

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

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In the matter of: *
*
PUBLIC HEARING IN CONNECTION WITH *
THE INVESTIGATION OF THE ALLISION * Docket No.: DCA-08-MM-004
OF THE M/V COSCO BUSAN WITH THE *
SAN FRANCISCO-OAKLAND BAY BRIDGE, *
NOVEMBER 7, 2007 *
*
* * * * *

NTSB Board Room and Conference Center
429 L'Enfant Plaza
Washington, D.C. 20024

Wednesday,
April 9, 2008

The above-entitled matter came on for hearing,
Pursuant to Notice at 8:30 a.m.

BEFORE: MARK ROSENKER, Chairman
JOSEPH OSTERMAN
DR. JACK SPENCER
ROBERT HENRY

APPEARANCES:

Technical Panel:

TOM ROTH-ROFFY
LARRY BOWLING
CAPTAIN ROB JONES
DR. BARRY STRAUCH
CRYSTAL THOMAS
PAUL STANCIL
BOB TRAINOR

PETER KNUDSON, Public Information Officer

Parties to the Hearing:

ROSS WHEATLEY, Chief of the Investigations
Division, Coast Guard
CAPTAIN MICHAEL WATSON, American Pilots Association
CAPTAIN RICK HOLLY, California Department of Fish and
Game, Office of Spill Prevention and Response
CAPTAIN NAGARAJAN M. SUBRAMANIAN (AGA), Fleet
Management, Limited
CAPTAIN PATRICK A. MOLONEY, Executive Director,
California Board of Pilot Commissioners
KNUTE MICHAEL MILLER, President, California Board of
Pilot Commissioners
CAPTAIN PETER McISAAC, President and Port Agent, San
Francisco Bar Pilots Association
MICHAEL HUGHES, Sperry Marine

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P R O C E E D I N G S

(Time Noted: 8:30 a.m.)

1
2
3 CHAIRMAN ROSENKER: Good morning. My name is
4 Mark Rosenker and I'd like to welcome all of you back to the
5 boardroom of the National Transportation Safety Board, and this is
6 the second day of the hearing concerning the accident involving
7 the M/V Cosco Busan. That accident occurred on San Francisco Bay
8 on November the 7th, 2007. I'd like to reiterate for the record
9 that this is an investigative hearing.

10 The purpose of the hearing is to obtain additional
11 evidence and further develop the Safety Board's understanding of
12 the facts identified thus far in this investigation. This hearing
13 will help the Safety Board determine the probably cause of the
14 accident and make safety recommendations to prevent similar
15 accidents from occurring in the future. No determination of cause
16 will be rendered during these proceedings. Mr. Rob Henry, who is
17 our Board Hearing Officer, I would like to ask you to call the
18 first panel.

19 MR. HENRY: Will Captain Arthur French, Dr. Robert
20 Bourgeois, Captain David Kranking, Captain Peter McIsaac and
21 Mr. Mike Miller please take the stand. Gentlemen, if you'll
22 please remain standing. Please raise your right hand.

23 (Whereupon,

24 CAPTAIN ARTHUR FRENCH

25 DR. ROBERT BOURGEOIS

1 CAPTAIN DAVID KRANKING

2 CAPTAIN PETER McISAAC

3 MR. MIKE MILLER

4 were called as a witnesses and, after having been first duly
5 sworn, were examined and testified as follows:)

6 MR. HENRY: Please be seated.

7 BY MR. HENRY:

8 Q. Captain French, would you please state your full name
9 and business address?

10 A. Arthur J. French III. I'm assigned to the U.S. Coast
11 Guard National Maritime Center, Martinsburg, West Virginia.

12 Q. And your present position?

13 A. Chief of the Medical Evaluation Branch, National
14 Maritime Center.

15 Q. And how long have you held that position?

16 A. Since November of 2006.

17 Q. And would you briefly describe your duties and
18 responsibilities in that position?

19 A. My duties are to oversee the medical evaluations
20 associated with merchant mariner credentials that are processed
21 through the National Maritime Center, and the ones who are
22 forwarded to us from the Regional Examination Centers.

23 Q. And would you briefly describe your education, training
24 and experience that have qualified you for this position?

25 A. I graduated from the U.S. Coast Guard Academy in 1973,

1 spent seven years as a Coast Guard officer, including tours of
2 qualified deck watch officer. I transferred to the Public Health
3 Service in 1980 and attended Uniformed Services University Medical
4 School and have served most of my career -- I've served all my
5 career with the Coast Guard, in medicine, and most of that has
6 been as an operational flight surgeon.

7 Q. And Captain, do you presently hold a marine license?

8 A. No, I don't.

9 BY MR. HENRY:

10 Q. Dr. Bourgeois, would you please state your full name and
11 business address?

12 A. Robert Michael Bourgeois. My address is 1201 Kenneth
13 Street, Morgan City, Louisiana 70380.

14 Q. And with whom are you presently employed?

15 A. The Bourgeois Medical Clinic.

16 Q. And how long have you been in that position?

17 A. Since January of 1993.

18 Q. Would you briefly describe your duties and
19 responsibilities in that position?

20 A. I'm the managing partner of the clinic. We have four
21 physicians there and we have an occupational medicine practice, so
22 we do maritime physicals, flight physicals, dive physicals and so
23 on and so forth.

24 Q. Doctor, would you please describe your education,
25 training and experience that qualified you for that position?

1 A. I graduated from the University of Southwestern
2 Louisiana, with a biology and chemistry degree, and have an M.D.
3 from the LSU Medical Center, New Orleans. I had a surgical
4 internship in Ochsner Foundation Hospital in New Orleans, and an
5 emergency medicine residency at the Orlando Regional Medical
6 Center in Orlando, Florida. And I'm board certified in emergency
7 medicine and occupational medicine, and I have an MPH from the
8 Medical College of Wisconsin.

9 Q. And do you presently hold a marine license?

10 A. No, I don't.

11 BY MR. HENRY:

12 Q. Captain Kranking, would you please state your full name
13 and business address?

14 A. David W. Kranking, at Coast Guard Headquarters in
15 Washington, D.C..

16 Q. And your current position?

17 A. I am the Chief of the Coast Guard's Mariner
18 Credentialing Program Policy Division.

19 Q. And how long have you held that position?

20 A. Since August of 2007.

21 Q. Would you briefly describe your duties and
22 responsibilities in that position?

23 A. The division that I lead is a new division at Coast
24 Guard Headquarters. It was formed by removing the policy function
25 from the National Maritime Center, where I served for three years

1 prior to the establishment of the Policy Division at headquarters.
2 The distinction or separation of duties is that headquarters is
3 responsible for policy, which we will disseminate for the
4 credentialing program, and the National Maritime Center, in its
5 regional offices, would then implement the policy.

6 Q. Would you briefly describe your education, training and
7 experience that qualified you for this position?

8 A. I'm a 1981 graduate of the Coast Guard Academy and in 27
9 years of service I have served aboard four Coast Guard cutters. I
10 have commanded two of those cutters as well as been the commanding
11 officer of a Coast Guard shore command. I have an advanced degree
12 in acquisition and contract management and I've served in project
13 management duties within the Coast Guard, and I've been with the
14 licensing program since 2004.

15 Q. And Captain, do you presently hold a marine license?

16 A. No, sir, I do not.

17 Q. Thank you.

18 BY MR. HENRY:

19 Q. Captain McIsaac, would you please state your full name
20 and business address?

21 A. Peter J. McIsaac, San Francisco Bar Pilots Association,
22 Pier 9, East End, San Francisco, California.

23 Q. And what is your present position?

24 A. I'm the port agent for the San Francisco Bar Pilots
25 Association.

1 Q. And how long have you been in that position?

2 A. Since November 2006.

3 Q. Would you briefly describe your duties and
4 responsibilities in that position?

5 A. Yes. The port agent is involved in the general
6 supervision and management of all matters related to the duties of
7 pilots. In carrying out these duties, the port agent is primarily
8 guided by the need for safety of persons, property, vessels and
9 the marine environment. And these duties include, but are not
10 limited to, assigning pilots to vessels, representing pilots
11 before the state board and its committees, and reporting to the
12 state board any matters which affect ability of a pilot to carry
13 out his or her duties.

14 Q. Would you briefly describe the education, training and
15 experience that qualified you for that position?

16 A. Yes. I'm what's known as a hawsepiper. I did not come
17 through a traditional maritime academy. I started in the Great
18 Lakes in 1977, working on tug boats and I was a tankerman back
19 there as well, overseeing the loading and the discharge of oil
20 barges. And from '79 to '85, I went up Alaska and worked for
21 Crowley Maritime in various positions on the water there. '86 to
22 '91, it was in San Francisco, where I eventually worked myself up
23 to the senior port captain overseeing all the Crowley captains in
24 the bay. In '92 and '93 I was a trainee in the state board of San
25 Francisco, as a pilot trainee and I've been a San Francisco bar

1 pilot since January 1, 1994.

2 Q. And Captain, do you presently hold a marine license?

3 A. Yes, I do, a Master 1600 Ton.

4 Q. Thank you.

5 BY MR. HENRY:

6 Q. Mr. Miller, would you please state your full name and
7 business address?

8 A. My name is Knute Michael Miller. The business address
9 is Pier 9, Suite 102, San Francisco, California 94111.

10 Q. And the position you currently hold?

11 A. I am President of the Board of Pilot Commissioners for
12 the Bays of San Francisco, San Pablo and Suisun.

13 Q. And how long have you been in that position?

14 A. For about 14 months.

15 Q. Would you briefly describe the duties and
16 responsibilities of that position?

17 A. The Board's regulation pursuant to the California
18 Harbors and Navigation Code lists only two duties. I do more than
19 the two duties, but the duties are to preside at regular and
20 special meetings of the board and to direct the administrative
21 operations of the board.

22 Q. Would you briefly describe the education, training and
23 experience that qualified you for this position?

24 A. The Harbors and Navigation Code provides only a very few
25 requirements for public members of the board. I am a public

1 member. The governor may appoint any person, provided that
2 there's not a conflict of interest of some sort, for example, a
3 financial interest in a tug boat, having sailed in recent years as
4 a pilot on the waters that form our jurisdiction, or having been
5 employed by a user of pilotage services on those waters.

6 There's also a requirement living in one of the 15
7 counties that touch the waters that form our jurisdiction, one of
8 which is San Francisco County and I live in San Francisco County.
9 There are no educational or occupational requirements beyond that,
10 however, I will tell you that I'm a graduate of the University of
11 California. I have a Bachelor's in sociology, a J.D. and an
12 M.B.A. I'm also a member of the California and D.C. Bar and also
13 a CPA licensed by California. My California licenses are inactive
14 right now.

15 I am an active member the D.C. Bar. I worked for three
16 years in the Arthur Andersen tax department in San Francisco, and
17 in private practice in San Francisco for four years. I was a
18 congressional staffer for five years, a lobbyist for the CIGNA
19 Corporation here in Washington for 15 years. For five years more,
20 I ran the lobby office for Ace Limited, a global insurance
21 company. The governor appointed me to the Board of Pilot
22 Commissioners in August of 2005 and as I said, in February of
23 2007, my colleagues elected me president.

24 Q. Mr. Miller, do you presently hold a marine license?

25 A. I hold a license. I am not sure that it still valid.

1 When I was 20 years old, which was 1964, the Coast Guard granted
2 me a license to sail as an ordinary seaman, messman or wiper. I
3 was told at the time that the license would be good for life. I
4 have been told by Coast Guardsmen since that policies may have
5 changed and that I may have to reapply should I wish to go to sea.

6 Q. Thank you. Thank you, Mr. Miller.

7 MR. HENRY: Mr. Chairman, the witnesses are qualified.

8 CHAIRMAN ROSENKER: Thank you very much, Mr. Henry.

9 Welcome to all of our witnesses and thank you for taking the time
10 to join us and offer testimony. We'll go to our Technical Panel
11 and the Technical Panel will be led this morning by Dr. Strauch.

12 DR. STRAUCH: Thank you, Mr. Chairman. We'll begin with
13 Dr. Bourgeois. Then, when I'm done, I'll turn the questions over
14 to the Technical Panel, then to the parties and so on. And then
15 the next witness will be Dr. French, in sequence through
16 Captain Kranking and then the next two witnesses we'll do as a
17 joint --

18 CHAIRMAN ROSENKER: Similar to what we did yesterday?

19 DR. STRAUCH: Yes.

20 CHAIRMAN ROSENKER: That worked fine. Thank you.

21 BY DR. STRAUCH:

22 Q. Dr. Bourgeois, good morning. Before we begin, could you
23 just elaborate a little bit more on your practice? I understand
24 that you've done a number of mariner physicals over the years.

25 A. Yes, sir, we do thousands of them, so I've done several

1 thousand of them in the course of my practice.

2 Q. So you're fairly familiar with the process?

3 A. Yes, sir.

4 Q. You've also written an article on the process, as I
5 understand?

6 A. Yes, sir, the Clinics of Occupational and Environmental
7 Medicine, it was -- one of the issues was on transportation
8 medical issues and I wrote the chapter on marine fitness for duty.

9 Q. Okay. And have you also been involved MERPAC's efforts
10 to revise the Coast Guard medical oversight process?

11 A. Yes, sir, I've been involved in the medical workgroup
12 since it started about three years ago or so and I've been
13 involved in that ever since.

14 Q. And that involves travel?

15 A. Yes, sir, it does.

16 Q. When you travel to the MERPAC meetings, who pays for
17 your travel?

18 A. I do.

19 Q. And who covers the lost income from your practice?

20 A. The clinic does. I do.

21 Q. So in other words, your efforts in MERPAC really come
22 out of -- on your own?

23 A. Yes, sir.

24 Q. Okay. Dr. Bourgeois, what do you see as the purpose of
25 oversight of Merchant Mariner's medical condition?

1 A. Well, I think the main reason is to ensure that the
2 mariner is medically fit for sea duty and that involves a dual
3 role in a lot of ways. It's to protect the public interest and
4 public safety. It also protects the other mariners sailing with
5 that particular person. And if you have to have flight crews go
6 out and pick someone up, that also protects their interests too.
7 So the healthier folks are, the less likely they are to have an
8 accident or an illness that would compromise shipboard safety.

9 Q. And when the Coast Guard attempts to balance public
10 safety versus the need of mariners to earn a livelihood, where do
11 you see them in this balance?

12 A. In the MERPAC meetings part of the instruction was to, I
13 guess, give a little more weight to public safety and a little
14 less balance to -- a little less weight to the other medical
15 issues. And the Coast Guard criteria are a little bit less
16 stringent than some of the companies. Some of the companies, you
17 know, are more strict, but it's the same thing with CDLs or the
18 same thing with FAA physicals. You know, companies may be more
19 strict than the DOT agency but not less strict. So while they are
20 looking at public safety, you know, we're not doing a wellness
21 program in there and some companies may be a little more stringent
22 on there.

23 Q. And when you conduct a physical yourself, a medical
24 evaluation, how do you see your role, again, balancing public
25 safety versus the need for your patient to earn a living?

1 A. Well, we try to make sure that everybody's fit for duty
2 and in doing so, sometimes you do uncover other medical issues,
3 whether it's medication issues or medical problems. And even if
4 those problems would not preclude them from working, we still give
5 them some sort of Counsel on ways to correct it or following up
6 with the personal physician or at least let them know that there's
7 an issue so that they can do something about it because I always
8 tell them I'd rather see you come back walking off the gangway
9 than in a body bag.

10 And a lot of them, you know, over the years, we've found
11 different folks with medical illnesses that because of the
12 physical, which a lot of folks gripe about, we found something and
13 they went out and had it treated and taken care of. And one of my
14 partners had a letter back from a guy that was disgusted about the
15 delay in his physical, but when he went to get the workup, he
16 found out he had a 98 percent blockage of his left main coronary
17 artery and the cardiologist told him that he probably wouldn't
18 have lived another month or so. So he came back and you know, was
19 delighted.

20 And we've had tons and tons and folks with the same
21 issues. I mean, just like with insulin, we've had a lot of folks
22 that were on insulin and out of several hundred, now, cases of
23 folks our age on insulin, they were able to get off the insulin
24 and get on the right oral medications, which were safer, didn't
25 have the hypoglycemia, healthier for them and that sort of thing,

1 and now they're happy and doing much better. So we do try to
2 balance that medical side of it. And we're charging \$40 for a
3 physical, which is not much to do all the things that we do. And
4 then we help them get all their paperwork together to make sure
5 that it's going to be in order for the Coast Guard. So we try
6 very hard to make sure that these folks can get healthy enough to
7 pass.

8 Q. Okay. Now, what I'd like to do is refer you, Doctor, to
9 a factual report prepared by the Safety Board's medical officer.
10 It's entitled "Medical Records Information," and it refers to
11 information that the accident pilot, the pilot on the Cosco Busan,
12 provided the Coast Guard, and two medical evaluations. One
13 occurred in July of '99 and the second, January of '07. And this
14 is a report that the Board has decided not to release to the
15 public at this time. In July of 1999, the accident pilot provided
16 information to the Coast Guard, indicating that among the
17 medications he was taking was something called Wellbutrin. What
18 is Wellbutrin?

19 A. Wellbutrin is used for antidepressant --

20 Q. Um-hum.

21 A. -- or for depression and it's an antidepressant that,
22 actually, I think is fairly safe as far as use on vessels.

23 Q. Um-hum. So you don't see this particular medication as
24 having side effects that could adversely affect a mariner's
25 performance?

1 A. If the medicine is controlling his symptoms --

2 Q. Um-hum.

3 A. -- and he's okay as far as the depression. I mean,
4 because it's a two-prong issue right here. You know, one is
5 medication and the other is condition. If the condition is stable
6 and it's okay, then that's all right. The medicine, I think,
7 itself is okay.

8 Q. Okay. And if you look at the conditions, sure enough,
9 one of the conditions checked off is -- again, this is information
10 he provide to the Coast Guard -- is psychiatric disorder
11 depression.

12 A. Yeah.

13 Q. So that would be consistent with what you said.
14 Something called pancreatitis. What is pancreatitis?

15 A. Pancreatitis is an inflammation of the pancreas, one of
16 your digestive organs.

17 Q. Um-hum.

18 A. And you see that fairly often in -- the two most common
19 causes would be gallstones blocking the common bile duct or
20 alcohol, if someone has alcohol issues.

21 Q. And by that you mean -- you don't mean moderate use of
22 alcohol. What kind of alcohol use would it take to cause
23 pancreatitis?

24 A. Most of the time it's chronic alcoholism.

25 Q. Okay. And additionally in the 719K, the pilot did

1 provide information that he had been convicted of driving under
2 the influence in February of '99 and in fact, had entered alcohol
3 rehabilitation for 30 days, in that time. "He has been cleared by
4 his psychiatrist for duty." So with that information, what would
5 you assume is the cause of the accident pilot's pancreatitis?

6 A. Well, if he had chronic alcohol use, I mean, the most
7 common cause is going to be alcohol.

8 Q. Um-hum. And with that kind of information, what kind of
9 a monitoring or follow-up would you want to see if someone came to
10 you with this information?

11 A. Well, what we normally do when we have a physical, if
12 there are issues that we'd like to investigate further, we request
13 records and we review them ourselves to see if there's adequate,
14 you know, documentation to support resolution or some stability in
15 the issue. We look at the medications they're on. Sometimes with
16 pancreatitis you have to take digestive enzymes or something else
17 to help you digest your food. So there are a bunch of things
18 you'd want to look at just to make sure that everything was back
19 to normal.

20 Q. Um-hum. And if someone had a diagnosis of alcoholism,
21 which appears to be the case, how long would you want
22 documentation that the alcoholism was under control from that
23 point on in the evaluation, if this patient continued to come to
24 you for medical evaluations?

25 A. Well, we like to see some continuation of care, either

1 Aftercare or continue the AA meetings or something along those
2 lines. Sometimes a periodic evaluation if it's substance abuse
3 versus dependence --

4 Q. Um-hum.

5 A. We've had the discussion in the MERPAC meetings. And
6 you know, if it's a teenager that had a DWI, you know, at 19 years
7 old and the guy is 45 years old and hasn't had any problems since
8 then, that's probably fine. You know, that may not be an issue at
9 all. If it's somebody that's had multiple DUI charges, if it's
10 somebody that's had failed rehabs, if it's somebody that kept
11 losing his job or kept having problems on the job because of
12 alcohol, we may want to see continued evaluations.

13 Q. And do you know off hand what the recidivism rate for
14 alcoholism is?

15 A. Not directly, no.

16 Q. Okay. Now, in '99, with the information given, a waiver
17 was -- to the Coast Guard -- was requested and if you look on the
18 second page of the medical records information at the top, an e-
19 mail from the National Maritime Center medical waiver staff notes
20 in its entirety, "A waiver is granted for the pilot's condition.
21 Please include a waiver statement on his license when it is
22 issued." And that is the end of the information. What kind of
23 information would you have liked to have seen on this waiver,
24 Doctor?

25 A. Well, one of the issues we do have when folks come in

1 with a waiver is it doesn't really say what the waiver is exactly
2 for, and I guess partly because of the protection of medical
3 information and you know, the Privacy Act and HIPAA and all. I
4 think that's part of the issue with that. But, you know, we have
5 on occasion had folks that had waivers for diabetes.

6 Q. Um-hum.

7 A. But, we don't know if it was diabetes because they were
8 controlled on oral medication, diabetics on insulin or a diabetic
9 on an insulin pump. So it would be nice for us to be able to know
10 that, but at the present time, you know, that's not available. So
11 what we do is we still request all the medical records anyway,
12 look at it and try and make a decision based on that.

13 Q. Um-hum. Would you like to have also seen the person who
14 granted the waiver, the person who judged the medical information,
15 the reasons why the waiver was granted and so on?

16 A. Well, a lot of times what we do now, the way the system
17 is migrated, we can call NMC directly and if NMC granted the
18 waiver, what I usually do now is talk to Captain French and find
19 out what it was for. And if they looked at everything we looked
20 at, then usually that's always okay.

21 Q. Were you able to do this with
22 Captain French's predecessor?

23 A. No, sir.

24 Q. Okay. So it may not be the process so much as
25 Dr. French's availability and any personal relationship you may

1 have developed that affects the ease of which you could interact
2 with him?

3 A. Well, we can call him any time and a lot of the maritime
4 companies in Louisiana have called him and that is 1-800-askNMC --

5 Q. Um-hum.

6 A. -- number really works.

7 Q. And what was your experience like with Dr. French's
8 predecessor?

9 A. Actually, when NVIC 298 was coming out, I was actually
10 was probably one of the few folks that looked at it before it came
11 out and it wasn't involved in the Coast Guard and they really
12 weren't that interested in a whole lot of input or changes
13 because, you know, this is how we did it and it's taken care of.

14 This time around, I mean, we've had more dialogue, more
15 cooperation. I mean, it's been a complete one-eighty. And I
16 mean, if you remember at the hearing for MERPAC, I mean, I think
17 this is the best we've ever been able to do it with the Coast
18 Guard and it's been really wonderful. I mean, Commander D'Orazio
19 has been really good at taking care of things and helping run the
20 meetings and keep us up to date on all the paperwork. And Captain
21 French has worked tirelessly on this also. And I mean, I know
22 it's taken a while but I don't think it could've been a whole lot
23 better.

24 Q. Okay. Now, what I'd like to do is refer you to the
25 accident pilot's most recent 719K. This occurred in January of

1 '07, 10 months before the accident. And among the medical
2 conditions that the pilot provided the Coast Guard on the form --
3 and when I read this I would like to ask you what you would look
4 for as a physician, in terms of the possible effects of these
5 medical conditions on a mariner's performance. And let's start
6 with glaucoma.

7 A. With glaucoma we like to see recent intraocular
8 pressures. Glaucoma is increased pressure in the eye and with too
9 much pressure in the inside of the eye, you can actually go blind.
10 So we like to see a current evaluation by an ophthalmologist,
11 where they check visual fields and check and see how the disease
12 is progressing and make sure that it's adequately controlled on
13 the medicines they're using.

14 Q. Okay. History of kidney stones?

15 A. Kidney stones, we like to see frequency in how many over
16 time and how many recently and that sort of thing. If it's past
17 history of kidney stones and he only had a few, it's not that big
18 an issue. If you've had three in the last two months, that may be
19 more of an issue.

20 Q. Okay. Sleep apnea?

21 A. Sleep apnea, we always want to see a current sleep study
22 and we want to make sure that the treatment itself is effective
23 and controlling the sleep apnea. If you just have a machine and
24 it's not set right, it doesn't work. And if you don't use a
25 machine, if you're not compliant with it, it doesn't work. So we

1 want to make sure that two things are happening, one, it's been
2 evaluated recently, within the past
3 year --

4 Q. Um-hum.

5 A. -- and that treatment is effective and we want to try
6 and make sure that the guy is compliant. And there are some new
7 -- some of the new machines actually have time-on-pressure
8 indicators that tell you how long they're actually wearing it, so
9 you can't just turn it on and leave it next to your pillow. And
10 then, if you're treated appropriately, you should be rested and
11 feel much better in the morning.

12 Q. And if you're treated -- not treated appropriately?

13 A. Then you can still have daytime, or whenever you're
14 working, somnolence or sleepiness. And you know, we've had folks
15 that were falling asleep on top chart tables because they couldn't
16 keep their heads up.

17 Q. Okay. So clearly, that's not something you would want
18 to see in a mariner?

19 A. No, sir.

20 Q. Okay. And if we proceed to the list of medications,
21 among the medications that the pilot indicated to the Coast Guard
22 that he was taking was something called Imitrex?

23 A. Yes, Imitrex is one of the medicines for migraines and
24 it's used usually to treat migraine headaches or cluster
25 headaches. And if you have that, that's usually just, you know,

1 occasional use. We want to know how often you're using them and
2 how often you're having the migraines, how debilitating are they
3 because in some people, you know, you have visual changes, nausea,
4 vomiting, severe pain and that sort of thing.

5 Q. Um-hum.

6 A. So you like to know a little bit about the migraine
7 history. And you know, if you have an occasional migraine and
8 you're using Imitrex, usually for some period of time, whether
9 it's, you know, an hour or two or five or whatever, you may be out
10 of commission, but that's something that you'd probably have a
11 limited time for.

12 Q. Okay. And are there any side effects of Imitrex that
13 you would look for that could impair somebody's performance?

14 A. Well, Imitrex can have different issues with folks.
15 Some people get real hyper with it, some people -- I mean, I've
16 taken it before with a history of migraines and I feel that I have
17 a razor burn on the back of my neck, but it's like the worse razor
18 burn you've ever had, but it goes away. Some folks don't tolerate
19 it well. I mean, I seem to be okay with it, but when I have a
20 migraine I do have to shut it down for a little bit.

21 Q. Doctor, the side effects I'm particularly interested in
22 are side effects that would affect cognitive performance, and by
23 that I mean would have adverse effects on perception, reaction
24 time and decision making. So in the following drugs that I'll ask
25 you about, I'd like to ask you also not only about the drugs, the

1 conditions that cause them, but also the effects of these drugs on
2 cognitive performance. The next drug that the pilot reported is
3 something called Aciphex.

4 A. Aciphex is one of the medications we use for acid -- to
5 decrease acid production in the stomach and Aciphex, I don't
6 think, would have much effect on all cognitive function.

7 Q. Okay. What about lorazepam?

8 A. Lorazepam is Ativan and that certainly would have an
9 effect on cognitive function. You know, the half-life on that is
10 about 11 to 12 hours, something like that, so it's still in your
11 system for a pretty good bit of time and that's not something that
12 you would want to have on board when you're trying to do important
13 duties.

14 Q. Okay. And what exactly is half-life?

15 A. The half-life is the time it takes for half of that drug
16 to be out of your system. And for FAA use -- because I'm also a
17 senior AME, aviation medical examiner -- for FAA use we look at
18 three and a half half-lives before you're considered clean enough
19 to operate or fly again. And if you look at five and a half half-
20 lives, that's usually when you're, you know, rid of the drug or as
21 much as you're going to see. So three and a half half-lives on
22 Lorazepam would be three times 11 or 12 and then six more hours.
23 So that's when you'd actually be free of any effect from it.

24 Q. Would the FAA permit a pilot to use lorazepam?

25 A. No, sir.

1 Q. Okay. The next drug listed is Provigil.

2 A. Provigil is a medicine they initially used for
3 narcolepsy, to try and increase wakefulness or alertness and they
4 started using it for sleep apnea if the sleep apnea is not
5 controlled. The Federal Motor Carrier Safety Administration does
6 not like folks using Provigil and at one point they said do not
7 clear anyone using Provigil. They still have strong feelings
8 about whether or not it's actually compatible with use in drivers.
9 My feeling -- and also, I've talked to NMC about it -- if you're
10 on CPAP for sleep apnea and you're not well enough controlled with
11 that, with the CPAP, to operate, then none of us feel that it's a
12 good idea to operate on Provigil.

13 Q. Okay. And CPAP is the machine that people with sleep
14 apnea use to force air pressure --

15 A. Yes, sir.

16 Q. -- into their respiratory system?

17 A. Yes, sir.

18 Q. And you mentioned earlier that one of your concerns
19 about sleep apnea was that it would be under control. So if you
20 saw someone who reported sleep apnea, who was also taking
21 Provigil, what would that tell you about the degree to which the
22 sleep apnea was under control?

23 A. I wouldn't think the CPAP was effective.

24 Q. Okay. And finally, the last drug listed is Darvon.

25 A. Darvon Compound-65 is one of the propoxyphenes and the

1 main issue with that is propoxyphene and Lorazepam -- well,
2 propoxyphene is actually for pain. You shouldn't be taking pain
3 medicine, whether it's narcotic or semi-synthetic or whatever,
4 while you're operating a vessel or operating hazardous machinery
5 or driving or whatever.

6 And the other issue, though, is that propoxyphene and
7 Lorazepam taken together, there are multiple warnings, if you look
8 at the product information literature -- that you should not take
9 both of those together because they potentiate each other. So
10 they would increase a half-life of both, which means it's going to
11 be in your system longer and have more effect because they're all
12 metabolized in what's called the cytochrome P450 pathway. The
13 other issue with that too is that Aciphex is also metabolized
14 there, so that would potentially have an effect on making it even
15 longer.

16 So any of those medicines, if you took them and you
17 thought it'd be okay to go in two hours or three hours or six
18 hours or whatever, you're actually going to have -- stretch it out
19 considerably longer. If you have liver disease, if this gentleman
20 had pancreatitis from alcoholism and also had any liver issues,
21 that may make it last longer also. So there are a few things in
22 there. The combination of the drugs is actually significant, as
23 far as the effects and the longer-term action.

24 Q. Presumably, if these medications had been prescribed by
25 different physicians, the patient may not even be aware of the

1 interactive effects of these drugs, is that correct?

2 A. That's correct.

3 Q. Okay. So how would you feel -- let me rephrase that.
4 What effects on cognitive performance would the combination of
5 Aciphex, lorazepam and Darvon have with someone who possibly had
6 uncontrolled sleep apnea?

7 A. Well, Provigil is also metabolized in the same pathway,
8 so you have four drugs that are all metabolized through the same
9 area and so they're going to compete for binding sites and that's
10 going to make the effect of each of them more and longer. The
11 cognitive effects, I think you're going to have issues with
12 delayed reaction time. You know, as far as the decision making, I
13 wouldn't want anyone taking those medicines and having them make
14 decisions in a safety-sensitive position because you can have
15 incidents with somnolence or sleepiness. As far as the judgment
16 calls, reaction to something that's urgent, it can be delayed. So
17 I wouldn't recommend taking those.

18 Q. And just if you could wear another hat, as a parent, how
19 would you feel if the school bus driver of your children was
20 taking these drugs? How confident would you feel putting your
21 children on a school bus with a driver taking these drugs?

22 A. They wouldn't get on the bus.

23 Q. Okay, thank you. Given this information about the
24 medication that he was taking and the medical conditions he had,
25 the information that he provided to the Coast Guard, should the

1 Coast Guard have granted this accident pilot a license in January
2 of '07?

3 A. No.

4 Q. Okay. And you mentioned earlier that you were an active
5 participant in the Coast Guard's revision of the medical oversight
6 process. As part of that, you toured the new National Maritime
7 Center, didn't you?

8 A. Yes, sir.

9 Q. What were your perceptions of the new center?

10 A. A beautiful building, lots of space and you know, we
11 walked all through the place and looked at a lot of different
12 spaces in there.

13 Q. Uh-huh. And what did you see in different spaces,
14 particularly space devoted to medical oversight?

15 A. In looking at the records that they have to go through
16 and then, I guess, anticipating the other RECs starting to dump
17 the medical records into there, as far as centralization, I think
18 they're going to need a bigger spot and more staff. I mean, we do
19 medical reviews all day long in our office and with four doctors,
20 it's kind of tough to keep up with what we have. I think they're
21 probably going to need more docs and more space.

22 Q. Okay. And we'll certainly pursue that with subsequent
23 witnesses. Now, in your participation in MERPAC, in the
24 efforts -- the Coast Guard's efforts to revise and upgrade the
25 medical oversight system, have all elements of the maritime

1 community been in favor of these proposed changes?

2 A. Some folks would like it to be a little more strict.
3 Well, there's not that many folks that'd like that. There's some
4 folks that are actually reasonably comfortable with it. There's
5 some folks that would like it to go away completely and not have
6 to do physicals or have any rules.

7 But, I think the MERPAC folks are pretty astute to the
8 fact that something has to be done. And I think after three years
9 of beating this thing up and working on it, I think they're
10 probably as ready as everybody else to move on. I think the
11 physicians have been satisfied with it, for the most part, for a
12 pretty good while because we've worked on it from the beginning,
13 also. And I think, from a medical aspect, you know, if it
14 would've been just docs in the room, we'd probably have been done
15 a good bit ago.

16 Q. Okay. But, given the public safety aspects of this,
17 particularly in light of this accident, the accident involving the
18 Andrew J. Barberi and the accident involving the Robert Y. Love,
19 why are some people against this and why would they want this, as
20 you said, to just go away?

21 A. Well, some folks think that by doing this, nobody is
22 going to be fit to sail. And that's not true. I mean, there are
23 a lot of folks that have perfectly clean physicals. I mean, they
24 go straight through because there's nothing wrong with them.
25 There are some folks who are going to require additional

1 information and if they're going to their doctor and doing what
2 they're supposed to do because, obviously, they're getting
3 prescriptions from somewhere, it shouldn't be that hard to get the
4 records to document that they're healthy enough to sail.

5 There are some folks that may need additional testing.
6 But, we've been doing a lot of this for years. This is nothing
7 new. I mean, if you had heart disease before, you had to have a
8 nuclear stress test, which was when you had to inject the dye,
9 either thallium or -- not dye but either thallium or one of the
10 other isotopes -- and then do a stress test. We've cut that back
11 to now it's just a functional stress test, so it's much cheaper.
12 Instead of being a \$1200 or a \$1500 test, it's, you know, two or
13 three hundred dollars.

14 So there are a lot of things we've done to try and make
15 it more mariner-friendly, more physician-friendly. You know, the
16 issue about cost, I mean, there are some folks that would probably
17 rather not have their insurance get used for mariners, but you
18 know, I'd rather find out they have something now than at autopsy.
19 So it's a lot of easier to check them and make sure they're fit
20 before you send them out than to get a call in the middle in the
21 night that said a guy just died.

22 Q. And my last two questions. Could you just describe what
23 your ideal medical oversight system would be, medical oversight of
24 mariners?

25 A. Well, we've talked at the MERPAC meetings about a

1 qualified panel of physicians or certified medical examiners or
2 whatever, and I certainly think that in a perfect world we'd have
3 that and I think, you know, we have spoken with Admiral Salerno
4 and expressed views about some of that. I think you need to have
5 docs that know what they're doing, number one. If a doctor's
6 concerned about whether or not he's going to keep this business or
7 whatever and passes things through that he probably shouldn't, you
8 know, I think there should be some sort of way to have oversight
9 of physicians and make sure they're doing the right thing.

10 I think, at the Coast Guard level, the NVIC is just the
11 start of this because these guidelines are for the medical
12 evaluation of folks and those things change over time. And so
13 this is really going to be more of a dynamic process because there
14 are medical conditions that change, treatments that change,
15 evaluation standards that change, medications change, so I think
16 we have to be on top of that. I think we need to have some
17 education for the mariners and for the companies and different
18 industry groups so that they can tell mariners that these are the
19 things that you shouldn't be doing on a vessel, these are ways to
20 keep up with what you can and can't do or shouldn't do.

21 And I think consolidation of all the medical data in NMC
22 is a great start. I think the faster we get it done the better.
23 Honestly, I think if this physical had gone to NMC and
24 Captain French had seen it, it would've stopped. And you'd have
25 to have more information and figure out whether or not this

1 particular fellow could've been cleared. I think NMC, though, is
2 going to have to have more staff because I don't think you can do
3 that big a burden with the folks they have.

4 And I think you have to have additional qualified
5 physicians because physician extenders help you with all of this
6 but you still have to have somebody with the last word and you
7 have to have -- you know, everybody works under the doctor, so you
8 have to have somebody there that's going to shoulder the burden
9 and I don't think you can do it with one doc. I think that Chief
10 Medical Officer position really needs to be high enough that it
11 reports to Admiral Salerno because ACOEM, the American College of
12 Occupational and Environmental Medicine, if you look at what they
13 use for medical directors, they always talk about that medical
14 directors should report to the highest level possible. And I
15 think it's much better to have a physician talking directly to the
16 boss because it's a whole lot easier for us to explain some things
17 than to explain it to somebody else and somebody else and somebody
18 else and just keep playing post office with it.

19 And so I think that is desperately needed. And I think,
20 like with policy, policy went to headquarters because that's where
21 policy is formulated and I think you need to have a physician
22 directly involved in policy, also, because sometimes it keeps you
23 from making decisions that you have to correct or go back on later
24 on. And I mean, I was a corporate medical director for Martin
25 Marietta, for Lockheed Martin. Well, actually it's Lockheed

1 Martin now, but Martin Marietta then.

2 And I reported to the vice president because, you know,
3 they tried it two or three levels lower and they kept bumping me
4 up because they figured you need to report high enough that the
5 story gets taken care of right the first time and that we'd get it
6 fixed. And so I think all of those things have to happen. And I
7 think when you have that network of examiners -- and I think you
8 have to do continuing education for them and quality assurance.
9 And the recent Senate bill spoke to a lot of it and I agree with a
10 whole lot of that in there, and I think the other docs on the
11 medical workgroup would also.

12 Q. And I think, by Senate bill, you're referring to U.S.
13 Senate Bill 2699, which we have as Exhibit 85?

14 A. Yes.

15 Q. Anyway, thank you, Dr. Bourgeois.

16 DR. STRAUCH: That concludes my questions, Mr. Chairman.
17 Thank you.

18 CHAIRMAN ROSENKER: Thank you, Doctor, and thank you.
19 Mr. Bowling?

20 MR. BOWLING: I have no questions.

21 CHAIRMAN ROSENKER: Captain Jones?

22 CAPT. JONES: No questions.

23 CHAIRMAN ROSENKER: And Mr. Roth-Roffy?

24 MR. ROTH-ROFFY: No questions, Mr. Chairman.

25 CHAIRMAN ROSENKER: Okay. Now, we're going to go back

1 to Dr. Strauch. You continue this line.

2 DR. STRAUCH: Okay.

3 CHAIRMAN ROSENKER: Go right ahead.

4 DR. STRAUCH: And now I'll question Dr. French.

5 BY DR. STRAUCH:

6 Q. Good morning, Doctor.

7 A. Good morning, sir.

8 Q. How are you, sir?

9 A. I am fine, sir.

10 Q. Good, good. That was my first question.

11 A. Yes, sir. My foot is fine.

12 Q. Good. That was my second question.

13 A. And I'm glad it's not my tailbone.

14 Q. Okay. Doctor, how do you see the role of medical
15 oversight in the Coast Guard, the medical oversight of mariners?

16 A. The medical evaluation certification system is part of
17 the triad of the Merchant Mariner licensing, the documentation
18 system, the other two parts being safety and security vetting, and
19 then professional qualifications and medical certification is the
20 third part. I think it's just as important as the other parts.
21 It is sometimes very complex and it interacts with a lot of other
22 programs.

23 Q. Okay. And what is the role of medical oversight? We
24 understand the role of security oversight and we understand the
25 role of, you know, oversight of professional credentials and so

1 on. What is the role of medical oversight in preventing mishaps?

2 A. Well, our goal is to reduce the risk of a marine
3 casualty occurring or near misses occurring because of medical or
4 physical conditions. So we want to address the human factors
5 aspects of the mariner, making sure that they have no medical
6 conditions, medications, or physical limitations that may either
7 overtly or covertly impair their performance and abilities to
8 safely perform the duties required underneath their maritime
9 credential. In a sense it's a public health program, you know,
10 because it very much is a medical program.

11 Q. And when you talk about performance, does that include
12 cognitive performance, as we just discussed with Dr. Bourgeois?

13 A. Yes. Since most transportation mishaps are due to human
14 factors, the cognitive performance is usually of greater
15 importance than the physical abilities of a mariner.

16 Q. Now, someone who is cognitively impaired by medications
17 and medical conditions, would this be the kind of impairment that
18 would be readily recognizable by someone else, a colleague or
19 someone on the bridge working next to a mariner?

20 A. Not usually. The studies in these areas have clearly
21 shown that cognitive impairments, performance decrements, are not
22 visible to others or to the person themselves, and in fact that
23 self-reporting of these, such as fatigue, is usually very
24 unreliable.

25 Q. And is cognitive impairment the kind of thing that would

1 be a diagnosable psychiatric condition under VSM4, let's say?

2 A. It may be. There are some psychiatric conditions that
3 do cause cognitive impairments, but there's a lot of non-
4 psychiatric medical conditions and medications that cause
5 cognitive impairments.

6 Q. So it's possible that one may be impaired without having
7 any diagnosable psychiatric condition or anything that would be
8 considered a psychiatric condition of any kind?

9 A. Absolutely. As an example, someone may be undergoing
10 chemotherapy, active chemotherapy, which certainly is a stress on
11 the body. It affects your cognitive impairment. Migraine
12 headaches, hypoglycemia from uncontrolled diabetes, any number of
13 medical conditions. And that's why we've listed a significant
14 number of medical conditions in the draft NVIC because they all
15 have the potential to cause a significant impairment to affect
16 maritime safety.

17 Q. Okay. Now, Dr. Bourgeois stated that, in his opinion,
18 the accident pilot should not have been granted a license.
19 Nevertheless he was. And in the interview of the San Francisco
20 REC, Regional Examination Center, chief -- and that interview is
21 Exhibit 92, but it's not necessary to refer to that at this point.
22 On Page 5 of that interview, the REC chief indicated that the
23 reason that the January of '07 medical documentation that the
24 accident pilot provided was not sent to NMC for review was because
25 of his interpretation of an e-mail that had been sent to senior

1 inspector personnel, saying that RECs were to follow the guidance
2 of the current NVIC, that is NVIC-298. In your opinion, was that
3 a correct interpretation of policy?

4 A. The policy was unclear at that point. Many of the RECs
5 knew that we were working on the NVIC, that we were internally
6 using the information and moving in that direction, but there had
7 been no official changes. Now, the NVIC does not "set policy."
8 It's guidance, so there were some RECs that were continuing to
9 work under that system of the previous NVIC. There were many RECs
10 who, through communications, monthly conference calls, meetings
11 that they had at NMC that we were able to give presentations at,
12 that knew the direction we were moving in.

13 Q. Is it possible that today there are still -- there's
14 still this inconsistency with which RECs are interpreting Coast
15 Guard policy?

16 A. I think there's a possibility, but I think it is much,
17 much less. The commanding officer of the National Maritime
18 Center, Captain Stalfort, has issued a memorandum -- actually
19 several memorandums and guidance to the -- both the transitioned
20 RECs that have been centralized and the legacy RECs that have not
21 been centralized yet, establishing more specific criteria of what
22 on the mariner physicals would trigger them to forward them to the
23 Medical Evaluations Branch at NMC.

24 Q. Okay. Now, the other reason the REC chief indicated for
25 not submitting the credentials was because of his interpretation

1 of the 1999 waiver. He said that the waiver was granted and since
2 then the pilot's medical condition and medication use had not
3 changed. But, we know that's not the case. We know, in fact,
4 that the medical conditions, as he indicated on the 719K, did
5 change and specifically sleep apnea was one medical condition that
6 was added in '07 and it was not there in '99. Now, the other
7 thing the REC chief indicated was that under his interpretation of
8 the NVIC, there was no medication that a pilot could indicate on
9 his 719K, his or her 719K that he or she was using, that would
10 warrant additional review by the NMC. Is this is a correct
11 interpretation of Coast Guard policy?

12 A. It would not be my interpretation of NVIC 298, which
13 clearly had medications and medical conditions stated that
14 would've -- that state that they should be referred to NMC for a
15 medical waiver.

16 Q. And again, what is the possibility that other REC chiefs
17 have misinterpreted the current NMC policy as this particular REC
18 chief did?

19 A. I think that there is a possibility but those
20 possibilities are decreasing almost on a weekly basis; that now
21 they have a point of contact at NMC. Before our branch was stood
22 up they didn't have any guidance, anyone to go to. Now, they
23 regularly communicate with us. Most of them do. And again, when
24 all of the RECs have completed transition of centralization to NMC
25 in September of this year, it will be a moot point because there

1 will be centralized review of all mariner credentials, including
2 physicals.

3 Q. So between now and September when centralization is
4 complete, there is still that possibility, is there not?

5 A. There is always that possibility, but again, it's
6 decreasing.

7 Q. And what is the Coast Guard doing to reduce that
8 possibility?

9 A. As I said, Captain Stalfort issued memorandums to the
10 RECs, directing them to forward physicals that meet the threshold
11 that we established, which was a pretty low threshold, for us to
12 review.

13 Q. Okay. And since Captain Stalfort -- I'm sorry. We'll
14 pursue that with Captain Kranking, our next witness. I'd like to
15 refer you to Exhibit 95. That's the NTSB recommendations that the
16 Safety Board issued to the Coast Guard following the accident
17 involving the Staten Island Ferry Andrew J. Barberi. There were
18 two recommendations issued and one of them called for a revision
19 of the -- Exhibit 95. One of them called for overhaul of the
20 Coast Guard's medical oversight system. What was your role --
21 what has been your role in the Coast Guard's response to this
22 recommendation, the Coast Guard's positive response where the
23 Coast Guard indicated that it was going to endeavor to upgrade its
24 medical oversight system?

25 A. In response to the NTSB recommendations and the Coast

1 Guard's response back to NTSB, Rear Admiral Salerno, then Captain
2 Salerno, requested the Coast Guard chief of Health and Safety, my
3 boss at headquarters, to assist in carrying out these
4 recommendations. I was assigned from my regular duties at
5 headquarters to the National Maritime Center to assist the Marine
6 Safety and Prevention Program in this, recognizing that this was a
7 significant undertaking and it involved numerous aspects, not just
8 medical.

9 I requested that a project team be chartered and
10 Admiral Salerno chartered a -- well, what we called the Merchant
11 Mariner Medical Certification System Development Team, MMMCSDT.
12 He chartered that in September of 2005. I was appointed the project
13 team leader and continued to work on that project with numerous
14 other people who -- none of the others were assigned full time, it
15 was a collateral duty to them. We generally met through electronic
16 meetings, biweekly, and convened some medical workgroups through
17 MERPAC, as Dr. Bourgeois has mentioned, and continued that
18 process, kind of implementing and planning and developing all in a
19 spiral cycle as we progressed.

20 One of the recommendations from the team and from NTSB
21 was to create a billet at the National Maritime Center for a
22 physician. The chief of Marine Safety and Prevention
23 Headquarters, at that time Admiral Bone, converted a line officer
24 billet to a physician billet, which, for those who understand the
25 Coast Guard and the military, that's pretty significant evidence

1 of a commitment to convert a line officer billet to a medical
2 billet, and established the billet at the National Maritime Center
3 in -- around November of 2006, which I -- because of my experience
4 in working on the project for the previous year, I transitioned
5 into the branch chief and kind of continued the project, also.

6 Q. And what were some of the activities that you did in
7 terms of, let's say, collecting information about the state of the
8 art of federal oversight of individuals in safety-sensitive
9 positions in transportation?

10 A. Because of my experience as a Coast Guard flight surgeon
11 and fair familiarity with the FAA system, I was a little bit
12 familiar with their system and knew how they worked with the
13 operations being conducted at the Civil Aeromedical Institute in
14 Oklahoma City. So I made a site visit down there to visit their
15 chief of the Air Medical Certification Division, Dr. Silberman,
16 and also the chief of the Aviation Medical Examiner Division,
17 Dr. Jones.

18 I also engaged with the staff of the Federal Motor
19 Carrier Safety Administration Medical Program, Dr. Gunnels,
20 Maggie Gunnels, here in D.C., and with their medical director,
21 Dr. Allison Whittles (ph.), and tried to collect a baseline of
22 information of how these other systems work. Simultaneously, we
23 also looked at the current Coast Guard regulations and policies
24 and analyzed those to see how those would fit in with the system.

25 Q. Okay. Now, I'd like to talk about the new system and

1 the first question I have is when do you anticipate that it will
2 be implemented?

3 A. Well, parts of it have already been implemented; they
4 were implemented in December of 2006. Like restructuring and
5 centralization, it's also a transition. We're not in the final
6 operating capability yet. Recentralization and restructuring
7 should be completed in September. The goal is for the Medical
8 Evaluation Branch to do 100 percent review of all mariner
9 physicals to be done by medical professionals.

10 Q. About how many physicals would that be? How many will
11 be reviewed annually?

12 A. While that can be somewhat of an imprecise number
13 because, in addition to the -- and it's not a straight linear
14 calculation of -- that there's approximately 220,000 mariners in
15 the five-year credential renewal process, it's not 220,000 divided
16 by five because we have other things that happen. There's some
17 churn in the industry, so new people come in. There's also a
18 requirement to annually review pilot physicals.

19 We also sometimes, when we issue a waiver, require a
20 mariner to submit a follow-up in, you know, two years or three
21 years, so we have those recurrent ones. And then there's issues
22 that come up as part of just people's medical conditions change
23 and they voluntarily submit that to us. From that, we estimate that
24 there will be approximately 60,000 physicals submitted annually.

25 Q. And before the transition began, how many physicals was

1 NMC reviewing annually?

2 A. About 2,000.

3 Q. So if my math is correct, that's a 30-fold increase in
4 numbers of physicals that NMC will review?

5 A. Right. And to clarify, there really was no predecessor
6 to me. The reviews at that point were often done by a non-
7 physician and those who required, on their judgment, a physician-
8 level review were referred to one of the physicians that the Coast
9 Guard Personnel Command assigned to the medical board process for
10 active duty and reserve members because they were in the same
11 building at that point. And it was a collateral duty, it was not
12 a primary duty. So as Dr. Bourgeois mentioned, you know, trying
13 to find someone that they could talk to, since it wasn't their
14 primary duty and they had another real job, there was, you know,
15 some difficulties there.

16 Q. Okay. And we'll pursue this issue with Captain
17 Kranking. I know there's much good information that he's going to
18 provide. Let's talk about the specifics of the revised system.
19 Start with medical conditions. The kind of medical conditions
20 that the accident pilot had listed in his 719K, would these --
21 under the new system, would these warrant additional medical
22 review, conditions such as sleep apnea, depression, a history of
23 alcoholism and so on?

24 A. Those are conditions mentioned in the draft NVIC.

25 Q. Okay. And if someone with these conditions were to

1 indicate the presence of these conditions on the new 719K under
2 the new system, what would happen when this information was
3 received in the NMC?

4 A. Well, it depends on what has been submitted. Now, you
5 also have to remember that the draft NVIC is just that and that
6 guidance is not being used yet and still has to be approved by the
7 Department of Homeland Security and the Office of Management and
8 Budget, after submitted by the Coast Guard. So when we refer to
9 the draft NVIC we cannot presume that the final approved version
10 is going to look like what we have in the draft now. But, aside
11 from that, we are able to use our internal guidance, within the
12 branch, of what we want. And if someone had those medical
13 conditions, we would want to see evaluations by the specialists in
14 those respective areas, to make sure that we had enough
15 information to make a decision.

16 Another thing with the draft NVIC, any of the NVICs,
17 like the medical NVIC, is that it really doesn't give the criteria
18 for approval or disapproval, other than vision and hearing, which
19 is set in regulations and clear-cut. All the draft NVIC is
20 intended to do is to say, for these medical conditions, we would
21 like this information so that we can make a medical evaluation.
22 It does not give the criteria for what is good to go and what is
23 not good to go.

24 Q. Okay. What about medications? Would the medications
25 that we saw listed in the accident pilot's 719K, medications such

1 as Provigil, Darvon, Imitrex, lorazepam, what kind of review would
2 you we expect when the new system is adopted?

3 A. First, a separate enclosure of the draft NVIC has been
4 devoted to just medications, to make sure that they clearly stand
5 out. Again, as Dr. Bourgeois mentioned, it isn't just the
6 medications, it's the condition for which they're being taken for
7 that we're also concerned about. But, just to make sure that
8 people understood that there are some issues with certain classes
9 of medications, we made that a separate enclosure, also. That
10 enclosure does address the medications that you addressed.

11 Q. And how does the Coast Guard intend to monitor substance
12 dependence under the new NVIC?

13 A. Again, it's a draft. The draft right now separates
14 abuse versus dependence of both substance abuse and alcohol. For
15 dependence we would require that the mariner submit a current
16 evaluation by a substance abuse professional. Substance abuse and
17 alcohol abuse are chronic diseases with high rates of recidivism
18 and we would require that at each recurrent evaluation.

19 Q. Okay. Now, if I could refer you to Exhibit 97, it's the
20 NTSB letter to the Coast Guard on the draft NVIC. The NTSB
21 commented when the NVIC came out that it did not see -- this
22 agency did not see a sufficient discrimination between substance
23 abuse and substance dependence and in fact, it was our
24 interpretation that the Coast Guard treated them as one and the
25 same.

1 So I'd like to ask you, how will the NVIC distinguish
2 between someone with substance abuse or someone with substance
3 dependence and the need for continued monitoring of someone with
4 substance dependence?

5 A. In the draft version that we have now, we have taken
6 NTSB's input into consideration and mated different requirements
7 for evaluation of abuse versus dependence, dependence being,
8 again, a chronic disease.

9 Q. Okay. You talked about the approximately 30-fold
10 increase in the number of Merchant Mariner documents, medical
11 documents that the Coast Guard will review. With the increase in
12 the average age, projected increase in the average age of
13 mariners, what effect will that have on the amount of information
14 to be included in these, I think you said, 60,000 mariner
15 documents, medical documents that the NMC will review?

16 A. I think, as the mariner workforce population increases
17 in age -- and it's a fairly more mature population right now. We
18 did a breakdown from MMLD about the various age distributions.
19 The majority of mariners fall in the 40 to 60 years old range.
20 Just as you would expect as people become older and have more
21 medical conditions, we can expect that it will become a little bit
22 more complex to evaluate.

23 Q. So if all things were equal, it would not just -- you
24 would not just expect a concomitant 30-fold increase in staff to
25 review the 30-fold increase in Merchant Mariner documents, you

1 would expect an even higher increase because the amount of medical
2 information that would be included in the documents would be
3 increased, as well, because of the increased aging of the mariner
4 workforce, is that correct?

5 A. That's probably a fair assumption.

6 Q. Okay. Under the new system, how will the Coast Guard
7 prevent a mariner from doctor shopping?

8 A. We have no mechanisms to prevent that.

9 Q. Do other agencies have mechanisms to prevent that?

10 A. I don't know about for the Motor Carrier Safety
11 Administration, but the FAA does it by controlling the physical
12 form, they all have a number and they issue the form to the airman
13 so the airman gets one opportunity. I know when I visited Dr.
14 Silberman and wanted an example of their physical form, it had a
15 number on it and he had to take the number off and account for it,
16 that it was being given to me and no longer used. So that's how
17 they control their doctor shopping.

18 Q. Okay. Should the Coast Guard have such a system?

19 A. I'm sorry, sir?

20 Q. Should the Coast Guard have a system to prevent mariners
21 from doctor shopping?

22 A. I don't know how prevalent of a problem it is. It would
23 be good to have a system where we could verify the accuracy of the
24 information that they're providing to whatever physician that's
25 going to do this, or non-physician. The Coast Guard allows non-

1 physicians to do this and there's practitioners and physician
2 assistants. It would be good to be able to somehow verify that
3 the mariner is indeed providing a complete history.

4 Q. Okay. Now, you said nurse practitioners could also
5 perform physicals in addition to a physician. How will the health
6 practitioners who perform physical, how does the Coast Guard
7 expect them to learn about the new system as described in the new
8 NVIC, the draft NVIC?

9 A. Well, in conjunction with the new NVIC, the Coast Guard
10 is forwarding a new physical form, the 719K, and it's going to
11 be -- it's already on the 719K. The examining healthcare provided
12 should be familiar with the NVIC, but it's going to be clearly
13 emphasized in the new 719K, that they should be familiar with the
14 contents of the NVIC.

15 Given that, we've taken a fairly aggressive approach of
16 trying to get the word out through existing Coast Guard
17 mechanisms, the Homeport website that the Coast Guard has for
18 marine safety and security, through the NMC web page, which is
19 being revised to make it a little bit more mariner-friendly and
20 easier to navigate through. We're certainly going to have
21 outreach efforts with medical organizations, such as ACOEM. And
22 we're starting to establish kind of an electronic distribution
23 network through our contacts now.

24 Q. And since it's fair to say that few physicians have the
25 interest in the Merchant Mariner public health that Dr. Bourgeois

1 has, it sounds like the onus will be on the physician or health
2 practitioner to obtain the information from the Coast Guard,
3 particularly if these are healthcare practitioners who don't often
4 perform Merchant Mariner physicals.

5 A. That is a challenge. It frankly is an unreasonable
6 expectation that, for the healthcare provider who probably has 15
7 minutes to see a patient, the mariner comes in with a 719K, to go
8 through and do an adequate history, do a physical exam and then be
9 able to interpret some of that from the 719K, which is -- well,
10 we've done our best to abbreviate it and still much less than the
11 other transportation modes' guidance. In the amount of pages,
12 it's still going to be 70 to 80 pages. Unless the healthcare
13 practitioner has some preexisting familiarity with what is going
14 to be in the NVIC, it would be very challenging for them to be
15 able to do this.

16 Q. Okay. And speaking of the draft 719K, which we have as
17 Exhibit -- oh, thank you -- 93, if you look under -- the bottom of
18 the page, the Coast Guard requires a physical examination and
19 certification be completed to ensure that the mariners are of
20 sound health, have no physical limitations that would hinder or
21 prevent performance of duties, or free of any medical conditions
22 that pose a risk of sudden incapacitation which would affect
23 operating or working on vessels. There's nothing mentioned here
24 about cognitive impairment.

25 A. It's mentioned in the NVIC. It may not be on that

1 version of the draft of which, unfortunately, because of my foot
2 surgery, I did not go to the last working group meeting and
3 participate in that, but it is in the NVIC, addressed, but it may
4 not be on the draft 719K.

5 Q. And of course the problem is that, as we just discussed,
6 since few physicians have the time to even go through the NVIC,
7 that it's very possible that physicians who don't do this often
8 will not be aware of this, is that correct?

9 A. I think that is a reasonable assumption.

10 Q. Okay. And what about in the new NVIC, the use of
11 medications that cause -- may cause cognitive impairment,
12 medications such as Darvon, lorazepam and so on, how will the new
13 system deal with these kinds of medications?

14 A. Well, as I mentioned, a separate enclosure to the NVIC
15 specifically addresses medications and certain classes of
16 medications that give limitations of what we feel mariners should
17 follow as far as their use within certain time limits of operating
18 under their credential. As far as the evaluation process at NMC,
19 when we get a physical that indicates the use of these medications
20 that we're concerned with, which is fairly frequent, the first
21 thing we do is go back to the mariner and say, here's our
22 guidelines.

23 Can your primary care provided change you to a
24 medication that may not be as problematic? And often that
25 resolves the issue. Sometimes, though, the underlying condition

1 that they're taking the medication for doesn't really have any
2 other classes of medications. For instance, someone may have
3 chronic pain and they have to take narcotics for, then that
4 becomes a problem.

5 Q. Now, Dr. Bourgeois gave his opinions of the ideal Coast
6 Guard medical oversight system. What do you see as the
7 impediments to implementing Dr. Bourgeois' ideal system?

8 A. Captain Kranking has a higher level of view of that at
9 headquarters than I do. But, at the tactical level at NMC, I see
10 that the -- you know, the restructuring and centralizing has been
11 a necessary but not sufficient part of establishing a medical
12 certification system. I see that we certainly are going to be
13 challenged by the number of evaluations that are going to be
14 required annually.

15 I see that while the NVIC is going to define what
16 information needs to come with the physical in order to make an
17 evaluation, we still have the next step of determining what we're
18 going to do with that information for establishing our criteria
19 for what is safe and what isn't safe. And that is going to be a
20 very complex and heavy lift. Right now we're kind of doing that
21 on a -- I wouldn't say an ad hoc basis. We've borrowed some
22 guidance from the other modes, both Federal Motor Carrier's for
23 commercial drivers and the FAA, but primarily from the Federal
24 Motor Carrier.

25 The Coast Guard's system -- now the Coast Guard's

1 mariners' requirements kind of all in between those two
2 populations, so we've tried to meld, you know, our guidance that
3 they use with our internal guidance. But, the development of that
4 is going to take a lot of effort and a lot of expertise that, you
5 know, one physician certainly cannot provide. So we're going to
6 depend upon the efforts of our pending federal advisory committee
7 and perhaps some other mechanisms through, maybe, partnerships
8 with professional organizations, such as ACOEM, to help us develop
9 those.

10 Q. Okay. And I understand, Doctor, you'll be retiring from
11 the Coast Guard shortly?

12 A. Yes, sir, in June, 35 years.

13 Q. So in that case, I'll ask you your opinion, sir, about
14 Senate Bill 2699, the so-called Lautenberg Bill, which does refer
15 to -- it does suggest revisions to the Coast Guard medical
16 oversight system. What's your opinion of that bill, sir?

17 A. I believe the response that went back from the Coast
18 Guard on that generally concurred with the medical section.
19 Remember, the bill addressed a lot of other issues besides the
20 medical program and I can only speak as to what the Coast Guard's
21 response was to the medical section. Generally concurred with it
22 and did not concur with the aspect that there would be automatic
23 reciprocity of medical-qualified examiners between all the modes.

24 In other words, FAA examiners could do Coast Guard
25 physicals. DOT examiners could do Coast Guard physicals. We feel

1 that there's a lot of commonality there, but there's also a lot of
2 unique maritime environment issues that wouldn't automatically
3 qualified those folks to do the mariner physicals, definitely
4 concurred with the establishment of a medical program director,
5 which would've established a separate Title 5 position for a
6 medical program director. And also in the Coast Guard's response
7 they clearly pointed out that the provision to create a system of
8 registered or certified network medical examiners, as the FAA has
9 and as Federal Motor Carrier is moving towards, is a significant
10 resource requirement that would require a significant amount of
11 resources.

12 It's taken Federal Motor Carrier, since they started
13 their initiative in around 2004, to do that. They hope to that
14 their first healthcare professional registered in the system
15 in 2010. It's a significant amount of work that needs to be done
16 to establish a system, establish what the training requirements
17 are and validate those, and also pass the enabling legislation and
18 regulations. It has also cost Federal Motor Carrier anywhere
19 between ten and nineteen million dollars to accomplish that.

20 Q. Dr. French, that concludes my questions and I'd like to
21 personally wish you the best of luck in your new career as you now
22 practice clinical medicine, and also on behalf of all of us
23 interested in maritime safety, thank you for your efforts to
24 upgrade the Coast Guard's medical oversight system, and it really
25 has been a pleasure working with you, sir.

1 DR. STRAUCH: And that concludes my questions,
2 Mr. Chairman.

3 CHAIRMAN ROSENKER: Thank you, Dr. Strauch, and thank
4 you, Dr. French.

5 Mr. Bowling?

6 MR. BOWLING: I have no questions.

7 CHAIRMAN ROSENKER: Captain Jones?

8 CAPT. JONES: No.

9 CHAIRMAN ROSENKER: Mr. Roth-Roffy?

10 MR. ROTH-ROFFY: No questions, sir.

11 CHAIRMAN ROSENKER: Okay, we're not finished with
12 Dr. Strauch. He is on a roll, so now we'll move to Dr. Kranking.

13 DR. STRAUCH: Well, thank you, Mr. Chairman. I
14 certainly appreciate that.

15 BY DR. STRAUCH:

16 Q. Captain, welcome.

17 A. Good morning. Just to clarify, I'm not a doctor, but
18 thank you, Mr. Chairman.

19 CHAIRMAN ROSENKER: But, you slept in a Holiday Inn last
20 night or something like that?

21 THE WITNESS #13: Yes, sir.

22 CHAIRMAN ROSENKER: Okay.

23 BY DR. STRAUCH:

24 Q. Well, actually, I'm a fake doctor, Captain. We
25 discussed with Dr. French the breakdown in the oversight that

1 allowed the San Francisco REC chief to basically misinterpret
2 Coast Guard policy. How confident are you that all REC chiefs now
3 are correctly following proper policy with regard to medical
4 oversight?

5 A. Well, concurring with what Dr. French said, we agree
6 that the guidance to the Regional Examination Centers was not
7 clear. Even since the issuance of NVIC 298, there's been a
8 certain reliance upon the staffs at the Regional Examination
9 Centers to make determinations as to what got forwarded up to the
10 National Maritime Center for review. The Federal Register notice
11 that was issued in September 2006 indicated that those annual
12 physicals submitted would be reviewed in accordance with NVIC 298
13 and any superceding guidance. Certainly it was known because the
14 same day that that Federal Register notice was published, also the
15 draft NVIC, the version at that time, was published for public
16 comment.

17 So the Regional Examination Centers were aware that
18 other guidance was in the works and were not certain to what
19 extent the RECs followed the same guidance or made the same
20 interpretations. However, your question with regard to avoiding
21 that situation, today, as we have moved further into our
22 restructuring and centralization project -- and the commanding
23 officer of the National Maritime Center has issued direction to
24 the regional offices, even from those Regional Examination Centers
25 that have not yet transitioned.

1 Those who have transitioned are forwarding all of their
2 applications for review at the National Maritime Center. Those
3 that have not yet begun or completed their transition, at least
4 those that there's an indication that a waiver may be required,
5 are being forwarded in that direction. It's been given to the
6 regional offices.

7 Q. All right. So could you give us assurance that, today,
8 no REC will permit medical documentation that should get further
9 review will not be passing that information on to the NMC for
10 additional medical review?

11 A. I think that possibility always exists, but with the
12 much more frequent communications from the National Maritime
13 Center out to the regional offices, and as they're all being kept
14 apprised of the transition and their roles are being defined for
15 them, certainly that possibility is far reduced.

16 Q. Okay. Dr. French mentioned that they expected 6,000
17 Merchant Mariner documents per year that NMC will review,
18 notwithstanding the fact that there will be a concomitant increase
19 in information on these documents. What kind of increase in staff
20 can we expect in the NMC to provide the kind of review that will
21 be required to provide an adequate level of public safety?

22 A. In posing that question, I think you just said 6,000,
23 but the figure was 60,000, from your discussion with the
24 Dr. French, which is approximately the number of mariner
25 applications on an annual basis. But, when you factor in some --

1 for instance, the annual submissions by pilots, that is above and
2 beyond the number of applications. For certain mariners a
3 physical examination is not required.

4 For example, the credential that Mr. Miller held however
5 many years ago, which is no longer valid -- I will clarify that
6 for him later -- was for ratings that do not today require, and
7 probably did not then either, a physical examination report. So
8 there's some offsetting there in the number of applications.
9 Arguably, the additional data that is required to be submitted
10 with a physical exam to help the adjudicative process with regard
11 to that, will actually aid the evaluation process. Much of what
12 the draft medical NVIC is about is transparency or putting into
13 writing what the Coast Guard has been practicing and asking under
14 NVIC 298. So it really is designed largely as a process tool to
15 educate and inform the mariners, their physicians, employers and
16 the Coast Guard employees as well, as to the types of
17 documentation that would be needed.

18 So would a 30-fold increase in the evaluation staff be
19 necessary? I don't think so. But, as in other areas of our
20 evaluation function, be it safety and security backgrounds of the
21 applicants or the professional qualifications of the applicants,
22 we continue to monitor the workloads and make process adjustments
23 and apply the resources where they're necessary.

24 Q. All right, let's talk about that. So how many people
25 will be involved, in September, in reviewing the medical documents

1 in NMC?

2 A. At this point --

3 Q. Just a ballpark.

4 A. Right now there's a staff of government and contract
5 employees in the eight or nine number of personnel.

6 Q. Eight or nine right now?

7 A. Eight or nine people, yes, sir.

8 Q. Okay. And what will the number be in September?

9 A. At this point there are no definite plans to change that
10 number. However, as a little bit of background and as was
11 clarified by Dr. French, he really did not have a predecessor.
12 And as recently as 2004, the "medical staff" at the National
13 Maritime Center consisted of one non-medical employee. In our
14 restructuring and centralization plan, which was the initial draft
15 completed in 2004, it was still envisioned to be a one-person
16 staff, albeit a medically-trained person.

17 With the Andrew J. Barberi investigation and your
18 recommendations and our process development, when that plan was
19 approved, it had grown to a staff of seven and the intent to
20 do 100 percent medical review of all the applications. We've
21 already expanded the staff beyond that design and we will continue
22 to do so as necessary.

23 Q. Okay. Now, Dr. Bourgeois cited the need to have
24 physicians provide oversight, the final say in oversight. How
25 many of this eight or nine will be physicians?

1 A. At this point, the only physician is the chief of the
2 branch.

3 Q. Okay. Dr. Bourgeois said that there should be a need
4 for a physician in headquarters to establish medical policy.
5 What's the plan to have a physician in headquarters to establish
6 medical policy for Merchant Mariners?

7 A. That is a recommendation, a perceived need that we are
8 reviewing and exploring the possibility of doing that and of
9 course that involves an increase in billets or a redirection of
10 billets and that would be reviewed in conjunction with all of our
11 resource needs.

12 Q. Okay. So you don't know?

13 A. Correct.

14 Q. Okay. Do you feel that one M.D. is sufficient to
15 provide an adequate level of public safety, of one M.D. to review
16 30,000 documents a year, notwithstanding the increased
17 transparency, increased centralization and increased use of, I'm
18 sure, office automation and so on?

19 A. I can't confirm your figure,
20 that 30,000 may require the physician's review. And Dr. French
21 may be better suited to address the tiered review process in place
22 currently at the National Maritime Center. But, similarly, just
23 as we won't until we have fully centralized the operation, have a
24 better sense of what the content on physical exams that were not
25 being forwarded to the National Maritime Center, perhaps for a

1 good reason, and whether there's something hidden there that
2 really changes the scope of the workload at the NMC. But, again,
3 presumably, many of those, as Dr. Bourgeois indicated, will be
4 what we may call the clean application or examination and require
5 a minimal amount of review and would not require the physician's
6 attention or personal review.

7 Q. But, isn't it fair to say that even with the minimal
8 review, if the Coast Guard will review every single Merchant
9 Mariner document that comes along, as will be the policy in
10 September, that one physician will be insufficient to provide even
11 a minimal review, given the expected -- just by sheer statistics
12 in the population, expected increase in the number of documents
13 that would call for a thorough review, given the increase in the
14 use of prescribed medications, given the increase in aging of the
15 population?

16 A. I think it's fair to say that that's a legitimate
17 concern that we should be attentive to and watching as the full
18 workload does shift to the National Maritime Center.

19 Q. And as the workload shifts, and as budgets continue to
20 be under pressure, and as the Department of Homeland Security's
21 priorities may change, what assurance do we have that the budget
22 that the Coast Guard allocates right now to Merchant Mariner
23 medical review will not be shrunk even further as the years go on?

24 A. I cannot give you that assurance. Certainly, if there
25 is -- if we do experience budget cuts, if we do experience staff

1 shortages within the medical function or any other function, for
2 that matter, whether it's a temporary shortage due to normal
3 attrition in the workforce or shortages because of changes in the
4 volume of the workload, there is going to be impact and I couldn't
5 speculate as to what the extent of that would be. I can say that
6 the funding allocated for the medical function is not a separate
7 budget line item. It is internal distribution of budget when the
8 National Maritime Center receives their annual appropriation.

9 So as we face -- and NMC has to make decisions as to
10 where to allocate their funding resources, they do so where the
11 funds are best applied, and it is recognized throughout the Coast
12 Guard that this particular function is a very critical one.

13 Q. But, given that it's not a line item, is it possible
14 that in a few years and with a new commandant, a new policy, budge
15 priorities could change and the commitment that there is right now
16 may change also, is that correct?

17 A. I can't speculate as to what changes might happen or
18 different priorities that future leaders in the Coast Guard might
19 have, but our budget needs and current budget status is certainly
20 a recurring point of importance to the Coast Guard.

21 Q. Now, there was discussion as to when the new NVIC will
22 be adopted. Captain, do you know when the new NVIC will be
23 adopted?

24 A. The update I can provide you is that, as we speak, the
25 MERPAC, Merchant Marine Personnel Advisory Committee, is holding

1 their spring meeting down in the Fort Lauderdale area. Last week
2 our other advisory committee that we've been working with, the
3 Towing Safety Advisory Committee, met out in Indiana. Both of
4 those advisory committees were tasked to provide recommendations
5 to the Coast Guard on the draft NVIC and the draft revision to the
6 medical form. TSAC, the Towing Safety Advisory Committee,
7 presented their recommendations last week and MERPAC is expected
8 to do so tomorrow. The Coast Guard will then respond to those
9 recommendations and as many of them as we can adopt or address to
10 the satisfaction of the advisory committees, we will -- our
11 intention is to forward the NVIC, as soon as possible, into the
12 clearance and review and approval stage.

13 Q. And then it goes through internal DHS review, would you
14 say?

15 A. Correct, it has been designated as a significant
16 guidance document that requires that review.

17 Q. Okay. And could you forecast, in your position, how
18 long DHS's internal review will take before that NVIC is actually
19 implemented?

20 A. I cannot.

21 Q. Okay. And finally, I think Dr. Bourgeois or Dr. French
22 mentioned the need to have a system that is sufficiently flexible
23 to incorporate changes in the state of the art of medicine, that
24 incorporates the ability to include new medications, new knowledge
25 on possibly impairing effects on medication. So I'd like to ask

1 you, Captain, how the new centralized system will maintain the
2 needed flexibility to keep up with changes in medicine and in
3 pharmacology.

4 A. One thing I think that was maybe just briefly mentioned
5 by Dr. French, the Coast Guard's in the process of pursuing the
6 establishment of an additional or a new federal advisory
7 committee, notionally to be called the Merchant Mariner Medical
8 Advisory Committee, MMMAC. The Coast Guard has submitted a
9 legislative change proposal to Congress to establish,
10 legislatively, this committee and I expected it to be in our
11 authorization bill, which is still in discussions on the Hill.
12 Because of those delays, we have initiated and obtained the DHS
13 pre-review of creation of that same committee through a
14 discretionary means.

15 So our intent is to establish that committee and hold
16 its first meeting this year. With that advisory committee in
17 place, which their charter intent would be to advise the Coast
18 Guard on issues such as our evaluation process, evaluation
19 criteria, physical requirements, they certainly will be a tool
20 that we use to address changes in medicine and changes in
21 conditions, medications and the like. But, we will rely on the
22 National Maritime Center and the medical staff there as the
23 frontlines people to bring those things to our attention. So we
24 can staff them to the advisory committee and we can also work the
25 process, which is a headquarters policy responsibility, of

1 updating the NVIC or publishing the changed guidance.

2 Q. Thank you, Captain.

3 DR. STRAUCH: I have no further questions, Mr. Chairman.

4 CHAIRMAN ROSENKER: Thank you, Dr. Strauch.

5 Mr. Bowling?

6 MR. BOWLING: I have no questions.

7 CHAIRMAN ROSENKER: Captain Jones?

8 CAPT. JONES: No questions.

9 MR. ROTH-ROFFY: And no questions, sir.

10 CHAIRMAN ROSENKER: Thank you. It's now time to turn it
11 over to the parties and I appreciate that the parties listened
12 very patiently and with a great deal of focus and we look forward
13 to any parties' questions. We'll start with the California
14 Department of Fish and Game, Office of Spill Prevention. You can
15 ask any of the three witnesses any questions.

16 CAPT. HOLLY: Mr. Chairman, I have no questions.

17 CHAIRMAN ROSENKER: Very good. Fleet Management Limited
18 from Hong Kong?

19 CAPT. AGA: Mr. Chairman, good morning. I have a few
20 questions, but I have to get organized. I thought that we'd get a
21 break and then -- so can I --

22 CHAIRMAN ROSENKER: Would you like me to return to you
23 at the end?

24 CAPT. AGA: That would be --

25 CHAIRMAN ROSENKER: That'd be fine.

1 CAPT. AGA: I request that, sir.

2 CHAIRMAN ROSENKER: That'd be fine. Sperry Marine?

3 MR. HUGHES: No questions, Mr. Chairman.

4 CHAIRMAN ROSENKER: Thank you. American Pilots
5 Association?

6 CAPT. WATSON: Yes, good morning, Mr. Chairman. We do
7 have a few questions. First of all, gentlemen, thank you for your
8 professional input and explanation of the medical situation with
9 the United States Coast Guard, and more significantly, I'm going
10 to get back to Topic Number 5, at hand, concerning the oversight
11 of the pilot.

12 BY CAPT. WATSON:

13 Q. And Dr. Bourgeois, you, in your introduction, and
14 Dr. Strauch pointed out several things and your business career
15 was emphasized and I commend you on that. And then, through your
16 medical knowledge, you gave an evaluation of Captain Cota. In the
17 medical records information that was extracted by the NTSB, by
18 Mr. Garber, are you aware of the time period that the discussion
19 that he led you through was a 38-year timeframe?

20 A. No, I'm just reading off the paperwork they sent me,
21 which was based on each of the evaluations.

22 CHAIRMAN ROSENKER: Doctor, I don't think you've got
23 your mic on.

24 THE WITNESS #11: It's on.

25 CHAIRMAN ROSENKER: Try it now.

1 THE WITNESS #11: Okay. Is it not working?

2 CHAIRMAN ROSENKER: Now, we hear you.

3 THE WITNESS #11: Okay. On the form, or not the form
4 but the document, it just lists the evaluations from 1999 and
5 2007.

6 BY CAPT. WATSON:

7 Q. Yeah, the copy I have indicated, when it was referred to
8 DUIs, et cetera, it goes back to 1971?

9 A. Yes, sir.

10 Q. And of course we'll want to get more to the most recent
11 evaluations, but you were not aware of the time period that these
12 comments were made, taking the medications, et cetera?

13 A. No, sir.

14 Q. Okay, thank you. Are you a member of MERPAC?

15 A. No, sir, I'm on the workgroup committee.

16 Q. And this workgroup committee, are there other doctors on
17 that?

18 A. Yes, sir.

19 Q. Are there other members of the general public?

20 A. Yes, sir.

21 Q. So anyone from the general public can offer their
22 comments and support to MERPAC to make evaluations?

23 A. As far as I know, yes, sir.

24 Q. Okay. Have you personally examined Captain Cota?

25 A. No, sir.

1 Q. Have you seen his 719K?

2 A. No, sir.

3 Q. So the only thing you're basing your testimony is on
4 this summary of this report?

5 A. Yes, sir.

6 Q. Do you know when Captain Cota had his problem with
7 depression?

8 A. On here it's listed as back in '98, '99.

9 Q. But, again, you don't know for sure, it's just based on
10 these --

11 A. Well, it's listed as '98, 1998 and 1999. It was a
12 treatment for alcoholism and depression.

13 Q. Okay. Is it true that he does not have depression
14 today?

15 A. Not to my knowledge. I mean, I don't know anything
16 about his current status as far as depression, no.

17 Q. Okay. So do you know the timeframe that he was taking
18 these medications that you were asked about?

19 A. Not the last time he took it prior to the incident, no.

20 Q. Is it your impression that he was taking the medication
21 listed on -- in November of 2007?

22 A. It looks like that from the form, yes.

23 Q. But, you don't really know?

24 A. No, sir.

25 Q. You don't know what medications he had taken on or

1 immediately before the incident?

2 A. No, sir.

3 Q. Isn't it true that when Captain Cota's 719K for 2007
4 lists his medical conditions, those conditions are conditions that
5 he has ever had in his life?

6 A. That's what you're supposed to report at the time of the
7 physical, yes, sir.

8 Q. So they have to tell the truth all the way back in their
9 life and history. So this goes way back past the 38 years,
10 possibly?

11 A. It could, yes.

12 Q. Another question. You're in the medical profession and
13 you deal -- you said you deal with thousands of seamen?

14 A. Yes, sir.

15 Q. Having some good friends in Louisiana, do you contract
16 with the pilot associations to give medicals?

17 A. Not that I know of.

18 Q. Do you contract with shipping lines and companies?

19 A. Actually, we don't really have contracts with them, they
20 just send folks in. We don't really have contracts.

21 Q. And who pays for it?

22 A. Sometimes the mariner pays and sometimes the company
23 pays.

24 Q. And of all your business, what percentage of those
25 thousands of reviews are done to pilots?

1 A. I don't know that we do any pilots. Those are mostly --
2 we're about 75 miles from New Orleans, so most of those would
3 probably be done in New Orleans, in and around that area.

4 Q. Okay. You said you did FAA physicals and airline
5 physicals and like that?

6 A. FAA physicals, yes, sir.

7 Q. And I guess you'd have some knowledge of the military
8 personnel and their standards for our Air Force and Navy pilots
9 and Marine pilots?

10 A. We don't really do much for the military pilots, no,
11 sir.

12 Q. Do you know, is it true that the U.S. Air Force permits
13 its long-range bomber pilots to use Provigil during their flights?

14 A. I don't know that.

15 Q. Would it surprise you that they would?

16 A. Well, the military does different things for purposes of
17 some of those long-range missions and they may be able to do it
18 because they have guys that are in great shape and they're usually
19 fellows that are doing it for a specific mission, for a certain
20 period of time. I don't think that's something they would do long
21 term.

22 Q. Okay. Is there any list that the NMC puts out that
23 identifies Provigil as a problem medication?

24 A. In the draft NVIC we list different medications and some
25 of them are listed by name and some of them are listed by class,

1 but that's a medicine that we would review.

2 Q. But, again, that's the draft NVIC that's not in effect
3 today?

4 A. Well, NVIC 2-98 came out way before Provigil came out,
5 so it wouldn't have been listed anyway.

6 Q. Are you aware of the work schedule of the San Francisco
7 pilots, specifically Captain Cota's work schedule?

8 A. No, I'm not.

9 Q. Would there be some medications that you discussed with
10 Mr. Strauch that he could safely take during his off-duty periods
11 of time?

12 A. If he's off a sufficient time period before he goes back
13 on a vessel, yes.

14 Q. Okay, thank you very much, sir, I appreciate it.

15 CAPT. WATSON: And I have no further questions for the
16 witness.

17 CHAIRMAN ROSENKER: Thank you very much. The San
18 Francisco Bar Pilots Association?

19 CAPT. HURT: No questions.

20 CHAIRMAN ROSENKER: Thank you. California Board of
21 Pilot Commissioners?

22 MR. MOLONEY: Yes, sir, I have a couple questions. I
23 guess this would go to Dr. French.

24 BY MR. MOLONEY:

25 Q. Would you expect the medical examiner to discuss the

1 condition and medications with the pilot, in-depth, including the
2 frequency of taking the medications and the status of the
3 conditions?

4 A. The 719K form says lists medications and dosages. We
5 would hope that the frequency and the current conditions be
6 updated on the 719K, but often there aren't and we have to go back
7 and request that information.

8 Q. The American Pilots Association alluded to this. The
9 719K asks to lists the conditions that the pilot has ever
10 suffered. Would you expect the medical examiner to have discussed
11 how long ago he suffered those conditions and how long he's been
12 free of the symptoms?

13 A. They may or may not. And that's why we have it in the
14 NVIC. Some conditions are chronic conditions that really can have
15 recurrences. Others, as an example, maybe an amputation, is a
16 fixed condition that you know isn't going to change. So it
17 depends upon the condition.

18 Q. And is it reasonable to assume that the medical examiner
19 would take all of the circumstances we've discussed into account
20 before determining a pilot fit for duty?

21 A. The medical professional doing the exam does not make
22 that determination. That determination is made by the Coast
23 Guard. They simply provide a recommendation.

24 MR. MOLONEY: Thank you, sir, that's all I have.

25 CHAIRMAN ROSENKER: Thank you very much. And as a

1 courtesy to the Coast Guard, these are your witnesses and we'll
2 wrap it up with you, but I'll go now to Fleet Management and
3 Captain Aga.

4 CAPT. AGA: Mr. Chairman, thank you very much. My first
5 question is to Dr. Bourgeois.

6 BY CAPT. AGA:

7 Q. I've been hearing about Provigil and one of the side
8 effects talks about a euphoric feeling. Can you describe to us
9 what is this euphoric feeling and how does it affect the cognitive
10 performance of a person?

11 A. Well, euphoria is a feeling of wellbeing or excitement
12 or a stimulation, sort of, and so those folks that experience that
13 side effect may feel over-confident or almost hyperactive, you
14 know, just really -- I mean, it's not normal but it is an effect
15 that would probably impair some of your thought process.

16 Q. Okay, my next question is, you said that the FAA has a
17 three-and-a-half half-life for the drugs that you listed out. Is
18 there a marine standard similar to this?

19 A. No. We've talked about it for the NVIC, for the draft
20 NVIC and we have looked at different half-lives and there are some
21 drugs, like some of the longer-acting benzodiazepines, that have a
22 40-hour half-life, so those would probably not be allowed because
23 40 hours times three and a half, you know, puts you way out. Some
24 of the medicines with a shorter half-life you may be able to take
25 prior to going to work, but it'd probably be at least a 48-hour

1 washout period.

2 Q. Okay. But, does the Coast Guard list out the half-life
3 requirement --

4 A. No, sir.

5 Q. -- as listed in the FAA?

6 A. No, they don't.

7 Q. Okay, talking about the comparison of
8 the 1999 and the 2007 719K, sleep apnea, I believe, was the recent
9 diagnosis, probably after the 2006 problem that was there on the
10 Pioneer. So this would be a new condition, is that correct?

11 A. Yes, it would.

12 Q. And sleep apnea, is it easily curable or do you think
13 the person has to take long-term medication?

14 A. Well, most folks do fairly well on CPAP if they can
15 tolerate the mask or the straps on their head or whatever they
16 have to wear. So there are a lot of folks that are safely sailing
17 with the machine. But, again, you have to ensure that when
18 they're evaluated, that the right pressure is used to correct the
19 problem and that they also are compliant with the usage.

20 Q. One last question for you, sir. You have a person who
21 is substance-dependent. And what period of random testing, drug
22 testing should a regulatory body do to make sure that that he's
23 not getting into substance abuse?

24 A. Well, on the substance abuse it's -- if you're looking
25 at the DOT model for return to duty, you know, they can be tested

1 for up to 60 months and you can increase the frequency or
2 whatever, depending on what you're looking for. Some companies
3 actually have employees sign an employment agreement that says
4 that they could be subjected to increased unscheduled and
5 unannounced testing and some of them do that to try and I guess,
6 encourage abstinence, but there's no specified frequency or time.

7 Q. Okay, thank you.

8 CAPT. AGA: And I would like to ask a few questions of
9 Dr. French.

10 BY CAPT. AGA:

11 Q. Good morning, sir.

12 A. Good morning.

13 CHAIRMAN ROSENKER: Excuse me, Captain Aga. Counsel has
14 a comment that he'd like to offer.

15 MR. HALBERT: I'd just like to point out for the record
16 that you phrased your question as a statement of fact and we have
17 not put any evidence into the record of a diagnosis of current
18 substance dependence. So just to clarify the record.

19 CAPT. AGA: Thank you.

20 CHAIRMAN ROSENKER: Thank you, Counsel. Continue,
21 Captain Aga.

22 BY CAPT. AGA:

23 Q. Dr. French, considering that you allowed so many doctors
24 to certify the Merchant Mariners in the United States, do you
25 think, like the FAA, if you had a recommended panel, approved

1 panel of doctors all over the United States, would that help in
2 better control of the 719Ks and the other documents that the
3 mariner submits to you?

4 A. Well, first, sir, it isn't the certification by the
5 healthcare providers that are doing it. They are again making a
6 recommendation on the 719K and it's up to the Coast Guard to
7 certify the mariners physically and medically competent.
8 Certainly any system would facilitate better training and
9 familiarization of the medical conditions and mariners' physical
10 and operational environments so that the people doing these exams
11 can provide us with the information we need, would improve our
12 system and decrease the risk of us missing a significant medical
13 condition. The better the information in, the better we're going
14 to be able to do this.

15 Q. Sir, what checks and balances are there that you're
16 getting good information back to you?

17 A. There currently is not any proactive checks or balances.
18 Retrospectively, if an issue comes up, we can go back and confirm
19 it, but we have no active quality improvement system to verify the
20 input of information.

21 Q. Do you think random drug testing for a substance-
22 dependent person would help?

23 A. For a what person? I'm sorry, sir.

24 Q. Substance-dependent person, that means a person who has
25 a condition for which he takes a drug, like Provigil or lorazepam,

1 and then you would -- one of these drugs can be abused. So do you
2 think a random drug testing policy by the Coast Guard would help
3 in controlling this?

4 A. I'm not aware of any abuse, widespread abuse issues with
5 lorazepam or Provigil. People who have drug or alcohol
6 dependence, testing is part of their treatment programs and
7 follow-up programs in accordance with good medical practice.

8 Q. Thank you, Dr. French.

9 CAPT. AGA: Chairman, I have no further questions.

10 CHAIRMAN ROSENKER: Thank you, Captain.

11 And the United States Coast Guard?

12 MR. WHEATLEY: Thank you, Mr. Chairman. The Coast Guard
13 has no questions.

14 CHAIRMAN ROSENKER: Okay, thank you. And we'll go to
15 the Board of Inquiry. Mr. Osterman?

16 BY MR. OSTERMAN:

17 Q. This group of questions is either for Captain French or
18 Captain Kranking and it's kind of -- I'll let you decide who needs
19 to answer it. I'm interested in harmonization. What efforts are
20 you aware that are underway, if any, to look at the medical
21 qualifications, the process for examination and certification for
22 mariners, pilots, truck drivers, any of the other transportation
23 modes?

24 DR. FRENCH. We are in contact with those other modes. In
25 fact, the Federal Motor Carrier Safety Administration has taken a

1 leadership role in sponsoring a quarterly federal medical
2 transportation issues roundtable, so we interact with them. As
3 far as harmonization, we try to take the research and the science
4 that they have developed and apply it to the maritime environment,
5 but that is not the same as taking the standards and applying
6 them. As has been pointed out by Dr. Garber, NTSB, at one of the
7 MERPAC meetings, sometimes those policies and standards are not
8 developed based on good medical practice and good science, but
9 there's a lot of other confounding issues involved in them. So
10 harmonization of standards across all the transportation modes,
11 while the scientific and medical evidence basis for it is good,
12 the strict alignment of those may or may not fit, particularly for
13 mariners.

14 One thing I like to point out is if a commercial driver
15 or an aviator crashes, they got out, they survive the crash, they
16 walk away and say that was a bad day at the office. Mariners are
17 often required to save the ship and passengers also. They have
18 additional requirements. So it's not exactly as transferable and
19 as easy to harmonize as it may appear. It's a nice concept but a
20 lot of challenges with it and it may not always be applicable.

21 Q. Now, within the uniformed services you have basic
22 requirements for the officer and enlisted ranks. They're all
23 generally uniform, those basic requirements throughout the
24 services, is that correct?

25 DR. FRENCH. Yes, sir, it's pretty much similar.

1 Q. Now, do you also have, for the uniformed services,
2 advance certification or examination requirements for different
3 types of positions, for example, pilots or those involved in some
4 other sensitive, safety-sensitive activity?

5 DR. FRENCH. Yes, sir. For instance, military aviators
6 need to have their physicals done by either a flight surgeon or an
7 aviation medical officer. Personnel involved in diving operations
8 need to have their physicals performed by a certified diving,
9 military diving medical officer. So we do have various -- and
10 there's subspecialties even within that.

11 Q. And I presume with that comparison, pilot versus diver,
12 the standards and the acceptable performance or medical condition
13 are somewhat different, is that correct?

14 DR. FRENCH. Yes, sir.

15 Q. Okay. All right, the quarterly meetings, Captain
16 French, that you spoke about, these are attended by all of the
17 modal administrations in the Department of Transportation?

18 A. Generally, yes, sir.

19 Q. Okay.

20 A. Unfortunately, I've missed the last two, including one
21 on Monday.

22 Q. Okay. And what is the outcome of those quarterly
23 meetings, is it a shared medical information or is there some
24 additional material?

25 A. It is an informal sharing of what is going on within

1 that mode and what they've done. For instance, Federal Motor
2 Carrier Safety Administration has sponsored a number of focused
3 research panels, which have looked at very focused medical
4 conditions, diabetes seizures. Very often they'll present the
5 results of that. This week one of the presentations was on
6 amputee drivers and how they're evaluated, and a presentation by
7 an amputee. So it's an informal sharing and networking of
8 information.

9 Q. Okay. One of the challenges that the Safety Board
10 frequently has is this kind of comparison among modes, the most
11 notorious, I think, is when we end up hours-of-service
12 discussions. Every modal operator has different hours of service
13 rules to govern fatigue. If there were legislation or some other
14 vehicle, a recommendation, that would suggest a uniform medical
15 standards approach for all transportation modes, how would you
16 respond to that?

17 A. I don't think it would fit all the modes and I think it
18 would probably, in an attempt to one-size-fits-all, probably not
19 do well for any of them.

20 MR. OSTERMAN: Okay, thank you, sir.

21 CHAIRMAN ROSENKER: Thank you, Mr. Osterman.

22 Dr. Spencer?

23 DR. SPENCER: Thank you, Chairman.

24 BY DR. SPENCER:

25 Q. Dr. French, are you aware if U.S. companies that operate

1 ships and tow boats and other sorts of vessels have their own
2 medical monitoring programs or do they generally just rely on
3 Coast Guard physicals?

4 A. It's a mix of both, sir. Some larger companies do have
5 medical programs. A lot of those people involved in those
6 programs have participated in the MERPAC medical workgroup
7 meetings.

8 Q. Okay. Do the companies that have their own programs
9 that you're aware of, have programs that exceed what's being
10 proposed in your new NVIC?

11 A. The discussions that I hear at the MERPAC workgroup
12 meetings indicate that a number of them have requirements and
13 guidelines that exceed what's in the NVIC because, as has been
14 pointed out before, the purpose of the NVIC is to ensure safe
15 maritime operations. We are not concerned -- while we are
16 concerned, it is not our authority to be their primary care
17 provider and to ensure preventive care measures and the long-term
18 effects of some of their medical conditions, while we're a smaller
19 subset of that.

20 If the healthcare of the provider, as Dr. Bourgeois has
21 mentioned, has been increased overall, the chances are that our
22 particular criteria will be met. But, it is not the Coast Guard's
23 responsibility to be the primary healthcare provider and ensure
24 the long-term health of the mariner. That's the responsibility of
25 the employer organization.

1 Q. Okay, thank you. I'm not done. I believe you mentioned
2 that the licensed officers have to have their physicals at five-
3 year intervals but pilots have them at one-year intervals?

4 A. Yes, sir.

5 Q. And the one-year intervals, is that for state pilots as
6 well as federal pilots?

7 A. I may ask my legal Counsel for that, but I believe it's
8 only a federal requirement. Captain Kranking probably knows that.

9 THE WITNESS #13: I cannot speak to state requirements,
10 but your statement with regard to the federal license that the
11 Coast Guard issues is correct.

12 BY DR. SPENCER:

13 Q. Okay. Why is it that the pilots have to have a physical
14 on an annual basis but other people who navigate ships can go five
15 years between physicals?

16 A. Seriously, sir, that's because of how the statutes are
17 written. I don't know the history behind those.

18 Q. Okay. All right, that's a good answer.
19 I won't question that one.

20 BY DR. SPENCER:

21 Q. All right, I have a couple of questions for Captain
22 Kranking, as well. Are there any sort of uniform international
23 medical standards for licensed mariners?

24 A. The Coast Guard serves as the lead of the U.S.
25 delegation to the International Maritime Organization. They held

1 meetings in the beginning of March. I know that the development
2 of international medical standards is a topic that they are
3 actively working.

4 Q. All right. So does that mean that there are standards
5 now or that there's a proposed work program for standards?

6 A. There are minimal standards now and what we have adopted
7 and working into the draft NVIC is certain functional
8 requirements, but that's the extent, to my knowledge, that the
9 international requirements go at this point.

10 Q. Okay.

11 DR. SPENCER: Oh, excuse me, I had one more question for
12 Dr. French.

13 BY DR. SPENCER:

14 Q. Following up on Mr. Osterman's question about Coast
15 Guard military physicals, for the Coast Guard officers who
16 navigate Coast Guard cutters, are the physical standards
17 equivalent to what's being proposed in your NVIC?

18 A. Well, sir, if I may answer that, the standard -- there
19 are not standards in NVIC except for vision and hearing. The
20 majority of the NVIC just says, if you have these conditions, this
21 is the information that we would like to see submitted with it so
22 we can make a determination. Given that the information asked
23 for, for the number of these medical conditions in the NVIC, for
24 Merchant Mariners, is for the vast majority much less than the
25 information that is required by uniformed services policies, for

1 instance, the Coast Guard medical manual, system of air medical
2 policy letters. So we are not going to the depth that the
3 military generally does for its members, for obvious reasons. The
4 requirements are higher for military personnel. The bar is set
5 higher.

6 Q. Okay. So could I conclude from that, that the operators
7 of Coast Guard vessels would qualify medically for a Merchant
8 Marine license?

9 A. In almost all cases, yes, sir. I'm sure there's some
10 exceptions, but the vast majority, if you can pass a Coast Guard
11 physical, you would be able to qualified for Merchant Mariner
12 license.

13 Q. Okay, thank you very much.

14 DR. SPENCER: Now, getting back to Captain Kranking.

15 BY DR. SPENCER:

16 Q. Does the Coast Guard keep track of the medical
17 qualifications of mariners operating foreign ships calling in the
18 United States?

19 A. No, sir.

20 Q. Okay. So do you have any way of determining their
21 medical fitness or evaluating it?

22 A. The short answer is no, sir, but those mariners are
23 licensed under the requirements of their flag state, which
24 includes some physical requirements. The port state control
25 function may be to verify the credentials of those sailors.

1 Q. Okay. And so do you know what the physical requirements
2 are for mariners in other flag states, at least what the states
3 put out?

4 A. No.

5 Q. Do you keep track of that?

6 A. Personally, I am not familiar with it, no, sir.

7 Q. Or does the Coast Guard?

8 A. I am not aware of it.

9 Q. Okay. I understand that this new NVIC covers a lot of
10 specific drugs, is that right? At least that's what I gathered
11 from a discussion this morning. As you get into certain drugs
12 that may qualify, is it published what drugs or drug combinations
13 would disqualify a mariner? Is that published somewhere?

14 THE WITNESS #12: Yes, sir, the enclosure to the draft
15 NVIC lists specific categories of drugs and for each category it
16 gives an example. For instance, it talks about benzodiazepines,
17 which lorazepam, Ativan, is one.

18 DR. SPENCER: Okay. Well, I don't know what any of
19 those are, so that's fine. Right now the regulations require that
20 when there's a marine accident, the people who may have been
21 involved in that accident or contributed to it are tested for
22 alcohol and certain illegal drugs. After you've established your
23 more rigorous program for medical credentials, do you anticipate
24 that the Coast Guard may expand the drugs that are tested for,
25 after a serious accident? Or have you given it any consideration?

1 THE WITNESS #13: I cannot speak to that, Dr. Spencer.
2 That's in the investigation function of the Coast Guard and I'm
3 the licensing function.

4 DR. SPENCER: Okay, that's all my questions,
5 Mr. Chairman.

6 CHAIRMAN ROSENKER: Mr. Henry?

7 MR. HENRY: Just one question for Captain French.

8 BY MR. HENRY:

9 Q. The physical evaluation required for renewal of a
10 license appears to be -- you know, require a good medical history
11 and for the individual to be physically fit on the day that he is
12 evaluated for his license and then his license is issued. What
13 systems are in place to account for the mariner that has a
14 disqualifying health event following the issuance of his license?

15 A. There is no requirement for a mariner to report a change
16 in condition in the interval from the issuance of their either
17 original or renewal through that five-year period, unless they
18 have been issued a medical waiver and we tell them, with the
19 issuance of the waiver, report any changes in that condition, but
20 that still would not cover any other conditions that may arise.
21 So there is no mechanism to have mariners require to report
22 changes in conditions.

23 Now, if we become aware of changes, either through self-
24 reporting by the mariner or is occurring with increasing frequency
25 in the marine field investigators, that these are brought to the

1 attention of the Coast Guard during casualty investigations, then
2 the Coast Guard can work with the mariner to try to get more
3 information and get the issue resolved, and if that doesn't
4 satisfy the needs to ensure that they're physically competent, can
5 initiate suspension or revocation hearings -- proceedings against
6 the mariner.

7 Q. So there's no requirement or duty on the part of the
8 mariner, the employee of the -- the employer of the mariner, to
9 report conditions that may be disqualifying, medical conditions?

10 A. In between physicals, that is correct, sir.

11 Q. Okay, thank you, Captain.

12 MR. HENRY: That's all I have.

13 CHAIRMAN ROSENKER: Thank you.

14 BY CHAIRMAN ROSENKER:

15 Q. Dr. French, first let me thank you for your 35 years of
16 service to our nation, as a Coast Guard officer and a medical
17 doctor, and congratulations on your upcoming retirement. You are
18 a flight surgeon?

19 A. Yes, sir.

20 Q. And where did you take your flight surgeon training?

21 A. I took my flight surgeon training at the U.S. Army
22 Aeromedical Center in Fort Rucker, Alabama, sir.

23 Q. Okay, because I wanted to ask a couple questions about
24 the issue of drugs and flying in the military. The Coast Guard,
25 do they have provisions for taking certain medications while

1 they're on missions?

2 A. Sir, I'm not sure I understand the question. Not just
3 on missions, but do you mean as far as if they're on a medication,
4 are they fit to fly a mission?

5 Q. First the question of using a drug in order to maintain
6 alertness, that type of thing.

7 A. No, sir. You're talking about the alertness programs
8 that the Air Force and the Navy and special operations people
9 have. The Coast Guard does not have a program like that.

10 Q. And that is a policy that the Coast Guard made under its
11 own decisions at the highest levels?

12 A. Yes, sir. I can only refer to a decision made several
13 years ago by a previous chief of health services, that the Coast
14 Guard would not go in that direction, of which I must point out
15 that even though the other services have those programs, they are
16 under very strict guidance by a local flight surgeon who's on
17 scene, who knows aviators very well. The other part is that the
18 recent reports from Special Operations Medical Association and
19 Aerospace Medical Association journals are that those programs
20 aren't used as often as people would expect. They're in fact very
21 seldom used. They're there if they need them, but it's not a
22 widespread and common occurrence, in fact, it's very rare.

23 Q. Thank you, that's an important issue. And talk about
24 the kinds of medications that might DNF you if you're a flying
25 officer.

1 A. Oh, what types of medications? Generally, any of the
2 ones that can impair your human performance, which would be the
3 classes of, certainly, narcotics, benzodiazepines, certain
4 antihistamines, but again, it isn't -- as you well know, sir, it
5 isn't just the medication that grounds you, it's the condition.
6 And as often happens is the pilots come in and say, gee, doc, can
7 I get an up-chit? You know, my cold is better or I'm taking, you
8 know, Sudafed and it's non-sedating. No, you still have the cold,
9 that's the problem because that's what's impairing your
10 performance. So it isn't just the medication.

11 Q. When we're talking about aviation as opposed to marine,
12 we're in a different environment, it's obvious that we're in a
13 different environment.

14 A. Yes and no. I mean, sir, it's a complex, highly
15 dynamic, tightly coupled, i.e., an inaction at one moment can
16 cause a significant consequence very quickly thereafter, so I
17 think that the operating environments -- and we've discussed this
18 at federal roundtables. The marine environment certainly does not
19 have the altitude issues and you know, we don't address any of
20 those in the NVIC, but the maritime environment is a highly
21 complex, dynamic human-machine interface requiring a high level of
22 cognitive function, often under physically stressful conditions,
23 so there are a lot of similarities between the aviation and the
24 maritime environment.

25 Q. The kinds of medications we were talking about today,

1 could they affect good marine operations and cognitive thinking
2 and cognitive --

3 A. Yes, sir, they would affect any kind of cognitive
4 processing in human performance requirements and causing human
5 performance decrements.

6 Q. Now, we talked also, interestingly enough, that you can
7 have your physical today and, God forbid, have a stroke the next
8 day or a heart attack and not have to call the Coast Guard and its
9 licensing and make sure that they are aware that a condition has
10 changed, is that correct?

11 A. Yes, sir, that's correct.

12 Q. What if that were an FAA license? And I realize that
13 you're not an FAA representative, but your knowledge of the
14 community, how would it work there?

15 A. They would be required to report it.

16 Q. Is there a reason why that hasn't been a concern of the
17 Coast Guard?

18 A. That would only be conjecture, sir, of why it hasn't
19 been concerned, but I think it's because that there has not been a
20 medical program director to take the responsibility to make it a
21 concern, as it is it for the other modes.

22 Q. What would it take to make such a change?

23 A. It would take -- I can't speak to this. It would be
24 just regulations or statutory changes also, significant changes.

25 Q. And sir, again, I respect your practice of medicine for

1 the many years that you've been involved in and the contributions
2 you've made. In your personal opinion, does this make -- does
3 this type of an idea show some promise?

4 A. In my personal opinion, yes, sir, I think it's a gap and
5 that gap has been discussed at the MERPAC medical workgroup
6 meetings and identified by other people familiar with medical
7 certification programs. So it is a current gap in the system.

8 Q. Thank you very much.

9 CHAIRMAN ROSENKER: And again, I want to thank all of
10 our witnesses that we had this morning. We're going to take a
11 break before we get to the second panel. We'll do a 10-minute
12 break and we'll come back at 11:05, so we will be in recess.

13 (Off the record.)

14 (On the record.)

15 CHAIRMAN ROSENKER: I know the managing director will be
16 here shortly. At this point, I think we are trying to excuse --
17 after this full session we'll try to do an excuse, right, because
18 at that point, I know Dr. French has a flight I think he's trying
19 to catch.

20 THE WITNESS #12: Yes, sir, tomorrow's my 30th
21 anniversary and I'd like there to be a 31st.

22 CHAIRMAN ROSENKER: Well, we do not want to interfere
23 with that. I hope you're not on American Airlines today because I
24 understand that they've canceled a number of flights. Check it
25 before you leave. Okay. Dr. Strauch?

1 BY DR. STRAUCH:

2 Q. And I'll do my best to make sure that you do celebrate
3 the 31st anniversary, Dr. French. I'd like to ask now, Captain
4 McIsaac and Mr. Miller, you'll both be in different panels this
5 afternoon and I know this will be discussed, but I would like each
6 of you just to discuss your organizations' respective roles in
7 overseeing San Francisco pilots and let's start with Captain
8 McIsaac.

9 A. Good morning. Are you talking about medical oversight?

10 Q. I'm referring to performance oversight, but I'll ask you
11 -- medical oversight is a different issue and I'll raise that
12 separately, but overseeing the performance of pilots to make sure
13 that their performance maintains the adequate level of safety and
14 that their performance is within state regulations.

15 A. Our association doesn't have any oversight issues per
16 se. By state regulation, the port agent has to notify the
17 commission on any matter that affects the ability of the pilot to
18 carry out his or her duties in a safe manner.

19 Q. Okay. And since you raised that, how often have you, as
20 the port agent, reported pilots to the commission?

21 A. I've notified the commission on two occasions that I was
22 concerned with a pilot's -- either performance or health issues
23 affecting his performance. I'm sorry.

24 Q. And what was the period of time in which you were a port
25 agent in which you did report two pilots?

1 A. Five and a half nonconsecutive years.

2 Q. Okay. And what were the issues with each of the
3 respective cases in which you reported the pilot?

4 A. One was age-related degradation of skills, in my
5 opinion. A pilot who was elderly was off for close to a year,
6 went through a number of medical procedures, wanted to come back
7 to work, there was a lot of concern on my part and the
8 commission's part and I notified the commission that I felt that I
9 was not comfortable just assigning him to vessels in his present
10 state. That was about four and a half years ago, I believe. And
11 in 2004 I reported a pilot or notified the commission of a pilot
12 who had some emotional or anger issues on a -- started on a pilot
13 boat and I had reports that it continued on in carrying out his
14 duties on the bridge of the vessel.

15 Q. What was the name of that pilot, sir?

16 A. That was Captain John Cota.

17 Q. Does the association have any medical standards that it
18 applies to its members?

19 A. The association does not.

20 Q. Okay, thank you.

21 BY DR. STRAUCH:

22 Q. And now, Mr. Miller, the same question. What is the
23 authority of your organization in overseeing the pilots?

24 A. The process really starts during our selection process
25 for possible trainees. We put them through a very rigorous

1 screening process to bring them into our training program and
2 that's where we first take note of their history, their
3 background, their potential. And without going into the
4 details -- I'd be certainly happy to do that, but perhaps this
5 afternoon might be a better time. Your call. We go through the
6 selection process. Those who make the cut through the selection
7 process then go into our trainee training program, which is a
8 program that lasts by law from a minimum of one year to a maximum
9 of three years.

10 They are under the regular observation of, frankly, the
11 entire -- almost the entire pilot organization, but in particular
12 the pilot evaluation committee, which is appointed by the
13 commission and who have the responsibility to run the trainee
14 training program and also assess the progress of those trainees.
15 Not all trainees make it through the program. For those who do,
16 we go through the licensing process, which includes a physical,
17 they have to take a physical before they get into the training
18 program and they have to take it again before they are licensed,
19 and they are re-licensed annually, which, under California
20 statute, requires them to be found fit for duty in a physical.

21 There's also the opportunity for the board to deny a
22 re-licensing if they are unsatisfactory for some reason amounting
23 to misbehavior. If we fail to license them, they have a right to
24 a hearing and appeals from that, from a determination. There's a
25 continuing education program. There are actually two programs.

1 One is on the three-year cycle and one is on a five-year cycle.
2 The three-year cycle is a classroom type of continuing education.
3 The five-year cycle is a manned model simulation process.

4 Again, these are programs that we operate and it is a
5 form of oversight of the pilots we license. We also have the
6 incident review process, which is laid out in the statutes in the
7 Harbors and Navigation Code. It comes into effect when there is a
8 maritime incident, not necessarily a casualty, and that is an
9 opportunity to not only examine that particular incident, but as
10 part of that process, there is a review of the history of that
11 pilot with prior incidents.

12 And that is built into the process and it also is part
13 of the file. It is a public item. And decisions can be made by
14 the Incident Review Committee or by the board itself, based upon
15 that information. And indeed, as Captain McIsaac said in his
16 opening remarks, we do rely on the port agent to report to us his
17 concerns about the ability of a particular pilot to carry out
18 their duties.

19 Q. Okay. So in other words, you enforce the state
20 legislation, and we're talking about the State of California and
21 not federal, is that correct?

22 A. That's correct.

23 Q. Okay. And let me see. Do you have any -- you said
24 pilots get a medical before they start and then they get a medical
25 when they apply and they get a medical a year thereafter. Are

1 these standards state standards, federal standards and do the
2 state standards exceed the federal standards?

3 A. I want to be responsive to your question. Let me
4 describe how it works because you gave me several options, all of
5 which might apply. When a trainee comes into the program, they
6 will take the physical, a physical. Okay. They have to be
7 licensed, so they will already have a federal mariner's license.
8 We will send them to a board physician and there are five.
9 Presently we have a panel of five occupational medicine physicians
10 who have agreed to apply the ship standards, protocols or
11 guidelines to the physical.

12 Now, let me describe what we get back and that will help
13 make this all make some sense. We do not get a copy of the 719K
14 or any other tests that our board physicians receive. At the same
15 time as they are doing the physical that we request they are also
16 doing the Coast Guard physical, in the normal case, because let's
17 say the Coast Guard has an annual physical requirement for our
18 older pilots, those who are 50 and over it is an annual
19 requirement.

20 For those who are over 35 it is every other year. For
21 those who are under 36 it's a quadrennial physical, something that
22 we will be looking at changing. But, in any event, on the
23 occasions that our guys take the physical, they will be getting in
24 effect two physicals, the Coast Guard physical and our physical,
25 which use different guidelines. The SHIPS guidelines are focused

1 on making -- they were designed for employers, as I have been
2 told, and they come up with a response. It's a check-the-box kind
3 of response that we get back. It says fit for duty, not fit for
4 duty, or permanently not fit for duty. At the same time as the
5 SHIPS guidelines are being used by our examining physician, he's
6 also giving the Coast Guard physical, which presently is given
7 through the NVIC guidelines. All the information that would be
8 gathered pursuant to NVIC is before our examining physician at the
9 time he applies the SHIPS guidelines. I would say we get the best
10 of both. The Coast Guard process requires that the examined
11 mariner disclose all medications and all conditions, as we have
12 been talking about this morning.

13 So whether the SHIPS process specifically requires that
14 information or not because they're, in effect, concurrent
15 examinations, that information is before the examining physician
16 and is available to him. Now, there's one other difference
17 between the SHIPS process and the NVIC process. The NVIC process
18 does not contemplate that the examining physician will make the
19 ultimate determination about fit for duty. That goes to the
20 Regional Examination Center, as we've been hearing. Under the
21 SHIPS process, the examining physician does make that
22 determination. It's hard to imagine that they would make
23 inconsistent determinations, that is to say, the recommendation to
24 the REC versus their response to us.

25 Q. Okay, thank you. SHIPS, by the way, is an acronym of a

1 program that was developed in the early '80s by the Maritime
2 Administration. And I think you said that one of the things that
3 you do, in overseeing your pilots, is incident investigations.
4 What's an incident?

5 A. An incident would include, but not be limited to,
6 allisions, collisions, groundings, maritime --

7 Q. Okay.

8 A. -- occasions that cause concern.

9 Q. Standard definitions?

10 A. Yes.

11 Q. And you said you review the history of the pilot with
12 each incident investigation? Is that what you said?

13 A. Yes. One of the inclusions to the report of the
14 incident investigation review committee is a listing of all
15 incidents that have involved that pilot.

16 Q. Okay.

17 A. Regardless of the outcome, whether it's pilot error or
18 not pilot error, whatever.

19 Q. Okay. And you did this with Captain Cota?

20 A. That's correct.

21 Q. Okay. I'd like to refer you to -- what's our exhibit
22 number? This will be Exhibit 94, the extracts from reports of
23 incidents involving Captain Cota, specifically one that occurred
24 on August 8th -- I'm sorry -- October of '04, October 9th of '04,
25 when his -- Captain McIsaac reported -- an incident that Captain

1 McIsaac reported to the commission. Captain Cota became "enraged
2 and irrational when boarding the U.S. Navy Vessel Tarawa." How
3 did the commission investigate this incident?

4 A. The port agent reported it to us. It did not involve an
5 allision, a collision or a maritime incident. It was referred to
6 the Incident Review Committee and treated as a medical matter and
7 they investigated it as such.

8 Q. Okay. Now, on Page 2 of that, it says, in fact, while
9 the IRC, or Incident Review Committee, has treated this incident
10 as a medical issue, it was informed -- and this is in a letter
11 from the commission to Captain Cota -- informed you that the
12 conduct described by the captain and officers of the Tarawa was,
13 in the IRC's view, unprofessional and had the potential of
14 distracting the bridge team from the safe navigation of the
15 vessel. Now, given that Captain Cota was given a clean bill of
16 health as part of the medical evaluation that occurred in this,
17 how did the IRC follow up on behavior that it considered
18 unprofessional, possibly distracting and one can assume from that,
19 could potentially endanger the safety of the vessel? What follow-
20 up did the commission do?

21 A. You mean during our investigation of the event?

22 Q. Subsequent to the investigation.

23 A. Subsequent to the investigation.

24 Q. Yes. In other words, how did you continue to monitor
25 the history of Captain Cota's performance after this

1 investigation?

2 A. Several stages. There were two psychiatrists who
3 reviewed the -- who examined Captain Cota. The first one had been
4 proposed by Captain Cota's lawyer. The response that we got in
5 that case was very summary. There wasn't a lot to it. And I was
6 not a member of the Incident Review Committee, but these are from
7 some conversations that I've had. The Incident Review Committee
8 wanted more and so it declined to accept that first opinion and
9 went to one of our board physicians for a reference to another
10 psychiatrist, who reviewed the files.

11 And I believe that he also interviewed -- I'm confident
12 that he interviewed Captain Cota. And he came back with a much
13 more detailed and a much more specific analysis and based upon
14 that, the Incident Review Committee proceeded. There were several
15 recommendations that that physician made. One was that there be
16 an anger management, that we send Captain Cota to an anger
17 management program. Staff tells me that, in fact, Captain Cota
18 did pay for that and went to it.

19 There was also a proposal that Captain Cota have, I
20 think, 14, 16 or 18 sessions with a therapist, with his own
21 therapist. I am not aware that he did all of that. He did some
22 of it but not all of it, but did not feel it was helpful, is what
23 I understand. And the third was that he have approximately two
24 months of ride-along or directly supervised piloting experience.
25 I'm not aware that that, in fact, occurred. I think that Captain

1 Cota did have some ride-along experience so that he would get his
2 recency back and familiarity with some of the jobs that pilots
3 have to do. At some point he went back on the board and
4 eventually went back to work. The Tarawa occurred, if I recall
5 correctly, October 9th and he was back at work in March and the
6 Incident Review Committee did not conclude its oversight until
7 that letter that you referred to was prepared, which I remember
8 quite well because it was the first vote that I took as a
9 commissioner and I did vote in favor of sending that letter to
10 Captain Cota. So there was oversight. In other words, the IRC
11 didn't close out its oversight until it felt confident that
12 Captain Cota could continue to do the work.

13 Q. Okay. So there were three things that were required.

14 A. That were suggested by the second physician.

15 Q. Okay, but three things that apparently were decided
16 upon, that he see a therapist, that he take an anger management
17 course, and that the commission or somebody ride along with him
18 for a period of two months, is that correct?

19 A. That was the recommendation of the second physician.
20 There was also an analysis by the first physician that questioned
21 some of those, some of those items.

22 Q. Okay.

23 A. So I think that it was suggested but it was not -- I am
24 not aware that the IRC ever made it an absolute requirement, but
25 these were things that were thought to be helpful and appropriate

1 and that they were implemented and then perhaps not followed
2 through if it did not appear to be helpful on a continuing basis.

3 Q. Should the commission have made it an absolute
4 requirement given what we know now?

5 A. That goes to another question which I think is important
6 and I don't want -- I'm not trying to avoid answering your
7 question, but it's a -- there was nothing in the Tarawa incident
8 that suggested that Cota was not a competent pilot. So if the
9 follow-up was going to go to the question of his admittedly
10 improper behavior, then the answer is perhaps it would be
11 appropriate to make sure he didn't lose his cool again. But, if
12 it's a question of did those three suggested activities -- does
13 that go to piloting, I don't think they go to piloting. I can't
14 find a nexus between his behavior and his competence at
15 maneuvering a ship. And in fact, on the Tarawa occasion, it was a
16 very difficult maneuver and he made it happen in spite of his
17 other issues.

18 Q. But, you can't find a nexus between what you cite in the
19 letter as unprofessional conduct, the potential of distracting the
20 bridge team and being a good pilot? Is that what you're saying?

21 A. Well, I would agree with you that distracting the bridge
22 team is not a characteristic of a good pilot. No question about
23 that.

24 Q. Okay. Then why was there no continued ride-along with
25 Captain Cota as there should've been?

1 A. At some point the -- well, the board doesn't go ride
2 along, okay, it would be another pilot who would be riding along.
3 And I can't speak to decisions about how pilots would view each
4 other, but I think it's fair to say that the guy, at the time, had
5 probably what, 23, 24, 25 years and all in all, notwithstanding
6 the events of November 7th, he had a very good -- on a percentage
7 basis, he had a very good career and a very safe career.

8 And so if he appeared to be piloting successfully, then
9 I'm not sure that -- and I don't mean to pass the buck to my
10 neighbor here, but he's the port agent and in the role of the port
11 agent, the port agent has to allocate resources and assign pilots
12 to ships and when you take a pilot off the board to ride along for
13 a period of two months, that's like losing a pilot for two months.
14 That's a big loss. If it's not necessary, then it shouldn't be
15 done.

16 Q. Okay.

17 BY DR. STRAUCH:

18 Q. Captain McIsaac, would you like to respond to that?
19 Excuse me. My cell phone. Would you like to respond to that, to
20 what Mr. Miller said?

21 A. Well, this is going to sound like I'm passing the buck
22 as well, to someone who's not even here, but I was not port agent
23 during this time. I wrote the initial letter and then, in early
24 November of 2004, I went back to piloting for the next two years.
25 So as far as the actual ride-alongs, this, even amongst the

1 pilots, was not -- or let's say, as the port agent at that time, I
2 did not view it as much of a piloting problem as it was a
3 potential behavior problem.

4 Q. Okay. Now, Mr. Miller, I'd like to refer you again to
5 Exhibit 97 and we have the February 20th, 2006 incident involving
6 the vessel Pioneer. Captain Cota was the pilot of a vessel that
7 grounded. And if we look at -- yeah, the exhibit is -- I'm sorry.
8 The exhibit is 94. Look at Page 5 of that, the recommendation,
9 and it says, closed this incident. Pilot in error. Captain Cota
10 acknowledges the lack of the situational awareness and does not
11 expect it will happen again. A warning letter of reprimand has
12 been placed in his file. Did anything else happen as a result of
13 this investigation other than the placement of a warning letter in
14 his file?

15 A. I'm not aware of any, any other action.

16 Q. Okay. So you have a situation where, in October of '04,
17 this pilot has an anger management-related incident that you
18 called potentially distracting of the bridge crew. A year and a
19 half later, he has a pilot error-related incident and there was no
20 follow-up other than putting a letter of reprimand in his file, is
21 that correct?

22 A. That is correct.

23 Q. Okay.

24 BY DR. STRAUCH:

25 Q. At what point, Mr. Miller, does the association look at

1 pilot's record and say, well, he's had 20-plus years of good
2 piloting, but the number of incidents that we're seeing raises a
3 question that maybe we need to do more than put a letter of
4 reprimand in his file, maybe we need to really watch this guy
5 closely? What is that point, sir?

6 A. That's a very legitimate question and I have two things
7 that I'd like respond. The first is that -- and let me put it in
8 the context of a quantitative context. Let's say that you have a
9 pilot who says -- who has an incident where loss of situational
10 awareness is clearly involved, and that's in month number one.
11 And then six months later there's another incident and it's,
12 again, situational awareness that's clearly involved. I'm not a
13 physician, I'm not on the Incident Review Committee, I'm not a
14 mariner, but I would look at that and I would say this looks like
15 something we've got to look at. I don't know whether that point
16 is three months, six months, nine months, 18 months.

17 I would note that our accusation filed by our Incident
18 Review Committee, which is a statement of charges against Captain
19 Cota, makes reference to a loss of situational awareness on the
20 Cosco Busan. So we have an incident, the one that you're
21 referring to, the Pioneer, which was, I think you said, 2006 and a
22 year a half later, more or less, we have another one. I look at
23 that and say this might be a pattern.

24 The other thing that I would comment is that we have
25 established a pilot fitness committee to look at our medical

1 standards and there are actually five or so charges, six charges
2 that we have given to that committee, which is going to -- at some
3 point today I will talk, whenever you'd like me to, about what
4 that committee's about and what it's going to do. But, one of the
5 key things that we are going to ask them to look at is the state-
6 of-the-art methodology in detecting a decline in a pilot's
7 situational awareness; critical function. We do not have a
8 guideline for doing that. I don't know that one exists in the
9 medical world. If there is one, we'd like to know about it.
10 There may be some in collateral -- other transportation
11 industries. I'm not aware of that. But, we do have physicians
12 who are charged with knowing about those things and advising us.

13 Q. Well, I could tell you, sir, as someone who specializes
14 in human factors, I applaud your efforts in situational awareness,
15 but situational awareness has many manifestations and the
16 manifestation I'm referring to now is not a medical one but a
17 performance one, and if you look at
18 Captain Cota's record, there certainly appears to be a pattern.
19 And I guess, let me rephrase the question this way. Why did the
20 commission miss the pattern of performance degradation that we see
21 in Captain Cota's performance, particularly in the last 10 years
22 of his career?

23 A. Well, I don't know what the baseline is from which we're
24 assessing the degradation. I mean, there are -- since the Mare
25 Caspium and since the incident review process has been in place,

1 as we know it today, because in a previous time it was a different
2 process, it was a different board, there had been five incidents
3 plus the Tarawa. Whether it constitutes a degradation, I'm not
4 sure because we looked at other pilots who have over 20 years of
5 service and people -- things happen out on the water. If you give
6 me a second, I think I can find the numbers. There are -- and I
7 apologize for it. Here we go.

8 We have 17 pilots with 20 years of experience or more.
9 Of that number, all have had -- well, all of them had incidents.
10 Just because you have an incident doesn't mean it's pilot error.
11 Generally it is not. Some of our very senior pilots have had no
12 pilot error in their entire career. Captain Cota had an error-
13 free record of 99.78 percent. Now, that's an indexed number.
14 That's a contrived number but it's an honest number. An incident-
15 free of 99.69. Of the cohort of senior pilots, using this index,
16 he had more incidents than others, but only by a tiny number
17 because pilots make a lot of moves.

18 Again, this is an approximation because we don't have
19 the exact statistic. But, over now 27 years, we estimate that he
20 made 3617 moves. That's a lot of moves. And even assuming that
21 all of the incidents from the previous incident investigation
22 regime were -- involved pilot error, which certainly is not the
23 case, but using the worst case analysis, he had a 99.78 percent
24 error-free rate. Again, I said this is an index. That's not a
25 precise number. So where do you start -- at what point can say

1 for certain and sure that there is a degradation in performance?
2 Now, clearly, there was a big problem on November 7th, no question
3 about it. I don't know what the point is at which you draw that
4 conclusion because there are other pilots who have incidents. At
5 what point do you say, well, it looks like it's really getting
6 worse? I don't know.

7 Q. But, isn't that the job of the commission, to establish
8 that point, to be able to look at a pilot's record and say, you
9 know, this is no longer a series of isolated events, this is
10 really a pattern? I mean, isn't that what the commission is
11 supposed to be doing?

12 A. I think that's a good goal, but how do you define where
13 that pattern begins? Incidents happen and they don't all happen
14 on a -- it's not a straight line sort of a function, it depends on
15 the kind of jobs that a pilot is doing, it depends on a lot of
16 factors.

17 Q. I can answer one question. I think one way that an
18 organization would do this is by discussing this matter with other
19 authorities, other organizations that oversee pilots and find out
20 what they do. Did your commission do this?

21 A. We have not done that and I agree with you 100 percent
22 and I'm involved in trying to get that kind of conversation going.

23 DR. STRAUCH: Okay. I'd now like to refer each of you
24 to Exhibit 88. It's a letter from PMSA, which stands for Pacific
25 Merchant Shipping Association. It's a letter to our chairman,

1 Chairman Rosenker. And let me ask Captain McIsaac.

2 BY DR. STRAUCH:

3 Q. If you go to the next to last page of that exhibit, this
4 PMSA letter, I'll quote. This is from a quote from an article in
5 the Sacramento Bee, published Wednesday, September 12th, '07.
6 It's by reporter Daniel Weintraub. It says, "Ship pilot board
7 deserves more scrutiny for spill." On the next to last page of
8 the -- the next to the last page. If you look at the third
9 paragraph up, the last line says, "Though small in numbers, the
10 pilots, that is, the San Francisco Bar Pilots Association, band
11 together into a political action committee that regularly donates
12 more than \$100,000 each election cycle to members of both
13 parties." Is that true?

14 A. Yes.

15 Q. Okay. Is that wrong? Is there anything illegal in
16 this?

17 A. No, not whatsoever. Our rates are set. The way our
18 rates work is we or industry can call for a rate case, present it
19 to the board, the board makes a recommendation to the state
20 legislature and then a bill has to be authored and carried through
21 to eventual signature, for the governor. So that is why we
22 participate in the political process.

23 Q. Okay, thank you.

24 BY DR. STRAUCH:

25 Q. And now, Mr. Miller, if you look -- if you go to the

1 first page of that exhibit, you look at the middle paragraph.

2 A. Are you talking about the PMSA letter?

3 Q. Yes, yes. Do you have that in front of you?

4 A. No, but I'm familiar with it.

5 Q. Okay.

6 A. I think.

7 Q. All right. Well, I'll quote from the latter part of the
8 middle paragraph. There you go. No, I'm sorry, the first page of
9 that exhibit.

10 A. I have that now.

11 Q. Okay. "And yet, the very structure of the Board of
12 Pilot Commissioners, under California law, lends itself to less
13 than the most robust and vigorous licensure practices possible.
14 Specifically, there is no functional legislative sunshine on this
15 relatively obscure board..."

16 A. Well, I think we could disagree with that.

17 Q. "...a lack of oversight, which is only combined by the
18 fact that it does not sit squarely within any department of the
19 state." Would you comment on that?

20 A. I sure will. And let me set the stage because I think
21 it will help make my remarks make some sense. The Board of Pilot
22 Commissioners was established by the first legislature of the
23 State of California in 1850. It was established as an independent
24 board and has been independent ever since. I'm a very nostalgic
25 guy, but we're not living in 1850 anymore, we're living in 2008.

1 There's legislation proposed in Sacramento, about which I have
2 testified, which would place the Board of Pilot Commissioners
3 under another agency. As introduced, S.B. 1627, by Senator
4 Wiggins, would have placed under the Department of Consumer
5 Affairs, which has 30-odd boards and commissions and offices and
6 whatever. I think that that's the wrong place for us to go. I
7 think that we do need to be part of a greater state entity. We
8 are too small and we are too specialized to do very well in a huge
9 state government organization all by ourselves.

10 Not everybody agrees with me, but I think that's where
11 we need to go. When I testified two weeks ago before the
12 California Senate Government Organizations Committee, I testified
13 that I could not support Senator Wiggins' bill in its then current
14 form. She has made modifications to the bill. Instead of putting
15 the commission under the Department of Consumer Affairs, as I
16 suggested that she do and others suggested as well, she would put
17 it under the state Business, Transportation and Health Agency.

18 That agency is responsible for the movement of goods
19 throughout the State of California. To me, that sounds an awful
20 lot like what pilots do, so I think that's a good home for us.
21 And she made other changes. And I should point out that the bill
22 that she -- she is termed, under California legislative parlance,
23 the author of the bill. The proponent of the bill was, in fact,
24 the Pacific Merchant Shippers Association, which fully
25 acknowledges that and was sitting at the table at the same time as

1 I made my remarks. They have agreed that the alternate home is a
2 good one. There were a number of other changes that I thought
3 were critical. One was that the bill that PMSA first wrote would
4 have sun-set the commission in 2012. I didn't think that was a
5 very good idea. Senator Wiggins has taken that out of the bill.
6 They also repealed all the sections of the Harbors and Navigation
7 Code which authorize our commission, and then rewrote them, some
8 of them, not all, and added some things, as part of the Business
9 and Professions Code.

10 With some legislative experience of my own, I thought
11 that it was a better mechanism to leave us in the Harbors and
12 Navigation Code -- pilots sound like harbors and navigation to me
13 -- and to make the modifications where it was clear what was being
14 done, rather than move sections around and come up with a bill
15 that was hard to follow. Senator Wiggins has agreed to that.
16 There has been a stakeholder meeting, which I attended and
17 participated in. That was last week.

18 Last week I had one adventure, this week I have a
19 different one and the week after this I've got to go testify about
20 our budget. And progress was made in that meeting, but it also
21 became clear that that bill needs a third rewrite and it may need
22 more. But, I look forward to working -- as I said in my
23 testimony, I look forward to working with Senator Wiggins, with
24 her staff and with other stakeholders, to come up with a good bill
25 that will put this commission where it needs to be to deal with

1 the problems of 2008. We didn't have 60 pilots and one inland
2 pilot back in 1850; we do today. And we have many other
3 challenges and we want to have a structure that will help us meet
4 them.

5 Q. Okay, thank you. And the bill to which you were
6 referring, California Senate Bill 1627, was introduced as Exhibit
7 86 into our docket.

8 And finally, Mr. Miller, there's another exhibit, 87,
9 that refers to California State Senate
10 Bill 1217, which -- introduced by Senator Yee. It requires the
11 board to submit annual reports to the clerk of the assembly. Do
12 you have any comments on this bill?

13 A. Yes, I testified in support of that bill. I think that
14 one of the challenges that we have, as being a small entity and
15 very focused in what we do, is that very few members of the state
16 government or the public at large know that we exist and know what
17 we do. I think it is a good thing for people to know what we do
18 and I think it's a bad thing for people to think that we're
19 somehow mysterious.

20 It is said by some that we are not publicly available or
21 somehow that we're trying to hide something. Nothing could be
22 farther from the truth. We are subject to the California Open
23 Meeting Act. All of our meetings are noticed. There is a 10-day
24 notice requirement, not only for our board meetings, but for all
25 of our committee meetings. We sent that out electronically and we

1 send it -- we put it on our website, I mean, and we send it out by
2 mail. We have a large mailing list. A lot of people know what
3 we're doing and when we're doing it. The minutes are all
4 published. They're put up on our website. The charge that we're
5 somehow not in the sunshine is simply false. That's just not
6 true. But, I think that more people need to know what we're
7 doing. One caveat that I have to make, the governor's
8 administration has not taken a position on either of those bills,
9 therefore the commission has no position, I, as a commissioner,
10 have no position, so when I express a point of view, it is my own
11 point of view as a public citizen.

12 Q. Okay, thank you, sir.

13 BY DR. STRAUCH:

14 Q. And Captain McIsaac, do you have any comments on --
15 additional comments on the PMSA letter on California State Senate
16 Bills 1627 or 1217?

17 A. Well, the Wiggins bill, the Senate bill that is 40-some
18 pages long, a lot of what's in -- we've protested the reporting
19 structure, inasmuch as what they did is they lazily took out, from
20 the contractors' code, all the reporting information that a
21 general contractor -- the board that oversees the general
22 contractor and put that over into this bill. It includes such
23 things as report how many citations.

24 The last time I checked, we don't get citations.

25 There's a number of things in there and we are working with PMSA

1 to try and find common ground there, but it is -- you know, the
2 board is a small board with only two employees and to generate the
3 reports that were requested in that bill, I think would be onerous
4 and would serve no purpose. A contractors' board is more of a
5 complaint-oriented board, whereas a pilot commission board is more
6 of incident-oriented board. So the aide that helped draft the
7 bill has never been down to -- doesn't really know what pilots do
8 and we're trying to educate her and work with her and PMSA to try
9 and come up with something that makes sense for everybody.

10 DR. STRAUCH: Thank you, Captain McIsaac and Mr. Miller.
11 Mr. Chairman, I have no further questions.

12 CHAIRMAN ROSENKER: Thank you, Dr. Strauch.

13 Mr. Bowling?

14 MR. BOWLING: I have no questions.

15 CHAIRMAN ROSENKER: Captain Jones?

16 CAPT. JONES: Just one question.

17 BY CAPT. JONES:

18 Q. Captain McIsaac, you said you referenced two incidents
19 or pilots to the commission, and in one case you said you used
20 your own determination on degradation of skills. Could you give
21 us a little background as to how you did that, how you determined
22 that?

23 A. It wasn't as much -- well, I was concerned about the
24 medical -- what the pilot had gone through medically in the
25 previous year or the previous nine months. He had been under

1 general sedation at least three times and he didn't have a very
2 easy recovery. It required two other surgeries. And my concern
3 was, due to his advanced age, that he could very well be a problem
4 in the future, so I informed the board of that.

5 CAPT. JONES: Okay, thank you.

6 CHAIRMAN ROSENKER: Thank you, Captain Jones.

7 Mr. Roth-Roffy?

8 MR. ROTH-ROFFY: No questions, sir.

9 CHAIRMAN ROSENKER: Okay, very good. Thank you. We'll
10 now go to our parties and we will start with the California
11 Department of Fish and Game, Office of Spill Prevention and
12 Response.

13 CAPT. HOLLY: No comments, Mr. Chairman.

14 CHAIRMAN ROSENKER: Fleet Management?

15 CAPT. AGA: Mr. Chairman, I have a few questions.

16 CHAIRMAN ROSENKER: Go right ahead, Captain.

17 BY CAPT. AGA:

18 Q. The first is to Captain Pete McIsaac. Captain McIsaac,
19 I refer you to the docket -- the document Number 91. That is the
20 transcript of your interview. You said that there is no ongoing
21 performance evaluation, but you know when a pilot is over the hill
22 because they start having accidents. Do you think that should
23 change in light of the Cosco Busan?

24 A. What I have seen as far as a decline in piloting skills
25 or pilot error in accidents, I think there's two general causes.

1 One, assuming that you have a good pilot to begin with, which I
2 think the board's selection and training process pretty much
3 guarantees, but what I've seen -- you know, and this obviously is
4 not a scientific study and I'm not a physician like some of my
5 esteemed panel members here, but they -- one think that I have
6 seen is that you either have age or medically-related degradation
7 of skills and I think the processes are already in place to catch
8 that. And another one is complacency. Complacency, it's really
9 tough to test for that and typically it's a certain wakeup call
10 for someone and hopefully there's a -- it doesn't result in any
11 issue.

12 But, to try and test for someone who has been complacent
13 in the past is typically -- it's not going to work because the
14 person is going to step up to the plate and do the job in the
15 correct manner during the review process. So as far as the -- you
16 know, it sounds like the physical standards, the medical standards
17 are being enhanced as we speak, so I think a lot of this is taking
18 care of itself.

19 Q. Okay, sir, thank you. How do you monitor the sleep
20 hours? Like on the ships, you have the STCW records for sleep
21 hours. Does the association have something similar for the
22 pilots, sir?

23 A. Yes. In the 1980s there was study done by a company
24 called Manalytics and it's commonly -- it's the 1986 Manalytics
25 study, where they came and spend a lot of time at our office,

1 working with pilots, studying and analyzing what we do and they
2 determined that 12 hours is a -- you know, due to the changing
3 cycles that we go through constantly during our work week or
4 weeks, where our circadian rhythms are subject to, you know, all
5 sorts of pressures, they have -- they determined that 12 hours
6 should be a standard that we report and the commission accepted
7 that and industry accepted that.

8 So whenever we have a -- when a pilot is going to work
9 with less than 12 hours off -- and of course the 12 hours, that's
10 essentially from dispatch to dispatch, so that includes the drive
11 time home, the cleanup time and the rest time and everything else,
12 so it's not 12 straight hours of rest per se. But, I report that
13 on a monthly basis to our commission. That is tracked and it
14 is -- if there's multiple MRP exceptions, minimum rest period
15 exceptions, typically, I'm asking to explain exactly what the
16 circumstances were that caused those.

17 Q. Okay, sir. As far as I understand, did Captain Cota
18 have any requirement, by the association, to report that he had
19 sleep apnea, and did the association know that he had sleep apnea?
20 Any comment on that?

21 A. No, we do not have any requirement. We leave it up to
22 the board and the Coast Guard, as far as the medical oversight.

23 Q. One last question. This Tarawa -- okay, this is more to
24 Mr. Miller. In the final analysis of that Tarawa incident, the
25 IRC concluded that it is a medical issue. Why was anger a medical

1 issue? Was it because of any drugs related -- that he was taking?
2 Or how did you conclude that this was a medical issue, sir?

3 A. Well, I was not on the commission at the time that the
4 IRC did its work and so what I have available to me is such
5 records as we have. But, I think the -- part of it is structural.
6 The IRC can investigate incidents. Nothing that Captain Cota did
7 on the Tarawa was an incident. There was no allision, there was
8 no grounding, nothing of that sort. Just a simple assessment of
9 what did go on suggested that it was a medical issue and that the
10 externalization -- and these are my words and not the IRC -- the
11 externalization of that much anger over that much period suggested
12 that there could be a medical issue and that's why the IRC handled
13 it that way.

14 Q. There's one more incident. The final recommendation of
15 that incident would be Pioneer. The commission accepted that
16 Captain Cota acknowledges the lack of situational awareness and
17 does not expect that it will happen again. How would you have
18 monitored such a statement, sir?

19 A. I don't know the answer to that question because we, as
20 a board, do not ride along. It would be a matter of -- forgive
21 me, to the guys on my right. This would have to be something that
22 would be observed by those who would be in the closest position to
23 observe his piloting. Now, I would observe, on this occasion,
24 that everybody gets distracted sometimes.

25 Now, clearly distraction, if it's on a recurring basis

1 and when you're moving a big 65,000 gross registered ton vessel,
2 is not a trivial matter. But, we don't -- and I made reference to
3 this in my earlier remarks. We do not presently have a mechanism
4 for recognizing a decline in a pilot's situational awareness. We
5 need that kind of a tool, but that's not presently available to
6 us.

7 CAPT. AGA: Thank you, Mr. Chairman. I have no further
8 questions. Thank you, sir.

9 CHAIRMAN ROSENKER: Sperry Marine?

10 MR. HUGHES: No questions, Mr. Chairman.

11 CHAIRMAN ROSENKER: Thank you. The Coast Guard?

12 MR. WHEATLEY: No questions, Mr. Chairman.

13 CHAIRMAN ROSENKER: Thank you. California Board of
14 Pilot Commissioners?

15 CAPT. MOLONEY: Yes, sir, I have a couple questions.

16 CHAIRMAN ROSENKER: Go right ahead.

17 BY CAPT. MOLONEY:

18 Q. For Captain McIsaac. Are the San Francisco bar pilots
19 subject to random drug testing, including Captain Cota?

20 A. Yes, we are.

21 Q. How does that test system work?

22 A. We have to test at least 50 percent of our personnel on
23 annual basis. The selection process is obviously random and we
24 use a collection agent and we have a number of them throughout the
25 Bay Area. Due to our wide geographic footprint, we have, I

1 believe, five different collection agents. We have one in San
2 Francisco, a couple in Contra Costa County, and then we also have
3 a roving or a guy who will come on site to do it or go to a site
4 to collect the samples. There is obviously a chain of custody or
5 control of -- whatever that term is. It's in custody the whole
6 time and then they send it to an approved testing facility.
7 Typically, it's Quest Diagnostics, which I believe is the largest
8 in the country. And from there it is -- the results go to a
9 medical review officer and then they contact us and send us the
10 results or the medical review officer sends us the results after
11 he has reviewed the tests.

12 Q. Thank you.

13 BY CAPT. MOLONEY:

14 Q. For Commissioner Miller. When the IRC reports on the
15 results of its investigation, does it routinely report whether or
16 not a fatigue was a factor?

17 A. Yes, fatigue is one of the issues that the commission --
18 well, the IRC itself looks at and that is part of the regular
19 report that is given to the board.

20 Q. Thank you. Of the three incidents investigated by the
21 IRC prior to the Pioneer, do you know how many involved pilot
22 error?

23 A. Yes. Let me make sure I'm looking at the right one.
24 The Mare Caspium in 1997. There was minor pilot error. The
25 positioning of the crane at Oakland Berth 37 contributed to the

1 incident. Also, it's worth noting that there was a trainee who
2 was riding with and working with Captain Cota on that particular
3 incident. And whatever happens because of a trainee's
4 involvement, it is the pilot of record who will be charged with
5 the incident, if there is one.

6 In that particular case, the board directed that the
7 staff write a letter to wharfinger and suggest that in the future
8 they move cranes out of the way so they don't get scraped. This
9 was a very minor incident, but it was an incident nonetheless. In
10 2002 the Chimborazo. There was a spring line caught on a dock
11 that damaged dock sheathing. There was no pilot error. That was
12 a line-handling incident. And also in 2004, eight months later,
13 the Ginga Kite. There was a vessel interaction with a tanker that
14 was moored at Avon, which is north into San Pablo or Suisun Bay,
15 no attributable pilot error. There was insufficient information
16 to make a judgment about whether the vessel that was being piloted
17 by Captain Cota was moving too close or too fast.

18 The reason for that is that both vessels involved had
19 left the area by the time we were notified of the incident, but it
20 was noted that there was a dredge and another vessel that had been
21 moored nearby and that the passing of the Ginga Kite had not
22 caused an interaction with them. So the IRC would simply report
23 no attributable pilot error. And then the Pioneer we've already
24 discussed.

25 Q. Thank you. Last question. Do you know what prompted

1 the anger in the Tarawa affair?

2 A. Yes, the pilot ladder had been rigged by the crew of the
3 Cosco Busan and --

4 Q. The Tarawa?

5 A. I'm sorry, the Tarawa -- standing down the side of the
6 vessel and there are -- I'm not a mariner, even notwithstanding my
7 having been licensed once. Ropes hanging down, tied to the bottom
8 of the pilot ladder, that are used to bring it down the side of
9 the ship and bring it back up. They're called tag lines. They
10 are illegal under international standards for a commercial vessel
11 and Captain Cota was enraged when he discovered that the tag lines
12 were, in fact, there. And when he asked the crew to remove them,
13 they refused and he took his pocket knife out and he cut the lines
14 off. To put it in context, tag lines can be extremely dangerous,
15 can endanger the life of the pilot because the pilot can become
16 fouled on those lines, be thrown off of the pilot ladder, drowned
17 or be chewed up by the screw of the ship.

18 In the last couple of years, we had a period of 13
19 months in which -- during which five -- four pilots died and there
20 was another terrible loss of a vessel -- of a pilot boat operator.
21 Pilots are very sensitive to the danger to life and limb that they
22 experience every time they get on or off a ship in adverse
23 conditions, and 11 miles off the Golden Gate, we have a lot of
24 days and nights with adverse conditions. And I would certainly
25 say that Captain Cota ought not to have been enraged, but he was

1 and that was the circumstance. It was what he perceived to be a
2 life-threatening or potentially life-threatening event and he
3 expressed his emotions.

4 Q. Thank you, sir. No further questions.

5 CHAIRMAN ROSENKER: American Pilots Association?

6 CAPT. WATSON: Yes, Mr. Chairman. Thank you. Two short
7 questions for Captain McIsaac.

8 BY CAPT. WATSON:

9 Q. Reference was made to the drug program that you have for
10 the San Francisco bar pilots. Is this plan approved by the U.S.
11 Coast Guard?

12 A. Yes, it is.

13 Q. And in that independent evaluation of -- in the process
14 of drug testing, if a test comes back positive, when is the U.S.
15 Coast Guard notified and by whom?

16 A. I believe the MRO has to send a copy of the test to the
17 U.S. Coast Guard.

18 Q. Yes, that's just standard procedure. Right. And
19 another exhibit Dr. Strauch pointed out was a newspaper article
20 submitted, or the source of the information, by a group known as
21 PMSA. Are they your friends? Who are these people? And you
22 commented that you participated in the political process because
23 of a variety of -- like everyone else in this country does. I was
24 wondering, does PMSA contribute to the political process?

25 A. Yes, they do.

1 Q. More than you guys?

2 A. Yes.

3 Q. Who are they? Can you tell us who they are?

4 A. Well, that's the Pacific Marine Shippers Association.
5 It's a number of the vessels that serve the West Coast and also a
6 number of the terminals that serve the West Coast and they
7 actually -- they're affiliated with the Pacific Maritime
8 Association, PMA, which is the group that hires all the
9 longshoremen and provides all the labor for all the terminals on
10 the West Coast.

11 Q. And do they traditionally get involved in your rate
12 cases, et cetera?

13 A. Yes, they do.

14 Q. Do they support you most of the time?

15 A. No, they don't.

16 Q. Thank you, sir.

17 CAPT. WATSON: That's all my questions.

18 CHAIRMAN ROSENKER: Thank you very much. And finally
19 the San Francisco Bar Pilots Association?

20 CAPT. HURT: Thank you. I have just one question for
21 Mr. Miller.

22 BY CAPT. HURT:

23 Q. You mentioned, in responding to a question by
24 Dr. Strauch, that there are mandated training cycles that the
25 commission enforces. Can you give a little further explanation of

1 what those cycles are and what they entail?

2 A. There's a three-year cycle, as I mentioned, a classroom
3 cycle and that is a -- he's better organized than I am, but I have
4 it in here. This is something that is carried out at MITAGS,
5 which is the Maritime Institute for Technology and Graduate
6 Studies. This, as I say, is on a three-year cycle. We send a
7 cohort of -- and we pay for it. We send a cohort of pilots a
8 couple of times or more during the year and the curriculum is
9 something that we request. We have a pilot training curriculum
10 committee which works out what it is that they think ought to be
11 taught for continuing education.

12 And let me point out that the last time that it went
13 through this process, it happened to be chaired Commissioner Nancy
14 Wagner, one of my colleagues, one of his fellow pilots, and also
15 the first female pilot in the United States of America, I might
16 add. With her for that exercise were two other commissioners,
17 both of whom were licensed mariners, albeit that one -- both had
18 shore jobs at the time, but they were both appointed to the
19 commission, they both understand how ships work, to use my
20 expression, and the three of them collaborated -- one was a wet
21 cargo representative and one was a dry cargo representative -- on
22 coming up with the selection of the vendor and also the
23 curriculum.

24 Bridge resource management is a three-day part of this
25 seven-day program. That's where you learn about emergency

1 procedures. That's where you learn about, in one or another
2 marine casualty, what went wrong. What was the error chain? Why
3 were all of the gates open when at least one of them ought to have
4 been closed? What broke down in the communication within the
5 bridge team?

6 Also on the agenda, emergency ship handling on a land-
7 based simulator; emergency medical response, something that is
8 mandated by the IMO, the International Maritime Organization or
9 one of its subsets; advanced electronic navigation systems, which
10 has included ARPA and ECDIS; and then a regulatory review. It's a
11 very comprehensive and thorough program. We think it's important
12 that we send our people there every three years. There is another
13 program which is a manned model simulator. We send our people to
14 that every -- once every five years. And these are regulatory
15 requirements.

16 If the pilots don't do these things, they lose their
17 license. We're real serious about it and they take it seriously.
18 We send them to Port Revel. Some accuse us of being derelict in
19 our duties because we send them over to France where they can sip
20 wine. Let me explain why we send them to France and not some
21 other venue. It's the best program in the world, that's why.

22 With our concurrence, the pilot organization sent a
23 couple of its pilots to another manned model simulator in Poland.
24 They had problems in moving the models from one end of the pond to
25 the other end of the pond. They lost a lot of time watching the

1 models go back and forth and not being in the model and using it.
2 That's not a problem in Port Revel. And there was a language
3 problem. There is a manned model simulator in Great Britain. The
4 problem with that one is it's a deep-water pond and our pilots
5 spend a lot of their time piloting with one or two feet under the
6 keel. We need a shallow pond.

7 Port Revel has a shallow pond. Furthermore, Port Revel
8 can be set up to mimic the conditions in the waters where our
9 pilots pilot and that is problematic in many of the other similar
10 facilities. There's another one in Australia. Anyway, the point
11 being that we do take continuing education and continued training
12 very seriously. We have these programs, they work and they make
13 our pilots better pilots. Taken in conjunction with our training
14 program for pilot trainees, we have seen a dramatic decline in the
15 number of incidents, and particularly the ones involving pilot
16 error, since these programs have been put in place.

17 Q. Thank you, Mr. Miller.

18 CAPT. HURT: I have no more questions.

19 CHAIRMAN ROSENKER: Thank you very much. We'll go to
20 the Board of Inquiry. Mr. Osterman?

21 MR. OSTERMAN: Let's start with Captain McIsaac.
22 Captain Jones, please me if get too far into your next panel area
23 or if I'm redundant. So you have my permission to stop me.

24 CAPT. JONES: Well, you've got my permission to just go
25 ahead.

1 MR. OSTERMAN: Okay.

2 CAPT. JONES: I'll just cut mine out.

3 BY MR. OSTERMAN:

4 Q. All right. What I want do here is essentially break it
5 down. This panel is about performance oversight and all the
6 mariners in the room understand this, but I'm not sure that those
7 non-mariners really understand the whole system and I'm one of
8 those folks. To become a pilot you need to first have -- maybe
9 not first, but you need to have and passed a medical evaluation
10 that's administered by the Coast Guard, correct? That's one
11 factor, is that right? I'm going to kind of carry us through the
12 things that are necessary.

13 A. Yes, there's actually a comprehensive medical evaluation
14 prior to entering into the state's trainee program.

15 Q. Okay. All right. And after they enter into the state's
16 training program or selected by the commission for that position,
17 the pilot then obtains a license or do they have the license when
18 they're walking in the door, usually?

19 A. No, we have a minimum standard of -- you have to have a
20 1600-ton masters license as a minimum to come in and at least two
21 years of command time in the previous five years. So they're
22 seasoned mariners who have been subject to the Coast Guard's
23 medical evaluations prior to ever getting into the training
24 program.

25 Q. All right. So before they get into the training

1 program, they've passed not only the medical evaluation, a very
2 rigorous selection process administered by the commission,
3 correct?

4 A. Yes.

5 Q. And they have to have substantial experience and most of
6 your pilots entering into this system have substantially more
7 experience than your minimum, is that correct? They usually do,
8 correct?

9 A. Yes, yes.

10 Q. Okay. Once they are through and successfully complete
11 the training program sponsored by the commission and a billet
12 becomes available, they then begin a program of OJT, if you will,
13 is that correct?

14 A. Can you define OJT?

15 Q. Well, once they've completed the training program, are
16 they released to do individual pilotage in the San Francisco Bay
17 Area?

18 A. Yes. And we have a two-year step program where, rather
19 than assign them to certain size vessels, they are assigned to any
20 vessel in rotation. But, what we do is identify certain vessels
21 due to the size or the narrowness of the harbor or just the
22 complexity of the job. We will send along a senior pilot with
23 him, or with him or her, so that they can -- typically, the new
24 pilot actually does the work but they do it under the auspice or
25 under the almost oversight of a senior pilot.

1 Q. Okay. Who monitors those assignments?

2 A. I do.

3 Q. Okay. So you don't just get thrown into the rotation,
4 you enter the rotation and if it is a challenging or difficult or
5 unusual or even a new area of the Bay, that pilot will get an
6 experienced pilot to go with them?

7 A. Yes. And after the two years, any pilot can ask for
8 assistance on any job.

9 Q. Okay. And that's a two-year period where you monitor
10 them?

11 A. Yes.

12 Q. Okay. After that, they're essentially in the rotation?

13 A. Correct.

14 Q. Are there times in the rotation when you select people
15 outside of the rotation to handled particularly difficult jobs?

16 A. Yes.

17 Q. Okay. Once they're in the rotation -- I'm going to leap
18 to the end of the program -- if they, in fact, have an incident,
19 Commissioner Miller described to us what happens if there is an
20 incident and there is an oversight activity that goes on by the
21 commission and an investigation. In between those two things, we
22 know from both of your testimonies that there are mandatory
23 training requirements. I presume that they're very much like
24 CEUs. But, you require the pilots -- and not only does the
25 license require it but you require the pilots to attend training,

1 is that true?

2 A. Yes.

3 Q. And then there's also random drug testing, correct?

4 A. And post-incident, yes.

5 Q. Okay. What other performance oversight comes into play,
6 by either the association or the commission, in between that -- at
7 the end of the two-year period, when they have gone through, how I
8 described it, OJT, and any incident not counting training or
9 random drug testing? What are the other performance oversight
10 activities of the association? For example, do you give annual
11 performance reviews? Are there any schedule ride-along
12 evaluations?

13 A. No, there's nothing formal.

14 Q. Okay. And Commissioner Miller, does the commission do
15 anything in that regard, short of notification of an incident?

16 A. No, we don't.

17 Q. Okay. Captain McIsaac, if you were to discover that
18 there was some concern about a particular pilot, how would you
19 normally make that discovery, is there -- in your experience,
20 short of a reportable incident.

21 A. I would hear about it from other pilots or possibly
22 we've had -- in the past I have had crew members from our ocean
23 station boat come to me and express concern about an individual
24 pilot's skill or lack thereof on the pilot ladder.

25 Q. Okay. All right. Are there any other methods that you

1 would learn of pilot performance issues, if there were some?

2 A. Certainly a company can write a letter and typically the
3 letters will come to the pilot office as opposed to the commission
4 and then I will contact the company and meet with the pilot. I
5 will ask for a meeting with a company representative, preferably
6 somebody in operations who knows shipboard operations, and we will
7 have a meeting and decide where to go from there.

8 Q. Okay. Is there any license renewal testing or
9 evaluations that are done?

10 A. No, nothing beyond the medical.

11 Q. Okay. All right. So I just want to recap a little bit.
12 Once they have been medically certified, they've been through the
13 rigorous selection process, they've met the minimum qualifications
14 and generally they're more qualified than that and they have their
15 appropriate license. They go through the training program and
16 then, following the training program, you have a about a two-year
17 period where they're not simply thrown into the rotation, they're
18 worked into the experience of being a bar pilot in San Francisco.

19 A. If I could just clarify? They are in the rotation, so
20 they would be doing whatever job falls to them, but what we do is
21 we assign a senior pilot to that specific job as an extra measure
22 of safety.

23 Q. Okay, I understand. And that's about a two-year period
24 where you do that on a fairly routine basis?

25 A. Yes, it's a step program where it changes at six months

1 and again at 18 months.

2 Q. Okay. After that, the pilots are required to do a
3 routine medical evaluation. We covered that earlier. There is no
4 licensing re-check. And short of an incident, pilots don't come
5 to the -- to anyone else's attention except for the association,
6 correct? And then that attention, if you see something in a
7 pilot, it is generally because someone has reported to you, either
8 one of your other pilots or a company or someone else has reported
9 to you some concern, correct?

10 A. Correct.

11 Q. Okay, thank you.

12 CHAIRMAN ROSENKER: Thank you, Mr. Osterman.

13 Now, Dr. Spencer?

14 DR. SPENCER: Thank you, Mr. Chairman.

15 BY DR. SPENCER:

16 Q. Captain McIsaac, the random drug testing program that
17 you have that's approved by the Coast Guard, does the Coast Guard
18 require that you have this program or is it voluntary?

19 A. I believe it is a requirement.

20 Q. Okay. And what drugs are tested for under this program?

21 A. Illegal drugs.

22 Q. Following up on Mr. Osterman's questions, can a pilot
23 who is fully qualified and in the rotation go to any facility in
24 the Bay Area by himself the first time or does he have to have
25 specific training for certain facilities?

1 A. There are certain jobs like dry dock jobs and we also
2 have the reserve fleet up in Suisun Bay, which are very technical
3 jobs. We're a mix of deep-sea masters and tug boat captains.
4 Typically, we will assign a -- I will designate or special assign
5 a pilot to a job that requires a lot of planning so that that
6 person is with that, he's meeting with the representatives of the
7 -- of MARAD and the tug boat companies and the reserve fleet or
8 the shipyard. And so they will be special assigned and they will
9 take that job right from the planning stage all the way through
10 completion. So generally, yes, a pilot can go to every terminal
11 in the Bay, with the exception of the rivers, which takes a --
12 which is another special area we deal with. But, in general, a
13 pilot can go just about anywhere we are licensed to cover.

14 Q. Okay. Mr. Miller, the federal law that requires federal
15 pilots to undergo annual physicals, does that also apply to state
16 pilots?

17 A. It does in the sense that none of our pilots will have
18 only a state license. According to California law, they must have
19 a federal license in order for their state license to be valid or
20 to be issued a state license. So therefore the physical that is
21 the precedent to having the federal license becomes a condition
22 precedent, derivatively, for the state license as well.

23 Q. Okay. So all of your state pilots are also federal
24 pilots?

25 A. That's correct.

1 Q. Captain McIsaac, is the San Francisco Bar Pilots
2 Association an association of independent pilot contractors? I've
3 heard that term used, independent contractors.

4 A. Well, the association, they are independent when they
5 are out on the vessels and that -- or actually piloting. The
6 association's there to essentially provide the infrastructure to
7 allow that independent pilot to pilot in a safe and efficient
8 manner, inasmuch as we provide not only the dispatch service but
9 the -- you know, the pilot boats and the hiring and the billing
10 and the overall infrastructure to support the pilot.

11 Q. Okay, thank you. And what are the requirements for a
12 person to join the Bar Pilots Association?

13 A. Well, they have to be licensed by the state board.

14 Q. Okay. So that comes first, then. And once a person is
15 licensed, is he entitled to join the association or is it a
16 membership where he has to be voted in?

17 A. They would have to be voted in.

18 Q. Okay. Have you ever had a circumstance where somebody
19 has received a state license but not been voted in?

20 A. No, not that I'm aware of.

21 Q. Have you ever had -- is it possible for association
22 members to be voted out for whatever reason?

23 A. Well, not of that association. We have a second
24 association and they're interdependent. The second association
25 actually owns the assets. That's the Benevolent and Protective

1 Association and you can be voted out of that, which would in turn
2 get you voted -- or you would have to give up your position in the
3 other association.

4 Q. Okay, I see.

5 BY DR. SPENCER:

6 Q. Mr. Miller, in not too lengthy terms, could you
7 summarize what the process is for a person to get a state pilot
8 license and at what stages is the San Francisco Bar Pilots
9 Association, or its members, involved in that process?

10 A. It would be the -- the training process is the principal
11 determinate. Once we bring somebody into the training process,
12 they, in effect, are trained by serving pilots, the training
13 program being run by the pilot evaluation committee, all five
14 members of which are 10-year veterans, or more, and they're agreed
15 to and selected by the board. So they run the training program
16 and have the direct, not only oversight of the process, but also
17 the reviewing function. Every time a trainee does a job, there is
18 a -- he gets a report card that specifies what the job was, when
19 it was, who the pilot was, who was in charge, and they're rated
20 from one to five on various, different parameters.

21 As they become more and more experienced and they've
22 done more and more jobs and done all the different parts of the
23 Bay and the various other things that we want them to do and they
24 are nearing the point at which they may be through the program and
25 licensable, they will start taking more and more rides with

1 members of the pilot evaluation committee, who are the ones who --
2 whose vote really counts. We track all of the votes, if you will,
3 or all the report cards given to the trainees over the entire span
4 of time that they're in the program, whether it's by members of
5 the eval committee or any other pilot.

6 But, when they're getting close, there are certain
7 requirements in our regulations for a certain of number of rides
8 and a certain score and that score is a score of 4.0 or better for
9 the three months prior to completion of the program and
10 eligibility for licensing, from the pilot evaluations committee
11 members. And so it's those -- and it's a score of one to five,
12 with five being the best and one being the worst. So it is that
13 kind of an evaluation, coupled with meeting the various regulatory
14 requirements, a number of jobs and other requirements. That
15 brings them through the program and positions them to be licensed.

16 Q. All right, thank you.

17 DR. SPENCER: That's all.

18 CHAIRMAN ROSENKER: Mr. Henry?

19 BY MR. HENRY:

20 Q. This panel was structure around the medical fitness and
21 performance oversight of Captain Cota and it was handled as two
22 discreet topics and yet we had one panel. My interest lies in
23 where there may be overlap in those two areas. As far as Captain
24 Cota and San Francisco bar pilots, I think some of the earlier
25 questioning from Dr. Strauch had to do with the 719K and whether

1 the association or the commission had a separate physical --
2 medical fitness program. And could you refresh me on how that was
3 answered?

4 A. We do have a separate program, albeit that there's an
5 overlay and that is that when we send one of our pilots to one of
6 our board physicians, we send them with the, if you will, check-
7 the-box certification, fit for duty, not fit for duty, whatever,
8 along with the Form 719K. The physician completes the examination
9 and will send back the check-the-box response, which is done --
10 and certifies that it is according to the SHIPS protocols.

11 That's what we use to determine fitness for re-
12 licensing. At the same time, because he's doing the Coast Guard
13 physical, he will process that 719K and send it through whatever
14 channels are appropriate, to the REC, I suppose, for their
15 processing as well.

16 Q. Does the commission or association have a program for
17 encouraging the fitness of pilots? And just drawing a parallel to
18 the federal government, you know, they subsidize health insurance,
19 they provide reimbursement for employees that want to take
20 advantage of physical fitness programs, they provide an
21 environment that meets OSHA requirements, all to encourage a
22 healthy employee. Does the commission or association have a
23 similar program?

24 A. No, but the pilot ladder tends to promote good health
25 because, if you start getting too far out of shape, then the pilot

1 ladder will certainly let you know. But, we do have a gym on
2 site. It is used by some pilots but not all.

3 Q. So it's sort of a survival of the fittest. What happens
4 in situations where a pilot is ill for a prolonged period of time
5 and out of the rotation? Again, coming back the federal
6 government, you can be out for a few days. After that, as an
7 employee, you're required to see a doctor and provide some sort of
8 a report to your employer. If you have a pilot that's ill for a
9 prolonged period of time, does the association or the commission
10 require him to visit a doctor and get some sort of an assessment?

11 A. We certainly would, yes. We become aware, in the normal
12 course of things, if there is a pilot who has been injured either
13 because of a service-related injury or, you know, playing
14 racquetball, whatever. It doesn't matter. If you can't work, we
15 know about that because it's reported to us at least monthly by
16 the port agent in our regular board meeting. And if the type of
17 injury or illness raised any kind of a question about the
18 suitability to continue to pilot, we would certainly require a
19 board physical. If it's simply having the flu for a three-week
20 period, we probably would not see any reason to take that step.

21 Q. Okay, let's carry that a little further. So you have a
22 pilot that does have a significant illness, comes back with a
23 medical assessment that he now has an illness or a condition that,
24 if it were being evaluated under the federal program, would
25 disqualify him for his license. Would you report that to the

1 Coast Guard, as far as a non-annual physical-type change in the
2 condition of this pilot?

3 A. I'm not aware that we've ever had that challenge to deal
4 with, but it would seem to me to be appropriate to do that.

5 Q. You would do that?

6 A. I would do that, yes.

7 Q. And the association -- are we talking about the same
8 entity? Who would require the pilot to see a doctor, would that
9 be the association or the commission?

10 A. As a practical matter, I think it would be either one.
11 But, certainly if the association, for whatever reason, did not do
12 that, we would do that if there were any question at all.

13 Q. And are you conversant with the NVIC and the health
14 standard that the Coast Guard uses, or at least know what to look
15 for to evaluate the need to inform the Coast Guard of this
16 condition?

17 A. Well, we certainly have copies of both documents and I'm
18 certainly not that conversant on either one. But, I think, at
19 least as I was interpreting the question, we're talking about
20 somebody who has a fairly profound condition and that --

21 Q. You had brought up in earlier discussions that Captain
22 Cota was of concern to you, based on his illness. Was that
23 reported to the Coast Guard?

24 A. What our actions -- I don't know whether our process was
25 reported to the Coast Guard, but the Coast Guard was certainly

1 fully aware of the event. In the file there's a letter from the
2 captain who was -- today would be considered the sector command --
3 to the captain of the Tarawa, explaining that the Coast Guard was
4 going to begin its own investigation. What they did and what they
5 did not do, I don't know. I think that they may have simply
6 monitored what we did and they were certainly kept abreast of what
7 our actions were. The Coast Guard regularly attends our monthly
8 board meetings and there's regular communication between our
9 executive director and others within the Coast Guard, so there's
10 an awareness.

11 BY MR. HENRY:

12 Q. Captain French, you had earlier stated that the Coast
13 Guard does not have a program, but MERPAC has considered this gap
14 in the system of monitoring the continual health of, well, pilots
15 or mariners during the interim time between physicals. If you
16 received a report from one of your RECs, mid-period, that there
17 was a mariner that had a medical situation, would you treat that
18 as a discreet evaluation and reassess his, you know, being allowed
19 to continue carrying a license?

20 A. Yes, sir, but let me clarify that the discussions about
21 interval reporting between --

22 Q. Correct.

23 A. -- credentials have been on an informal basis amongst
24 some of the physician members of this medical workgroup and not an
25 official part of the MERPAC, which is a federal advisory committee

1 task order to revise the NVIC and provide the recommendations on
2 that and the 719K. It's been mentioned, during meetings
3 associated with that, by some of the physicians as that being a
4 gap compared to the other transportation modes. In answer to your
5 question, there have been situations and they're increasing in
6 frequency as mariners and the maritime community is becoming more
7 familiar with what is in the draft NVIC and the conditions we are
8 concerned about, to report those, but they've been probably less
9 than 10 self-reporting, I would say, within the last year. Most
10 of them come to our attention through investigations conducted by
11 marine safety and investigators officers at the sectors as part of
12 their investigating a marine casualty.

13 They look and see -- there may be a medical issue here.
14 They forward the information to us. We look at it, ask them to go
15 back to the mariner and get more information, usually an
16 evaluation and the medical records, and then we make a
17 recommendation to the sector, whether it's not an issue or whether
18 they should ask the mariner to voluntary deposit their credential
19 until this can get resolved. Or, in significant cases, if
20 suspension and revocation proceedings should be initiated.

21 Q. Okay. Captain Arthur, following a process where, say,
22 in Captain Cota's case, you would have received
23 the 719K and made an evaluation as to continuing issuance of his
24 license and decided not to reissue it, would you have informed his
25 employer as to that decision and the reason why you made that

1 decision?

2 A. No, sir, we do not inform the employers, we handle this
3 through -- if it's an existing credential, then it has to go
4 through the sector and the senior investigating officer at the
5 sector.

6 Q. And do you even know who the employer is on the 719K?
7 Is that one of the fields?

8 A. No, sir.

9 Q. When it goes back to the sector, do they deal with the
10 individual himself or do they eventually inform the employer as to
11 why it was revoked and the reason?

12 A. I do not know the answer to how that is usually done,
13 sir. I know they do deal with the individual. Whether or not
14 they also deal with the employer, I do not know.

15 Q. Okay.

16 BY MR. HENRY:

17 Q. And back to the association and the commission. How do
18 you keep track -- you've indicated that it's a requirement for a
19 state license that they maintain a current federal license. How
20 do you know whether an individual has a maintained a current
21 federal license?

22 A. In terms of our process -- and again, it is a cyclical
23 thing -- we require a copy of the federal license as part of the
24 package that we look at for licensing. And in requesting a re-
25 licensing, there is implicitly -- and no other way -- a

1 representation that you are a federally licensed pilot because all
2 the pilots know that that is a requirement of California law.

3 Q. And in this file where you maintain a copy of his
4 current federal license, do you also maintain a copy of
5 his 719Ks?

6 A. No, we don't get any medical information on the pilots
7 at this time.

8 Q. And why don't you do that?

9 A. That's the way our regulations are written. I will say
10 that I think we need to -- and we are in a process of evaluating
11 our current medical processes and I am looking forward to making
12 some significant changes.

13 Q. Since you had earlier stated that you defer to this
14 physical evaluation by the Coast Guard, you know, for your own
15 purposes --

16 MR. HENRY: Mr. Chairman, that's all my questions.

17 CHAIRMAN ROSENKER: Thank you very much. We're just
18 about done and within a few moments we will break for lunch. I
19 have a few questions and then we will return back for the
20 afternoon session.

21 BY CHAIRMAN ROSENKER:

22 Q. I'd like to talk to Commissioner Miller about -- it
23 appears that you really -- your commission are kind of the
24 beginnings of the opportunity to serve in this profession at the
25 San Francisco Bar Association. Pilots, sorry, not the legal but

1 the Pilots Bar Association. Okay. Do you have any additional
2 requirements that the federal law would not necessarily be
3 covering?

4 A. Are you talking about on the medical side?

5 Q. No.

6 A. Just generally?

7 Q. On the medical, we know that that's pretty much that you
8 take their medical program. And I think you require a second
9 physical, if I'm not mistaken, is that correct, state physical?

10 A. Well, we do in the sense that there are two separate
11 sets of criteria, but it's done as one process.

12 Q. Okay, but what about things like morality and things
13 that, are they covered?

14 A. There is a statutory requirement that they be of good
15 health and good moral character, yes.

16 Q. Okay. And so you have a number of applicants, I would
17 assume?

18 A. And we've run the process now about -- last year and we
19 ran it a year before that. We have had 50 people inquire about
20 getting into the training program -- and these are rough
21 numbers -- about 40 of whom qualified for whatever reason and
22 command time being often one of them. Approximately that number
23 taking the exam, the written exam. About half of that number
24 passing it and going on to the simulator exam, and about half that
25 number, or 10, ultimately making the cut.

1 And once they make the cut, then we set up a ranked list
2 based upon their point score for qualification, written and
3 simulator and that becomes the pool on a ranked list from which we
4 draw trainees as we forecast the need to enhance our cohort of
5 pilots.

6 Q. And how long does the pool list last?

7 A. It lasts for three years.

8 Q. Okay. So if you make it one year and there's no
9 opportunity, perhaps, the second or third, you might be selected?

10 A. Yes, that's correct.

11 Q. And the selection really then, because of the way
12 Captain McIsaac discussed it, is once we get a billet and your
13 recommendation to him, the number one, two, three, four, five
14 would automatically be voted in, is that correct?

15 A. Well, it might have that effect, but we don't think of
16 it in those terms. We identify who we will offer status as a
17 trainee to or participation in the program. We start with number
18 one. Let's say we forecast a need for three and the program is
19 one to three years. The average is about 27 months, with a 10
20 percent washout rate. We will bring in three trainees. They
21 agree to come. If number three doesn't agree to come, he falls to
22 the bottom of the list and number four moves up and comes in and
23 begins the program. If they get through the program and they're
24 licensed, they will -- as a practical inevitability, they will
25 become members of -- they will become a San Francisco bar pilot

1 and concurrently become members of the association.

2 Q. Right. But, the program is jointly operated between the
3 commission and the bar association, or is it only operated by you
4 until they get certified?

5 A. It is operated, as a practical matter, by the Bar Pilot
6 Association under the aegis of the commission. What they are
7 doing is being done on our behalf.

8 Q. Okay. So they get their license after they go through
9 the two-year program?

10 A. That's correct.

11 Q. The state license, the state license?

12 A. Yeah, two separate events. One is completing the
13 program, which is not the same thing as getting a license, but
14 then you get a license if there is an opening and we try to
15 schedule it so that the guys that we bring into the program will
16 have a place to go. In other words, because we have a limited
17 number of licenses, presently 60, there has to be a vacancy within
18 the cohort of serving pilots and time things so that it all works
19 out.

20 Q. And normally, vacancies occur by virtue of people
21 retiring --

22 A. Typically retiring.

23 Q. -- or just saying I've had enough and I want to do
24 something else? Most of the time it's retiring?

25 A. Yes, very few pilots get out of the profession for any

1 reason other than that.

2 Q. So it's almost like, once you make this cut, it's a job
3 for life, a good job for life?

4 A. We hope so and we want it to be a good job.

5 Q. Okay. And that's a good thing, but I have some other
6 questions concerning criteria on what it might take to be
7 disqualified after you've gotten so far. For example, do you have
8 a metric -- because you gave a very interesting statistic of many
9 of your captains are at the 99-point-something percent operations
10 level, which is pretty good. But, if you have a number of
11 incidents or accidents, is each one of these worth the same?

12 A. Under the metric that I was using, yes, we have --

13 Q. Okay, but that's interesting to me because would, for
14 example, the allision with the Cosco Busan be similar to bumping
15 against a hard fender coming up into the pier?

16 A. It's a fair question. The chart that we did was done
17 not as a scientific exercise and we would not -- we don't keep a
18 statistic like that.

19 Q. Perhaps you should so you know the level of performance?

20 A. We could do that, but when you are dealing with -- we
21 could come up with a metric, but when you're dealing with a very,
22 very tiny number of incidents over a pilot's career, the numerator
23 is tiny and the denominator is huge and so as a consequence, the
24 variation is tiny.

25 Q. And I understand that, but I mean, there is a level of

1 performance and a level of a mishap or an accident that would draw
2 significant attention to a performance.

3 A. Yes.

4 Q. So let us say someone had no other incidents in a 25-
5 year career, other than this one or this level of accident, would
6 that be enough to DQ the person after this accident?

7 A. The answer is yes, potentially, and that is through the
8 incident review process carried to the extreme, which is to say
9 the filing -- the determination by the Incident Review Committee
10 that the event was such that it warranted consideration of
11 suspension or revocation of a license. That's the point at which
12 the IRC would file the accusation and trigger a number of events,
13 but ultimately leading to what is presently scheduled for
14 September 2nd, which is a hearing before an administrative law
15 judge, with the board sitting as trier of fact.

16 Q. How often does that occur?

17 A. It is very infrequent. We have had a couple of
18 incidents in the last -- I've forgotten the exact number of years,
19 maybe five, six, seven years, somewhere in there -- both of which
20 resulted in the pilot choosing to retire rather than face the
21 hearing.

22 Q. And what would that type of accident be?

23 A. Well, I don't recall the specifics of those two, it was
24 before my time, but --

25 Q. How about Captain McIsaac, would something -- could

1 something come to your mind that would say, oh, this is a terrible
2 accident and we're not going to allow you to perform anymore in
3 our level?

4 A. Yes, sir, one was a grounding at the mouth of the
5 estuary and the pilot did not inform VTS in a timely manner and
6 essentially the ship was there blocking half the channel for, I
7 don't know, 20 to 30 minutes, maybe longer. I'm going on
8 recollection here. But, that was probably a second or third
9 incident in the previous seven or eight years. So that was enough
10 to -- where the board -- they were going to start proceedings but
11 he elected to retire instead.

12 Q. And that's done by the board rather than the
13 association?

14 A. That's correct.

15 Q. Okay. And I'll just ask the commission again, how many
16 strikes does it take before you're out of the game?

17 A. We don't have a quantified number of strikes, as you
18 say. It would be the -- the point of entry into beginning a
19 process would be the IRC review of an incident and looking at the
20 history and seeing if there is a pattern there or if the severity
21 is such that it would trigger a concern. And if it did not rise
22 to the level of starting the revocation process, the IRC would
23 bring it to the attention of the board.

24 Q. And again, this is just hypothetical. Let's say one of
25 your pilots decided he or she needed some extra cash and decided

1 to go to a 7-Eleven and rob it and was caught and convicted. Is
2 that enough to get you out of the game?

3 A. I think that that kind of an activity would come to the
4 attention of the board and we would question the moral character
5 of the --

6 Q. How do you feel about that, Captain? And you've got a
7 long history. I hope that you're not going to tell me, just only
8 three weeks ago did we have an issue like that. I hope you're not
9 going to tell me that.

10 A. You have to quantify it. Did he use a gun? Well, we've
11 never had that type of incident.

12 Q. And that's a good thing; that is a very good thing.

13 A. That is a very good thing.

14 Q. I'm glad to hear that.

15 CHAIRMAN ROSENKER: Okay, we will take an hour's lunch.
16 We'll come back at -- I'll give you seven more minutes. Let's
17 come back at 2:00. We'll adjourn for lunch.

18 (Whereupon, at 12:53 p.m., a lunch recess was taken.)

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1 A. Since 1992.

2 Q. Please describe your duties and responsibilities in that
3 position.

4 A. I manage the day-to-day operations of the association
5 and its programs, including the administration of the BRM for
6 pilots, a training program. I coordinate the development of
7 position papers and policies and best practices publications. I
8 participate in regulatory and legislative proceedings and
9 activities.

10 Q. Would you briefly describe the education, training and
11 experience that qualified you for this position?

12 A. I graduated from the University of Virginia School of
13 Law in 1978. Had about 15 years in private practice as a maritime
14 attorney or specializing in maritime law. I was a member of
15 the -- or I am a member of the Maritime Law Association and was
16 chairman of the Pilotage Law subcommittee for a number of years.
17 I was outside Counsel for the APA and for a number of pilot groups
18 before I came in-house with the APA in 1992 and I've been a
19 private industry advisor to U.S. delegations to over 30 sessions
20 of the International Maritime Organization, the committees and
21 subcommittees.

22 Q. And Mr. Kirchner, do you presently hold a marine
23 license?

24 A. No, I do not.

25 MR. HENRY: And we would welcome back Captain McIsaac.

1 And we have previously gone through this series of questions on
2 your background, so we will move to the next individual, which is
3 Capt. Jorge Viso.

4 BY MR. HENRY:

5 Q. Captain, would you state your full name and address,
6 please?

7 A. My name is Jorge Viso. The address is 1825 Sahlman
8 Drive, Tampa, Florida 33605.

9 Q. And Captain, by whom are you presently employed?

10 A. I work for the Tampa Bay Pilots Association.

11 Q. And what is your current position?

12 A. I'm currently a state licensed pilot with a federal
13 endorsement, also, on my license and I'm the co-manager of the
14 Tampa Bay Pilots Association.

15 Q. And how long have you held that position?

16 A. As co-manager, just this year. I've held chairman
17 positions five years over the tenure that I've been there and I've
18 been with the association since 1990.

19 Q. Could you briefly describe your duties and
20 responsibilities in that position?

21 A. I have to take my regular turn as a pilot in rotation
22 and I assist the executive director that we have, who's overall in
23 charge, in assisting him with matters in relation to the running
24 of the Pilot Association, specifically with my watch.

25 Q. Can you briefly describe your education, training and

1 experience that qualified you for this current position?

2 A. I enlisted in the Coast Guard in 1978 and served an
3 enlistment there, was released early to attend the United States
4 Merchant Marine Academy, which I graduated in 1985. Hold a
5 Bachelor of Science from the Academy. I worked on American Flag
6 Tankers for five years and after that, I was successful in
7 procuring a position with the Tampa Bay Pilots Association, been
8 working there since.

9 Q. Captain, you earlier stated that you hold a marine
10 license?

11 A. Yes, I do.

12 BY MR. HENRY:

13 Q. Captain Robert Thompson, would you please state your
14 full name and business address?

15 A. My name is Robert L. Thompson, 8150 South Loop East,
16 Houston, Texas 77017.

17 Q. And Captain, by whom are you presently employed?

18 A. I work for the Houston Pilot Association.

19 Q. And your current position?

20 A. My current position is I'm Presiding Officer, one of the
21 three executive officers for the organization.

22 Q. And how long have you held that position?

23 A. This is the start of my third year in the position.

24 Q. And can you briefly describe your duties and
25 responsibilities in that position?

1 A. As the Presiding Officer, I'm in charge of the everyday
2 proceedings for the organization, including dispatching the
3 pilots, operation of our vessels, interface with the Coast Guard,
4 interface with the Pilot Commission, everyday day-to-day safety
5 issues on the channel, member of the Pilot Board Review Committee,
6 enforcement of all the working rules of the Houston Pilots and on
7 quite a few of the safety committees for the Port of Houston.

8 Q. Captain, could you briefly describe your education,
9 training and experience that qualified you for your current
10 position?

11 A. I graduated from the National River Academy of the
12 United States in 1977. I spent 10 years working for an inland
13 barge company where I was captain, port captain and vice
14 president, until I was voted into the Houston Pilots in 1987.
15 This is my twenty-first year as pilot and I've spent over ten
16 years on the executive committee, including these last three.

17 Q. And do you presently hold a marine license?

18 A. Yes, I hold a 1600 gross ton Master, hold a first-class
19 pilotage for Houston, Galveston, Texas City, Master of Towing
20 Vessels upon Great Lakes and western rivers, and radar observer,
21 Chief Engineer of 4,000 horsepower and under vessels.

22 Q. Thank you, sir.

23 BY MR. HENRY:

24 Q. Captain Nielsen, would you please state your full name
25 and business address?

1 A. Captain Eric Nielsen, 3720 Dillon Street, Baltimore,
2 Maryland 21224.

3 Q. And by whom are you presently employed?

4 A. Association of Maryland Pilots.

5 Q. And how long have you been in that position?

6 A. Since 1989.

7 Q. Can you briefly describe your duties and
8 responsibilities in that position?

9 A. I'm the president of the association and as such, I
10 manage the association. It exists to provide equipment,
11 facilities and operational support for the pilots who provide
12 pilotage service. We also serve as a collection agent for
13 pilotage fees and we also conduct a pilot training program for the
14 state of Maryland.

15 Q. And Captain, can you briefly describe the education,
16 training and experience that qualified you for your position?

17 A. I graduated from the United States Merchant Marine
18 Academy in 1981, sailed as a deck officer until 1989, when the
19 state of Maryland accepted me into the pilot training program. In
20 1994, I was granted unlimited license by the state of Maryland.
21 In 1996, I was elected to the association's board of directors and
22 appointed by the governor of Maryland to the State Board of
23 Pilots. And in 2000, I was elected president.

24 Q. And Captain, you said you presently hold a marine
25 license?

1 A. Yes. Master, any gross tons upon oceans.

2 Q. Thank you.

3 MR. HENRY: Mr. Chairman, the witnesses are qualified.

4 CHAIRMAN ROSENKER: Thank you very much and gentlemen,
5 thank you for taking the time to appear with us today. We'll turn
6 it over to the Technical Panel.

7 BY CAPT. JONES:

8 Q. Good morning, gentlemen. Just a quick -- I'll start off
9 with Mr. Kirchner and then, because of Captain McIsaac's local
10 expertise to San Francisco, I'll get some questions clarified by
11 him and then open it up to the group and I'll address you as such,
12 okay. That's our master/pilot exchange right now. Hopefully I
13 can stick to it. Mr. Kirchner, could you briefly tell us the role
14 of the APA with respect to the nationwide pilot associations?

15 A. Well, we're an association of pilot groups, so all these
16 state groups and the three groups, the Great Lakes Pilots, are
17 member of the American Pilots Association and we're trade
18 association, but we're also a professional association. We do --
19 we're not a regulatory body, but we do establish positions and
20 policies and we also have a training program, a certification
21 program, that we administer.

22 Q. How many associations are there?

23 A. There are approximately 60 pilot groups that are members
24 of the APA. It's about 1200 individual pilots.

25 Q. And does the APA try to establish national standards for

1 the member pilots?

2 A. We do, on an issue basis. We don't try and cover all
3 the potential issues, but when an issue comes up or there's a
4 matter that we feel the profession really needs to sort out where
5 it is on that particular issue, then the association will try to
6 address that.

7 Q. And how often do you meet with the member associations
8 or how do you stay in contact with them?

9 A. Well, we have one meeting, one large meeting, a Board of
10 Trustees meeting, each year. Each state has one trustee. The
11 even number years, that's a week-long convention. The odd number
12 years, it's a two-day meeting. It's basically just for the
13 trustees and our Navigation and Technology Committee. We attend
14 or our groups hold regional meetings once or twice a year. We
15 have a quarterly newsletter, also have a broadcast e-mail system
16 where we try to get the word out quickly on things that -- where
17 we need our members to hear about things that are going on. So we
18 keep -- a big part of our job is keeping in touch with our
19 members.

20 Q. Okay. Shifting away from policy a little bit, what do
21 you see is the role of the marine pilot?

22 A. Well, as you know, we have a statement, a position on
23 that. The compulsory state pilot directs the navigation of the
24 ship subject to the overall command of the master and the master's
25 ultimate responsibility. It's a shared responsibility, so that

1 both the master and the bridge crew and the pilot have their
2 duties and have to work together to -- for safe navigation to
3 happen.

4 Q. You said he directs -- so the pilot is actually in
5 control of the vessel, directing control?

6 A. He typically will have -- he or she typically will have
7 the con, but gives orders directly or directions directly to the
8 helmsman, you know, rather than going through the master. So --
9 and for example, the language of the federal compulsory pilotage
10 requirement talks about the pilot needs to be or that the vessel
11 needs to be under the direction and control of the pilot and
12 that's pretty consistent with the way it is in the states.

13 Q. Okay. And how do you feel -- see the role between the
14 master and the pilot, the position between those two?

15 A. Again, the pilot takes the con, but the master should
16 and in fact is required to monitor what's going on on the bridge.
17 They're supposed to work together. One distinction, however, is
18 that a state pilot has public responsibilities. A pilot's job is
19 to protect the interests of the state and its people and its
20 economy and environment, so that state pilots are expected to
21 exercise independent professional judgment when necessary and that
22 may occasionally require the pilot to say no to a particular type
23 of operation that the master may want to engage in, so that's a
24 distinction there, that the state pilot has these other
25 obligations and duties to the public.

1 But, other than that, they're expected to work together
2 and create a smooth working relationship on the bridge of the
3 ship.

4 Q. Could you give us an example of how the pilot would have
5 to say no to the master's desires?

6 A. If a master wants to take a particular route through
7 pilotage waters that the pilot feels is unsafe, he's expected to
8 speak up and try and prevent that and use all practical means to
9 do that, decisions to get under way when conditions aren't right,
10 the pilot is expected to exercise independent judgment.

11 Q. Okay. Could you elaborate on your position on laptops,
12 on the APA's position with regards to laptops?

13 A. We support the use of portable electronic equipment by
14 pilots, where appropriate. It's been a very positive program over
15 the last 15 to 20 years, now, as pilot groups look at the benefits
16 of using their own carry-aboard equipment. Each port is
17 different; the type of equipment, the need for it. There are some
18 places where it would probably not be appropriate, ever. There
19 are some places that just haven't -- there hasn't been the right
20 equipment yet and maybe some day they'll move to portable
21 equipment, but you know, that's been a very promising development
22 and we've tried to assist in that by doing research on an
23 association-wide basis. We had a research project with Maritime
24 Administration a number of years ago to test out some of these
25 portable units and to make recommendations. We've tried to

1 address the legal considerations in using the units and just
2 recently, we put out a best practices paper on the use of the
3 units.

4 And we're also doing, right now, a survey of all of our
5 pilot groups to look at whether they're using units and if so,
6 what kind of units and what type of capabilities and we expect to
7 have the results of that effort out in the next week or two.

8 Q. Would it be fair to say, then, you're just leaving it up
9 to each association right now and their membership?

10 A. Yes. In some places, their pilot commissions also get
11 involved in that review process. But, again, it's up to the
12 professionals to decide whether these things will help and if so,
13 you know, what types of units, what type of capabilities they
14 should have, how are they going to be used, how are they going to
15 be incorporated into their piloting practices. So it's really not
16 something that's suitable to have someone external to the pilot
17 group come and tell them what to use here.

18 These are a pilot's personal tool and so you've got to
19 have the pilots with a buy-in to this and one of the successes of
20 the program in this country has been that the pilots have driven
21 it. You know, they're the ones that really prompted it and began
22 the whole movement towards portable units.

23 Q. Okay, thank you. What expectations does the APA have
24 for maintaining proficiency with regards to the new technologies;
25 ECDIS, electronic chart systems, AIS?

1 A. We have a resolution, an official resolution, of the APA
2 that urges APA member pilots to be familiar with advances in
3 technology. That really hasn't been a problem. Pilots have long
4 been proponents of technology. We have a very active Navigation
5 and Technology Committee that reviews these things. Captain Jorge
6 Viso is the chairman of that committee and could answer a lot of
7 questions about the particular types of technology.

8 Q. Okay. Does the APA have a policy with regards to random
9 drug testing for all the associations?

10 A. Well, we don't really need a policy because all the
11 associations do that; to our knowledge, they do. And whether
12 required by federal law or state law, in a number of places the
13 groups were required by state law to have random programs before
14 the federal program came into effect, so it's a fact of life for
15 being a pilot.

16 Q. Do you get any feedback from the associations? Is the
17 program working? Is there any way to monitor it?

18 A. Well, it certainly seems to be working. I know the
19 Coast Guard has an audit program. They could come in and review a
20 Coast Guard required program. Actually, we kind of encourage
21 that. There are a lot of technicalities there and a lot of
22 paperwork requirements and it's pretty easy to run afoul of some
23 of those things and periodically, it's a good thing to take a look
24 at it and make sure that you're following the chain of custody
25 requirements. There are educational aspects to the program that

1 you have to maintain. The employees have to take a class when
2 they come in. You want to make sure that's being done properly.
3 And one thing we do encourage is that the groups contract out for
4 that, you know. They should go to the experts and we think that's
5 a good idea. But, some groups do it in-house, themselves, but
6 just in terms of complying with all the many requirements,
7 particularly the recordkeeping requirements, it's a good idea to
8 contract that out with an established and certified and approved
9 contractor.

10 Q. Okay. We heard Captain McIsaac's litmus test for
11 physical ability in San Francisco. The pilot ladder seems to be
12 the standard. But, does the APA have any physical standards that
13 they require of the association members?

14 A. No.

15 Q. Okay. How would you describe your relationship with the
16 various state commissions?

17 A. Well, we deal with them the way we deal with any
18 governmental regulatory body, and, in this country, the state
19 pilot commissions are the competent pilotage authorities for this
20 country. So as the voice of the piloting profession, we certainly
21 have to deal with and we want to deal with the pilot commissions,
22 so we have a range of interactions with them. We can comment on
23 proposed rules. We also have kind of an informal information
24 sharing expectation with them. They can call us if they want to
25 get some information about anything and we'll get that to them as

1 soon as we can. As I said, we comment on rules. I'll be
2 commenting the end of this week on a proposed rule that the Alaska
3 Board of Marine Pilots, for example, has, so they're a
4 governmental regulatory body and we deal with them on that basis.

5 Q. Do you know how many members of the APA sit on
6 commission boards, off-hand?

7 A. No. As you know, the commission -- the makeup of the
8 commissions will vary from state to state and some states don't
9 have any pilots on the board and other states just have a few and
10 kind of the predominant model is an equal number of pilots and
11 industry members or pilot users, and then the public members or
12 other designated members, but I haven't totaled up how many of
13 them are pilots.

14 Q. All right. Can you tell us a little bit about the
15 difference between state and federal pilots?

16 A. For the state system, the federal pilot license is an
17 entry level license. It gets you in the door. And then on top of
18 that, there's training. The federal license, for example,
19 requires no prior training as a pilot in order to obtain a federal
20 license. It's based on, you know, a certain number of sea
21 service -- a certain amount of sea service time and then you take
22 a written exam, but the individual will never have to have
23 actually been trained as a pilot and there's no continuing
24 training required for a federal pilot license. So the state
25 systems are all built on top of that. It kind of acts as a

1 national minimum standard and so the state systems all require
2 additional training, additional -- well, they require continuing
3 training and -- so there's a pretty big difference in terms of the
4 standards and the qualifications for the two licenses.

5 Q. All right, thank you. Does the APA have any standards
6 for pilots? What would be your definition of a poor or
7 substandard pilot? How would you define that or look for that?

8 A. As I said, we're not a regulatory body, so we don't go
9 out looking for or getting reports of pilots that have problems.
10 You know, that's the job of a competent pilotage authority. As I
11 said, we have position statements and policies about training and
12 the operations, the professional operations, of pilots, but I
13 don't know if we have anything that directly would be responsive
14 to the question.

15 Q. All right, thank you. With regards to bridge resource
16 management, in one of your papers you mention that you would like
17 to see it expand or enhanced, the training, that after five years
18 the cycle -- if there's no new training or new courses, the pilots
19 are going through the same training. Do you have any ideas that
20 would expand or enhance that type of training?

21 A. Well, it's -- after we developed the first guidelines or
22 the guidelines for the initial BRMP courses and set out what we
23 expect those courses to have in order to obtain the APA's
24 approval, it quickly became apparent that because we also had a
25 recommendation that those courses be renewed -- first it was every

1 three years and now it's every five years -- we had to encourage
2 the training centers to offer additional things in the renewal
3 courses so that you're not just repeating the same course every
4 five years. The pilot wouldn't really get much out of that and
5 they certainly wouldn't want to do that, so we made
6 recommendations to the training centers that are in our guidelines
7 for our approval of things that they should be looking at,
8 certainly, any changes that have occurred, any recent developments
9 since -- you know, in the past five years.

10 We're a big believer in the use of casualty reports as
11 training reports, so certainly, any recent casualty reports from
12 anywhere, whether it's here or some other country; advances in
13 technology; changes in law. Really, anything that's new, you
14 know, we support that and we encourage a little bit more creative
15 use of simulation as part of that. You can marry the BRMP course
16 with other types of instruction -- just something to keep it
17 relevant and advanced beyond the initial course.

18 Q. All right, thank you. With regards to bridge resource
19 management, the master/pilot exchange, is there any way you can
20 monitor the exchange between the pilot and the master? Does the
21 APA at all reach out to industry, to the customer, so to speak?
22 Do they get feedback from the captain of the vessel that it was a
23 good master/pilot exchange or is there any way to check that?

24 A. Well, not on a ship-by-ship basis. We certainly don't
25 get reports from the masters of ships about their last encounter

1 with a pilot or one of our members. We do talk to the industry
2 organizations all the time.

3 For example, we have a discussion group with INTERTANKO
4 and that's always a topic of conversation, is the master/pilot
5 information exchange and you know, what's the latest there. So we
6 try to listen to their concerns and we keep in touch. And when we
7 originally developed our best practices summary, you know, that
8 was done in a workshop where we particularly invited working
9 shipmasters to get their views and to see what they need or what
10 they feel that they aren't getting from pilots and we try to
11 address that.

12 Q. Okay, thank you.

13 MR. HENRY: I'd like to turn our attention to Captain
14 McIsaac.

15 BY MR. HENRY:

16 Q. Captain, I apologize if I ask questions that you've
17 already answered on a couple panels. I'm going to try to stay
18 away from -- but you said yours is an elected position as Port
19 Agent with the San Francisco Bar Pilots Association?

20 A. That's correct, a two-year term.

21 Q. And that's elected by the membership of the Pilots
22 Association?

23 A. Yes, elected by the membership and affirmed by the State
24 Board of Pilot Commissioners.

25 Q. Okay. And do you sail or do any piloting jobs while

1 you're in that position?

2 A. Not regular pilot jobs. I will take various people out
3 with me who want to, for some -- well, I've taken new public
4 commissioners who want to see what we do. I'll take them out
5 there, essentially as the escort or to -- so that they're not
6 asking questions of the pilot during that time, so --

7 Q. Okay. So you're not actually piloting --

8 A. That's correct.

9 Q. -- while you're in your Port Agent status?

10 A. That's correct.

11 Q. Okay. And if you wanted to go back to becoming a pilot,
12 which you might want to do, do you have to go through any sort of
13 check rides or recertification?

14 A. No, not so much recertification. It's actually -- as
15 Port Agent, I'm dealing with the day-to-day jobs, so you know, I
16 feel -- you know, I was Port Agent for four years previous to this
17 current time and I went back to piloting for two years and I rode
18 for about three weeks, but what I found was is that I'm still a
19 pilot and dealing with the day-to-day it's just that I'm not
20 actually out there doing it. And I found that after the first
21 week I was just kind of spinning my wheels, so I did ride for
22 quite a bit longer and then did a couple jobs with other pilots,
23 but I was rather amazed how quickly it all came back,
24 so --

25 Q. Okay. How many pilots are there in the San Francisco

1 Bar Pilots Association?

2 A. The number is set at 60 licenses. There's also one
3 inland pilot, as well. But, currently, we're working with 54
4 pilots.

5 Q. Okay. I'd kind of like to direct this now to the actual
6 incident day and use your expertise there. Taking the morning of
7 that accident, if you were the pilot, with the type of ship, the
8 location and the visibility conditions, could you give me an
9 example of how you'd conduct the master/pilot exchange?

10 A. Well, on a sailing it's quite a bit different than on an
11 arrival, especially in limited visibility conditions. You know,
12 we board at sea eleven miles out. We have ships coming from three
13 different -- well, actually four different directions, including
14 the outbound. And so at the dock you have time for a much more
15 formal master/pilot exchange and typically, you know, some
16 pilots -- we publish a pamphlet that has had input from both the
17 APA over the years, but also individual pilots. We frequently
18 tweak it.

19 But, myself, personally, and I think Captain Hurt, as
20 well, my associate here, we will -- I use a checklist where I'll
21 look at the job and it's actually a standard card, then I have
22 room for other things and I just go down there and discuss it with
23 the captain before we elect to get under way.

24 Q. Okay. The card you're referring to, that's the
25 master/pilot card?

1 A. Yes. That's our formal card, but not everybody uses the
2 formal card. Some people use their own system, as well.

3 Q. Okay. Now, Captain Cota also signed the vessel pilot
4 card, but he signed it for receipt only. Could you explain that?

5 A. Well, when you got the card, that everything's checked
6 out and there are no deficiencies and you really -- you don't have
7 time to go through well, you're not going to run a second engine
8 check and all the things that you just assume that it's done, so a
9 lot of pilots do elect to sign it for receipt only as opposed to,
10 you know, signing it and verifying that everything is in proper
11 working order.

12 Q. So if the air draft said 138, you're just acknowledging
13 you signed it but you can't get up there and measure the air draft
14 at 138 feet?

15 A. Right, although most of the time you've already taken --
16 if it's going to be an air draft dependent transit, you've already
17 taken the keel to mast height -- that's in Lloyd's -- and you've
18 typically already done that back at the office before you even get
19 on the ship.

20 Q. All right. Were there any restrictions on getting under
21 way in certain types of visibility before the incident?

22 A. We have the Harbor Safety Plan and that mandated
23 anything less than -- if visibility was anything less than a half
24 mile that you should not get under way. The problem with that is,
25 is we deal with the summer fog where we -- I mean, there is

1 probably 75 percent of the days in the summer where at some point
2 during that day you're going to have less than a half mile
3 visibility. It typically doesn't impact over near Oakland or
4 even -- it comes in through the Golden Gate and then turns up
5 Alcatraz and then dissipates over near Berkeley, so it's something
6 we deal with almost on a daily basis during the summer, but it is
7 a -- as far as following the Harbor Safety Plan, it was more done
8 on an individual basis, case by case, depending on the situation
9 at hand and the equipment onboard the vessel and everything else
10 that goes into making that decision, whether or not to get under
11 way or proceed to the dock.

12 Q. Well, the pilot that's on board, is he verifying that
13 with the use of the radar or in his own eyes, obviously, by taking
14 the distance and then see what he could see or is he going by
15 radio broadcasts or is he calling around asking for verification?

16 A. Actually, if there's any question, VTS usually picks up
17 on it fairly quickly and then they do a very good job of spreading
18 the information. We've got to check in at least 15 minutes prior
19 to getting under way or even if we're outside -- and when you
20 board the vessel, when you check in, they will -- if you're in fog
21 at that point, they will give you a visibility check on the
22 inbound and tell you if it extends beyond the normal summer
23 patterns, so --

24 Q. Okay. Before November 7th of 2007, had vessels been
25 getting under way with your pilots on them in that kind of

1 visibility?

2 A. You mean that day or just in general?

3 Q. In general, before?

4 A. At times. Well, it would depend -- you know, the fog in
5 that part of the Bay is fairly rare. Maybe six -- probably on
6 average six days do we get fog over in Oakland; some years, less,
7 some years, quite a bit more. But, you know, I can't really
8 answer that question yes or no and give you specific examples, but
9 you know, fog is something we deal with quite a bit in San
10 Francisco, so --

11 Q. My mistake. Who makes the decision to go on a day like
12 that with the visibility as it was? The ship's getting ready to
13 get off the dock. How is that decision made between the master
14 and the pilot?

15 A. In my experience, it's always been a joint decision
16 where either party has veto power.

17 Q. So one party says no and they don't go?

18 A. Yes.

19 Q. They both have to say yes?

20 A. Yes. I've boarded ships, especially tankers, where as
21 soon as you walk in, the captain will say well, you may as well
22 grab a bunk. We're not going anywhere any time soon, so the
23 decision's already made at that point, but yeah, it is typically a
24 discussion and you decide -- either side can, if you're not
25 comfortable with it, you don't go.

1 Q. Okay. We had that up on the screen. I just want to
2 reference the chart and we've seen this up here before. This is
3 the chart that was aboard the Cosco Busan on the day of the
4 accident and Captain McIsaac, if we were just -- if we were coming
5 in from sea and we were approaching the berth that the Cosco Busan
6 was at, do you have any problem with any of the lines that were
7 drawn on the chart?

8 A. Well, the one is too close to Delta Tower, but frankly,
9 in spite of what was said yesterday, we don't -- you know, a lot
10 of times the chart room is in the back of the wheelhouse and our
11 job's pretty much in front of the wheelhouse, so we don't -- as a
12 pilot, I don't spend a whole lot of time on the paper chart. In
13 this case, I would've pointed out to the mate and the master that
14 his line was too close to Delta Tower, but that would not affect
15 my transit, whatsoever.

16 Q. Okay. I just want to read an excerpt from the U.S.
17 Coast Pilot Number 7. Captain Aga alluded to this when he was
18 asked about drawing the lines on the chart the other day, what his
19 -- the officers on his ship would use, the coast pilot, sailing
20 directions, and that's what they would reference before they put
21 the lines down on the chart to berth.

22 So for San Francisco and the Oakland Bay Bridge, the
23 recommended passage -- I better put these on. "The recommended
24 passage for southbound traffic is under the northeast half of Span
25 A and B. The northbound traffic," -- which I'm assuming the Cosco

1 Busan was -- "should use the southwest half of D and E." Is that
2 line drawn approximately through the southwest half of the span
3 between D and E?

4 A. Yes, it is.

5 Q. So if they were just following the coast pilot, they
6 approximated a pretty good course for the outbound transit?

7 A. Yes.

8 Q. And do you see anything wrong with drawing that one line
9 where it's conjoined from the west to the left with the inbound
10 transit and just using the same line in and out?

11 A. That's not unusual.

12 Q. Okay.

13 A. Obviously, inbound -- the eastbound traffic lane, it
14 takes you south of Alcatraz, so I don't know what the rest of that
15 chart looks like, but obviously at a certain point, I assume that
16 triangulated line, the lower one, I assume is probably the inbound
17 one that comes in from south of Alcatraz.

18 Q. Yeah, just for the record, it is and you know, the coast
19 -- also states that the inbound should be between A and B. Now,
20 as the pilot, you can choose either one. It's up to your
21 discretion, is that correct?

22 A. Well, you could choose anyone, but it would be pretty
23 rare to go through A and B. If you have outbound traffic that's
24 going to be relatively close, what you would do is you would allow
25 them, since it's a regulated navigation area and you can't have

1 opposing traffic in there, the outbound would go through Delta-
2 Echo and the inbound could go through Charlie-Delta or possible
3 Alpha-Bravo. But, as -- if you have a clear shot to go into
4 Oakland, you would typically use Delta-Echo span.

5 Q. And just further, not to belabor this point, but if the
6 team coming in, the bridge team, the foreign vessel, had never
7 been here before and just followed the coast pilot and drew a line
8 coming south from Alcatraz through A and B and you were the pilot
9 and saw that and just wanted to go through D and E, you'd divert
10 from that course?

11 A. Yes.

12 Q. Okay. Is the majority of the Oakland traffic -- I think
13 you said this, but it's through D and E, if the traffic prevail?

14 A. Yes.

15 Q. Okay. Could you describe the work shift for the San
16 Francisco Bar Pilots? One week on/one week off, two weeks on?

17 A. Yeah, the standard shift is Wednesday through Wednesday,
18 so it's more like -- it can be as much as eight days, then six
19 days off. But, it's strictly rotational with few exceptions and
20 it just depends, as far as length of job and length of time off --
21 well, length of job depends, obviously, on the -- what job you end
22 up with. A typical day, we dispatch from the outside -- or from
23 the inside out. In other words, a pilot will be put on a sailing,
24 take the ship to sea and then wait in rotation out on the pilot
25 boat 11 miles out for an inbound. There are times when there's an

1 imbalance between the number of pilots we need out there and the
2 number of pilots we have out there, so we do what's called run
3 light, where we'll put them on the -- one of our run boats and
4 send them out, get them onto the pilot boat or the station boat
5 that way.

6 Q. Do you know where Captain Cota was in that shift? Was
7 it at the end of the week, the end of his routine?

8 A. Yes, he was at the end of his week.

9 Q. Okay. Was there any advantage to him, by making that
10 trip, that would've set him up better for the next rotation or was
11 he in a hurry that day? Anything like that come to mind?

12 A. No. We actually -- we had a TWIK presentation from the
13 Coast Guard was being done at our office later that morning, but
14 regardless of what he did, there would not have been a -- he would
15 not have got back in time for that, so no, there's nothing that
16 would effect -- he was -- when he finished his day, he was going
17 to be finished for the week, so there was nothing that I know of
18 that would've benefited him at all.

19 Q. All right, thanks. Do your pilots, with regards to
20 restricted visibility, mechanical problems, do they practice any
21 type of bailout procedure with regards to risk, high-risk areas,
22 the bridge, narrow traffic lanes?

23 A. We don't practice it, but in the training program I was
24 taught to have a geographic point that is your bailout for
25 especially the more narrow bridges that we pass through up-river.

1 I think every pilot probably has a geographic bailout point and it
2 changes depending on whether its flood or ebb tide, as well, but
3 it does -- you know, it's kind of a mental stop, I think, as
4 opposed to a published stop or bailout point, so --

5 Q. All right. And just for the record, any part of that
6 bridge, except for the piers and the towers, was navigable? You
7 can go through between A and B, B and C, C and D, and D and E?

8 A. That's correct?

9 Q. Okay. And when would the smaller, narrower channels be
10 used?

11 A. We actually use them with -- well, we used them for the
12 aircraft carriers. Charlie-Delta, there's actually about 20 feet
13 of more room as far as the height and it's also the deepest draft
14 one is Charlie-Delta, so when we used to bring in the 50-foot deep
15 tankers down to Anchorage 9 for lightering, we also used Charlie-
16 Delta.

17 Q. All right. Can you bring that up on the screen? I was
18 trying to bring the previous radar picture that everybody's seen.
19 This is the picture that was available to Captain Cota while at
20 the dock. In your opinion, Captain, because you're -- you know,
21 you're the San Francisco pilot, how is that picture? Is that used
22 to what you're seeing there? Is it fair? Is that good?

23 A. Well, this is only a picture of one of the radars,
24 correct?

25 Q. The three centimeter?

1 A. The three centimeter? It's fair, at best.

2 Q. Okay. Thanks, just wanted to get your opinion on that.

3 I just got a further question. What's fair about it in your eyes
4 or what could be better?

5 A. This is a picture from the dock, correct?

6 Q. Correct.

7 A. Or at the dock. Well, it doesn't --

8 Q. That was just before sailing, Captain.

9 A. Yeah, it looks like everything's there, but it's not as
10 clear as I would like it. It's obviously there's a distortion on
11 the -- you know, typically you'd get a very good -- you should be
12 reading a very distinct line for the south side of the estuary all
13 the way across there. That's hard rock over there. You know,
14 it's a riprap all the way up and you typically get a very good
15 radar picture there, so I'd be a little concerned about that. All
16 right. Thanks, Captain.

17 On days when the visibility's restricted like that, do
18 any of the pilots feel any pressure from industry to get under way
19 in less-than-ideal conditions?

20 A. Occasionally, yes.

21 Q. And what's done about that?

22 A. Well, like I'd said before, it's pretty much a joint
23 decision and the -- you know, there's two different types of
24 vessels we serve in a very general sense and you know, the bulkers
25 and the oil tankers, they do not have the sense of urgency that a

1 more -- that a container or a passenger vessel would have. They
2 have a lot more, as far as the -- you know, they're a lot more
3 regimented in their schedules than a tanker. I mean, a tanker's
4 going to go out there, he's going to make 12 to 14 knots and have
5 -- he's going to get there when he needs to get there, but the --
6 so there is some pressure. A lot of times it's coming from the
7 agent or the port captain on the dock. It's not very often that
8 you will get a captain who will put pressure on you to sail during
9 inclement weather conditions.

10 Q. All right, thanks. In your opinion, what type of
11 circumstances would there have to be for a ship's master to
12 relieve one of your pilots? Or take over the con from?

13 A. I think if they lost total confidence in the pilot's
14 abilities. Or obviously, in extremis, but I think those are the
15 two -- if they were concerned with what was going on, you know, to
16 the point where they weren't confident that the pilot could safely
17 navigate their vessel, then I would expect them to relieve the
18 pilot.

19 Q. Okay. Has that ever happened, to your knowledge, in San
20 Francisco Harbor?

21 A. Yes.

22 Q. About how many times?

23 A. I saw it once, as a trainee, and I've never had it
24 happen to me, personally. An American or a U.S. captain would
25 probably be a lot quicker to do it than a foreign master, but a

1 lot of the U.S. captains that are utilizing our services don't --
2 they have us there as an added layer of safety. They actually --
3 a lot of them have their federal pilotage endorsement and with an
4 enrolled vessel, they could actually do their own piloting, but
5 they elect to use us, so the one instance that I personally
6 witnessed, that was the case, was it was a U.S. master and he was
7 not confident in the pilot, so --

8 Q. Okay, thanks. I'd like to direct your attention back up
9 to the display. Now, this is the Sperry ECS that was available
10 onboard the Cosco Busan. And the two red triangles that are on
11 either side of the bridge, what do they represent to you?

12 A. Those would be the radar buoys that mark the Delta
13 Tower.

14 Q. And have you seen that symbology displayed differently
15 on other charts, on other vessels?

16 A. I've seen it displayed differently on paper charts, yes.

17 Q. Is it pretty well displayed for you, that you know what
18 they are when you see them on either side of the bridge like that?

19 A. Yes, it is clear to me.

20 Q. And on this specific chart, that tan rectangle that's
21 in-between the two buoys, what does that indicate to you?

22 A. Well, Charlie Tower was the first one you -- or the --

23 Q. Yeah, I don't have the mouse. I can't take control of
24 the mouse.

25 A. Yeah, that -- well, that would represent Delta Tower.

1 Q. Okay. And the one to the northeast of it?

2 A. Echo.

3 Q. So without the buoys there, those towers are still
4 pretty well displayed or identifiable to you?

5 A. Yes, although if the buoys were missing, then -- or the
6 symbols for the buoys were missing, then I'd question it.

7 Q. Okay.

8 BY CAPT. JONES: While we still have that up, I'd just
9 like to -- Captain Viso.

10 A. Yes, sir?

11 Q. Again, the two red triangles, what do they indicate to
12 you?

13 A. Red nun buoys.

14 Q. And how many times have you seen red nun buoys displayed
15 electronically in different types of symbology? Or how many
16 different types are there?

17 A. Well, I think there's a standard and a slightly
18 different one, but the S-57 charts that we use, that's the
19 standard symbology for a red nun.

20 Q. Okay. So this is a pretty symbology, then?

21 A. Yes.

22 Q. Okay, thanks. I'll go back to Captain McIsaac.

23 BY CAPT. JONES:

24 Q. Captain, do you work with the VTS at the Coast Guard,
25 with the Coast Guard VTS in San Francisco Harbor? Do you meet

1 with them, discuss issues?

2 A. Yes, we do.

3 Q. And how often is that?

4 A. It's quarterly or as needed, if we need something in-
5 between. Typically, if we've had issues, we had a couple pilots
6 like Lieutenant Commander Mohr spoke to yesterday, we've got what
7 we call a V-pic (ph.) committee which consists of a couple of the
8 people from VTS and a couple of our pilots, so if there's any
9 issues we channel them through our V-pic committee and they will
10 discuss them and typically, we get feedback from the V-pic
11 committee that is disseminated to all the pilots.

12 Q. Okay. In your opinion, with the navigation radar
13 display we saw, the VMS display we saw, on that morning, who was
14 the most qualified on the bridge of that vessel to get that ship
15 safely through the bridge?

16 A. Well, I don't quite understand the question. I don't
17 know -- I've never met the captain. I don't know what his
18 qualifications were. Obviously, they've hired the pilot for his
19 local expertise, so in any situation like that I would assume that
20 the local pilot is typically going to be most qualified.

21 Q. All right, thank you. The issue that was brought up
22 before, Captain, with regards to the pilot ladders and Captain
23 Cota and the danger of the pilot ladder being rigged wrong, was
24 anything ever followed up? Do you have a standard callout to Navy
25 vessels to rig it a certain way? I know merchant vessels should

1 do it a certain way, but you also have the first opportunity, when
2 you call over to the vessel that's inbound, they usually get a
3 description of how the pilot ladder should be rigged.

4 A. Yes. We actually -- you know, our fleet week is planned
5 out probably a month to six weeks in advance and we always send a
6 lot of information. Most of the ships are coming from San Diego.
7 But, we'll send hard copies of the information and other
8 information -- well, we don't send it as much as we give it to the
9 naval officers when we meet with them and then ask them to
10 distribute it accordingly. And then also, if the ship's coming
11 from, let's say, Hawaii, where he's not going to be able to get
12 that, they can get a lot of that information right from our
13 website, so we would direct them to do it from there or ask that
14 they do that from there.

15 Q. Okay. Thanks, Captain.

16 BY CAPT. JONES:

17 Q. Captain Viso, now. How many members in your
18 association, sir?

19 A. Presently, we have 23 pilots.

20 Q. Okay. And is there any way to monitor their performance
21 and continue training?

22 A. Well, they're monitored during the training period. The
23 training period in the state of Florida is a minimum of two years.
24 In Tampa, it happens to be almost three years because of the
25 length of the route. And during that training period, they're

1 closely monitored by the other pilots, the deputies are. After
2 that, besides the fact that they're monitored by the state, by the
3 Department of Professional Regulation, which oversees them through
4 the Board of Pilot Commissioners and then the Board of Pilot
5 Commissioners has oversight, through the power vested in the Board
6 and the Department, for the rest of their career.

7 Q. Okay. Tampa has a VTS?

8 A. Yes. It's in the process of being codified right now,
9 but it is functional, yes.

10 Q. And do you have any working relationship with them?

11 A. Yes, we do. I happen to be the liaison for the pilots
12 with CVTS.

13 Q. And how would you describe that relationship right now
14 or the interaction between VTS and your pilots?

15 A. It's very positive right now. We did have a vessel
16 traffic advisory system in place for years before this formal CVTS
17 was stood up and the pilots had been intimately involved with that
18 throughout the time that it's been up. Now, CVTS, the pilots were
19 actually involved with that in helping the Port Authority and the
20 Coast Guard procure the funds to get the equipment and I've been
21 directly involved in helping the watch-standers at CVTS and
22 understanding what our perspective is about CVTS, from the pilots'
23 perspective. We do have an outreach program with them where they
24 do ride with us through entire transits and I've encouraged the
25 pilots in my association to go up to CVTS into the building and

1 spend some time with the watch-standers, which they've done. So I
2 think we have a very good relationship with CVTS.

3 Q. Okay. Captain, the policies for your association on
4 laptops, do you have any? Do all your members use them?

5 A. All our members use them.

6 Q. And is that a written policy? Are they made to use them
7 or is that voluntary?

8 A. No, it's voluntary, but all the pilots choose to use
9 them. We've been using laptops for 11 years, so we helped develop
10 the primary system that we used back in -- when we first rolled
11 out in 1998 and we've been so intimately involved with that, that
12 its use is obvious to us and we found it to be very useful, so we
13 have full usage from our group.

14 Q. Are they all the same manufacturer? You keep everything
15 the same or are the pilots allowed to buy their own equipment?

16 A. We chose, as a group, to buy the equipment from one
17 manufacturer, Erinc (ph.), and it's standard. Everybody gets the
18 same issue. The units are owned by the Tampa Pilots LLC and the
19 pilots can customize their displays to a degree, but not very
20 much. It's a standard display with standard routes. Almost
21 everything is standardized so everybody's looking and going from
22 the same page.

23 Q. Okay. Captain, it was mentioned you're the chair of the
24 NAVTEC committee for APA?

25 A. Yes, that's correct.

1 Q. Okay. Can you tell me, with regards to the laptops,
2 ECDIS and the ECS and the AIS and radars, the available electronic
3 equipment on the bridge of a ship, which one's the most reliable?

4 A. Most reliable?

5 Q. And why.

6 A. Well, most reliable is still going to be the radar, in
7 my estimation because we know what it is. It's a radio wave and
8 it's bouncing off a solid object and it's coming back. After that
9 would be GPS and then it degrades from there just because it's
10 controlled by the display function with, I believe, AIS being the
11 least accurate.

12 Q. Okay, thank you. If an inbound ship or outbound was
13 using a laptop, the pilot was using a laptop computer and there
14 was a discrepancy or an admitted problem between the master and
15 the pilot with regards to what they were seeing, how would that be
16 resolved?

17 A. A discrepancy in what?

18 Q. In the information displayed on either system. The
19 laptop, if it was not showing what the master felt that it should
20 be showing, how would they resolve that between the two leaders of
21 that bridge team?

22 A. Well, we'd discuss -- one of them is obviously an error,
23 so we'd have to go through some error trapping to find out what
24 the issue is.

25 Q. Do you see that as a problem in the future with regards

1 to this type of equipment?

2 A. I don't see it as an issue. I've seen it actually
3 happen and I didn't get any pushback from the captain. It was a
4 problem with some of his equipment. We were able to double check,
5 through various means, and prove out that one of the systems was
6 deficient.

7 Q. All right. The use of the pilot plug, is that any
8 advantages, disadvantages over a stand-alone laptop with an
9 antenna?

10 A. Well, a stand-alone laptop, as you've termed it, with an
11 antenna, will only give you the ship's own position, your own ship
12 position, so this will tell you basically, in simplest terms,
13 where that antenna is on the earth and then you can project that
14 onto some sort of electronic chart display. The use of the pilot
15 plug gives the pilot access, gives his laptop access to
16 information that comes from the AIS transponder on the ship, so
17 typically, what a pilot's going to use in his laptop from the
18 pilot plug is gyro heading input from the ship and also a backup
19 GPS position that will come from the ship and it will give all the
20 traffic that the transponder's picking up outside that ship. So
21 it's very useful for traffic management and for -- in a radar
22 versus AIS argument, you can see things that the radar cannot see.

23 Q. Okay. Thanks, Captain.

24 BY CAPT. JONES:

25 Q. I'll turn it over to Mr. Thompson, here. I want to make

1 sure we get everybody in for the time allotted. Captain, the
2 number of members in your association?

3 A. Houston Pilots have 71 full pilots and 18 apprentice
4 pilots.

5 Q. And what qualifies those pilots to become pilots? What
6 kind of apprentice program do you have?

7 A. The pilot commissioners have set out an applicant review
8 committee. The applicant review committee has two pilots on it,
9 myself and another pilot, some appointed people from the
10 commissioners and some port staff and if you want to make
11 application to the Houston Pilots, you have to send your
12 application in to this committee to meet the minimum requirements
13 of -- for deep sea it would be a third mate's license and for in
14 the waters it would be a 1600 gross ton master and at least six
15 years' on these license, minimum.

16 And this committee evaluates these applications. They
17 do a background search, criminal and Coast Guard, and upon
18 completion of this applicant review committee board, they'll pass
19 these applicants onto the pilot pool. Once the pilot pool
20 receives it, we will interview these applicants and then qualify
21 them from our general pool of qualified applicants. And then when
22 we do need a pilot, we will pull a pilot from this pool.

23 Q. All right, thank you. Does your pilotage water have a
24 VTS, also?

25 A. Yes, we have a very good VTS.

1 Q. Okay. And what's your interaction with them? Do you
2 meet with them regularly, discuss issues?

3 A. We meet quarterly. We meet -- we're involved in a lot
4 of the same committee meetings. We meet all the time with them.
5 We actually have hired quite a few of their personnel that now are
6 dispatchers for the pilots.

7 Q. What's the level of control the VTS has over the
8 movement of ships in Houston?

9 A. Captain of the port has ultimately complete control over
10 to stop or how to maneuver the vessel as far as you don't pass a
11 certain area. They choose to leave that up to us as far as being
12 the professionals of the port.

13 Q. Okay, thank you. Does the Houston Association have
14 anything regarding laptops, any policies? Do your members use
15 them?

16 A. We use them. We started exploring laptops in 1992 and
17 in 2002 we fully mandated approval that all pilots would use
18 laptops and as of today, we use the Raven unit.

19 Q. And how do you -- your association, how do you monitor
20 any accidents or incidents that your members are involved in?

21 A. All incidences are investigated by the Coast Guard and
22 then they will, in turn, pass those incidences on to the Pilot
23 Review Board, which is a panel of nine people from industry and
24 pilots that the pilot commissioners have established and they will
25 review the case and decide whether its -- what charges, whether

1 it's a no charge or a letter of warning, reprimand, suspension or
2 revocation or even as far as whether training should be handed
3 out.

4 Q. All right. And how does your association handle post-
5 accident drug and alcohol testing if there's an incident with a
6 pilot?

7 A. The post-accident is right away, within two hours we
8 have a program set up with the captain of the port that we do our
9 alcohol testing right away with the crew members of the ship. We
10 actually carry swabs for alcohol testing and we will have a
11 witness sign by the captain or chief mate that we did the alcohol
12 swab. Then when the ship is safely moored or the pilot has been
13 able to get off, we have a drug testing, come to the pilot and
14 alcohol and drug testing is performed again.

15 Q. Okay. Does the Port of Houston have any restricted
16 visibility procedures?

17 A. After the channel incident closed, which the channel,
18 for fog -- we don't have as much as other ports, but if we run
19 into fog and we encounter fog, the pilot on the vessel has the
20 right to, when he gets to the pilot boat or if he anchors in the
21 channel, he'll -- close the port at the point. If he gets to the
22 bar, he usually closes the bar. Once the bar is closed, then I'm
23 involved and we no longer dispatch pilots to vessels for moving
24 until we -- we'll start monitoring the weather. We'll look at the
25 circumstances. We'll look at the weather, the weather is starting

1 to clear, if there's a front coming. And only until we see a
2 break in the weather, visibility clearing up in the upper channel,
3 visibility starting to go three or four miles in the bay will we
4 start to assign a handful of pilots, three or four pilots. We
5 don't want to flood the channel with a lot of pilots at one time.
6 Once we assign a pilot, then it's still up to the decision of that
7 onboard pilot, when he gets to the ship, to decide whether it's
8 go or no-go. And that, too, that the master and pilot both have
9 to agree to go. If the master doesn't want to go, we don't go.
10 If he wants to go and I don't want to go, we don't go.

11 Q. All right. Does Houston have a harbor safety committee
12 like -- the one that was described about San Francisco?

13 A. We have a HOGANSAC safety committee, yes. They wouldn't
14 be like, I don't believe like San Francisco. This is Houston
15 Galveston Navigational Safety Committee and they meet monthly. We
16 have a chair on there. All safety matters are discussed during
17 this committee.

18 Q. All right. Thank you, Captain.

19 BY CAPT. JONES:

20 Q. Captain Nielsen?

21 A. Yes, sir.

22 Q. The Maryland pilots now, the association, what are the
23 qualifications to become a Maryland pilot?

24 A. An applicant who wishes to become a Maryland pilot has
25 to apply to the State Board of Pilots, which is within the

1 Department of Labor, Licensing and Regulation. The minimum
2 criteria are that you have to be 21 years old, you have to have
3 passed a Coast Guard physical examination to be a pilot. You have
4 to have one of the following maritime credentials, either have
5 completed a four-year course of study at an accredited maritime
6 institution acceptable to the Board, one of the maritime colleges
7 or maritime academy and have a license as a third mate or greater.
8 Or you can have an unlimited master's license issued by the Coast
9 Guard or have a minimum of five years experience in the maritime
10 industry working on vessels in the deck department as a licensed
11 master or mate on tugs or inspected vessels of which at least two
12 years experience has been as master of a ship-assist harbor tug.

13 Q. All right. Thank you, Captain. Do you have any
14 operating policies for the Maryland association? Procedures?

15 A. Procedures, we -- each pilot, being an independent
16 contractor, works for himself. Overarching procedures perhaps are
17 different for the Chesapeake Bay are due to the length of the
18 route and pilots are able to take a relief pilot on any vessel
19 they choose going up or down the Bay. And for various slow
20 vessels or deep draft vessels, we'll assign two pilots for the
21 entire route.

22 Q. Now, you're also on the Board of Commissions?

23 A. I'm an ex officio member, yes.

24 Q. Could you describe that interaction? How does that
25 work?

1 A. There are, in addition to the five non-pilot members,
2 the four pilot members provide professional expertise to the
3 Board. Most of the professional licensing boards in Maryland have
4 either all licensees as members or a vast majority. Ours is a
5 little bit different because of our unique position, but they're
6 there to provide the expertise the Board needs to operate and it
7 works smoothly.

8 Q. How does your association handle post-accident drug
9 testing?

10 A. We rely on the ship to provide -- or the Coast Guard to
11 provide alcohol testing within two hours and we have a contract
12 facility that does our random drug testing, also does post-
13 accident drug testing and we do that as soon as we can after we
14 get the pilot ashore.

15 Q. All right. And then that pilot's relieved and the ship
16 can go on its way or if its able to do so?

17 A. If it's an incident, the Coast Guard generally does not
18 wish the ship to leave.

19 Q. Okay.

20 A. We will send a pilot out to relieve the pilot that was
21 on board right away and then take it from there.

22 Q. And how about your association with laptops, is there
23 any requirement or --

24 A. There's no requirement. There's no need for a
25 requirement. Everybody uses them who are on the canal route and

1 bay route. The pilots that are involved in harbor duty, docking
2 and undocking ships, don't routinely use them because of the
3 shortness of the job.

4 Q. I'd like to allude to something I was talking with
5 Captain McIsaac about, the Bay, the Chesapeake Bay is a pretty
6 broad expanse of water. The ships inbound will usually have lines
7 on the charts. Do you routinely follow those lines? Do you stick
8 strictly to those lines? Can you describe how you proceed?

9 A. Pilots will follow the route that they deem is
10 appropriate. The Chesapeake Bay, depending on your draft, you may
11 use different routes. There are certain channels that virtually
12 every ship has to go on, but in the naturally deeper areas, ships
13 drawing 50 or 48 feet will be in a different area than a ship
14 drawing 20 feet. I think the common practice for pilots is to
15 evaluate the course line that's drawn on the chart and if they're
16 radically different than the route the pilot's going to use, at
17 least I usually instruct the crew so they're not alarmed when
18 we're deviating from it.

19 Q. But, it would not be unusual for you not to follow a
20 line, even though it might be safe, that they drew right through
21 the middle of the bay, do you follow, like, a deep water route or
22 a deep water channel?

23 A. Deep water route or we follow traffic patterns to
24 separate tugs and tows from ships.

25 Q. Okay. And how does your association monitor any

1 incidences or accidents?

2 A. That's done by the State Board of Pilots.

3 Q. Okay. Could you describe what the Maryland Pilots
4 Association's biggest safety challenge is, if you have one or know
5 of one?

6 A. I think for us in the Chesapeake Bay is dealing with
7 recreational craft. As many of you know, Annapolis is a Mecca for
8 sailboats and they are not all aware of the limitations that deep
9 draft ships have. It's an ongoing campaign of ours to try and
10 help them understand. We visit yacht clubs, we submit to magazine
11 interviews and we've been on radio programs to try and make them
12 understand, help them understand.

13 Q. All right. Thank you, Captain.

14 CAPT. JONES: Mr. Chairman, I've concluded with the
15 panel.

16 CHAIRMAN ROSENKER: Thank you. And I will ask your
17 colleagues.

18 Mr. Bowling, do you have any questions?

19 MR. BOWLING: Mr. Chairman, I just have one. I'd like
20 to direct it to the APA.

21 BY MR. BOWLING:

22 Q. It was mentioned, during your feedback, that industry
23 had conveyed some concerns over the master/pilot exchange. Could
24 you summarize what concerns you've heard from industry regarding
25 that particular topic?

1 A. Not so much in the terms of complaints or concerns, but
2 we try to get from them the information that they wanted and the
3 way that they wanted it. And we got a lot of their useful
4 suggestions and -- but I can't recall a specific complaint or -- I
5 could tell you pilots had some general complaints or concerns that
6 they raised, but it seemed -- my recollection was that the
7 feedback we got from the masters was kind of mixed.

8 Q. Okay, thank you.

9 MR. BOWLING: I have nothing else, Mr. Chairman.

10 CHAIRMAN ROSENKER: Thank you, Mr. Bowling.

11 Dr. Strauch, do you have any questions?

12 DR. STRAUCH: I have no questions, sir.

13 CHAIRMAN ROSENKER: And Mr. Roth-Roffy?

14 MR. ROTH-ROFFY: Yes, sir. I just have a couple
15 questions. Perhaps I'll start on the end there because you have
16 the best view, Captain Nielsen. I'm going to ask for Exhibit --
17 with the radar images to be brought up. And for the record, I'm
18 referring to Exhibit 48, which contains the radar images as well
19 as the VMS images.

20 BY MR. ROTH-ROFFY:

21 Q. Okay, on the right-hand side is the time, is at 1511,
22 Captain Nielsen, and the gain setting is on the left side, which
23 we heard from Sperry Marine that that was a fairly high gain
24 setting. Can you comment about the quality of the picture and
25 perhaps the reason the image might appear that way?

1 A. Well, obviously I'm not a San Francisco pilot, but --

2 Q. Generally, from your experience with radar.

3 A. -- if I knew that that was the bridge, just seeing the
4 rather un-distinct radar return from the bridge and the extra
5 returns that couldn't be vessels, I don't believe, the circular
6 returns near the 200 to 180 bearing lines. I would think that the
7 gain is just too high.

8 Q. Okay, thank you.

9 BY MR. ROTH-ROFFY:

10 Q. Captain Thompson, could you also comment on the quality
11 of that and perhaps, from your experience or evaluation of that
12 picture, what might be wrong with it?

13 A. I'd have to agree with the comments -- I mean,
14 definitely, the gain looks like its too high with all the
15 distortion around the -- or the unclear line for the bridge and
16 all the other echoing you see down to the 190 and 200. And also
17 the fact that, like Captain McIsaac pointed out earlier, if it
18 zoomed in, you know, you lose a lot of the hard surface and I've
19 never been there, but he said it's a hard rock surface over there.
20 You're losing that surface across the ship, so it's the filtering
21 out seems like it's affecting that.

22 Q. Okay. And go ahead and pull this image down and I'll
23 ask to pull up another image, about 1626, if you could find --
24 okay, this is a little bit later in the accident sequence, as I
25 mentioned, about 1626. It's Image Number 2365 for the record. If

1 you could just pause that, please. This is the ship approaching
2 the bridge.

3 BY MR. ROTH-ROFFY:

4 Q. Captain Nielsen, could you also give an evaluation of
5 that radar picture, just from your general knowledge of radar?

6 A. I would expect to see the resolution of the bridge a
7 little clearer.

8 Q. Okay. Do you see any indications of the gain setting,
9 it might be too high or too low?

10 A. Well, other than the other scattered echoes that are
11 around, that would indicate that perhaps it's too high and then
12 the blurriness of the bridge, itself.

13 Q. Okay.

14 BY MR. ROTH-ROFFY:

15 Q. And I ask Captain McIsaac, please, to have a look at
16 that image and we heard from our interview with the accident pilot
17 that he used the VRM or the Variable Range Marker set at .33 and
18 in fact, this radar image does show a VRM set a .33 and according
19 to our interview with the accident pilot, he used that as kind of
20 a way to work his way through the bridge. Is that a common
21 practice among San Francisco pilots, for example, in this sort of
22 weather conditions?

23 A. Yes, it is. Point-three-three and then you put the VRM
24 -- you essentially run that down along YBI there and I typically
25 include -- I'll put the EBL over on about 315 and then as I'm

1 making the turn, I come to that -- I use that as kind of a leading
2 mark for myself.

3 Q. Okay. According to the time on this image, it's about
4 1626, about the time that the pilot starts making his left turn.
5 Is the ship in position at this time, referring to the Variable
6 Range Marker? To make the turn to starboard or how would you
7 evaluate the ship's position? I'm sorry if it's hard for you to
8 see it.

9 A. It looks like he's a little bit to the north at that
10 point.

11 Q. Okay. And I'd just like to step forward a couple of
12 images. Okay, stop there. In your view, how would you rate the
13 quality of that RACON firing in there? Is that something you
14 would normally see on transits such as this? Or actually, I
15 should ask you do you see the RACON firing?

16 A. Yes, I do see the RACON firing.

17 Q. Okay.

18 A. And yes, it is fairly common to -- you know, it doesn't
19 always show up. It's frequently out of service, but it's nothing
20 unusual in that picture.

21 Q. But, on this particular radar image, would you say that
22 that RACON is fairly prominent?

23 A. Yes.

24 Q. Okay. And just for the record, referring to, again,
25 time about 1620:29. I'm sorry, 1626 and 29 seconds. And if you

1 could just step a couple more frames forward, just bear with me,
2 please. I believe we'll see the bridge thicken a little bit and
3 in our interview with -- if you could hold it there. Would that
4 be an abnormal indication of the way the bridge appears there,
5 Captain McIsaac, as they approached it??

6 A. Well, as you get very, very close to the bridge, you do
7 start getting some distortion just because it's -- you know, you
8 have that large amount of steel right in front of the radar, so
9 you will start picking up a little distortion.

10 Q. So you would not be surprised -- or would you be
11 surprised by that sort of image as you approach the bridge on the
12 radar display? Would you have some concerns about the functioning
13 of the radar?

14 A. It's fairly typical to get distortion when you get that
15 close to it.

16 Q. Okay. Okay, I'd like to now turn to the VMS image.
17 I've got just one image I'd like to pull up. The next image I
18 want to show is of the -- again, it's the same docket item, which
19 is Exhibit Number 48. It's from the Sperry Marine screen
20 captures. What Sperry Marine has told us is their best estimation
21 of the way the VMS electronic chart was displayed on the vessel at
22 the time of the accident and we've compared this to photographs
23 taken after the accident. In fact, there's a close resemblance.
24 And I just wanted to specifically talk about the red triangles and
25 give a couple of the other panelists an opportunity to talk about

1 it.

2 BY MR. ROTH-ROFFY:

3 Q. Actually, Captain Nielsen, are you familiar with that
4 red triangle symbology for buoys on the electronic chart systems
5 that you've used?

6 A. Yes, our laptops use S-57 charts.

7 Q. Okay. Are you familiar with other types of symbols on
8 other vessels that would vary from that? Is there a large degree
9 of variation among that particular type of buoy symbol?

10 A. I couldn't say.

11 Q. Pardon me?

12 A. I couldn't say.

13 Q. Okay. Just in your experience of piloting ships, do you
14 look at the ships' electronic chart systems?

15 A. Yes. And because we're well aware of where the buoys
16 are, it's -- I never have difficulty understanding what the
17 symbology means on the charts.

18 Q. Okay.

19 BY MR. ROTH-ROFFY:

20 Q. And Captain Viso, you being involved with the electronic
21 chart, initially with the APA, can you, in your experience, tell
22 us the variation and the symbology for that particular -- I
23 believe it's a nun buoy or conical buoy?

24 A. That's a standard display you're going to see on an S-57
25 chart for that type of buoy. In a different IALA buoy system,

1 that could be a different color, but that's what we use here in
2 the United States, so that's what you have. That's typical.
3 Although, to the question you were asking about what we see on
4 other ships, most of what at least I've seen in my experience has
5 been a lot of electronic chart systems, non-compliant ECDIS or
6 off-the-shelf versions that ships have decided to employ for an
7 electronic chart display and that can be anything from an S-57
8 chart like this to a raster presentation, which is just going to
9 be a reproduction of the paper chart and then you would see the
10 more typical symbology that most everybody's familiar with on a
11 paper chart.

12 Q. Okay. Is there a wide variation in the presentation of
13 that particular type of buoy?

14 A. No, I don't believe there is.

15 Q. Okay, that's all I have. Thank you very much.

16 CHAIRMAN ROSENKER: Thank you, Mr. Roth-Roffy. We'll
17 now go to our parties. We will start with the California
18 Department of Fish and Game, the Office of Spill Prevention
19 Response?

20 MR. HOLLY: No questions, Mr. Chairman.

21 CHAIRMAN ROSENKER: Thank you. Fleet Management?

22 CAPT. AGA: Mr. Chairman, I have a few questions.

23 CHAIRMAN ROSENKER: That would be fine.

24 CAPT. AGA: Thank you, sir.

25 BY CAPT. AGA:

1 Q. First is addressed -- these sorts of questions, I will
2 talk to Mr. Krishna [sic] first. Sorry, Krishna -- Kirchner. I
3 apologize for --

4 A. That's fine. Kirchner.

5 Q. Kirchner. Thank you, sir. I got it now.

6 A. I can't pronounce your name, either, Captain.

7 Q. Okay. Okay. Sir, who is the pilot's employer under the
8 United States system of pilotage?

9 A. Typically, the pilot is self-employed. He is an
10 independent contractor for various purposes. Sometimes and in
11 some circumstances, the ship is considered the employer.

12 Q. Okay. And when the pilot goes for training, like the
13 San Francisco Bar Pilots Association sends them for training, then
14 who becomes their employer?

15 A. In San Francisco, that system, as I understand it,
16 actually, the trainees have a contract with the Commission and
17 they're actually working under that contract with the Commission
18 and the Commission pays them.

19 Q. Sorry.

20 BY CAPT. AGA:

21 Q. Can I request Captain McIsaac to confirm that?

22 A. That is correct.

23 Q. Okay. And in this case now, when Mr. Cota is no longer
24 -- has a license, is he -- who is he employed with right now?

25 A. Well, he's still a member of our association, but if he

1 either license is revoked, part of our -- one of our mandates of
2 the association is you have to hold both the underlying federal
3 license and the state license, so as long as it's still suspended,
4 he is a member of our association, however, he is not getting paid
5 by the association.

6 Q. Okay, sir.

7 BY CAPT. AGA:

8 Q. I'll go back to Mr. Kirchner. Does the association have
9 any plans to adopt the Resolution 960 for best practices of
10 pilotage?

11 A. I'm sorry, I didn't understand the first part. I didn't
12 hear it. I'm sorry.

13 Q. Now, do you have any plans to adopt Resolution 960 for
14 best practices of pilotage?

15 A. Well, those are recommended guidelines for governments.
16 It's not a question of whether the association adopts those or
17 not. In fact, we were involved in the drafting of those
18 guidelines, as a general issue. We support them and we approve
19 them, but there's nothing really there for us to adopt.

20 Q. Okay, sir. It talks about cross-cultural training for
21 pilots.

22 A. Yes.

23 Q. Do you have any plans to do that?

24 A. That's a standard part of our bridge resource management
25 for pilot courses.

1 Q. My next question is there was an NTSB safety
2 recommendation after the Star Princess and it was addressed to
3 San Diego Pilot Association and it was also a copy was passed to
4 you. Did you disseminate that to all the pilot associations about
5 pilot fatigue and sleep apnea?

6 A. I believe that was the Southeast Alaska Pilot
7 Association and my recollection is that we did disseminate it.
8 Some of those we put in our newsletter. It depends on what the
9 request is or the instruction from the NTSB, what we do with
10 those.

11 Q. Do you have any idea if any of the pilot associations
12 have specific requirements about sleep apnea?

13 A. I would doubt that any association would deal with sleep
14 apnea. That's a regulatory issue. I mean, it's something that,
15 as a national association and in our dealings with the Coast
16 Guard, we talk about all the time. It's one of the medical issues
17 and it's also one of those issues that's a cross between medical
18 condition and fatigue, so we know a little bit about sleep apnea.

19 Q. Thank you, sir.

20 CAPT. AGA: I'll ask a few questions of Captain Pete
21 McIsaac. I hope he doesn't mind.

22 BY CAPT. AGA:

23 Q. You talked about some pressure from the industry for
24 leaving port. Captain Cota has said in his interview with the
25 NTSB that there was no pressure. Do you think this happened here?

1 A. No. No, I did not mean to imply that it happened on the
2 Cosco Busan. In fact, although I did -- Captain Cota and I, we
3 haven't discussed the accident in any sort of depth, whatsoever,
4 for obvious reasons, but one thing he did tell me early on was
5 that he did have a conversation with the master out on the bridge
6 wing and you know, obviously, that's not recorded, but he did tell
7 me that he had talked to the master about where or not he was
8 comfortable to sail, so --

9 Q. Okay. Is the rotation that you talk about, is it cast
10 in stone or you could change the rotation?

11 A. You mean as far as an individual changing the rotation?

12 Q. Yes, sir. That is correct. Typically, I'm talking
13 about Captain Cota. There was a problem -- and there was heavy
14 fog. Could you have changed, as an oversight? I mean, when
15 you're overseeing the pilotage, could he have changed the rotation
16 to assign another pilot?

17 A. No, I wouldn't have done that just because I didn't -- I
18 did not know there was an issue with a situation of awareness. I
19 mean, like I had said earlier, I can specially assign pilots, but
20 it's typically if it's a special job that we need a lot of
21 planning on.

22 Q. When the ship was heading in the wrong direction, when
23 the VTS called concerning that Charlie-Delta had deeper draft,
24 could the VTS have told Captain Cota that you are in danger,
25 please go through Charlie-Delta?

1 A. Well, I guess they could've told him that, yes, but that
2 would be highly unusual for them to do that.

3 Q. Okay. Last question. Does the associations, any of the
4 associations, do you have a list of medications that the pilot is
5 barred from taking?

6 A. No, as an association, we don't, but we -- you know, we
7 look to the regulators to handle that portion of it.

8 Q. Okay. Is that the same for all the other associations,
9 gentlemen?

10 THE WITNESS #18: Captain, are you directing that to
11 each one of --

12 CAPT. AGA: Yes, to all of you and I just want an
13 opinion. Does the pilot have to declare to you the medication
14 he's taking and if he declares, do you have the authority to tell
15 him not to go onboard the ships or is it only the Coast Guard and
16 the regulatory body?

17 THE WITNESS #18: It would be the Coast Guard and the
18 regulatory body in the case of Tampa Bay.

19 THE WITNESS #19: For Houston, it would be the Coast
20 Guard Medical and the Port Authority Medical.

21 THE WITNESS #20: In Maryland, they don't have to
22 declare that to me.

23 CAPT. AGA: Okay. One other question, this also coming
24 across the board. Why is it that after an accident, the -- or an
25 incident, the pilot is taken off by the association and taken for

1 drug testing rather than wait for the Coast Guard to take the
2 sample and test it independently?

3 THE WITNESS #16: If I can start at my end, from a
4 national perspective and then you'll get the individual ports,
5 first of all, in many instances, the Coast Guard will not take the
6 sample. They look to someone else to do that, usually the marine
7 employer. In the case of a pilot, it's just worked out that and
8 typically, with the approval and support of the captain of the
9 port, the pilot association will take care of that, that the Coast
10 Guard has greater confidence that the pilot association is going
11 to actually be able to do that within the very tight timeframe and
12 they have the capabilities of providing for that in advance,
13 including the contract with some agency that's going to come and
14 take the sample and do the testing, so the preferred method is to
15 have the pilot association take care of that.

16 And I can also say that there was some resistance when
17 the alcohol testing rules first came out among the pilots, which I
18 think was quite legitimate, that they were reluctant to put their
19 careers in the hands of a foreign crew that was going to do a test
20 on them without any assurance of the ability of that crew to
21 handle that properly. So I can say -- my experience is -- that
22 these things were worked out at the local level and everybody
23 seems to be happy with having the pilot association do that and in
24 order to meet that very tight two-hour timeframe, the pilot
25 associations have a procedure for getting the pilot off as soon as

1 they can and get the pilot tested.

2 THE WITNESS #17: And Captain Aga, in San Francisco we
3 don't necessarily take a pilot off. You know, we have over 200
4 miles of routes, so there's times when we cannot get to a pilot in
5 any timely manner. We do carry the strips to do the alcohol test
6 and then as soon as we get the pilot ashore, then we will do the
7 -- direct him to go do the drug and typically, we'll do another
8 alcohol test since we don't have a lot of confidence in those
9 strips.

10 But, also, in the event of a serious accident, we
11 typically like to get the pilot off and get a fresh pilot on there
12 just for safety reasons. I think it's been shown, in past
13 studies, that one accident tends to lead into a second or third or
14 a compounding effect because decisions are not being made in the
15 proper frame of mind, so in this accident, I made the decision to
16 take Captain Cota off as soon as it was safely anchored and I
17 called Captain Uberti and I told him, in my initial conversation
18 and then I left a message with him about an hour later, when I
19 actually took Captain Cota off, so that he was aware of it and I
20 told him where the investigators -- or where he would be and his
21 investigators met with Captain Cota, I think, around noon time
22 that day.

23 THE WITNESS #18: Captain, specifically in Tampa, there
24 was an incident. The pilot association has contracted an agency
25 to do the testing and the collection, which usually is done in

1 coordination with notifying the Coast Guard so they know exactly
2 what we're doing, but that's all approved Coast Guard site.

3 THE WITNESS #19: Captain, in Houston, as far as I know,
4 the Coast Guard doesn't do drug testing. They put that burden
5 onto the pilot association, so we have our pilot call for or we
6 call for a certified drug testing agency that does it and results
7 are forwarded on to the Coast Guard.

8 THE WITNESS #20: Likewise in Maryland, it's a procedure
9 that's been our agreement with the sector that the pilots will
10 take care of it and we do it to make sure it gets done so that
11 issue is resolved and there's not a problem of waiting for the
12 ship owner to take care of it.

13 CAPT. AGA: Thank you very much, gentlemen, for your
14 patience. I have no more questions.

15 CHAIRMAN ROSENKER: Thank you, Captain.
16 Sperry Marine?

17 MR. HUGHES: No questions, Mr. Chairman.

18 CHAIRMAN ROSENKER: U.S. Coast Guard?

19 MR. WHEATLEY: Thank you, Mr. Chairman. I just have a
20 couple questions, if I could, of Mr. Kirchner.

21 BY MR. WHEATLEY:

22 Q. Earlier, sir, you indicated that you have roughly 60
23 pilot groups and 1200 pilots and that there's a variety of ways
24 that you go about drug testing program. Could you give us a feel
25 of roughly what percentage of your associations run their own drug

1 testing programs versus what percentage contracts them out?

2 A. No. Recently, we'd been talking about the drug testing
3 programs within the association and it was, you know -- that was
4 not something that we ever had reason to survey our membership on
5 before. When issues come up, we'll survey our membership and --
6 but I really don't know. I had assumed that most of the groups
7 had contracted this out. I was kind of surprised, recently, just
8 a handful that I talked to, that there were several that did not
9 do that. So I think that's going to be the trend in the future
10 based on our advice.

11 Q. Just kind of a follow-on to that, as a result of those
12 who actually run their own drug programs, from the Coast Guard
13 audits of those programs, are you aware of any significant
14 problems that have been identified with the way that your
15 associations run the drug testing programs?

16 A. Not significant. I know of one small group that seemed
17 kind of in the dark about the drug testing program or there seemed
18 to be a time gap in their understanding of how that works, so they
19 were still operating under the understanding that existed a number
20 of years ago, really before the random testing program came in. I
21 understand that it's not at all unusual to have minor non-
22 compliances of some of the requirements, but I'm not aware of any
23 major problems.

24 Q. To the extent there may have been identified problems,
25 are you aware of whether or not there's been corrective action

1 taken to amend those?

2 A. The ones that I've heard of, there are steps being taken
3 to correct those.

4 Q. And just finally, would it be fair to say that -- or
5 I'll ask it this way, has your association expressed a preference
6 or a recommendation to your members concerning a preference for
7 one form of drug testing, either to contract out or to do it
8 internally?

9 A. Not as an association. I have, in discussions with some
10 of the groups lately, I've said I think it's a good idea to
11 contract that out and have also suggested that they talk to the
12 Coast Guard, their local Coast Guard, to get some advice from them
13 about the contracting companies that they are familiar with and
14 are comfortable with.

15 MR. WHEATLEY: Thank you, Mr. Chairman. I have no more
16 questions.

17 CHAIRMAN ROSENKER: Thank you very much.

18 The California Board of Pilot Commissioners?

19 MR. MOLONEY: Thank you, Mr. Chairman. I have a
20 question or two for Captain McIsaac.

21 BY MR. MOLONEY:

22 Q. How long does -- going back to the radar images we saw a
23 couple moments ago. How long does the RACON firing show up on the
24 radar screen?

25 A. You mean in a typical live situation?

1 Q. Yes.

2 A. It's not every sweep, but it'll show up for a sweep. So
3 it doesn't show up every sweep.

4 Q. And would it be just roughly every two or three or four
5 or five or would it vary from radar to radar?

6 A. No, I think it probably varies more RACON to RACON, so
7 I'm not really sure.

8 Q. Also, from what distance from the bridge would he RACON
9 begin to display its Morse code identification? How far away?

10 A. I would say probably within about three quarters to a
11 half mile you'd start picking it up.

12 Q. And again, on this bridge, as you approach the bridge,
13 at what distance would the RACON no longer be visible?

14 A. Well, you start losing it as you get underneath it and
15 obviously, it's not pinging the -- it's not pinging it, so it's --
16 you know, once -- well, actually, after you go through it, you're
17 getting in the other direction, so you will, unless your stack is
18 blocking it immediately as you pass underneath, which is fairly
19 common or the mast, but -- you know, because there is a sector
20 shadow behind every radar because they're mainly -- they're
21 mounted so they have unrestricted access or beam width out in
22 front of the ship since that's the direction most ships go, so --

23 Q. Thank you.

24 MR. MOLONEY: No further questions.

25 CHAIRMAN ROSENKER: And finally, the American -- excuse

1 me, the San Francisco Bar Pilots Association, Captain Hurt?

2 CAPT. HURT: I have no questions.

3 CHAIRMAN ROSENKER: And finally, the American Pilots
4 Association.

5 CAPT. WATSON: Thank you, Mr. Chairman. I have a couple
6 questions for Captain McIsaac.

7 BY CAPT. WATSON:

8 Q. We heard yesterday that there are new fog rules in
9 effect in San Francisco now. Can you explain the role that the
10 San Francisco Bar Pilots Association played in the development of
11 these rules?

12 A. Yes. Immediately following the Cosco Busan allision and
13 subsequent oil spill, we kind of put together an internal review
14 committee to look at all our processes and procedures and best
15 practices and we were somewhat stymied by inasmuch as we didn't
16 really know what -- we don't know all the causal factors to the
17 accident and we won't, you know, until all the investigations are
18 complete. But, the one thing we did know, obviously, is that fog
19 was a contributing factor. I think everybody could agree on that,
20 so we sat down and started looking at that and we started looking
21 at, you know, what was in the Harbor Safety Plan and what could be
22 done better and how it could be enhanced so that it would prevent
23 an accident like this in the future.

24 So we developed our own program or it was actually
25 Captain Hurt and I and then I contacted Captain Gugg, the sector

1 commander, Captain of the Port, and put together a group with VTS
2 and Lieutenant Commander Mohr and we went over and sat down with
3 them and they had done -- they were working on pretty much a
4 parallel course and so we sat down and essentially took what we
5 had developed, kind of merged in some of the other ideas and then
6 jointly -- we had about three or four meetings to get something,
7 to get the actual language written, then we took that to the
8 Harbor Safety Committee, first took it through the Navigation
9 Subcommittee or workgroup and then from there, the full Harbor
10 Safety Committee has adopted that into the Harbor Safety Plan.

11 Q. Thank you. One other quick question. Before this
12 casualty, this Cosco Busan, when was the last time
13 San Francisco Bar Pilots was involved in an incident or casualty
14 that resulted in an oil spill?

15 A. According to our records, it was 1937 was the last time
16 we were involved in an oil spill, so --

17 Q. Before you were born, I guess.

18 BY CAPT. WATSON:

19 Q. To Mr. Kirchner, have you been involved in the MERPAC
20 review of the Medical Review Program?

21 A. Yes, I have. I've been a part of the medical workgroup.

22 Q. Okay. Do you agree with Dr. Bourgeois's description of
23 that review?

24 A. I'm glad you asked that question, Captain Watson. No.
25 There was one issue -- well, there was one statement that he made

1 that I do disagree with and that was the suggestion that there
2 were people in that workgroup or there were interests represented
3 there that opposed the idea of medical review or would like the
4 whole program to go away. I believe that's what he said. That's
5 not at all true.

6 I've been taking part in the workgroup for as long as
7 the doctor has. I have never heard anyone say anything like that.
8 There are some legitimate issues and disagreements, areas of
9 disagreement concerning the revised program. Those have nothing
10 to do with the desire to eliminate a program or to lessen the
11 review. Those are legitimate issues that people in good faith are
12 dealing with to try and structure a program that's not only
13 effective but efficient and practical and fair. So that
14 characterization, from what I heard, that people are holding it up
15 because they want it -- you know, because they don't support the
16 idea of a medical review -- is not true.

17 Q. Okay. Thank you very much.

18 CAPT. WATSON: Mr. Chairman, thank you for the
19 opportunity. I have no more questions.

20 CHAIRMAN ROSENKER: Thank you very much. We'll go to
21 the Board of Inquiry. Mr. Osterman?

22 BY MR. OSTERMAN:

23 Q. Very simply. Mr. Kirchner, how many pilot groups are
24 there in the United States?

25 A. There are, I would estimate maybe 65 groups, organized

1 groups of pilots.

2 Q. Do all 65 -- or what proportion of those 65 have an
3 oversight body like a commission, like each of the pilot groups
4 represented here?

5 A. All the state pilot groups with the exception of Hawaii,
6 their pilots there are overseen by the Department of Commerce and
7 Consumer Affairs. They have a Director of Pilotage who's a
8 bureaucrat within that department. But, for all the other states,
9 there's one or more state pilot commissions. In the Great Lakes,
10 of course, that's a niche. The federal government regulates the
11 pilots there.

12 Q. We'll get into this with the next panel, but are pilots
13 generally represented on those commissions, for the most part?

14 A. Well, we provided a breakdown of all the commissions and
15 their compositions. There are two that spring to mind right away
16 that don't have any pilots. I believe there are -- well, there's
17 three, now that I think about it. There's probably five, maybe,
18 that don't have any pilot representation at all. As I said, by
19 far the predominant model is to have an equal number of pilot and
20 pilot users and then with a group of public members and other type
21 of designated members. Typically the pilots on the committee or
22 the commission don't form a majority of the members.

23 Q. Okay. And then finally, pilotage is not a unique United
24 States circumstance, it is international, correct? Are there
25 general areas in the world where pilots are not available or is

1 this relatively universal?

2 A. I don't know of an area where there are no pilots or
3 ships that don't have to use pilots when they get there. It's a
4 pretty common occurrence.

5 Q. Okay. All right, thank you.

6 CHAIRMAN ROSENKER: Thank you, Mr. Osterman.

7 Dr. Spencer?

8 DR. SPENCER: Thank you, Chairman.

9 BY DR. SPENCER:

10 Q. Captain McIsaac, you talked about pilot rotation and the
11 order that pilots report to duty. Are there situations where
12 shipping companies ask you either to provide a specific pilot or
13 not provide a specific pilot?

14 A. Typically, no. Special assignments, like if it's -- we
15 do have -- divided up the -- well, like the shipyard. I'm the
16 Port of Redwood City representative. There's times when they may
17 -- if they have an issue they want to talk about beforehand or
18 there's planning involved, they may ask that that representative,
19 especially at the shipyard they'll ask if I can send a specific
20 pilot because they want to talk to that pilot, not only have them
21 do the job but talk to them about, you know, some other thing,
22 some other dredging issue or something like that, so it's very
23 rare, maybe a couple times a year and if it makes sense, we
24 accommodate them, but if it doesn't, then we just tell them
25 it's -- you know, it'll go in rotation.

1 Q. Okay. Have you ever encountered a situation or are
2 aware of a situation where a shipping company asked that Captain
3 Cota not be provided as a pilot?

4 A. Years ago, yes. There was an oil company that -- and
5 subsequent to that, that was worked out subsequent to that and I
6 believe there was some -- there was an incident at a dock and
7 until it worked its way through the commission process, it was
8 asked that Captain Cota not be assigned to any vessel going to
9 that dock. So it wasn't so much the vessel, but it was the
10 facility.

11 Q. I see.

12 BY DR. SPENCER:

13 Q. And Captain Viso, have you had situations where you get
14 negative feedback on a pilot and therefore -- or positive feedback
15 and therefore make decisions on who to assign on the basis of
16 that?

17 A. Well, the only situation of recent memory was a vessel
18 that asked for another pilot to be assigned, but it was an issue
19 of fog and the master wanted to sail in the fog and the pilot
20 refused to sail. He asked that another pilot be assigned and
21 another pilot was assigned and they sat there for another four
22 hours until it cleared. That's the only recollection I have.

23 Q. Okay, thank you.

24 BY DR. SPENCER:

25 Q. And Captain Thompson, same question for you.

1 A. We have had where a ship can refuse a pilot, but we do
2 not take the pilot out of rotation and we'll wait the four hours
3 and reassign another pilot.

4 Q. Okay.

5 BY DR. SPENCER:

6 Q. Captain Nielsen?

7 A. I'm not aware of any ships requesting that we not send a
8 particular pilot.

9 Q. Thank you.

10 BY DR. SPENCER:

11 Q. Now, Mr. Kirchner, at the beginning of your presentation
12 when you were talking about state pilots versus federal pilots,
13 you said that state pilots have other duties to the public and you
14 mentioned things that I took as being safety and environmental
15 protection and that sort of thing that they exercise independent
16 judgment. Did you mean to imply that such is not the case with
17 federal pilots?

18 A. Typically, the most common use of a federal license is
19 by a crew member on a ship, so he's an employee of the ship and he
20 does what he's told or that's typically the case, you know, so he
21 has that relationship and of course, if he engages in something
22 that's unsafe, the Coast Guard has jurisdiction to take action
23 against him, but he's an employee there and you know, he's subject
24 to direction from the ship, whereas a state pilot and the whole
25 state system is set up to try and insulate the pilot from those

1 type of pressures so that his judgment can be devoted solely to
2 safety rather than the economic -- rather than overriding economic
3 considerations.

4 Q. I see. Does APA perform any oversight function with
5 respect to the associations?

6 A. No.

7 Q. So oversight of associations, then, is handled by the
8 state commissions?

9 A. Oversight of the pilots is by the state commission.

10 Q. I see. Now, I think one of the roles of the APA,
11 correct me if I'm wrong, is to provide for an exchange of
12 information among the associations --

13 A. Right.

14 Q. -- and the members maybe help with consistency in some
15 areas, come up with recommended practices or best practices, is
16 that right?

17 A. Right.

18 Q. That sort of thing, coordination?

19 A. Yes, sir.

20 Q. Do you have an opinion on whether such a role would be
21 useful with respect to state commissions, themselves, because I
22 don't think there is a coordinating organization for them?

23 A. I think the exchange of information is valuable and they
24 do reach out from time to time to try and get that information and
25 often they contact us to find out what other states are doing, but

1 there may be some benefit to having a mechanism for doing that on
2 a more reliable basis or a day-to-day basis. I think the issue
3 there has been before is that there's got to be funding, there's
4 got to be a secretariat function, there's got to be -- somebody
5 has to sponsor such an organization that does that and you know,
6 that's been a real difficulty. You have to try and find how that
7 would work and how it would be assured of reliable funding.

8 Q. I see. So at times, then, APA does assist the state
9 commissions on technical or policy matters if you're asked?

10 A. Absolutely.

11 Q. Thank you very much. That's all.

12 CHAIRMAN ROSENKER: Thank you, Dr. Spencer.

13 Mr. Henry?

14 BY MR. HENRY:

15 Q. Captain Viso, if we could draw on your experience with
16 laptops a little more. Are the laptops that you all are provided,
17 are they ECDIS compliant?

18 A. No. I would use the term that the Sperry representative
19 used the other day. They're ECDIS light.

20 Q. Is there a laptop on the market that is ECDIS compliant?

21 A. I don't believe so, not a laptop. If there is, I'm not
22 aware of it right now.

23 Q. And we've heard a little bit about the use of laptops
24 with U.S. pilot organizations. Are you in a position to comment
25 on the use of laptops in other parts of the world, other

1 progressive piloting organizations in other countries?

2 A. To some degree. I do have some exchange of information
3 with pilots at the international level and there has been some use
4 in Europe. They had their own program there to work on a portable
5 pilot unit. I know that there are Australian pilot associations
6 that use laptops. There's others. It's not isolated to the
7 United States.

8 Q. Are you aware of any legislation, state or federally, in
9 the hopper right now to mandate the use of laptops by pilots?

10 A. I've heard of it. Yes, sir.

11 Q. Your thoughts on that?

12 A. As a point that we made in discussion quite a bit over
13 the years, piloting is a very local issue and whether a laptop is
14 appropriate for a particular pilot district should really, I
15 think, be set by the pilots. The pilots have, in this arena have
16 always sort of led the charge in this use of technology and I
17 think pilot associations identify what needs they have and then
18 determine whether a laptop or some kind of configuration,
19 navigation configuration in a computer would be appropriate for
20 their use.

21 Just an example, my route is 43 miles, so I'm on the
22 ship for hours and I have to meet a lot of opposing traffic, so
23 it's a very useful tool to me. But, other pilot districts that
24 are only a few miles long, where they can see all the traffic or
25 it's one-way traffic, a laptop might not be appropriate, so I

1 think it's really something that should be left to the pilots to
2 determine.

3 Q. How do you deal with pilots in your organization that
4 are intimidated by electronics, you know, the old sailors?

5 A. Well, I'm getting to be one of the old sailors now, so
6 as a generational change, that has not been really an issue. It
7 has been such a useful device in our particular area. I can only
8 speak for Tampa, that it was embraced pretty wholeheartedly and as
9 the pilot group gets younger, as we take in people, we're getting
10 candidates that are more conversant with the technology, so they
11 have no aversion to it. They'll embrace it.

12 So I don't think that's been an issue, at least in my
13 experience. I don't see that as a stumbling block. And also
14 what's very important and we've always promoted is that training
15 is absolutely important and just having a laptop showing you where
16 you're at is not enough. You have to have some sort of supporting
17 training so that the pilot or whoever's using this kind of
18 technology is conversing and understanding what it can provide,
19 what it can't provide, what the shortcomings are along with its
20 attributes. So training is important, also.

21 Q. And Captain, when you board a vessel that maybe has not
22 been in your pilotage waters before, with a laptop, how do you
23 work with a master as far as how you're going to use that device
24 when he may be intimidated by a machine that he's not familiar
25 with, with software that he's unfamiliar with and he's comfortable

1 with his own, possibly off-the-shelf electronic charts? How do
2 you work with somebody who may be in that situation?

3 A. Well, I'd have to tell you that that really has never
4 been the case. The use of laptop becomes obvious and it's
5 discussed during the master/pilot exchange when we're discussing
6 where we're going to go and all the equipment, so the pilot laptop
7 is just another tool that the pilot uses. He doesn't use that
8 instead of everything else on the ship, so it just complements
9 what's already on the ship. And actually, most masters that
10 haven't seen something like this are quite curious as to what it
11 is. But, we've been doing it for a while, so most everybody that
12 comes to Tampa has seen a laptop and they know that we're using
13 them for years, so I really haven't run into that.

14 BY MR. HENRY:

15 Q. Captain Thompson, in your pilotage areas, you have a
16 significant challenge because of the very restricted waterways and
17 you know, the Houston Channel and the challenges that you have to
18 face. Are laptops very useful in your situations?

19 A. A laptop is becoming a definite, very beneficial tool.
20 In our channel, with it being long and narrow, the two-way traffic
21 and the amount of tows we could encounter is upwards to 300, 400
22 tows a day move on that channel, so the laptop alone that we
23 carry, Raven, without the AIS plug, just the fact that we have the
24 antenna and our own laptop that talks to the other ships, it
25 actually goes out to our office and comes back so we can see the

1 other vessels is useful, but with the AIS pilot plug and you can
2 actually see the name of the tows that you're meeting instead of
3 calling out to one of four or five tows out there, you can
4 actually pick the tow you want to call out. It's very beneficial.

5 Q. You get AIS information through other sources on the
6 vessel.

7 A. You could, but this puts it all at one local area to
8 where if you were in a case of running in reduced visibility, you
9 don't have to walk around to every location to find that
10 information. You have all of it right there on the laptop at the
11 window or where you're conning from.

12 Q. Okay.

13 BY MR. HENRY:

14 Q. Captain Nielsen, I have to confess, I'm one of those
15 recreational boaters in the Chesapeake Bay that sometimes gets in
16 your way and in my case, it's not so much that I don't understand
17 the restrictions that you have, it's the difficulty in judging the
18 relative motions of your vessels versus mine and there are times
19 where I wish I had more wind or just want to be somewhere else in
20 the bay, but do you all use laptops traditionally and how do you,
21 in your master/pilot exchange, work with somebody who may not be
22 familiar with what you've carried on board?

23 A. Well, now since laptops have been in use around the
24 world for so many years, it really, as Captain Viso said, is not
25 an issue. They are not surprised to see it, they know what it's

1 about and it's not an issue.

2 Q. Captain, does your organization have a program for a
3 continual monitoring of the performance of your pilots past the
4 probation apprentice stage?

5 A. Our association does not.

6 Q. And is that handled at another level?

7 A. Continual monitoring, if -- just to monitor is not
8 handled by anybody. If there is an incident, then the State
9 Board, of course, will be aware of it and by our statute, the
10 State Board will review other incidents when they make a decision
11 on how to handle an incident at hand.

12 BY MR. HENRY:

13 Q. And Captain Thompson, in Houston?

14 A. There's no formal program of monitoring after our three-
15 year apprentice course, but upon renewal of the commission, every
16 four years -- I mean, in a four-year period our average is around
17 220, 240 vessels a year, so you're upwards to close to a thousand
18 vessels every four years into your commission. When you go for
19 renewal, our committee -- does a background search on you for
20 felonies which, in our case, would kick us out of the
21 organization, lose our commission and also they do a Coast Guard
22 search and check into the incidences we had.

23 BY MR. HENRY:

24 Q. And Captain Viso, that same question for Tampa.

25 A. Tampa would be consistent with the rest of the state of

1 Florida in that the Board of Pilot Commissioners would oversee,
2 but it would require an incident, for the most case, to trigger --

3 Q. Okay. And we'll have an opportunity to ask that same
4 question of Commissioner Phipps later. Thank you.

5 MR. HENRY: That's all my questions.

6 CHAIRMAN ROSENKER: Thank you, Mr. Henry.

7 BY CHAIRMAN ROSENKER:

8 Q. Captain Nielsen, I, unlike Mr. Henry, I was wise enough,
9 in my 20 years of sailing on the Bay, to stay away from your
10 members. Although I had a nice size sailboat, she was no match
11 for the kinds of vessels that were rolling in and out of the
12 Chesapeake under the pilotage of your membership, so -- let me
13 ask -- I got a chance to talk to Captain McIsaac earlier today
14 about what it took to be removed or voted out or asked to leave
15 the association. Do you have any type of guidance, any type of
16 after a certain number of incidents, it's-time-to-go kind of
17 policy?

18 A. That would not be an issue for the association. It
19 would go before the State Board of Pilots.

20 Q. I understand, but even that, any time you get an issue
21 with one of your pilots and it's a serious issue, it kind of
22 reflects poorly on the rest of the profession, so it's in the best
23 interest, it would seem to me, of the association to make sure
24 that their people were highly qualified and performed at the
25 highest levels all the time. So if you had someone that was

1 continually having a problem -- bumping into things, for
2 example -- would it behoove the association to do something?

3 A. Well, I'm confident that the State Board would act in
4 that case. If it's especially a case of repeatedly doing the same
5 thing, I have no doubt that their license would be suspended or
6 revoked.

7 Q. Okay. Well, I'll ask -- because I think we're getting
8 ready to do another panel that we'll have some discussion about
9 that issue. How about you, Captain Thompson?

10 A. We're regulated by the State -- by the pilot
11 commissioners and in that case, it would never get by them even --
12 I mean, before us because when you have an incident, the Coast
13 Guard investigates it and then when that investigation, then the
14 BPRC, the Pilot Review Board, which is a panel of -- that the
15 pilot commissioners have elected people to sit in there for them.
16 It's three pilots and it's six other members of industry and their
17 judgment would be on the incident at hand, they do not look at
18 your previous accidents. They weigh it on its own merit, but when
19 it comes to the either punishment phase or settlement stage, then
20 they go back over all your history and you know, it wouldn't sneak
21 by them before it got to us, so if there was evidence of a pilot
22 having frequent, frequent accidents. They would either look to --
23 do a suspension or revocation or maybe even look at more training.

24 Q. Okay.

25 BY CHAIRMAN ROSENKER:

1 Q. And Captain Viso, your policies are similar?

2 A. Yes, sir. The Board of Pilot Commissioners has
3 oversight over the pilots and I can speak from my experience over
4 the years that, you know, they are active in their investigation
5 of any incidents.

6 CHAIRMAN ROSENKER: Okay. Well, thank all of you for
7 your participation on this panel and what we'll do is take a ten
8 minute break. We'll come back at 4:25. We'll take a ten minute
9 break and do our final panel.

10 (Off the record.)

11 (On the record.)

12 CHAIRMAN ROSENKER: Okay, welcome back and we're here
13 for the final panel. Mr. Henry, would you have the witnesses
14 sworn in and qualified?

15 MR. HENRY: Yes, sir.

16 Will the witnesses please stand and raise your right
17 hand?

18 (Whereupon,

19 KNUTE M. MILLER

20 ROBERT POUCH

21 CAPTAIN CHERYL A. PHIPPS

22 THOMAS KORNEGAY

23 were called as a witnesses and, after having been first duly
24 sworn, were examined and testified as follows:)

25 MR. HENRY: Please be seated.

1 And Mr. Miller, you were previously qualified. I'll
2 move on.

3 BY MR. HENRY:

4 Q. Mr. Pouch. Would you please state your full name and
5 business address?

6 A. My name is Robert H. Pouch. My business address is 17
7 Battery Place, Suite 1230, New York City, New York.

8 Q. And by whom are you presently employed?

9 A. I'm presently employed by the Board of Commissioners of
10 Pilots of the State of New York.

11 Q. And how long have you held that position?

12 A. I've held that position for 18 years, sir.

13 Q. And that position is?

14 A. Executive Director of the Board of Commissioners.

15 Q. Thank you. Could you briefly describe your duties and
16 responsibilities?

17 A. Yes. I'm responsible for carrying out the policies and
18 procedures and daily routines of the Board of Commissioners as
19 they are described under the New York State Navigation Law, the
20 New York State Code of Rules and Regulations and Board policies
21 and procedures with respect to the selection, training, licensure,
22 administration, accident investigation and general administration
23 of the New York State pilotage system in the three districts that
24 we administrate in the state of New York, sir.

25 Q. And would you briefly describe the education, training

1 and experience that qualified you for this position?

2 A. Yes, sir. I attended Maine Maritime Academy. I have a
3 Bachelor of Science in Marine Transportation, a license as a third
4 mate and was also, upon graduation, commissioned an ensign in the
5 Naval Reserve. I went to sea for American Export Lines, was third
6 mate on the SS Export Ambassador. Also served in the United
7 States Naval Reserve, Military Sealift Command. In my commercial
8 career, I served as Senior Vice President of Hapag-Lloyd and the
9 Scindia Steam Navigation Company and subsequently served as Vice
10 President, President and Chairman of Barber Steamship Lines,
11 Barber Blue Sea, Wilhelmsen Lines and Barber Ship Management prior
12 to joining the Board of Commissioners of Pilots.

13 Q. And sir, do you presently hold a marine license?

14 A. I have a third mate's ocean license, sir, but I'm not --
15 it's not active.

16 BY MR. HENRY:

17 Q. Commissioner Phipps, would you please state your full
18 name and business address?

19 A. Cheryl A. Phipps. My business address
20 is 1833 Southeast 17th Street, Fort Lauderdale, Florida.

21 Q. And by whom are you presently employed?

22 A. Port Everglade Pilot Association.

23 Q. And what is your position in that organization?

24 A. I'm a pilot.

25 Q. And how long have you been a pilot?

1 A. Twelve and a half years.

2 Q. Could you briefly describe your duties and
3 responsibilities in that position?

4 A. I'm not part of the management, so I just pilot the
5 ships in and out of Port Everglades.

6 Q. Okay. And could you please briefly describe the
7 education, training and experience that qualified you for this
8 position?

9 A. I graduated from Texas A&M in 1985. I started sailing
10 tankers for twelve and a half years and then I became a Port
11 Everglade pilot in 1996.

12 Q. And do you presently hold a marine license?

13 A. Yes, I do. Unlimited masters and a State of Florida
14 pilot license.

15 Q. Thank you.

16 BY MR. HENRY:

17 Q. Mr. Kornegay, could you please provide your full name
18 and business address?

19 A. My name is Thomas Kornegay. Business address is 111
20 East Loop North, Houston, Texas 77029.

21 Q. And by whom are you presently employed?

22 A. Port of Houston Authority.

23 Q. And your position?

24 A. I'm the Executive Director and as the Executive
25 Director, I'm also the secretary to the Port Commission and the

1 Port Commission is also the Pilot Board, so I'm also the secretary
2 to the Pilot Board.

3 Q. And how long have you held that position?

4 A. Since 1992.

5 Q. Could you briefly describe your duties and
6 responsibilities in that position?

7 A. Well, as the Executive Director, I'm mainly the chief
8 executive officer for the Port Authority, but for the Port
9 Commission and the Pilot Board, they basically are my bosses and I
10 perform all the staff functions for them, carrying out all of
11 their procedures, regulations, et cetera.

12 Q. Would you briefly describe your education, training and
13 experience that qualified you for this position?

14 A. Yes, sir. I went to the University of Texas. I also
15 went to Oklahoma State, but I am an engineer, structural engineer.
16 I have a Bachelors and a Masters.

17 Q. And do you presently hold a marine license?

18 A. No, sir.

19 Q. Thank you, sir.

20 MR. HENRY: Mr. Chairman, the witnesses are qualified.

21 CHAIRMAN ROSENKER: Thank you very much. We'll go to
22 our technical panel and our lead questioner for this particular
23 one will be Dr. Strauch.

24 DR. STRAUCH: Thank you, Mr. Chairman. Before I begin,
25 I'd like to ask Ms. Phipps, in addition to being a pilot for the

1 Port Everglades Pilot Commission, do you also hold a position in
2 which you exercise oversight of pilots?

3 THE WITNESS #23: Yes, sir. I'm Chairman of the Board
4 of Pilot Commissioners in the state of Florida.

5 DR. STRAUCH: Okay. And in that capacity, how many
6 pilots does -- your authority is exerted over?

7 THE WITNESS #23: Yes, sir. The Board of Pilot
8 Commissioners is made up of five pilots and five non-pilots.
9 Three of those are consumer members of the board, one is a user of
10 pilots, works in a industry that uses pilots, and one works in the
11 maritime industry. We also have legal Counsel for the board. The
12 state's attorney's office supplies us with a prosecuting attorney.
13 We also have an investigator pilot consultant who's with me today.
14 We oversee 91 pilots in the state of Florida and presently, we
15 have 16 deputy pilots that are in training.

16 DR. STRAUCH: And are these pilots all in Port of
17 Everglades or are they in other Florida-based ports, as well?

18 THE WITNESS #23: No, sir. There are roughly 17 ports
19 in the state and I say roughly because some of those ports are
20 licensed through other -- one port, like Tampa has Port of Manatee
21 as well as Tampa.

22 DR. STRAUCH: Okay, thank you. Just to follow up on
23 some previous questions that the Board of Inquiry asked in the
24 earlier panel, could we establish on the record that there is no
25 analog to the role that American Pilot Association plays for the

1 pilots for commissions or oversight authorities, is that correct?

2 THE WITNESS #23: I'm sorry, that the APA holds?

3 DR. STRAUCH: Yes. In other words, is there an
4 analogous organization of commissions that serves a similar role
5 for pilot commissions that, you know, works with them to enhance
6 communications, to share resources and so on and so forth? And
7 this is for all of you, not just --

8 THE WITNESS #23: I'm not sure if this will help answer
9 your question, but we do have the Florida Pilot Association, the
10 FSPA, and we do work closely with them. They do help organize
11 some of our training, you know, present training for the pilots
12 and if we have any disciplinary actions, sometimes we'll discuss
13 issues with them, as well.

14 BY DR. STRAUCH:

15 Q. Mr. Pouch, on a national level is there a similar
16 organization?

17 A. Sir, I recall perhaps a decade ago that there was an
18 attempt to organize a national group and I believe the initial
19 effort came out of folks in Florida who held a national symposium
20 and I think there was a subsequent meeting a few years after that,
21 but other than that, that's my total knowledge of efforts to
22 organize a national group, sir. I would say that in the region of
23 ports that share boundary waters, waters of concurrent
24 jurisdiction, in New York, New Jersey, Connecticut and Rhode
25 Island, there are efforts among the pilot commissions to have

1 joint discussions and harmonize approaches on issues of
2 regulation, policy and procedure, sir.

3 BY DR. STRAUCH:

4 Q. Okay. So is it a fair statement to say that on the
5 national level, the state of oversight of pilots is that there is
6 no national organization, that oversight of the pilots is
7 exercised, rather, by small authorities that exercise that
8 authority in relatively small geographic areas immediately above
9 the associations over which they oversee, is that correct,
10 Mr. Kornegay?

11 A. Yes, sir. That's the way I understand it.

12 Q. Okay.

13 DR. STRAUCH: Anybody disagree with that?

14 THE WITNESS #22: Sir, I would clarify, when you talk
15 about small geographical areas, I think some of the geographic
16 areas, in fact, are quite large. The Hudson River pilotage
17 district is 124 miles, the Port of New York and New Jersey is
18 quite a large geographic area, as is the Long Island/Block Island
19 Sound and in terms of geographic smallness, I think some of our
20 pilotage routes are quite long.

21 DR. STRAUCH: Okay. I appreciate that. I think one of
22 the points I'm getting at is that this morning Mr. Miller was, in
23 referring to Captain Cota's performance, was citing statistics in
24 terms of error-free performance and was comparing that, I believe,
25 to other pilots in the San Francisco Bay area, which is a pool

1 of 60-some odd pilots. Does any organization that you know have
2 access to data on pilot performance that exceeds that of the
3 organization of which they are part of? In other words, is there
4 any kind of national database that you can turn to, to say okay,
5 nationally, this is how my pilots are doing rather than only
6 locally? Ms. Phipps.

7 THE WITNESS #23: That's one of the reasons we use the
8 APA. It does help bring a lot of statistics together for us and
9 also, as far as in response to the smallness, our department's
10 quite large and it's a regulatory body with statutes and
11 regulations and the synopsis or the meeting that my friend here, I
12 can't remember his name, was talking about was more of a harbor
13 safety, but it did try to encourage other pilot groups to get
14 involved on a safety level and I believe there's one coming up.

15 BY DR. STRAUCH:

16 Q. Mr. Miller?

17 A. To confirm that, there is no national clearing house of
18 which I'm aware and no place to go for additional statistics. The
19 reason, of course, that I had them at my fingertips this morning
20 is because we were able to look in our records and put them
21 together. Let me comment that in the last several weeks I've had
22 the good fortune to speak to my counterpart in Alaska, with the
23 Alaska Board of Marine Pilots and also in the state of Washington,
24 as well as a couple of others who are in the state of California
25 and as many know, but not all, perhaps, we only regulate the

1 waters of San Francisco Bay and its tributaries plus Monterey.
2 The other ports in California each have their own local regulatory
3 regime, Port of LA, Long Beach, San Diego and so forth. I raised
4 with my counterparts the prospect of doing another symposium and
5 there were three done, actually, in 1991, '93 and '95, but none
6 since, and spoke to the utility of having some sort of a national
7 clearing house mechanism.

8 I don't know what that would look like. I don't know
9 whether it would just be an e-mail chain or whether it would be a
10 full-blown trade association, but I raised those issues and there
11 was genuine interest. Nobody knew what the answer was, but
12 everybody thought it might be a good idea to sit down, all
13 commissioners, organizations of commissioners, and talk about it
14 and see if there was a direction that would make sense that we
15 might pursue in the future.

16 BY DR. STRAUCH:

17 Q. Of course, in the previous panel, Mr. Kirchner alluded
18 to lack of resources as one of the reasons why APA has sort of
19 stepped into the vacuum of providing a national source of
20 information to pilot commissions, so how successful do you think
21 commissions would be in the future given the lack of resources to
22 establish a regular systematic method of communications, be it in
23 a forum or other method, Mr. Kornegay?

24 A. Well, as far as my board goes, I believe they would be
25 very interested in that sort of thing. I think it's an area

1 that's very lacking in the United States.

2 BY DR. STRAUCH:

3 Q. Ms. Phipps.

4 A. I think the piloting part is fairly local. The safety
5 issues that we're meeting here today for, on the federal level, we
6 do have the Coast Guard and I do want to look into their issue
7 with the medical and as far as resources for such a thing, I know
8 the symposiums that we held, it has been since '95. That was
9 funds that were donated by different pilot groups that brought
10 that together. So it's possible, but I don't know, as far as
11 never ending pot for resources would come from.

12 BY DR. STRAUCH:

13 Q. Mr. Pouch?

14 A. When you talk about resources, I would say in the post-
15 9/11 era, I can think of one agency in particular, you know, that
16 has stepped up and assisted localities in addressing major issues
17 and that's the Coast Guard, through their area of maritime safety
18 committees, harbor operations and safety committees and area
19 maritime security committees, which in a place like the Port of
20 New York, has hundreds of members which are formed into executive
21 committees and subcommittees on all manner of things; aids to
22 navigation, under-keel clearances, air draft clearances, problems
23 with dredging, problems with bridges, Homeland Security grants. A
24 lot of the players, the maritime players in the ports, including
25 the pilot associations, have channeled their resources for

1 regional safety and security measures through these committees.
2 Having said that and addressing your specific question about a
3 national organization to coordinate the state pilotage systems, I
4 think if it's important enough and if the benefits are there for
5 the states and the users, it should be done.

6 BY DR. STRAUCH:

7 Q. Okay. Mr. Miller?

8 A. I think that resources are always an issue and
9 certainly, we operate our commission on a very, very restricted
10 budget. Actually, in conversation with my counterpart in the
11 state of Washington, we did talk about the resource issue, he
12 raised it, and our conclusion was that with enough lead time and I
13 don't mean five or eight years, but enough time to get it into the
14 budget process for an out year and for that matter, just for
15 people to clear their calendars so that all interested parties can
16 be at the same place at the same time, you might be able to do it.

17 But, it would probably take a couple of years just since
18 we're all state agencies of one stripe or another, the state
19 budgeting process has to be brought into play and it would take a
20 little bit of time. It would also take some time to come up with
21 an agenda and do all the things that meeting planners do. That
22 said, I think it would be a very productive thing. In the spirit
23 of full disclosure, I come from the insurance world, which is also
24 regulated at the state level and there is the National Association
25 of Insurance Commissioners. Now, that's a huge industry and a

1 huge regulatory undertaking. They have four conventions a year.
2 I would not anticipate that those of us in this room and our
3 counterparts would be up to that.

4 DR. STRAUCH: Okay. And of course, I'm sure I don't
5 have to point out the difference between regulation insurance and
6 regulation of harbor safety regulation of pilots. I think that's
7 fairly apparent. But, I would like to follow up on something that
8 Mr. Pouch and Ms. Phipps said and that is the role of the Coast
9 Guard and I think Mr. Pouch talked about the Coast Guard's
10 assistance since 9/11 in the New York area, but it sounds to me
11 like the assistance the Coast Guard has provided has not been on a
12 national level, but more on a local level to each organization, as
13 needed. Is that a correct assessment? And please, whoever wants
14 to answer, please go ahead.

15 THE WITNESS #22: Everybody seems to be looking at me to
16 start. I guess my answer to you, sir, would be if you go to the
17 Department of Homeland Security U.S. Coast Guard Home Port page, I
18 believe every port has its own home port page where they try to
19 organize and publicize the joint safety and security efforts that
20 are being made in the region. And under our national umbrella,
21 because you've asked us to focus on that, the Coast Guard is the
22 administrator of the maritime domain in terms of maritime safety,
23 security and homeland security.

24 Having said that, if they were given the responsibility
25 to manage the maritime domain and never took these efforts, the

1 maritime community would be at a loss to turn anywhere else for
2 assistance and guidance. And to put it in the framework of one of
3 the captains of the port in our area, he said if there is a major
4 problem to be solved, a disaster or hurricane, we don't want to
5 meet each other within the safety and response community, as well
6 as the pilotage community, where there's a lot of expertise
7 residing in all these port advisory organizations, including
8 towing companies and ferry companies, people who employ mariners -
9 - we do not want to meet them on the first day that there is a
10 major problem, so I give them great credit for responding to the
11 responsibilities that they have to organize so many committees and
12 subcommittees and bring people from the maritime user, maritime
13 regulatory community and the maritime operations community into
14 this group and make effective use of their talents. I don't know
15 whether that's directly responsive to your question, but I felt I
16 had a responsibility to try to explain the role that the Coast
17 Guard has been playing in the last five years or so.

18 DR. STRAUCH: All right. Let me follow up on that and
19 I'll ask other commissioners, so is it fair to say, based on what
20 Mr. Pouch said, that all the agencies and entities that are extant
21 in this country, there's only one that has the national
22 perspective and the resources to provide a medium of
23 communications for local commissions that can obtain and provide a
24 source of national data as to pilot safety and be of other benefit
25 to local organizations and that is the Coast Guard. Is there

1 anyone who would disagree with that? Mr. Kornegay.

2 THE WITNESS #24: Well, I'm going to take a little bit
3 different tact because we may have a problem that is slightly
4 different than a lot of the other port commissions. You know, the
5 resources, money, is what we're talking about in the first place
6 about the conferences and that sort of thing. That is not an
7 issue for us because we have the Port Authority and the Pilot
8 Board being together and the Port Authority is a money making
9 organization, so that's not an issue. We do have an issue, let me
10 preface this with I agree with everything you said about the Coast
11 Guard. I have nothing but the highest regard for them and they do
12 great work. They help us through HOGANSAC and other things that
13 Captain Thompson's already talked about.

14 But, we do have an issue in trying to investigate
15 incidents on the channel in that our pilot board does not have the
16 ability to subpoena people or anything like that, so when the
17 Coast Guard goes out and does an investigation of an incident, we
18 would like to be able to share in that information because we
19 don't have the resources, if you will, to go do that ourselves.
20 And we seem to have a recent -- recent being the last two or three
21 years -- ruling from the Coast Guard that under Freedom of
22 Information and I guess that's the proper terminology, they cannot
23 share that information with us until the case is closed and
24 sometimes that takes a very long time. So -- and sometimes they
25 don't want to do it, at all, depending on how the case is closed

1 or not. So it's a real issue for us to try to work with the Coast
2 Guard on those issues.

3 DR. STRAUCH: Okay. And Mr. Miller, how do you see the
4 ability of the Coast Guard to serve as a resource to pilot
5 commissions above and beyond their investigative duties and
6 responsibilities?

7 THE WITNESS # 21: Well, they're certainly in a position
8 to disseminate information and such as that, but I think, just
9 thinking about my own experience in San Francisco Bay, there are
10 three organizations that are involved in the pilotage phenomenon
11 and they work very well together, each with its own mission.
12 There's the Coast Guard, there's the commission and there are the
13 pilots and they have each have a different role to play and I
14 think that that could be replicated at the national level, but I
15 wouldn't want to see one subsumed under the other, which is to say
16 I don't think that the mission of local regulation of pilots is a
17 good addition to the many missions of the Coast Guard, so I can
18 see the Coast Guard facilitating something that the pilot
19 commissions would do as their own initiative.

20 DR. STRAUCH: Okay. Now, I'd like to address,
21 specifically, the topic of quality of oversight and how that's
22 performed and Mr. Miller, I think you answered this in earlier
23 testimony, but if you look at the last year and a half, two years,
24 we've seen a number of major accidents involving pilots that the
25 NTSB in investigating, including involving the New Delhi Express

1 in the Port of New York-New Jersey, the Cosco Busan and the
2 Kitting (ph.), which -- we will complete that report in time. Is
3 there a problem, given these accidents, with the quality of
4 oversight of pilots today? Mr. Kornegay.

5 THE WITNESS #24: I don't believe there is a problem
6 with oversight in the pilot boards of the pilots. I think we do a
7 fairly good job. I've been listening to a lot of the testimony
8 today and I'm reminded of one of the questions that was asked
9 about, you know, how many incidents does a pilot have before you
10 do something about it, giving disciplinary action or whatever, and
11 that's a question that you just can't answer easily because, you
12 know, I think there was a baseball analogy that was mentioned and
13 it occurred to me that, you know, how many strikes do you get?
14 Well, I don't know. If it's foul balls, you get a lot. And foul
15 balls could be finger benders or you know, slight groundings or
16 whatever. I mean, there's a lot of incidents that happen that
17 don't require discipline.

18 DR. STRAUCH: Okay. And we'll pursue that shortly.

19 Ms. Phipps?

20 THE WITNESS #23: Actually, the tiered system in Florida
21 -- first of all, everything has to be reported. If you scratch
22 something, it's got to be reported. You'll get in more trouble by
23 not reporting something. That gives us -- we've got -- in fact,
24 we've got very good investigative quality on our board. We have
25 Commander Dutness (ph.) on our board and he's initially the

1 investigator, then there are about 50 or 60 others employed by the
2 department. So everything is looked at. Our tier system is, if
3 there's an incident and it is of some consequence, it's -- by one
4 class. If a second incident occurs, it steps up the classes until
5 at some point the license is revoked or suspended, depending on
6 the incidences. And I just wanted to say one other thing about
7 the statistics that you were talking about, the APA does indeed do
8 a lot of that for us and that's paid for by the pilots.

9 BY DR. STRAUCH:

10 Q. Okay. Mr. Pouch?

11 A. You were talking about oversight of pilots and I think,
12 specifically, the accidents.

13 Q. Yes.

14 A. I guess what I was thinking about was how we start the
15 whole process, but I guess that would be a separate question, that
16 is how the pilots are brought in and trained and supervised, so
17 this is really pointed at accidents and investigations right now?

18 Q. Well, it's pointed out to oversight of pilots who have
19 completed their selection and training and frankly, I'm not --

20 A. Okay.

21 Q. I'm not sure we'll have time to get into all of the
22 issues that would be good to get into, but once a pilot is
23 licensed, good to go, what -- is there a problem with overseeing
24 those pilots that we don't have the kind of accidents that we're
25 sitting here today discussing?

1 A. Well, I guess the short answer to your question is in
2 the state of New York right now, we have seven marine accident
3 cases that we have under investigation. Two involve vessels which
4 struck bridges with their antenna systems due to problems with air
5 draft reporting from the vessel. The other seven are -- I guess I
6 told you there were seven. The other five are power failures;
7 power failures, main propulsion failures, steering gear failures,
8 which, by the way, just to revert back to a question that we were
9 talking about earlier, laptop computers are valuable tools to have
10 on the bridge of a ship when you lose bridge power because it's
11 the only thing left that a pilot would have to be able to
12 determine his position and speed to the water.

13 In our system a pilot must report an accident promptly,
14 within 24 hours in writing. The Board opens an investigation.
15 All of our investigations are in cooperation with the United
16 States Coast Guard and we are finalizing right now a Memorandum of
17 Agreement which has been authorized by Admiral Allen so that the
18 state of New York and the United States Coast Guard can jointly
19 exchange information and develop the -- use the maximum resources
20 possible to investigate marine casualties. Having said that, our
21 system, as we perform an investigation, we conduct hearings. In
22 generality, if I am the principal investigating officer, one other
23 of our board members, our six board members, under the state
24 navigational law, pilot commissioners may not be pilots, so one of
25 the six board members who consist of two senior executives from

1 the marine insurance industry, a maritime admiralty attorney, a
2 port operator, a terminal operator and a dry cargo boat chartering
3 expert, they are the current board members. One of them will be
4 appointed the hearing officer. We conclude with the hearings, we
5 render an opinion and order. If there is a finding of fault,
6 there may be a suspension involved, during which time of
7 suspension that pilot will have to go to some type of training
8 before they may come back to work. But, that is, in brief, an
9 oversight of our investigation, of incident procedure, sir.

10 THE WITNESS #21: Okay. Could I add just one analysis
11 that we've done and actually, at the Board's suggestion, and I'll
12 go through it very quickly. But, I think it's important to see a
13 perspective of the array of incidents that we investigate and what
14 we have found for two years, up to the Cosco Busan. In the
15 year 2006 there were nine incidents that were reviewed. There
16 were two soft groundings in the river. That means you ran on the
17 mud and nothing happened, no damage. One was pilot error; that
18 was Captain Cota on the Pioneer. One was no pilot error. There
19 was high runoff coming down the rivers. There'd been a heavy rain
20 and the force of the water -- this was the first ship to go
21 upriver and it pushed the ship onto the mud. Got off and
22 continued on his journey. Seven had contact with a pier; one of
23 those was a bridge. And docking and undocking, when you dock a
24 ship it's a controlled allision. We have historically recorded
25 those as allisions and indeed, they are, but that's what happens

1 when you dock a ship. It goes bump on the wharf. Seven contact
2 with a pier. One, rotted pilings gave way. That involved a
3 normal landing. One, the engines failed to respond. One, there
4 was a boat anchored in a narrow channel and there was not much
5 place to go, so fortunately the -- if I recall the case directly,
6 the people on the boat got out and they pushed themselves away
7 from the side of the ship. That was not pilot error.

8 The boat was not supposed to be in the middle of the
9 channel. One, there was exposed steel on a pier which caused some
10 cosmetic damage, not pilot error. One, there was a barge left
11 halfway in the channel. Pilot didn't put it there. One, the
12 antenna -- again, it was higher than the pilot card said it was
13 and it hit the bridge. Most minor or cosmetic. There was one
14 minor pilot error. There were high crosswinds. The ship was
15 riding high in the water and there was a hard landing on approach.

16 It was deemed to be a minor pilot error. So of those
17 nine, there were only two that were deemed to be pilot error. In
18 2007 there were five; three soft groundings upriver, no damage.
19 One which was no pilot error because the engine failed. Two,
20 minor pilot error, both in challenging conditions. There was
21 another one that year, a minor pilot error. It was a hard
22 landing. There was a delay, there was a trainee who was actually
23 conning the vessel. There was a delay in getting the tug into
24 position because the trainee misjudged how long it would take to
25 get there in a strong current. There was one more that was no

1 pilot error. There was a vessel interaction. The AIS was
2 reviewed. It was proper speed, proper location. So they aren't
3 all the Cosco Busan. They aren't all serious damage. Most of the
4 incidents that we review are just what happens when you're trying
5 to move this huge piece of steel through water in challenging
6 conditions. So I share it for what it's worth.

7 DR. STRAUCH: Okay, thank you. Of course, the problem
8 with that logic is that even small errors are intolerable in a
9 system in which even a small error can lead to environmental
10 catastrophe or loss of life. So I would like to ask the
11 commissioners then, what kind of oversight do the commissions
12 exercise that's not investigative, that it's proactive? In other
13 words, how -- once a pilot is licensed, what do you do to make
14 sure the pilot remains qualified, remains confident and doesn't
15 make even the most relatively insignificant of errors? And
16 Ms. Phipps?

17 THE WITNESS #23: One of the reasons that we hold our
18 board meetings in the ports is that we go and observe the pilots
19 doing jobs. We have continuing education that it's usually a
20 program brought to us by the FSPA and the board will generally
21 approve what they bring before us, but we try to stay active in
22 the port. We try to go and visit. We also get a list of how many
23 ships each pilot has done every year and so it gives us a general
24 idea of numbers that they're doing. And I think that a result of
25 that is how many incidents are there and we might get the same

1 kind of thing, 25 reported a year out of 31,000 movements and
2 maybe one or two of them might be significant. And like you say,
3 it's intolerable and we try to do the right thing and punish in a
4 way that'll help that pilot not do it again or if we do see some
5 sort of chain of errors going on with a pilot, we have an impaired
6 pilot program that we will insist that that pilot take part in and
7 that way he doesn't lose his license and hopefully gets better
8 with whatever the problem is.

9 DR. STRAUCH: Okay, thank you. Mr. Kornegay, do you
10 have -- what method of proactive oversight does your organization
11 exercise?

12 THE WITNESS #24: Well, I think the answer to your
13 question is that the pilots themselves have a very, very strong
14 training program and I think you heard Captain Thompson talk
15 earlier about the three-year apprenticeship that they have, deputy
16 pilots have to serve for three years. And then they have
17 continuing training after that and as a matter of fact, they use
18 the same pilot and the model that was discussed earlier today.
19 And let me just say that, you know, we also believe that every
20 incident has to be investigated. We have, you know -- we're about
21 14,000 ship movements every year. We have at least 40 to 50,000
22 barge tows in and out every year. Out of all of that activity, we
23 have something in the order of 15 to 20 incidents and most of
24 those are either soft groundings or as I mentioned before, fender
25 benders. In the last three years we've done eight full hearings

1 where we had an incident that we thought was necessary to actually
2 go through a full investigation.

3 DR. STRAUCH: Okay, thank you. Since we're running
4 short of time, I'm going to ask a couple of brief questions.
5 Ms. Phipps, you said your organization oversees 91 pilots;
6 Mr. Miller, I think your organization oversees 60 pilots.
7 Mr. Pouch, how many pilots are overseen in your organization?

8 THE WITNESS #22: One hundred.

9 DR. STRAUCH: One hundred, okay. And Mr. Kornegay?

10 THE WITNESS #24: We're at 79 -- 71 plus 19. Or 18,
11 excuse me.

12 DR. STRAUCH: Okay.

13 THE WITNESS #24: Seventy-one plus eighteen.

14 DR. STRAUCH: Seventy-one plus --

15 THE WITNESS #24: Seventy-one full pilots and 18
16 deputies.

17 DR. STRAUCH: Okay, thank you.

18 BY DR. STRAUCH:

19 Q. Mr. Miller, I know we asked you earlier about medical
20 standards. Mr. Pouch, does your organization have medical
21 standards that exceed those of the --

22 A. Yes, sir. I believe so.

23 Q. Okay. Could you describe that?

24 A. Yes. Before a pilot can be accepted either as an
25 apprentice or a licensee, they must appear before the board and in

1 terms of the licensees, they must come before the board annually
2 for their license renewal and interview. And there's
3 a 10-point checklist that the board goes through to renew a
4 license. Four out of the six board members must vote to renew and
5 all of the board members review the 10-point checklist that
6 consists of a report on the number of pilot's trips, the vessels
7 that the pilot piloted and where the trip originated from and went
8 to. They must also present a fit for duty certificate from a
9 medical doctor. They must take an eye exam that morning.

10 They must present their current United States Coast
11 Guard license, their pilot record and then details of their duty
12 time, their vacation time and any medical time off that they had
13 during the course of the year. One of the important points that
14 we stress with the physical exam is that we have a form that goes
15 with the physical exam to the doctor and it states this form must
16 be supplied to the physician at the time of required annual
17 physical, return to duty after an illness or the prescribing of
18 any medication.

19 And basically, it goes through what a pilot's duties
20 are. The doctor has to understand this when he's filling out the
21 form; safely navigating vessels up to 1100 feet; day or night
22 mooring in any conditions; safely mooring and anchoring vessels;
23 protecting the port, it's people, property, environment;
24 determining if the proposed vessel transit is safe considering
25 such factors as the vessel characteristics, weather, current, et

1 cetera; the ability to bring the safest possible conclusion to any
2 contingencies that may arise. And the physical requirement
3 necessary to perform pilotage duties would include transferring
4 between vessels at sea in all weather conditions; climbing a
5 Jacob's ladder to height of nine meters up the outside of the
6 vessel; following this climb, a further stair climb of as much as
7 ten stories; eyesight and hearing up to standards adequate to
8 perform the duties; on-call and available for 24 hours a day,
9 seven days a week; the unavailability of medical intervention
10 during most of the time onboard vessels while on duty; long
11 periods of stress and concentration periodically interspersed with
12 short periods of extreme stress.

13 This is the requirement that the doctor has to
14 understand before he fills out a fit for duty physical. So those
15 would be the requirements that the pilot must bring to the board
16 for his annual interview in order to get his license renewed.

17 Q. Okay. Now, again, how many pilots do you over see?

18 A. In the Port of New York-New Jersey, there are 84. In
19 the Hudson River there are eight and in the Long Island Sound-
20 Block Island Sound, approximately 16.

21 BY DR. STRAUCH:

22 Q. Okay. And again, we're pressed for time, Mr. Pouch. In
23 2007 how many pilots did not have their licenses renewed through
24 this process that you've just described?

25 A. All pilots who came before the board had their licenses

1 renewed.

2 Q. Okay. 2006, how many were not renewed?

3 A. We had some medical disabilities.

4 Q. Okay.

5 A. I wasn't quite prepared for that question, but I do not
6 think that there were any failures to renew for cause in 2007 --

7 Q. I'm not talking about the --

8 A. -- but -- for medical?

9 Q. Right. The process you just described.

10 A. Medical disabilities. These would be work-related
11 injuries and perhaps non-work related injuries. Two pilots in
12 2007 is an estimated number for medical disability and the prior
13 year, most likely two, as well.

14 Q. Okay.

15 BY DR. STRAUCH:

16 Q. Ms. Phipps, what kind of -- does your organization have
17 medical standards that exceed those of the Coast Guard and if so,
18 what are they are, quickly?

19 A. We've always required a yearly physical and we just now
20 adopted the same form that the Coast Guard uses.

21 Q. Okay, thank you.

22 BY DR. STRAUCH:

23 Q. Mr. Kornegay?

24 A. We have our own special screen that has been set up with
25 a local clinic and it covers vision, hearing, mental health,

1 circulatory, respiratory, et cetera, et cetera, and they have to
2 go -- the pilots have to go take the physical at our clinic.

3 Q. Okay, thank you.

4 BY DR. STRAUCH:

5 Q. And again, we are running late, so I have one last
6 question and that is I'd like to ask each of you what rules your
7 organizations have implemented that provide sufficient hours of
8 service to preclude fatigue? Ms. Phipps?

9 A. I'm sorry?

10 Q. What kind of hours of service rules have you implemented
11 that will reduce the likelihood of pilot fatigue?

12 A. The commission takes guidelines from the ports and looks
13 at their time periods, their rotation and that's really all we do.

14 Q. Okay, thank you. Mr. Miller.

15 A. We have a twelve-hour rest period that is our standard
16 minimum rest period guideline. It's not a rule, but we enforce it
17 by hearing from the port agent at every meeting, the number of
18 minimum rest period exceptions, the reasons for them and the
19 duration of the exception and also the reasons why it happened.
20 And the goal is to make sure that we have a well-educated, well-
21 trained, well-rested pilot for every job.

22 And there are very few in the course of a month. I
23 mean, when you're doing 700, 800 moves and you have nine or ten or
24 eleven, that's not very many. I agree that you want zero. Part
25 of the challenge is you have to have enough pilots available to

1 you and right now we're running short of pilots.

2 Q. Thank you.

3 DR. STRAUCH: I have no further questions, Mr. Chair.

4 CHAIRMAN ROSENKER: Very good, Dr. Strauch. Thank you
5 very much.

6 Mr. Bowling?

7 MR. BOWLING: I have no questions.

8 CHAIRMAN ROSENKER: Captain Jones?

9 CAPT. JONES: No questions, sir.

10 CHAIRMAN ROSENKER: And Mr. Roth-Roffy?

11 MR. ROTH-ROFFY: No questions, Mr. Chairman.

12 CHAIRMAN ROSENKER: Very good. We'll move to the
13 parties and we will start with Fleet Management. That's the first
14 time I think we've started with you.

15 CAPT. AGA: Thank you, Mr. Chairman.

16 BY CAPT. AGA:

17 Q. We understand that the San Francisco Pilot Commission is
18 funded by a levy on the ship when she comes in. So if there's an
19 issue of funding, couldn't the levy be increased to a reasonable
20 level to increase the oversight on the pilots?

21 A. Yes. In some cases, with the concurrence of the
22 legislature and in some cases, with concurrence of the Department
23 of Finance in California.

24 CAPT. AGA: These are just to Mr. Pouch.

25 BY CAPT. AGA: Given what happened in the Cosco Busan

1 case and do you suggest any check and balance that could be put in
2 place to make sure this doesn't happen to another ship?

3 A. Well, sir, I'm not totally familiar with all of the
4 details of the unfolding investigation so my direct answer is I
5 can't form any opinion right now until I really know the
6 conclusion of the investigation.

7 Q. One last question to you, sir, again. If a pilot had
8 declared the medication that has come to light, would it be
9 possible for you to have renewed the license?

10 A. I'm going to think about that. I need to think about
11 that answer for a minute. But, I would like to say that every
12 time we renew the license of a pilot, the entire board looks at
13 the medical folder. The medical folder is studied in quite some
14 detail. We have sometimes had trouble reading the doctor's
15 handwriting as to what exactly the doctor is prescribing and we
16 have to ask the pilot to come and help us decipher what it is the
17 doctor has written in terms of the prescriptions. So occasionally
18 we also see that a doctor has failed to check the form at the
19 bottom of the renewal as to whether it's fit or not fit or
20 requires further evaluation.

21 So in those cases we have to stop the process and go
22 call the doctor's office and try to find someone in the doctor's
23 office to tell us -- give us the answers to those questions.

24 But, to go one step further in trying to respond
25 directly, we had one case of a pilot, he was taking lithium. That

1 was our most -- the case that most concerned us. I believe
2 lithium is prescribed for people who might have manic depression
3 type symptoms. In that case, we did not renew the license of the
4 pilot until we got a second evaluation of that pilot.

5 When we received a second evaluation, we were convinced
6 that it would be okay to renew the pilot's license and this pilot
7 continued. He took himself off of duty one time because someone
8 changed his medication and he didn't feel right and he and his
9 wife went right to the hospital and he removed himself from duty
10 until he felt well. That is the only case I can tell you with
11 respect to those types of drugs, drugs that might alter one's
12 performance or moods during the work cycle. And in direct answer
13 to your question, sir, the board would think very, very carefully
14 in reviewing prescriptions in a case like that.

15 CAPT. AGA: Thank you, Mr. Chairman. I have no further
16 questions.

17 CHAIRMAN ROSENKER: Thank you. Sperry Marine?

18 MR. HUGHES: We have no questions, Mr. Chairman.

19 CHAIRMAN ROSENKER: California Department of Fish and
20 Game, the Office of Spill Prevention and Response.

21 CAPT. HOLLY: No questions, Mr. Chairman.

22 CHAIRMAN ROSENKER: U.S. Coast Guard?

23 MR. WHEATLEY: Thank you, Mr. Chairman. I just have a
24 couple of questions, mostly clarification for Ms. Phipps.

25 BY MR. WHEATLEY:

1 Q. I believe when you were describing the investigation and
2 enforcement type of procedures you have in the state of Florida,
3 you described them as being a tiered process, is that correct?

4 A. No, that was the punishments were tiered. The
5 investigation is not tiered. It's done by our maritime
6 consultant.

7 Q. Okay. And possibly I missed understood you. Did you
8 say you have 50 investigators for the state of Florida?

9 A. Yes, that investigate the non-maritime issues involved
10 in a case.

11 Q. Okay. Could you expand upon that? What do you mean
12 when you say non-maritime?

13 A. Well, let's say a ship runs into a dock and maybe hits a
14 car. That's a situation where they would pull in an investigator
15 to investigate, perhaps the shore side parts of it.

16 Q. Okay. How many maritime investigators do you have
17 for --

18 A. We have one.

19 Q. Just one?

20 A. But, we also have contracts for others if there's some
21 reason that we need it.

22 Q. Okay. And how many available contractor employees do
23 you have or do you typically employ?

24 A. One right now.

25 Q. Okay, thank you.

1 MR. WHEATLEY: I have no further questions, Mr.
2 Chairman.

3 CHAIRMAN ROSENKER: Thank you very much. The San
4 Francisco Bar Pilots Association?

5 CAPT. HURT: No questions, Mr. Chairman.

6 CHAIRMAN ROSENKER: Very good. American Pilots
7 Association?

8 CAPT. WATSON: No questions, Mr. Chairman.

9 CHAIRMAN ROSENKER: And the California Board of Pilot
10 Commissioners.

11 MR. MOLONEY: No questions, Mr. Chairman.

12 CHAIRMAN ROSENKER: Very good. I'll ask now the Board
13 of Inquiry if they have any questions.

14 Mr. Osterman?

15 Mr. Osterman says no. How about Dr. Spencer?

16 DR. SPENCER: Yes, sir. But, not too many.

17 CHAIRMAN ROSENKER: As many as you like, Dr. Spencer.

18 DR. SPENCER: Thank you. I'm actually going to ask the
19 same or similar questions to all of you, so whoever doesn't get
20 asked first can think about the response that they might like to
21 give.

22 BY DR. SPENCER:

23 Q. Mr. Kornegay, for the Board of Pilot Commissioners, who
24 do they report to and what is the form of the report? Do you do
25 an annual report, for example? And basically, who oversees the

1 work that the Board does?

2 A. Well, as I explained earlier, the pilot board is
3 actually the port commissioners and there are seven of them. They
4 are appointed -- they are political appointments. Two of them are
5 appointed by the City of Houston, two are appointed by Harris
6 County, one's appointed by the City of Pasadena, one's appointed
7 by the Harris County Council, the mayor's council and association
8 and the chairman is appointed as the chairman by the City of
9 Houston and Harris County combined. So that's who they report to.

10 Q. And do they report in the form of an annual report or
11 how is the reporting actually carried out?

12 A. Well, the pilot board does not really submit an annual
13 report.

14 Q. If someone were interested in obtaining information
15 about what the pilot board does, how would one go about doing
16 that?

17 A. You send a request to the pilot board, they'll give it
18 to me and I'll answer it.

19 Q. Okay.

20 BY DR. SPENCER:

21 Q. All right, Captain Phipps?

22 A. Yes, sir. Our board is established by the Department of
23 Business and Professions. We have an executive board that is
24 employed by the state. The executive board member does a yearly
25 report. The board chair does a yearly report. All information

1 after every meeting is distributed to anyone on our mailing list
2 and the secretary of the Department of Business and Federal
3 Regulation also does a report, yearly report.

4 Q. Okay. So like NTSB, you're very much an open
5 organization.

6 A. Very transparent.

7 Q. Okay.

8 BY DR. SPENCER:

9 Q. Mr. Kornegay, back to you just for a second. For your
10 meetings, do you keep minutes of the meetings?

11 A. Yes, sir. The two boards meet once a month. So yes, we
12 have formal, open public meetings and -- oh, I'm sorry.
13 Apologize. We have monthly meetings. The two boards meet the
14 same time each month and yes, we have minutes. It's public
15 meetings. It's a very transparent operation.

16 Q. Okay, thank you.

17 BY DR. SPENCER:

18 Q. Mr. Pouch?

19 A. Yes, sir. The Board of Commissioners of Pilots of the
20 State of New York is a public agency operating under authority of
21 the New York State Navigation Law. The board is a part of the
22 executive branch and it files an annual report to the governor and
23 legislature. The annual report is published and available to the
24 public and it also appears on the board's website, together with a
25 number of other useful links. I think I mentioned this earlier,

1 so please, if I'm repeating myself, someone remind me, but there
2 are six board members and within the navigation law there is a job
3 description that specifies the minimum requirements of the
4 commissioners.

5 In essence, four must have been mariners holding Coast
6 Guard licenses or in charge of the navigation watch of a naval or
7 Coast Guard vessel. The two members who are not licensed are
8 required to have a minimum of ten years in the maritime industry
9 and I think I mentioned that we have two senior marine insurance
10 industry executives, one terminal operator, one port operator, one
11 admiralty attorney and one dry cargo chartering expert that make
12 up the board members, sir.

13 Q. And you said you do an annual report, is that right?

14 A. Yes. So we have weekly meetings and we have an annual
15 report to the governor and legislature.

16 Q. Okay. And the meetings are open, is that right?

17 A. Yes, sir. They're public meetings with the exception of
18 the executive session, which primarily revolves around personnel
19 matters such as those detailed interviews with the pilots that we
20 discussed earlier. Those are done one on one with the pilot
21 before the board and those are not open to the public because of
22 the Privacy Act requires that that be under executive session
23 together with legal issues and negotiation issues. But, all
24 issues are public, sir.

25 Q. Okay, thank you.

1 BY DR. SPENCER:

2 Q. And Mr. Miller, who does your board report to? I
3 understand what you'd explained earlier about the proposed
4 legislation, but currently who does the board report to and what
5 is the form of the report and what is the transparency of your
6 meetings?

7 A. There is no specific individual to whom we report. What
8 I have done in my tenure is to establish a channel of
9 communication with the governor's executive staff, specifically on
10 the Cabinet side and also on the legislative side. The bulk of
11 the oversight of what we do is actually with the Department of
12 Finance and I believe I may have said that or I may not have said.
13 That's the functional equivalent in California of OMB here at the
14 federal level. They're the ones who know what we're doing and
15 what it costs and they take a look at us in that regard.

16 In terms of reporting, there has not been a regular
17 report to the governor, to the legislature and indeed, the
18 legislation that's under consideration would do that. In terms of
19 transparency, with rare exception, all of our meetings are noticed
20 and they're open and there are minutes and they are available,
21 electronically and on our website and in hard copy, as well.

22 An example of the kind of meeting that we would not do
23 in an open meeting, if we were discussing an individual pilot's
24 medical issues, that's a privacy issue. We had a situation a
25 couple of years ago where an applicant to join our training

1 program appealed a decision that that individual was not eligible
2 for the training program. The reason we closed that, and I was
3 chairing that meeting at the time, the reason we closed it is that
4 there are employers who will fire employees who are looking for
5 alternate employment and we wanted to protect the identity of that
6 applicant.

7 We closed the meeting a few weeks ago because the
8 subject matter, which was an augmentation to our budget was still
9 within the deliberative stage for the governor. It was not
10 subject to being obtained under the state equivalent of FOIA and
11 so that was a private matter. That was not a public matter.
12 Other than that and when we review our trainees on a monthly
13 basis, that's a closed matter for the training. Again, it's a
14 privacy matter. Other than that, all of our meetings are open.

15 Q. Okay. Thank you very much.

16 DR. SPENCER: Mr. Chairman, I have no more questions.

17 CHAIRMAN ROSENKER: Thank you, Doctor.

18 Mr. Henry?

19 BY MR. HENRY:

20 Q. Yes. Mr. Pouch, you had indicated that none of the
21 commissioners in your organization are pilots.

22 A. Yes, sir.

23 Q. Could you explain that in a little more detail? They're
24 not operating pilots or they're pilots that have surrendered their
25 license or --

1 A. None of the board members on the commission are pilots
2 because the Navigational Law prohibits persons who are pilots from
3 serving as commissioners.

4 Q. But, they may have previously been a pilot?

5 A. No, sir.

6 Q. Not at all?

7 A. No, sir.

8 Q. And why is that?

9 A. I think that's what the law says.

10 Q. Okay. Would you care to speculate on the rationale for
11 that law?

12 A. I really don't know the roots of it. It's been around
13 for a very long time and presumably, as a matter of first
14 impression, there might've been some concerns, you know, about a
15 conflict of interest, of having people who would be granting
16 licenses and investigating accidents and such, also, in effect,
17 reviewing their coworkers' actions or competencies. But, I don't
18 know. I've never studied or seen the legal background or the
19 underlying reasons for why the legislation says it that way.

20 BY MR. HENRY:

21 Q. And Commissioner Phipps, in your pilotage area -- now,
22 you're a commissioner --

23 A. That's correct.

24 Q. -- with a role in oversight of the state pilots, but
25 you're also an active pilot?

1 A. Yes, I am.

2 Q. And how do you rationalize what I perceive as a conflict
3 of interest in a case where you may be involved in an accident and
4 part of a commission that's going to investigate you?

5 A. As in anything, you'd be recused from anything that you
6 felt -- any conflict, just like you would have to on a board if
7 you were overseeing something and you knew the person. I think
8 the integrity of our board would speak for itself. We have five
9 non-pilot members and they look to us to clarify some of the
10 issues that they would not otherwise understand, even simple
11 things as terminology.

12 So I think it brings a very good flavor to the board, as
13 well as the fact that the state of Florida has 17 ports, all of
14 which are very different. Some are very long, transits that the
15 pilot has a four hour transit. Some ports have 24 pilots; some
16 ports have one or two. I think it would be really a disservice to
17 the state and the people that the ships serve by having pilots on
18 board without having an equal amount of people being able to help
19 make decisions as statute.

20 Q. It would be an interesting dialog between your state and
21 New York as to the pros and cons of how each state manages this
22 sort of objectivity.

23 A. Might be interesting to hear from their pilots.

24 THE WITNESS #22: If I might add one thing, because
25 Captain Phipps mentioned an important issue, we do have an

1 admiralty attorney. That admiralty attorney has clients. We have
2 insurance company members who also have insurance, marine
3 insurance, and we have a port operator who occasionally has his
4 docks struck by ships. Whenever such a case as Captain Phipps had
5 alluded to would arise, where there might be a conflict due to
6 some business relationship that one of our commissioners had with
7 either a client or a customer, that commissioner recuses him or
8 herself.

9 THE WITNESS #23: Just something that my consultant
10 pointed out to me. We have a separate expertise that does our
11 investigations and I believe that your board, that you all do the
12 investigations. You actually assign a hearing officer. So in
13 that respect, the board members don't get involved in that. We do
14 have a probable cause panel that's made up of board members; it
15 has pilots and non-pilots on it, but we also have board Counsel,
16 a prosecuting attorney and an investigator that brings the
17 evidence before the board.

18 BY MR. HENRY:

19 Q. But, who accepts the probable cause?

20 A. The probable cause is brought to a panel by the state's
21 attorney's office with recommendations and evidence as procured by
22 our investigator and by the state's attorney's office.

23 BY MR. HENRY:

24 Q. And Mr. Miller, in San Francisco, the pilot commission,
25 it's made of membership that includes pilots?

1 A. Yes, it does. There are seven members. By law, two will
2 be pilots; two are shippers' representatives. All are appointed
3 by the governor for four-year terms and can be reappointed for an
4 additional four years. Of the two shipper representatives, by
5 law, one is a wet cargo, tanker representative and the one is a
6 dry cargo, container cargo representative, and three public
7 members. I am a public member and the others are, as well.
8 There's no requirement that the public members have maritime
9 experience. But, in fact, during all of my tenure, we have had
10 one member who has maritime experience. Presently, we have retired
11 Rear Admiral Frank Johnston, recently retired from the United
12 States Maritime Administration.

13 Q. And your members that are pilots, are they -- do they
14 also pilot?

15 A. Yes. They're serving pilots.

16 Q. Serving pilots.

17 A. That's correct.

18 BY MR. HENRY:

19 Q. And Mr. Kornegay, in Houston?

20 A. The question is?

21 Q. The question is the pilot commissioners --

22 A. Right. None of them are pilots.

23 Q. Are any of them active pilots?

24 A. None of them are pilots. No, sir. None of them have a
25 maritime background.

1 Q. None of them have a maritime background?

2 A. Correct.

3 Q. And who does your investigations?

4 A. We actually have an investigative review committee that
5 is appointed by the board and they appoint people who actually do
6 have maritime backgrounds to do that. Some of them are even ex-
7 Coast Guard and we have three pilots on the investigation review
8 committee and they are the ones that actually investigate the
9 incidents and make a recommendation to the board. And then, if
10 the pilot doesn't agree with the recommendation of that committee,
11 he can appeal it to the board.

12 Q. In Houston -- and I'm going to ask each one of you the
13 same question -- is there a mandatory age for retirement of the
14 state pilots or are you aware of any pilotage organizations that
15 have that, comparable to, say, an airline pilot?

16 A. It's 65 -- excuse me, 68. Now, we have, together with
17 the pilots, set a time. We did not have a time years ago and it
18 was a real issue, not having a mandatory retirement because, you
19 know, we had fellows that were over 70 years old and still
20 working. So we worked the situation out with the pilots to have a
21 mandatory retirement age.

22 BY MR. HENRY:

23 Q. Commissioner Phipps.

24 A. The board doesn't have any such rule or statute,
25 however, I do know that two of the ports, Port Everglades has an

1 age limit at 65 and I believe Jacksonville has an age at 70 for
2 retirement.

3 BY MR. HENRY:

4 Q. Mr. Pouch, in New York?

5 A. Yes, sir. The mandatory retirement age
6 of 65 has been in effect for a long time. In fact, it was even
7 successfully defended in court, in federal court, by the board.
8 However, in 2006 the board allowed any pilot who has achieved
9 his 65th birthday to seek six-month extension of his license with
10 one reduction in grade if that pilot wanted to continue to pilot
11 beyond age 65.

12 BY MR. HENRY:

13 Q. And Mr. Miller, in New York? I mean in San Francisco,
14 excuse me.

15 A. California, San Francisco. There is no mandatory
16 retirement age. It is my understanding, I'm not certain about
17 this, that it is a function of a State of California blanket
18 prohibition against mandatory retirement ages. There may be
19 exceptions to that.

20 Q. Right. And you have the pilot ladder, anyway, right?

21 A. We have the pilot ladder.

22 MR. HENRY: Thank you, sir.

23 CHAIRMAN ROSENKER: Thank you, Mr. Henry. Mr. Kornegay,
24 God bless those 70-year-old guys. I hope I can climb the Jacob's
25 ladder when I'm 62 and do ten stories. These guys must be

1 amazing.

2 THE WITNESS #24: They were, sir. They came into my
3 office and had a real conversation with me.

4 CHAIRMAN ROSENKER: I bet you. I bet you.

5 BY CHAIRMAN ROSENKER:

6 Q. Captain Phipps, I'm intrigued by a couple of things.
7 First, an A&M grad that becomes a ship's master. That, in and of
8 itself, I think, is quite an achievement. I did not know they had
9 a program for maritime service.

10 A. It's in Galveston. It's a satellite university of Texas
11 A&M. Maritime academy.

12 Q. Okay. Were you in the Corps, as well, by any chance?

13 A. Yes.

14 Q. That doubly impresses me. That doubly impresses me. In
15 addition to that, you talked in terms about a tiered form of
16 response to incidents.

17 A. Yes, sir.

18 Q. And that's the first time I think I've heard something
19 from the commissions, that they have written policy that tells
20 what's going to happen after a certain series of issues. Could
21 you describe that a little bit, please?

22 A. Certainly. Let me just pull it up so I get the tiers
23 correct. The guidelines in our rules that we have set up, there's
24 Class 1 is a revocation of the license. Class 2 is a suspension.
25 Class 3 is a restriction of the license. Class 4 is to place the

1 licensed state pilot or certified deputy pilot on probation and
2 there's a lot more about how long the probation has to be. Class
3 5 is an imposition of administrative fine. Class 6 is an issuance
4 of a reprimand.

5 So Class 6 would be the least amount of punishment and
6 that's generally in lieu of finding of probable cause. So
7 probable cause would have been a possibility for whatever the
8 offense was and in lieu of, they'll get a reprimand. And that's
9 generally the first -- the first offense, of course, if it's a
10 letter of reprimand, it would've been something like, perhaps, the
11 wind caught the stern and maybe dented the ship and like I said,
12 pretty much, if it were a serious incident, the Class 1 would come
13 into effect if there were two serious incidences, so the license
14 would be revoked.

15 Q. And what about, say, a Class 3 or a 4?

16 A. As far as restrictions?

17 Q. Define the type of incident which would get you into
18 that category.

19 A. Most of these disciplinary determinations are done by
20 the state's attorney's office or they're recommended to the board.
21 Well, let's -- the panel can recommend to the state's attorney's
22 office, but at this level, it's done by the state's attorney's
23 office.

24 Q. But, is it written in a way that the pilots understand?

25 A. It's written in a way that the pilots understand and

1 that the probably cause panel can make a recommendation to the
2 prosecuting attorney and when the probably cause is deciding on a
3 case, they may or may not know what other incidences at that time
4 the pilot has been involved in because they are just determining
5 the facts of that particular case, but the state's attorney's
6 office does, indeed, keep record and they know how many cases and
7 if they see, they'll take the appropriate actions.

8 BY CHAIRMAN ROSENKER:

9 Q. Mr. Kornegay, do you have a program kind of similar to
10 that?

11 A. Well, we don't have a tiered situation with actual
12 certain types of incidents requiring certain actions. We have the
13 same basic ability to either no action or issue a letter of
14 reprimand, suspend the license or recommend to the governor that
15 the license be revoked. But, it's strictly up to the
16 investigation review committee to recommend to the board what
17 action fits what incident.

18 Q. Okay.

19 BY CHAIRMAN ROSENKER:

20 Q. How about yours, Mr. Pouch? Do you have a program
21 similar to what Capt. Phipps has?

22 A. Yes, Mr. Chairman. Any investigation will result in a
23 finding of fault or no fault. In reaching the conclusion, the
24 board is looking at the pilot competency, the pilot's aptitude, if
25 there were questions and the root cause and the probable cause of

1 the accident. In determination of our findings, there is a
2 ladder, if you want to call it that, of actions that the board is
3 directed and authorized to take.

4 One would be a letter of caution. The other would be a
5 letter of admonishment, then letter of reprimand, suspension of
6 license, reduction in grade -- suspension, by the way, is without
7 pay -- revocation of license or other action which could be a
8 safety recommendation which might be directed not only at the
9 pilot, but at the whole pilotage system, if that was warranted, or
10 something which falls under our awards program because lots of
11 times -- there are many times, if there is a casualty of some kind
12 and due to special actions on the part of the pilot, the pilot is
13 able to avoid damage or danger or public injury, then we have an
14 awards system with appropriate medals that go to the pilot based
15 on the actions that they took.

16 Q. Very good.

17 BY CHAIRMAN ROSENKER:

18 Q. And Commissioner Miller, do you have any program similar
19 to that?

20 A. We do have something in our regulations. We have a list
21 of factors that the IRC, Incident Review Committee, shall consider
22 as a result of an investigation. I think I can highlight these
23 very quickly. The severity of the misconduct, danger to the
24 public, number and frequency of prior incidents involving pilot
25 error, nature and extent of any injuries, property damage, harm to

1 the environment resulting to the incident, length of time the
2 pilot has been licensed; prior corrective action imposed on the
3 pilot, the degree to which the proposed action is likely to
4 prevent recurrence; affect of the proposed action on the inland
5 pilot's livelihood; corrective action already taken by the pilot
6 or the inland pilot relative to the incident of consideration; the
7 degree of negligence and any other mitigating or aggravating
8 circumstances deemed pertinent by the Incident Review Committee.

9 That is for relatively simple, straightforward
10 incidents. We also have -- when we get into the area where we're
11 talking about possible suspension or revocations, we have other
12 guidelines, the genesis of which is similar to Coast Guard
13 regulations. They're not identical. For example, there are
14 specific things for -- for example, under the influence of illegal
15 drugs while on duty; filing an accusation recommending revocation
16 of the license -- not talking suspension, talking revocation --
17 and then it goes on for alcohol, other things; failure to comply
18 with federal, state, local navigation laws or regulations from a
19 minimum of reprimand to a maximum of filing an accusation and
20 recommending suspension of the license, one to three months. And
21 there are other gradations, depending on the severity of the
22 infraction, if you will.

23 Q. How often do -- and this is to you, Commissioner Miller
24 -- how often do pilots come to your attention having to deal with
25 issues that you just described?

1 A. Drugs and alcohol?

2 Q. Any of the issues which you just described.

3 A. For suspension or revocation?

4 Q. Exactly.

5 A. It's uncommon. It's very uncommon.

6 Q. It's uncommon?

7 A. Yes.

8 Q. Did Captain Cota ever have any issues before your
9 commission?

10 A. There were the several incidents that we discussed
11 earlier today.

12 Q. So you're saying it's uncommon, but yet Captain Cota had
13 had a couple of them?

14 A. Uncommon to have something that would rise to the level
15 of a suspension or a revocation of his license. There are other
16 sanctions that could be applied, whether it be counseling, ride-
17 along trips, letter of reprimand, things of that nature.

18 Q. Again, the question I'm asking is on an annual basis,
19 how often do pilot issues come to your attention that you must do
20 some type of resolution on?

21 A. The range is from about six to about 18 per year and
22 there doesn't seem to be any -- and we're talking about 60 pilots
23 and 10,000 moves a year.

24 Q. Right. But, you're getting as many as 18 a year?

25 A. These are incidents. These are not findings of pilot

1 error.

2 Q. Right.

3 A. Eighteen incidents --

4 Q. But, 18 incidents that you must investigate in some way,
5 shape or form?

6 A. That's correct.

7 Q. Okay. And how many times did Captain Cota come before
8 your commission?

9 A. The Incident Review Committee, there -- since the
10 creation of the current process, there were four incidents plus
11 the Tarawa. This is going back to --

12 Q. Okay. So let's call it five, is that a reasonable
13 addition?

14 A. -- 1997 was the first, I think. 1983, thank you.

15 Q. Ninety-three or --

16 A. 1993, thank you.

17 Q. 1993.

18 A. Yeah.

19 Q. So 14 years or so, five incidents?

20 A. Five incidents. And we had -- there were investigations
21 before the current process was put in place.

22 Q. Okay. But, is that unusual to see one pilot with five
23 incidents or is that it happens all the time?

24 A. It is higher than the average for a pilot of his
25 longevity.

1 Q. Okay. Thank you.

2 (Witnesses excused.)

3 CHAIRMAN ROSENKER: Thank you, Commissioner. Thanks all
4 of you. I appreciate your testimony and your participation. The
5 hour is somewhat late, but we're still earlier than we originally
6 anticipated. I want to thank all of the parties for their
7 participation and I want to congratulate the Technical Staff and
8 Dr. Spencer and his team for putting together an excellent
9 investigative hearing.

10 Now, I have to go and start reading things again, so
11 bear with me. With the last witness having been heard, this
12 concludes the public hearing phase of the Safety Board's
13 investigation. In closing, I want to emphasize that this
14 investigation will remain open to receive at any time new and
15 pertinent information concerning the issues presented. The Board
16 may, at its discretion, again reopen the hearing in order that
17 such information may be made part of the public record.

18 I know the inevitable question is when will we complete
19 this investigation? We can't answer that at this time. There is
20 obviously more work to be done before the staff will present the
21 NTSB with its draft final report. For now, though, I will give
22 you an estimate and that I hope that if things continue on
23 schedule, we could look at fall as the earliest that we could
24 expect this draft report to be presented. So on behalf of the
25 NTSB, I want to again thank the parties for their cooperation not

1 only during this proceeding, but also throughout the entire
2 investigation of the accident.

3 Also, I want to express my sincere appreciation to all
4 of those individuals, the groups, the corporations, agencies who
5 have provided their talents so willingly throughout this hearing.
6 The record of the investigation, including the transcript of the
7 hearing and all exhibits entered into the record, will become part
8 of the Safety Board's public docket on this accident and will be
9 available from the Safety Board's public inquiries office or
10 website. Anyone wanting to purchase the transcript, including
11 parties to the investigation, may contact the court reporter
12 directly. I now declare this hearing to be in recess indefinitely
13 and adjourned at the conclusion of our investigation. Have a safe
14 trip home and thanks, everybody.

15 (Whereupon, at 6:00 p.m., the hearing in the above-
16 entitled matter was closed.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: PUBLIC HEARING ON ALLISION OF THE
CONTAINER SHIP M/V COSCO BUSAN WITH THE
SAN FRANCISCO-OAKLAND BAY BRIDGE

DOCKET NUMBER: DCA-08-MM-004

PLACE: Washington, D.C.

DATE: April 9, 2008

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.

Timothy Atkinson
Official Reporter