

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

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TELEPHONE INTERVIEW OF
JUDGE RICHARD J. GANUCHEAU

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* Docket No.: DCA07FM013
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Monday,
September 10, 2007

The above-captioned matter convened, pursuant to notice,
at 11:00 a.m.

BEFORE: Jim Scheffer
William R. Woody

APPEARANCES:

JIM SCHEFFER
National Transportation Safety Board

WILLIAM R. WOODY
National Transportation Safety Board

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I N T E R V I E W

(11:00 a.m.)

INTERVIEW OF JUDGE RICHARD J. GANUCHEAU

BY MR. WOODY:

1 Q. All right. I'll start with the questions we have
2 drafted. And, first of all, could you just give us the background
3 leading to the creation of the Louisiana Board Review, and, for
4 example, any groups that were the main sponsors or main advocates,
5 was it a long procedure to get it passed through the legislature,
6 and what problems was it supposed to address, the Board to
7 address? If you'll just take those general questions, please?

8 A. Well, I can't speak from first-hand knowledge. My first
9 knowledge of the existence of this Board, other than possibly
10 reading a newspaper report of the passage of the bill, was that I
11 was -- it was suggested to me that I could serve as one of the
12 three retired judges that were required to be appointed to this
13 Board, and I wrote a letter to the Governor of the State,
14 suggested that I would be available and willing to serve if
15 appointed. I was ultimately appointed in April of 19 -- of 2005,
16 rather.

17 The background is, before the creation of this Board,
18 the disciplinary proceedings or -- and the investigation of any
19 incidents that occurred both on the Mississippi or the Calcasieu
20 River were investigated by the pilot groups. There are four pilot
21 groups in Louisiana. One operates -- one has pilots who work in

1 the Port of Lake Charles. The other three all work the
2 Mississippi River. One group works the mouth of the Mississippi
3 River up to a point. Another group works from that point on the
4 Mississippi River to the Port of New Orleans. And the third, the
5 group on the Mississippi, works from New Orleans to Baton Rouge.
6 So there are four pilot groups, and they are independent of each
7 other.

8 Prior to the enactment of this legislation and the
9 creation of this Board, each pilot group handled disciplinary
10 matters within their own group. That is, they disciplined
11 themselves. And at some point in the past, there was a great deal
12 of public criticism of the way these pilot groups operated. There
13 was a great deal of nepotism involved. There was some suspicion
14 that the disciplining of pilots who were accused of substance
15 abuse or other personal faults that caused or contributed to
16 incidents or accidents on the river were, in effect, swept under
17 the rug or dealt with in a very minor fashion. The nepotism is
18 certainly not beyond dispute because if you want to be a river
19 pilot in this state, you've got to have some family connections
20 with river pilots.

21 So it was a wave of reform, and one of the issues that
22 was also paramount at the same time was that the pilots were
23 grossly overpaid, in some people's view. The industry people who,
24 in effect, fund the pilots 100 percent felt that the charges were
25 excessive, and the comparison was made to the pay received by

1 federally chartered pilots who did exactly the same thing, and I
2 think the comparison was such that the pilots were paid a great
3 deal more than the federal pilots.

4 But, anyway, all of that resulted in some action in the
5 Louisiana legislature in the 2004 session. And two Boards were
6 created. The Board that I chair was created, and, in addition to
7 that, a Board was created to fix the fees that would be paid for
8 the services of the pilots. And we referred to it as the Fee
9 Commission. That function had previously been performed by the
10 Louisiana Public Service Commission. The Louisiana Public Service
11 Commission regulates utility rates, telephone rates, and other
12 public monopoly businesses. They had previous, --to enactment of
13 this act -- been regulating the pilot fees, that is, the fees that
14 shipping would pay for the services of pilots. Those functions
15 are now transferred to what's referred to as the Pilot's Fee
16 Commission, which was enacted at the same time the legislation
17 that created the Pilot Review Board, which I chair, was first
18 created. Does that cover your initial question?

19 Q. I think --

20 A. Or have I left anything out?

21 Q. I believe it does.

22 A. Okay.

23 Q. What -- I'd like you just to repeat one thing. Was
24 there any particular thing that got this process going? Was there
25 any accident on the river, for example, that brought this to a

1 head, so to speak?

2 A. Not that I'm aware of. We've had some rather serious
3 incidents on the Mississippi River, and the one that comes to mind
4 is at the point in the river where it passes the City of New
5 Orleans, there's a shopping center on the east bank of the river.
6 And a vessel headed downstream, as I recall, lost power.

7 Q. I --

8 A. And ultimately crashed into the wharf on the Mississippi
9 River adjoining this shopping center, and there's also a
10 residential development in the same area. That did a significant
11 amount of damage. And as I have learned, since I'm the Chairman
12 of this Board, the first thing a pilot does when a ship loses
13 power is to drop an anchor, and they usually lose that anchor.
14 And then they try the second anchor and try to stop the vessel.
15 Apparently, that didn't work well enough, so the vessel collided
16 with the development that's called the River Walk in New Orleans.
17 And there were no deaths, but there was significant property
18 damage. And that may have preceded, or it may have occurred
19 before the legislation that created the Board. I'm not sure.

20 Mr. Scheffer. Yes. That was in 1996 when I first --

21 A. Well, then it was long before.

22 Q. -- came aboard, and I was involved with that
23 investigation.

24 A. This Board was created in the 2004 session of the
25 legislature. So my timeframe is a little awkward, but it was --

1 that incident occurred before the creation of this Board, and it
2 may have contributed to it, but I'm not absolutely sure of that.
3 I can remember no other serious incidents of accidents involving
4 death or serious injury prior to this Board. But then I didn't
5 have any great amount of interest in it. It was just a news item
6 that I would have read and kind of filed away in my subconscious.
7 But none of it comes to mind at this point.

8 By Mr. Woody

9 Q. Okay. Who was the person in the legislature, or
10 persons, that introduced the legislation and got it through?

11 A. I don't know.

12 Q. Okay.

13 A. There had to be a lead author, but my -- the information
14 I get now is that this was a cooperative effort of folks involved
15 in the maritime and the shipping industry in Louisiana and the
16 four pilots' associations. I don't have before me the act with
17 the authors' names on it, but that's easy to find out. I can give
18 you the Act number, and you can access that on the Internet. I
19 just don't happen to have it in front of me. But it was a
20 cooperative effort between industry and the pilot interests to --
21 that produced this, and it passed overwhelmingly. There was very
22 little opposition I'm told when the matter came up for vote in the
23 state Senate and the state House of Representatives. So it was a
24 cooperative effort, and -- but I don't know the names of the lead
25 author.

1 Q. Okay. And who was the Governor at the time --

2 A. Blanco.

3 Q. Who?

4 A. Kathleen Blanco, who is our governor now.

5 Q. Present governor? Okay.

6 A. She is not running for re-election, and her time will
7 end some time in January of '08. There's a governor's election
8 campaign going on as we speak.

9 Q. Okay.

10 A. And she has chosen not to run for re-election.

11 Q. All right. We were wondering about the funding. Why
12 wasn't funding authorized in the initial legislation?

13 A. What I hear, and this is secondhand, but I've asked
14 specific questions directed toward that to people who were
15 involved, and the answer I get is that the proponents of the
16 legislation were not certain of a favorable vote or a favorable
17 majority of votes in the Senate and the House when the legislation
18 was up for passage. So rather than put a funding proposal in,
19 they left it as is, or they drafted it as it is, that we would
20 seek our own funding. And I'm told they did that with the hope
21 that it would make passage of the bill easier in the House and the
22 Senate.

23 There was a stated appropriation, I'm told,
24 (indiscernible), and the appropriation (indiscernible) be included
25 in the state budget. And from what I gather, the proponents of

1 this legislation did not want to get involved in the budgetary
2 process and run the risk of losing some votes of fiscal
3 conservative members of the House and the Senate. But as it
4 turned out, the vote was nearly unanimous both in the House and
5 the Senate to pass the bill. So they were misinformed about their
6 support, and I'm told that's the reason the funding provision in
7 the bill was put in as it is. And it's just an oversight that
8 folks who were supporting the bill apparently didn't count noses
9 or count votes adequately to -- and then act accordingly. They
10 thought they needed to take the funding provisions out in order to
11 get the bill passed. But it passed overwhelmingly, I'm told.

12 Q. All right. That probably answers our next question we
13 had about your right to accept funds and also to be able to
14 self-generate funds. And we were going to ask about that. But I
15 think you've answered this generally.

16 A. Well, I don't know of any way to self-generate funds.
17 We have no authority to impose a tariff on shipping nor do we have
18 authority to impose a tariff or to impose fees upon the pilot
19 groups. I don't know what that means. It's certainly apparent in
20 the act that we can accept grants or donations of a sort.

21 Q. Um-hmm.

22 A. However, the subject was broached as to whether we
23 should accept donations from pilot groups, and I felt -- not that
24 one had been offered and refused -- but when the idea was floated,
25 I suggested that we could be criticized for accepting funds from

1 the very people we are supposed to regulate or review. There's
2 been some talk about funding by the Louisiana Pilot Fee
3 Commission, but that's gone nowhere. I suppose if some foundation
4 wanted to fund us, we could accept a grant from a foundation or
5 from a government agency. However, I think ethics would preclude
6 us from accepting a grant from any organization that we have any
7 regulatory power over or any supervisory power over, which would
8 include the pilot groups. So no grants have been offered, but if
9 it came from a pilot group, I think I'd be required, ethically, to
10 refuse it.

11 Q. All right. And I think -- get away from funding just
12 for a minute, then, would you describe the composition of the
13 Board and the qualification of the members?

14 A. Well, the statute sets out the membership of the Board.
15 It requires that the Board be composed of 11 members, all
16 appointed by the Governor of Louisiana. And it says they're
17 required to be citizens of the United States, registered voters,
18 and domiciled in Louisiana for not less than five years. The
19 membership is composed of four people associated with the pilot
20 groups, and they all need to be pilots. One must be a member of
21 the Board of Examiners of the Bar Pilots for the Port of New
22 Orleans. The second one must be a member of the Board of River
23 Port Pilot Commissioners for the Port of New Orleans. The third
24 pilot member must be a member of the Board of Examiners for the
25 New Orleans/Baton Rouge Steamship Pilots for the Mississippi

1 River. And the fourth must be a pilot member of the Board of
2 River Port Pilot Commissioners and Examiners for the Port of Lake
3 Charles.

4 Then from the industry side, two members chosen from the
5 list of (indiscernible) persons nominated by the Louisiana
6 Association of Business and Industry and the Louisiana
7 (indiscernible) Association, two members chosen from the list of
8 (indiscernible) persons nominated by the Louisiana Ports
9 Association, and the other three would -- are required to be
10 former judges in the state court system, either on (indiscernible)
11 of our Supreme court, our Appellate Court, or our trial-level
12 court. I am a retired member of the Louisiana trial-level
13 courts -- we call it the District Courts. And the other two
14 members were retired judges, one a Justice, a retired Justice of
15 the Louisiana Supreme Court, and the third former judge was a
16 retired judge from the District Court in the northern part of
17 Louisiana.

18 Q. All right. And if you would just describe the mission,
19 the job that your Board is supposed to do. I can understand
20 there's at least more than one function. If you could just review
21 the functions that --

22 A. Oh, there are a number of functions, and they're set out
23 in the statute.

24 Q. Right.

25 A. The first requirement of the Board, as set out in the

1 statute, is that we must issue rules and regulations to
2 administer, implement, and enforce the act which created the
3 Board.

4 Q. Um-hmm.

5 A. We have adopted rules and regulations. We have not been
6 able to promulgate those rules and regulations as of now, the
7 reason being that in Louisiana, in order to promulgate regulations
8 by a state Board, they must be published in the official journal
9 of the state for a period of time, and they -- a period of comment
10 by public or interested parties needs to be established. And then
11 they get published in what we call the State Register,
12 R-e-g-i-s-t-e-r. And at that point they become enforceable.
13 Well, we have no funds with which to do the advertising. We've
14 prepared and adopted a set of rules and regulations, but we have
15 not been able to promulgate them. So we've done that.

16 The second duty is that the Board is required to review
17 and either approve or reject any proposed rule or regulation
18 drafted by any of the pilot groups. And the exception to that is
19 any emergency rule.

20 Q. Judge (indiscernible) --

21 A. We've not had any incidences of that up to this point.

22 Q. Yes. We're having a little bit of a garble on our
23 phone. I'm not sure if it's my phone or whether it might be
24 yours. Have you had any phone troubles lately?

25 A. No.

1 Q. Okay. You're very clear now.

2 A. Well, I'm a little closer to the phone.

3 Q. Okay. We're hearing you loud and clear then.

4 A. All right. I'll continue to talk a little closer.

5 Q. All right.

6 A. I'll repeat what I just said?

7 Q. I think we might have got it pretty well. You explained
8 about rules adopted but not promulgated, that the promulgation
9 requires you to advertise and to put them into a state register
10 for people to comment on. It would require a period of time. I
11 think we pretty well got that.

12 A. All right.

13 Q. And we got -- we (indiscernible) pretty well to the
14 review of the pilot groups, regulations, and after that I think we
15 could resume.

16 A. All right. The third duty generally required of the
17 Board is to request, receive, and review reports prepared by any
18 of the pilot groups, all of the pilot groups, related to accidents
19 involving pilots regulated by this bill when the pilot is acting
20 under a state commission. So if a pilot is performing services as
21 a pilot and they -- an accident occurs -- the term accident is
22 broadly interpreted to mean groundings as well as collisions with
23 vessels or shore-side objects. So all of those incidents are
24 required to be reported to my Board.

25 Upon receipt of that, the Board is required to review

1 the report, and we can take no further action, and by that we
2 would consent to the action of the pilot group submitting the
3 report. Or, we have the power to remand the matter to the pilot
4 group which submitted the report for further investigation and
5 report back to the Board after that investigation is completed.
6 And we should -- we're required to receive reports as to consent
7 disciplines agreed to by the pilot group and the pilot in the
8 event of some action. When we get a report of the consent
9 disciplinary action, we can review it, take no further action, or
10 we can remand the matter for further proceedings if we're not
11 satisfied with the action of the pilot group with regard to the
12 discipline imposed.

13 The next duty we have is we are required to receive
14 reports as to all formal disciplinary adjudications rendered by
15 any pilot group with regard to the actions of a member pilot. And
16 as in other instances, we can take no further action and consent
17 to the action of the submitting Board or we can remand the matter
18 for further investigation and report. We also are required to
19 receive appeals from any party to a formal disciplinary proceeding
20 by a pilot group if the party is dissatisfied with the results of
21 the disciplinary action by the pilot group of which that pilot is
22 a member. We've not received any of those to date.

23 We're also required to receive sworn complaints against
24 any pilot from any source for actions taken by a pilot while in
25 the performance of his duty. And we've received one of those. It

1 was -- we referred it to the pilot group of which that pilot was a
2 member. They investigated the matter and reported back to my
3 Board. We received the report, and we consented to their action,
4 which was, in effect, a consent disciplinary action which involved
5 some remedial training of the pilot and a period of --
6 probationary period. And it involved a complaint of an excessive
7 wake by a vessel that the pilot was on at the time, and it was
8 lodged by the proprietor of a shore-side ship service facility,
9 which, in effect, was a service which ferried personnel and
10 supplies to and from vessels in the river to a shore-side
11 location, and there was a complaint about an excessive wake that
12 did some damage to at least one of his vessels.

13 The next thing listed in the statute that we're required
14 to do is to submit an annual report to the General Counsel of the
15 Department of Transportation and Development of the State of
16 Louisiana on the accident investigations and the details of the
17 accidents. And that report is to be submitted on or before the
18 last day of February for the previous calendar year.

19 We are also required to maintain a permanent accident or
20 incident record on each pilot and we do that. We are required to
21 submit an accident report as soon as practically possible to the
22 General Counsel of the Department of Transportation and
23 Development in those accidents in which state property is involved
24 or is damaged. We're required to provide to all commissioned
25 pilots a copy of the Board's rules and regulations. We have done

1 that even though they are not promulgated. We have made available
2 to every licensed pilot in the state a copy of our rules and
3 regulations.

4 Q. All right.

5 A. And that concludes the duties of the Board as set out in
6 the statute.

7 Q. Just one question (indiscernible). How many reports
8 have you submitted to the state annual reports?

9 A. None.

10 Q. None?

11 A. None.

12 Q. None?

13 A. We have no facilities. We have no staff. We have no
14 office. We have no funds. We have no equipment. We have no
15 typewriters. We have no e-mail. We have no computers. We have
16 nothing that is owned by or leased by or related to the Board.
17 Everything that happens with regard to this Board is done by me
18 personally with the assistance of my wife. And we've got some
19 assistance now from a law firm with which we have contracted, and
20 they are graciously providing filing services and paralegal
21 services to the Board for the last three or four months with no
22 compensation whatsoever, and it's only because they feel an
23 obligation to do what they agreed to do and to help us and hope
24 that they're compensated in the future. But we frankly have no
25 ability to do some of the things that we are required to do under

1 the statute because we have no funding.

2 Q. I think that pretty well takes care of our question
3 about what has lack of funding, how has it affected you?

4 A. Well, I would suggest this to you, two things, and you
5 may want to look into it. The State of Louisiana has a huge, and
6 I'm talking about several hundred million dollar surplus as we
7 speak. My Board's budget request for a fiscal year is the amount
8 of \$168,000. That's the total budget request for the Board's
9 operations. I've corresponded with the Governor and suggested to
10 her that it certainly would not be inappropriate for the state to
11 fund this Board since it's a state act that requires the Board to
12 exist and do certain things. And I have corresponded also with
13 the Governor's executive counsel making the same suggestions. The
14 Times-Picayune newspaper reporter who wrote an article about the
15 Board several weeks ago, and I'm sure you've seen it or know about
16 it --

17 Q. We have, yes.

18 A. Contacted the Governor's office, and she was told,
19 according to the newspaper article, that the Governor was
20 considering my letter requesting funding. That letter was written
21 mid-June of this year. So it's been 90 days or more since I wrote
22 the letter to the Governor. I've heard nothing at all. But if
23 you'd like to contact them, I can give you the names and the
24 contact information of both the Louisiana commissioner of
25 administration, who is basically the man who runs the Governor's

1 office, and the Governor's executive counsel, both of who might be
2 able to give you some insight to what the state's intentions are
3 with regard to funding. If you'd like to have those names and
4 contact information, I can give them to you.

5 Q. We'd like to take that.

6 MR. SCHEFFER: You can e-mail it.

7 BY MR. WOODY:

8 Q. Or you could, if you'd like, just e-mail it to us.

9 A. All right. I will be happy to do that. I guess I can
10 reply to the e-mail you sent to me, and I will do that as soon as
11 this conversation is over.

12 Q. Surely. Thank you. That'd be good. And we were going
13 to ask, too, the events, or the history of your Board since the
14 passage of the legislation.

15 A. Sure.

16 Q. For example, what members were assigned, and so forth.

17 A. I was --

18 MR. SCHEFFER: We got you. You were assigned.

19 JUDGE GANUCHEAU: Yes, I was appointed in April of 2005.

20 Even though this legislation was in effect before that, the
21 appointments, at least my appointment, did not come from the
22 Governor's office until April of '05. And then it was much later
23 than that. It was in June of 2006 before an organizational
24 meeting of this Board was called and the appointed members were
25 called to the Governor's office in Baton Rouge, Louisiana, but

1 that was in June of '06. Now, you have to understand that we
2 suffered a severe hurricane in August of '05, and things were in a
3 state of confusion and crisis in Louisiana, particularly in south
4 Louisiana, for a long time after that hurricane. So that could be
5 a reason for the delay in the organizational meeting, but it did
6 not occur until June of 2006. And it was at that meeting I was
7 elected chairman of this Board.

8 BY MR. WOODY:

9 Q. All right.

10 A. Since then we've had, and I counted them, we've had 16
11 Board meetings for various purposes, many of which were concerned
12 with attempts at funding, and the majority of the balance of them
13 were concerned with the proposal discussion and adoption of the
14 rules and regulations that we have adopted. We don't have a Board
15 meeting scheduled as we speak because I was waiting to get some
16 answer on the funding issues before calling the Board. The Board
17 has nothing to do at this point other than talk about funding and
18 maybe review some of these reports we received from the pilot
19 Board, but we have no ability to do anything other than to meet.
20 And we only can meet because some facilities for meeting are made
21 available to us at no cost by some groups in this area. We've met
22 at the offices of a state agency in Louisiana, which had some
23 facilities available to us, and we've met at the offices of one of
24 the pilot groups, which has made an office, a meeting space,
25 available to us. But it's difficult to call a meeting. If you do

1 anything at the meeting, it's impossible to follow through and
2 implement anything that the Board decides it needs to do. So I
3 find it futile to call a meeting when the meeting can do nothing
4 other than talk about our lack of funding and our lack of ability
5 to do anything that we're charged to do under the statute.

6 And, in addition to that, the statute sets out a very
7 modest pay level for those of us who are independent members of
8 the Board, the three retired judges. We're unable to pay the per
9 diem and the expenses of those judges who go to the meetings, so
10 for all of those reasons, there's no meeting scheduled at this
11 point.

12 Q. I see. I did have one date I believe I might have
13 gotten -- the date that the people were appointed, can I just make
14 sure I have that date? Was that the, you know, the members were
15 appointed to the Board?

16 A. The date I have, and I don't have the exact day of the
17 month, but it was in April of 2005.

18 Q. All right. That's what -- I put that down. I wanted to
19 make sure that was right.

20 A. Um-hmm.

21 Q. All right. And you've talked about the level of
22 funding. We're just interested, the \$168,000, that would be
23 enough to get you fully operational or do you perceive down the
24 path it would require more or do you have a feeling for the long-
25 range budgetary requirements?

1 A. Well, I can't answer that question because I don't know.
2 You know, there's never been a Board charged with these
3 responsibilities before this one, so there's no history. What we
4 did was to the extent we could determine expenses, we factored
5 those in, and we factored in, I think, six meetings of the Board
6 in a year. And with that in mind -- and, again, that was our best
7 estimate of the number of times we ought to meet even though, as
8 an aside, the statute requires that we meet a minimum of twice a
9 year.

10 Q. I see.

11 A. But we estimated that we would meet six times in a year.
12 We factored in the cost of the meeting as best we could for six
13 meetings a year. And then we factored in the cost of the officers
14 and directors liability insurance that we must have. We factored
15 in the cost of what we guesstimated to be the amount of services
16 we need from a court reporter at the meetings, an investigator if
17 we found we needed to investigate an incident. And other meeting
18 expenses that we would incur.

19 Q. Sir, when you talked about the investigator, that's when
20 you -- we started getting a little bit of a garble in our phone
21 here. It could be our phone. But there -- we read you very well
22 until you talked about the need to acquire an investigator.

23 A. What I was saying, as best I can remember, is that we
24 estimated that in the event we needed to investigate an incident,
25 then we'd hire an investigator. And it was purely an educated

1 guess as to what amount of services we would need from an
2 investigator and the cost. So the funding is really our best
3 estimate of what it would cost to operate at the level that we
4 think is reasonable considering what everybody on the Board knows
5 about incidents that happen on our rivers in Louisiana. So I
6 can't tell you whether it's going to be adequate, inadequate
7 (indiscernible) two or three years (indiscernible). There was no
8 provision in there for staff offices -- I'm sorry -- staff
9 salaries, office rental (indiscernible). We feel at this point we
10 don't need that (indiscernible), and we'll have to have
11 (indiscernible) separate offices. But we're doing without that at
12 this point.

13 The law firm that we have contracted with has indicated
14 that the meeting space will be made available by them, and we've
15 got the services of a paralegal and an attorney as and when needed
16 built into the price that they quoted us for their representation
17 and in performing those aspects of their contract obligations even
18 though they have not yet been paid.

19 Q. All right. I think that pretty well answers our
20 question about long-range -- the funding and the long-range
21 funding, and so forth. Do you think --

22 A. This Board needs to have a predictable, reliable source
23 of funding if it's to operate. And that was really the point of
24 my letter to the Governor in June, that if the intent of the
25 legislature and the Governor, who signed the bill, is that this

1 Board should exist and operate, it needs to be funded. And I
2 think it's the administrations obligation to secure a reliable
3 funding source for this Board if it's to operate. At this point,
4 it's not operational because we can't operate without funding.

5 Q. We can certainly see the benefit of an independent
6 Board. Would you give us a few more words about how this Board,
7 when it's functioning, can provide for improved safety on the
8 rivers and improved (indiscernible) and perhaps accountability?

9 A. With regard to safety on the river, we are charged with,
10 in effect, an oversight of disciplinary proceedings by the pilot
11 Boards themselves of their members. And it would be my idea that
12 when we review the reports of incidents that occur on the river
13 and we subsequently get reports of the action taken by the pilot
14 groups, we have responsibility to decide whether or not the
15 actions taken by the pilot groups with regard to discipline of the
16 pilot, if the pilot's found at fault, is appropriate. And if more
17 is needed to hopefully curtail incidents in the future by that
18 pilot, then we should -- we need to act.

19 If we, for instance, were to receive multiple reports of
20 incidents involving a particular pilot and there was some
21 suggestion that a contributing cause might have been physical
22 condition of the pilot, substance abuse, or something of that
23 sort, when we would see that pattern and if we suspected that the
24 pilot group was not taking appropriate action with regard to that
25 pilot, we can make recommendations to the pilot group that they do

1 more to either rehabilitate that pilot or remove him from service
2 or that we can -- well, let me backtrack on that. We have no
3 ability to remove the pilot, to revoke the pilot's license, nor
4 does the pilot group have the ability to revoke a pilot's license.
5 Only the Governor of Louisiana can revoke a pilot's license. But
6 we can certainly make recommendations, and we're required to make
7 reports to the Department of Transportation and Safety in
8 Louisiana.

9 So to that extent, we are charged with an oversight of
10 disciplinary actions. And a recommendation to the Governor or to
11 the Department of Transportation of Louisiana from this
12 independent Board would certainly carry some weight. So in that
13 regard, I think the function of the Board has a great deal to do
14 with the improvements of safety on the river, rivers in Louisiana,
15 in the future. Now, we haven't been able to do any of that
16 because we're not funded, but I think that's the underlying
17 consideration that caused the enactment of the legislation that
18 creates the Board.

19 Q. All right. We have just a couple sort of specific
20 things. You'd explained to us what the Pilot Fee Commission was,
21 and we had something called the Automatic Tariff Rate Adjustment
22 Mechanism that is spoken to in the law. We wondered what that is
23 and how it works.

24 A. I don't know.

25 Q. Okay.

1 A. You might want to direct your inquiry on that regard to
2 somebody connected with the Pilot Fee Commission.

3 Q. All right. Now, one of the terms we've been using in
4 the -- we see it in the regulations as "consent discipline" and
5 then we have something called "formal disciplinary adjudication".
6 Could you compare those two processes, explain what they are?

7 A. Well, of course, the consent would be that if the pilot
8 regulatory -- the pilot group and the pilot agree on something
9 that the pilot must do, and most often that entails continuing
10 education or some courses that the pilot is required to take by
11 the consent disciplinary action. I guess it could also involve
12 some suspension, but I'm not sure of that either.

13 Q. Okay.

14 A. But the consent disciplinary action is self-explanatory.
15 And let me see if I can -- the formal disciplinary action I think
16 involves a hearing before the Board of commissioners that the
17 pilot belongs to. And that hearing would involve testimony,
18 witnesses, and exhibits presented at the hearing to the pilot
19 group. And I'm sure each of these pilot groups has a disciplinary
20 committee. We would then get a transcript of that hearing. The
21 court reporter would transcribe all the testimony, and we would
22 get a copy of the testimony and copies of any exhibit that was
23 introduced, as well as the decision of that pilot disciplinary
24 Board, which we would then review. We have the right to take no
25 action if we agree with the action of the pilot Board or remand it

1 to the pilot Board for further investigation. And then we have
2 the right after that process is finished -- well, we have the
3 obligation after that process is finished to listen to an appeal,
4 to hear an appeal by the pilot if he feels aggrieved by the
5 decision of that disciplinary Board. And then once we hear that
6 appeal, we can make a decision either to ratify the actions of
7 that disciplinary Board of the pilot group, remand it to them for
8 re-hearing or further investigation, and then we have the right if
9 we feel it appropriate to recommend to the Governor that the
10 Governor take some action with regard to the pilot's license. So
11 that would be the formal disciplinary proceedings as opposed to
12 the consent.

13 Q. All right. I think we have just one more technical
14 question. We noticed in the regulations there's a reference to
15 damage to state property, and we were just wondering if the damage
16 to the I-10 Bridge in the Kition accident, which happened on 10
17 February, if that amounts to damage to state property?

18 A. Well, I'm not sure who owns the I-10 Bridge. I'm not
19 sure if it's the State of Louisiana or the federal government.

20 MR. SCHEFFER: The state owns the bridge.

21 JUDGE GANUCHEAU: If it's state property, then, of
22 course, that would be included, yes.

23 BY MR. WOODY:

24 Q. We believe it's state property.

25 A. Okay. And we would have received a report, and at some

1 time when it's appropriate we would review it and make the report
2 to the State Transportation Board.

3 Q. All right. Well, judge, we want to thank you, and we'd
4 like to ask if there's anything we haven't covered that you think
5 would help us. We'd be happy to hear.

6 A. Well, I have a question, and it's not some additional
7 information, but you and I spoke initially, and I'm not sure I'm
8 clear on exactly what happens with this interview and what the
9 goal of it or the reason for it is from the standpoint of the
10 Transportation Safety Board.

11 BY MR. SCHEFFER:

12 Q. Judge, Jim Scheffer, here. We'll do a summary of this
13 interview and put portions of it into our factual report of the
14 accident of the Kition collision with the I-10 Bridge. Those
15 areas that referred to pilotage and pilotage oversight -- we
16 didn't know the existence of your Board, so we'll be putting that
17 in.

18 A. Um-hmm.

19 Q. And also the facts as they state that as of this date
20 there is no funding, and we'll put that in. And then if that
21 affects some of our analysis, as far as the adequacy of pilotage
22 oversight on the Mississippi River, that'll be entered into the
23 report.

24 A. And your report is made to the National Transportation
25 Safety Board as appointed by the president I presume?

1 Q. That's correct. We are the technical staff, and we
2 present a draft report to the Board members. They vote on our
3 report, which is made up of a factual and analytical section,
4 along with findings and a probable cause. And, normally, there
5 are some recommendations that -- attached to the report that's
6 also voted on by the Board members.

7 A. And I wonder if I might request through you a copy of
8 that report and whatever recommendations are made by the Board
9 members.

10 MR. WOODY: It'd be our pleasure.

11 MR. SCHEFFER: Absolutely.

12 MR. WOODY: Yes.

13 MR. SCHEFFER: And all of the factual material that's
14 been gathered by Mr. Woody and his team are put into a public
15 docket, and we'll also be sending that along to you when that's
16 released.

17 JUDGE GANUCHEAU: Thank you very much. And if you need
18 any further information from me or you think I can help you
19 further with the preparations, of course, please, don't hesitate
20 to call.

21 MR. SCHEFFER: That's fine, and while we -- the, okay,
22 process that we've gone through to date, we have parties to the
23 investigation, and I'm not sure if Mr. Woody mentioned that to
24 you.

25 MR. WOODY: I did not.

1 MR. SCHEFFER: But there are -- some of the state called
2 us, shall we say, our parties --

3 MR. WOODY: Coast Guard.

4 MR. SCHEFFER: The Coast Guard and the --

5 BY MR. WOODY:

6 Q. E.N. Bisso, the tug company and NOBRA, the pilot
7 association.

8 A. And the pilot that was on the vessel that collided with
9 the bridge was a member of what organization, if you know?

10 Q. NOBRA.

11 A. Okay. NOBRA.

12 Q. NOBRA 38 was his title.

13 A. And the date of that collision?

14 Q. 10 February 2007.

15 A. Okay.

16 Q. And t involved, a large tanker called the Kition, K-i-t-
17 i-o-n --

18 A. Um-hmm.

19 Q. -- which turned out of the berth at Apex Oil just
20 upstream of the I-10 Bridge.

21 A. Um-hmm.

22 Q. The pilot turned the ship from the berth, and it swung
23 around and the bow of the ship hit the finder system of the
24 bridge, doing probably about 2 million dollars worth of damage to
25 the finder system.

1 A. Um-hmm.

2 Q. And the ship sustained -- I believe it was something
3 like \$700,000 in damage for repairs.

4 A. Um-hmm.

5 Q. Then there was another close to a million dollars for
6 oil storage and, of course, the ship had extra costs, you know,
7 labor to pay while they were not shipping, and they had other
8 costs.

9 A. Right.

10 Q. And then they also paid for pilotage.

11 MR. SCHEFFER: And we get involved normally when it's in
12 excess of a half a million dollars worth of damages or six deaths
13 or a total loss of a vessel. There's a federal statute which says
14 what our authority is.

15 JUDGE GANUCHEAU: Okay. I understand. Thank you for
16 that information. And I will e-mail to you the contact
17 information for the commission of the administration and the
18 Governor's executive consult in case you wanted to contact them.

19 MR. WOODY: All right. Thank you very much, sir.
20 Appreciate it very much.

21 MR. SCHEFFER: And we certainly appreciate your time,
22 Judge.

23 JUDGE GANUCHEAU: Okay. Good-bye --

24 MR. SCHEFFER: Good morning, now.

25 MR. WOODY: Good-bye now.

1 (Whereupon, the telephone interview in the above-
2 entitled matter was concluded.)
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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Telephone Interview of Richard J.
Ganucheau

DOCKET NUMBER: DCA-07-FM-013

DATE: September 10, 2007

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Danielle VanRiper
Transcriber