

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

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INTERVIEW OF
JUDGE RICHARD J. GANUCHEAU
and
CAPTAIN BRAD PALMER

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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 11:00 a.m.

BEFORE: ROB JONES
National Transportation Safety Board

APPEARANCES:

ROB JONES
Marine Investigator
National Transportation Safety Board

I N T E R V I E W

(11:00 a.m.)

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3 MR. JONES: This is Rob Jones, Marine Investigator with
4 the NTSB. It's October 9th, it's approximately 11:00, and we're
5 conducting an interview with Judge Richard Ganucheau and Captain
6 Brad Palmer. Judge, if you could just give me an interview, or a
7 background as to why the Board of Review of pilots was set up in
8 the first place? The quickest version you can would be
9 beneficial, just because you've -- I know you've already gone over
10 some of this incident. And why, what brought about this Board, if
11 there were already a Board of Examiners to oversee the pilots due
12 to incidents, what was called for for this Board to be put into
13 place?

14 JUDGE GANUCHEAU: Well, there are some other people who
15 are much more familiar with that history than I am. I became
16 familiar with the history just through talking to people who'd
17 been involved in the enactment of the bill that set up this Board.
18 The bill was passed in the 2004 session of the Louisiana
19 Legislature, and it became effective -- it became law in Louisiana
20 in August of 2004. What preceded it, based on the information I
21 have, is that there was some criticism of the four pilot groups
22 that operate in south Louisiana. One pilot group operates out of
23 the Calcasieu River that Captain Palmer told you about. And as
24 for the Mississippi River, there are three pilot groups that
25 operate. One pilot group takes the vessel from offshore through

1 the Mississippi River delta, and they're called bar pilots. And
2 there's a group of pilots that take it from around Venice,
3 Louisiana, north to New Orleans, and they're called the Crescent
4 River Pilots. And the third group takes ships, vessels from New
5 Orleans to Baton Rouge, Louisiana, and they're called New Orleans
6 - Baton Rouge Pilots Association, NOBRA. And there'd been some
7 criticism about the situation where those pilot groups, within the
8 group, did the discipline of any pilots that were accused of any
9 wrong-doing or negligence or omissions, and there was some
10 criticism that, and I think it probably came from industry, that
11 the pilot groups weren't sufficiently thorough in their
12 investigation, and in many cases were too lenient with regard to
13 discipline administered to pilots who were guilty of errors,
14 omissions, or negligence, or worse, substance abuse, things like
15 that.

16 And at the same time, there was an issue about the
17 fixing of the fees that shipping pays for the services of pilots,
18 and that issue was under the jurisdiction of a body created by the
19 Legislature called the Louisiana Public Service Commission. The
20 members of the Louisiana Public Service Commission are elected
21 officials in Louisiana; therefore, there was the suggestion that
22 there were a lot of politics involved, and a lot of political
23 benefits flowing through Public Service Commission members from
24 the pilot associations. I don't have first-hand knowledge of any
25 of that, except that I believe that's the background upon which

1 this Act was passed, that created the Board that I chair. There
2 was also created, at the same time, an organization called the
3 Pilot Fee Commission. The jurisdiction to set rates or tariffs
4 for shipping was transferred from the Public Service Commission to
5 the Pilot Fee Commission. And as I understand that law, and
6 Captain Palmer probably knows better than I do, whatever increase
7 or whatever expenses the pilots incur that they want to pass on to
8 the shipping interest have to be approved by this Fee Commission.

9 So in effect, the Fee Commission has taken the place of
10 the Louisiana Public Service Commission in fixing the fees imposed
11 on shipping for the services of the pilots, and the pilots are
12 entitled to collect from shipping some other expenses that pilots
13 incur. I don't have an exhaustive list, but there's a list
14 probably in the statute that created the Fee Commission that
15 allows the Fee Commission to tax shipping to reimburse the pilot
16 associations for some expenses.

17 I hear, not from first-hand knowledge, that at some time
18 in the past, the Public Service Commission has reimbursed pilots
19 associations for expenses of lobbying and political contributions,
20 and I think that was one of the issues that brought the matter to
21 a head in the Louisiana Legislature, that they wanted to eliminate
22 shipping reimbursing pilots for political contributions and
23 lobbying work. But I don't have any first-hand knowledge of that.
24 I get this from discussions I've had with people who were
25 involved.

1 The bill that created the River Pilot Review Board that
2 I chair was designed to set up an agency to oversee the actions of
3 these pilot groups when there were disciplinary issues taken up by
4 the pilot groups of their own members, and the statute that
5 created the Board sets out what the pilot groups must do, and what
6 this Pilot Review Board that I chair must do. And it starts with
7 the receipt by the Pilot Review Board of reports of incidents on
8 the Calcasieu and the Mississippi River. We're required to
9 receive those and review them, and we go further depending on what
10 happens. But that's basically the background, as I appreciate it.

11 The Pilot Fee Commission is up and operating because
12 they had the ability to impose tariffs to fund themselves, as well
13 as to set the tariffs on the pilots organizations. The statute
14 that created the Pilot Review Board provides no funding, and it
15 provides that the Board is "required to pay its operating expenses
16 from self-generated funds or other funds made available to the
17 Board for that purpose," and I'm quoting from the statute. We've
18 not been able to generate any funds. In the past few months I've
19 made an attempt, while the Louisiana Legislature was in session,
20 to get our budget request included in a budget bill in the
21 Legislature, unsuccessfully. We've made an attempt to have the
22 Pilot Fee Commission levy a tariff on shipping to fund our budget,
23 and we specifically requested a fee of \$25.50 per vessel entering
24 the Mississippi River or the Calcasieu River, and it's only per
25 vessel. It's not \$25.50 in and \$25.50 out, it's \$25.50 per vessel

1 entering the river. The Pilot Fee Commission docketed that, and
2 we had a hearing, and the result was that the matter was tabled.
3 No action was taken. I intend to attempt to revive that issue and
4 bring it before them a second time. One of the problems I see
5 with the Pilot Fee Commission, just as an observer, is that there
6 are 11 members of that Commission, four from industry, four from
7 pilots groups, and three independent members, as the statute talks
8 about, that are not associated with the shipping industry or the
9 pilot industry. And for me, I understand that when they heard our
10 request for the tariff, the four members from the pilot groups and
11 the four members from the industry were present, but only one
12 independent member. The statute requires a majority vote of the
13 Board to take any action. My experience has been that the pilots
14 and the industry people vote opposite each other on nearly every
15 issue, so in order to get a majority of 11, you need at least six
16 votes to pass anything. Well, if there's only one member, one
17 independent member present, and the four pilot members and the
18 four industry members vote opposite each other, you can't get
19 anything done at that meeting for lack of a quorum. They get a
20 quorum of the Board by getting six people at the meeting -- or
21 nine people at the meeting, four pilots and four industry people,
22 and one independent. So my attempt is going to be, if we revive
23 this request for the tariffs to fund my Board, is to ask the
24 chairman of the Pilot Fee Commission to please set the meeting far
25 enough in the future so that we can have a fair chance of getting

1 at least two independent members at the meeting, with the hope
2 that we can get a six-person vote on our proposal.

3 That's my personal observation, and I only attended one
4 meeting of the Pilot Fee Commission, and there were nine members
5 present: four from industry, four from the pilots groups, and one
6 independent, and every issue I saw voted on was a 5-4 vote. The
7 statute requires a majority of the Board, or of the Commission, to
8 do anything. So, they couldn't accomplish anything with the 4-4
9 split with one independent. That's a fundamental sketch of the
10 history of our attempts at funding. There's been some talk about
11 that Pilot Fee Commission issuing a loan to the Pilot Review
12 Board, and my observation, when that was suggested during a recess
13 at this meeting of the Fee Commission, was that if there was an
14 understanding that the recipient of the loan had no ability to
15 repay it, I would be in favor of it, but I would have to make that
16 point to whoever was issuing the loan to the Pilot Review Board
17 that we have no funds to which to repay it, and we have no
18 prospects of funds -- but that isn't going anywhere. We're still,
19 at this point, unfunded. This law firm has been doing work on
20 behalf of the Board with the hope that they will get paid, and
21 we're very grateful that they are, in effect, carrying us up to
22 this point.

23 MR. JONES: The Fee Commission, is that how the local
24 examiner boards get their money to sit on in review of an
25 incident, like NOBRA, the NOBRA examiner boards?

1 JUDGE GANUCHEAU: That's what I understand. The Pilot
2 Fee Commission, as I understand it, and please correct me,
3 Captain, if I am wrong, the Pilot Fee Commission sets the tariff
4 on the ships that use the pilots' services. And those monies go
5 into a fund out of which the pilots' salaries, expenses, et cetera
6 are paid. And I don't know the break-up, if a ship comes into the
7 Mississippi River and ultimately goes to Baton Rouge, I would
8 suppose they pay three different tariffs, and the tariff that's
9 assessed for the bar pilots, which is the most seaward pilot,
10 would go to that pilot group. The tariff that's assessed for the
11 trip from the mouth of the river to New Orleans would go to that
12 pilot group, and the tariff assessed for the trip from New Orleans
13 to Baton Rouge would go to that pilots group.

14 CAPTAIN PALMER: The answer to your question is, that is
15 correct, and it's thrown into normal operating expenses. They're
16 already being compensated for those normal operating expenses, but
17 this is a new Board, a new entity that's coming onboard, and the
18 feeling, though, it was appropriate to go directly to the Fee
19 Commission, because the statute specifically says that the new Fee
20 Commission has exclusive rights to set fees on shipping in the
21 State of Louisiana.

22 MR. JONES: Well, could a portion of that amount -- and
23 I'm not trying to solve this, that's not my place -- could a
24 portion of that amount go to your Board?

25 CAPTAIN PALMER: Yes.

1 JUDGE GANUCHEAU: We sought and received an opinion from
2 the Attorney General of Louisiana, and the specific request was
3 whether -- was his opinion as to whether or not the Fee Commission
4 had the right and the power to assess a tariff to fund the Pilot
5 Review Board, and his opinion was in the affirmative, that they in
6 fact, the Fee Commission in fact has the power to levy a tariff on
7 shipping to fund the Pilot Review Board. And we got that before
8 we made the request, so with the request to the Fee Commission, we
9 sent the Attorney General's opinion, that the Fee Commission did
10 in fact have the authority to levy that tariff to fund the Pilot
11 Review Board.

12 CAPTAIN PALMER: And just our general feeling is that
13 the original concept and those legislators that set up these two
14 new boards, specifically the State Oversight Board, that there
15 would be a fee set on shipping, obviously. And even to the point
16 where some of this was presented to some of those legislators
17 about how State Oversight Boards are funded in other states. For
18 example, the San Francisco State Oversight Board is funded by
19 percentage of the total tariff that's charged to a ship, all
20 right? That's San Francisco. Connecticut, same sort of thing.
21 They get charged by a licensing fee. Florida, it's a percentage
22 of the tariff of the ship, and I'll just give you this just as a
23 reference of how other state Boards are paid.

24 MR. JONES: All right, thank you. Let's take the issue
25 of funding off the table. If you did have the funding, are the --

1 is the Board in place with the members, do you feel, to do an
2 adequate oversight job of the task that you're there to do?

3 JUDGE GANUCHEAU: Yes. Currently the Board is one
4 independent member short of what's required under the statute.
5 There are four members of the Board from industry, four members
6 from the pilot groups. There are only two former Judges on the
7 Board at this point; one resigned, and so that gives us a Board of
8 10 rather than 11. I have written to the Governor of Louisiana
9 when that member resigned; in fact, he wrote to the Governor
10 resigning his position, and I requested a replacement months ago,
11 and that member has not been replaced. He was a retired Judge
12 from the northern part of Louisiana, Shreveport, Louisiana, but to
13 answer your question, we have a 10-member Board currently, and we
14 get 100% attendance from the pilot members, and we get 100%
15 attendance from the industry members, and I am there for every
16 meeting because I call the meetings and I chair the meetings.
17 There's another retired Judge on the board, who is elderly and
18 ill, and has not been in attendance at the last couple of
19 meetings. I've done nothing about that. I've not informed the
20 Governor that he is elderly and, in my view, unable to perform his
21 duties, because nothing's happening at this point.

22 But, to answer your question, we could convene a Board
23 meeting, and I can expect to have all of the pilot members and all
24 of the industry members there, and I'm there, so we have nine
25 members, which is a quorum of the Board. Now, can we get six

1 votes to do anything? I don't know. But we haven't gotten to
2 that stalemate up to this point. We've done of the things that
3 the statute requires that we do, and some of it has been done with
4 the assistance of this law firm, which has not been paid. Some of
5 it has been done with the assistance of lawyers paid by the --
6 which group?

7 CAPTAIN PALMER: NOBRA pilots. Oh, no, no, I'm sorry.
8 The bar pilots.

9 JUDGE GANUCHEAU: The bar pilot group's lawyers helped
10 the Board draft the regulations that we were required to adopt and
11 promulgate. Is that a copy --

12 CAPTAIN PALMER: It is, sir. That is the latest copy
13 that I have, draft 13. We haven't approved these rules as of yet,
14 have we?

15 JUDGE GANUCHEAU: We have. And we sent them up

16 CAPTAIN PALMER: All right.

17 JUDGE GANUCHEAU: Anyway, we've adopted rules and
18 regulations as the statute requires us to do, but Louisiana law
19 requires that we promulgate these rules before they become --
20 before they have the force of law. That requires some
21 advertising, and that requires distribution of the rules to some
22 groups and organizations, and a comment period, and a hearing.
23 Well, we have no funds to advertise. We have no funds to host an
24 open comment period, or have a hearing. The bar pilot group has,
25 in effect, funded the legal cost and the other cost of preparing

1 these regulations. The Board considered various drafts. We had
2 some discussions, we had several meetings on it, we made some
3 changes, and we finally adopted a final version, which we have.
4 But they're not effective, because we haven't followed the
5 Louisiana law that requires promulgation and distribution of them,
6 because we don't have the funds to do that. So we've done that.

7 The statute also requires that we request and receive
8 from every pilot group incident reports of any incident involving
9 a state-licensed pilot. And those incidents include collisions
10 with ships and stationary objects, they include groundings, they
11 include --

12 CAPTAIN PALMER: Collision --

13 JUDGE GANUCHEAU: -- a few other things, collisions
14 between two ships, and groundings, and collisions with stationary
15 objects on shore. I believe that covers it. So we get those from
16 the pilot groups, and they are sent to this law firm, care of my
17 Board, under my Board's attention, and Mr. Barbierre (phonetic
18 sp.), who you've met, is designated by this law firm to collect
19 those and file them. So we're doing that.

20 We're required under the statute to keep a file on every
21 licensed pilot with regard to the incidents in which that pilot is
22 involved, when we receive a report. This law firm is doing that
23 for us as a service. There was a serious incident in the
24 Mississippi River involving motor vessel K-i-t-i-o-n, which is
25 being investigated now. We are required to receive from the pilot

1 group which licensed Captain Strahan, Captain J. Strahan, to
2 receive their report of disciplinary action taken in their
3 investigation, and under the statute we have the right to receive
4 it, review it, and take other actions if we deem appropriate with
5 regard to that incident and their investigation of it, and their
6 discipline. We also have the right to investigate the incident if
7 we choose to, but of course, we can't do that for lack of funding.

8 So, we're doing some of the things that the statute
9 requires. We can't do them all, but we're doing what we can with
10 the help of some of the pilot groups and their lawyers, and the
11 assistance of this law firm, who's helping us with some of the
12 filing and other requirements with the hope that we can pay them
13 some time in the future.

14 MR. JONES: You mentioned the Kition, which actually
15 precipitated all of this on my part. If and when you receive the
16 report from the Kition, from the Oversight Board, you'll read it,
17 and if you want to take any action on it, is there any avenue for
18 you to do that, or do you just respond back to the Board of
19 Examiners for NOBRA?

20 CAPTAIN PALMER: Well, part of our Board is actually to,
21 if we read it and our Board members feel as though there's a
22 particular interest, that we need to look into it, that is the
23 function of the State Oversight Board, is to do exactly that.

24 MR. JONES: Now one of the things, Judge, that you had
25 said, when you get together it's kind of a 4-4 split, industry-

1 pilots, and I know that's been about other issues which regards
2 the meetings, fundings. With an actual accident like this, do you
3 have corroboration from the two groups? Is there a good give and
4 take between industry and the pilots?

5 JUDGE GANUCHEAU: We've not had any serious divisions on
6 the Review Board between the industry groups and the pilot groups
7 to date. What would happen if we considered the report and the
8 disciplinary action taken by the pilot group to which Captain
9 Strahan belongs, and my Board reviews it, and has to make a
10 decision to either accept what that pilot group has done and
11 approve it tacitly, or take some further action either to remand
12 it for further action by that pilot board or have our own Board
13 conduct an investigation and/or a hearing, I can't predict how
14 that -- how the vote would fall on that.

15 MR. JONES: Right, until you see it.

16 JUDGE GANUCHEAU: But to date, we've not had any serious
17 divisions between the pilot groups and the industry groups, with
18 only one exception. We were presented with a bill by the lawyers
19 who prepared these regulations, and it was suggested by the pilot
20 -- the Review Board member pilot of the Bar Pilots Associations
21 that those lawyer fees be included in our budget, so that we could
22 request funding for that, and in effect pay that. The pilots
23 voted yay, the industry voted nay, and it was a 4-4, and there was
24 only one independent person at the meeting, yours truly, so it did
25 not pass. We did not take any action. That's the only serious

1 division we've had. When things come up in the future, I think
2 it'll be a case-by-case basis as to whether we have cooperation
3 between the pilot groups and the industry groups, or opposition.
4 And that's the function of the three independent members, to allow
5 a quorum of the Board to vote one way or the other. As it stands
6 now, as a practical matter, if I called a meeting of the Board and
7 got 100% attendance from the pilot groups and 100% attendance from
8 the industry groups, I'd be the only other person in attendance.
9 Justice Ortique, who's a member of the Board, is ill and old and
10 is not able to attend. So, if I needed a four-person (sic) vote
11 to pass something, and I had a 4-4 split, and only me, I can't do
12 anything, even though I've asked Governor Blanco to replace Judge
13 Scott, I think his name was --

14 CAPTAIN PALMER: Yes, sir.

15 JUDGE GANUCHEAU: -- who was appointed and resigned, the
16 Governor's office has taken no action to appoint -- to replace
17 that member. I have not taken any action with regard to Justice
18 Ortique, the third independent member, because of his age, and
19 he's infirmed. I may do that at some point; I haven't done it
20 yet. So, the prospects are, if there's a hotly contested issue, I
21 suspect we'll get a 4-4 vote, and I'll have to vote one way or the
22 other, but that would only make it a 5-4 vote, and not a quorum,
23 which the statute requires. So, in that regard, our hands may be
24 tied, but that's a prediction, and I hope it doesn't come to pass,
25 but it's a possibility.

1 CAPTAIN PALMER: And I would agree with the Judge that
2 it doesn't appear that this State Oversight Board is that
3 adversarial, that we potentially see a problem. Except when it
4 comes to money, maybe. It's just going to be a money issue, but I
5 think the people who sit on that Board are fair and reasonable,
6 and when it gets to debating a potential incident, what's
7 appropriate and what's not appropriate.

8 MR. JONES: And Captain Palmer, let me just get this
9 straight. You -- the Pilot Board Review members are also the
10 individual pilot -- you're on the Examining Board for, like, Lake
11 Charles?

12 CAPTAIN PALMER: That's correct.

13 MR. JONES: So it's not --

14 CAPTAIN PALMER: There's one member of each of those
15 independent boards that we discussed earlier.

16 MR. JONES: So you're sharing both hats?

17 CAPTAIN PALMER: Yes.

18 MR. JONES: It's not a different pilot.

19 CAPTAIN PALMER: It's not a different pilot. And that's
20 to add some form of continuity to that Board, as far as
21 information transferred between the local Board, so to speak, and
22 the State Oversight Board.

23 MR. JONES: All right. So you, in a sense, if there was
24 an accident in Lake Charles, sit in judgment of a pilot that was
25 engaged in that accident, and then once the Lake Charles Board of

1 Examiners has made their report, and then it comes to the Review
2 Board, now you've got in-house an 11-member which you're now a
3 part of, and you're bringing the knowledge you have from that to
4 those other 10 members?

5 CAPTAIN PALMER: That is correct, sir. Yes. And I just
6 drew that up just so you understand the difference between the
7 Boards. You have the Bar Pilots, the Crescent Pilots, and the
8 NOBRA pilots, from south to north. Their local Pilot Commissioner
9 Examiners is three pilots that's sitting on that board, for each
10 one of these groups. Now, Lake Charles is a little bit different.
11 You have one pilot that sits on the local Pilot Commissioner
12 Examiners, with one local businessman and the president of the
13 Port Board. So, you don't have three pilots.

14 MR. JONES: So there's a little more independence here
15 in Lake Charles?

16 CAPTAIN PALMER: A little bit more independence maybe in
17 Lake Charles, okay. But then the State Oversight Board, as you
18 can see, is to oversee the actions of each one of these groups.

19 MR. JONES: Yeah, I --

20 JUDGE GANUCHEAU: Well, let me clear something for my
21 own information, if I may.

22 MR. JONES: I had a little time this morning, so I was
23 just showing Captain Palmer and the Judge this little flowchart.
24 I didn't have all the denunciation of Lake Charles, I just put two
25 river pilots.

1 CAPTAIN PALMER: Now, see, Lake Charles is wrong. It's
2 one pilot --

3 MR. JONES: Right, and I'll fix that then.

4 CAPTAIN PALMER: Right. It's one local businessman --

5 JUDGE GANUCHEAU: And in the instance of a hearing by
6 your Pilot Board, Captain Palmer --

7 CAPTAIN PALMER: Yes, sir?

8 JUDGE GANUCHEAU: -- how is the pilot member of that
9 three-person board chosen? Is it a different pilot for each
10 incident, or is it one pilot designated to sit on that Review
11 Board?

12 CAPTAIN PALMER: I am voted by the Pilots Association
13 itself, by the Lake Charles Pilots, to represent the pilots on the
14 local Board, and then I am commissioned by the Governor to sit on
15 that Board.

16 JUDGE GANUCHEAU: So you are the designee of the Lake
17 Charles Pilot group to sit on a disciplinary hearing board --

18 CAPTAIN PALMER: That's correct.

19 JUDGE GANUCHEAU: -- and you would sit on it for the
20 term of your appointment as a member of that disciplinary board?

21 CAPTAIN PALMER: Yes, until they -- elections are every
22 March -- until they determine that they don't want me to represent
23 them anymore.

24 JUDGE GANUCHEAU: It's my understanding, with regard to
25 the incident involving Captain Strahan and K-i-t-i-o-n --

1 CAPTAIN PALMER: Kition.

2 JUDGE GANUCHEAU: -- Kition, that the hearing's already
3 been conducted, and I have the benefit of a copy of their findings
4 of fact, and I got that because it was suggested to me that I
5 would be interviewed by somebody from the local newspaper about
6 this after the hearing was over, so I got from their lawyer's
7 office a copy of it, but I don't know that this constitutes a
8 report of their disciplinary proceedings. Captain Palmer hasn't
9 seen it; I don't know if you've seen it --

10 MR. JONES: I have seen it.

11 JUDGE GANUCHEAU: You have? Yeah. I expect that my
12 Board will receive a lot more from that pilot group as a report of
13 this hearing. I think we're going to get a complete transcript of
14 the testimony, and we're going to get a copy of all exhibits, so
15 we're going to get a lot more than what I have here, which is a
16 five- or six-page document entitled "Findings of Fact." But it
17 goes much further than finding facts --

18 MR. JONES: Recommendations.

19 JUDGE GANUCHEAU: -- it -- well --

20 MR. JONES: Training.

21 CAPTAIN PALMER: It's more like a narrative than
22 findings of fact.

23 JUDGE GANUCHEAU: Yes, but the last two paragraphs are
24 what they have ordered this pilot to undergo, and -- "over the
25 course of a three" -- it begins with paragraph 32(a) -- "over the

1 course of a three-week period beginning October 4, 2007, Captain
2 Strahan will begin a program to evaluate his close-quarters
3 maneuvering skills for docking, undocking, anchoring, un-
4 anchoring, and buoy-assisted maneuvering." It goes on for several
5 more lines, and then there's a paragraph 32(b), which goes on to
6 describe other actions and other training and review that this
7 pilot will have to undergo. It doesn't state anywhere in here
8 that this is a consent -- a report of a consent discipline. This
9 seems to be only a finding of fact and, although it's not labeled
10 "conclusions," it seems to be that the Board has reached some
11 conclusions that they set out in paragraph 32.

12 So, with regard to that incident, I think my Board will
13 get a lot more than I've already gotten, and it would be my
14 intention to allow all the other members of the Pilot Review Board
15 to familiarize themselves with the information that my Board
16 receives, and then have a meeting to consider what, if anything,
17 the Pilot Review Board wants to do with regard to that incident.
18 That's in the future. This hearing only occurred --

19 CAPTAIN PALMER: This last week.

20 JUDGE GANUCHEAU: -- a week ago, this last October 3rd.

21 CAPTAIN PALMER: Yeah, when an incident like this would
22 ever come before our Board, there's a lot of things we would,
23 obviously, want to know. You know, we'd want to see the very
24 simple things like the drug-testing analysis. What's his history,
25 training, educational level, dah-dah-dah-dah-dah? You know,

1 there's a tremendous, a lot of information, I think, that I think
2 this State Oversight Board would want to see.

3 JUDGE GANUCHEAU: The reason I bring that up is, that in
4 the event my Board votes -- at least six of my Board votes to do
5 something other than just receive this, review it, and accept it,
6 then we've got no ability to do anything.

7 MR. JONES: Right.

8 JUDGE GANUCHEAU: If we convene a hearing, we need a
9 court reporter to take all the testimony. We may decide we need
10 counsel present. We may decide we need to require, or engage the
11 services of, an expert to give us an unbiased opinion of the cause
12 and the culpability with regard to this incident, none of which we
13 can do. And that's one of the requirements of the Board under the
14 statute, but we just can't do it because we don't have any
15 funding.

16 MR. JONES: Under the rules, also, with this -- if this
17 is the final finding from the NOBRA Board of Examiners on that
18 pilot, he can appeal to you, to the Oversight Board --

19 JUDGE GANUCHEAU: Yes.

20 CAPTAIN PALMER: That's correct.

21 MR. JONES: -- and say, "This is unfair," or --

22 JUDGE GANUCHEAU: Yes. And the procedure would be the
23 same. He's entitled to a hearing. I'm sure he's entitled to
24 bring counsel and call witnesses, and this Board would need to --
25 just thinking about the practicalities -- a site for the hearing,

1 at least one court reporter, and we may want to have counsel
2 present to advise the Board on points of law. And, the other
3 problem we face is that the regulations that we have adopted deal,
4 in great deal, with the procedure of a hearing of that sort, which
5 are not effective at this point. So, there may be a vacuum there
6 with regard to the rules of procedure if an appeal is filed and
7 does occur. And anyone's who's a party to the appeal needs to
8 know what the rules, the ground rules, are, and the procedural
9 rules are. We've adopted them, but we were not able to promulgate
10 them for lack of funding, so technically they're not in force. I
11 don't know what problems that might present if we get to a hearing
12 stage, but that's a potential problem.

13 MR. JONES: So to this point, you've -- any incidents
14 that have happened on the rivers between the four pilot
15 organizations, you've just been gathering the data, or the
16 reports, receiving the reports?

17 JUDGE GANUCHEAU: We require each pilot group to send me
18 and, I'm not sure about this, but at one point they were sending
19 them to all of the Board members, a copy of a report of any
20 incident that occurred on the river. And the ones that were
21 coming to me as Chairman, I collected at my home, because that's
22 where they were coming, because we had no office, and when this
23 law firm agreed to represent us and do the functions of filing, we
24 started directing them to the law firm here. So, they come to the
25 Board addressed to this law office address, and they are collected

1 and filed by Mr. Barbierre for the Board.

2 MR. JONES: But no action on any reports you've received
3 has been taken? You just read --

4 JUDGE GANUCHEAU: By my Board, no.

5 MR. JONES: -- so it's not agreement, not disagreement,
6 or not, you know further review?

7 JUDGE GANUCHEAU: No, we have no ability to do any of
8 those things, even though the statute requires that we receive
9 them and review them. And I think the appropriate action by my
10 Board is that, every report received after the last meeting be
11 reviewed at the next meeting, and a vote be taken, do we want to
12 do any more with regard to this incident? Do we want to remand
13 for an investigation? Do we want to require a hearing? But we've
14 not been able to do any of those things for the reasons I've
15 talked about.

16 CAPTAIN PALMER: And when we say that, it sounds as
17 though there's absolutely no oversight in the State of Louisiana,
18 which is not true. If those other Boards are doing their job,
19 then we don't really need to be here. But there is oversight. I
20 know that there's pilots who been reprimanded in Crescent River
21 and Bar Pilots for violations, and have been -- even had their
22 commissions taken away. So, there is oversight, it's just that we
23 haven't had the opportunity to see what's -- individually, what's
24 happened.

25 MR. JONES: I can understand that there is the

1 oversight, but somewhere along the lines here, there was the
2 desire in the State of Louisiana to have more oversight, and that,
3 again, I don't know -- we're just beating around the bush with
4 regards to -- it's just where, you know, how do you perform?

5 CAPTAIN PALMER: Well, my personal feeling is that as
6 soon as the Judge gets this re-presented to the Fee Commission, we
7 will get funding. And the next meeting is sometime in the first
8 week of November --

9 JUDGE GANUCHEAU: Of the Fee Commission?

10 CAPTAIN PALMER: Yes, sir. I made that call yesterday,
11 and they're expecting your call.

12 JUDGE GANUCHEAU: Excuse me. Did you speak to the
13 Chairman, or the administrator?

14 CAPTAIN PALMER: I spoke with Captain Miller, who spoke
15 with A.J. Gibbs, who wants to talk to you in regards to making the
16 motion, because of the legalities. And you can't make the motion
17 to get on the agenda, they need to -- and I suspect that we're
18 going to get the funding.

19 MR. JONES: One of the things that we look at, and again
20 I wasn't the investigator on the Kition, and I would reserve
21 comment on the little bit of the facts of findings I've seen, just
22 because I don't know all the facts of the case, but the -- you
23 know, what the Board will strive to do is to try to -- if they can
24 find a way to make a recommendation, in their eyes, that they see
25 would help the situation, they'd have -- they'd make that

1 recommendation at the end of the report, along with the facts, the
2 analysis, the conclusions, and probable cause. Who would we, in
3 your eyes, right now, make that recommendation to?

4 CAPTAIN PALMER: Presently, the only one you can make --
5 we would surely like to get a copy of it. We might not be able to
6 take any action, but those recommendations should surely go to us.

7 JUDGE GANUCHEAU: When you say recommendations, you mean
8 the Oversight Board?

9 MR. JONES: Right.

10 JUDGE GANUCHEAU: I agree with Captain Palmer. I think
11 your recommendations ought to go to the pilot group, and it's the
12 NOBRA pilot group that this man is a member of. It should go to
13 them, and since my Board has oversight, we should get a copy of
14 it, but I would also suggest that you send that recommendation to
15 the State Capitol in Baton Rouge, Department of Transportation and
16 Development in Baton Rouge, and maybe the Governor's Executive
17 Counsel. Because if the report comes to us, it may not get a lot
18 of attention in Baton Rouge, but we're required to make an annual
19 report to the -- let me get the title for you --

20 MR. JONES: And the Governor is the only one who can
21 grant the license, right?

22 JUDGE GANUCHEAU: The Governor licenses pilots, and only
23 the Governor can revoke a license. My Board has no authority to
24 revoke a license. We can make a recommendation, but we cannot do
25 a revocation. The statute requires the Board to submit an annual

1 report to the General Counsel of the Department of Transportation
2 and Development on accident investigations, and we're required to
3 do that by the end of February for the previous year. So, we're
4 required to make a report to the State Department of
5 Transportation and Development, so I would think the
6 recommendations of the NTSB ought to go to that same official in
7 Louisiana.

8 MR. JONES: We really want them to go to the
9 organization that can oversee and enforce, or at least make sure
10 it's going to come to the --

11 JUDGE GANUCHEAU: Well, that's the local pilot group and
12 the Review Board. But if your recommendation goes so far as to
13 recommend any changes in the review and discipline process, that
14 would have to come from the individual pilot groups and has to be
15 approved by the Oversight Board. The Pilot Oversight Board has a
16 right to review and comment on, and maybe even remand any
17 regulations or rules adopted by the individual pilot groups. So
18 if the Lake Charles pilot group adopts rules, they've got to
19 submit them to the Review Board for approval, and we can comment
20 on them, or we can remand it. If we do nothing, they become
21 effective without any action, but we're required to be a part of
22 any, at least informed of any rule changes.

23 CAPTAIN PALMER: What I see, thinking kind out of the
24 box, what could potentially happen, we'd surely love to see your
25 recommendations go to those individual pilot groups so that they

1 could take action based on your recommendations as well. If they
2 don't, then surely it's our responsibility to take what's
3 appropriate action based on your findings, and at least evaluate
4 your findings and feel as though we think it's appropriate. One
5 of the reasons we'd like to make sure that you give it to that
6 local pilot group, so that they can do whatever they need to
7 reprimand, or take care of their pilot business there, so it never
8 comes to the State Board, because if that pilot thinks that he has
9 been fairly treated, he may be involved in litigation against
10 their local board. If we can allow the litigation to go there,
11 and never come to our Board, then we would much rather have that
12 than have the -- our State Oversight Board reprimand the pilot,
13 and then be involved in litigation when we -- not necessarily
14 should be. It should be left up to that local pilot group.

15 MR. JONES: Well, yeah, and I was just looking at the
16 chain of command, so to speak. One of the things we also look at
17 in the recommendations is, even though the accident might be
18 locally to the one pilot group, practices might be the same
19 throughout the other pilot groups, and not only just located in
20 Mississippi (sic). It could be along the Gulf, of all pilot
21 organizations, so in that case, the recommendation might go to any
22 similar type of operation. So, you know, it's not like we would
23 be sending it just to the one, per se, because that's where the
24 incident happened. But I was just, as far as, you know, who was
25 overseeing who with regards to the Board. If the Board was fully

1 functional, viable, funded, you know, where would our first
2 recommendation go? To the Pilot Oversight Board, to disseminate
3 it to the individual Boards, and then down to the training, and
4 the reprimand, or whatever.

5 JUDGE GANUCHEAU: We could do that, yeah.

6 MR. JONES: Yeah. Well, gentlemen, I don't know how
7 much clearer you could put it. If you have anything else to add,
8 I'm open.

9 JUDGE GANUCHEAU: Well, I want to make a point of this.
10 It's my understanding, and I have it on first-hand information,
11 that the opposition to our tariff request at the Fee Commission
12 comes from industry and the Louisiana Association of Business and
13 Industry. The Louisiana Association of Business and Industry has,
14 as I understand it --

15 MR. JONES: Don't they have two members on your Board?

16 JUDGE GANUCHEAU: The Governor has to appoint two
17 members chosen from a list of four persons nominated jointly by
18 the Louisiana Association of Business and Industry, the Louisiana
19 Chemical Association, the Louisiana Farm Bureau Foundation, and
20 Louisiana Mid-Continent Oil and Gas Association. There is at
21 least one member of my Board, a man named Bradley, who is employed
22 by the Louisiana Association of Business and Industry. He is, and
23 I don't know what his job is. Someone told me he's a lobbyist,
24 but I'm not absolutely sure of that, but he has told me, face-to-
25 face, "I have been instructed by the Louisiana Association of

1 Business and Industry to oppose any attempt to have a tariff
2 imposed upon shipping to fund the Pilot Oversight Board."

3 CAPTAIN PALMER: That was his quote.

4 JUDGE GANUCHEAU: So I know that the Louisiana
5 Association of Business and Industry opposes our attempts to get
6 funded by the tariff. I also know that the Louisiana Association
7 of Business and Industry has nominated persons who serve on the
8 Fee Commission. So, I extrapolate that people on the Fee
9 Commission, at least those who work for, or are controlled by the
10 Louisiana Association of Business and Industry, are going to
11 continue to oppose our request for that tariff. And I think
12 that's a pertinent observation because the industry people were a
13 big precipitating factor in the creation of this Pilot Review
14 Board. They wanted it in the name of improvement, or impartial
15 oversight of pilots. And for them to be a proponent of this
16 Oversight Board, but then an opponent of the shipping industry
17 paying for the Oversight Board, seems incongruous to me. And I've
18 suggested that to anybody who will listen to me, with the hope
19 that maybe someone can reach the Louisiana Association of Business
20 and Industry through its president, Dan Juneau, and have them back
21 off a little from that opposition, because in my view, our request
22 is akin to a user fee. The shipping industry uses the services of
23 the pilots. This Review Board is an independent Oversight Board
24 of those very same pilots. So, it's a required service, this
25 Oversight Board is a required service enacted by the Legislature,

1 and the idea that the users of the services of the Oversight Board
2 are against their members funding it seems incongruous to me. And
3 I haven't had an opportunity to tell Mr. Juneau that to his face.
4 I would hope that I get it at some point, but I haven't had it
5 yet. But I will, at first opportunity.

6 CAPTAIN PALMER: Along the same lines, that the
7 representative of LAMOGA, which is Louisiana Oil & Gas, is they're
8 -- the member that sits on the Fee Commission represents Citgo
9 Refining, and I don't understand as well because Citgo Refining is
10 a Venezuelan oil company that does business in the State of
11 Louisiana, that is also opposed to the funding of this State
12 Oversight Board. How can a Venezuelan-owned oil company make
13 recommendations on the state level on how we should conduct
14 business?

15 MR. JONES: I don't know, gentlemen. It's not falling
16 on deaf ears. We've heard it, we've heard the argument. I just
17 don't know how to --

18 CAPTAIN PALMER: And you hear constantly, even in the
19 local newspaper, "Well, we don't want to pay, because exorbitant
20 rates that are charged already by Louisiana pilots." I've heard
21 that time and time again. You see that in the newspaper. Well,
22 I've got a rate comparison here, okay? Right now, typical rate on
23 a large loaded tanker, the Lake Charles pilots -- I can't do the
24 Mississippi River pilots, but I'm just speaking for the Lake
25 Charles pilots -- we're 12 1/2% cheaper than Beaumont, okay?

1 We're only asking for \$25 per ship. We're 12 1/2% cheaper than
2 Beaumont, okay? We did this because -- Delaware River, where
3 Citgo, where they actually go, we're 79% cheaper than the Delaware
4 River.

5 JUDGE GANUCHEAU: So you're well below the usual charges
6 of the industry than other places than Louisiana.

7 CAPTAIN PALMER: Houston, 27% cheaper than Houston.

8 JUDGE GANUCHEAU: Anything you can do to help us to
9 drive that message home would be appreciated, because I'd
10 certainly like to get this Board funded. I feel remiss in that
11 I've taken on a job as Chairman, and I can't get this Board to do
12 what the statute requires that it does, and that's repugnant to
13 me. I'm a former Judge. The Legislature has expressed a will.
14 I've taken on the job of chairing this Board and can't do it, and
15 I'm frustrated, and I won't hide the fact that I've considered
16 resigning, but I don't consider myself a quitter. I'm going to
17 stick it out and see if I can get it done. After I get it done,
18 if I still have the negative feelings I had with regard to the Fee
19 Commission, I may resign at that point, but I want to see it
20 through, and try to get this Board funded, and at least get it
21 functioning. But it's been very frustrating, and at the beginning
22 of this process, the only way the Board functioned was through the
23 good offices of myself and my wife. I took the minutes, my wife
24 typed them. All of the correspondence was done out of my
25 residence with my personal equipment and funding for postage and

1 all, and it's been frustrating, so I hope it changes.

2 MR. JONES: Point well taken. All right, gentlemen,
3 I'll conclude the interview.

4 (Whereupon, at 11:50 a.m., the interview in the above-
5 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: Interview of Judge Richard J.
Ganucheau and Captain Brad Palmer

DOCKET NUMBER: DCA-07-FM-013

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.

Matt Dycus
Transcriber