammering; "not getting", disbelieving the lies I'm hearing</i>). So ... so what you're ... yeah —
22:30.1	...
22:30.9	Please «make it simple for me[you]».
22:32.4	...
22:41.3	OK. So: «Your[My] point of view is that the totality of everything you've[I've] told me[you] — the combination of» — yes, go ahead ...
22:47.0	...
22:49.5	... «of the fact that there was» ... «there was no demotion» ...
22:52.2	...
22:53.5	N[ow] — and, and by "demotion" [<i>as usual, Mandel rushed the conversation, before I could clarify that he meant "reduction from Band 8"</i>] ...
22:55.1	...

15· Old Complaint, Part I, pp. 18, 25.

16· Old Complaint, Part I, p. 24.

TIME	CONTENT
22:55.7	OK.
22:56.2	...
22:57.4	Number Two: «That I[you] was[were] not providing ... the support that he required.» OK.
23:02.4	...
23:04.7	«The relationship between me and Mr. Knabe at the time.» Yes. ... «And» ...
23:09.7	...
23:13.4	And the — and the ... «And the fact that IBM does indeed shift assignments around all the time, that combination of things» — yes ...
23:20.7	...
23:23.7	«Leads you[me] to the conclusion that I[you] was[were] treated fairly in the work assignment change.» OK. ... Uhm. ... You keep using the word “demotion” as if this “Band 8” thing is something very magical. It is <u>not</u> . I was given a much worse position, and much worse job. ... This job had far less responsibility. And it wasn’t until s- several days later, when I started complaining about it, that Dan actually started increasing th- the — the, uh, amount of work that was in — to make it more interesting. His initial thing was very, very clear. His very words, for days, was, quote, “switcheroo”. ¹⁷ In other — that’s his word — i- in other words, one-for-one swapping me and my work assignment, with Sujatha and Sujatha’s work assignment. He did not add extra work to that until some days later. He just dropped it, and said, “You two”, basically, “you two go figure it out”.
24:14.3	...
24:15.0	OK. So, what you’re saying, is that a situation like this, which, nominally speaking, is indeed a “transfer” in the sense of no Band change, no salary change — and I agree that’s that’s correct, there was no Band change or salary change — you’re saying that that that, uh, you could have basically assigned me to go clean the toilets, and as long as I’m the same Band, and the same uh salary, that that would not have been an adverse job action. I say you are totally wrong. Now, what I said is on the record, what you said is on the record. We can continue to your next point, if you wish.
24:47.8	...
25:00.0	You’re right, I was n- ...
25:00.9	...
25:04.6	Right. You you — OK, so you just stated «I[you] was[were] not asked to clean the toilets, nor something as minor as that of cleaning the toilets».
25:10.9	...
25:22.8	OK. So what you’re stating is uh «if I[you] had indeed been asked to clean the toilets [literally!], that would not have been an equivalent job, and» uh «you[I] would have agreed with me[you] that that definitely would be», you know, some sort of uh a- an adverse job action. And — ... OK.
25:38.2	...

17· Old Complaint, Part I, p. 26.

TIME	CONTENT
25:42.2	OK. So you agree in- that « hat would have been something inappropriate to ask me[you] to do». OK, I have that on record. Thank you.
25:48.3	...
25:53.9	The «project plan issue» ¹⁸ — OK, yes. So this was the one where J- Dan asked me to write up ... (<i>clears throat or coughs</i>) as he said, I believe it was, “day by” — “detailed, day by day, for the next three” — well, maybe it was three and a half — “weeks”, until I went out on surgery and vacation, of the four brand new projects that I got from Sujatha, that I’d never heard of before, and he wanted it, uhm, “independently”, which means I can’t talk to Sujatha, I couldn’t talk to him, I could only make it up by myself. Right?
26:26.3	...
26:28.6	That’s — ... th- I mean that is what it was, I m[ean] he could not have described it differently, it’s all on rec[ord] —
26:33.8	...
26:42.1	All right.
26:42.5	...
26:53.2	OK. «Other people on Feldman’s team have been asked to produce project plans. It’s not uncommon t- for people to (<i>stammering</i>) make project plans within IBM. It’s especially true in cases of IB- in IBM where an employee such as myself[yourself] ... is» ... Is what? Is ... «resistant to providing status reports»?! (<i>Incredulous.</i>) What status reports have I been resistant to provide? ... I can think of none!
27:21.3	...
27:24.7	«I[you] was[were] asked on June 10 th and June 15 th » ¹⁹ ... «to provide status reports» —
27:30.3	...

18· Old Complaint, Part II, p. 13.

19· I’ve never been able to figure out what Mandel was referring to on June 10.

TIME	CONTENT
27:30.7	Yes. ... And I did. ... Uh, look. ... You (<i>sigh of exasperation</i>) — OK, so Dan «initially asked us[<i>you</i>] to provide status reports on our[<i>your</i>] transition». ²⁰ ... Eh, um, Sujatha ... I forget what day, I don't have a calendar right in front of me — but Sujatha provided ... uh, a status report of our mutual transition, and said in there w- — she copied both me and Dan — and said “Walt, if you have anything to add, please add it”. ²¹ OK? I didn't bother adding anything, because I had <u>nothing to add</u> . ²² Dan, at that point, jumped on me, saying that he had asked ... Sujatha and I to “individually in our[<i>your</i>] own words provide status reports”. ²³ And that's <u>false</u> . He never, ever did that. ²⁴ All he wanted was a s- he — very simply — asked for a status report of the transition between us. Sujatha gave that, and I concurred. OK? Now, that's ... Now, you say there are additional cases of — a- by the way, then I did immediately start giving “individual” status reports —
28:28.4	...
28:29.3	No. ... Uhm ... From that point on. But you say that there was a second one? What was this second one?
28:34.1	...
28:37.5	«He asked me[<i>you</i>]» ... He asked me «again on June 15 th to provide a status report», and you're claiming I did not do that?
28:42.5	...
28:47.2	OK. You're saying, «at that point I[<i>you</i>] started providing some sort of status report». OK. Well, I- I'll have to look at the exact date. So you're saying, «on June 10 th I[<i>you</i>] did not provide the status report» ²⁵ ... «and then he had to ask me[<i>you</i>] again on June» 5 th — uh, June «15 th » — «and then from that point on I[<i>you</i>] did provide» ... «status reports». Is that what you just said? ... We we may be talking about the exact same incident. [<i>That is, I thought (and still do think) that Mandel was confused/lying, and that there was actually only one “incident”, namely, Sujatha’s email of June 14, to which Dan responded on June 15.</i>]
29:06.7	...
29:12.3	OK. You're saying «my[<i>your</i>] comments about it were “absurd”, ²⁶ so I[<i>you</i>] did it “begrudgingly” as well». That's right.
29:16.8	...

20· Dan's initial email referred to here was sent on June 14. Old Complaint, Part II, p. 45.

21· Sujatha's email referred to here was sent on June 14. Old Complaint, Part II, p. 45.

22· This is a very well-accepted/established protocol, of course: when multiple people are working on the same exact project (in this case, the mutual transition hand-off), only one needs to submit a report, the other(s) chiming in only if/as required. In fact, Sujatha and I had exercised this protocol in Dan's presence, just a couple of days earlier that very week (June 12-13), where as usual Sujatha had asked me to chime in if I had anything to add, and in that case I did have something to add, so I did chime in. Old Complaint, Part II, p. 44.

23· Dan's later email referred to here was sent on June 15. Old Complaint, Part II, p. 45.

24· Referring to Dan's initial email (June 14, footnote 20). Only in his later email (June 15, footnote 23) did Dan ask for status reports from “each of [us]”, “in [our] own words”.

25· I've never been able to figure out what Mandel was referring to on June 10.

26· Old Complaint, Part II, p. 52.

TIME	CONTENT
29:18.8	Yes, I did — OK. ... You said, that «I[you] said “it was absurd to be asked to do that”». And I agree, it <u>was</u> absurd, because once (<i>stammering</i>) —. Sujatha and I, who were doing a tran- a mutual transition ... It was suff- it was <u>totally sufficient</u> for anything he ever needed to know, that only one of us provide the act of [<i>stammering, unintelligible; perhaps the word “proactively” was intended</i>] write the report down, copy to other, and say, “If I haven’t” ... you know, “If there’s anything to add, please add it”.
29:42.8	...
29:43.4	That is ... That is not absurd. That makes totally good sense. So it is absurd to ask for individual reports from each one of us, because they’re going to be the <u>exact same thing</u> . Her and I are doing the transition with one another. If she tran- gives me a piece of work, I then — then I receive that piece of work from her, and vice versa. So that <u>is</u> absurd.
30:03.9	...
30:04.3	There. Uhm, that’s what I have to say about that. You’re claiming that it was wrong of me to make a statement like that?
30:11.0	...
30:12.0	And by the way, all this stuff you’re saying — this bus- “absurd” business and s- and stuff — uh (<i>sighs</i>) OK, well, I I won’t go into that. Let’s just continue. Uhm — [<i>Indicating frustration and resignation: I was thinking about raising the fact that Dan’s demand for transition reports was “absurd” for the additional reason that Dan’s “transition project” was <u>utterly trivial</u>, yet he required them for an “absurd” two weeks’ duration, hence almost all of the “transition reports” he required to be submitted had null content.²⁷ But I realized by this point that any attempt to reason with Mandel would be met with total lack of reason on his part, so I just dropped that line of argument.</i>]
30:22.8	...
30:25.7	W- w- Which is what now? I didn’t hear that. ... Oh, the Warning Letter. ²⁸ OK. The Warning Letter is now the last issue. Go ahead.
30:31.1	...
30:39.8	OK. So: «It would not be at all uncommon at IBM to provide a Warning Letter» ... «to an employee s[uch]» — what does “such as myself[<i>yourself</i>]” mean?
30:48.8	...
30:51.6	OK. And «you’ll explain what “such as myself[<i>yourself</i>]” means in a moment». OK.
30:54.7	...
30:56.9	«Who» ...
30:57.2	...
30:58.9	... «Who exhibits an» ... wait a minute. «Who» ... OK, uh wait. ...
31:01.8	...

27· Old Complaint, Part II, App. N and Q.

28· Old Complaint, Part II, Sec. 20 and App. AA.

TIME	CONTENT
31:02.6	I — OK. I would ... be happy to hear that again. I'm trying to record it. ... Please say it again. «Who would d-» — «who would» — what?
31:09.8	...
31:11.2	«Exhibit an escalating set of unprofessional» —
31:14.7	...
31:16.1	— «and inappropriate comments and behaviors» —
31:18.9	...
31:20.4	Yes.
31:20.6	...
31:21.2	— «and disregard for management direction.» ²⁹ So, what were those ... things ... um —
31:26.2	...
31:27.1	«You'll[I'll] give me[you] some examples.» Good.
31:28.2	...
31:31.0	«The confrontation with Mr. Feldman on» — what day?
31:33.7	...
31:35.0	«May» ... «May 18 th .» ³⁰ What happened on May 18 th , I don't remember.
31:37.7	...
31:44.0	«The pieces of paper» ... Y- yeah, sure. OK. So it's —
31:49.3	...
31:51.0	Wait a minute. ... OK. So there's — OK. May 18 th was one of 'em. «The other — next one was June 8 th .» ³¹
31:56.1	...
31:57.3	«Mis-» ... oh ... «Mister Knabe on June 8 th ». Oh, OK. That — yes — that's the one where he yelled at me. ... OK. And and you're saying —
32:04.0	...
32:06.2	Where you found that (<i>chair creaking</i>) he did not yell at me, but I did ... yell, and I said profanities. OK.
32:11.0	...

29· This was the first time I'd heard this list of Mandel's lies about "escalating set of unprofessional and inappropriate comments and behaviors, and disregard for management direction".

30· Old Complaint, Part I, pp. 17-18.

31· Old Complaint, Part I, Sec. 6.

TIME	CONTENT
32:14.7	Th- uh OK — wait ... <i>(Getting very heated, as I recognize the cited “Warning Letter comments and behaviors” as arising from lies and/or protected complaint mechanisms, hence “retaliation per se”.)</i> «Then there was calling Mr. Knabe a bully and a liar.» ³² ... I did that to <u>Dan</u> .
32:19.5	...
32:20.0	I did that to Dan —
32:21.2	...
32:22.2	OK.
32:22.6	...
32:23.2	Wait a minute. Wait a minute. Y- W- Y- OK, wait. You’re doing this too fast. Please, please slow down, so I can ... uh, get this down in my notes.
32:29.6	...
32:30.5	What were all of these? J- J- Just say ‘em again, one at a time, and I’ll and I’ll ... get ‘em down.
32:35.1	...
32:37.3	«Calling Mr. Knabe a bully.»
32:38.5	...
32:40.9	«Calling Mr. Knabe a liar.»
32:42.4	...
32:45.7	«That Mr. Knabe was going insane.» ³³ I didn’t call <u>him</u> that — I I was conjecturing that to <u>Dan</u> . Now let’s not get — let’s —
32:52.5	...
32:53.6	Yes. Contigue[<i>stammering over “continue” vs. “go ahead”</i>] continue ...
32:55.0	...
32:57.1	«Th-»
32:57.2	...
32:58.7	«That he was making nonsensical and worthless comments.» ³⁴ What was that? ... Wh- I’m not sure ...
33:03.1	...
33:06.8	OK. That’s somewhere in my documentation? OK.
33:09.2	...
33:11.8	«And on top of that, denigrating the work of my[<i>your</i>] peers.» What what denigration did I make of the work of my peers?

32· See footnote 15, above.

33· See footnote 16, above.

34· “Nonsensical”: Old Complaint, Part I, p. 119. “Worthless”: Old Complaint, Part I, pp. 42, 122.

TIME	CONTENT
33:16.4	...
33:17.2	Yeah. «Give me[you] some examples.»
33:18.7	...
33:23.8	Wait a minute. «Un-» Referred to some of their work as «an unbelievable[ungrammatical] poor solution» ³⁵ ...
33:28.6	...
33:29.7	I think I know what that is. That's in the "nzVtCapture"? ³⁶
33:33.1	...
33:36.8	«That data they sh- provided should be considered unreliable until proven innocent.» ³⁷ Well, that's obvious, every — heh — data is like ...
33:43.9	...
33:45.3	Wait a minute. «Suspicious and unreliable until proven innocent.» That's right. All data is suspicious and unreliable until you can prove it's correct.
33:52.3	...
33:52.8	«A terrible idea.» ³⁸ What was the «terrible idea»?
33:56.0	...
33:58.7	All right. «Terrible idea.»
33:59.7	...
34:01.1	«Stonewalling and laz-» ...
34:02.8	...
34:03.1	«Stonewalling.» ³⁹ I'm not sure what «stone-»
34:05.5	...
34:05.7	«Lazy»? ⁴⁰ ... W- Wait a minute. «Lazy»? ... Wher- Where was — OK. The «lazy» — was this «lazy» comment about clicking a button?
34:12.1	...
34:12.4	Ah. You've just said «Yes», that that was (<i>chair creaking</i>) that was a «that was a» ...
34:15.7	...

35· Old Complaint, Part II, p. 63.

36· Old Complaint, Add. V, Sec. 57.2.

37· Old Complaint, Part II, p. 64.

38· Old Complaint, Part II, p. 64.

39· Old Complaint, Part II, p. 132.

40· Old Complaint Part II, Sec. 18 and p. 134.

TIME	CONTENT
34:17.6	... «part of an ongoing pattern.» Very interesting. A lot of that happened <u>strictly during the, uh, complaint</u> — the C&A [<i>Complaints and Appeals</i>] process, (<i>chair creaking</i>) which, uh, is <u>not eligible</u> for the kinds of things that you’re talking about. [<i>Meaning, “protected, by the rules of retaliation per se”.</i>] Uh, that <u>has</u> to be put aside. And if it’s not, that’s just totally beyond the bounds of any investigation. But — OK.
34:36.8	...
34:40.2	Yes. «Because I[<i>you</i>] make a complaint about my[<i>your</i>] management» ... «that doesn’t give me[<i>you</i>]» ... «free reign» ... «to say» — free reign ... Oh no! I wasn’t I wa[<i>sn’t</i>] — well, actually, it <u>does</u> give me “free reign” to say anything I want, but I did not <u>do</u> that. ... What I did was, I stated true facts, everywhere along the line. I was not “denigrating” anyone. I was saying <u>the work</u> they did was bad. That’s a very, very different thing. I think the thing we’re talking about this thing where Dan said was a- “ad hominem”. ⁴¹ It was absolutely <u>not</u> “ad hominem”. Dan is the one that himself told me Joseph Shkolnick’s work was “ <u>shit</u> ”. ⁴² OK? And that’s one of his employees. So he told me another person in his group — said Joe’s work was “shit”. That is totally inappropriate. But he <u>did</u> specify that his <u>work</u> was “shit”, not that <u>Joe</u> was “shit”. And therefore, I have very great objection to you coming around and telling me that I’m not allowed to say a piece of work is not good.
35:38.4	...
35:40.8	I — and I will. I will ob-. You just told me «I’m[<i>you’re</i>] entitled to object», and I’m telling you I will object. And I just did.
35:46.1	...
35:46.6	OK.
35:47.0	...
35:52.5	OK. «Those were the four issues, and now you[<i>I</i>] have some wrap-up comments you’re[<i>I’m</i>] going to make.» OK?
35:56.3	...
35:57.2	Yes.
35:57.4	...
36:04.7	OK. So you’re saying, «I[<i>you</i>] should not try to find out what peers said” — what — “said anything about me[<i>you</i>]». OK.
36:11.2	...
36:11.8	OK.
36:12.2	...
36:14.5	«Or do anything that could be interpreted as trying» ... «to intimidate my peers»!? ... Retaliation in other words. Interesting.
36:23.8	...

41· Old Complaint, Part II, Sec. 12.

42· Old Complaint, Add. V, Sec. 57.4, p. 20.

TIME	CONTENT
36:25.1	«Or manipulate the investigation.» What does “manipulate the investigation” mean?
36:29.5	...
36:35.7	Oh! So now you’re not going to tell me what that means, but «all you’re[I’m] saying is that I[you] should not do anything which would lead you[me] t- to the conclusion I’m[you’re]» trying to — er — «attempting to manipulate the investigation». But, you won’t even tell me what that means. So how will I kn[ow]- — ever know what I’m doing? I could come into the building, and sneeze the wrong direction, and that could be claimed to be a «manipulation of the investigation». ... How am I ever going to live with this? ... It’s not possible.
37:02.3	...
37:05.8	You «expect me[you] to use reasonable judgment». Considering that no reasonable judgment (<i>stammering</i>) has been used with me to date on any of this. That’s fascinating! OK. It’s — um — OK. It’s in my notes. It’s it’s in my notes.
37:16.9	...
37:20.2	You’re saying «we have a difference of opinion on that» fact, on that «point». What — on what — on which point?
37:25.6	...
37:30.8	Th- OK.
37:31.5	...
37:32.1	Th- «That no one» has been — «has used an unreasonable process with me[you].» OK.
37:36.4	...
37:37.1	OK. «You[I] disagree with me[you] on that point.» It’s in my notes. Thank you.
37:39.8	...
37:41.1	OK.
37:41.5	...
37:42.0	OK.
37:42.5	...
37:48.1	A- «A reminder again that you’re[I’m] the final escalation point with IBM.» Now why are you telling me that yet again? Are you telling me that so that I will not try to — uh — talk to anyone else about this? Anywhere in the whole company? Is that what — is that why you’re telling me this? And do you mean that? Or what?
38:02.7	...
38:06.3	OK. So, “all you[I] mean is that it will come back to you[me] anyway”. So am I am I, then, free to go ahead and, uh, like, publish this document on the Internet, or on in the New York Times? Th- the stuff that I’ve written, I’m talking about.
38:18.4	...
38:22.0	«You[I] can’t stop me[you] from doing things like that.» Would that be a a — what you might call — a “manipulation of the investigation”?

TIME	CONTENT
38:28.2	...
38:41.7	OK. So ...
38:42.4	...
38:49.1	OK ...
38:49.5	...
38:50.3	All right. Well well, let let me just repeat that. Uh, y- you said, «Your/[My] idea of manipulation [of] the investigation» was somethi- «be something more along the lines of trying to find out who said what» uh «about any of this, trying to» uhm «get them to» s- ...
39:03.9	...
39:04.4	... in- «influence» ...
39:05.2	...
39:06.1	... «the kind of things that they might say about» ...
39:08.3	...
39:09.2	... About — about what? Any of this?
39:10.5	...
39:11.5	OK. Uh, OK. ... But you're saying it's OK for me to go ahead and, basically, give people m- my case — my, uh, Complaint and Addenda? And that would not be an issue?
39:21.4	...
39:24.9	Uh-h, n-no. I- My Complaint. ... To anybody?
39:27.6	...
39:28.2	I mean, let's say I give it to Dan. He told me that he hadn't seen it. And this was, uh, like, 6 weeks ago — [a]pproximately 6-8 8 weeks ago — that th- he did not — he had not seen a copy of that. ⁴³ And I think that's really unfair to him, and to everyone else involved in this investigation. Why are people not being told what they're accused of?
39:45.8	...
39:51.8	B- «Because you're[I'm] doing the investigation, and they're not.» That was the reason. OK. And — OK. «That's right.» That's what you said. OK, then — it is OK for me to go ahead and give them copies of the Complaint and the Addenda?
40:02.8	...
40:04.1	Would this be an issue with anyone at IBM?
40:06.5	...
40:10.3	OK. Y- — OK. You just said, «If I[you] want to give it to somebody in my[your] management, you[I] wouldn't stop me[you]»
40:14.7	...

43· Old Complaint, Add. III, p. 16.

TIME	CONTENT
40:19.0	OK.
40:19.4	...
40:20.0	OK. Now you're — but now you're getting really specific. You said, «to Dan». ... What I wanted to give it to e- — you know — everybody at Netezza?
40:26.9	...
40:27.7	Just just put it up on the website, and say, “There it is, go get it.” Would that be an issue?
40:31.7	...
40:34.3	«You/[I] would have a problem with that.» ... And what would be the problem? That's not “manipulating”, that just “informing”. In my mind, this would be actually something that <u>needs</u> to be done, because: people need to know what's happening with respect to investigations and complaints like this. Because the BCG is very clear, that people are actually <u>required</u> to report stuff like this, and that there'll be no retaliation, but I have had nothing but retaliation since Day One on this. So, I think people need to be aform- — informed — that they should not go to HR, because HR is just gonna help retaliate against them. That's uh uh a simple service, to my fellow employees at IBM. So I would really like to tell them. Is there an issue? What is wrong with this? Would I be retaliated against for doing this? Let me put it that way.
41:25.7	...
41:28.0	«I/[you] would not be retaliated against.» OK. Would I be fired? Or would I be demoted? Any of those things.
41:33.6	...
41:36.7	OK. «You'll/[I'll] make that judgment when you see it.» So you're not going to tell me any of this?
41:39.7	...
41:40.3	This [<i>the “informing” discussed above</i>], by the way, in the law is known as “ <u>opposing discriminatory behavior</u> ”. OK? It [<i>the opposition, that is</i>] is <u>legal</u> . It would be totally illegal for I- — of course, IBM has already done this many times — but it would be totally illegal for IBM to — uh — to visit y'kn[ow] adverse job uh actions upon me for do- — for opposing discriminatory behavior. OK?
42:01.5	...
42:04.9	OK. Y- so, «You're/[I'm] not making a commitment about what I'll/[misspeak, should be “you'll”] do when I/[you] do something.» Even though I'm being very specific here. I know you can't make a commitment if I go and and start — you know — well, I don't even kn[ow] —. Just let you mind go wild. Which I would never do.
42:17.2	...
42:19.2	OK. «Make it simple for me/[you].»
42:20.3	...
42:26.5	OK. (<i>Stray noise.</i>) «You're/[I'm] not going to conjecture at all possibilities, or multiple possibilities, on this call.» And I agree. I'm not asking about that. All I'm asking about is,

TIME	CONTENT
	if I put this up on the Internet —. Say, not even at IBM. Just, say, on the open Internet. And start talking out- — totally outside of IBM — and saying, “This is what happened to me”. Would this be a problem?
42:45.4	...
42:50.6	A- OK. If «I’m[You’re] not using IBM systems», I know «you[I] can’t control what I[you] do». But would I be fired, for something like disloyalty, or some ridiculous thing? Because everything I’ve written is obviously <u>true</u> , it’s obviously not slander.
43:03.4	...
43:11.4	OK. So, «All you[I] were[was] worried about was my misuse of IBM systems.» OK.
43:14.8	...
43:16.6	The possible —
43:17.2	...
43:18.0	OK, «You[I] have not accused me[you]» — and I agree, you have not ... «accused me[you] of misusing IBM systems. You[I] were[was] only worried about the <u>possible</u> misuse of it.» OK. I think that’s, uh — I think I’ve gotten out of you all the information that you’re going to be willing to answer to me. ‘Cause I — you’re just not answering my questions directly. So I will just have to — well, discuss it with my lawyer, for example.
43:36.8	...
43:38.2	OK.
43:38.4	...
43:49.5	OK. So, you just said that you’ll «be getting back to me» — uhm, «in a regular» — what? — «interactive dialog» ...
43:56.1	...
43:57.6	OK, «we». OK. So you said «IBM» — someone at IBM, but not necessarily you specifically, «will be getting back to me[you]» on this uh interactive, uhm, y’know, «dialog about reasonable accommodation». OK, I’ve got I’ve got that.
44:09.7	...
44:12.0	OK. «And that’s it for you[me].» And I I think that’s it for me. I think I’ve tried to raise everything I could think of as we went along. Obviously I’m not satisfied with this, but as you say I can’t escalate any further within IBM, so — And as you also told me when we talked the first time ⁴⁴ — which was I think it was July 1 st — that, um, I I I’m pretty obviously — [free] to do anything I want to out- outside of IBM. Uh, and you can’t stop me. And and we both agree that that’s probably — um ... uh ...
44:39.3	...
44:40.3	«correct» — That «you[I] can’t stop me». And that «I[you] can go further if I[you] so desire, but it has to be outside of IBM».
44:45.9	...

44· Old Complaint, Part II, p. 20.

TIME	CONTENT
44:47.6	Right.
44:47.8	...
44:48.5	OK, right.
44:48.9	...
44:50.2	OK, thank you.
44:50.8	...
44:53.8	OK. So, uhm, so I'm going to uh transcribe all of this for my lawyer, Rob Mantell. And, uh, I think he'll probably be the next person to contact you. Unless ... u- unless we have some email thing, or uhm — Naturally I'm still going ...
45:10.8	...
45:17.8	OK. So, he — not talk to you, he n- he will continue to talk to Larry Bliss, the IBM lawyer that contacted him. OK, got it.
45:24.6	...
45:26.6	It is. It is, indeed. <i>[Responding to Mandel's comment along the lines that «this whole thing has been an unfortunate situation».]</i>
45:27.6	...
45:29.3	OK.
45:29.6	...
45:41.7	OK. So so, you just said that, «HR people will talk to employees, but won't really talk to third parties, such as, in particular, lawyers that represent employees». ⁴⁵
45:51.4	...
45:52.1	«But» th- «the lawyers there[<i>here</i>] at IBM will.» OK, so I've got it.
45:55.1	...
45:55.6	And I'll I'll relay that to him.
45:56.7	...
46:01.7	No, no, it makes no — I have no — I have no objection to that, actually, at all.
46:05.7	...
46:09.3	Yes, they do. I've, uh, got them (<i>referring to the likeness of the names "Russell Mandel" and "Robert Mantell"</i>) slightly, uh, confused, once in awhile, myself. "Mandel" and "Mantell", yeah.
46:15.7	...
46:21.2	Oh, yeah, I gue- I guess they are.
46:22.7	...

45· Old Complaint, Add. V, pp. 60, 61.

TIME	CONTENT
46:23.8	Same initials. OK.
46:24.8	...
46:25.5	OK. Very good. I think I have all I need to do now to take to him.
46:29.0	...
46:30.3	OK.
46:30.7	...
46:32.0	Thank you very much. Goodbye.
46:33.0	...
46:33.4	<i>(Phone call and recording end, just before 2:50 PM EST.)</i>

5 “Notes And Complaints”

In the above phone conversation, Mandel accused me of an “ongoing set of notes and complaints” (a.k.a. “comments and behaviors”, “escalating set of unprofessional and inappropriate comments and behaviors”, “behavior issues” [Old Complaint, Part II, Sec. 17], etc.) which somehow “justified” the retaliation IBM visited upon me.

Nothing could be further from the truth, of course. As has been noted many times (see esp. Old Complaint, Add. V, Sec. 57), there are at least 3 reasons these “notes and complaints” were ineligible for any kind of retaliation:

- Everything I said was the plain/obvious/innocent truth, and was said in a non-offensive manner (albeit candid, as required by the circumstances).
- Everything (with the sole exception of the “lazy” comment) was said in the course/conduct/context of IDR/C&A Open Door, and hence was protected *per se* by law, according to the standard formulae of discrimination-retaliation law.
- Everything (with the sole exception of the “lazy” comment) was “Dan-absolved”, i.e., protected by prior approval by Dan.

Mandel’s verbatim descriptions of the “notes and comments” appear in the Verbatim Transcript, above, and are further summarized here:

“COMPLAINT”	REF.	DATE	COMMENTS
Bully and liar (also mind-reader, though Mandel didn’t bring that up on the phone call) 21:16.3	Old Complaint, Part I, pp. 18, 25	May 18 June 10	At meetings with Dan, I explicitly and proactively complained about Fritz being a bully and liar (and of expecting me to be a mind-reader), based directly upon specified false adverse acts he committed against me, which exacerbated/triggered my PTSD, as Dan had been previously explicitly notified. This communication was therefore protected, and harassment based upon it was retaliation <i>per se</i> .
Possibly going insane 21:16.3	Old Complaint, Part I, p. 24	June 9	In a phone conversation with Dan the day following the yelling incident, Dan explicitly asked me why I thought Fritz would act the way he did. Upon Dan’s pressing me, I suggested as a last resort that Fritz might be going insane, though I explicitly told Dan that was (in addition to its literal meaning) a “catch-all” for all other reasons. This communication was therefore protected.
Absurd; begrudging 29:16.8	Old Complaint, Part II, p. 52	June 27	In an email with Dan and HR, I complained about Dan’s requirement of “transition status reports” and “impossible project planning” in various terms: “onerous/picayune crap”, “blackballing”, “nonsense” and “absurd”, and that I’d “been subjected to this kind of harassment before”. This communication was therefore protected.

"COMPLAINT"	REF.	DATE	COMMENTS
Pieces of paper 31:44.0	Old Complaint, Part I, pp. 17-18	May 18	At a meeting with Dan, he informed me about Fritz's "Excel graphics" lie, and supported Fritz, while totally ignoring anything I said. Dan's behavior was calculated to exacerbate/trigger my PTSD (recalling that Dan was already well-aware of my susceptibility to such abuse). I grew explosively PTSD-triggered, though was able to hold myself together fairly well, except for this paper-throwing-into-recycle-bin gesture. In any case, this was non-premeditated, and happened in the context of PTSD-inducing harassment, hence was protected.
Yelling 31:51.0	Old Complaint, Part I, Sec. 6	June 8	Fritz yelled at me, but Mandel lied that I yelled at Fritz! That was entirely false, and this incident of "my yelling at Fritz" never happened.
Nonsensical 32:58.7	Old Complaint, Part I, p. 119	June 10	In an email to Fritz (with Dan CC'd) about his yelling at me, I called Fritz's stated reason for his yelling "nonsensical", for stated technical reasons (namely, it makes no sense to "generate WaltBar stats from a PerfBar run"). In any case, this communication constituted a direct complaint about Fritz's abusive behavior, hence was protected.
Worthless 32:58.7	Old Complaint, Part I, pp. 42, 122	June 12	In the wake of the yelling incident, Fritz demanded that some "debug" performance tests be run. But since Wahoo had already been debugged, any such tests would have been worthless. Not only I noted this, but so did my colleagues (Devesh, Steve): we all agreed on those tests' worthlessness, and the test were never run, of course. In any case, I was complaining directly about Fritz's harassing demand to run those worthless tests, hence the communication was protected.
Unbelievably poor solution 33:23.8	Old Complaint, Part II, p. 63	June 30	In an email to Dan and HR, I was defending myself against Dan's demotion of me, by pointing out that I'd solved a problem ("nzVtCapture") that Sujatha had previously supplied an "unbelievably poor solution" to (though I defended her to the extent that I believed someone else had "put her up to it"). I made similar comments about Devesh's solution (while also defending him as a "fully capable developer"). In any case, this whole email was a direct complaint about Dan's abusive decision to "throw a really first-rate employee under the bus", hence the communication was protected.
Data suspicious and unreliable until	Old Complaint, Part II, p. 64	June 30	Ditto (same as preceding item).

"COMPLAINT"	REF.	DATE	COMMENTS
proven innocent 33:36.8			
Terrible idea 33:52.8	Old Complaint, Part II, p. 64	June 30	Ditto (same as preceding item).
Stonewalling 34:05.5	Old Complaint, Part II, p. 132	July 6	In an email to Dan, I defended myself against Dan's "three behavior issues" charge, guessing that perhaps Brian Maly had complained to Dan about an email I'd written months earlier, (gently) rebutting a (technical) comment Brian had made. The word "stonewall" was used in a perfectly appropriate way, and was used solely in this email to Dan (it was never said to Brian, in particular). In any case, this whole email was concerned about my responding/complaining about Dan's "three behavior issues" charge against me, hence it was protected communication.
Lazy 34:05.7	Old Complaint, Part II, Sec. 18 and p. 134	July 6	<i>(Dealt with elsewhere.)</i>