

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

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INTERVIEW OF

JOE ACCARDO

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\* Docket No.: DCA-07-FM-013  
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Tuesday,  
October 9, 2007

The above-captioned matter convened, pursuant to Notice,  
at 9:50 a.m.

BEFORE: ROB JONES  
National Transportation Safety Board

APPEARANCES:

ROB JONES  
Marine Investigator  
National Transportation Safety Board

I N D E X

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I N T E R V I E W

(9:50 a.m.)

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3 MR. JONES: My name is Rob Jones. I'm a Marine  
4 Investigator with the NTSB, and I'm interviewing Joe Accardo with  
5 the Board of Review for the river pilots, the Board of Louisiana.  
6 It is Tuesday, the 9th of October, at approximately 9:50, and we'd  
7 like to just conduct the interview now. Mr. Accardo, could you  
8 just give me a little background on yourself, who you work for,  
9 and how you were appointed to the Board, and whatever you'd like  
10 to say after that.

11 MR. ACCARDO: Yes, my name is Joe Accardo,  
12 A-c-c-a-r-d-o. I'm a member of the Board of Louisiana River  
13 Pilots Review and Oversight. I was appointed about three years  
14 ago. At the time that I was appointed, I was the Executive  
15 Director of the Port of South Louisiana, which is located at mile  
16 point 114 on the Mississippi River to mile point 162. This port,  
17 when I was there, had in excess of 4,000 vessels a year, deep-  
18 water vessels, in international trade, which were piloted by the  
19 pilots to the various stops, private and public docks within the  
20 port district.

21 When the legislation was passed by the Louisiana  
22 Legislature, it was intended that there be some reform in the  
23 methods by which pilots were reviewed, relative to their  
24 competency. The Fee Commission was appointed to set the fees by  
25 which the pilots were paid. The Board of Review was given limited

1 jurisdiction to review the -- any incident or any matter that  
2 might come up which might reflect on the qualifications and  
3 competency of the pilots. The way I understand the law to be is  
4 that the various pilots, Pilot Boards, and there are three on the  
5 Mississippi River and one on Lake Charles, those Pilot Boards have  
6 the sole right to choose their members under certain criteria,  
7 which they have developed over the 150 years that pilots have been  
8 in use on the Mississippi River. And, the Fee Commission, nor  
9 does the Board of Review, have anything to do with the choosing of  
10 the pilots and their initial qualifications. The Coast Guard  
11 looks at that and gives them the appropriate licenses.

12           But whenever there's any incident, it's my understanding  
13 that when there's any incident, that the appropriate Pilot Board,  
14 the Board for which that pilot works, is the Board that then  
15 reviews, looks at, and decides whether or not it's going to have a  
16 hearing as to the incident, an accident, et cetera. The --  
17 whatever decision it makes, whenever there's an incident on the  
18 river, whenever there's a hearing, whenever there's a decision,  
19 it's my understanding that under this law, revised statute 34.11-  
20 31, those incidences are filed, and notices are filed with our  
21 Board, the Board of Review.

22           Going back to why I was appointed, I was one of two  
23 people appointed to the Board, which were to come from nominees  
24 made by the Ports Association of Louisiana. The Ports Association  
25 was tasked in the law to give four names to the Governor, of which

1 he was to choose two members. I was chosen while I was the  
2 Executive Director -- I was nominated while I was the Executive  
3 Director of the Port of South Louisiana, and chosen by the  
4 Governor together with Roger Richard, who's Executive Director at  
5 the Port of Greater Baton Rouge. Roger has since resigned from  
6 that position, and he resigned -- he was replaced with Urban  
7 Treuil, who is the Executive Director of the Port of Plaquemines,  
8 which is south of New Orleans, deep-water port south of New  
9 Orleans.

10           So, the important thing about the Louisiana Board of  
11 Review, and I'm not going to get into the make-up, the rest of the  
12 make-up; suffice it to say that all of the pilots have members on  
13 the Board, the industry groups have members on the Board, and  
14 there are three Judges, retired Judges, who are supposed to be  
15 independent members of the Board. At this point, one of the  
16 Judges resigned from the Board, at this point as maybe as a year  
17 and a half ago, and as far as I know, he has not been replaced.  
18 The Chairman of the Board, under the legislation, was slated to  
19 come from one of the three Judges, and Judge -- retired Judge  
20 Richard Ganucheau is presently the Chairman of this Board.

21           We have received notices of incidences. Unfortunately,  
22 when the Legislature created the two Boards, it gave clear  
23 authority to the Fee Commission to collect -- to assess fees, to  
24 collect fees from which it can operate. In the case of the Pilots  
25 Review Board, it did not. It simply said that the Board may incur

1 necessary expenses in the discharge of its duties and functions  
2 and responsibilities of this part. The cost of equipment, office  
3 space, office supplies, and other necessary expenses for the  
4 administration, implementation, and enforcement of this part shall  
5 be paid from self-generated funds, or other funds made available  
6 to the Board for such purposes. The Board may accept grants,  
7 allocations, or appropriations of the United States Government, or  
8 donations, grants, or other forms of assistance from private  
9 foundations or other sources. Unfortunately, there's no part of  
10 this legislation which allows us to raise fees from our own  
11 sources, even though it gives us -- seems to give us that right,  
12 there is no way to do that.

13           So, essentially, we're a Board that's functioning  
14 without any sources of income. We tried to shoe-horn ourselves  
15 into finding money by making the case that the proper functioning  
16 of the Fee Commission required that there be a properly  
17 functioning Board of Review, that having competent pilots was --  
18 could only be accomplished by have a operating Board of Review  
19 that might determine whether or not pilots pilot -- there's Pilot  
20 Boards that are properly administered, and oversaw the hiring and  
21 maintaining of safe pilots. At first -- and we asked for an  
22 opinion from the Attorney General. At first, the Attorney General  
23 found, perhaps, that was not the case, and then a subsequent  
24 letter on February 22nd, 2007, they agreed with us that the Pilot  
25 Fee Commission has the specific statutory authority to use pilot

1 fees and rates for all ordinary and necessary operating and  
2 administrative costs and expenses, including, but not limited to,  
3 the funding of the operational expenses of the Review Board, and  
4 sharing its resources and facilities.

5           So, even though we got this opinion, so far we've not  
6 been able to get the Pilot Fee Commission to assess a surcharge of  
7 some kind to sustain our operations. Their lawyers seem to,  
8 perhaps, disagree with that opinion. There's disagreement on the  
9 Fee Commission, particularly from the industry side, about whether  
10 or not there should be another fee put on ships coming into the  
11 river, and so even though the -- I think, at one point, the  
12 various Pilot Boards had offered to put up some money to assist us  
13 in our operations, we felt that that was -- would be a conflict  
14 for them to do that. They did, too -- the first time we met, we  
15 had a Pilot Commission Board office, and they provided lawyers,  
16 and they provided staff to assist us in writing rules, you know.  
17 We accepted that because we had no choice, no place to meet, no  
18 staff, and we did our best to make sure the rules were, you know,  
19 properly written and fair to everyone.

20           So, this brings us to the point, I guess, when, you  
21 know, even though we've ask the Legislature to appropriate money,  
22 it has not seen fit to do that. The Governor has not sponsored  
23 legislation to do that, and as a result, we're not in the budget  
24 even though it's in the state law. Appropriate money, they've  
25 never done that to us, never done that for us. Essentially, it's

1 neglected, this important function.

2 MR. JONES: Seems like it always comes back to money.

3 MR. ACCARDO: Yeah. Even -- we did a budget, it's about  
4 \$160,000 a year operational budget. Only the Judges get paid for  
5 serving on this Board. I don't get paid any fees, or even  
6 expenses. The pilots who serve, of course, are working for their  
7 association. I'm not sure if they're reimbursed expenses or not,  
8 but they have a direct interest in this. The Judges are supposed  
9 to be paid, but so far none of them have been paid. There's no  
10 money to pay them. They're supposed to be paid a per diem under  
11 the law. Even -- we hired this law firm to make space available  
12 for us on an hourly basis, but we've not been able to pay them. I  
13 presume this is pro bono, at least to this point. We've not  
14 really done anything except use their space, and we use -- so --

15 I'd be happy to answer any other questions you might  
16 have.

17 MR. JONES: I appreciate the background information. It  
18 does seem to be the -- going around about the money. No matter  
19 who I talk to, that seems to be the biggest thorn in everybody's  
20 side, with regards to the functions of the Board. So, let's  
21 hypothetically say that the funding was there. Do you feel the  
22 Board is necessary, the oversight of the individual Pilot  
23 Examining Boards?

24 MR. ACCARDO: The Legislature thought it was necessary,  
25 and at the time that this Board was created, and it's only been

1 about four years ago that this legislation was passed -- not even  
2 four years ago. This was a compromise between the pilot group and  
3 the industry group, who pay for the cost of the pilots, shipping  
4 charges, pilots and fees. So it was seen as a way to, perhaps,  
5 have oversight over the disciplining activities of the four Pilot  
6 Boards, and yeah, I think it can be a -- it can serve a good  
7 purpose. Sometimes the mere fact that there's someone that can  
8 look at what you do, forces you to be far more judicious in how  
9 you act and what you do, and how things are handled. Certainly,  
10 you know, the fact that the press can look at things is one fact  
11 of it. Knowing that, perhaps the Pilot Review Board can, on its  
12 own, institute a hearing. We get notices of the incidences; at  
13 least, the pilots have agreed to send us notices, you know. A  
14 better way would be for us to be able to pick up those incidences  
15 reports on their own, and not just rely on the pilots, or double-  
16 check to make sure we're getting them all. We're aware of this  
17 incident that happened at the I-10 bridge in Baton Rouge, and in  
18 fact, even, one of our members at the Port of Baton Rouge says  
19 their security camera picked up the accident, and I think you guys  
20 have a copy of that.

21 MR. JONES: Yes.

22 MR. ACCARDO: So -- yeah, I think, then, a properly  
23 functioning Pilot Review and Oversight Board is necessary, and I  
24 don't quite understand the logic of the industry group, who seem  
25 to oppose the extra fee that could be implemented by the Fee

1 Commission. Certainly, next year, we have to make a better try to  
2 get the Legislature to appropriate money. Perhaps a new Governor  
3 and a substantially new Legislature will do that.

4 MR. JONES: When the Board votes, if they were to vote  
5 on it -- is it 6-5, just a majority vote, to overturn something  
6 the examiners have --

7 MR. ACCARDO: It's a majority vote.

8 MR. JONES: Okay.

9 MR. ACCARDO: Frankly, I haven't looked at in three --

10 MR. JONES: Oh, that's okay.

11 MR. ACCARDO: And I think it may be also covered in the  
12 rules. The rules came from the law firm representing the pilots -  
13 -

14 MR. JONES: That's okay. You know --

15 MR. ACCARDO: Have you all -- have you been given copies  
16 of these?

17 MR. JONES: If not, I'll check with the other  
18 investigators.

19 MR. ACCARDO: Chris probably has it, and -- on their  
20 end.

21 MR. JONES: Now, do you see yourself, being from the  
22 courts, and the other industry professionals, does that round out  
23 a good independent Board for overseeing the pilots?

24 MR. ACCARDO: Yeah. The mandate from my membership is  
25 to try to make sure that we have a safe and competent crew of

1 pilots moving ships in and out. It does our organization, our  
2 members, no good to have shipping lines fear coming into the  
3 Mississippi River because of safety issues. They're already  
4 complaining about cost, of paying pilots and, of course, the cost  
5 of piloting up-river to some of their inner ports, but if -- every  
6 time a ship comes into the river, its insurance carrier says it's  
7 going to be a higher cost because you're trading on the  
8 Mississippi River, and we don't have confidence in the competency  
9 of the pilots, that would raise shipping rates. And certainly, we  
10 understand the economics of having shipping -- ship owners and  
11 shipping lines and shipping agents agree that there's a fair  
12 method for setting fees, but they pay to use pilots, and the  
13 pilots are properly screened to make sure that they're competent.  
14 And you know, the Coast Guard itself has similar rules.

15 MR. JONES: Yes.

16 MR. ACCARDO: Are you asking me the question, are we  
17 duplicating the Coast Guard's role? They've certainly raised that  
18 decision (sic). I think we have -- you know, we may have a little  
19 bit broader powers.

20 MR. JONES: Well, if an incident comes to your Review  
21 Board, do you feel there's enough interaction between the members,  
22 technically-wise, between the pilots that sit on the other  
23 Examining Boards, and yourselves, and industry, do you -- can you  
24 further the investigation? Do you hire your own investigators?

25 MR. ACCARDO: We can, but we have no money to do that.

1           MR. JONES: Right. And how about just the give and take  
2 with yourself and the other pilots? Because, since they're the  
3 professionals on the river --

4           MR. ACCARDO: There's been open and frank discussions.  
5 We have disagreed on things. From the very first, we disagreed on  
6 where the domicile of this Oversight Board should be. I favored  
7 it being in Baton Rouge, where the Fee Commission is, so we could  
8 share office space and staff. The pilots wanted it here in New  
9 Orleans. It makes a difference as to who gets the any -- if you  
10 go the Court, it makes a difference as to, of course, the  
11 jurisdiction, and the Judges, and the Courts of Appeals that are  
12 involved, so it was more convenient for them. It was, perhaps,  
13 more convenient for two of the "independent" Judges. I felt from  
14 an economic standpoint, it should have been in Baton Rouge, where  
15 we could have got free office space, and even used the staff of  
16 the Fee Commission.

17           But I voted with the industry group to do that. The  
18 pilots voted -- I think two of the Judges, to do it here, and they  
19 won. When we did -- we've had some disagreements on the form of  
20 the rules we were trying to adopt. The unfortunate thing about  
21 this whole process, when we did it, the rules were essentially  
22 drafted by lawyers who worked for the pilots themselves. I can't  
23 say it was an arms-length process here, even though I'm a lawyer  
24 by training, and supposedly we had three Judges who were lawyers  
25 who should have paid attention to everything on here, but we did

1 our best to make sure the language was fair. They did a lot of  
2 work, maybe 13 or 14 versions of this before we finally adopted  
3 it. I think they're fair, but, you know, I didn't like the  
4 process. When we drafted our budget a few months ago, there was  
5 an effort made to pay the lawyers for their work, and I objected  
6 to that, and unfortunately, that day, we didn't have enough votes  
7 to -- that day, we had some absences, and there was not enough  
8 votes along with the industry group to reject that, and I thought  
9 it was -- first of all, we had not hired them to do the work.  
10 Secondly, I thought there was a conflict. These lawyers could  
11 not, at the same time, work for the Pilot Boards and then also  
12 work for us.

13           So, on those bases, we voted, and we voted not to  
14 include -- I think they wanted something like \$40,000, and they  
15 probably were worth it, worth the work that they did, but I just  
16 felt that it was not appropriate to do that. So, we had not, so  
17 to speak, ever had the opportunity to be engaged in a review of a  
18 disciplinary action, nor have we, even though we have the power to  
19 within the law and the rules, though we have the power to initiate  
20 an investigation, it was a no-go from the very -- we don't have to  
21 rely on what they have done, and we can go ahead, if we had the  
22 funds, you know, investigators, and just find out what's  
23 happening, we could do that. But we have not done that in the  
24 three-plus years that I've been on this Commission, this Board.  
25 Essentially, we have been too very much inactive. We've spent a

1 lot of time getting to the point where we could act, having rules  
2 and procedures, and getting ready to look at things, but we have  
3 no ability to do that unless we get free work. If we were to have  
4 a hearing, I'd have to participate. I don't expect to be paid,  
5 though my membership would expect me to attend without being paid.

6 So, that's not the issue. The issue is staff, a place  
7 to keep your files, someone to file it, do paperwork, someone to  
8 take stenographic recordings of what's going on, someone to be  
9 your advocate on a day-in, day-out basis, we haven't been able to  
10 do that.

11 MR. JONES: What's your term, or appointment to the  
12 Board? Is it --

13 MR. ACCARDO: It's consistent with the Governor. Our  
14 new Governor can reappoint, replace me. My term is concurrent  
15 with the Governor.

16 MR. JONES: Okay. So you could be appointed with a year  
17 left on the Governor's term, and then a new Governor came in --

18 MR. ACCARDO: And under the general law, the State is,  
19 I'm sure, most -- I would stay until I was replaced, you know. So  
20 I think -- I don't know what's going to happen. If we don't have  
21 any money, I'm not sure I want to keep serving.

22 MR. JONES: Understandable.

23 MR. ACCARDO: It's just like there's --

24 MR. JONES: Now, the way I read it, I understand, is the  
25 pilot that, say, was in an incident, has the right to appeal to

1 your Board after his examiners could take discipline on him, and  
2 if that came to you now, from what I gather, it would be hard for  
3 you to review it, or act on it --

4 MR. ACCARDO: Yeah, we'd have no ability to do that. We  
5 could sit down and read what happened, you know, do this on a pro  
6 bono manner, if they'd give us the space to do that.

7 MR. JONES: Right.

8 MR. ACCARDO: Or we could prevail upon the Fee  
9 Commission to make their facilities available. We've done it  
10 before, sit in an office of one of the pilot groups. After a  
11 while, we began meeting at the New Orleans Assembly (phonetic sp.)  
12 Board facility, and we did that for quite a while, but that was  
13 like once every two or three months. We haven't had a meeting now  
14 in nearly four months, about four months.

15 MR. JONES: Just going back a minute, the legislation  
16 was produced in 2004, approximately?

17 MR. ACCARDO: When was this done?

18 MR. JONES: Yeah, and was it initiated by -- what  
19 prompted it, to get the Review Board? Was it the public --

20 MR. ACCARDO: I think it was the controversy -- year --  
21 the controversy over the fairness of the fees. The fees was set  
22 by the Public Service Commission, which is essentially a Board  
23 that was supposed to be looking at utility rates. It had the  
24 additional function of setting piloting fees. Those fees were  
25 contested multiple times, but the most recent one that came out of

1 the Lake Charles -- contesting of the fees, the Lake Charles  
2 pilots. There was a hearing office that worked for the Public  
3 Service Commission that reached the conclusion that the fees were  
4 not fair, and the issue was brought by, I think, several oil  
5 refineries in that area who contested that the fees were being  
6 charged. And that go all the way up to the Supreme Court, and  
7 apparently the very fact that that case might become precedent  
8 allowed this legislation to be passed, where the jurisdiction was  
9 removed from the Public Service Commission and put into this new  
10 Fee Commission Board. They set up a separate Oversight Board for  
11 disciplinary issues. The Board is comprised of 11 members  
12 appointed by the Governor, and there's one pilot from the Board of  
13 Examiners for the Board of Pilots, a member from the Board of  
14 River Pilot -- another member from the -- no, the Board of River  
15 Pilots for the Port of Commissions of New Orleans, a member from  
16 the New Orleans and Baton Rouge Steamship Pilots Association,  
17 another member from the Board of River Port Pilots Commission. I  
18 think it's referred to in the statute, I believe, refers to the  
19 Port of Lake Charles. Two members from a list of industry  
20 associations, two members from a list of four nominated by the  
21 Louisiana Ports Association, three former Judges who've served on  
22 the Louisiana Supreme Court, Louisiana Appellate Court, Louisiana  
23 District Court.

24           So at this point, as I said, we only have two Judges  
25 serving, who can only be removed -- their terms shall be

1 concurrent with that of the Governor. Any member appointed by the  
2 Governor may serve more than one consecutive term, and we serve  
3 without compensation, so --

4 MR. JONES: Not a lot of compensation going around.

5 MR. ACCARDO: It's not an issue. We serve specific  
6 economic interests. I serve a specific interest, and so do the  
7 industry-appointed members, and so do the pilots. So the facts  
8 are, too, of course, once we can (indiscernible) we can wind up in  
9 court. And that was, I believe, speculating, I believe that was  
10 one of the background issues, as I mentioned earlier, as to why  
11 the domicile was chosen by the Board to be here. There was a  
12 great deal of dispute in the Legislature as to where the domicile  
13 the Fee Commission and the Board of Review should be, and they  
14 left it up to the Boards to decide. The Fee Commission decided to  
15 be in Baton Rouge, and the Board here decided to be in New  
16 Orleans.

17 MR. JONES: And if an accident came to you after the  
18 examiners, and you disagreed with the examiners, do the examiners  
19 have the right to appeal that back, or --

20 MR. ACCARDO: I think -- frankly, I think once they make  
21 a decision --

22 MR. JONES: Would you go to the Governor?

23 (Pause.)

24 MR. ACCARDO: We have received reports relative to all  
25 disciplinary adjudications. We have the right to, once we review

1 it, not to take any action. We can remand the matter back to the  
2 Board of Commissioners, or our examiners can take the action. We  
3 can receive appeals from any party to a formal disciplinary  
4 proceeding before the Board of Examiners. That means that if a  
5 ship owner filed a complaint, the pilot's disciplined, then either  
6 party can appeal, take an appeal to us. We can receive sworn  
7 complaints against any pilot, from any source, a direct complaint,  
8 or actions taken by the pilot while performing his duty. We may  
9 conduct an investigation; we don't have to. We can refer the  
10 matter back to the Board Commissioner's for examiners -- for  
11 investigation, or we can conduct hearings pursuant to an  
12 administrative procedures act, and the rules adopted by the Board.  
13 That's why it was important that we adopt the rules. We can take  
14 -- we have right, we would have the right to acquit the pilot,  
15 impose sanctions against the pilot, or remand -- reprimand the  
16 pilot, order the pilot to participate in a remedial training,  
17 impose a probationary period, impose a fine not to exceed \$10,000,  
18 order the pilot to pay the cost of the hearing, inclusive of  
19 attorneys fees, or recommend to the Governor that the pilot's  
20 commission be suspended or revoked. The Governor's the only one  
21 that can do that. And the Board shall have the authority to  
22 suspend the pilot's commission in the event of an emergency,  
23 pursuant to procedures.

24 So there are a number of things we can do.

25 MR. JONES: It seems like you've covered it, Joe, and I

1 appreciate your time. It seems we keep running back to the issue  
2 of funding and financing.

3 MR. ACCARDO: Do you need any of this information? Do  
4 you need the Attorney General's opinion on the Fee Commission, the  
5 --

6 MR. JONES: I wouldn't mind getting copies of that. Do  
7 you have anything further to say, or is that pretty much --

8 MR. ACCARDO: No, except, do you guys have money you can  
9 give us to fund our Board?

10 (Laughter.)

11 MR. JONES: I think that's already -- that question's  
12 already been asked of the other investigators, but no.

13 (Laughter.)

14 MR. JONES: I think we're pretty strapped, too.

15 MR. ACCARDO: You can -- you know, I'll certainly make  
16 available, this is the statute on both Boards. This is a summary  
17 of -- at the top is a summary of -- you can have that, you can  
18 have this amended letter of advice. It's amended because the  
19 person said no.

20 MR. JONES: I'm going to stop the interview here.

21 (Whereupon, at 10:25, the interview in the above-  
22 entitled matter was closed.)

23

24

25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Interview of Joe Accardo

DOCKET NUMBER: DCA-07-FM-013

PLACE: New Orleans, Louisiana

DATE: October 9, 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.

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Matt Dycus  
Transcriber