

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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In the matter of: *

MARINE BOARD OF INVESTIGATION *

INTO THE SINKING THE *EL FARO* *

ON OCTOBER 1, 2015 *

*

* * * * *

Prime F. Osborn III Convention Center
Jacksonville, Florida

Tuesday,
February 14, 2017

APPEARANCES:

Marine Board of Investigation

CAPT JASON NEUBAUER, Chairman
KEITH FAWCETT, Member
CDR MATTHEW J. DENNING, Member
LCDR DAMIAN YEMMA, Recorder
CDR JEFF R. BRAY, Legal Counsel

Technical Advisors

CDR MICHAEL ODOM
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National Transportation Safety Board

BRIAN YOUNG, Investigator in Charge
MICHAEL J. KUCHARSKI, Marine Accident Investigator
CARRIE BELL, Marine Accident Investigator

Parties in Interest

LUKE M. REID, Esq.
JACK FORNACIARI, Esq.
TOTE Services

GERARD W. WHITE, Esq.
American Bureau of Shipping (ABS)

SPENCER A. SCHILLING, P.E.
Herbert Engineering Corporation

WILLIAM R. BENNETT, III, Esq.
On behalf of Mrs. Theresa Davidson
(Next of kin to Captain Michael Davidson)

Also Present:

ARCHIE WARE, JR.
Seafarers International Union (SIU)
(On behalf of Mr. Bradley and Mr. Hearman)

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P R O C E E D I N G S

(9:04 a.m.)

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2
3 CAPT NEUBAUER: Good morning, this hearing will come to
4 order. Today is February 14th and the time is 9:04. We're
5 continuing at the Prime F. Osborn Convention Center, Jacksonville,
6 Florida. I am Captain Jason Neubauer of the United States Coast
7 Guard, Chief of the Coast Guard Office of Investigations and
8 Analysis in Washington D.C. I'm the chairman of the Coast Guard
9 Marine Board Investigation and the presiding officer over these
10 proceedings.

11 The Commandant of the Coast Guard has convened this Board
12 under the authority of Title 46 United States Code § 6301 and
13 Title 46 the Code of Federal Regulations Part 4, to investigate
14 the circumstances surrounding of the sinking of the S.S. *El Faro*
15 with the loss of 33 lives on October 1, 2015 while transiting east
16 of the Bahamas. I'm conducting the investigation under the rules
17 in 46 C.F.R. Part 4.

18 The investigation will determine as closely as possible the
19 factors that contributed to the incident so the proper
20 recommendations for the prevention of similar casualties may be
21 made; whether there is evidence that any act of misconduct,
22 inattention to duty, negligence or willful violation of the law on
23 the part of any credentialed merchant mariners contributed to the
24 casualty; and whether there is evidence that any Coast Guard
25 personnel or any representative or employee of any other

1 government agency or any other person caused or contributed to the
2 casualty.

3 I've previously determined that the following organizations
4 or individuals are parties in interests to this investigation:
5 TOTE Services represented by Luke Reid; ABS represented by
6 Mr. Gerard White; Herbert Engineering Corporation represented by
7 Mr. Spenser Schilling; and Mrs. Theresa Davidson, the next of kin
8 for Captain Michael Davidson, master of the S.S. *El Faro*
9 represented by Mr. William Bennett.

10 These parties have a direct interest in the investigation and
11 have demonstrated a potential for contributing significantly to
12 the completeness of the investigation or otherwise enhancing the
13 safety of life and property at sea through participation as party
14 in interest. All parties in interest have a statutory right to
15 employ counsel to represent them, to cross-examine witnesses, and
16 to have witnesses called on their behalf.

17 I will examine all witnesses at this formal hearing under
18 oath or affirmation, and witnesses will be subject to federal laws
19 and penalties governing false official statements. Witnesses who
20 are not parties in interest may be advised by their counsel
21 concerning their rights, however, such counsel may not examine or
22 cross-examine other witnesses or otherwise participate.

23 These proceedings are open to the public and to the media. I
24 ask for the cooperation of all persons present to minimize any
25 disruptive influence on the proceedings in general and on the

1 witnesses in particular. Please turn your cell phones or
2 electronic devices off or to the silent or vibrate mode.
3 Photography will be permitted during this opening statement and
4 during recess periods.

5 The members of the press are welcome and area has been set
6 aside for your use during the proceedings. The news media may
7 question the witnesses concerning the testimony they have given
8 after I've released them from these proceedings. I ask that such
9 interviews be conducted outside of this room.

10 Since the date of the casualty, the National Transportation
11 Safety Board (NTSB) and Coast Guard have been conducting
12 substantial evidence collection activities and some of that
13 previously collected evidence will be considered during these
14 hearings. Should any person have or believe he or she has
15 information not brought forward but which might be of direct
16 significance, that person is urged to bring that information to my
17 attention by emailing elfaro@uscg.mil.

18 The Coast Guard relies on strong partnerships to execute its
19 missions and this Marine Board of Investigation is no exception.
20 The NTSB is providing representatives for this hearing. Mr. Brian
21 Young, also seated to my left is the investigator in charge for
22 the NTSB investigation.

23 Mr. Young, would you like to make a brief statement?

24 BRIAN YOUNG: Yes, I do, Captain. Good morning, Captain.
25 Good morning all. I'm Brian Young, the investigator in charge of

1 the National Transportation Safety Board's investigation of this
2 accident. The NTSB has joined this hearing to avoid duplicating
3 the development of facts. Nevertheless, I do wish to point out
4 that this does not preclude the NTSB from developing additional
5 information separately from this proceeding if that becomes
6 necessary.

7 At the conclusion of these hearings, the NTSB will analyze
8 the facts of this accident and determine the probable cause
9 independently of the Coast Guard. We'll issue a report on our
10 findings, and if appropriate issue recommendations to correct
11 safety problems discovered during the investigation.

12 CAPT NEUBAUER: Thank you Mr. Young.

13 We will now continue on with testimony from Captain John
14 Lawrence with TOTE Services.

15 Captain Lawrence, just to remind you, you remain under oath
16 from yesterday.

17 Before we begin with this morning's testimony there are a
18 couple of clarifications from yesterday. I'd like to get on the
19 record that the voluntary weather program, the specific
20 programming we were discussing yesterday is a voluntary program.
21 It's based on letting mariners submit weather information at sea,
22 which helps NOAA determine weather forecasting for areas that have
23 limited other abilities to assess the weather.

24 Mr. Bennett, did you also want to make a clarification?

25 MR. BENNETT: Yes. Just so the record is clear, the

1 transcript, the second mate said "I hope I sent it out right."
2 She did send it out right. It's just that it had a typo. There's
3 a distinction between knowing how to send something out and
4 whether the message had a typo, and I want to make sure it's clear
5 that she knew how to send it out.

6 CAPT NEUBAUER: Thank you, sir.

7 TOTE did you also want to make a statement before we begin?

8 LUKE M. REID: Yes, sir. Over the course of the hearings
9 we've talked about standing orders of the captains, et cetera.
10 And obviously from the beginning of the investigation, Captain
11 Davidson's orders were, standing orders were requested, and those
12 were presumed to be on the vessel. We searched electronically,
13 extensively, throughout TOTE's databases and system and were
14 unable to locate it. Last evening we were contacted by Captain
15 Ray Thompson who discovered a thumb drive in an old bag of his
16 that he had on the ship, and found some materials that had been
17 provided to him from Captain Davidson. They are an old set of
18 standing orders. And so we informed this Board this morning of
19 that fact and will be submitting it for the record.

20 CAPT NEUBAUER: Thank you, Mr. Reid, that will be added as
21 Exhibit 395. Thank you.

22 At this time, I'd like to continue on with the questioning
23 Captain Lawrence. Mr. Fawcett?

24 (Whereupon,

25 JOHN LAWRENCE

1 was recalled as a witness and, having been previously sworn, was
2 examined and testified as follows:)

3 EXAMINATION OF JOHN LAWRENCE

4 BY MR. FAWCETT:

5 Q. Good morning again, Captain Lawrence.

6 A. Good morning.

7 Q. A couple of questions, a follow-up from yesterday's
8 testimony. Regarding the audit process, is it difficult to
9 conduct an audit while the ship is loading?

10 A. While it's loaded, no, I don't see any difference between if
11 it's loaded or empty.

12 Q. No, I was saying, while it is loading cargo.

13 A. No, sir.

14 Q. We spoke at length about the voluntary observer program for
15 weather. On the Web there's a video that was released in October
16 2016 by NOAA. The title of the video, which is about 13 minutes
17 long is, quote, "Teamwork on Weather at Sea: NOAA's Volunteer
18 Observing Ships." At minute 4:11, the commentator says, "One
19 forecast can verify or change a forecast over a great stretch of
20 ocean, providing crucial advanced warning for the next ship
21 transiting through." Have you seen this video?

22 A. No, sir.

23 Q. Based on that statement, would it be prudent for ships to
24 participate in that program?

25 A. I'd rather not comment until I saw the video, the whole

1 video, actually on something like that.

2 Q. So we talked about the hearings about bridge team management,
3 also been described as bridge resource management. And we asked
4 questions about how different witnesses have seen it conducted.

5 As the safety auditor for the company and a master mariner, what
6 is your definition of how bridge team management is carried out?

7 A. Well, it's required by STCW, so they have training prior to
8 -- it's required training prior to the ship, and then it's also
9 required as far as our quarterly training for the vessel as well.

10 Q. What is your interpretation of what effective bridge team
11 management is? Could you give an explanation for the public of
12 what that is?

13 A. Yes, without the actual definition in front of me as far the
14 courses, what they say, but just in my own words, it is just the
15 team work that's required on board the vessel for all the officers
16 of the watch and the crew members that are involved in each of the
17 watches, just the preparation and the execution of what's required
18 to operate the vessel and navigate it safely.

19 Q. And based on your understanding, would this include the
20 ability of crewpersons to assert their opinions related to the
21 plans of the vessel or the operation of the vessel? In other
22 words, can a crewman speak up in an effective bridge team
23 environment and express themselves about what the ship is doing,
24 for example, what course the ship is taking or what -- how the
25 ship is loading cargo?

1 A. Again, my own opinion, I would expect that any input would be
2 accepted.

3 Q. The next line of questioning speaks to two things. It speaks
4 to the culture on board the *El Faro*, and it speaks to the culture
5 of TOTE. So if you'll take a moment, Commander Yemma's going to
6 put up Coast Guard Exhibit 266, the voyage data recorder
7 transcript, page 251, time 20:50. Do you see that, sir?

8 A. Yes.

9 Q. The third mate and the AB are talking about one of the chief
10 mates that fell asleep on the watch.

11 At 20:15:18, the third mate says, "Like ex-chief mate *El*
12 *Yunque*, the first time he fell asleep on watch he must have been,"
13 quote, "ah, that was kind of nice and refreshing."

14 The AB said, "Yeah, yeah."

15 AB says, "Who's going to say anything [SOUND OF LAUGHTER]."

16 The third-mate says, "Yeah." Quote, "We didn't crash into
17 anything. There's nobody out here and what's the problem?"

18 The AB says, *, which means unintelligible, "does it all the
19 time."

20 The third-mate says, "Then he got caught and nothing
21 happened. Then he got caught again and nothing happened."

22 The AB said, "Yeah."

23 The third-mate says, "[EXPLETIVE] kept on doing it."

24 AB says, "Uh-huh."

25 Third-mate says, "Or whatever it is - whatever little

1 [EXPLETIVE] thing that people do. Huh? How about that? Got away
2 with it and nobody noticed, nobody cared."

3 My question to you is Commander Denning asked you yesterday
4 if anybody reported to the DPA any issues, and someone did report
5 to you about the chief mate falling asleep on watch. Could you
6 talk about that in as much detail as possible?

7 A. Yes, sir. I was notified by text message from an unknown
8 crew member, very sporadic as far as the different texts he would
9 send me, but basically he initiated it with sending me some
10 pictures of a person sleeping on a stool.

11 I tried -- I contacted him right away because it was
12 obviously what he considered a designated person issue or not any,
13 hopefully, a safety concern he was looking at. And so I texted
14 him back. And I'd have to say that I know we have the text. But
15 I texted him back and we communicated back and forth a few times.
16 He appeared to me to be fairly uncooperative as far as what I was
17 asking him to give me more detailed information. I was -- and I
18 was also asking him -- I was uncomfortable texting. I'm more into
19 an on the phone conversation than emails. So I asked him, I said
20 -- I asked him to either call me or email me if he had a concern
21 and wanted to give me additional information on this.

22 And again, his -- this went on for probably a number of
23 hours, if I remember correctly. It was from probably early
24 evening till, I think it was 9 or 10:00 at night when I was home.
25 So again, these texts are going back and forth. Didn't make a

1 lot of sense to the some of the texts he was sending me in reply.
2 So I finally gave him a few ultimatums, saying listen, you know,
3 can you tell me who you are? Do you want me to follow up on this?
4 And basically, you know, let me know what you're going to do, but
5 I'm not going to continue with this game of texting back and forth
6 and getting partial answers, unless you're serious about if you
7 want me to look into this.

8 He finally gave up, I think, if I remember correctly, at that
9 point. And anyway, the next day I took it -- I took the picture
10 and I notified -- I think I spoke to the vice president. And,
11 anyway, we discussed it. I'd have to look at the actual -- my own
12 emails that I -- there's records of. But that would explain where
13 I went next, if I went to, again, to the vice president or to HR.

14 But we discussed it internally in the office and I showed the
15 pictures to -- I think I showed them to the department -- I mean,
16 to the director of ship management for the ship.

17 And I didn't know who the person was. And we said, well, we
18 can obviously find out who it is. And it eventually went to the
19 vice president for TOTE, Puerto Rico -- TOTE Maritime Puerto Rico,
20 at the time. And they investigated it. We ended up, the plan was
21 to contact the captain. We had different options, different I had
22 laid out and I thought about, and then we discussed it again with
23 senior management, which way you wanted to handle this best. And
24 we decided that HR would handle it with the head of labor
25 relations and crewing and I think one of the directors visiting

1 the ship when it came with the captain, and approaching them,
2 showing them the pictures.

3 From there, I was, I was actually going to go with them at
4 the time, but I had to travel on a required environmental training
5 I had to do, so I didn't go to the ship with them. However, they
6 handled it from there as a HR issue and ended up taking
7 disciplinary action on the person. They approached -- my
8 understanding is they did approach the person who was accused. He
9 admitted to actually sleeping on watch and they did, you know,
10 take disciplinary action.

11 Q. If you could turn your attention to Exhibit 282, which may
12 help refresh your memory. This is an email that you sent on
13 Wednesday, July 15, 2015, to Mr. Morrell. And if you'll take the
14 time to look at it, I'm going to ask you a couple questions and
15 that may be able to refresh your memory. So I'm not going to
16 speak to the email at the moment, but it may help your answers.

17 When you say investigated, what do you mean?

18 A. We addressed the issue.

19 Q. But please elaborate on the investigation.

20 A. Once again, I turned it over to HR because it became more of
21 an HR issue with somebody sleeping on watch. And they, as I said
22 before, they investigated by speaking to the captain of the ship,
23 showing him the pictures, then discussing it directly with the
24 person involved, which crewing knew who it was. I didn't
25 recognize the person. They recognized the person, and they

1 approached him and they did an investigation, as far as
2 questioning why he was sleeping on watch, and when did it happen?
3 Is it true? He admitted it, and there was a letter given to him
4 to take the disciplinary action that they decided to take. They
5 actually demoted him.

6 Q. Okay, you were contacted by this individual in the early part
7 of July, or mid-July. Would that be correct?

8 A. That's correct.

9 Q. And you spoke to the captain. Was the captain that you spoke
10 to the captain who was master of the *El Faro* when this incident
11 could have taken place? I mean, did you speak to the captain who
12 was master when this incident took place?

13 A. I don't recall. Again, I'd have to go further into these
14 emails. If I recall, probably, I was going to send him the
15 pictures and ask him if -- I think it -- again, I'm not sure when
16 it took place, the reason being is that I'm sure when these
17 pictures were taken. My opinion was that, until it was
18 investigated further, that I didn't even know if they were real or
19 not real, or if it was really somebody that was on watch or not on
20 watch. So I couldn't understand, again, from the various texts I
21 was getting back and forth.

22 What I took it as, as I said here, is a disgruntled crew
23 member. Because part of the text he said that he was fired and he
24 felt, well, he got fired for whatever he got fired for, so why
25 wouldn't this person who was sleeping on watch get fired also. So

1 that was kind of the context of some of the text exchanges.

2 So again, I had gone to the -- so I wasn't sure which captain
3 was on there when this person was on, whether this, you know,
4 whether this mate was basically on the ship or not at the time, or
5 what period it was. So the investigation was -- again, once it
6 was turned over to crewing and labor relations, that's when they
7 went to the vessel.

8 I did initially contact the captain who was on there at the
9 time and was going to send him the pictures. I wasn't sure if the
10 email was secure or not to send him those, if anyone else would be
11 looking at it on the ship. So again, once again, it was turned
12 over to labor relations and they had followed that from there, and
13 basically I didn't get involved in it after that point.

14 Q. To refresh your memory, if I said that you sent the question
15 about whether he had secure email to Captain Axelsson, who came
16 aboard approximately the 19th of July, would you say that would be
17 correct?

18 A. I'd have to take a look at that.

19 Q. Understand. Is a mate sleeping on watch, whether it's in --
20 well, let's say, if the circumstances are that it was at sea, is
21 that a safety issue or is that a human resources issue?

22 A. I'd say it's a safety issue. I'd say it's both.

23 Q. Was Captain Davidson or Captain Axelsson interviewed for the
24 purpose of this investigation?

25 A. I don't recall without looking further into the -- I'm not

1 sure who was on the emails. I know I didn't interview them, but
2 whether labor relations interviewed them or not, I'm not sure.

3 Q. Do you know if any crewpersons were interview for the purpose
4 of this investigation?

5 A. I'm not aware if they were. Like I said before, as far as
6 the any designated person issue, we take it very seriously and
7 there's a certain confidentiality that I like to respect whenever
8 I get involved in a designated person issue. The least people
9 that get involved in it, seemed to me, that are not specifically
10 involved in the issue itself, the better it is. That way they
11 keep the integrity of the designated person contacts, to let
12 people know that, you know, we don't take it lightly, but also we
13 do not -- well, we take it very seriously, but also we do not
14 share this information when somebody is contacting us in
15 confidentiality. Like I said, the crew member never told me who
16 he was that was actually reporting this. So we wouldn't want to
17 even open up the possibility of repercussions for the person who
18 was reporting this. So again, I try to keep it -- try to take a
19 proper action but try to keep it as contained as possible.

20 Q. So looking at that email that is in front of you, at the
21 bottom of the last full paragraph, which is your email to Mr. Phil
22 Morrell, why didn't you report this to the company president,
23 because that's your direct report as an DPA, isn't it?

24 A. I believe I did report it to the company president and then
25 he asked basically how we were dealing with it, myself and Phil

1 Morrell.

2 Q. The last full paragraph I will read: "He told me" -- which
3 I, if you read above, that's the person who reported it -- "that
4 he considered this a definite safety issue, eventually signed off
5 saying, never mind, sir, and that he had done his part by
6 reporting this to me." And you have in the text, "I saved the
7 text message if you wish to see that. Some thoughts. There were
8 two pictures of someone" --

9 A. I'm sorry, I don't see that. Can you scroll down to where
10 that is?

11 Q. Yes, sir. Do you see it now?

12 A. Yes, sir.

13 Q. "Some thoughts. There were two pictures of someone
14 (apparently chief mate, apparently sleeping sitting on a stool,
15 apparently in the wheelhouse) appears to be two separate instances
16 as person was dressed differently in each pic, no timestamp."

17 Next, "No concrete evidence of actual situation. Could have
18 been the chief mate visiting up on the bridge on some other
19 officer's watch and nodding off after a long workday."

20 Next --

21 MR. REID: Can you read question mark, question mark, please?

22 MR. FAWCETT: Thank you, sir.

23 BY MR. FAWCETT:

24 Q. It ends, question mark, question mark.

25 Next, "Crewmember taking picture. Showed own

1 irresponsibility of duties and lack of safety by not waking the
2 watch officer, if the case."

3 "Crewmember taking picture. Makes me feel we should not be
4 allowing personal cell phones while on watch. Many of our vessels
5 have a policy. Company policy does not allow taking pictures of
6 other crew members. Says he told other crew members. Says he
7 will notify Coast Guard, CG. My plan of action [IF YOU APPROVE]:
8 We should conduct some follow-up to show due diligence on our
9 part. It was reported to us that apparently an officer on the *El*
10 *Faro* was sleeping on watch. Due to lack of specific details, I do
11 not feel that a full investigation is needed. I plan on calling
12 the captain (new captain on board now). I will tell him that an
13 apparent disgruntled and recently fired crew member sent me the
14 pics of apparent chief mate sleeping on bridge. His crew may be
15 aware of this. Unless he has additional info or reason to believe
16 this report, I recommend you should meet his deck officers and
17 tell them that a deck officer on *El Faro* (can also say he is not
18 even sure if same officer is still on board due to no time frame
19 given) was reported to the company by a crew member, no longer on
20 board vessel, to be sleeping on watch at least twice. Obviously
21 not to be tolerated, et cetera. Recommend that he enforce a
22 policy of 'for private use' phones allowed during watchstanding (I
23 know they have that policy while on the gangway watch on those
24 vessels.) And lacking anything further, end it there."

25 Does that -- your plan action for this infraction?

1 A. That was one of my options, recommendations.

2 Q. So, so what was the issue? In other words, there's a
3 discussion about people taking pictures on watch and enforcing a
4 cell phone ban on the bridge. But what was the central issue
5 here?

6 A. The central issue was whether or not this was a viable
7 report, whether this was correct or not. And I said it was -- as
8 I said there, there was quite a few different issues I think
9 involved in this.

10 Q. At the conclusion of the human resources investigation was a
11 report provided to you?

12 A. I don't recall seeing an actual report.

13 Q. Did anybody examine the STCW records for the chief mates to
14 determine if fatigue could have played a factor in the mate
15 falling asleep on watch on multiple occasions?

16 A. I did not. I don't recall if anyone else had looked at it.

17 Q. And related to this, my final question. Did anybody have the
18 individual go to a physician to determine if that individual had a
19 medical condition such as narcolepsy or other sleep disorder so
20 that the individual be given the benefit that a medical condition
21 might have caused this?

22 A. My understand is that he did not request this or deny any of
23 the accusations, so my understanding is that's how labor relations
24 decided to go further and take the action that they took.

25 Q. And we have requested and received, although it's not in

1 evidence, the personnel file for that chief mate. There is no
2 mention in his file of this incident nor the investigation. Would
3 you expect it to be found in his file?

4 A. Again, I'd have to -- you'd have to address that question to
5 labor relations. I don't get involved in what's in the crew
6 member's files.

7 Q. Do you maintain or do any personnel that work for you
8 maintain files related to investigations for the *El Faro* of any
9 type?

10 A. Yes, sir, if they had an incident, we would maintain those
11 files.

12 Q. Do you have any files for any individuals that have served on
13 the *El Faro* in 2014 or '15?

14 A. I'd have to look at our files. I can't say that off the top
15 of my head.

16 MR. REID: Sir, just to clarify your question. I think he
17 answered the question. He doesn't keep files on personnel. So is
18 the question, you know, are there any files of investigations for
19 the *El Faro*? Is that what --

20 MR. FAWCETT: Yes. That was the question, sir.

21 THE WITNESS: For investigation files, again, I'd have to
22 look at our files, but -- you know, we do receive many reports
23 from all vessels, and the *El Faro*, as far as near miss reports,
24 the audit reports, follow-ups. And so, whatever -- especially
25 near miss reports may require a follow-up, may require an

1 investigation. Again, that would all be in our files.

2 BY MR. FAWCETT:

3 Q. Was the chief mate sleeping on watch a violation of a TOTE
4 zero tolerance policy?

5 A. I don't recall if there's an actual policy that says, don't
6 sleep on watch. I do know that there's a policy saying keep an
7 alert watch. So, and again, without saying specifically sleep, in
8 essence, every person -- you keep awake on watch, yes.

9 Q. After this incident was there any type of notice, safety
10 alert or note put in a company safety letter talking about, not
11 the event specifically, but learning from the event, maybe some
12 kind of admonition to vessel crews about, you know, being well-
13 rested, making sure they're fit for standing watch, getting the
14 appropriate rest?

15 A. For almost every incident we have, most are near misses, we
16 do share lessons learned with the entire fleet. We do it on a
17 quarterly basis through a safety meeting we have through the
18 office and talking to all the various port engineers of the ships.
19 Then we send out a follow-p newsletter to all our vessels and it
20 lists any incidents we've had in the past quarter with corrective
21 actions, lessons learned. Same thing for their -- most of our
22 significant near miss. As far as this specific incident, I don't
23 recall now if we had shared that within the fleet.

24 Q. In the ensuing months since that email was received, have you
25 been able to determine when the chief mate fell asleep on watch?

1 Did HR determine when the individual fell asleep on watch?

2 A. Once again, I wasn't there in the final investigation that HR
3 did, and labor relations. So you'd have to address that to them.

4 Q. Captain, is there a way I could request anything related to
5 that investigation from the human resources department?

6 MR. REID: Sir, I think we produced emails from the labor
7 relations director at the time. You do have a letter from the
8 individual to the company, essentially admitting this and they
9 took action. I don't know that anything else exists, but we will
10 look again. I know this request was made and we produced the
11 file, the personnel file and the other materials and the emails
12 that document all this. But if you're looking for a particular
13 report, I do not think one exists.

14 MR. FAWCETT: Yes, sir. And I was looking towards, for
15 example, if the STCW records were examined or if people were
16 questioned related to -- I know the individual admitted it. But
17 I'm looking to other pieces of information that might have been
18 gathered, other than email and other than the letter from the
19 chief mate. So Captain, I'll let you address that.

20 CAPT NEUBAUER: Are you saying you have received the records?
21 Is that --

22 MR. FAWCETT: No.

23 CAPT NEUBAUER: Without the addition of STCW and other types
24 of records. Okay, well, if we can -- if there are any other
25 records that were collected as part of this administrative HR

1 investigation, we would like to get those. If none exists then,
2 we'll move on.

3 MR. REID: We received that request previously and we
4 provided everything that we have.

5 CAPT NEUBAUER: Okay, thank you. I recommend we move on.

6 MR. FAWCETT: Yes, sir.

7 BY MR. FAWCETT:

8 Q. My final question, sir, is an infraction -- in other words,
9 the transcript conversation by the third mate indicates that he
10 was caught sleeping twice. Is the conduct of a crew member such
11 as sleeping on watch required to be entered into the official
12 logbook of the vessel?

13 A. If it happened and it was discovered at the time, I would
14 expect the captain to enter it in the logbook. But seeing this
15 was after the fact -- I'm not even sure, you know, what captain
16 was on there at the time. This was all due to this crew member
17 taking pictures and discovered that quite a bit after, I imagine,
18 the actual incident. So I wouldn't expect it to be an immediate
19 log entry.

20 MR. FAWCETT: Thank you very much, Captain Lawrence.

21 CAPT NEUBAUER: Mr. Young?

22 UNIDENTIFIED SPEAKER: Captain, may we take a short break,
23 please?

24 CAPT NEUBAUER: Yes, sir. The hearing will recess and
25 reconvene at 9:50.

1 (Off the record at 9:40 a.m.)

2 (On the record at 9:52 a.m.)

3 CAPT NEUBAUER: The hearing is now back in session. At this
4 time I'd like to go to the NTSB, Mr. Young.

5 MR. YOUNG: Thank you, Captain.

6 BY MR. YOUNG:

7 Q. Good morning, Captain Lawrence. Thank you.

8 A. Good morning.

9 Q. I'd like to call your attention to Exhibit 25, please. It's
10 in the book on the witness table. It's the operations manual for
11 the vessels under the SMS system. And if you could go to section
12 15.6, please, Critical Equipment? It's page 323.

13 A. Yes, sir.

14 Q. Captain Lawrence, the ISM Code requires companies to identify
15 potential emergency shipboard situations and establish procedures
16 to respond to these situations. And within the SMS system,
17 certain hazardous situations were identified and one of them was
18 the loss of lube oil pressure. Can you please discuss how as the
19 DP you had verified that the vessel *El Faro* was in compliance with
20 this policy?

21 A. You're asking how I would know that the vessel is in
22 compliance with this?

23 Q. Correct. Yes, please.

24 A. Well, the vessel should be in compliance with everything
25 that's in our operating manuals. And unless I was made aware that

1 they were not in compliance, it would give me no reason to
2 actually go forward and check that specific procedure for the
3 vessel. It could possibly be a procedure that we would spot check
4 during an audit, but I did not specifically check this.

5 Q. In this procedure, as well, it speaks to additions to this
6 list. Have you ever been aware of any additional suggestions for
7 other systems to be added to the critical equipment list?

8 A. Not at the time of the incident. Since the incident, yes.

9 Q. If crew members wanted to add or suggest new changes or
10 updates to the SMS system, what tool do they have to contact you
11 for suggestions?

12 A. We have a formal form for modifications of suggestions to our
13 safety management system that the crew is aware of. As far as
14 their training of the SMS on board the vessels, or any time that I
15 would visit the vessels or any of my auditors or team, they would
16 typically explain that to the crew members, as well. They can
17 also bring up suggestions at their monthly safety meetings, which
18 is done quite often, as far as any changes, anything that they
19 feel that needs to be brought up or changed. And all that would go
20 through the master of the vessel and his input to my group ashore.

21 Q. And in your time as DP, have there ever been any suggestions
22 from any of the ships that you oversee to cause an update to the
23 SMS system?

24 A. Yes, many. I can't recall any specifics right now, but you
25 know, if you go through our files there are definitely quite a

1 few. That's how we get our -- that's how we make our changes to
2 the manual there. And they also have specifics master's review of
3 our system that they do twice a year, plus a quarterly review of
4 the ISM system that all the officers on board have to go through
5 and review and see if there's any updates or changes that they'd
6 suggest, as well as the crew during the safety meetings. Or
7 again, anytime that a crew member would see something that they
8 felt that needed to be changed, they can make that suggestion
9 either verbally or through the formal form process. And that
10 would come into our office and then we would consider it. And
11 there's a process for that ashore to sign off on it, which I would
12 eventually sign off or not on that.

13 Then we give the feedback to the vessel if it is something
14 that we accepted. And then we would make the changes, typically
15 in the next revision of the manual, unless it was something that
16 we felt was significant enough to change immediately. And we
17 would do so typically by an operations memo that we'd send out to
18 the vessels.

19 Q. So the ops memo would be sent out via email to all the
20 vessels?

21 A. That's correct.

22 Q. And is there a policy for the vessels to report back to you
23 that they have received and disseminated that information
24 throughout their crew?

25 A. Yes, sir.

1 Q. Prior to coming on as the DP for TOTE, how were you trained
2 in the position for which you accepted as designated person?

3 A. I've been designated person since -- actually just about
4 since the ISM has, that code has come into play for various
5 companies. This is my third company that I've been designed
6 person with. As far as my initial training, I don't recall, you
7 know, what initial training I had. I meet all the qualifications
8 in the ISM Code as the qualifications for a designated person.
9 And again, I've been designated person for I think a little over
10 18 years now for various -- three different companies.

11 Q. And within that position, do you attend training to keep you
12 current on the new regulations and new procedures and policies
13 within the ISM Code?

14 A. If there was specific updates that I felt that I needed
15 training on, I would definitely look into that. But we're kept
16 apprised of all new regulations and training through various other
17 methods we have available to us in the company. So we -- I feel
18 we keep abreast of everything in the different organizations we
19 belong to. And, you know, if there's -- I have no question that
20 we are not up on the latest, you know, the latest regulations that
21 I need to be aware of.

22 Q. In your role as DP with other companies, was it ever part of
23 your job description to track the vessels at sea?

24 A. Not my position to specifically track the vessels at sea, no.

25 Q. In regards to previous audits of *El Faro*, we understand that

1 the next nonconformity would have been number 19 or 20, and it was
2 held in that position as next in the last audit in 2015. The
3 previous 19 nonconformities, had all of them been addressed and
4 closed out prior to the accident?

5 A. I'd have to review those. I don't have them here in front of
6 me. That would have been from 2013, I think, the audit. I assume
7 they were, but again, I'd have to really refer to our records to
8 see.

9 Q. And who maintains that list of corrective actions and
10 nonconformities for the vessels?

11 A. My department does.

12 Q. Is there anybody in your department throughout the auditing
13 process that would review STCW timesheets from vessels?

14 A. We review the timesheets if there was an issue that was
15 reported to us. That's the responsibility of the captain to
16 monitor that aboard the vessel and the responsibility obviously of
17 every crew member on the vessel to monitor their own. If there is
18 an issue, part of our SMS does say that the captain is to notify
19 me. That's when I would review. And there's also, at the various
20 audits, that's typically a review item, too, that our auditors
21 would go on board and they would, as part of a spot check, they
22 would typically look at the STCW work hours, as well.

23 Q. And switching gears to risk analysis and job hazard analysis.
24 Is it a requirement for the vessels to forward to you any of the
25 risk analysis worksheets that are completed?

1 A. No, sir. It's not a requirement that they forward them to
2 me. It's a requirement that they do job hazard analysis and risk
3 assessment, but they do not necessarily have to forward them to us
4 in the office.

5 Q. During any of the audits of *El Faro* that you've conducted,
6 have you ever spot checked any risk analysis or job hazard
7 analysis worksheets?

8 A. I only did the one audit of the *El Faro* myself, and I don't
9 recall if I actually looked at a specific JHA worksheet. I know I
10 discussed them in detail, in depth, with all the crew members and
11 the officers on board, and I was comfortable that they were doing
12 the JHAs. I more than likely did look into their record book to
13 see if there was a JHA -- any JHA forms there, but I can't
14 substantiate that right now.

15 Q. And is it identified in the safety management system if a job
16 hazard analysis or risk assessment should be done prior to an
17 event such as departure from port with heavy weather or at sea
18 dealing with heavy weather? Is anything addressed within the risk
19 analysis description in SMS?

20 A. As far as a job -- as far as a risk assessment, I'd have to
21 refer, look into the manual to see exactly what we say about that
22 for the heavy weather.

23 Q. And just to confirm, if any job risk assessments were done,
24 they would be retained with the ship; is that correct?

25 A. Any written risk assessments, that's correct.

1 MR. YOUNG: Thank you, Captain Lawrence. I appreciate it.

2 CAPT NEUBAUER: Mr. Kucharski?

3 BY MR. KUCHARSKI:

4 Q. Thank you Captain. Good morning, Captain Lawrence. Good
5 morning, counsel.

6 A. Good morning.

7 Q. I apologize in advance, I have quite a few questions. The
8 first ones I'd like to do is just maybe sort of bookkeeping or
9 just understanding of the system, if you will, and some general
10 questions.

11 You're now director of vessel safety; is that --

12 A. Director of fleet safety, correct.

13 Q. And you're -- has -- and Mr. Peterson, who was director of
14 safety and I think operations, did you take his -- essentially his
15 position, or was a new position developed?

16 A. No, I did take his position.

17 Q. And did someone take your previous position as manager?

18 A. My assistant manager of safety and operations was promoted to
19 my past title.

20 Q. And that would be Ms. Finsterbusch; is that correct?

21 A. That's correct.

22 Q. And did somebody take her position?

23 A. No.

24 Q. So then have any numbers changed within the safety structure,
25 marine safety structure at the company?

1 A. We have changed the title. As I said, we have distributed
2 different various responsibilities that I had where we felt that
3 certain people were capable of adding that to their services.
4 Also, we have a SQE coordinator now. We had changed her position
5 from what she was doing for operations and brought her strictly
6 into the safety group. And now we also have another SQE manager
7 as well, that we've employed last year.

8 Q. Does a new organizational chart of TOTE services exist?

9 A. Yes, sir.

10 Q. Okay, we will ask for that, to see that, please. Does -- we
11 don't need to see it now, but just in some date.

12 Do all crew members have access to the OMV, the operations
13 manual of the vessel?

14 A. Yes, sir.

15 Q. And what mode do they have access to that?

16 A. Typically by a computer that's on electronically that they'll
17 have in the crew area. Every ship is a little bit different but
18 everybody's to have access, whether it by paper or electronic
19 format.

20 Q. Great. Thank you. I don't want to revisit the total of what
21 was discussed about a crew member sleeping, but you did mention
22 confidentiality when the DPA is contacted. Did you mention
23 confidentiality?

24 A. I did.

25 Q. So if a crew member at sea has some kind of a problem with a

1 safety issue, at sea now, like maybe should go into a hurricane or
2 something like that, if they were concerned about something, how
3 would they contact the DPA at sea and what confidentiality would
4 they have?

5 A. Well, they could go through if they had communications
6 available to them on the vessel. I guess every case would be a
7 little bit different. Again, wherever they are, if they're within
8 -- if they have their own cell phone, or if they're allowed to use
9 the ship's satellite phone if they want to make a confidential
10 call. Again, every vessel is a little bit different as far as how
11 they contact me. But typically a DP, I'll get most of my
12 notifications from when they're ashore at certain times.

13 And I just want to throw out there, too, is that sometimes it
14 seems like we're confusing the designated person issue versus the
15 emergency response team, as well. If it's an emergency, you know,
16 they would basically notify an emergency response team through our
17 emergency number. The designated person really typically will be
18 getting those more of the confidential type calls there, at their
19 own convenience, usually.

20 Q. Okay. So at sea, I know you mentioned about cell phones or
21 whatever it was, if it would have to go through some kind of a
22 system where they were able to actually contact the company at
23 sea, as opposed to using their cell phone, cell phone towers?

24 A. Well, whichever means that they have available to them.

25 Q. Do you know with the satellite phone, where the satellite

1 phone receivers were, the handsets were on the *El Faro*?

2 A. No, I do not.

3 Q. Would it surprise you that there's one on the bridge and
4 there's one in the captain's office?

5 A. No, that's typical.

6 Q. Would you also be familiar with the policy of, as far as all
7 communications, satellite communications, phone call
8 communications, who they had to go through on the vessel?

9 MR. REID: Can you refer to the policy, please?

10 MR. KUCHARSKI: In testimony, other testimony, which we have.
11 I can produce it. I don't have the --

12 MR. REID: Captain, if you're going to ask him about the
13 policy, we'd like to see the policy, please.

14 MR. KUCHARSKI: Okay, then, let me rephrase the question.

15 BY MR. KUCHARSKI:

16 Q. Do you know if the crew members need to go through a master,
17 with the master, all communications on the vessel, satellite
18 communications?

19 A. Again, I'd have to see our actual policy on that.

20 Q. Okay. Thank you for that. The developing of the critical
21 equipment list, do you know if that's a shipboard or a shoreside
22 requisite by ISM?

23 A. I'd have to refer to the actual wording in the ISM.

24 MR. KUCHARSKI: Lieutenant Commander Yemma, could you pull up
25 Exhibit 394, please?

1 BY MR. KUCHARSKI:

2 Q. And Captain, let me know when you're ready.

3 A. Okay, ready.

4 Q. Section 10.3, does it say the company should identify?

5 A. Correct.

6 Q. Do you know if the AMOS or --

7 A. I'm sorry? What was the question?

8 MR. KUCHARSKI: I'm sorry, counselor, asked -- I'm sorry.

9 BY MR. KUCHARSKI:

10 Q. Are you -- AMOS, the planned maintenance or preventative
11 maintenance system to the ships, the *El Faro*, are you familiar
12 with the system?

13 A. I know of the system. I don't utilize it myself.

14 Q. Do you know if that identifies any critical equipment in
15 there?

16 A. That is normally where it would identify it.

17 Q. Yes, I don't want to bring you through. We can pull up AMOS
18 and you can show it where it is in there, but if you don't know,
19 then I don't want to drag you through that.

20 A. No, as I said, I do not utilize the system. Going back to my
21 audit, I did -- I would ask them to provide that to me, and show
22 me.

23 Q. Okay. This, the next process I'd like to go through is start
24 off with -- and it will involve the critical equipment, critical
25 operations. So we can start with, it'll be Exhibit 25, Section

1 15, starts at page 320.

2 CAPT NEUBAUER: A Mr. -- I think the book hit the microphone.
3 It's active.

4 MR. REID: Captain Kucharski, you're referring to 15.6,
5 Section 15.6, or something more than that?

6 MR. KUCHARSKI: Well, first sorry for cutting you off. No,
7 start off with Section 15. My exhibit shows page 320.

8 MR. REID: Okay.

9 BY MR. KUCHARSKI:

10 Q. Okay. So this section says, special and critical
11 events/operations/equipment. So I'm guessing by the title here,
12 it includes all of those?

13 A. All these in the sections, yes.

14 Q. Yes, sir. Okay. And Mr. Young asked you a little bit
15 earlier, and I think he -- I know he had asked Mr. Peterson
16 yesterday about risk assessment. He said we'd have to ask you.
17 Does risk assessment include -- do these operations, are they
18 included in risk assessment?

19 A. I would say so, yes.

20 Q. And you mentioned a simple formula for this risk assessment?
21 Do you --

22 A. It's in the management system. It's a frequency versus
23 severity formula. In addition to that, as we mentioned earlier,
24 we've got the job hazard analysis which would typically be
25 utilized for any type of major operation like these here.

1 Q. And were you able to locate that formula? I don't want to --
2 it's not a trick question. If you've already looked at it.

3 Otherwise, I -- how maybe a place -- it's not an OMV, but --

4 A. Yeah, I'd have to spend a little bit of time here looking for
5 it, but I find it -- I'll find it, if you need it.

6 Q. No, sir. Let me, let me -- and that's why -- and I apologize
7 for jumping. I'm not trying -- it's not trying to be a trick.

8 Because I did the word searches for this particular formula

9 yesterday in both the OMV and -- let's turn to the, Commander

10 Yemma and Captain Lawrence, Exhibit 026 now, and the -- emergency

11 preparedness manual, and that's page 38. And at the top it's

12 Section 4.2, Job Hazard Analysis and Risk Assessment.

13 A. That's correct.

14 Q. Okay. So down midway in the page, it says, simple formula --
15 looks like this. Do you see that?

16 A. Yes, sir.

17 Q. Is that the one we're talking about?

18 A. Yes, sir.

19 Q. So, explain how this works. Are there numbers involved in
20 here? It says a simple formula: risk equals high frequency times
21 consequence. How does this work?

22 A. I haven't used this myself as far as this formula. I do the
23 job hazard analysis when I'm looking at risk and, additionally,
24 now we have some different risk assessment tools since this, that
25 we have in place now based on feedback and audits over this past

1 year. But this formula is fairly subjective, but it's a well-
2 known formula. A lot of times we'll go with a risk -- a matrix of
3 some sort, too. But it's basically just what it says there.

4 Q. And the one you mentioned, which -- you know, the matrix or
5 whatever it was, do they assign numbers for these as a formula
6 does, or is it a color and -- you know, how does the matrix look?

7 A. We do now. We have a risk assessment process with -- as a
8 full tool. And it does have a matrix, it does have numbers
9 involved in it as well.

10 Q. Thank you for that. Very, very helpful. Thank you.

11 So now we're back to -- sorry to make you jump but that's why
12 I was able to find that particular passage of the simple formula
13 that you mentioned yesterday. So, if we could go back now please
14 to Exhibit 25. And the section -- now it will be 15.5, please.
15 And that's at page 322.

16 A. I see it.

17 Q. And this section talks about critical operations as opposed
18 to critical equipment. Would you agree there it says critical
19 operations?

20 A. Yes, sir.

21 Q. Okay. And page 323, at the very top, there's written
22 language before we get into what looks like a table, and it talks
23 about a checklist. A modification has been made to the checklist
24 procedure to allow on-board modification to the checklist. Do you
25 see that wording?

1 A. Yes, sir.

2 Q. Okay. So if I understand correctly, this is a table, it's in
3 this critical operations section. And then the table below it
4 says special/critical operations, and listed in there is, secure
5 the vessel for sea on departure. You see that on the very bottom
6 of that table?

7 A. Yes, sir.

8 Q. So, is there any kind of a checklist or any -- is there any
9 procedure that the vessel has, a written procedure for a secure
10 vessel for sea on departure?

11 A. I'd have to refer to the sections that actually reference
12 this here.

13 Q. And a little bit further down, underneath the table, there's
14 again, there's a paragraph. And then it talks about operations to
15 be determined by the master, chief engineer, or the ISM committee;
16 do you see that wording?

17 A. Yes, sir.

18 Q. And who was in the ISM committee? Can you tell us?

19 A. I'd have to look at the definition. But it's typically the
20 master and another senior officer, typically -- there's
21 recommendations of who should be on it, but it's the master,
22 another senior officer, usually the chief engineer, and at least
23 two crew members would be on the ISM committee.

24 Q. Not to be picky, crew members ratings or unlicensed that --

25 A. That's correct, unlicensed. And they recommend senior crew

1 members, typically, the boson and possibly the steward.

2 Q. Thank you. Very helpful. A little bit further down, the
3 second to the last sentence in there talks about a special binder.
4 Do you see that?

5 A. Yes, sir.

6 Q. It goes on to say, "Shall be instituted to hold these
7 procedures." Do you know if the *El Faro* had a specific binder for
8 these?

9 A. I do not know. I would expect they did since that says they
10 should have one, but it's not something that I've seen myself
11 during the audit.

12 Q. Well, maybe -- it says, the last sentence says this binder
13 will be reviewed at the annual audit.

14 A. You are correct.

15 Q. So do you recollect -- I'm going to pull up the audit in a
16 second here. But down in that section, I just happen to see it
17 now, you did an annual audit.

18 A. To be honest with you, I don't remember seeing that specific
19 line. But I review all of the binders as part of the audit, like
20 I said in the audit, all specific binders that would be associated
21 with the safety management system, I would typically go through,
22 either at that point there or prior to the audit, many of the
23 records that they have send in to us in the office. So I would
24 say that I probably did see that, but I can't recollect that I
25 specifically looked for that exact document or binder.

1 Q. Great. Thank you for that. Now we're going to go down a
2 little bit further, and I'm going to start in the 15.6, which is
3 the critical equipment. And I know Mr. Young has asked you a
4 number of questions, but mine will specifically concentrate on the
5 very last sentence on page 324 -- well, it may not be the -- yeah,
6 it's in the sentence. It says, "The list above will be expanded
7 as a result of lessons learned, through vessel audits, and from
8 suggestions submitted from the vessel.

9 Do you know if this list has been expanded?

10 A. It has now, yes, sir.

11 Q. So at the time of the *El Faro* incident, was there anything
12 besides lube oil pressure, loss of steering, and loss of
13 electrical power from blackout?

14 A. I can't recall.

15 Q. Do you -- in the -- did you collect any of these binders at
16 all, or did the ships send any of the binder information for any
17 of the other ships?

18 A. Not that I recall. We didn't require them to send that
19 information.

20 Q. Okay. So now if you would please -- internal audit. That's
21 Exhibit 3.11. Let's go to the last page, please.

22 A. I'm sorry? I guess I'm there.

23 Q. I'm sorry. I just wanted to make sure you were ready to go
24 through the question. So it's item number 2, under observations,
25 OVM 15.6 was discussed. The ship is to put in place a, in quotes,

1 "ship specific," end of quote, critical equipment list.

2 So this was June 4, 2015. I believe this audit was performed
3 in March, I guess, was it?

4 A. That's correct. I think March 3rd.

5 Q. So from that audit, did you see any -- up until then, until
6 the time of the sinking, did you see ship-specific critical
7 equipment lists submitted?

8 A. As I said, this wasn't a finding. I listed it as an
9 observation. So it was the ship's responsibility to do that
10 internally, to give the ship-specific additions to the critical
11 equipment list.

12 I actually took a look last night, trying to find emails
13 because I thought I did -- seeing this question was also asked
14 yesterday, I thought I had seen the response from the chief
15 engineer to follow up on this observation with me. I do -- I had
16 remembered, and I thought it was this vessel, and I -- because
17 it's a question that I ask on most of my audits. And I could not
18 find that email. It may be long gone.

19 Q. And going back to that requirement of the ISM, which was the
20 very first exhibit that I asked to call up. We can look at it
21 again. The ISM requirement to have these critical equipment
22 lists, do you know long it's been in effect?

23 A. I do not know how long it's been in effect.

24 Q. Let's look now please at Exhibit 26.6, and its Section 9.7,
25 and that is page 163. And for the record, the section that I'm

1 looking at is Section 9.7. It says Roll-on/Roll-off vessels.

2 A. I have that.

3 Q. So the third paragraph down says, because of the extent the
4 space is in question, watertight doors shall be closed -- do you
5 see that -- during navigation except when necessary. Do you see
6 that, sir?

7 A. Yes, sir.

8 Q. The opening and closing of such doors must be recorded in the
9 logbook. Do you see that?

10 A. Yes, sir.

11 Q. So when you did your audits, did you ever see the opening and
12 closing of watertight doors logged in the logbook at sea?

13 A. I don't recall looking specifically in the logbook for that
14 entry.

15 Q. Would opening and closing scuttles be a watertight opening
16 that would be, in your opinion, would be included in this policy?

17 MR. BENNETT: Excuse me. I think the -- it said watertight
18 doors.

19 BY MR. KUCHARSKI:

20 Q. Sorry. My question was, would you think scuttles would also
21 be included in this policy?

22 A. I might -- again, I would think that it would include -- a
23 watertight door could be defined in different ways. It's
24 obviously something that should remain watertight while at sea.

25 In hindsight, looking at the scuttle, I would feel that that would

1 be also in this definition.

2 Q. Thank you for your candor, Captain. Paragraph 4, please, the
3 second sentence, which says, special patrols -- starts off. I'll
4 read the whole sentence: "Special patrols should be carried out
5 at regular intervals through the voyage to ensure that all
6 lashings are secure." Do you see that sentence, sir?

7 A. Yes, sir.

8 Q. Okay. Okay, what -- do you know what special patrols were on
9 the *El Faro* to check that?

10 A. No, sir. I'm not -- that would be an on-board function and
11 I'm not aware of that.

12 Q. Would you have the opinion what regular intervals are? Would
13 that be night, day? Would it be --

14 A. I wouldn't speculate on that. I think every situation is
15 different depending on the round of the vessel, or the type of
16 vessel.

17 Q. Okay, Captain, we're going to shift gears a little bit and
18 talk about emergency response, if you will. And dip into the
19 emergency response of the shore side -- I think it's called the
20 ERT, and seeing how all the pieces fit.

21 A. Okay.

22 Q. But first off, I'd like to ask you of the company emergency
23 response team, the ERT I believe it is. And we will spend a
24 little time in Exhibit 385, and that's the Emergency Response
25 Manual. And I'll read across the top. It says, "TOTE Services

1 Inc., Emergency Response Team, Emergency Response Manual. Are you
2 familiar with that document, sir?

3 A. Yes, sir.

4 Q. So the first question is this, the emergency response team,
5 is that a shoreside team?

6 A. Yes, sir.

7 Q. And the very first question is, does the ship have access to
8 this manual? Do they actually see it?

9 A. I believe they do now, but not all vessels did have access in
10 the past.

11 Q. The emergency response team, tell me how it's structured
12 here. The ship, if they have an emergency, their first point of
13 contact is the DPA or the responsible person, and then this
14 emergency response team is stood up?

15 A. Yes. Let me just go back once, too, on my previous answer.
16 The emergency response team is in the -- in our manuals as well.
17 So they won't have access to this. This has all the various
18 numbers of different ports and then additional information. But
19 the actual emergency response team members and contact numbers is
20 -- all the vessels have that. Just to clarify that.

21 As far as -- and I'm sorry, what was your question on this
22 again?

23 Q. No, that was great, that clarification. Very helpful.

24 So but the emergency response team, shoreside members, in
25 your -- when you stand up this emergency response team, do you

1 have a computer loaded up with CargoMax and the stability program
2 to the vessel?

3 A. I do not. No, sir.

4 Q. Does any member of the emergency response team have that
5 computer?

6 A. It would be available to any member on request.

7 Q. Do you know yourself, or any members of the emergency
8 response team, do they have any training in the CargoMax stability
9 computer?

10 A. I'm not sure who on the team may or may not have it. I do
11 not.

12 Q. Have you ever seen the CargoMax program?

13 A. No, sir.

14 Q. Do you or any members of your team have actual shipboard
15 damage control experience or training?

16 A. If you're speaking to a specific course, I'm not aware of any
17 specific course. But I'd have to speak to each member to see if
18 they're -- they're all extremely experienced, mostly ex-mariners,
19 on the team, and like I said, I'd have to basically poll them to
20 see exactly what previous training they've had throughout their
21 careers.

22 Q. Does your station bill for the vessel, the assignments for
23 the personnel, actually have a damage control component in it?
24 Their assignments?

25 A. I'd have to review the station bill.

1 Q. So you mentioned that the ship would not have access to this
2 full manual but some of the contact numbers they would have access
3 to; is that correct?

4 A. That's correct. They have the full instructions of how to
5 report an emergency shore side.

6 Q. So let's look at page 11 and at the very bottom, there's a
7 table -- well, there's a table that sort of runs on, and -- but by
8 the table it has salvage and marine firefighting. Do you see
9 that?

10 A. Yes, sir.

11 Q. And then it that has companies: T&T Salvage, Resolve
12 Salvage, Fire Marine Response Alliance, and DONJON-SMIT. Do you
13 see on these?

14 A. Yes, sir.

15 Q. And the telephone numbers there. So my question is, does the
16 vessel have this particular list to contact?

17 A. I don't believe so. This would be more of a shoreside
18 function.

19 Q. So to understand how this all feeds in with emergency
20 response -- I guess, if there is an emergency, the vessel needs
21 assistance, if they don't have these numbers, who are they calling
22 then? Are they calling you or the DPA, or the responsible --

23 A. They're calling our emergency response number, which would go
24 to the call center and would be texted at this point back to the
25 incident. The emergency call center would send a text to

1 everybody on the emergency response team, basically a series of
2 functions that would ensure that somebody responds. Then they
3 would begin -- once they send the text, then the call center would
4 begin calling down the list of our emergency response team
5 members, starting from the top of the list.

6 And the way we have the list is I would be on the top of the
7 list as the emergency response team coordinator. And then it
8 would go down the list, as far as who I would want the call to go
9 to next. And basically, go all the way to the bottom of the list
10 with assurance that somebody would answer within that period of
11 time.

12 They also have access obviously to my DPA number, my cell
13 phone, which is posted on all the ships. So that's actually what
14 Captain Davidson had done, knowing that I'm the emergency response
15 team head and also the DP, he called my cell phone first before he
16 would call that call center number. And then, I've instructed the
17 vessels through that time, I said, in certain situations, because
18 you have go through a middle person there, if you want to try,
19 depending on -- if you want to call my cell phone first, you're
20 allowed to do so.

21 Q. And Captain Davidson contacted you close to 7 a.m., somewhere
22 in that vicinity. Is that correct?

23 A. It was 7 a.m. Yes, sir.

24 Q. And they were experiencing difficulties back roughly 5 a.m.,
25 5 time frame, 5 to 5:30?

1 A. Yes, sir. According to the VDR, yes.

2 Q. These particular companies, are they for salvage or are they
3 -- the ones listed at the bottom there, are they for salvage or
4 are they to, for you to use and find out if the vessel has a
5 problem with stability or issues with flooding or listing, would
6 they also be used for that, or is it pure salvage? So I have idea
7 what it's --

8 A. I'm not -- could you, you know, ask that question again? I'm
9 not quite clear exactly what you're asking, what you're looking
10 for there as far as the capabilities.

11 Q. So would this be sort of after the fact, a salvage situation,
12 where maybe the vessel is grounded or something like that and you
13 need to move it, or would they have the knowledge, these
14 particular companies, to call with knowledge about the *El Faro*, to
15 say, "Hey, we've got a problem here. We've got flooding. We've
16 got list. Can you help us out?" Can they help the master out to
17 find out what's -- how he can save the ship, he or she?

18 A. Well, obviously, that first call would go to the Coast Guard,
19 and with their assets. But this is actually a requirement. We
20 have all these companies on contract, on retainer. And it's --
21 that's actually -- it's a requirement. Sorry. It's a requirement
22 for our oil spill response plans, that you have a contract with a
23 salvage company, and that you have to notify them within a certain
24 period of time once you have an oil spill, within hours -- an hour
25 I think it is, or 2 hours. So that's -- so we had them available

1 here, obviously, with the capabilities for anything else they do
2 in the salvage world. And I think they have all the capabilities
3 that you mentioned yourself there.

4 So my plan was, immediately after contacting and talking with
5 the Coast Guard -- and actually the Coast Guard recommended it as
6 well when I spoke to them, asking if we had a salvage team on
7 contract. And then I said that we'd be calling them as soon as I
8 hung up with the Coast Guard. And the salvage team immediately
9 looked at all available assets in the area. I basically put them
10 on notice, is what I did when I called them. I said, I'm putting
11 you on -- you know, if we're familiar with people, obviously we
12 have them on contract. We know their capabilities. And so I gave
13 them a call and told them the situation and the certainties at the
14 time. But so they immediately began -- not mobilizing at the
15 time, but actually began to see what assets they would have
16 available to get to the area or in the area. So that's how we
17 began with that.

18 Q. Great. Thank you for the explanation.

19 Do any of these companies, T&T Salvage, for example, on the
20 list here, do they have the plans of the vessel, any potential
21 downflooding points, the stability manual of the vessel? Do they
22 all -- do they have all that?

23 A. I'm not sure exactly what they have. Again, they work with
24 our -- they actually were working, once the incident response
25 began. We also activated our RRDA, the rapid response damage

1 assessment, ABS, and they worked together with them as well. So
2 together they had many of those plans available.

3 And as part of our incident response team, I actually
4 assigned somebody to be in charge of the contacts, actually Lee
5 Peterson, with the -- with the salvage company, and to work with
6 them and to basically oversee that section of the response. And
7 they were part of our response incident command right up until the
8 end, until we closed down the incident command, days later.

9 Q. So this was all put into effect after the 7 a.m. call from
10 Captain Davidson?

11 MR. REID: What do -- what do you mean by put in effect?

12 BY MR. KUCHARSKI:

13 Q. All the phone calls? You made phone calls out to contact
14 these different entities you mentioned, Lloyd's, RRDA, and --

15 A. Yes, that's correct.

16 Q. Just a couple of brief questions about the RRDA. Was this a
17 required service? You mentioned these other ones here, the oil
18 spill response -- yeah, oil response plan, and you're required to
19 have them. Was the RRDA a requirement?

20 A. It's not a regulatory requirement but it's a requirement of
21 our company. We made it a requirement for our individual company.

22 Q. And why was it you chose -- if you have these salvage
23 companies, why was it you chose to use the RRDA, add that to the
24 list?

25 A. I'm not sure -- I don't know if I understand your question

1 fully.

2 Q. Okay. You said it was not a requirement, a regulatory
3 requirement, but a company requirement. Why did the company
4 require having the RRDA?

5 A. That was -- that decision was made by the executive
6 management and I didn't get involved in that. But obviously,
7 based on their capabilities and possible past relationships, and
8 the knowledge of what they could do in an emergency.

9 Q. And do you know if Lloyd's has all the plans in the vessel,
10 and do you know if they have all the information there on hand? I
11 meant ABS. Did I say Lloyd's? Sorry.

12 A. Again, I'm not directly familiar with exactly all of the
13 plans, all the plans and all the information they had.

14 Q. Okay. I would like to move off of this particular topic.
15 But it has to do with stability sort of. So let's look at OMV --
16 that's Exhibit 25, page 229.

17 And Captain, I have a line of questions here that's more
18 follow-on in another section. Would you like to take a break at
19 this time?

20 A. I think so, yes, please.

21 CAPT NEUBAUER: The hearing will now recess and reconvene at
22 11:00.

23 (Off the record at 10:46 a.m.)

24 (On the record at 11:01 a.m.)

25 CAPT NEUBAUER: The hearing is now back in session.

1 TOTE, do you have a follow-up question you'd like ask Captain
2 Lawrence?

3 MR. REID: Yes, sir.

4 Just for clarity, Captain Kucharski asked you about
5 watertight doors and whether that was -- you considered, also
6 considered those to be scuttles in that part of the manual. Is it
7 fair to say that what you were trying to convey is that in terms
8 of watertight integrity, watertight doors and the scuttles are
9 both important but not necessarily that a watertight door or a
10 scuttle can be considered a watertight door?

11 THE WITNESS: That's correct.

12 MR. REID: And for the sake of the clarity of the record,
13 Captain Lawrence was asked an operational question about that
14 section. The prior testimony from other witnesses is that the
15 watertight doors are just those, the watertight doors, the large
16 watertight doors on the Ro-Ro ships that are logged.

17 And I would point out section 10.13.7.3 of the operations
18 manual for vessel, which is Exhibit 25, makes a distinction
19 between scuttles and watertight doors, and says, the chief officer
20 shall be responsible that all watertight doors and hatches are
21 secure. Hatches is another word for watertight -- for scuttles.
22 Section 13.4, another distinction between watertight doors and
23 hatches, 13.4 of the OMV, which states in part all watertight
24 doors and hatches are to be properly secured for sea prior to
25 departure.

1 So I don't want to get any confusion about the difference
2 between a watertight door and a hatch. Thank you.

3 CAPT NEUBAUER: Thank you.

4 Mr. Young.

5 MR. YOUNG: Thank you Captain.

6 BY MR. YOUNG:

7 Q. Captain Lawrence, just one follow-up question regarding the
8 risk assessment matrix that has been updated. How would a crew
9 member locate this new updated matrix within the safety management
10 system to perform a risk assessment?

11 A. It is now part of the safety management system.

12 Q. Can you be more specific as to what section of the safety
13 management system you're referring to?

14 A. I'd have to take a look and see exactly in there. I mean,
15 sent it out as an operations memo with the new risk assessment for
16 that type of risk assessment procedure and tool, actually -- I'd
17 say more than a procedure -- is a tool that they can utilize. And
18 it had a number of risk assessments that were pre-calculated, pre-
19 done by ourselves in the office as well, by a team, and actually
20 with a consultant as well. And so we had actually sent that out
21 as a number of examples of risk assessment and then explained to
22 the vessel how to utilize this risk assessment tool and
23 recommended that they utilize it, you know, for on board risk
24 assessment exercises.

25 Q. So to be clear, it would be an additional policy or procedure

1 in addition to the OMV or the EPMV, it would be included in the
2 ops memo section?

3 A. It was included in the ops memo section. It has since been
4 incorporated into the actual OMV, either the OMV or the EPMV. I'd
5 have to take a look in which one, but -- as I said earlier, most
6 of our -- a majority of our ops memos and anything that relates to
7 a change in procedure or policy will eventually be incorporated
8 into our actual manual at the next revision. We had just
9 completed a next revision at the end of this past year, so it was
10 incorporated into it at that time.

11 If I can make one other clarification because we talked about
12 the risk assessment. And the question was asked to me if the
13 existing risk assessment procedure, that the formula that's in
14 there -- and I had mentioned that I don't necessarily utilize that
15 formula. That formula was in there as far as the, you know, the
16 risk versus severity, that was in there for years before my time
17 of coming to the company. It's been part of -- it's another tool
18 to use. There's many -- as I mentioned before, there's many risk
19 assessment tools are available to the crew. Such as the job
20 hazard analysis, there's a voyage planning, there's that formula
21 there. And, you know, bottom line is that since risk assessment
22 was entered into the ISM requirements, this safety management
23 system has been audited many times, especially towards the
24 requirements of risk assessment. And, you know, it's always been
25 said that we're at full compliance with our risk assessment

1 procedures.

2 Q. Thank you for that clarification. And so just to be clear,
3 the OMV has been updated at the end of 2016?

4 A. That's correct.

5 Q. And it includes the updated risk assessment?

6 A. Yes, sir.

7 Q. Okay, thank you for that clarification.

8 CAPT NEUBAUER: Mr. Kucharski.

9 BY MR. KUCHARSKI:

10 Q. Yes, sir. I'd like to go back to Captain Lawrence and
11 counsel, the characterizations of scuttles as hatches. Is that in
12 somewhere in -- Captain Lawrence, in the OMV where it says,
13 scuttles are hatches, or is that interpretation that a scuttle is
14 a hatch? You actually see wording that it says that, or is that
15 counsel saying that scuttle is a hatch?

16 A. It doesn't specifically say the scuttle. It says watertight
17 doors and hatches. I would consider the scuttle to be a hatch, is
18 what we're saying, what we're saying there.

19 Q. Okay, great. Thank you. Thank you, that's very helpful
20 because the scuttle was blown open. We need to understand the
21 watertight door policy and the scuttle. So --

22 MR. BENNETT: Excuse me. You've made the characterization
23 that it was blown open, but it could have also been inadvertently
24 left open by a crew member late at night, correct?

25 MR. KUCHARSKI: I'm not going to say that. But what the --

1 MR. BENNETT: Well, then don't use blown open in your
2 question.

3 BY MR. KUCHARSKI:

4 Q. What did Captain Davidson report to you?

5 A. I'd have to look at the VDR transcript.

6 Q. So let's go through section that Mr. Reid actually mentioned,
7 10.13.7.3. That's Exhibit 25 again, and it's page 229.

8 A. Yes, sir.

9 Q And down towards the, towards the end of the -- well, I guess
10 it's the middle. It says where, "Master must positively determine
11 the source of the list/trim." Do you see that?

12 A. Yes, sir.

13 Q. And then it talks about, the next sentence, "If the master
14 determines that the uncontrollable list/trim does not present a
15 danger to the intended passage, he/she must contact the operations
16 department and/or TSI manager of safety and operations to discuss
17 the situation before letting go of the lines." Do you see that?

18 A. Yes, sir.

19 Q. Has -- have any of the masters contacted you or to your
20 knowledge any of the operations department for a situation like
21 this?

22 A. Not that I'm aware of.

23 Q. Is there any passage in the manual, the OMV, which talks
24 about a vessel incurring an uncontrollable list, or list over 2
25 degrees, as far as contact -- is there any directive to contact

1 the company when that situation occurs at sea?

2 A. I can't readily recall.

3 Q. Did you as the safety manager -- I'm sorry, I'm paraphrasing.
4 You can correct me if -- but as safety manager, did you ever
5 discuss any implications of leaving the cargo hold fire dampers
6 open at sea?

7 A. No, sir.

8 Q. The monitoring the ships, monitoring the ships at sea, was
9 there any -- in heavy weather or hurricane season, when the ships
10 enter into heavy weather, was there any process in place to
11 monitor the TOTE ships, as they operated in and around heavy
12 weather?

13 A. No specific procedure that I'm aware of.

14 Q. Was there a process in place for any of the other companies
15 that TSI manages, which includes monitoring the ships and weather
16 information?

17 MR. REID: Can you be clear about who, what companies you're
18 referring to, please, sir?

19 BY MR. KUCHARSKI:

20 Q. Any of -- any companies except for Sea Star, the TOTE vessels
21 running to Alaska or the vessels on the Puerto Rican run, the Sea
22 Star vessels; TOTE manages, I believe, vessels for a number of
23 other companies; is that correct, or the government?

24 A. I'm not familiar with any specific procedures that require
25 that.

1 Q. Is there any process in place now for TOTE to monitor the
2 vessels as far as when -- hurricane season goes? Is there
3 anything like that?

4 A. Yes, sir.

5 Q. And last question, is there a port captain or somebody that
6 is assigned that type of position, either temporarily or a
7 permanent position; to monitor the vessels? Or who monitors the
8 vessels?

9 MR. REID: Sir, when you ask who monitors the vessels, can
10 you be more specifics?

11 BY MR. KUCHARSKI:

12 Q. Is -- yes. Yes, sir. Is it a particular person or title of
13 a person or is it yourself? Who -- is someone assigned to
14 actually do that?

15 A. I would oversee that process to ensure that it's being
16 conducted.

17 Q. Okay, and your oversight would have someone beneath you that
18 actually monitors the vessel?

19 A. It's in a case-by-case situation depending on the weather the
20 vessel's approaching.

21 Q. Okay, thank you. Thank you for that. I guess I sort of lied
22 or was mistaken, but I do have one more question.

23 During Tropical Storm Erica there were a number of emails
24 back and -- at least one email to the ship from yourself, to the
25 master asking about what the procedures were. Do you recollect

1 the -- there was an exchange, if you will?

2 A. Yes, I do.

3 Q. I want to ask you some specifics about that, but the -- why
4 did you become involved with the *El Faro* during Erica, and prior
5 to the sinking of the *El Faro* during Joaquin, there wasn't the
6 same involvement that we can see in the emails? Was any reason
7 for that?

8 A. Well, I answered those questions in my previous testimony.
9 Do you want me to repeat that?

10 Q. No, if you're sure you answered them all. I'm fine with
11 that. Yeah, I don't want to -- thank you.

12 MR. KUCHARSKI: Thank you Captain.

13 THE WITNESS: Thank you.

14 CAPT NEUBAUER: Captain Lawrence, I just have one follow-up
15 question from the testimony.

16 BY CAPT NEUBAUER:

17 Q. In regards to the salver that TOTE had contract with on the
18 morning of the incident, were there any services that salver could
19 have provided to *El Faro* from shore?

20 A. Could you explain "at the time of the incident"? I mean --

21 Q. Yes, sir. Just the salver that was involved with the *El*
22 *Faro*, at least looking at the incident?

23 A. Well, they did provide services to us throughout the incident
24 right up to the end. But at the exact time they had -- there was
25 no equipment, that there was no Coast Guard equipment. There was

1 nothing for at least a day that could even get into the area due
2 to the storm.

3 Q. Did that salver have a technical advisor available that could
4 have provided advice to the *El Faro* in regards to the stability or
5 damage control?

6 A. I'd have to check. I believe they do have that expertise
7 because they were working in tandem with the rapid response damage
8 assessment team as well. So they have a wide array of expertise
9 in the salvage groups that's -- that's required.

10 CAPT NEUBAUER: At this time I'd like to go to the parties in
11 interests, and this will be the final line of questioning.

12 TOTE?

13 BY MR. REID:

14 Q. Captain Lawrence, you were, Mr. Fawcett asked you a number of
15 questions about the incident that was reported to you regarding a
16 watchstander that sleeping on watch. This former crew member who
17 was terminated by TOTE contacted you directly. Is that not
18 correct?

19 A. That's correct, by text.

20 Q. And he had your phone number?

21 A. That's correct.

22 Q. And is that probably because your phone number is all over
23 every vessel that TOTE services and manages?

24 A. That's correct.

25 Q. And when you received the picture, you couldn't determine

1 whether this picture of this watchstander -- or whether it was a
2 watchstander or when it was taken. It could have been taken years
3 earlier as far as you know. Correct?

4 A. That's correct.

5 Q. And you didn't even know if the person was on watch when you
6 saw that picture because there could have been another
7 watchstander, and he could have just been up on the bridge. Is
8 that not correct?

9 A. That's correct.

10 Q. And you needed to look into this matter further, correct?

11 A. Correct.

12 Q. And that's exactly what happened?

13 A. Yes, sir.

14 Q. The company verified that it happened?

15 A. Yes, sir.

16 Q. And the company demoted the officer; isn't that right?

17 A. That's correct.

18 Q. And so in your opinion, did the safety management system work
19 by virtue of a crew member reporting directly to you something
20 that was a problem and was ultimately corrected?

21 A. That's correct. Yes, it did.

22 MR. REID: May I take a minute, sir?

23 CAPT NEUBAUER: Yes, sir. Do you want to take a recess or
24 just --

25 MR. REID: We'll take 5 minutes, sir.

1 CAPT NEUBAUER: The hearing will recess and reconvene at
2 11:25.

3 (Off the record at 11:19 a.m.)

4 (On the record at 11:26 a.m.)

5 CAPT NEUBAUER: The hearing is now back in session. We'll be
6 continuing on with the questioning from TOTE.

7 MR. REID: Thank you sir.

8 BY MR. REID:

9 Q. So, Captain Davidson, yesterday Mr. Peterson was asked about
10 -- no, yesterday Mr. Peterson was asked about your span of control
11 -- I believe it was yesterday -- in that you had a certain number
12 of vessels under management. And how many vessels do you have
13 under management?

14 A. Twenty-four vessels. Actually 10 of those vessels were the
15 MARAD vessels there, which are not actively in operation; 10 or
16 less people usually on those vessels. So 10 fully active -- 14
17 fully active vessels.

18 Q. Okay. And at your last company how many vessels -- when you
19 were the designated person, how many vessels did you have under
20 management?

21 A. I think we had 78 vessels.

22 Q. Okay. And based on your experience managing the vessels for
23 TOTE Services, do you believe that your span of control is
24 adequate in terms of having visibility of -- over the program?

25 A. Yes, I do.

1 Q. You were also asked questions or there were other questions
2 during these hearings about whether shore side knows where the
3 vessel is at various times and it's been characterized as that --
4 by some that, you know, there's only a noon report and that's the
5 only type of communication. Do you receive, and others at the
6 company receive, departure reports?

7 A. Yes, we do.

8 Q. And do you receive noon reports?

9 A. Yes, sir.

10 Q. And do you receive arrival reports?

11 A. Yes, sir.

12 Q. And isn't it true that others at the company will receive
13 communications when the vessel leaves the dock by telephone or
14 text?

15 A. Yes, sir.

16 Q. Could we pull up the exhibit on critical equipment, please,
17 which I believe is 3- --

18 MR. REID: Lieutenant Commander Yemma, do you have that
19 exhibit number? It's 394.

20 BY MR. REID:

21 Q. So, Captain Lawrence, the critical equipment, the definition
22 of critical equipment is "equipment and technical systems, the
23 sudden operational failure of which may result in hazardous
24 situations." Okay, is that your understanding of what critical
25 equipment is as it's used in the ISM?

1 A. Yes, sir.

2 Q. Okay. And do you have some examples of things that might be
3 critical equipment?

4 A. Yes, sir.

5 Q. So steering might be critical equipment?

6 A. Yes, steering, main engines, the anchors, emergency
7 generators, are examples.

8 Q. So, and the key there is that these are systems that the
9 sudden operational failure of which may result in a hazardous
10 situation; is that correct?

11 A. That's correct.

12 Q. So if you lost steering while you were in a channel, that
13 would be a hazardous situation, correct?

14 A. Yes, sir.

15 Q. If you lost propulsion in a situation, that might be a
16 hazardous conditions, correct?

17 A. Correct.

18 Q. Thank you.

19 MR. REID: No further questions.

20 CAPT NEUBAUER: Mrs. Davidson?

21 MR. BENNETT: Yes, Captain, thank you.

22 BY MR. BENNETT:

23 Q. Captain Lawrence, can you turn to Exhibit 25, page 229, which
24 is 10.13.7.2, entitled, Vessel Safe for Sea.

25 A. I have it.

1 Q. Within that paragraph, it says that the chief officer shall
2 be responsible that all watertight doors and hatches are secure,
3 correct?

4 A. Correct.

5 Q. And when it says chief officer, does that equate to chief
6 mate?

7 A. Yes, sir.

8 Q. A quick search on Dictionary.com shows that a scuttle's
9 defined as an nautical term meaning "small hatch or port in the
10 deck." Do you agree with that definition?

11 A. Yes, sir.

12 Q. And you read the VDR, correct?

13 A. Yes, sir.

14 Q. And the captain on several occasions directs the chief mate
15 to go secure the deck, correct?

16 A. Correct.

17 Q. And the second mate is also noted on the VDR to say that she
18 saw the boson and the crew out on deck, correct?

19 A. Yes, sir.

20 Q. If you could turn to the VDR transcript, which is Exhibit
21 266. If you could turn to page 467 of the document. It's
22 actually 466; it's time stamped 06:54:33.

23 And it says, quote -- it's the captain speaking with a
24 question mark, quote, "Now a scuttle was left open or popped open
25 or whatever," end quote.

1 Do you recall Captain Davidson telling you that in his
2 telephone call to you?

3 A. I'm sorry. Yes, sir.

4 Q. During the examination by Mr. Fawcett, he had asked you some
5 questions yesterday about the turnover of the watch of from the
6 second mate to the chief mate and whether you would have advised
7 your relief about the flashes that she saw. Do you recall that
8 testimony?

9 A. Yes, sir.

10 Q. Can you turn to page 354, timestamp 03:44:37.5. Let me know
11 when you're there.

12 A. We're here.

13 Q. That indicates that there was a conversation between the
14 second mate and the chief mate at 3:44. That's basically to
15 turnover the watch, correct?

16 A. That's correct.

17 Q. And those who listened to the VDR put in brackets stating
18 that there was an unintelligible conversation between the second
19 mate and the chief mate. The only detectable words were spoken by
20 the second mate, quote, "called the captain," end quote. And that
21 conversation lasted for about a minute and a half, correct?

22 A. That's correct.

23 Q. So it appears, although it wasn't transcribed, that the
24 second mate, over the course of about a minute and a half was
25 advising the chief mate what she observed and what happened during

1 her watch, correct?

2 A. Correct.

3 Q. And this was a very experienced second mate who had sailed on
4 the *El Faro*. It was an experienced chief mate. And can we assume
5 from that minute and a half conversation that she was advising the
6 chief mate what actually happened, including possibly telling him
7 about the light flashes?

8 A. That's possible.

9 MR. BENNETT: Thank you Captain. No further questions.

10 CAPT NEUBAUER: Okay. ABS.

11 MR. WHITE: No questions, Captain. Thank you for your
12 testimony.

13 CAPT NEUBAUER: Mr. Kucharski.

14 BY MR. KUCHARSKI:

15 Q. Yes, sir, one more question, Captain Lawrence. We're again
16 at Exhibit 25, page 322, where it talks about drills.

17 A. Yes, sir, I'm there.

18 Q. Could you give us a rundown of the type of drills that you
19 held while you were there?

20 A. I'm sorry, I have to read through this first and see what
21 drills we're talking about. If you could give me a second?

22 Q. Yes, sir.

23 A. Yeah, these are our annual drills that we combine with
24 actually a security drill, as well -- emergency drill and security
25 drill that we hold typically near the end of each year, usually

1 November/December period. And we coordinate that with each
2 individual vessel, notify them, and to discuss -- have them
3 actually come up with different scenarios to incorporate certain
4 elements that they would need in the drill. And then once we
5 decide upon it with each other, then the drill is conducted.

6 Q. And you do one per vessel annually; is that correct?

7 A. Yes, sir.

8 Q. And your time at TSI, do you recollect any drills where there
9 was a flooding scenario?

10 A. I don't -- I don't recollect that.

11 Q. And the last sentence of paragraph -- I'm sorry -- Section
12 15.4 says, "Comments and findings for the vessel are essential in
13 pinpointing shortcomings with the system and areas where
14 improvement is needed." Do you see that sentence?

15 A. Yes, sir.

16 Q. Have any comments and findings from the vessel get submitted
17 on these?

18 A. I'm sorry, say again. Been submitted?

19 Q. Yes, to pinpoint the shortcomings to see whether -- have any
20 comments or findings, tell me about that process. Is there a
21 process where they're submitted to the company? How does that
22 work?

23 A. At the completion of the drill the vessel does submit an
24 email, a recap of the drill and, basically what it says in there,
25 any type of shortcomings or any issues that they had, that they --

1 you know, and then we address those.

2 Q. And do you keep that record, the emails with the comments or
3 the findings?

4 A. It is kept in the office, yes.

5 MR. KUCHARSKI: Thank you, we'll ask for that as a
6 submission. Thank you. Thank you for patience, both of you.
7 Thank you.

8 CAPT NEUBAUER: Are there any final question for Captain
9 Lawrence at this time?

10 MR. REID: I have one sir.

11 CAPT NEUBAUER: Go.

12 BY MR. REID:

13 Q. Captain Lawrence, yesterday you were asked about your
14 receiving a call from Captain Davidson. Do you recall that?

15 A. Yes, sir.

16 Q. And although you testified that you had initially
17 underestimated the seriousness of the situation that the *El Faro*
18 was in, and in your conversation with Captain Davidson -- isn't it
19 true that after you got off the phone with Captain Davidson, you
20 immediately contacted the Coast Guard and you immediately
21 contacted your salvage contractor and activated your emergency
22 response system and harnessed all of the resources that were
23 available for the company to immediately respond?

24 A. Yes, sir.

25 MR. REID: No further questions, sir.

1 CAPT NEUBAUER: Captain Lawrence, you are now released as a
2 witness at this Marine Board of Investigation. Thank you for your
3 testimony over two sessions and your cooperation. If I later
4 determine that this Board needs additional information from you, I
5 will contact you through your counsel. If you have questions
6 about this investigation, you may contact the Marine Court
7 Recorder, LCDR Damien Yemma.

8 (Witness excused.)

9 CAPT NEUBAUER: At this time do any of the PIIs have any
10 issues with the testimony that we just received?

11 MR. REID: No, sir.

12 MR. BENNETT: No, sir.

13 MR. WHITE: No, sir.

14 CAPT NEUBAUER: The hearing will now adjourn for lunch and
15 reconvene at 12:30.

16 (Whereupon, at 11:41 a.m., a lunch recess was taken.)

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A F T E R N O O N S E S S I O N

(12:34 p.m.)

CAPT NEUBAUER: The hearing is now back in session. At this time, we'll hear testimony from Mr. Evan Bradley, former bosun on the *El Faro*.

LCDR YEMMA: And Mr. Bradley, please raise your right hand.
(Witness sworn.)

LCDR YEMMA: Thank you. You may both be seated, please. Start by stating your full name, and spelling your last name.

THE WITNESS: Evan Joseph Bradley, B R A D L E Y.

LCDR YEMMA: And sir, if you can also state your name and spell your last, please.

MR. WARE: Archie Ware Jr, W A R E.

LCDR YEMMA: Thank you.

Mr. Bradley, can you tell please tell the Board, are you currently employed and where?

THE WITNESS: I'm not currently employed.

LCDR YEMMA: And can you briefly tell the Board a little bit about your prior maritime experience?

THE WITNESS: I boarded my first ship in Newport News, Virginia, the *Overseas Natalie*, May 20, 1975, and I disembarked from the *El Faro*, May 20, 2015. I've been sailing now over 40 years, on and off.

LCDR YEMMA: Thank you. And what is your highest level of education completed?

1 THE WITNESS: I went to American College in Sacramento in
2 between ships, for real estate and foreign languages. And I also
3 have college credits at -- in Maryland through the Paul Hall
4 Vocational Training Center.

5 LCDR YEMMA: And do you have a current Merchant Mariner's
6 license?

7 THE WITNESS: Yes, I do.

8 LCDR YEMMA: Thank you, sir.

9 Mr. Fawcett is going to start your questioning.

10 (Whereupon,

11 EVAN BRADLEY

12 was called as a witness and, having been first duly sworn, was
13 examined and testified as follows:)

14 EXAMINATION OF EVAN BRADLEY

15 BY MR. FAWCETT:

16 Q. Good afternoon, Bosun Bradley.

17 A. Good afternoon, Mr. Fawcett.

18 Q. So all of my questions are going to relate to the time frame
19 leading up to the loss of the *El Faro* and her crew in 2015, unless
20 I tell you otherwise. And we're going to talk about your
21 experience on the *El Faro* as AB dayworker and as bosun. So if you
22 want to take a break at any time, please let us know. And we
23 appreciate you showing up.

24 A. Yes, sir.

25 Q. So you served in two capacities on *El Faro*. In November

1 2014, you served as an AB, and then in 2015, from March to May
2 2015, you served as bosun. Would that be correct?

3 A. Yes, sir.

4 Q. And when I say AB, can you tell us what you did as an AB on
5 *El Faro*?

6 A. I was an able-bodied deck maintenance, and I was on board for
7 22 days. And I worked on the lifeboats, preparing for the
8 certificate of inspection in Puerto Rico. And I also was involved
9 in maintenance projects, the stowing the gangway nets, stitching
10 them back up, and changing out all the lines, sea painters, the
11 lines on the little disembarkation ladder that goes over the side
12 of the boats, and washed them out real good. And also the third
13 mate was handling safety stuff.

14 Q. So now, turning to the duties of bosun, your duties on the *El*
15 *Faro*, could you talk about what you did? And go into detail if
16 you could about what the bosun -- what you did as a bosun on the
17 *El Faro*.

18 A. We were involved in the extensive maintenance project around
19 a lot of surveyors, marine surveyors coming on, preparing the
20 vessel for the Alaskan run. We were -- the daymen were forward on
21 the bow project and my sailors were on -- the ABs, when I say
22 sailors, they were on the starboard side.

23 And also, we redid the flag pole on the stern, and I would --
24 I separated the fellows a little bit and then we would blend
25 together. And we were also chipping the rail posts from the deck

1 level up. Some were corroded and they were being welded and
2 redone. Of course, we tied up and let go often, and we -- you
3 know, those guys worked hard. They were a good, good crew.

4 And on occasion up on the bow, they were strong and they
5 would flip the forward hatch open, which you would access the
6 carpenter shop with. And I'm not sure if the wind caught it, but
7 -- oftentimes I told them I'd like two guys to do this, that
8 spring is old. And there was a lot of wear on the port hinge, and
9 the dogs were kind of worn. And my concern then was about
10 watertight integrity on the bow.

11 And they would throw it open, and it'd shake, and go down and
12 hook up the hoses for air and water on deck. Because after they
13 chipped, we'd blow it -- or rinse it off with fresh water. They
14 would blow it, and then we'd prime it and then paint it. Get a
15 couple, a few coats of primer on there.

16 Q. So just for clarity, could you talk a little bit about what
17 the bow project was?

18 A. On the bow, they were -- we were chipping big, you know,
19 scale off the decks and around the hatch, so they could check and
20 make sure that it was not rusted through on the main deck forward.
21 We checked the -- I would check, call up with the sound power
22 system to the bridge and play with them -- not play with them, but
23 tell them, hey, we forgot the air on deck and called up, we want
24 to get the air on deck. But it was working. And that was another
25 thing, you know, we were checking out everything.

1 We were also working on the mast, about 20 feet high,
2 cleaning her up. I had the guys shine the bell and we would
3 periodically fire up the winches, and take turns and free up the
4 capstans. But basically, a facelift and greased up. We were
5 greasing things. The anchor windows regularly, because it was
6 nice and warm and that's the time we roll the drums and grease
7 everything, make sure it's operable for tying up and letting go.

8 Q. So were you aboard when they were doing preventative
9 maintenance forward where they chipped through with pneumatic
10 equipment, chipped through either decks or bulkheads or tank tops?

11 A. Some of that was done prior to me going aboard. But ABS did
12 come on. We had welders, a few ports. I can't remember the exact
13 ones. I believe it was JAX and Puerto Rico. And they were below
14 the decks. And they were longitudinal, around the ladder wells,
15 they reinforced that, put in some new rungs and they would -- the
16 guys and myself, we would prime them and paint them.

17 Most of the damage through the bulkheads, I heard about it,
18 but when we were chipping through it was mostly on the starboard
19 side, at the -- they were about 6 inches in diameter, that held
20 the handrails that go fore and aft on the starboard side. We were
21 chipping around those and those were going through the pipe, but
22 not through the deck, if I recall correctly. But, no sir, not
23 through the deck level. If it did happen, I can't recall it.

24 Q. Okay. So we've talked about your duties as AB and talked
25 about your duties as bosun, and we may go into more depth about

1 those later. But you mentioned your 40 years at sea. Had you
2 sailed on a wide variety of deep sea vessels? Can you tell the
3 type of vessels you have served -- sailed on?

4 A. Yes, sir. My first ship was a tanker and my last ship was a
5 Maersk Lines Limited. I was on the K class, I believe the G
6 class. I was -- my first bosun's job was on *Montpelier Victory*,
7 which was Victory Carriers. I was young. I was just promoted
8 from dayman to bosun. And I've been on bulk carriers, freight
9 ships -- a bosun discharges on just about everything but a
10 passenger ship and an LNG, a liquefied natural gas ship.

11 Q. So I'd like to turn your attention to when you first reported
12 aboard the *El Faro*, when you got the job, you left the union hall
13 and went to the ship. And if you need to take a minute to think
14 about this, please do.

15 But prior to reporting to the *El Faro*, did TOTE, the union,
16 or the captain of the ship, ask you if you were under a doctor's
17 care or a medical professional's care for any type of condition at
18 all?

19 A. When I boarded the vessel, I believe Captain Eric Axelsson
20 asked me basically just what you repeated, if I was on medication,
21 he had a form, and I said, no, sir.

22 Q. So the -- so the medication he asked you about, did he ask
23 you about -- just for clarity, did he ask you if you were under a
24 doctor's care?

25 A. I believe so, yes. There was -- it comes up on a lot of

1 ships. But I'm almost certain he did. He asked if I was okay,
2 and I said, aye, captain. I'd sailed with him before.

3 Q. Do you know what TOTE's policy is, and that would be serving
4 on the *El Faro*, for the use of over-the-counter medications? Say,
5 for example a product like ZzzQuil or some other product that
6 might cause drowsiness.

7 A. No, but I did have Aleve when I boarded the vessel because
8 of, you know, walking all around, things I do. And I also had, I
9 believe, some Tylenol PM to help me sleep, especially in port when
10 boxes are banging.

11 Q. So just so I don't miss this, what do you mean by boxes are
12 banging?

13 A. Well, they call them boxes or cans, but containers. It's
14 sometimes a noisy loading the container ship, when trucks are
15 coming on and off, back aft, on that vessel, and up forward, the
16 containers. Especially my fo'c's'le is forward, and when they
17 lower the after-hatch, you know, it's kind of noisy.

18 Q. So what I'm going to do, is I'm going to go through a series
19 of areas about the ship, and I'm going to ask your observations or
20 what your impressions were based on your background of 40 years of
21 seagoing experience. So you step aboard the *El Faro*, what was
22 your overall impression of the ship?

23 A. It was old. It needed some TLC, so to speak. And she was
24 operable at sea. I mean, I was on her when she would do 26½
25 knots. That was the fastest speed I heard they clocked in when I

1 was on there. But yeah, it was a working old ship.

2 Q. So how would you know she did 26½ knots? And where were you?

3 A. I believe we were at sea, and for some reason, they goosed it
4 up, and I asked. I like to ask and know what the ships can do.
5 I'm curious. And I say, hey, what can she do? All ahead full, I
6 heard, was 26½. One day we were cutting water until we started
7 slowing down for the whales. When they -- certain parts of the
8 year they just go 11.9 knots, or 11 to 10.9. I don't know exactly
9 what they did, but they -- for the right whales, they slow down
10 during whale season.

11 Q. So do you recall who told you the ship did 26 knots?

12 A. I believe one of the ABs. It might be 23 knots. Maybe it
13 was the last ship I remember 26 knots. But I think that, open up,
14 on the *El Faro*, she could go 23 or 26 knots.

15 Q. Can you talk about your observations about how deck
16 operations went on the ship? By deck operations, I mean taking
17 the tugs, making them up alongside, unmooring, handling the pilot,
18 getting on and off. How do the deck operations go on board?

19 A. When I was dayman, we didn't have any problems taking the
20 pilot on or off. I was also responsible for taking the port tug,
21 too, when I was dayman. And that wasn't a problem. We stowed the
22 tug to the line leading to the hawse -- you know, the Panama chock
23 around around the faring to the drum, and heave her up. And then
24 general utility deck engine guy, the GUDE, or the ordinary -- he
25 basically the ordinary's work up there, you know -- and he would,

1 after I pulled it, we'd, you know, slack it, throw it over on the
2 bits, then call in, tug fast forward.

3 Q. Did you ever observe the taking of drafts on the ship's
4 outboard side, either in Jacksonville, or in San Juan?

5 A. No, sir. I hear that on the radio transmissions, and when
6 they would take the draft forward and draft aft, and that was
7 prior to sailing. The mates, the mate on watch would do that.
8 Sometimes it would be the third or the chief mate. I recall
9 hearing the third mate Jamie reporting a draft. But you know, I
10 was bosun 66 days, dayman 22. But prior to sailing, they would
11 call in and write the draft mark. I hear that on my radio
12 transmission.

13 Q. So this ship, the *El Faro* was on a regular schedule, which
14 sometimes is called liner service, back and forth repetitively,
15 between Jacksonville and San Juan. What were your impressions
16 about like how the ship fought complacency? In other words, were
17 the watchstanders vigilant? How did they deal with the regular
18 service of the ship, back and forth, back and forth, same route?

19 A. That crew had been on those runs for some time. And tying up
20 and letting go, they were good. Real good.

21 Q. How about at sea?

22 A. At sea, they were good workers. And if they did good, I'd
23 knock them off a little early. And occasionally, you know, the
24 run, they'd sometimes -- the guys would come out just a little bit
25 late. That's true on every ship.

1 Q. So did you ever observe, what I would use the word,
2 complacency?

3 A. I told Captain Eric, he asked me why I was on deck with the
4 flashlight at 10:00 at night, and it wasn't on my overtime sheet.
5 And I said because it was for the safety of the ship. I made the
6 rounds. I just had a bad feeling, couldn't sleep. We were
7 pitching a little bit. And I was bosun at that time. And I just
8 looked around to make sure that the forward was secured right, the
9 anchors were taught. Again, you know, I just wanted to make sure
10 because it was an old ship and that's my responsibility, to secure
11 the anchors. And I checked on them regularly, unless it's too
12 rough to check on them.

13 And then sometimes -- on that ship, I had never got that
14 rough. But I had some concerns. And I told the captain that
15 there was an instance where, when they let the pilot off real late
16 or real early in the morning, I can't remember, but we did take a
17 little wind and spray and rain, and the scuppers weren't properly
18 taken out, and this allows the water to go over the side. We had
19 some water, and what I refer to as -- well, the deck below the
20 main deck, I call it the car deck, but I can't remember which
21 levels, probably -- I don't know if it was A or B, but -- and we
22 had to pull them and let the water run over the side.

23 But I mentioned to the captain that, you know, sometimes I
24 just get the feeling if we get caught up in a hurricane, this, you
25 know, the ship's going to have some problems. So he held the

1 meeting about crew and officer complacency. And he said, just
2 because you've been on this run 13½ years and you haven't been in
3 a hurricane, doesn't mean you won't be in a hurricane.

4 Q. Which captain was that?

5 A. I referred to him as Eric, Captain Eric, and that was -- his
6 last name I now know is Axelsson.

7 Q. Was that meeting a safety meeting?

8 A. He called the safety meeting the next day after I informed
9 him about some, what I felt were watertight -- because I was
10 planning to take that ship to the West Coast, and I knew get on an
11 Alaska run in the winter, she's tough. It's really tough. And --
12 repeat that question, please?

13 Q. Well, I just said, would you call it -- you know that, the
14 gathering to talk about complacency, would you call that a ship's
15 safety meeting?

16 A. It wasn't a scheduled meeting. He called it because we had
17 been talking about, just, you know, ongoing operations and getting
18 her ready for Alaska. And he told the steward department at 0600,
19 because I was down there getting coffee before we turned to down
20 below, and he said that -- and this was in late April or early
21 May. And he told the steward department, everybody who comes in
22 to eat, LaShawn, we're going to have a safety meeting at 1020.
23 And he had this meeting on company time, opposed to a coffee time,
24 and it was not a scheduled meeting. So there may not be any
25 reference to it in the minutes or so forth.

1 Q. So as bosun, could you go all over the ship's holds, could
2 you go over the ship's decks, and as part of your duties? In
3 other words, could you go to the lower holds? Could you go the
4 main deck? Could you go to all of the main decks of the
5 accommodation spaces? And not to include the engine room, could
6 you go everywhere?

7 A. When she's loaded, you could, but you'd have to open
8 scuttles. You couldn't open watertight doors, depending on where
9 the tractor trailers were set and everything. When I say
10 watertight doors, I mean hydraulic doors. So you would -- I
11 would access -- for instances to clean the fructose station down
12 below or -- well, not clean the station, but there was things that
13 we had to do. We had to clean up some cat litter and stuff from a
14 prior oil spill one time. And we had to access it through the
15 longshore, I call them longshore. They're scuttles and, you know,
16 lower our brooms, dustpans, buckets, and then pull them up. You
17 know, we'd take it back aft and secure it where the garbage would
18 go off in Puerto Rico.

19 Q. So, in general, at sea, how would you assess how the
20 watertight integrity was maintained? In other words, were the
21 watertight doors, the man doors, closed as they were required?
22 Same thing for the scuttles, did you see them closed all the time?

23 A. Prior to sailing, I would do what they call the security
24 watch for stowaway search. But I would go down on, again, the car
25 deck where the pilot stations are. And I believe there was four

1 scuttles on the starboard side and three on the port. It was a
2 watertight door that went down a ladder well with six dogs. I
3 would make sure that that watertight door was dogged down, because
4 the longshoreman would leave it open when they'd come. Sometimes
5 they'd leave the scuttles open. Sometimes they would lay them
6 down, but they would not twist it and engage it and lock her down.

7 So that was my job on the security watch, stowaway search.

8 Maersk, I just got off the Maersk a while back, and we had
9 security. We used different terminology. On that vessel, it was
10 called stowaway search. When I had that deck secure, I would call
11 in the bridge and say, stowaway search complete.

12 Q. So looking at the stevedore hatches or the scuttles with the
13 hand wheels, the raised hatches or scuttles, at sea, did you ever
14 observe them in the open position and tied open?

15 A. Depending on the type of work the engine room or deck
16 department was doing, what we would do is open that door, put it
17 on a latch, and put a sign, "Man Working Below." They had signs
18 on those things or a placard like, on a wooden -- and with a line
19 on it. And then whoever was doing that, that particular work, it
20 was their job to remove that sign and flip it around so you didn't
21 see the "Man Working Below," and close it, and secure it for sea.

22 Q. So during your service aboard *El Faro*, did you see any of the
23 scuttles, including the gaskets for the scuttles or the closure
24 mechanisms or the hinges that did not work properly?

25 A. When I was aboard, I would close them and sometimes you would

1 have to shake it to line it up to secure it. But when I was
2 aboard they worked, and the gaskets, there wasn't -- you know,
3 they were there and they would press up. But where the pin went
4 through, as you raise it, you know -- it was a 40-year old ship.
5 It was a little loose. But yes, you could shake it a little bit,
6 you know, and secure it. They all secured for me or I would have
7 reported it as, you know, something on the repair list.

8 Q. So at sea when those scuttles were opened, was that reported
9 to the bridge?

10 A. I'm not sure. I don't recall hearing that on radio
11 transmissions, but they might have done it on the sound power
12 phone or a regular phone or it could have been in an early meeting
13 where they talk about what they're doing.

14 Q. I don't know this and that's why I'm going to ask it. So
15 what -- when the ship is being loaded in Jacksonville, what watch
16 are you on? What time of day are you working?

17 A. I work from 0800 to 1700, and take lunch from 1200 to 1300,
18 coffee time 10:00 to 10:20, and coffee time 1500 to 1520.

19 Q. So then at the end of that period of time, when the ship puts
20 the sailing time on the board -- pardon me -- they'd call you out
21 for unmooring?

22 A. Yes, sir, depending on the -- sometimes we'd leave at 2000,
23 sometimes 2200, sometimes, you know, right after dinner. The
24 times varied. When I was aboard, I recall the launch moment being
25 a little late, you know, with finishing cargo or they would wait

1 for a few containers to come or, you know.

2 Q. And in the port during the last, you know, the day when the
3 ship's back loaded and getting ready for sea, what would you be doing?
4 doing? Would you be down in the holds or what would you be doing?

5 A. I could be wherever they assign or told me, but primarily I
6 would be out of the way, off the decks, back aft. You can't do a
7 lot of work on deck when the longshoremen are working in port. So
8 we had our projects back aft around the house, but -- you know,
9 around the gangway. Depends where the -- if the stern was done,
10 you know, I'd like to grease the gangway and BS with my AB on the
11 gangway. Sometimes we'd just be standing by waiting for an order.

12 Q. As you readied -- during your service *El Faro*, as the ship
13 was getting ready to sail with the ramps still aboard, did you
14 observe like cargo coming on in the last minutes? In other words,
15 coming on at the very end, the ramp being removed and then the
16 ship sailing?

17 A. There were times when we would call all hands and had to
18 wait. That happened once I recall on that vessel. They were
19 waiting for three or four trucks to come aboard. But yes.

20 Q. So the movement of cargo on the ship while it was being
21 loaded, did you ever see the truck maneuvering the trailer chassis
22 down the Ro-Ro spaces?

23 A. Yes, I did.

24 Q. And was the maneuvering of those trucks, did you ever see the
25 maneuvering of the trucks or the chassis strike the vessel

1 structure, for example bulkheads, frame, stiffeners, beams?

2 A. I was on the lower deck back aft doing something one day in
3 port -- I believe it was Puerto Rico or Jacksonville. I can't
4 recall actually. And I did see a truck press up against the
5 bulkhead and turn his wheel hard right or hard left, and then --
6 in the cab and spin the wheel so as to straighten up the load so
7 they could move more cars around it. I saw that once or twice.

8 Q. So while the vessel was at sea and you move around the holds,
9 did you ever observe what I will describe as poor lashings? In
10 other words, worn chains or binders or straps that were used to
11 secure cargo?

12 A. The chains were -- and turnbuckles and straps, they were --
13 we had to pick those up, what was laying on deck after we sailed.
14 But, you know, they were rusty. They were old. And operable.
15 And the mates would check the cargo as they loaded, the mate on
16 watch, if I remember correctly, and my responsibility and my
17 sailors, and usually the daymen did this. After we sailed, we
18 would go down the next morning and make sure it was tight and hang
19 the chains, get them out of the way, clear the decks and pick up
20 any loose longshore trash, and put them in the garbage cans.
21 Garbage went off in Puerto Rico.

22 Q. Did you ever see any chain -- well, say, securing devices
23 that broke or failed while you were aboard?

24 A. I recall some tires that were kind of low and we would chock
25 them up with wooden wedges and rubber wedges, you know. And a

1 couple of times, yes, they would miss some chains and my sailors
2 would lash her down, you know, take the binder and pipe turn, snap
3 it. But that's a typical, that's what we have to do was check and
4 balance. That's securing for sea.

5 Q. You mentioned the ship pitching on one voyage. Do you
6 remember if someone said, hey, the ships got a little motion to
7 it; go down and check the lashings or tighten them up?

8 A. I believe the mates did that at sea, would make their,
9 whatever they were doing. My -- I never heard them state -- the
10 mate would tell me on my team, the deck where I would secure the
11 stowaway search and secured those, my sailors and I were
12 responsible when I was on there for that deck. And the daymen and
13 I would do that.

14 Q. If I said something, do you know what I mean by a Roloc box?

15 A. Not, not -- I've heard of that, the Roloc, that term, but
16 it's the longshore gear goes in, I call them flat racks.

17 Q. Okay, these are the large steel --

18 A. No, I know what you're talking about, yeah, the recess boxes.

19 Q. Okay, and for the record, those are the large structures,
20 steel structures at the nose that the trailer sits on. So did you
21 ever see -- you know, in the deck, they have a button. It's a
22 device where the Roloc box attaches to. Do you remember seeing
23 Roloc boxes where the trailer wasn't stowed on a button?

24 A. No, I never saw that.

25 Q. So I'd like to shift gears a little bit about how the crew

1 worked together and -- so you attended safety drills, such as
2 abandon ship, man overboard, fire and emergency. Could you talk
3 about how the crew carried out those drills?

4 A. Again they were experienced and they were good. And I had an
5 arrangement with them. I -- my style is I don't like fooling
6 around tying up, letting go, or at safety or boat drills. And the
7 guys were good. And sometimes we would finish and there'd be 30
8 minutes left and I would tell them, all right, guys, stow your
9 gear, that means your lifejackets and survival suits. I want you
10 to finish up that special job you were working on and you do the
11 same. That was my code to knock them off early for doing a good
12 job. They were good on those drills.

13 One instance, an AB, because there was a fire suit that
14 wouldn't fit a lot of people. Emil was his name. He was good,
15 real good dayman. But he felt he was being singled out to put
16 that suit on every drill because the other guys stepped away or
17 something. It's little games they do. And it's not going to sink
18 a ship. And he said, I did it last week; I don't want to do it.
19 And then I've had -- and I said, listen, you know, you really
20 should do this, and he did. And we had a little talk with Chief
21 Mate Torres, the dayman and myself, and I later talk to the
22 delegate, Jesse Jackson -- Jackie Jones? JJ, I called him JJ. He
23 was a good man. And that never happened again. It was just one
24 of those days, having a bad day; he was hot, tired. But he didn't
25 get 20 lashes.

1 Q. So did -- how long did you sail with Captain Axelsson?

2 A. I was with Captain Axelsson in 2003 on a Maersk ship, and he
3 came aboard after some incidents. And we cleaned up that ship.
4 We did -- there was 87 violations when the Coast Guard flew out
5 from Holland, and one of my sailors, we left the lee -- the
6 islands going into Vladivostok, Russia. We took on approximately
7 6 tons of ice up forward. We were down by the head. We had to
8 chip ice just to get into port. And he came aboard later when we
9 were in the Middle East. We cleaned up the ship and I had a good
10 rapport with him. And I always called him Captain. I didn't know
11 his first or last name until this vessel. And he was a good
12 seasoned captain.

13 Q. So on *El Faro*, from the time you were aboard, how much time
14 did you serve with Captain Axelsson?

15 A. During the 22 days as dayman and all but the last 3 weeks as
16 boson. And I have to recall, I'm only 66 days as boson, relief
17 boson.

18 Q. So did Captain Davidson or Captain Axelsson approach safety
19 drills differently?

20 A. Yes, they did.

21 Q. Can you speak about that?

22 A. If I'm not mistaken -- I know Captain Axelsson had a fire and
23 boat drill every week, and it was, to me -- now we don't have to
24 do it weekly like we used to have to do it. But he was old school
25 and he continued to do it that way. And again, you know, it went

1 smooth. Captain Davidson, I believe did it once every 2 weeks or
2 once a month, and we had the drill with him. He knew the guys
3 were good and the boats were working, and they just had a
4 different style, the two captains, just like boson might, or two
5 chief stewards.

6 Q. So the same question related to safety meetings, how did --
7 can you contrast Captain Axelsson how he ran those meetings
8 versus Captain Davidson?

9 A. I don't recall having a meeting with Captain Davidson, the
10 last 3 weeks I was aboard the vessel, as far as the safety meeting
11 because they're monthly. So I really don't know, and I believe I
12 had one or two safety meetings as -- probably one, except for the
13 special meeting he called, with Captain Axelsson when I was aboard
14 the vessel.

15 Q. So once again, I'd like you to take a moment to contrast
16 Captain Axelsson and Captain Davidson in the area of being about
17 the deck and walking either the deck spaces or the cargo holds,
18 and being about the ship?

19 A. Captain Axelsson was involved in a lot of deck projects, even
20 on the Maersk I was working on. He was out there and very
21 involved, a hands-on captain. I was told that Captain Davidson
22 didn't come out on deck like Captain Axelsson. But my first week
23 aboard with Captain Davidson, he said, yeah, Bosun, I like what
24 you did over there on the port side. And he knew. I never saw
25 him on the deck, and I get out there at 5:30 or 6, but yet he knew

1 what was going on deck.

2 Q. Did you ever see him on deck?

3 A. No sir, but I'm busy. I'm watching my sailors, not the
4 captain. If he never said, hey, Bosun, I need you for this or
5 that out on deck. No, I did not.

6 Q. So were you, -- when you were aboard there was a process
7 going on in TOTE and that was the selection of crew for the new
8 ships, the Marlin class ships out on the West Coast being built.
9 Did that cause any issues on board *El Faro*?

10 A. Yes, sir, I believe it did. I got to know, you know, the
11 mates. I didn't call them by their first name, but Jamie was the
12 third, and Danielle was the second. And the ABs, Damien. I
13 believe the steward was picked to go to the new ship, and the
14 electricians weren't uncertain. But yeah, the, all the fellows
15 after being on that run for 5 years to 13 years, sure they wanted
16 a shot at the new ship and they were upset that they weren't
17 picked, or they hadn't been talked to at least to go to the LNG,
18 the new LNG class. Yes, and it was kind of a letdown for them, I
19 would say, yeah. And so -- it wasn't an unhappy ship, but yeah, I
20 believe some of them were kind of disappointed.

21 Q. Did it ever -- did you ever observe it going beyond just
22 disappointment? Like, did it cause friction between any members
23 of the crew that you observed?

24 A. I'm not certain about that. It could have, but, you know,
25 the ship -- they knew it was going to be scrapped and, you know,

1 let's face it, none of us like to put away a good old ship, you
2 know, but the new one was coming out and there were going to be
3 opportunities, you know.

4 CAPT NEUBAUER: Mr. Bradley, when you say that they knew the
5 ship was going to be scrapped, what vessel are you referring to?

6 THE WITNESS: *El Faro*.

7 CAPT NEUBAUER: Was it your understanding the vessel was
8 going to relocate to a different trade or actually going to be
9 scrapped?

10 THE WITNESS: I was told that we were -- it was scheduled to
11 go to the shipyard in the Bahamas for approximately 10 days. It
12 was going to go to the West Coast and relieve the ships on the
13 Alaska trade, and after they had -- so they could go in for their
14 COIs and annual or biannual inspections, whatever the case may,
15 and then we were going to -- it was going to be scrapped.

16 CAPT NEUBAUER: Thank you sir.

17 BY MR. FAWCETT:

18 Q. So I'm getting to the end of my questions. While you were on
19 board *El Faro*, and this is a broad term, but did you observe any
20 incidents or infractions of the way a ship's business is supposed
21 to be conducted? For example, like anything on the bridge, in the
22 holds, were there any incidents that occurred between crewpeople
23 that you were aware of?

24 A. No, the most we -- not really, no. I mean, there was a
25 couple of disagreements, perhaps, but that's typical. You know,

1 oh, you took too much ice down in the engine room. We need the
2 ice for the longshoreman water cooler. You know, maybe that kind
3 of stuff. But not -- I never saw any -- and you know, but it's
4 hot and tired, you know. I had some disagreements with my sailors
5 about how we're going to do things. But I don't believe so, not
6 that I can recall, I mean.

7 Q. While you were aboard, did you take part in any training?
8 Now by this I don't mean drills or safety meetings, any kind of
9 training that was required by the company?

10 A. No, sir, not really. Not -- like I mean to mean training is
11 a drill. But as far as classroom work or hands on, the engine
12 room took care of the bunkering. I took care of the boats. The
13 engine start, boats, boat motors. I greased the Fleming gear. I
14 mean, everybody has their duties. But as far as special training,
15 I wasn't given any. And I've been with one captain before and
16 also I sailed with the Chief Mate Ray, when he was third mate in
17 Guam. I was on that ship for a year.

18 Q. By training I mean TOTE has a track training program and some
19 of the topics might be like hypothermia. There may be heavy
20 weather safety. There may be one topic, bridge team management
21 for the officers. I'm talking about that kind of where you have
22 subjects you go through at a meeting.

23 A. As, now I recall, as dayman, I was on there when Mr. Lawrence
24 came and they discussed about the fellow that they lost, giving --
25 Captain Axelsson gave -- spent a lot of time on CPR trying to keep

1 him, but apparently they lost him. And I didn't even know that,
2 that had happened until that meeting. And we had some questions
3 and answers, and it was a safety meeting. They informed us about
4 the six Ro-Ros they took over from Crowley. They were going to
5 start crewing those and operating those.

6 So yes, about that. Yeah, there was some training, I
7 believe. And they did answer questions and described where the
8 safety books and things like that were. I believe one was on the
9 bridge, one in the engine room and one in the crew lounge, and the
10 guys were, you know, requested to read it and things like that and
11 they discussed it at that particular meeting that lasted about an
12 hour, if I'm not mistaken. Maybe a little longer. I can't
13 recall.

14 Q. So did you get any training, for example, in like wearing
15 Scott air pack, or a defibrillator location and use, or the
16 Heimlich maneuver?

17 A. I've been trained and retrained so many times at my union
18 facility, at the Paul Hall Upgrading Center and at the Harry
19 Lundeberg School of Seamanship. But yes, they did tell us where
20 the Scott air packs were, and they brought the defibrillator down,
21 now that I recall, at fire boat drills. That stuff would come
22 out. They would take a chunk of safety equipment, specialized for
23 that kind of stuff, and the third mate or second mate would
24 describe it, you know, and point it out: the flare gun, whatever
25 the case may be, EPIRBs, they did the EPIRBs and stuff, and the

1 little relief galley assistant, or GSU, I guess they call them.
2 You know, I had to show her where it was up there and where she's
3 supposed to bring if the boat goes. Yeah, they did do that. That
4 was --

5 Q. So was that done, that kind of stuff where the defibrillator
6 would be brought out or the EPIRB or other specialized training,
7 was that done the same when you were on board with Captain
8 Davidson as it was with Captain Axelsson?

9 A. I was only with Captain Davidson for 3 weeks, or maybe even,
10 I think three trips -- two trips to Puerto Rico and back, maybe it
11 was, not even 3 weeks. But I did have a rapport with him and --
12 you know, he could have done that afterwards. But, you know, as I
13 said, the two captains had their own style, but I believe them,
14 you know, to be good guys, both of them.

15 Q. So my final question is, while you were on board *El Faro*, how
16 many times did you, in both periods of time, how many times did
17 you put on your immersion suit?

18 A. I believe for them, I think one time prior to the Coast Guard
19 COI, which I was there for the boat drill and fire, mock fire
20 escape, you know, the fire drill that we did perform. And we
21 passed the first time, both of them. I put it on myself when I
22 came aboard the second day in my fo'c's'le to make sure it was all
23 good to go, no holes in it. And then I believe I did it one time
24 -- we all had to do it once. And again, it was the 60 days. So
25 one time in 60 days prior to Puerto Rico on the -- prior to the

1 COI. And we did a couple of drills so we'd be ready for that COI,
2 because there were some relief ABs there, too, at that time.

3 MR. FAWCETT: Thank you, sir. That completes my questions.

4 CAPT NEUBAUER: CDR Denning.

5 BY CDR DENNING:

6 Q. Good afternoon, sir. Just a few follow-up questions. Over
7 here. I know we're all coming out the speakers.

8 During your testimony with Mr. Fawcett, you mentioned a
9 special meeting that Captain Axelsson called. You said it was not
10 a scheduled safety meeting but something in addition. You said a
11 quote that it kind of stuck out in my mind that I want to ask you
12 about. You said it was during company time not coffee time. Are
13 the normal safety meetings held during company time or coffee
14 time? What time are they normally held?

15 Q. It depends on the captain. A lot of times it's a give and
16 take. They always take longer, so we start -- sometimes they
17 could start it at -- we'd knock off for coffee at 10 to 10 and go
18 to 10:20. Our contract is 10 to 10:15. So it's a give and take.

19 But, so what we do is sometimes we start at 10. We're still
20 having our coffee and cookie, listening to what the agenda is, and
21 then sometimes it may last till 10:30, 10:35. So it's, you know,
22 what's good for the ship is good for the crew.

23 Q. So you've sort of already answered my next question, which
24 was going to be how long did safety meeting typically take you.
25 You said about 30, 35 minutes. Is that typical for safety

1 meetings?

2 A. It depends on the ships and the topic. Sometimes they could
3 go longer, but seldom shorter. They're not -- it's kind of like
4 the same routine stuff but for new people and for people not to
5 forget or to know where the other things might be or not be. On
6 every ship they have emergency gear lockers in different
7 locations.

8 Q. On the VDR audio transcript, one of the things we've focused
9 on with other witnesses -- and we won't read through it right now,
10 but there seems to be some reluctance on the part of some crew
11 members on the *El Faro* on the final voyage to have voiced some of
12 the safety concerns that they had during safety meetings. Did you
13 experience anything like that as far as the crew being not
14 comfortable bringing up safety concerns at safety meetings?

15 A. Not really, no. When I was on there, I had seasoned sailors,
16 and they weren't afraid to tell me where to go, and I don't
17 believe my guys, the guys I sailed with, no, they would, they
18 would bring up stuff. Matter of fact, they wanted their safety
19 shoe reimbursement, and they had to wait for the completion of
20 tour of duty, I understood. And that started some nonsense,
21 because they bought some boots and they wanted the extra 100 for
22 whatever reason.

23 UNIDENTIFIED SPEAKER: 125. 125.

24 THE WITNESS: 125. I was just testing him.

25 BY CDR DENNING:

1 Q. So besides safety meetings, what is another way that the crew
2 could bring up safety issues to management at TOTE?

3 A. I was under the impression we had an open-door policy. And
4 they could go at any time, any seafarer knows that, about safety.
5 Safety is what it is. And I used to tell the guys, don't work as
6 fast as I talk. Hurry up, but work safe, smart and steady. You
7 know, if they were giving me a bad time, oh, you talk too fast
8 most of the time. But that's my style.

9 No, I believe that they -- anytime, you know. One guy came
10 to me, he'd been on the ship 4 days. He asked me for gloves. I
11 went up to the locker and got him gloves. He was an engine room
12 guy. And, then later, he said, Bosun -- you know, the last 4 days
13 he'd been on. He said, I've got an enormous survival suit. He's
14 over 6'2", 6'3". I said, no, why didn't you tell me; let's go get
15 one right now. So I grabbed the third mate and, yeah, we got
16 that. It's -- you know, that's part of the complacency and
17 attitude of a seafarer, if he doesn't want to say something, or
18 for whatever reason, that's on him.

19 But it was basically an open-door policy. If something's not
20 right or unsafe, report it. And that's the way I understood TOTE
21 to be, even when I was with them in Guam years ago on a military
22 ship that was.

23 Q. Earlier today and part of yesterday we heard testimony from
24 Captain John Lawrence, who is the designated person ashore. We've
25 heard about placards being on the vessel with his phone number on

1 it. Did you see those placards when you were on board *El Faro*?

2 A. No, I did not, but I wasn't looking for them. If I have a
3 problem -- I'm old school -- I call my union. And I have been
4 known in port to -- when I started sailing we had shipping
5 commissioners. And I remember, you know, that was the hole card
6 we could play, if we thought we were being unfairly treated. And
7 I'm not afraid to call the Coast Guard.

8 But I've never had to call the designated person ashore
9 because I like to work thing out on the ship, you know, face to
10 face. If I'm wrong, I say, hey, I've made a mistake. And if I'm
11 not, I don't accept an apology but let's don't do this again. And
12 that's how I work.

13 Q. Do you feel like if you needed to contact the DPA, you would
14 have had the means to do that on the ship?

15 A. Yes, because you're at port every -- they told me, it's a 56-
16 hour run, and you probably could. Again, I've never had a reason
17 to call a DPA when I was in port, and for 88 days in two different
18 capacities. But I don't know why anyone -- but I did not see
19 those placards and numbers. I believe that they were in those
20 books. And again, I had never looked for them. It was the least
21 of my worries was a DPA. I had all kinds of stuff going on on the
22 deck as far as operational and maintenance.

23 Q. During his testimony, Captain Lawrence mentioned a form that
24 could be filled out for a crew member to report what we call
25 nonconformities or observations. Do you feel that you had access

1 to those forms and the methods that were required to report
2 officially nonconformities with the vessel?

3 A. I never saw a book or box or any of those documents or
4 literature, or whatever you want to call it, but I never had a
5 reason to look for it. So I don't -- I can't yes or no, but
6 that's the best I can answer that.

7 Q. Understood. Thank you. My final question, during Captain
8 Lawrence's testimony, we spoke about an internal audit he
9 conducted on March 3, 2015, which is also the date that you came
10 on board *El Faro*; is that correct?

11 A. I believe it is, and that's probably when I referred back to
12 that meeting about him describing the six ships that they took
13 from Crowley and so forth, and that's -- it's kind of coming back.
14 So yeah, I do recall that.

15 Q. Is there anything else you can recall from that meeting as
16 far as what Captain Lawrence said to the crew, and also, if you
17 could expand upon who from the crew was present at that meeting,
18 and just as much as you can recall about that meeting?

19 A. A lot of the guys were there. Most of the crew, except for
20 maybe the guys on watch. Because I remember them passing the
21 books around. It was a full house. You know, engine room,
22 steward department, and I recall that he said the ship had a good
23 safety record with the exception of the man -- I believe it was an
24 engineer who had some kind of complications and the CPR didn't
25 work and they lost him. And that's when I got kind of goose

1 bumps, you know, that kind that throw -- I don't like, you know.
2 So I thought that, and I could see Captain Axel [sic] just kind of
3 drop his head because he'd worked on that guy to save him so much.
4 But I do recall that, that it was a good safety record but there
5 still was a death aboard, so I think they had to start fresh, if
6 I'm not mistaken.

7 Q. Thank you, sir. That's all I have.

8 A. Yes, sir. Yes, sir.

9 BY CAPT NEUBAUER:

10 Q. Good afternoon, Mr. Bradley. Sir, just a couple of follow-up
11 question from that earlier line. How would you characterize the
12 communications between the deck and the engineering crew?

13 A. I wouldn't say good or bad. I really can't say. I was in my
14 deck department thing. If I needed something from the engine
15 room, and I think I really -- all I needed was air on deck, common
16 grease locker, you know. I just needed, and most of my daymen,
17 you know, would show me around, where the stuff is, where the gear
18 is. I mean, I was familiarized the 22 days I was a dayman.

19 But I wouldn't say it was bad. You know, I think the guys
20 worked together. You know, they'd all known each other for a long
21 time. They worked together pretty good. I do recall one time,
22 for me, my hearing isn't the best like it was, so I would prefer
23 to use a walkie-talkie instead of the phone on the bulkhead, where
24 that forward hydraulic watertight door, because I would secure
25 that sometimes; had to open it and secure it. We'd have to hold

1 it. And I'd take -- the GUDE was Roosevelt. I used to take him
2 with me often. And he was my extra set of eyes with the
3 flashlight to make sure that was all dogged down. Because I had
4 my balance and checks, and sometimes I'd test the guys. And I
5 know it's not right, and I'd say, come here and tell me what's the
6 matter with this? And most of the times they'd find it. And if
7 they don't, I'd show them what the matter with that, and I'd say,
8 now, I don't want to see that anymore, okay, guys. And that's how
9 that works with me.

10 Q. How about communications between the officers and the deck
11 crew?

12 A. Again, sometimes it's hot communications. I mean, nobody was
13 afraid to speak their mind when I was on there. And the guys
14 worked good together. Sometimes they didn't, but, you know --
15 what I observed, you know, there was times when I had to say,
16 guys, you know, I wish we wouldn't do this again or don't do it
17 like that. And they'd say, hey, Bos, you know, you said, you
18 know, you weren't going to change anything. I said, well, I lied.
19 If it's working, I don't fix it. If it's not working, we're going
20 to fix it. And there was a lot of maintenance projects. You
21 know, they were -- well, those guys were working. They did, they
22 worked hard. It was a working ship, bottom line.

23 Q. Was the manpower sufficient to keep up with the workload, to
24 keep the ship safe?

25 A. When I started sailing, my first time boson, I had 13 men in

1 that department. The ships were much smaller. Of course, we had
2 to swing the ballast by hand on the tankers. We didn't have a lot
3 maintenance. As they automated the ships, they made them larger
4 with less crew members. In my opinion, no ship has enough people.

5 But on that ship, it worked. It was working when I was on
6 there and it was old.

7 Q. Sir, I'd like to shift the focus to the incident that you
8 referred to with water, I believe it was on the second deck, just
9 above the watertight deck on the *El Faro*. Do you remember that,
10 sir?

11 A. Yes.

12 Q. I'm curious, during that incident, did any water get into the
13 holds or any spaces below?

14 A. One time I had to go up there -- and again I used my walkie-
15 talkie instead of the phone -- on the bulkhead to pump out the
16 bilges, and there was about 6 inches of water across. And I can't
17 remember what day, what month, but I remember that I had Roosevelt
18 with me, the GUDE, and we had to pull the screens, make sure there
19 was no bag or anything before they put suction on the eductor, you
20 know, to jam anything up, that it was going to be -- just like you
21 sweep a man's throat if you were going to give him mouth-to-mouth,
22 make sure we had clear, you know, air coming through or water,
23 good suction. So there was nothing. We felt around in there.
24 There was about this much water, 6 or 8 inches, and it went across
25 -- it was stored ship across, and we sucked it out. And we had to

1 wait and, you know, call the engine room. They had to line it up
2 and I -- I was new to the ship. And I didn't know the system, you
3 know, like what deck, what -- and tell them. I had to read the
4 numbers on the bulkhead so that the engine room third could line
5 that up to suck out that water.

6 Q. What hold is that, sir?

7 A. It was forward below, below the car deck, one deck below the
8 car -- what I call the car deck, and the fructose stations were
9 there, all the way forward. And again, they were hydraulic doors
10 that I had to open up to go around to get to that phone. And I'd
11 prefer -- I said, just get the walkie-talkie in the engine control
12 room. I can't hear good on this phone.

13 Q. Did you say that you were unable to hear communications well
14 on the ship's phone?

15 A. It was noise going on. The guys were chipping up on the bow.
16 And, again -- I'm 62 now. Then I was about 60. And I've heard a
17 lot of noises so my hearing's not the best and I prefer a walkie-
18 talkie opposed to a phone, you know, where you -- it's just the
19 way my style is.

20 Q. Yes, sir. Do you know what the cause of that water in that
21 space was?

22 A. No, sir, I don't.

23 Q. Did the rest crew see that as unusual, that there was water
24 in that space?

25 A. The rest of the crew again were doing what they were doing.

1 And I was following the mate's instructions, Bosun, go forward.
2 Take a guy with you. Clean the rose -- make sure the rose boxes
3 are clear and call the engine room. When they are, we'll get a
4 suction and get that out.

5 Q. Do you know if the engine room received the bilge alarm?

6 A. I do not.

7 Q. Was the space able to be dewatered at the time of the event?

8 A. I guess, for that ship. Every ship is different and I do
9 know that it took a little while to line it up.

10 Q. Longer than what you were used to on other vessels?

11 A. Well, I don't always do that on other vessels, but -- you
12 know, it went out -- when it started, it went out. You know, you
13 can't compare that vessel with another vessel. It would be like
14 putting a '54 Chevy against a brand new Camaro.

15 Q. So just one last question. During the incident where you had
16 water on the second deck, did you notice if the vessel was riding
17 in an usual manner, at all?

18 A. I wouldn't say so. But, you know, at the time you're not
19 looking for that, you know. I was chasing water, so to speak.
20 But I didn't see anything -- I mean, that area was, the fructose
21 stations were recently put in. It was new. It wasn't rusted.
22 The decks were kind of clean. There wasn't a whole lot of rust or
23 garbage. And if I remember correctly, the water wasn't listing to
24 port or starboard; it was just straight across, about 6 or 8
25 inches. So we were even keel.

1 Q. Sir, I do have one additional question. When you -- did you
2 ever find any debris in the rose boxes, especially the incident
3 where you had to dewater the space?

4 A. In that rose box, and again, I -- we weren't preparing the
5 rose boxes for any kind of an ABS inspection or anything like
6 that. But there was some -- the rust from the screen itself,
7 there was some down there.

8 That forward section was fairly clean. But in the after
9 sections, you know, we'd often -- when we were securing our decks,
10 we would have to pick up I guess what the longshoreman had, stacks
11 of papers. When they'd finish, they'd drop them, lose them, and
12 all their garbage we were taking off in Puerto Rico.

13 Q. Occasionally you would find that debris in the bilge areas?

14 A. Not -- well, on the main deck. But, you know, not in the
15 bilges. But it -- you know, with the drag on the ship and if
16 there's water, it's going to go that way, if there was any.

17 Q. Yes, sir. Understand. Did you ever serve under Bosun
18 Lightfoot?

19 A. Negative. I do know him. I relieved him on the *Resolve*. I
20 met him in Japan. We were activating the ships years ago, I
21 believe it was '98, and I've seen him around the hall. And I knew
22 him, but we never sailed together.

23 CAPT NEUBAUER: Yes, sir, thank you.

24 We've been going for about an hour. Would you like to take a
25 break or keeping on going with this line of questions?

1 THE WITNESS: If it'd be okay, I'd like to smoke a cigarette
2 and drink some water. Take a little break.

3 CAPT NEUBAUER: Yes, sir. The hearing will recess and
4 reconvene at 2:00.

5 THE WITNESS: Thank you.

6 (Off the record at 1:48 p.m.)

7 (On the record at 2:01 p.m.)

8 CAPT NEUBAUER: The hearing is now back in session.

9 Mr. Bradley, I just have one more follow-up question from
10 earlier.

11 BY CAPT NEUBAUER:

12 Q. Do you remember during the incident we talked about, the 6
13 inches of water in the hold, was that fresh water or saltwater?
14 Do you know?

15 A. I don't know for sure, but I assume it might have been fresh
16 water from them guys -- the fellows, who ever did it, washing down
17 the fruct station or doing something up there. But I did not put
18 the water in.

19 Q. Did that occur underway or was it in port?

20 A. It was at sea.

21 CAPT NEUBAUER: At this time, I would like to go to the
22 National Transportation Safety Board, Mr. Young.

23 MR. YOUNG: Thank you Captain. Thank you Bosun.

24 BY MR. YOUNG:

25 Q. Discussing that incident with the water in the bilge, do you

1 remember what the weather was like at that time?

2 A. It was calm.

3 Q. And have you ever been in rough water on the *El Faro* on your
4 time as AB?

5 A. Negative. No.

6 Q. And was it part of the routine maintenance for the deck
7 department to clean the rose boxes on any sort of a schedule?

8 A. I guess as they needed it. No, I wasn't aware of a certain
9 month. I guess when they tested bilge alarms they would, you
10 know, do that and assign a GUDE, maybe an internal guy to do that.

11 Q. And during the incident where there was water in the bilge,
12 was it necessary that you had removed a large amount of debris or
13 any debris in order for the pump to work?

14 A. No, there wasn't. We made sure that nothing would suck in
15 there. We felt around and there wasn't really anything in there
16 but a little bit of rust, maybe half a coffee can.

17 Q. And previously you said, in order to remove the water, that
18 there could be an eductor. Are you sure there was an eductor or
19 could it have been a bilge pump? Just to clarify.

20 A. I thought they were lining it up to an eductor, but it could
21 have been a bilge pump. I'm not an engineer guy.

22 Q. Understood. And speaking of that, as a deck guy and a boson,
23 during coffee time and meal times, did you communicate or talk to
24 or chat with some of the engine crew?

25 A. I mostly ate with my 8 to 12 AB, and the only time I sat with

1 -- Joe would come up and -- off the 8 to 12, and Jack. And we
2 didn't talk business. We talked about quad-cab trucks,
3 retirement.

4 Q. That leads me to my next question is, did you ever hear any
5 concerns or safety issues with any of the engine crew members?

6 A. They just needed gloves now and then or wanted an extra pair.
7 No.

8 Q. Each time the vessel departed port, what did the deck
9 department do with the mooring lines on the bow or stern?

10 A. The mooring lines up forward, I would put the eyes over the
11 bits, lash the bites, and naturally secure anchors and so forth.
12 And on the stern, they should have been doing the same thing.

13 MR. YOUNG: Thank you very much.

14 CAPT NEUBAUER: Ms. Bell.

15 BY MS. BELL:

16 Q. Good afternoon, sir. I just have a few questions. You
17 stated that you worked with Davidson for about 3 weeks, that you
18 had a good rapport with him. How often would you say you
19 interacted with him? Was it daily, weekly, while you were on
20 board?

21 A. I had to renew a passport and there was some talk that I
22 might come back on that vessel. And I asked him if he would write
23 some kind of a letter to help me to expedite the passport, and he
24 did. He stamped the ship's stamp on company letterhead and wrote
25 a brief letter about expediting my passport so that I could return

1 back to that vessel or another vessel. And he put his license
2 number on that document. He asked me to destroy it afterwards. I
3 got my passport in 6 days instead of 6 to 8 weeks.

4 And we did speak, good morning, Captain. I would see him,
5 you know, around the mess hall areas, community areas. It always,
6 hi, cheerful, how you doing, Bo's? I'm just fine. And that's
7 when he would throw it at me, oh, yeah, it looks good out there.
8 I like what you guys are doing. Keep it up.

9 And again, you know, he was just a nice guy as far as I was
10 concerned. He was a good captain.

11 Q. You were responsible for handling crew issues and concerns,
12 correct?

13 A. Yes, ma'am.

14 Q. Did you ever have any issues or concerns that had to go to
15 the captain's level? Not specific to Captain Davidson, but while
16 you were on *El Faro*?

17 A. There was an incident about a longshoreman holiday in Puerto
18 Rico, and it was paid from the last line, it was an issue. The
19 guys wanted to get paid for the whole day and that didn't happen.

20 Boots, safety toe, steel-toed boots, they wanted to be
21 reimbursed, and that was an issue. And I can't -- you know,
22 there's a lot of things that come up, but nothing -- we had our
23 regular meeting to document these things that would go to our
24 union headquarters.

25 Q. Thank you. Do you recall any complaints against Captain

1 Davidson by crew members while you were on board?

2 A. No, ma'am.

3 Q. Were you ever on board when the Polish riding crew was on
4 board.

5 A. No, ma'am.

6 Q. And I want to talk a little bit about the STCW, sleep logs or
7 requirements. How did you report your work hours when you were on
8 board *El Faro*?

9 A. When I was aboard, we were working 4 hours overtime, and
10 unless the ship was sailing at a, you know, at an unusual time, I
11 would write in my regular overtime and the chief mate would fill
12 out the STCWs -- I believe it was monthly. They'd give them back
13 to us and we would review them and sign them and return them.

14 Q. So you were filling them out daily and then turning them into
15 the chief mate?

16 A. When I -- I was just writing in my overtime sheets, and they
17 would collect them weekly. The deck -- would take them to the
18 mate, and then later -- no, I don't think it was weekly. I
19 believe monthly. Yeah, the STCW time is derived from -- they know
20 what hours we work on watch, from 8 to 5:00 or midnight to 8,
21 whatever the case may be. And then our overtime rates. And
22 that's how they tabulate the time, by using our overtime rates --
23 our overtime sheets.

24 Q. Can you recall on average about how much overtime you would
25 get per day?

1 A. Four hours.

2 Q. And that was every day?

3 A. Just about. Sometimes it might go an extra one or two, if
4 something came up in port or going -- you know, leaving port,
5 going to sea.

6 Q. Was there any point where you were over your hours or that
7 you were not complying with STCW requirements that you were told
8 that?

9 A. No. No, ma'am. I get 22 days and then 66 days, with nice
10 weather. No, I didn't have any instances where I had to go 24
11 hours, like in pirate waters on Maersk Lines, or something like
12 that.

13 Q. Did you know of anyone else who was working when you were
14 there that would go over their hours or that was discussion that
15 was had?

16 A. In my department, I didn't know of any while I was aboard.

17 Q. Was it typical for everyone to have at least 4 hours of
18 overtime daily?

19 A. Yes, ma'am. My union rep just corrected me. The steward
20 department, again, which I don't work in a run, they get 3 hours a
21 day.

22 Q. Okay, thank you. Do you recall if anyone ever complained
23 about being tired?

24 A. Again, it was hot that time of year, and the work -- you
25 know, taking stores, different kinds of stuff, yeah -- I mean, not

1 complained. But we always -- I don't want to use the B word, but
2 yeah. You know, sure. It was a tough run. Sometimes I was. You
3 know, it's just -- you don't sleep good sometimes, you know, for
4 me. But, yeah, I was tired. Up and down the decks, down below,
5 up, you know. But that's on every ship.

6 Q. Could you take a break, take a rest if you needed to? Would
7 you be able to have someone relieve you so you could rest if you
8 needed to?

9 A. I would relieve guys on the gangway so they could go up and
10 get coffee. Actually, it was a deal. I would relieve when they'd
11 go make me coffee. They'd make coffee. Take a break. I'd
12 relieve them. They'd come down. I'd go get a cup of coffee and
13 come back down. At coffee time, lunch time, you have an unbroken
14 hour of rest between meals, and we had our 15 to 30 minutes coffee
15 time at 10 and again at 1500.

16 Q. And you stated that you didn't take any over-the-counter
17 sleeping medications. Did you -- did the group members ever
18 mention that they were taking anything that you recall?

19 A. No, but I did. I'd take Aleve on just about every ship I go
20 on, and I also take Tylenol PM on ships with me, just in case.
21 For instance, I have to go to bed early on the Northern Europe
22 runs and it hard to sleep. So I'll take a Tylenol PM, drink a
23 glass of milk and lay down and try and get some rest, just get off
24 my feet. And then I go for quite a few hours again, going through
25 the locks up there, Belgium, wherever they send me.

1 Q. And you mentioned earlier about a lot of noise during cargo
2 operations and things of that nature, at night did you have -- was
3 there a lot of noise, did you have problems sleeping due to noise
4 at all?

5 A. On certain nights -- you know, you have to realize when the
6 longshoremen come on, they start disconnecting lashing gear,
7 dropping it down to the deck. Trucks are coming up and down. The
8 crane, when the crane's moving, like the lights flash and the
9 alarm goes off so nobody walks in front of or behind the crane.
10 You've got forklifts, just -- the docks are noisy.

11 Q. Do you sleep with earplugs or anything?

12 A. I don't like to because if an alarm goes off, I want to hear
13 it. Or my radio. I leave my radio on low, but I know the B word,
14 Bosun. If it goes off, I respond.

15 MS. BELL: Thank you. That's all the questions I have.

16 CAPT NEUBAUER: Mr. Kucharski.

17 BY MR. KUCHARSKI:

18 Q. Yes, thank you, Captain. Good evening. Good afternoon,
19 Bosun Bradley, how are you?

20 A. Yes, sir.

21 Q. You mentioned earlier that you said it was a working ship.
22 Did the crew work regular overtime on the voyage, you know, not
23 mandatory overtime, but did the crew work the nondiscretionary of
24 type overtime?

25 A. Yes, when I was aboard.

1 Q. And how about when the vessel was in Jacksonville; did the
2 crew work a lot of overtime? When I say the crew, the sailors as
3 you call them, ABs, did they work regular overtime doing
4 nondiscretionary type things?

5 A. In home port, we would take stores, and that's food stores,
6 engine and deck stores, and I'd try to knock them off so they
7 could go home. So we didn't work maintenance overtime, but
8 operation overtime, tying up, letting go, and get the stores
9 aboard, and help the steward out. And they'd run -- not run, but
10 knock off, you know 1600, 1630, and try and beat the traffic so
11 they could go home. So we didn't work maintenance overtime.

12 Q. And that, did that include also be off watch; so the
13 watchstanders, when they got off watch do they work overtime in
14 Jacksonville?

15 A. When I was aboard they went home. And I would, again, say,
16 hey, make me a cup coffee and get out of here. When their watch
17 was -- I'd relieve them just maybe even 20 minutes to the hour so
18 they'd get a little extra head start, if I could.

19 Q. Did the deck department routinely check all the lashes --and
20 when I say lashes, the container lashes, the Roll-on/Roll-off
21 lashes. When you left port from Jacksonville on the sea voyage
22 down to Puerto Rico, to San Juan, did the deck department
23 routinely check all the lashings on the vessel, cargo lashings?

24 A. The morning after we got underway it was the daymen and I
25 would do that on the deck, below the main deck. I refer to it as

1 the car deck. They had tractor-trailers and stuff like that, most
2 of the big stuff on that deck, boats; you never knew what was on
3 there. But yeah, we would do that. Pick up the loose trash, the
4 loose gear and the chains, the straps, whatever it was and we'd
5 start forward and work aft.

6 Q. So when you say that car deck, that's where the ramp went on
7 in --

8 A. Yes.

9 Q. -- Jacksonville; is that right?

10 A. Excuse me for cutting out. Yes, sir.

11 Q. And how about the containers up on the main deck, did you
12 check any of the lashings on them or any of the Ro-Ro down in the
13 tween deck or down in the lower hold?

14 A. Main deck same thing. We'd go forward and work our way aft,
15 and we'd get the lashing -- the loose lashing rods, twist locks,
16 anything loose on deck, we would secure.

17 Q. Okay, great. How about checking the lashing themselves or
18 the twist locks that were already fitted to the cargo? You know,
19 they have binders on there or they have twist locks on some of the
20 containers, lashing rods or things like that, did you check all
21 those to see if they were tight?

22 A. Low lever action -- yes, you know, your eyes there is --
23 you're, you know, picking up stuff. If you see something that's
24 not -- you know, usually you'd flip it, you know. Yes, and the
25 mates checked also.

1 Q. And did you find any problems with the lashing or the twist
2 locks on the containers?

3 A. Occasionally we would find one that didn't have a hook and a
4 rod and we would -- that's typical on all those container ships.
5 And the mate would say, okay, you got two starboard or four port,
6 you're missing a rod, you're missing a short rod, a long rod,
7 whatever the case may be. And we'd go out, put it up a tick or
8 two, tighten her up, with a turnbuckle and hook and rod. It
9 happens sometimes, yes.

10 Q. And how about -- when you say the rods, you're talking about
11 the container rods on the container deck?

12 A. Yes, sir.

13 Q. And can you tell me, sir, how about the Roll-on/Roll-off
14 cargo? Did you find any lashing that needed to be redone or that
15 they were insufficient?

16 A. There was a couple of times where a tire was losing air and
17 it was from slack. And we'd take a couple of, you know, links,
18 retighten. Yeah, that's normal on all the, all the container
19 ships, yeah. You're going to find some sometimes. It's just the
20 nature of the beast.

21 Q. Are you familiar with the vessel safety management system?

22 A. Again, when Mr. Lawrence came, they referred to it as the SMS
23 books -- one on the bridge, one in the engine control room, one in
24 the crew mess hall -- and we were instructed to read them on every
25 ship, and be aware and familiar with that. So yes, sir.

1 MR. KUCHARSKI: Commander Yemma, could you pull up Exhibit
2 335, please.

3 BY MR. KUCHARSKI:

4 Q. Can you see that Mr. Bradley?

5 A. Yes, sir. Yes, sir, SS *El Faro* Deck Working log.

6 Q. Great. Have you ever seen this form before?

7 A. No, sir. I'm used to an SIU overtime sheet.

8 Q. Did you fill out on the type of a form or notice or anything?

9 Did you provide that to the chief mate, like a workbook, things
10 that you did during the day?

11 A. Yes, I had a workbook. And I filled it out and that would go
12 in the overtime sheet once a week, in the overtime box, and the
13 delegate would take it to the mate. But I never filled out one of
14 these forms that I remember. I may have added something or -- he
15 might have filled it out and I was on the walkie-talkie, or he did
16 it from my overtime sheet.

17 Q. And I'd like to look at page 35, and the particular date is
18 5/17/2015. I believe you were on board until the 19th of May.
19 Look at the entry there and it says, it looks like it's next to
20 the 0800 to 1200, midway through that line it says, replacing D-
21 rings on second deck aft. Do you see that?

22 A. Yes, sir. I remember the D-ring operation.

23 Q. So the deck department assisted with the D-ring replacement
24 during that date?

25 A. Yes, we did.

1 Q. Were there any other dates that you recollect during that
2 time that you assisted with either D-rings or, say, buttons with
3 any replacement or repairs?

4 A. I believe there was a few dates when we went down there with
5 sledgehammers and steel wedges and long pinch bars, and a lot of
6 WD-40 to free up some of the D-rings, and they were -- the welders
7 were welding those. We'd free them up and they would, if they
8 needed, re-weld them and replace them.

9 Q. Thank you. Was it the engine department personnel that were
10 welding them or was it shoreside people, or could you tell who it
11 was, or?

12 A. When I was aboard, we were freeing them up and they had not
13 yet started using cutting torches and welders. But I do remember
14 moving a MIG welder around. But my guys, we didn't weld and we
15 wouldn't be around a welder, you know. But we did free them up.

16 Q. Were you aware of any problems with the D-rings or the
17 buttons besides just the maintenance that you were doing on them,
18 freeing them up?

19 A. Some had been driven over many times and they needed to be
20 put in new. I remember them marking them. And again, I came
21 down, they told me which ones they sprayed yellow, for instance,
22 we freed them up. Me and the guys got out of there -- and we had
23 things on deck 2. That was -- I remember doing that, though. We
24 did that.

25 Q. Was that mostly on the -- the buttons and D-rings, was that

1 mostly on the second deck?

2 A. It was on the deck I refer to as the RO -- okay, the ramp
3 deck.

4 Q. How about when you were on there, did you perform the lashing
5 gear inventory? Do you recollect that?

6 A. Not on that ship. I don't recall counting lashing rods and
7 twists locks, but -- I didn't. I'm not saying it wasn't done.

8 Q. Okay. How about, did you find that there were sufficient
9 lashing gear, that there was sufficient lashing gear on there,
10 extra chains, binders, twist locks?

11 A. I believe so. But again, when I was aboard, I had to change
12 out some turnbuckles, if I'm not mistaken a couple times. Or a
13 bent rod here and there, but I believe there was ample supply.

14 Q. Did you have to put extra lashings on any cargo?

15 A. Not that I remember.

16 Q. Do you know if there any checklists for securing the vessel
17 for sea?

18 A. I was never given a checklist, other than the crew, when we
19 sailed, everyone had their little area that they were supposed to
20 check what we call a stowaway search. The guys, the ABs would go
21 through the house, check some compartments on the main deck. I
22 was always that deck below. And I'd go a little early to so I
23 wouldn't, you know -- to get it done. Once I knew the
24 longshoremen were off, I was down there and securing and then come
25 back up.

1 Q. How about, was there any checklist for making watertight
2 closures, scuttles and doors, things like that?

3 A. If there was, I didn't have it and I -- the scuttles I did
4 were the four on the starboard and the three on the port, the
5 forward hatch.

6 Q. Mr. Bradley, did you do that on daily basis or was that just
7 pre- -- you know, at departure time?

8 A. Departure.

9 Q. And I apologize, but did -- what did you say the hours that
10 you worked at sea?

11 A. We would get our wake-up call at 0530, turn to it at 0600,
12 and we'd come out at 1730 and work to 2000. And then, of course,
13 our regular -- for the dayworkers, it was 0500 to 1700, always
14 taking our lunch break around, between 1200 and 1300.

15 Q. So your day at sea ended at 2000, roughly?

16 A. Yeah, at sea; yes, sir.

17 Q. And did the deck department, any of the sailors work past
18 2000 without you working with them?

19 A. When I was aboard, if they -- no, I was the last one off the
20 deck, myself and the daymen. Watchstanders, bridge and overtime
21 during the day.

22 Q. Did the SIU have permanent bosons on those ships?

23 A. Yes, sir, they did.

24 Q. Oh, you -- were you at any time permanent boson on that ship?

25 A. Negative. I was relief.

1 Q. Did you serve as permanent boson on other vessels?

2 A. Yes, sir.

3 Q. Do you remember who the permanent boson was on the *El Faro* in
4 2015?

5 A. James Walker.

6 Q. Did you ever consider taking a permanent boson job while on
7 any of the, any of the Ponce class vessels?

8 A. I took a relief job and I usually sail foreign. But I could
9 have probably taken a permanent job, but I elected to take the
10 relief job.

11 Q. Is there any reason you didn't -- you say, you could have
12 taken the permanent job on one of the -- I'm asking specifically
13 about the Ponce class, the *El Morro*, the *El Yunque*, the *El Faro*.
14 Is there any reason that you didn't?

15 A. Yes, I did have a chance, and my father's illness at the
16 time, I could have been permanent on *El Morro* and I let Walker
17 take it. I knew him. And I stepped back and took the relief on
18 the *El Faro*, and let Pat Ray take the permanent on the *Yunque*. I
19 have no children and no wife, and that meant a lot to Pat. He
20 used to thank me. I'm going to be at my kid's soccer game
21 tonight, man, thanks. And same for James Walker. And so -- and
22 now that my father's gone, I don't know what I might do, you know.
23 But then I stayed close to home to take care of my -- he was very
24 old. You know, I had family.

25 Q. Was there a program that you're aware of to inspect and

1 repair the watertight doors and scuttles on the ship?

2 A. That would probably be engineering if such a program -- I'm
3 sure they had a program for that. But I didn't have a program for
4 it. It was routine maintenance to grease the watertight engines
5 and dogs, the cert fittings and all of that. Yeah, the boson, me
6 and the guys, the deck department, we did that. And they were
7 regularly greased; it was monthly. And acom ladders, gangways.

8 Q. How about the scuttles themselves? Did you do any
9 maintenance, the deck department do any maintenance on the
10 scuttles while you were on there?

11 A. Not while I was aboard. But when I was dayman, I was doing
12 what I was instructed to. There could have been maintenance going
13 on I never knew about.

14 Q. Did you ever encounter a problem with the securement of the
15 scuttles?

16 A. On occasion, I shook it around a little bit, so it would
17 screw in and the dogs would go in. There was one that was a
18 little tricky on the starboard side.

19 Q. How would you describe the scuttles? Were they, were they,
20 fairly heavy to lift up?

21 A. Yes, they were heavy. And, you know, we had to walk around
22 and do the deal. That was it.

23 Q. And you mentioned about a latch on them; is that correct?

24 A. If you opened it, there was a red latch, painted red. So
25 when you flipped it up against the bulkhead, you could latch it

1 down. And if they were latched, I didn't ever have to latch them,
2 because we were rolling, we had good weather. But if somebody
3 latch them open, it was because they were rolling a little bit and
4 felt the need to have that extra latch.

5 And again, there was a sign, Man Working Below. If you
6 opened that and was a man below, you didn't want to dog him in
7 there because he wouldn't be able to flip that open -- well, you
8 got a strong guy could. I probably could. I just wouldn't like
9 to do that. So you flip your sign Man Working Below, and when you
10 come out, you flip it so that you don't see anything and you're
11 secure.

12 Q. You said that there -- one of the scuttles, the cover, the
13 hatch cover, it was a little bit tricky on the starboard side? Do
14 you remember where, what the location of that one was?

15 A. I believe it was the -- if you're starting forward, coming
16 aft, it was probably the number -- the second one. I mean --

17 Q. When you could, when you opened that scuttle from the car
18 deck or the ramp deck, okay, from that deck and you went inside,
19 could you physically close that then and secure it from the inside
20 if you wanted to?

21 A. Yes, but I never did.

22 Q. Did --

23 A. Negative. The way they locked in, no, there wasn't an
24 opening from below. Because it would go like, you know, this,
25 when you'd screw down on it, it would engage. So there was not

1 another lock. No, you could not.

2 Q. So there wasn't a wheel on the underside of it?

3 A. No, sir, there was not. Sorry about that. I had to think.
4 Must have been another ship. Sorry.

5 Q. That's okay. I'm sure it's, you know -- d

6 Did you ever find someone when you went through the scuttle
7 and you came out, say, into the engine room, you know, the tween
8 deck there, there's a watertight door going into the engine room.
9 Did you ever find anybody go down there and forget to close the
10 door?

11 A. From the -- to go into the engine room from the car deck, you
12 went down a ladder, if I'm not mistaken, and there was an opening
13 and you just went through, but there was a watertight door and ---
14 with six dogs on it. And I don't -- I believe it was open, the
15 large door, so they would have ventilation in the heat.

16 Q. When you -- you've been through those scuttles a number of
17 times, correct?

18 A. The longshore scuttles?

19 Q. Yes, sir, the ones on the car deck there.

20 A. Yes. I would probably say -- I didn't do it every day, but
21 yeah, I had to go down there to back aft on the starboard side to
22 clean that oil and, with the sailors. And then I had to go down
23 to that fruct station operation once a week, clean that, was
24 weekly on the way back from Puerto Rico. And every 2 weeks, I
25 think we had to put fresh water on the port side for like little

1 stringers and stuff.

2 Q. When you did that, you went to the scuttle, did you call the
3 bridge to report that you were going down into a scuttle, opening
4 the scuttle.

5 A. No, I did not. Because that was part of my maintenance. I'd
6 run it by the mate, what was I going to do, you know, I had to get
7 it done.

8 Q. How about when you can out of that scuttle, did you come back
9 and secure that?

10 A. Yes.

11 Q. Did you report to anybody that you would secure the scuttle?

12 A. No.

13 Q. You were asked earlier about the mates taking drafts in port.
14 You said you could hear them on the radio. Were you ever asked by
15 one of the mates to rig a pilot ladder to go over and look at the
16 drafts on the offshore side in Jacksonville, the one not against
17 the dock?

18 A. The tugboats did that. They would get the drafts, if I'm not
19 mistaken from the tugboats, would come alongside and read them the
20 draft. And they were at eye level. But I'm not saying they ever
21 did it. They, you know --

22 Q. Correct, while you were on board, they never asked you -- you
23 or one of the sailors to rig a pilot ladder for them to go over
24 and look at the drafts on the offshore side?

25 A. I don't believe I ever did and I don't recall hearing that on

1 my radio. Because my guys would be busy. But the drafts were
2 read right prior to sailing, and my guys would be doing other
3 things, preparing to sail on deck.

4 Q. Do you remember if there was a policy or a procedure for
5 running the cargo hold ventilation fans at sea?

6 A. I think that would be more with the engineering. I never
7 partook, or partake any; I wasn't involved in that. But we did
8 clean some of those spaces.

9 Q. You mentioned that you used to sit and have -- sit with the 8
10 to 12 AB and talk to the 8 to 12 AB at lunch and things like that.
11 Did you say that?

12 A. Yes.

13 Q. So did you know Jack Jackson fairly well?

14 A. I saw him around for many years, and he was a real good
15 sailor. Old time sailor. I mean, and he did anything I asked
16 him, when I asked him, and he never gave me any trouble, and I
17 really appreciated him. And we did have Joe, the fireman, and
18 Jack and I would stop eating because Joe prayed every meal, and
19 when he did, we would bow our heads and we'd stop eating.

20 Q. And how about Jeremy Riehm, did you know him? Did you sail
21 with him?

22 A. What was his grade?

23 Q. He was a third mate, Jeremy.

24 A. Oh I, I thought it was Jamie. I'd sailed with Jeremy. We
25 got along good. I tried to have a rapport with all the officers,

1 and, you know, if he was on the bridge, I was on the deck, but
2 when we -- you know, I helped rig things for him. Yeah, I liked
3 him.

4 Q. Did you sail -- I believe he came up to the fo'c's'le. Did
5 you ever sail with him on any other vessels, when he was in the
6 fo'c's'le?

7 A. I don't remember sailing with him, but --

8 Q. And you, did you perceive him as a competent, as a good
9 sailor?

10 A. I believe he was a good sailor. I liked him. You know, if
11 he went through hawsepipe and got his third mate, I respect him
12 for that. And he still respected the crew. He didn't forget
13 where he came from. Yeah, I liked him.

14 MR. KUCHARSKI: Thank you, Bosun, no further questions.

15 CAPT NEUBAUER: Mr. Bradley, I just have a couple follow-up
16 questions, sir.

17 BY CAPT NEUBAUER:

18 Q. You mentioned the scuttle on the starboard side, car --
19 second deck, was a little more difficult to operate than the
20 others. Do you remember what hold that scuttle accessed?

21 A. I believe it would be the one behind the watertight door,
22 where the fructose stations are.

23 Q. And sir, can you give your opinion on the condition of the *El*
24 *Faro's* lifeboat davits?

25 A. I can talk now? Yeah, okay, I'm forgetting to push buttons.

1 Okay, again, I did the COIs, and we also lowered our boat,
2 the starboard boat, went down in Puerto Rico into a cradle, a
3 wooden cradle, and we flipped the lever. The davits were operable
4 and I was on the lever. I lowered that boat to second mate,
5 dropped the man ropes. Chief mate and cadet were on the deck, I
6 believe at the time. We lowered down in the cradle, flipped the
7 lever and we brought her back home, and when I say home, I mean
8 it's secured.

9 Q. Did you have to do any preparation or maintenance ahead of
10 the COI inspection to get davits ready?

11 A. I grease them every week on every ship I'm on. I grease the
12 boats. The davits and winches, wires, the whole bit. Yeah, but
13 the lifeboats working good.

14 CAPT NEUBAUER: Sir, we just have a few more questions from
15 this side, and then we'll go to the parties of interest. Are you
16 still good to continue on or would you like to take a break?

17 THE WITNESS: I don't care, 5 or 10, is that all right?

18 CAPT NEUBAUER: Yes, sir. The hearing will recess and
19 reconvene at 2:55.

20 (Off the record at 2:45 p.m.)

21 (On the record at 2:59 p.m.)

22 CAPT NEUBAUER: The hearing is now back in session.

23 Mr. Bradley, before we ask the questions, I just want to
24 follow up on the scuttle issue that we discussed earlier.

25 BY CAPT NEUBAUER:

1 Q. Was there ever a need to take any extra measures to secure a
2 scuttle beyond just using the hand wheel, itself?

3 A. No, there was a forward scuttle on the bow that, it might
4 have been repaired, and that's the one that had a hinge on the
5 port side that was basically broken and the dogs were worn. And I
6 showed the chief engineer. I showed the mates. It was on the
7 repair list. And I left a ratchet strap, two of them, up forward,
8 new ones, and I told them, if you guys get in bad weather, you
9 need to ratchet strap that scuttle down, and this was in May. And
10 that's when I -- and I also mentioned that to Captain Axelsson,
11 and then he had the safety meeting.

12 Because I think you're -- when talk about scuttles, and an
13 issue of watertight integrity came up before this hearing, and I
14 wanted to be open and honest, and I believe that was repaired.
15 And that's -- the scuttles on the car deck were good, with one
16 instance, three or four times I had to play with it to get it to
17 engage. And then once I engaged those scuttles, I straightened my
18 back, and I would bend down just a little bit and pull up, and if
19 I couldn't pull it up, I knew it was watertight secure, and then I
20 could sleep at night.

21 Q. In regards to the water in the hold that was identified, do
22 you remember what date that would have been, even approximately?

23 A. Okay. Roosevelt was the GUDE and he was with me. I didn't
24 do it as a dayman. I did it as a boson. And I think it was
25 probably my third trip. So it was probably early April, and I

1 believe that somebody in the engine room -- or it might have been
2 the first trip when I first came on. I can't recall. And I
3 believe it came from freshwater from somebody cleaning down there.
4 And then they have to come up, if there's not somebody with a
5 walkie-talkie -- because sometimes I say, bring your walkie-
6 talkie, Roosevelt, get one, you know, and I'll call you; you shut
7 that water off. That way it couldn't leak. They would pinch the
8 hose, come back up, secure it at the gate -- there was a Y gate.
9 And then they'd come aft and secure it again.

10 Q. Sir, did you ever enter the ventilation trunks for the *El*
11 *Faro*, for inspection?

12 A. No, not for inspection.

13 Q. Did you ever operate the fire dampers on the second deck for
14 those cargo exhauster supply trunks?

15 A. No, but I remember -- I believe we greased them. And they
16 took grease.

17 Q. Did you ever enter the racking bulkheads that are around the
18 exhaust trunks? There's -- we believe there was an opening on the
19 *El Faro* that you could enter and then you would be kind of inside
20 the racking bulkhead but outside the exhaust trunks.

21 A. Is there, by chance, a photo of that?

22 Q. Yes, sir. We're going to show a video and if you -- we're
23 trying to determine exactly what the configuration was inside a
24 certain exhaust trunk. So if we -- we'll show you that video now,
25 and maybe that will refresh your memory, sir.

1 A. Thank you.

2 CAPT NEUBAUER: Lieutenant Commander Yemma, what exhibit is
3 that?

4 LCDR YEMMA: It's 380, Captain.

5 CAPT NEUBAUER: If you could play that video about 1 minute
6 and 45 seconds in.

7 (Video played.)

8 CAPT NEUBAUER: Thank you. If you could stop the video
9 please.

10 BY CAPT NEUBAUER:

11 Q. Sir, did you recognize that exhaust trunk that was in the
12 video on the starboard side?

13 A. Yes.

14 Q. Did you ever enter that, the access opening to that exhaust
15 trunk, sir?

16 A. No, I did not.

17 CAPT NEUBAUER: Thank you.

18 At this time, I'd like to go the parties in interest for any
19 questions. TOTE?

20 MR. FORNACIARI: Yes, Captain, we just have two.

21 BY MR. FORNACIARI:

22 Q. Mr. Bradley, I have just two questions for you. One, did you
23 like working for TOTE?

24 A. Yes, I did.

25 Q. And if you had the chance, would you sail for TOTE again?

1 A. I would.

2 MR. FORNACIARI: Thank you. Thank you, Captain.

3 CAPT NEUBAUER: Mrs. Davidson.

4 MR. BENNETT: Bosun Bradley, I just want to thank you for
5 your 40 years' experience. Your comments about Captain Davidson
6 are greatly appreciated. Thank you. No further questions.

7 CAPT NEUBAUER: ABS?

8 MR. WHITE: Thanks for your testimony, Bosun. We have no
9 further questions.

10 CAPT NEUBAUER: Mr. Kucharski.

11 BY MR. KUCHARSKI:

12 Q. Yes. Sorry, Bosun Bradley. Exhibit 335, page 33, it says,
13 on 425, it looks like 13.17.100 says, "Wash down tank top." I
14 believe that was while you were on board. Could you tell us what
15 the procedure was for that? Is the hold then pumped out after
16 that was done?

17 A. Okay, the -- it says, "Change out fructose reservoir water,
18 wash down tank top." Okay, I do recall the reservoir water. That
19 was a weekly, if I'm not mistaken, that we did. It was on the
20 port side. We expressed water, and I used to take GUDE Roosevelt
21 with me. Once I think JP helped me with that, too.

22 Wash down the tank top. I didn't write this down, and I
23 don't know what tank top they're referring to. And if I'm not
24 mistaken, I don't know what tank top would be down there. There
25 was a fructose, big cylinders, but I don't know what tank top

1 they're talking about.

2 Q. But do you recollect on your -- while you -- time on board as
3 boson or AB, did you wash down the cargo holds?

4 A. Negative, not cargo holds. We swept them and picked up
5 longshore trash, loose dunnage, any -- you know, anything that we
6 could get in a garbage bag, in a garbage can.

7 MR. KUCHARSKI: Thank you. No further questions.

8 CAPT NEUBAUER: Bosun Bradley, I just have one final question
9 from my side.

10 BY CAPT NEUBAUER:

11 Q. The Marine Board of Investigation is looking at the Alternate
12 Compliance Program in its entirety for the effectiveness, and I'm
13 curious. Over your long history of service in the Merchant
14 Marine, what's your opinion of Coast Guard inspections and the
15 ability for those to ensure a vessel's in compliance.

16 A. Sometimes they're real thorough. And especially when we got
17 tagged on the *Maersk Arizona*, that ship needed that kind of
18 authority, I would put it. You know, being old, the ship was just
19 --it needed attention, and they no longer have it in service.

20 When the Coast Guard did our COI in Puerto Rico, we did lower
21 the boat to the water's edge; they flipped the lever. And we
22 hooked it back up and brought her home. There were trainees,
23 there was several people watching, and it looked to me like they
24 were watching a COI in training and exercising. I have friends
25 that are in the Coast Guard.

1 You know, I guess you guys -- to make it better, you might
2 have to -- you know, it might be one of my nightmares -- maybe
3 more often, more thorough, longer, day time, also at in the
4 evenings, at nights. I don't know. You know, if we're talking
5 about this incident, and I'm sure we are, it was a tragedy.
6 Category 4. You know, you don't get worse, get much worse than
7 that. That was, that was pretty bad.

8 I was in Hurricane Sandy, 180 miles from the eye on a Maersk
9 ship. We had a death overseas due to heat stroke. We came back
10 around. We lost a starboard lifeboat in a fire. The captain
11 sounded the intruder alarm because it was already set in pirate
12 waters. Everyone went to the engine room. I had been up 21
13 hours, came out and I figured, I'm not going to wet my pants for a
14 bunch pirates. I grabbed a modeling spike, a couple of knives and
15 I used the restroom. When I came out, because I was late, I heard
16 the captain on the PA system, it's not a fire, it's not a fire. I
17 know there's a couple guys out there. I mean, it's not a pirate
18 alarm, pirates, intruders. It's a fire, it's a fire.

19 And I went and I had one of my daymen, who was up with me 21
20 hours. I said, suit up. The steward was late coming out, didn't
21 make it to the pirate haven. I said, you guys all get suits. I'm
22 going to go out to the boat. And the mate and I had to spray each
23 other with salt water spray and approach the fire with a jet
24 stream. It took 3½ hours to put the fire out. By the time the
25 other guys came out to finally suit up and everything, we almost

1 got the fire into the house. We had a boundary pool. We lost our
2 starboard boat.

3 Then we came home and went through Hurricane -- not went
4 through it, but got 180 miles to the eye of the hurricane before
5 the captain made a decision to turn around. The company had, when
6 they left -- and this needs to be a record. When they left, the
7 company, because Sandy was coming barreling down into Jersey,
8 nobody shut off the email. My captain kept getting "Proceed to
9 Newark, New Jersey," this course and speed.

10 And when I went up to the bridge the second time, saying, hey
11 Cap, what's going on? I'm going to have to go out and start chain
12 falling containers now. We're going to start losing it, and
13 getting in negative GM. He's shaking that email at me, saying,
14 are we ready to make a turn; I keep getting these emails. I said,
15 aye, captain, we're ready. And we didn't lose a can of paint. I
16 worked those guys. We left the cadets in. And we made the turn.
17 Five days later we went to Philadelphia to discharge that cargo.

18 So helping you guys, you know, prevent that kind of stuff,
19 you can't. But to make this work better, what I've seen, a better
20 rapport with the officers and crew on these ships, maybe some
21 universal training. I mean, we might be in pirate waters together
22 sometimes, you know. I don't know. I'll think about it and I'll
23 write you guys. You know, I have some of my retired buddies --
24 because that's damn good question and I wished I had a better
25 answer for you.

1 Q. Sir, I appreciate the answer and any feedback you can give to
2 the Board. One final question then. What is your opinion of the
3 ability of the ABS surveyors doing inspections on the Coast Guard
4 behalf to hold the vessel accountable to meet the safety
5 requirements?

6 A. American Bureau of Shipping, I've been over and through all
7 the shipyards, all -- through your shipyards. I've seen the ABS
8 on and off ships for years. And again, I think it's more team
9 work between the agencies, closer team work. Like, hey guys,
10 we're on the same team.

11 Q. Are you saying, have you seen a decline in the team work
12 between ABS and the Coast Guard over the years?

13 A. I'm not saying that at all. I really never observed the
14 Coast Guard and the ABS working. That's my point. There's --
15 we're kind of like, that's you guys doing that stuff. All we do
16 is chip, prime and paint. You know, we're seldom asked for our
17 observations, what's going on.

18 And often, you know, sometimes, on MARAD ships, you know, I
19 mean, let's face it, our fleet is old. Tell me how many new ships
20 we have opposed to the medium made ships and then the old ships.
21 And we still have the Title 11 shipbuilding going on, if I'm not
22 mistaken, seldom used. This company's got two new brand, the 300,
23 the first green ships coming out. I mean, hey, that speaks for
24 itself. We need newer ships and better weather.

25 CAPT NEUBAUER: Thank you sir.

1 Are there any final questions for Mr. Bradley before we stop?

2 MR. REID: No questions, sir.

3 MR. BENNETT: No questions, sir.

4 MR. WHITE: No questions, sir.

5 CAPT NEUBAUER: Mr. Bradley, you are now released as a
6 witness to this Marine Board of Investigation. Thank you for your
7 testimony and your cooperation. If I later determine that this
8 Board needs additional information from you, I will contact you
9 through your counsel. If you have any questions about this
10 investigation, you may contact the Marine Board Recorder,
11 Lieutenant Commander Damian Yemma.

12 (Witness excused.)

13 The hearing will now recess and reconvene at 3:25.

14 (Off the record at 3:16 p.m.)

15 (On the record at 3:29 p.m.)

16 CAPT NEUBAUER: The hearing is now back in session.

17 At this time, we will hear from Mr. Marvin Hearman, III,
18 former able seaman on the *El Faro*.

19 (Witness sworn.)

20 LCDR YEMMA: You may be seated, please. Thank you, sir.

21 Sir, can you start by stating your full name and spelling
22 your last name, please.

23 THE WITNESS: My first name is Marvin. My last name is
24 Hearman, H-E-A-R-M-A-N.

25 LCDR YEMMA: And can you also please state your name and

1 spell your last name again, sir?

2 MR. WARE: Archie Ware, Jr., W-A-R-E.

3 LCDR YEMMA: And, Mr. Hearman, can you tell the Board where
4 you're currently employed and what your position is?

5 THE WITNESS: Currently, I've got my own -- I have a food
6 truck that I have working right now. So I'm not shipping out
7 anymore.

8 LCDR YEMMA: Mr. Hearman, can you bring the microphone a
9 little closer. You're pretty soft-spoken. I want to make sure we
10 get it on the record sir.

11 THE WITNESS: Okay, I got food truck and I have a restaurant,
12 so that's what I do now. I'm no longer shipping out.

13 LCDR YEMMA: Can you tell the Board about some of your prior
14 shipping experience and maritime experience?

15 THE WITNESS: Well, I went to the Paul Hall school in
16 Baltimore, Maryland for '03 -- so I've been pretty much shipping
17 out ever since then.

18 LCDR YEMMA: And what is your highest level of education
19 completed?

20 THE WITNESS: Highest grade completed is 12th grade.

21 LCDR YEMMA: Do you have a current Merchant Mariners license?

22 THE WITNESS: Correct, I do have a Merchant Mariners license,
23 right now, yes.

24 LCDR YEMMA: Okay, thank you Mr. Hearman. Mr. Fawcett's
25 going to begin your questioning, sir. Oh, sorry, Commander

1 Denning.

2 (Whereupon,

3 MARVIN HEARMAN, III

4 was called as a witness and, having been first duly sworn, was
5 examined and testified as follows:)

6 EXAMINATION OF MARVIN HEARMAN

7 BY CDR DENNING:

8 Q. Hello, Mr. Hearman. Thank you for being here today.

9 So did I hear you right, you said you started shipping out in
10 2003; is that correct?

11 A. Correct.

12 Q. And how long did you -- when did you stop shipping as an AB?

13 A. Actually, when the *El Faro* went down I was on vacation. So
14 in all this time I didn't go back.

15 Q. So you were a permanent AB on board *El Faro*?

16 A. I had the AB job, which is a permanent job on the *El Faro*.

17 Q. And can you describe for us in that time frame from 2003 when
18 you started until 2015, some of the other ships that you were on,
19 particularly TOTE and Sea Star vessels in that entire -- just some
20 more, a little bit more detail on, like your background and types
21 of ships that you were on.

22 A. Okay. I pretty much worked on any kind of vessel. So that
23 was my first time working for TOTE. But I worked for tankers, Ro-
24 Ro ships, anything. I done did pretty much all, as far as the
25 ship-wise.

1 Q. During that time frame, 2003 to 2015, that was your sole job
2 shipping out for that entire 12-year period?

3 A. Yes, I got my AB ticket in 2006. So I've been sailing able-
4 bodied seaman since 2006. But that's my first time working with
5 TOTE.

6 Q. And according to the crew list that we have obtained from
7 TOTE, in the last year, just covering the last year of the *El Faro*
8 before the sinking, you served on board quite a bit with Third
9 Mate Jeremy Riehm, Second Mate Danielle Randolph, and Captain
10 Davidson, quite a bit with the three of those, and a little bit
11 with Chief Mate Schultz, is that your recollection, sir?

12 A. Correct. I think Schultz, I think he had just came back. I
13 think that the chief mate they just hired back because of the new
14 ships. They was rearranging everybody for the new ships went out.

15 Q. Thank you, sir. Can you briefly describe for us the role of
16 an AB on board the *El Faro*?

17 A. My role was, I took, I stood watch. And I worked with the
18 captain and the chief mate. So pretty much I brung the ship in
19 Jacksonville and then took it out of Jacksonville. And in Puerto
20 Rico, I brung the ship in Puerto Rico and took the ship out of
21 Puerto Rico. So I steered the ship pretty much, beside when we
22 were going in port.

23 Q. You said you worked with the captain and chief mate.

24 A. Yes.

25 Q. Which watch were you on, the 4 to 8 watch then?

1 A. Correct, I had the 4 to 8 watch since the ship came out of
2 the shipyard.

3 Q. And what about daywork? Did you do daywork on top of your
4 time on the bridge?

5 A. Daywork was -- daywork for me was from, I had the 4 to 8, so
6 once I ate breakfast, I came after 12:00 from overtime, and then I
7 was off till 1600 in the evening.

8 Q. Mr. Hearman, I think the court reporters are having a little
9 difficult. If you could bring the microphone closer, sir.

10 A. Okay.

11 Q. Thank you, sir.

12 A. All right.

13 Q. So can you describe for us -- back to the bridge, can you
14 describe for us your duty, the duties of an AB on the bridge,
15 besides steering?

16 A. All right, the duties of an AB is -- I think I had, I had to
17 sweep and mop the bridge. That was my first duty when I did get
18 up. And while we're at sea, I stood watch. So from to 4 to 8,
19 I'm looking out the window making sure, calling out the contacts,
20 which is the ships, other ships in the area are; just watching
21 everything pretty much from out the window.

22 Q. And when you're underway, typically enhanced steering or
23 autopilot?

24 A. Well, once we leave out the jetty, the channel, I guess, once
25 we get so far off, we go in autopilot, which the ship runs pretty

1 much the -- you dial in the course and the ship follows the
2 course, unless we hit rough seas and that puts us in hand
3 steering.

4 Q. Are you typically walking around the bridge or are you
5 required to stay right there by the helm?

6 A. You're pretty much walking around. You're just moving
7 around, but you're keeping your -- it's not necessary you have to
8 look at the radar, but it's just something that you can do while
9 you're up there. So I just learned that, too, while I was up
10 there. But you're looking out the window -- that's the main thing
11 -- with the binoculars, and making sure the ship is safe, I guess.

12 Q. So you had sailed quite a bit with Captain Davidson. The
13 others, the other captain that you sailed on board with was
14 Captain Axelsson; is that correct?

15 A. Correct.

16 Q. Can you describe for us what you observed as an AB as far as
17 voyage planning between the captains and the mates? Let's start
18 with, who prepared the voyage plan for any given voyage?

19 A. All right. So the second mate, he's in charge of the charts
20 and all that. So he's going to draw it out. By it being on
21 Jacksonville-Puerto Rico it's left on the chart. So the same
22 route that we would run every week, we're going to sail on that
23 same line, unless it's like bad weather or something like that
24 right then. Then he's able to reroute it. Then the captain okay
25 it, and then he will do a route, you know what I'm saying, that --

1 Q. Did you observe pretty open communication between the second
2 mate and the captain as they're planning out their routes?

3 A. Yes, just like I say, I pretty much stood the whole watch
4 with the 4 to 8, so the captain, the second mate, they have to
5 communicate. They have to communicate. So it's like -- yeah.

6 Q. Was it the same with -- let's focus on Captain Davidson. So
7 there was Second Mate Randolph and the off-duty second mate. Did
8 you observe any difference between how Captain Davidson
9 communicated with each of the second mates?

10 A. Yeah, it was -- you know, they got different styles. So
11 every captain has its own way because they're the captain, just
12 being that's -- so even with Danielle and the other second mate,
13 they had different relationships. So they can talk one --
14 Charlie, he was -- Second Mate Charlie, he was a little more
15 experienced, so they can pretty much just trust him because he
16 know he been doing it forever. So they had that kind of -- what
17 can I -- that kind --

18 Q. Like a bond?

19 A. Yeah, they had that, yeah. They had that kind of bond. So
20 he can just tell -- he didn't have to tell Second Mate Charlie,
21 right, go do this right here, because he already had the did, you
22 know what I'm saying? Versus somebody who haven't been on the
23 Jacksonville-Puerto Rico run for, you know what I'm saying, 13, 14
24 years. They worked together forever, so it was pretty much, he
25 know what to do.

1 Q. So you mentioned heavy weather. Did you sail aboard the *El*
2 *Faro* in the -- you have heavy weather during your time?

3 A. Yeah, but it wasn't -- it's not like a Northern Europe run or
4 nothing like that, right there. It's going to be bucking, but
5 it's not going to get, you know what I'm saying -- you won't get
6 nothing, you'll get up in Northern Europe or nothing like that.
7 So it can get, it can get bumpy. I'm going to put it like that.
8 It's not going to be nothing physical or anything where the ship's
9 going to go down. But --

10 Q. So just a few months before tropical storm and Hurricane
11 Joaquin, there was another storm called, Erica. Did you serve on
12 board the *El Faro* during that time?

13 A. I think I was on there, but I can't really remember. But
14 it's not like it's -- ask me the question one more time.

15 Q. There was another tropical storm and hurricane called Erica.
16 It was back in the late August time frame. I believe you may have
17 just gotten off just before that. But was there, was the storm --

18 A. I think I got off on August 22nd, if I ain't mistaken. I
19 think I had gotten off. Which is like I say, even -- I still talk
20 to the guys. So it was like -- we get in Puerto Rico, we still
21 keep everybody, you know what I'm saying, everybody informed. So,
22 I don't think I remember them telling me we're going through a
23 storm.

24 Q. What about after Hurricane Erica? You know, the ship
25 diverted through, or took Old Bahama Channel to avoid that storm,

1 ended up hitting it anyway. Did any of the crew from the *El Faro*
2 describe that experience to you?

3 A. No, I think -- yeah, I think I was on vacation for that, but
4 I don't think I heard. I don't think anybody talked about it. I
5 don't think nobody talked about it. It's Jacksonville. I don't
6 -- I never seen it really get rough like. Even hearing from, you
7 know I'm saying, hearing of a storm going from Jacksonville to
8 Puerto Rico. I didn't get to talk, so it was really like --

9 Q. So as they're planning the route, did the mates ever, or even
10 underway, did the mates seek, you know, any kind of advice or
11 discuss the route or the ship handling with the ABs here? You
12 know, you're steering the ship. You're feeling the ship. You've
13 got some good input for them. Did they ask you your feelings on
14 the route or how the ship was handling or any of that?

15 A. I'm going to be honest. You've got -- this is how they
16 explained it to us. You got licensed. You got unlicensed. Our
17 voice is not even -- they don't even ask us, to be honest. It's
18 pretty much whatever, whatever the bosun or the captain say,
19 that's what it is. So we don't have a voice in it, to be honest.

20 Q. If you did have a voice, what would you say?

21 A. Well, it depends on different -- they did, they did go to
22 school for it, so a lot of people don't really know how to apply
23 the chart card, or you know what I'm saying, add to it? You know
24 what I'm saying? So a lot of people go up there just to steer.
25 But me personally, I learned a lot of stuff because I ask

1 questions. You know what I'm saying? But that, they, a lot of --
2 I'd say Captain Davidson, he was pretty much more like a -- if you
3 want to know something, you can learn it. You know what I'm
4 saying? If you got a question, he'll give you answer. But some
5 captains, you wouldn't dare ask them. I'm just being honest. You
6 wouldn't dare ask something like that right there because they'd
7 say it's not your job when you ask them.

8 Q. So you're saying, Captain Davidson was easy to talk to as an
9 AB?

10 A. He was the one out of my whole shipping career, like one of
11 the best ones. I'm just being honest, where you can go to and if
12 there's a problem or something like that right there, he would --
13 he'll stop it right there. You know what I'm saying? So you can
14 go to him, and not even in a problem, you can go to him and just
15 ask him a question and he'll give you an answer.

16 Q. Was it the same way with the mates? Did you experience that
17 mates having a pretty open communication with him?

18 A. I can say, yeah. But we had some problems aboard. We had
19 some problems aboard, and -- you can ask questions about it, you
20 know what I'm saying?

21 Q. What kind of problems are you referring to?

22 A. Well, we had --

23 Q. I know it seems a bit of an opened-ended question, but since
24 you brought it up, I'd like to hear what you have to say.

25 A. Well, we had some problems. It was, to be honest, you know,

1 I'm going to be honest, it was really like crew against -- it was
2 unlicensed against officers. So every time you say something,
3 it's like you're a troublemaker. Or you can go ask a question,
4 like, why we going through this storm? Oh, we don't pay you to
5 think. That's what kind of answer you would get. You know what
6 I'm saying?

7 Or, you got some of them walking around just because they
8 went to school for it and got the credentials for to be mate, to
9 be, you know what I'm saying, get the officer license. Then they
10 feel like they was better. That's on any ship in fleet though,
11 not just TOTE. So --

12 Q. Did any of the mates ever express any concerns regarding
13 safety while -- you're on the bridge with the chief mate, let's
14 say, you know, when the captain's not on board. Were there any
15 discussions between him or any of the mates about overall safety,
16 route planning? Any concerns that they brought up in the absence
17 of the captain?

18 A. I'm not going to say that. Overall, I think it was a good
19 crew but it was just a bunch of stuff going on, to be honest. And
20 it was a problem with both captains. I sailed with both captains,
21 so -- if it was a safety issue, both of them was tough on safety.

22 So it's a problem today, tomorrow -- if they can handle it, it's
23 going to be handled. You know what I'm saying, so it's not like
24 they're going to push it off to side, or anything like that. If
25 it's a problem, it's going to be handled, with both captains.

1 Q. Did you ever hear either the captains or the mates on the
2 satellite phone that's on the bridge?

3 A. Yeah, the the company called the satellite phone. I guess
4 the captain and the chief engineer, they get a certain amount of
5 time on the satellite phones, so, yeah, they can use the satellite
6 phone anytime they want to.

7 Q. What types of discussions were being had on the satellite
8 phone?

9 A. Oh, on this ship by being a short run, it was pretty much all
10 the company. If we're going to fast, if they -- we slow down from
11 from Puerto Rico to Jacksonville. So if they tell the captain
12 that he wanted to do 10 knots, and they look -- I guess they had
13 something that they look at, because I done be on the bridge when
14 they call the bridge and be like, you all are going too fast.
15 You're doing 13, 14 knots. Why you -- and the standing order is
16 supposed to 10 knots. So they'll call bridge then and tell us to
17 slow down. So they'll bump the RPMs down.

18 Q. So scheduling discussions?

19 A. Oh. yeah.

20 Q. What about going from Jacksonville to San Juan, were there
21 scheduling discussions that way?

22 A. Pretty much leaving Jacksonville going to Puerto Rico be 4
23 bells the whole way. So I guess it already discussed. You know
24 what I'm saying? But coming back from Puerto Rico, because we
25 slow bell, I think, when we left Puerto Rico Friday night and had

1 to be to Jacksonville, Monday morning or Tuesday, something like
2 that. So that was pretty much the company. I know one -- I know
3 a couple of conversations I heard where there was -- I guess they
4 had like some vessel supplies or something like that right there.
5 So they tell us instead of going 10 knots, bump it up full speed.
6 So we full speed and come back to Jacksonville. But you rarely
7 heard or whatever. That's the only conversations, though.

8 Q. Typically full speed from Jacksonville to San Juan?

9 Did -- were there ever calls about taking the most direct route,
10 staying on schedule, don't deviate from the most direct route?
11 Any similar conversations?

12 A. We pretty much -- he's not going to do that because the
13 captains already know you got -- and it's all the time, you got to
14 be able to get the ship there on time. You can't burn too much
15 fuel. It's certain stuff on every ship every captain got to deal
16 with, so they pretty much know. You can't just, he can't just
17 say, I'm altering course to do this right here. No, you can't do
18 that. You got to go through -- he got to still follow steps, too.
19 He can't just control the whole ship by himself like that.

20 Q. So most captains issue standing orders or night orders. Did
21 you see a copy of the Captain Davidson's standing orders or night
22 orders on the bridge?

23 A. Oh, yes, I seen them. I even read them, because when I say
24 he walked, he'll sit down. So then to pass the time, I read them.
25 I pretty much know the whole operation on the bridge, but I'm not

1 an officer, but I can, I can tell you the whole operations up
2 there.

3 Q. Can you tell us what you can recall about those standing
4 orders?

5 A. Well, both captains pretty -- I'm going to tell you about
6 both captains. In every standing order if you have any problem,
7 call me. They said, they always have an open-door policy. So it
8 can be 1:00, 2:00 in the morning, and if a problem occur, you've
9 got to call them and wake them up. They didn't sleep, right --
10 they slept right here, though. So --

11 Q. So any problems call. Anything else you can remember about
12 those standing orders?

13 A. And then the standing orders, then like I say, you going from
14 Jacksonville to Puerto Rico, so you got the course; they have the
15 course written in there. This is the course I want you to stay
16 on. Pretty much it was only in the book, it was only about this
17 minute -- probably about three sentences, you know what I'm
18 saying, pretty much saying this is the course I want you to
19 follow; if you have any problems don't hesitate to call me. Stuff
20 like that right there. It was nothing like significant.

21 Q. So we've talked about relationship between mates and the
22 captain, ABs and the mate and the captain. What about engine room
23 personnel? How is the relationships between the decks -- the deck
24 department and the engine department?

25 A. Well, you know, like I said, we all were pretty much

1 everybody from Jacksonville. So we get along. But with the -- it
2 was a problem with the engine room. They bump heads, though.
3 That's on ever ship though. The engine guys don't like the deck
4 guys. They a licensed department so it's always -- but pretty
5 much if I was getting in Jacksonville and all of us, you might
6 stay 1 block away from me or this side of town, we hang out. So
7 it's different.

8 Q. The mates talked to the engine room on the electronic phone,
9 the house phone you call it, on the bridge, during the course of
10 the watch. Do they, do they call down and talk about RPMs, any
11 other discussions about how the ship is handling?

12 A. Well, before the end of every watch, they have to call in the
13 temperature. They have to call in, I guess the temperature of the
14 water. They'd have to call in the course. They'd have to keep
15 their only little log, too, though. So, just simple stuff like
16 that right there, that the mate's on watch have to do before they
17 get off watch, with only *El Faro*, that's how it was.

18 Q. So is that how frequently they would talk, once per watch,
19 they would talk to the engine room?

20 A. That's it. You got the noon day slip, which I pretty much, I
21 don't know whether they're up there, but I know they got the noon
22 day slip.

23 Q. Weather information that the ship would receive, we talked a
24 lot in these hearings about BVS, the Bon Voyage System. Did the
25 mates ever show the screens on the weather system?

1 A. Yeah, you know, like I said, I learned a lot of stuff while I
2 was up there. I could look at the computer. I can tell you how
3 fast the wind, the wind blowing right here, or whatever. If it's
4 a hurricane like that, I can tell you, you know what I'm saying,
5 the distance, what speed that we do when we be in the hurricane.
6 So it's a lot, it's a lot but you also had that little weather
7 strip, when hurricanes come in the area, just keep going off, so
8 you had that in one weather machine, so yeah.

9 Q. Did the, did the mates indicate to you how user friendly they
10 felt that system was?

11 A. To me personally, I think it's excellent because it tells you
12 everything. It can tell you if a hurricane happening right now by
13 Puerto Rico, it'll tell you where it's going to be in 3 days on
14 that. So I think it's helpful, I don't know. That way they used
15 to keep it on the computer, so it got to be helpful. But you also
16 had the little slips, too, would come in, that it's getting
17 closer. So it just keep going off, keep going off.

18 Q. On the BVS, did the mates ever indicate to you that they had
19 any concerns with its accuracy on weather forecasting?

20 A. No. They've been using it for years, and then I seen there
21 was an upgrade of the software. So they used to update the
22 software and all the stuff like that, new charts and new
23 everything, so -- I don't think that was a problem.

24 Q. Do you recall the anemometer readout, the display showing the
25 wind speed and direction on the bridge?

1 A. Yes, it was above -- it was above the windows, if I ain't
2 mistaken. They'd take --

3 Q. Did -- I'm sorry, I cut you off.

4 A. No, I was saying, it was just telling you the wind speed and
5 all that right there. And like I said, I used to help out with a
6 lot of that stuff, so --

7 Q. Do you recall if it, if it seemed to work all the time?

8 A. I think the majority of the time I could say it worked, but I
9 don't know. They had to replace something up top of the bridge.
10 They had to replace a piece or something for that, I think it
11 wasn't accurate. But I think they audited it.

12 Q. What time frame was that discussion when they were replacing
13 a piece?

14 A. Now that, I don't know. But then, like I said, I used to be
15 walking around, so if I hear it, I hear it. I'm just, I'm steady
16 moving around, so -- some of the stuff I heard, if I want to, you
17 know what I'm saying, like learning, and I -- but that was
18 nothing, you know what I'm saying, something I never read.

19 Q. Did it feel like that was maybe -- you know, just give me a
20 general time frame, if you can. A month before Joaquin, or a year
21 before, 2 years before?

22 A. No, actually, I think it was fixed though, it was fixed
23 before then, though. So it wasn't nothing like -- because I know
24 they was using it. They had, just like I said, before we get
25 watch, they've got to write all that stuff down, you know what I'm

1 saying, so yeah.

2 Q. So the mates were using, you recall them using the
3 anemometer, or did they sometimes -- you know, you talked about
4 looking out the window, observe the weather from the sea state and
5 estimate versus using the anemometer? Did they ever do that as
6 well?

7 A. Yeah, that too. So just like I say, we used to look out
8 window to see which way the wind blowing and, you can just look at
9 the waves, you could tell which way the wind blowing, you know, by
10 the white caps, you know what I'm saying? You can just pretty
11 much see how hard the wind's blowing, and stuff like that.

12 Q. So when you're not on the bridge and you're doing your
13 overtime work out on deck, what type of work did you do?

14 A. I chipped and paint. It's always the different jobs, you
15 know what I'm saying? It might be, because you know, we had
16 animals I might have to watch. What, it was pretty much anything.
17 Whatever you got -- whatever need to be done, that's what you're
18 going to do.

19 Q. Did you go down below in the cargo holds?

20 A. Yeah, I walked, I worked down there too. Just like I said,
21 we had to do lashing and all the kind of stuff like that, pick up
22 lashing chains and the whole kind of stuff like that.

23 Q. Were you ever asked to tighten lashings?

24 A. We all did it. Just like I say, they might tighten it before
25 we leave and we hit -- it might get a little bumpy, and then the

1 chief mate, when he making a round, I guess he was checking the
2 chains. So he'll tell the boson, hey, have the guys to spread out
3 and tighten the lashing, you know.

4 Q. As you're working in the cargo holds, let's say you're all
5 the way down on fourth deck, the tank top level, did you ever
6 observe water in those cargo holds?

7 A. Well, two times I think it was, but one time I heard the
8 captain saying it was -- they had a leak down there, and he had
9 the Second Mate Charlie, they was rotating out making sure -- I
10 guess they had a crack or something like that right there, and
11 water was coming in. But when we got into port they fixed it,
12 though they had the crew, the welding guys to come on and they
13 went inside the ballast and all that. Because I remember the
14 chief mate being dirty, real dirty, and so they weld everything
15 up, and I guess the, what, ABS guys, they came on and checked it
16 and okayed it.

17 Q. Do you recall a time frame for that discussion?

18 A. To be honest, I really don't. But I just know what I know,
19 you know what I'm saying. I seen it and I -- because they had the
20 white suits on. It was filthy, the whole bottom was filthy and
21 they had to climb through the little -- that little bridge that's
22 up under the deck, the bottom deck. I forgot what they called it,
23 but -- so I know for a fact that he put Second Mate Charlie. They
24 had to keep, every watch they had to keep going back and forth to
25 make sure the water wasn't getting out of hand.

1 Q. So the crack, what was your best description of where that,
2 the location of that crack?

3 A. I want to say on the starboard side. I want to say the
4 starboard side. I'm pretty much sure it was starboard side, like
5 forward of the bow and the bow.

6 Q. There's large watertight doors, cargo doors between the cargo
7 holds. Well, with that, I'll stay with that crack for a bit.
8 Did, how much water did you observe in the holds from that
9 particular issue?

10 A. Oh, I'm sorry. Oh, I didn't, I can't, now that I can't, I
11 can't say. But it was, I guess it was enough where they had the
12 mates going down there, rotating out and checking it. You know
13 what I'm saying. So it had to be some water down there.

14 Q. And that was below the cargo hold; is that correct?

15 A. Correct. Correct, below, but they had to have welders come
16 on and weld the ship, weld it, that crack.

17 Q. Before you said, did you say two times you observed water in
18 the hold? What was the other time?

19 A. I think both times they were like, I think cracks or
20 something got in the ship. I believe, like I said, I went -- I
21 was listening but, that's not mine. I be having so much stuff
22 going on, but I know what I heard, you know what I'm saying, so.

23 Q. Anything else you'd like to add on those topics?

24 A. I guess, it was just a -- it's an old ship. It's an old ship
25 and a lot of old ships need to be taken out of the fleet, to be

1 honest. They need to be took out, or if you're going to do an
2 inspection, do a real inspection. Don't bring some guys who are,
3 I ain't going to say, you paid them off and they okay, you know
4 what I'm saying. Because a lot time I think we left, and I know
5 we weren't supposed to leave, but that's it.

6 Q. So when you say real inspections, did you observe some
7 inspections that you didn't believe were thorough?

8 A. Yeah, even, even the lifeboats, you know what I'm saying? It
9 was like they weren't ready. Then we got a tap on them and do all
10 whatever, in a case of emergency was to happen. But the
11 inspectors even, the ones that came out, they okayed it, and we
12 fixed the problems pretty much, you know what I'm saying, the best
13 that we can, but it's not really like the way it need to be it.
14 When you got your guys scared to go inside of them, then it's a
15 serious problem.

16 Q. Scared to go inside what?

17 A. The lifeboat, they was always -- it's an old ship. You're
18 talking about a ship almost, what, 40 years old or something like
19 that. So it's just like trying, I said, it's just like trying to
20 take a 40-year-old car to New York, driving to New York. It's
21 scary. You don't know if you're going to make it.

22 Q. So were there specific problems with the lifeboats that you
23 were aware of?

24 A. Oh, yeah, you got to think about it, the ship was sitting up
25 for, in the shipyard or whatever. It was sitting up, so rust,

1 rain, water and all that stuff. We fixed a lot of that stuff, but
2 then like I say, I brung it out in the shipyard, but it was
3 because 4 hours a day we'd chipped, we paint, ain't no if, ands or
4 buts about it. We'd knocked a lot rust around, buckets and
5 buckets and buckets of rust off the ship, so, it wasn't a brand
6 new ship.

7 Q. So a lot of chipping and painting. Was it surface rust or
8 were, did you observe steel that was wasted through, or was it
9 surface rust that you were chipping off and then repainting it?

10 A. It was both. And like I say, 2 or 3 months, we went down one
11 side of the ship, just halfway from the house on back, it took us
12 about 3 months just to do that right there, but, you know, you got
13 -- it's an old ship, you got to realize. Where they spray paint
14 the ones what don't get all rusted through, and they replaced it.
15 But it's an old ship. A lot of rust.

16 Q. Did certain decks or holds require more chipping and painting
17 than others?

18 A. The whole ship, it was -- I'm just being honest, it was. But
19 that's with any ship though that's old as 40 years old.

20 Q. Back to the lifeboats. I'd like to get a little bit more
21 detail of some of the problems what you were, you were alluding
22 to. Were there any issues with the lifeboat davits?

23 A. Well, I done see them let them down and they won't come back
24 up. Now you got to call the engine crew, then they'll come out
25 and fix it and bring it back up, repair some of the, the little

1 levers on it. It's just normal wear and tear. But some of the
2 stuff probably should have been replaced, but just like I said, as
3 seamen, we don't voice our opinion about stuff like that, right
4 there because half of the time we ain't getting heard or when you
5 say something it's a problem, but you're not thinking about a ship
6 going down either, that'll happen to use the lifeboats.

7 Q. Were the lifeboats lowered to the embarkation deck during the
8 fireboat drills?

9 A. Every, every fireboat, yes, there was a starboard and a
10 right, we both -- it depends on how the wind. So you might be
11 going in one direction, we going this way the wind blowing. Say,
12 oh, the captain going to say, no, we're not going to mess with
13 this one right here. Alter course, and we going to drop the other
14 lifeboat. So the boats are getting -- we did the safety drills.
15 But you can do them all day in case -- I mean, you can practice it
16 all day, but in a real situation it's totally different.

17 Q. How so?

18 A. That's anything, because just like I was saying, you can, you
19 got people panicking. We can practice fireboats and all that
20 stuff all day, but it's not the real thing. And that's what I
21 like about really both captains because they might call a fire
22 drill and don't even -- like today, today is Tuesday. They'll
23 tell us on most ships, our fire drill will be Friday. But I done
24 seen them guys, they'll do fire drills and they don't even
25 announce it. So it's more like a real situation versus because

1 you don't know, you've got time to think it, when you got a
2 general alarm going on. You just doing your job.

3 Q. So what about inside the lifeboats, did you ever get inside
4 the lifeboats and observe the condition of the, either the boats
5 themselves or the survival equipment that was inside?

6 A. Yeah, we did all that. I think what we need to do -- not we,
7 but I guess that's the Coast Guard and the inspection, we need to
8 do a thorough inspection of all that stuff out there, right there,
9 because I know one instance they had -- even if the ship would
10 have went down, you have the life, inside the lifeboats the water
11 was expired like 7 months or 8 months or something like that,
12 right there. And I know I seen somebody come on and inspect it
13 so, he just said, list stuff like that right there.

14 Q. So you saw Coast Guard inspectors come on board and count the
15 water inside the lifeboats, is that what you're saying?

16 A. Yeah, I've seen them. Just like I say, when we get into
17 port. But see, they do a lot of that stuff when we in port. So
18 we come to Jacksonville, just like I say, I'm on 4 to 8 watch. At
19 8 o'clock, I'm going home, so I don't seen nothing after 4
20 o'clock. And even in Puerto Rico, when we pull in, I'm gone. So
21 I don't know pretty much -- I know what I see, though, you know
22 what I'm saying. So I see the Coast Guard guys, and I see the --
23 and I hear about it. So it's pretty much, that's all.

24 Q. So do you feel like those inspections are not thorough? Is
25 that --

1 A. I think, I think that, I mean, by this right here happening,
2 I think it need to get a little, it needs to be more serious,
3 because this, this right here really like hit home, you know, and
4 this is damn for real. It need to be took as a serious matter,
5 you know what I'm saying. So yeah.

6 Q. Did you ever talk to any of the Coast Guard inspectors on
7 board?

8 A. No, they just come on. I bring them up. I call the captain.
9 I tell him hey, they here, and they made our watch come down.

10 Q. What about ABS surveyors, do you ever talk with any of them
11 on board?

12 A. I ain't going to say I talk to them, but I know one time I --
13 when we was in Jacksonville, the gangway got stuck, and I guess
14 they had to put a new winch on and the ABS guy was like -- and he
15 made like a joke, you know what I'm saying, so they still, and we
16 still ended up, we put a chain up all on the gangway and we
17 sailed.

18 Q. So what do you mean, he made joke? I'm trying to understand
19 the scenario.

20 A. It was like, it was pretty much like, I guess the people over
21 there had to put the winch on and all that stuff like that, right
22 there. It was pretty much like, you had to just see how, he
23 didn't really say no word, he was just like -- because I was on
24 gangway watch, he was just like (sigh sounds).

25 Q. Was something not working properly?

1 A. Yes, he was pretty much tired of waiting around.

2 Q. So it was just the winch was the issue?

3 A. Yeah, the gangway. I guess they did something like, it
4 wasn't done correctly.

5 Q. Did you ever use the scuttles to go down into the cargo
6 holds?

7 A. Yeah, we used them.

8 Q. Did they, did you see any issues with those? Did they open
9 and close properly? Did they seal? Were there any issues with
10 the mechanical operation of them?

11 A. Well, I never seen a -- I never had a problem with one of
12 those. We worked in the holds, though. Then like say, I put the
13 sign, that man in the hold, so nobody won't come behind the ship
14 in the holds, because it's heavy, when you got to turn in them and
15 climb back up, it going to be pretty heavy if you not a strong
16 guy.

17 Q. You were here in the room while Bosun Bradley was testifying
18 a little bit ago. Is that correct?

19 A. Correct.

20 Q. Did you hear him discuss one of the particular scuttles that
21 was, I can't remember how he described it, but he had to wiggle it
22 to get it to seal properly. Did you experience that same issue?

23 A. I don't know which one he was talking about, but I know the
24 one on the bow, it was old, right, you slam it down. But it still
25 locked. It still was able to, you know what I'm saying, secure

1 and they did have the, the chain -- what do you call it? The
2 straps. They put a strap on it so it would be extra tight.

3 Q. Now was that a scuttle -- that wasn't a scuttle down into the
4 cargo hold, if I understand correctly? That was in a, a different
5 space. Is that right?

6 A. The one I'm talking about is on the bow. Where you --

7 Q. And what space did that lead into?

8 A. Yeah, the forepeak, it leads down into forepeak. You can get
9 to anything, well, the aft to forepeak.

10 Q. Was there a policy on board that required the scuttles to be
11 closed and checked while underway?

12 A. Yeah, just like said, the boson, that was their department
13 where they secured for sea and do all that stuff like there,
14 right. It wasn't my job, the AB, but just like I say, I know the
15 operation and they'll call it in, always say, the scuttles secure
16 and all. Stuff like that right there.

17 Q. So that's checking on a regular basis was the boson's job?
18 Is what you're saying?

19 A. Correct.

20 Q. What about users like, you know, folks like yourself or
21 anyone else that's on board. Was there training that said, when
22 you're finished using a scuttle, secure it?

23 A. Yeah, the captain, they'll tell you, like, especially at sea,
24 you have to keep those doors closed, you know, the scuttles
25 closed. Stuff like that. There wasn't no, no training. You just

1 know from you working on ship that you know you got keep them, at
2 sea.

3 Q. Did everyone seem to comply with that and keep the, keep the
4 scuttles closed on a regular basis? Do you feel like the culture
5 on board was to keep them closed when not in use?

6 A. Yeah, I can say everybody pretty much complied because if
7 you're on the Jacksonville-Puerto Rico run you've been shipping
8 for a while. So you, everybody who come there run with that
9 experience, they know what ships. So a lot of stuff that you knew
10 on board, I know you got that ship then, I know you've been around
11 for a while so you know how to put -- you pretty much know how
12 everything goes.

13 Q. So I'd like to talk a little bit about cargo securing now.
14 We've heard a lot of testimony from different witnesses about
15 responsibilities of mates regarding cargo securing both in port
16 and underway. I want to talk first about in port. Did you
17 observe the Portus longshoremen in lashing gangs?

18 A. Yes, crewmen, and like I said, we pulled in our watched, so I
19 watched the whole operation till I left.

20 Q. Can you describe that operation for us? We've heard reports
21 of it being somewhat chaotic and fast moving. Can you just tell
22 us what you, what you've observed?

23 A. What I seen, when they first come on board, they sign in at
24 the gangway, and they start throwing the rods down. They
25 unlashing. They throwing them down. And as far as down below, I

1 done heard what some of the guys was complaining to the boson like
2 this, we shouldn't be working while they doing cargo because you
3 got them cars, you got the trucks coming on grabbing boxes. You
4 know what I'm saying. People be working. So we really shouldn't
5 be working. It's not even that serious working in port, while
6 they doing cargo. A lot of companies don't even allow it. But I
7 know this company, TOTE, you work in port.

8 Q. What kind of work would you do in port?

9 A. Well, I'm going to be working with a lot being at the gangway
10 but as far as I, my buddies, they would be dragging mooring lines
11 because of the big tractors. Sometimes the tractors come on, and
12 they have to put the lines down. So the tractors drive on the
13 lines and it was all kind of stuff like. You can be doing
14 anything. They tell you, you're going to work.

15 Q. So you spent a fair amount of time on deck. Did you ever see
16 -- you know, we've talked a lot about the buttons that secure the
17 Ro-Ro cargo, the Roloc boxes attached to the buttons. Did you see
18 any of those damaged while you were on board *El Faro*?

19 A. I ain't going to say that, but I know they was replacing
20 them, a lot of that stuff. I was doing it for my overtime, you
21 know what I'm saying. Fray D-rings and doing all kinds of stuff
22 on my over, for my overtime. But I seen them boxes that the
23 trailer sit on, the little, the little things what you talking
24 about.

25 UNIDENTIFIED SPEAKER: Sunlight box.

1 THE WITNESS: Yeah. So they pretty much work.

2 BY CDR DENNING:

3 Q. So while you're in port the cargo ops are going on, did you
4 -- was there usually at least one mate out on deck? Could you
5 describe what the, what the mates responsibilities were, as far as
6 your understanding?

7 A. The mate responsibility, oh, you got the boson, and the
8 electrician and all those guys. On the top deck, they was
9 unplugging the reefers, coiling them back up. And the mate, he'll
10 go down below, too, and he'll start down below. And then the guys
11 will help him with that. And then the mates, when they start
12 bringing back on, they'll start plugging back up and doing
13 whatever they got to them.

14 Q. Do you ever recall port mates being used on *El Faro*?

15 A. They had just started that right there. They had just, I
16 guess they went away, but they started bringing them back with the
17 port mate. But even with that, the port mate was working by
18 himself because I guess they figured that it was a break, and that
19 was a problem, too. Like, the port mates was doing the work and
20 you got the un-licensing thing that we, we can't even get -- you
21 all making us work, but you all take off the jobs there and
22 getting paid for it, as far as the port mate. So on most
23 companies when you have a port mate come on, he help out,
24 everybody help out. But with this company here, I guess the Chief
25 Mate Ray, he had just came to this company, so he pretty much

1 tried to bring that whole little thing with him, too, as far as
2 the port, the port mate.

3 Q. So when port mate's on board are the, the other mates
4 getting, getting rest? Is that --

5 A. Yeah, they start, they started to go to sleep. Probably
6 they'll go to shore.

7 Q. How frequently did the mates check the cargo lashing
8 underway? You said earlier, I think that it was everyone's,
9 everybody helped out with that. How frequently were those
10 lashings checked for tightness?

11 A. See, pretty much, every day it's bumping, automatic,
12 automatically we'd -- I think every other day or something like
13 that right there. So if it's a smooth sail, then we really, we
14 pretty much don't worry about. I guess the mate will probably
15 make his round, and then he'll call. But if it's a smooth
16 sailing, he'll be like, nah, I'll give them something else to do.

17 Q. When it got bumpy, did the lashings tend to loosen up?

18 A. Yeah.

19 Q. Was the frequency of checking the lashings increased if you
20 were in heavier weather, bumpy, as you called it?

21 A. Correct.

22 Q. Did you ever seen any of the Ro-Ro cargo tip over, the
23 trailers on the chassis, they would tip over while you were on
24 board?

25 A. I didn't see that, but they had pictures on the bridge where

1 the trucks done broke loose and went out, one went through the
2 wall there, it was in the shipyard, or something about that, right
3 there. They had pictures on the computers.

4 Q. Did they ever talk about that on the bridge, as far as
5 precautions?

6 A. I never heard of that.

7 Q. They just had pictures up there for the purpose of sharing
8 stories or --

9 A. It pretty much just giving stories. Just like I say, when
10 you go through, when you get bumping, we laugh, we've been doing
11 it for a while, just to be honest. We don't think that it can get
12 physical. Physical how it really can get, you know what I'm
13 saying so. I think it was a conversation like that, or something
14 like that.

15 Q. What about the containers on deck? Did you ever see
16 container stacks breaking free or leaning over when underway?

17 A. I not saying one time, but they, we had about five high or
18 something like that, four or five high, and one of the, I noticed,
19 I guess the Gantry crane, he put it on wrong. But I be looking
20 out the window, I'm trying to find anything to keep me busy, and I
21 noticed it, but I told the captain and he got it fixed, when we
22 got in port though.

23 Q. So that wasn't a failure of lashing equipment? You described
24 it as a crane put it on wrong?

25 A. Yes, the Gantry crane put it on wrong. It wasn't a,

1 actually, no bad reaction or nothing, but just like I say, when
2 you go five high, the only box that get lashed at the first two,
3 the bottom two. So you still go three containers up top that's
4 not even lashed. But the bottom two is lashed everything to
5 bottom.

6 Q. So how does the crane put a container on wrong? Can you
7 describe that for me? Describe for me what you saw.

8 A. I guess, I guess when the Gantry crane picks it up, it sits
9 on a twist lock, and a green light come on to let them know that
10 it's locked in. But apparently, I don't know if it was a failure
11 due to the spreader bar, but it went on wrong. The bottom, the
12 bottom two, the backside two didn't -- instead of going in place,
13 it was like crooked, so it was sitting on top of the next
14 container.

15 Q. So the twist locks that it sat on were not engaged to the
16 container above it?

17 A. Correct.

18 Q. I want to go back to the drills a little bit. We talked
19 about it before. During drills, did you and other crew members
20 wear lifejackets during, during fireboat drills?

21 A. There was a fireboat drill, everybody have -- you bring your
22 survival suit outside your door. And you bring your life vest to
23 the boats.

24 Q. So the survival suits, you bring them outside your door.
25 Your stateroom door, is that what you mean?

1 A. Correct.

2 Q. Were those ever inspected? Did you ever put them on, make
3 sure they fit?

4 A. I think that was the one time a month, or something like.
5 One time a month, but they tell you like, just be a good seaman
6 just to make sure if something do happen, make sure your own stuff
7 work. But they had third mate, that was his job, too, to make
8 sure the zippers are greased. But at the same time, you got to
9 check your own stuff, too.

10 Q. So you talked about the lifeboats. What about the life
11 rafts? Those were located on the same deck with the lifeboats; is
12 that correct?

13 A. I think every -- now those were inspected and I think when we
14 got to Puerto Rico, they brung like three or four of them on, or
15 something like that right there. But those were, I know those was
16 in good standing.

17 Q. How do you know that? They're in the cradle, right? How do
18 you know that?

19 A. Because I -- I know because some of them we had to put them
20 up and they was heavy. So we knew that everything was good with
21 those. They replaced them and you can see on the tag. They was
22 tagged for about --

23 Q. What did you see on the tag?

24 A. If I ain't mistaken, they got like the date and they mark it,
25 rated it. They say when it expires or something like that right

1 now.

2 Q. You talking about the, in the hydrostatic releases inspected?

3 A. Yeah.

4 Q. In the VDR audio transcripts, NTSB has recovered the voice
5 data recorder from the *El Faro* and we've had an opportunity to
6 review that and hear some of the words of the crew on board. Have
7 you read any of that transcript?

8 A. I did, but by -- just like I said, a lot of them guys, we've
9 been friends, man. It was like, I read so much of it, I really
10 couldn't even take it. You know what I'm saying? It's just
11 opened up a whole other door that I'm trying to close. So I
12 didn't really hear the whole thing, but I read enough.

13 Q. One of the things that we read that I've been bringing up to
14 several witnesses is there's some crew members that expressed
15 reluctance to bring up safety concerns at safety meetings. Did
16 you ever, like either yourself have reluctance bringing up safety
17 concerns, or did any of your shipmates have any reluctance to
18 bring up safety concerns at safety meetings?

19 A. I never had a problem or I will say something, but that's
20 just me. If I see a problem, I'll tell you. When you're on the
21 ship a lot of people, everybody be in their own little world, so
22 it's pretty much -- some guys probably are not even looking for
23 nothing but, you might go somebody working in the kitchen don't
24 care about what's going on outside, or you know what I'm saying?
25 I'm not saying they don't care, but it just, they're not looking

1 for something that can be corrected.

2 Q. Did you feel generally safe or unsafe when you were shipping
3 on *El Faro*?

4 A. To be honest, I never thought about it. That's my job. I
5 fly. I just go get on the ship. I don't even think about it.
6 Just like me walking on the ground, I don't think a sink hole is
7 going to up. I just go do it. You know what I'm saying? But I
8 can tell you that, that's one of the oldest ships I done probably
9 been on.

10 CDR DENNING: Thank you sir. I don't have any further
11 questions for you. I'll pass it to the Captain and my colleagues.

12 CAPT NEUBAUER: Mr. Hearman, we've been going for a while.
13 Would you like to take a break, sir?

14 THE WITNESS: Yes, sir.

15 CAPT NEUBAUER: The hearing will recess and reconvene at
16 4:40.

17 THE WITNESS: All right.

18 (Off the record at 4:26 p.m.)

19 (On the record at 4:41 p.m.)

20 CAPT NEUBAUER: The hearing is now back in session. Before
21 we get, re-continue with the questioning, I want to make one
22 clarification from Commander Dennings' line. He had stated that
23 Erika was a tropical storm/hurricane, and Erika was just a
24 tropical storm.

25 At this time, Mr. Fawcett will have some questions, sir.

1 BY MR. FAWCETT:

2 Q. Hello Mr., Hearman. Thank you for being here today. So
3 before the *El Faro* sailed on the accident voyage, you're pretty
4 tight with the crew here in Jacksonville. Is that correct?

5 A. Correct. Actually where I keep my food truck at the guys,
6 some of the guys came by my food truck just to talk to me. But we
7 like, it's really like family, though. So yes.

8 Q. Did any of them come to you and talk to you about the voyage
9 that they were about to go on? Did they express any concerns for
10 their safety? Did they talk about the storm?

11 A. I would say, no. But just like I said, it's a typical day
12 for us, sailing. We go through storms all the time, but we don't
13 ever think about the ship going down.

14 Q. And for the record, it might not have been a storm at the
15 time. It was just perhaps a tropical system, so, thank you for
16 your answer. There is a thing called the Seaman's Protection Act
17 of 2010, and what it says basically, is if you notify the Coast
18 Guard or another federal agency, companies may not discriminate
19 against you or take action against you if you report to the Coast
20 Guard. And I do advise people to read it fully because it
21 contains a lot of information. But you've shipped for some time
22 and what's the real world? What's your feeling about the real
23 world, if you make a report to the Coast Guard, for example, about
24 a safety deficiency?

25 A. I'm going to be honest, you're going to get fired. If you

1 call the Coast Guard, the designated person, all them guys, you
2 going to get fired. If -- that's all I will say. You're going to
3 get fired. You're not allowed to -- even though his name, the DP
4 guy, even though his name posted in the crew mess, whatever, but
5 if you go on any ship in the fleet, if you call the designated
6 person ashore, I'm going to sit right here and tell you, you going
7 to get fired, just being honest.

8 Q. So we'll talk to you about that a little more later, but did
9 TOTE or the union ever give you training in that Seaman Protection
10 Act that I just talked about?

11 A. No.

12 Q. A couple of follow-ups on CDR Denning's question. In 2015,
13 while you were aboard *El Faro*, did you put on your immersion suit?

14 A. Correct, I did.

15 Q. And do you recall how many times? And you were aboard for
16 almost 6 months, weren't you?

17 A. Actually, I was on board with them 2 years, like 2 years,
18 almost 2 years for the vessel. On and off, vacation, working,
19 vacation, working.

20 Q. And in 2015, you were aboard just generally from March to,
21 towards the end of August. Would that be correct?

22 A. I would have to look at my discharge, but I know when we
23 first brung the ship out of the shipyard, I think we all did --
24 like I think I did like 119 days, or something like that, which is
25 almost 4 months, and pretty much, we all -- just like I say, it

1 was like family. So if you're leaving, I'm leaving, too, so a
2 whole new crew coming on board. And we all come back together,
3 too.

4 Q. So during 2015, you got off towards the end of August. Can
5 you recall when you put on your immersion suit and did anybody
6 look at how you put it on to make sure you properly put it on?

7 A. Now with that, now with that, when they have the safety
8 meetings, I think we did it once a month. And how he does, is the
9 captain will call everybody inside the crew mess, that's where we
10 have the meetings at, and everybody bring their suits. So right
11 there inside the crew mess, you would get inside your Gumby suits
12 right there. And then once you finish, I guess the third mate, I
13 guess there's some kind stuff they put on the zipper to make sure
14 it don't stick, and they'll leave it there and then he'll sit by
15 the door.

16 Q. So the safety meetings that you had while you were aboard,
17 did both captains attend all of the safety meetings?

18 A. All right, Captain Erik, he was more -- they had different
19 styles. On every ship it's, the captain's different on every
20 ship. So with these two captains here, Captain Axelsson, he would
21 come down but he's on -- during the drill, the captain, I think
22 his job was up top. But once the fireboat and all that is over,
23 he'll come down. So Captain Axelsson would come down and sit down
24 and he'll talk. But Captain Davidson is pretty much like, if
25 you're a second mate, you need to know your job. Like if you come

1 -- I already when I come on the ship, I need to know my job
2 because he's not going to sit there and babysit. You see what I'm
3 saying? So it's pretty much like, he want -- he pretty much more,
4 if you get hired, if you get hired to be an AB or a cook, you need
5 to know how to cook, or you need to know how to drive the ship.
6 If you can't, then -- that's any job. If you can't do the job,
7 then the next person come on.

8 Q. So did Captain Davidson supervise the safety meetings down
9 below?

10 A. He made the mates do their job. So they reported everything
11 back to him. And then we had, if some important, he'll come down,
12 but he took safety very important. I mean like, he took it very
13 seriously.

14 Q. So on the VDR transcript, one of the entries, the second mate
15 is talking, and she says, "We don't have any lifejackets up here
16 on the bridge -- do we? Like the *El Morro*?" Do you know why the
17 second mate wouldn't know where the lifejackets were on the
18 bridge?

19 A. I wouldn't know why but -- I think I even asked that question
20 because most ships you have, on the outside of the bridge wing,
21 they got an apartment, a compartment where the lifejackets are
22 stored. Because I made it, too, because I'm a big guy and the
23 suit that he can get in, I can't get in the suit. So what I'm
24 saying, like hey, if something was to go down right now -- we're
25 just talking -- if something was to go down, if this ship was to

1 go down right now, would I have to run to my room to get my suit,
2 or do you have a spare suit up here for me? And I think the, I
3 think the answer was like, they keep one for the mate and one for
4 the officer inside the desk. I don't even think I know or even
5 seen it. It's different. It's different.

6 Q. So on the transcript, there's two mentions of a steering
7 issue and it's described in the transcript as a Jacksonville
8 outbound incident. Were you on board the ship when the vessel had
9 a -- the *El Faro* had some kind of steering issue coming out of
10 Jacksonville?

11 A. I don't think I was on board then. I don't think I was on
12 board when that happened.

13 Q. Do you recall if while you were aboard *El Faro*, there was a
14 loss of propulsion at sea? So you would lose propulsion for some
15 reason, and the second mate would be Ms. Randolph; the third,
16 Mr. Riehm; the chief mate, Captain Thompson. Are you aware of a
17 loss of propulsion at sea?

18 A. I think that happened one time when I was on board, coming
19 back to Jacksonville, if I ain't mistaken. We lost the whole
20 plant, and they worked on it, the engineers. They changed some
21 stuff, but I don't remember what they changed out. But they
22 changed some stuff. Where they got it -- well, actually, it
23 happened -- I think we did like 4 or 5 knots or something like
24 that right there. We had to -- it was something that happened
25 with the propulsion, though. But something -- but they had to fix

1 it when we got in port.

2 Q. Just to help maybe refresh your memory, do you know if it
3 happened like just coming out of San Juan, northbound, or was it,
4 you know, far at sea where you couldn't see land?

5 A. The incident I'm talking about is, I think we was at sea.
6 But now that you say that, too, I remember we lost a plant coming
7 out of Puerto Rico, too. But I don't think I was on that, but I
8 remember them talking about it.

9 Q. So the, so the time it happened at sea, you think you were
10 aboard?

11 A. No, the time that it happened at sea, I know for a fact I was
12 on board, because just like I say, I'm an AB. And you go from 10
13 knots, 12 knots, till 3. And we so used to -- when we leave
14 Puerto Rico, we know we have to, once we get to Sunday, Monday,
15 and Tuesday, it's going to be held like this right here. So we
16 think -- we already making our plans what we're going to do when
17 get in Jacksonville. So when that happened, that threw the whole
18 thing off. So it took extra time, so we had the slow slow bell on
19 making to Jacksonville.

20 Q. Do you remember if it was accidental? In other words, by
21 that I mean, it wasn't planned like for maintenance, like they
22 said, let's run the ship slow because we know we have to fix
23 things? Or was it like a sudden loss of propulsion for some other
24 reason?

25 A. Yeah, it wasn't planned. It wasn't planned, because you hear

1 it like. The ship is all automatic, so once you hear from -- some
2 loud noise and it goes to (slap), you know what I'm saying. So we
3 knew something was up. Then you got all the alarms going on off
4 and everything going off, so --

5 Q. Is there any chance you could narrow it down when that might
6 have occurred? You know, even to the month?

7 A. No, sir. I couldn't. I just remember it, because just like
8 I said, I be trying -- when we hit Jacksonville, pretty much
9 everybody from Jacksonville, so we get here, we're gone. We're
10 trying to leave.

11 Q. In your time of standing watch, did you ever see either
12 captain come to the bridge when a mate during the night called
13 them?

14 A. Like I said, both captains, if you have a problem they're
15 coming. Like, they coming. It's an open door. I could have a
16 problem with you, I can go to their room 2 o'clock in the morning,
17 he coming out.

18 Q. So TOTE's building brand new ships. You have the brand new
19 ships. They're going to replace the old ships. They're going to
20 run down into San Juan. Did the selection of the crew and the
21 officers for the new ships cause any problems on board?

22 A. Oh, it caused a big deal. Just like I said, I had the 4 to 8
23 watch, so I heard everybody side, from the captain to the mates to
24 everybody. It was a big problem. I think the whole situation was
25 handled wrong, because you gave certain people power to pick

1 certain people and that's when the problem occurred, because a lot
2 of -- the whole thing was, you have Danielle, Jeremy, the Second
3 Mate Charlie, you got all of these guys that been on the
4 Jacksonville-Puerto Rico run forever. Now here it is, they don't
5 have powers, they done did all this all this stuff right here, and
6 now you've got Chief Mate Ray Thomas, at the time he was chief
7 mate, you got him. You got Second Mate Torres, but he was on the
8 -- Torres was good then, too, but the problem occurred when you've
9 got chief mate -- I'm just being honest. You got Chief Mate Ray
10 Thomas, when he's on vacation, he's going inside the office
11 talking to Melissa. So now Melissa's picking her crew that she
12 wants to go on.

13 So it was just a bunch -- I heard it. Even, normally, when
14 you go on ships, you never hear the mates talking in front of the,
15 talking in front of the unlicensed. But I guess it hit them so
16 hard till you couldn't -- they couldn't hold it back, so I heard
17 their conversations. They telling you like, man, that's messed
18 up.

19 And then you got -- I know for a fact that Captain Davidson,
20 he was a very smart guy. So they didn't even give him a shot at a
21 new ship. They just let the other people pick the ship for him,
22 you know what I'm saying? But they say that he was not the
23 captain. Axelsson, he was -- it was told to him that they trying
24 to go a different route. They want some younger guys, so that's
25 the reason why he pretty much quit. I seen him quit on the

1 bridge, and he's a captain. But he couldn't take it no more, so
2 -- it was just a lot going on. It was just a lot, the way the
3 situation was handled.

4 Then you got the, now you got the guys who going to the new
5 ship, they having problems with the guys who are not going with
6 the ship. So now you got them two butting heads right there, too.
7 So it was just like, it was a big, it was a big thing. It was
8 nothing small.

9 And I think, me personally, because from what I'm hearing
10 from them, it was handled wrong. Because now you're picking a
11 younger person over experienced, and that was a problem. So
12 that's why you had gotten the -- I been sailing 30, 40 years, and
13 now you got a guy who been sailing third mate and now he's the
14 captain on the new ship. And now you got -- it was just so much
15 to the point where I just started going outside because I got my
16 own problems in myself. I don't want to hear your problems all
17 the day, just to be honest.

18 But stuff like that right there. They was getting, telling
19 this guy here, he going to be the new captain. But just like I
20 say, he was a smart guy. Since we throwing it out there, I heard
21 him tell me this right here, he's like, man, that's why he, I
22 guess he went and got a lawyer, threatened them with the lawyer,
23 say, hey, you all need to -- you all didn't even give me the
24 chance of even, you know what I'm saying, hearing my side. Like
25 seeing do I want to the new ship versus just saying, I'm not going

1 to make it. See what I'm saying? So it was like -- then they
2 brung him back in. They flew him in and gave him a chance to hear
3 his side. Just like I say, he's a smart guy, too, though, and he
4 was very intelligent.

5 Q. So just to be clear, the smart guy, is this Captain Davidson?

6 A. Correct, yes, Captain Davidson. Both of them are smart guys,
7 but just like I say, Captain Erik, by him being a older guy
8 already, he just took it and was like, okay, this is the direction
9 you all want to go then, that's what it is. But Captain Davidson,
10 he like, nope, I'm fighting them. I'm fighting for it.

11 So that's when the company called him back in on his vacation
12 after I guess he was talking about a lawyer or something. And
13 that's when they at least gave him an interview for the job. But
14 at first it was like, no interview, period. And that's why you
15 had commotion. You had Danielle going off on the bridge. I'm
16 missing out. She's going for another company. And a lot of
17 stuff, just to be honest, it was, it was wrong. It was wrong,
18 because if you got somebody working with you, they been doing this
19 run all this long time, why wouldn't you give them a chance?

20 Q. So did this cause you stress? In other words, you said you
21 had to walk off the bridge to get away from some of the
22 conversations?

23 A. Yeah, I'm still stressed out right now to this day. I'm
24 stressed out because -- not even beside of that. I'm talking
25 about the whole incident, that I lost pretty much my whole

1 brotherhood by something that could have been prevented.

2 Q. So towards -- let's look at say the last 2 weeks you're on *El*
3 *Faro*. Did -- was Captain Davidson, did he treat any of the
4 officers any different because of the situation he was put in, you
5 know, with the selection for the Marlin and not getting it the
6 first time around?

7 A. I'm not going to say that. I'm not going to say that. But
8 what I am going to say, he was very smart. And I think he should
9 have got the chance. He's one of the best captains that I ever
10 sail with as far as like treating people equally. It wasn't an
11 officer or unlicensed. Yeah, me and him, we had our differences
12 one or two times because I was a delegate. So any problems that
13 occurred on the ship, I had to bring it to him. That's my job.
14 And I'm going to bring it to you, you know what I'm saying. We
15 can bring friends all day, but that was my job on the ship also as
16 the AB, I was the delegate, too. So if you had a problem, they'll
17 come to me, then I'm going to address the problem because it's my
18 job. You see what I'm saying?

19 But, we had, I'd say, about two little fallouts or whatever.
20 I ain't going to say a fallout, we just -- I just had to do my
21 job, you know what I'm saying. But even after that right there,
22 it still wasn't no he treated me different or anything that like,
23 right. He said what he had to say, and I said what I had to say
24 because I'm the delegate. I got to tell you. I'm going to tell
25 you. You know what I'm saying. So it was pretty much, everything

1 was back to normal. He didn't treat unlicensed different from
2 licensed.

3 Q. So I want to -- I want to follow up on an earlier comment
4 before I move on. You had -- we had talked about the propulsion
5 loss at sea. Do you remember who the captain was when that
6 occurred?

7 A. If I ain't mistaken, I think it was Captain Erik. It think
8 it was Captain Erik.

9 Q. So we talked earlier with the designated person ashore about
10 an incident where a chief mate fell asleep on watch. Did a sleep
11 -- did a chief mate fall asleep on watch while you were aboard the
12 ship?

13 A. Yes. It was my watch partner, and I was going to say, the
14 whole thing about that right there, they got, they got upset with
15 me about that right there, too, because they couldn't really prove
16 that I said something about it. But the whole thing was -- I'm
17 going to tell you the whole situation about it. And that was, I'm
18 the delegate. And I don't care if you're in the engine room,
19 you're in the steward department, if it was brung to my attention,
20 I'm going to tell you. I'm going straight to the captain and I'm
21 going to tell the captain, like what's up.

22 And what he was doing, the second mate, or the chief mate he
23 was abusing his power, and it was, just like I said, as soon as
24 you say something, you're going to lose your job. So when I told
25 him, I pulled him to the side, I said, listen man, these are my

1 guys. These are my brothers, and you ain't going to just throw
2 your power around like that right there. And if you don't stop
3 doing what you doing, it's going to be a problem. So that's how I
4 told him the same way.

5 But since it was -- since the problem didn't stop, that's
6 when we all contacted this guy, Lawrence, John Lawrence, and when
7 I laid the problem out on the table, it wasn't so much of fixing a
8 problem. It was more concern, who are you? Because I told you,
9 if you call the DP, you lose your job. That was the problem. So
10 I'm sitting here 5 minutes telling you what's going on, and the
11 only thing you come back is, who are you? If you don't want it,
12 if you don't want to stop texting; if you don't want to tell me
13 your name, then I no longer can text. It wasn't Kurt. It was all
14 of us. If I had another phone, I'd show you the text messages.
15 But we been notify him and told him what the problem was.

16 Q. I'm sorry Mr. Hearman. Let me, let me just say that, we're
17 talking very complexly here. So what I'd like you to do if you
18 could in the best way possible, is take us through the story of
19 the chief mate falling asleep on watch. Try to tell me when it
20 happened, who was the master and what happened. In other words,
21 I'm a little confused as to the whole story, who you reported it
22 to, and then reported. So take your time, and explain the story
23 as completely as possible for when you first observed the chief
24 mate falling asleep on watch. If you can give me dates, that
25 would be helpful, even a month would be helpful.

1 A. Let me look at my phone. November 16, 2014, that's like one
2 of the first times. That why, by me, he was a good dude. The
3 second mate was a good dude and I pulled him to the side myself
4 and I told him, I said, man, listen; you need to stop doing what
5 you're doing because it's danger. And it didn't stop there.

6 Q. Okay, just for clarity, I'm going to ask you some targeted
7 questions. Was the ship at sea when this occurred?

8 A. Yes.

9 Q. And just for clarity, you're talking about second mate, but
10 it was -- let's talk in the terms so we understand it. It was the
11 chief mate, correct?

12 A. Correct. I'm sorry.

13 Q. Okay, so you see the chief mate falling -- he falls asleep.
14 And you pull him to the side and you tell him what?

15 A. It was my watch partner, so I was -- we didn't have no
16 problems like that right there. I just told him, like man,
17 listen, I don't want you to lose your job, because on any ship in
18 the fleet, once you go to sleep, you get caught, you get fired.
19 It's the first company I've ever seen that this happen you get
20 demoted. We don't get demoted. If they catch me asleep on the
21 bridge, I get fired. The next port it's going to be a relief.

22 Q. Okay, so this is in November 2014. At that time did the
23 chief mate give you a reason? Did he say, I'm fatigued from cargo
24 loading? Did he say, I'm sick? What, why did he fall asleep?

25 A. I can't say why he fell asleep, but I can tell you, I know he

1 was sleeping. They like to sleep, some guys just like to sleep.
2 I'm not a sleeper. I can stay up all day, but for him, he's a
3 sleeper and they know he was a sleeper, too. But it's just,
4 everybody protect everybody when you got the license. I'm just
5 being for real, because I know for a fact both captains, they done
6 caught him asleep. And Captain Erik told me to go out on the
7 bridge wing and he got on him for sleeping because he caught him
8 asleep.

9 Q. Was that in the same time frame? That was, you, you -- he
10 fell asleep in November 2014. When did Captain Erik catch him,
11 just approximately?

12 A. I can't say the actual date, but how it was, one captain will
13 let you sit down, the other captain, Captain Harry won't you sit
14 down because he's like an older captain. He still follow up on
15 those guidelines where you sit down, you're going to go sleep,
16 especially at a time like that. It's not normal sleeping that
17 often. And that's not normally working hours. It's normally
18 sleep from 4 o'clock in the morning, you going to be in your bed
19 asleep. See, I can deal with it. I can sit in chair and not go
20 to sleep. But he can't do that. So my answer is, he would go to
21 sleep anytime we let him sit in a chair.

22 Q. Did Captain Axelsson as a matter of policy remove a chair
23 from the bridge or did the chief mates, because Captain Axelsson
24 wanted it, remove a chair from the bridge?

25 A. Yeah, Captain Erik, Captain Erikson [sic], he didn't want a

1 chair up there, but Captain Davidson did. But it really don't
2 matter. Anybody, if you sit down if you're a sleeper. Because I
3 done been on a ship like I've seen captains fall asleep sitting in
4 a chair. Anybody can do it. So it's -- those captains there,
5 they end up with the problem, too, just to be honest, too. They
6 butt, they butt heads. So one guy go on vacation, the other guy
7 delete all this stuff, make all the new rules. The other guy come
8 back, he erase all his stuff. So it was like a game. It was a
9 game. And that's why Captain Erikson [sic] quit, because he said,
10 he's tired of playing the game. I seen him quit with my own eyes.

11 Q. We'll get to that.

12 A. Okay.

13 Q. All right, so, with the changing of the rules, how did, how
14 did the ship operate consistently? In others, you got two
15 captains with different sets of rules, what kind of rules?

16 A. When I say rules, I'm talking about like, like as far as the
17 standing orders. This guy don't want this guy doing this. He
18 don't want nobody eating before 12 o'clock. And that was big
19 thing, too. So one guy said, you can eat at 11:30. Because the
20 officers, the officers, I think they was eating around about
21 11:15. And just like I said, I'm a delegate, too, so you got the
22 crew coming to me now saying, how they getting paid till 12
23 o'clock on the company time and, you have the unlicensed, you got
24 to come in there at 12 o'clock. So different rules. So one
25 captain chose to do this, and the other captain chose to do this

1 right here because it's a licensed/unlicensed thing.

2 Q. All right, so did Captain Davidson catch the chief mate
3 sleeping?

4 A. Correct.

5 Q. When would that have been?

6 A. I can't actually tell you a date, but I know for a fact, like
7 I seen it with my own eyes, when he snuck up. Because when he
8 come on the bridge, Captain Davidson, he -- my name is Marvin, so
9 when he opened the door he say -- because me and him had a
10 relationship. Me and this captain had a relationship. So when he
11 come through the door from his room, he say, Marvin Marv -- that's
12 what he called me -- before he come up the steps. So that's
13 letting me know that he's coming up the steps.

14 But this one time, he didn't say nothing. He just eased on
15 up the steps. And when he come in there, I'm in the corner, like
16 this right here. And the other guy, he knocked out. But it's, I
17 guess it's an unlicensed thing. He will never chew him out in
18 front of me. But behind closed doors, like I tell you he tell me
19 to go outside or something, Marvin, I need to talk to him for a
20 minute. I already know it's going to be something. And I come
21 back in and he looking crazy. I already know what done went, I
22 already know what went on.

23 Q. Okay, so we're talking about three times this happens. Was
24 each time the chief mate the officer of the watch and was it at
25 sea?

1 A. Correct. They know. Everybody know. You can go from the
2 unlicensed who done sails on ship. Everybody know, you know,
3 what's going on. I know what's going on in the engine room and
4 I'm not even in the engine room. Everybody talk. It's a ship.
5 We only got so much space.

6 Q. All right. So now we move down the road into 2015. During
7 2015, did the -- I guess where I'm getting to, did he, did the
8 second -- did the chief mate continue to fall asleep on watch?

9 A. Any chance he get, he'll go to sleep. I'm just -- he's a
10 sleeper. And that's why I keep saying, he's a sleeper. If I'm a
11 sleeper, I go to sleep, too, right here while I'm talking to you.
12 I'm just being for real. He's a sleeper. And everybody know what
13 it is.

14 Q. Okay. At what time in, you know, approximately 2015, was a
15 decision made to reach out to shore and tell shore, somebody
16 ashore -- I know eventually the designated person, Mr. Bruer, sent
17 a text message to the DPA. We had a conversation about it
18 earlier. Did anybody on the ship reach out to anybody ashore to
19 tell them what was going on with the chief mate?

20 A. I'm going, I'm going to be honest, it wasn't Kurt Bruer who
21 sent the email. I sent him the email telling him, and just like I
22 say, he was saying pretty much, I think -- who is this? He was
23 asking, who is this? Who is it? I said, you don't need to know
24 who it is. Here's the problem and we need to get it fixed.

25 Q. And you're talking -- I might have misspoke. You sent text

1 messages with pictures; is that correct?

2 A. Yes, just like I said, I'm the delegate and the chief mate,
3 he was throwing his power around. He was throwing, abusing his
4 power, getting away with it, thinking that he's winning and this
5 right here, cutting our overtime. Doing whatever wanted to do
6 because he say the chief mate. So he's sitting right here telling
7 people and every time we open our mouth, we're a troublemaker or
8 something like that right there. They considered us
9 troublemakers. That's what the office say, we troublemakers on
10 the ship. So we just had to take everything in our own hands.
11 And that's when I text him, and I was telling him about it, and
12 then I think Kurt said something, and I was telling him, I said,
13 the problem need to be fixed and it need to be fixed now. And
14 that's when I say, you can do it all. We'll email it to the
15 company.

16 Q. Okay. So before that, I mean, we're saying the whole ship
17 knew it.

18 A. Yeah.

19 Q. We asked Second Mate Berrios if he knew about it. He said he
20 didn't.

21 A. Because -- because Berrios, even if he did know, he's one of
22 the good mates. And I'm just being honest. He's one of them.
23 I'm going to slide it to you, he's one of the good mates. He's
24 from Puerto Rico, so first of all, he would never say that he seen
25 one of his own brothers from Puerto Rico sleeping on the watch.

1 And he was new. So they was pretty much molding him. And they
2 already had done told him, point blank, that he was going to the
3 new ship. So you will never hear him saying that he was sleeping
4 on watch. And he probably didn't know because Berrios had just
5 started sailing with -- well, I ain't going to say just had
6 started sailing. But just like what I said, he was molding him.

7 Q. Did anybody on the ship communicate their concerns about the
8 chief mate sleeping on watch to anybody else ashore?

9 A. No, I think it was just this guy here, but at the same time,
10 just like say, Jackie Jones -- I'm talking about like a lot of the
11 guys, they been sailing, all these guys been sailing together on
12 this run forever. So it's not like I'm trying to make you lose
13 your job, or nothing like that right there. But if I keep nipping
14 at you, nipping, you know what I'm saying, nipping at you, nipping
15 at you, you going to get tired and you going, you know what I'm
16 saying, you going, you going to do something. And that was the
17 whole thing. It was never intent, it was never intent for, for
18 this guy, for Mr. Lawrence to get involved. It was never meant
19 for that right there. You see what I'm saying? It was only, he
20 just -- it had been got out of hand so bad till somebody had to
21 get involved.

22 Q. Mr. Hearman, I have to ask you an important question. The
23 chief mate is sleeping on your watch. You are the lookout and the
24 AB. Why would you let him sleep? Now we are going to talk about
25 the other issue with the chief mate, and I'm assuming it's how he

1 ran the deck. We're going to talk about that.

2 A. Okay. Well, I'm going to answer your question. I did not
3 let him sleep. I kept waking him up. And I told him, and I told
4 you all, I pull him to the side; I'm not going to keep waking you
5 up. That's what I tell him. So you need to get up out your seat
6 and walk around like I'm doing.

7 Q. Did you feel that your safety was in peril because the chief
8 mate was sleeping?

9 A. No, I don't feel that because, like I say, I know how the run
10 the whole operation, but it's not my job. But I did not let him
11 sleep like that right there though. If you fall asleep, I'm
12 waking you up. I will cut the music off. I do whatever I got to
13 do, but once you throw your power around, you're not going to just
14 hammer me in that kind way. When you cut my overtime, take my
15 food out of my family mouth, out of my family mouth, then there's
16 going to be a problem.

17 Q. Okay. So you did not notify anybody other than Captain
18 Lawrence, the DPA, that the chief mate fell asleep?

19 A. Correct, but really it's not my job. Just like he tell me,
20 if there's a problem occur on the ship, they tell us, we don't pay
21 you to think. So I felt the same way with that situation right
22 there. They don't pay me to keep waking you up. But I'm doing it
23 because I got along with you; you was my partner on watch. But if
24 anything happen, you in control, you in charge. That's what I'm
25 telling him.

1 Q. At any time while the chief mate was sleeping, were you in
2 proximity to land or vessels that were -- could you see the lights
3 of any vessels, see the lights of land?

4 A. Just like I said, I'm going to say it again, I didn't look
5 around. If I see you go to sleep, and you my partner, I'm going
6 to wake you up. And it's not my job to keep waking people up.
7 When the captain, when both of those captains seen him sleep, it
8 should have got held to them, as the same way if I would have got
9 caught asleep, and I would have got -- the situation would have
10 got handled then. That's what I'm trying to say right there.

11 Q. I understand that. I'd like to move on. What was the issue
12 between the chief mate and you and perhaps other unlicensed crew?
13 Speak of that as a separate item, if you would. You said he was
14 abusing power. Could you talk about that?

15 A. Yeah, he was abusing his power, like, they been on that run
16 so long, where you can, you can go home when you get to Puerto
17 Rico on the clock. Or you can do like that. You're crying
18 because I knocked off 10 minutes early, you making me work my 4
19 full hours on the overtime, but here you go, you get a radio and
20 you can go to your house in Puerto Rico and still get paid and
21 nobody say nothing. That's when the problem occurred, right
22 there. It ain't for, it ain't for the work. It's not double
23 standards. We both work for TOTE.

24 You could -- you got hired to do a job and I got hired to do
25 a job. That's when the problem -- but it was never a problem with

1 me and him like that because we stood watch together. And we can
2 sit there and talk. The problem occurred was when he started
3 changing the rules for the guys. I'm the delegate. So you --
4 it's impossible. These guys got hired, just like I got hired. So
5 they see you go home when you in Puerto Rico, on the clock, you're
6 getting paid for it, because you're writing in overtime for it.
7 But when they want to knock off early, just say 30 minutes, and
8 they done bust they butt, you tell him, no, stay and work the
9 whole hour. No, stay till the end; you can't leave. We want to
10 see our family, just like you want to see your family. So that's
11 when the problem occurred. So that's why we always had friction.

12 And just like he say, he say, Marvin, I don't know why you
13 always jumping in. It's not that. I got to do my job. I'm the
14 delegate, and I'm going to do my job. That's what I'm getting
15 paid for.

16 Q. So during the time frame you were aboard, and I'm not sure
17 about one of them, but did the way the crew management was
18 handled, looking at crew management on the ship between the chief
19 mate or other officers, there was an incident where an AB
20 threatened a third mate physically. Why did that happen? Without
21 naming names.

22 A. I'm not going to name any names, but I was there for that
23 incident, too, and I seen it. And there was -- it was, they said
24 it was intimidation, or whatever. But the guy who they said did
25 it really was no -- nobody, nobody was actually there to see the

1 whole incident, just to be honest. It was just he say/she said.
2 But they took -- it was a problem and it was officer, like being
3 an officer, then one guy lost his job. Just say hey, we don't
4 need you. He did it and got rid of him. If they don't like you,
5 you gone. You're going to get fired.

6 I got into it with the second mate. I proved the guy from
7 TOTE came down into the office, my union representative was there
8 and they wrote me up talking about, well, the second mate said
9 he'll kick my A, he done kick A and all this right here. The
10 excuse they gave me was he can't hear. He heard the wrong thing.
11 I'm saying how did done get from over there to right here by me?
12 Oh, he was trying to see what you was trying to say. Why? It's
13 always an excuse. I'm just being honest. It's double standards,
14 because just like I told him, if it would have -- if I would have
15 did what he did, I would have lost my job. The same thing in that
16 incident what you saying, by being an officer, the dude
17 automatically lost his job, but it don't work that way when it's
18 an officer bringing up on an unlicensed, and that's not fair
19 either.

20 Q. The incident between the crew person and the third mate, do
21 you recall who was the captain at that time?

22 A. Captain Davidson.

23 Q. The incident that you spoke about with you and the second
24 mate, do you recall who was the captain at that time?

25 A. Captain Davidson.

1 Q. I have seen statements from you and the second mate related
2 to the other incident that occurred later in your tour. The one
3 earlier between the third mate and the AB, was there an
4 investigation? Did they ask you to make a statement? Did they
5 look into it?

6 A. For the third mate, the two -- the incident with the third
7 mate, yeah, they asked me to make -- they asked me to write what
8 the captain told me to write. So I done like they told me. I
9 didn't see it.

10 Q. So now we turn to the final episode of the chief mate
11 sleeping on watch. You sent pictures via text and comments to
12 Captain Lawrence, the DPA. Did anyone from TOTE interview you as
13 part of an investigation so that you could make a statement and
14 conduct an investigation?

15 A. No, and just like I say, they all got mad at me because
16 technically they didn't know it was the whole ship, but they just
17 thought it was me, but they couldn't really prove it. So that's
18 when me and the second mate got into it, when the chief mate got
19 demoted when we got to Puerto Rico. He had to come on board and
20 get all his stuff, that same night. That's the incident that me
21 and the second mate got into, because all this right here led to
22 -- I mean led from that incident right there.

23 Q. So would you claim that the working environment was hostile
24 in terms of the climate that you worked under because of these
25 incidents?

1 A. Correct. I even had got a lawyer because of it. So it was a
2 proven fact, even two more of the guys on the ship had lawyers
3 because of the hostile environment, just being honest.

4 Q. With what you know about your relationship with the chief
5 mate, do you know if he ever talked to you and said, I don't, I
6 don't get enough rest? In other words, I'm looking at the STCW
7 rest periods. Was it ever, did he ever talk to you about the
8 cargo loading operations or anything that produced fatigue?

9 A. Just like I said, it's pretty much all -- you not going to
10 hear that. You're not going to hear it, because just like I said,
11 they make good money, and there's ways around everything. Even
12 the STCW, just being honest. There's ways around it because they
13 got a program on the ship where once you put your hours in and it
14 don't line up, get red, it turns red. So the only thing you have
15 to do is just go around and fixing numbers and you're back. They
16 make good money.

17 Q. Are you aware of anybody fixing the numbers so that they
18 weren't in the red for STCW?

19 A. I ain't going to say that right there, but I know it was a
20 big problem on the ship where the engine room, their hours got
21 took, and the deck department hours, they stayed with their hours.
22 And that would make them more curious about the STCW, like these,
23 these guys here -- these guys from the West Coast which state and
24 talk about Chief Mate Ray. He came, when he came he brung a lot
25 of stuff that he got from on the other ships. They already had

1 their program set for the Jacksonville and Puerto Rico run. So
2 that's why it was never a problem.

3 The problem occurred was when Ray brung all the old stuff --
4 I mean, the new stuff that he's bringing to the company. That's
5 why they start bumping heads in the engine room, because he took
6 \$7,000, \$8,000 a year just off their hours and all of that. He
7 was -- it was never explained. I know some of the conversations
8 and the argument they had where, you don't really know how the
9 STCW goes. You don't know how it was written. It could have been
10 written this way, it could have been written that way right there.
11 But the whole problem was, the chief mates and them, they still
12 was getting their hours in the deck department, but the engine
13 room wasn't getting their hours, so that's when the problem
14 occurred. That's why they couldn't get along.

15 MR. FAWCETT: Mr. Hearman, I appreciate your candor and your
16 answers to my questions.

17 And Captain, I have no more questions.

18 CAPT NEUBAUER: Mr. Hearman, we've been going for a while.
19 Would like to take a break, or can we continue on?

20 THE WITNESS: I want to take a break. We'll take a break.

21 CAPT NEUBAUER: The hearing will recess and reconvene at
22 5:40.

23 THE WITNESS: All right.

24 (Off the record at 5:30 p.m.)

25 (On the record at 5:42 p.m.)

1 CAPT NEUBAUER: All right, the hearing is now back in
2 session. Mr. Hearman, I just have a couple follow up questions to
3 that last line, sir.

4 BY CAPT NEUBAUER:

5 Q. I believe you testified that Captain Davidson trusted the
6 work of Second Mate Baird. Is that correct, sir?

7 A. Correct.

8 Q. Did Captain Davidson appear to have the level of trust in the
9 work of Second Mate Randolph? And if you don't have an opinion,
10 that's fine, but if you do, I'd like to hear it.

11 A. Well, if we going to be serious here, he didn't, he didn't
12 have that much trust. Like Second Mate Charlie, he done been with
13 TOTE so long to the point where he just another captain. He can
14 steer the ship out. He can do, he can do everything, from the
15 charts, he -- they call him like the golden, he's like the golden
16 guy. He can do everything. And a lot of ways, he's been on that
17 ship so long to the point where if something go wrong that this
18 captain here never seen, he can straighten it out because he knows
19 that it is.

20 Q. So the follow-up questions are, did you notice if Captain
21 Davidson got more involved in *El Faro's* navigational duties while
22 serving with Second Mate Randolph?

23 A. See, it's kind of like -- I'm trying to answer the question,
24 but -- he trusted her, but with Danielle there was a little --
25 Danielle knew what she -- she knew her stuff, too. But it was

1 just experience. Just like I say, Second Mate Charlie like, you
2 can't do nothing to him. You better not say nothing to him wrong
3 or anything like that. He the man of the ship.

4 Q. So he just didn't have the same working relationship in
5 place; is that correct?

6 A. He and Danielle and Charlie was cool, too, until -- I told
7 you the whole thing about the ship, the new ship and all that,
8 when they found out that Charlie was going and Danielle wasn't
9 going, and that was -- that's when the fistfights started. They
10 even turned on each other.

11 Q. And you also testified that you -- that a person would get
12 fired for raising a safety concern. Did you ever see anyone get
13 fired for reporting a safety violation before the incidents happen
14 with the sleeping on watch?

15 A. Let me rephrase that. I don't, I didn't mean for it to come
16 out if a person gets fired for raising a safety concern. You
17 would not get fired for that. You will get fired if you call the
18 DP. That's on any ship in the fleet. Just being honest. It
19 don't got to be TOTE. It can be, it can be any company. Because
20 the captain, they have so much power, they feel like you didn't
21 follow the chain of command and you took by your own hand, so now
22 you got to go. You're going to be fire.

23 Q. Understand the clarification. Thank you, sir.

24 CAPT NEUBAUER: At this time I'm going to pass it to the
25 National Transportation Safety Board for a few follow-up

1 questions. Mr. Young?

2 MR. YOUNG: Thank you Captain.

3 BY MR. YOUNG:

4 Q. Thank you, Mr. Hearman, for your testimony today. Can you
5 please explain the function of the delegate that you said that you
6 are as your position on the ship. What does the delegate do on
7 the ship?

8 A. All right, we get 1 hour a week overtime. So in the deck
9 department, I was the deck delegate. The engine has its own
10 delegate. The steward department has its own delegate. So it's a
11 -- me and him watch, or me and him partners and he have a problem
12 with you. Before it escalates, he'll come say, hey, man, I might
13 did this -- let's say he coming in late -- you coming in on watch
14 late. Versus him telling the chief mate or making a big deal
15 about it, he'll come to me and I address the issue, like man, I
16 might need you just to start, just getting up there a little bit
17 faster, you know what I'm saying, just come to work a little bit
18 early. You know what I'm saying, stuff like that right there.

19 Now once I can't correct it or whatever, I go to the bosun.
20 The bosun goes to the chief mate. And that's how they get, that's
21 how it get resolved.

22 Q. When you were experience the issues with the chief mate
23 sleeping, did you follow that chain of command to go through the
24 bosun and then the chief mate?

25 A. To be honest, just like say, we was, me and the chief mate,

1 we -- me and him was all right. So versus, if I didn't like him
2 off the top like that right there, and he's always getting on me
3 or something like that right there, then I would have went that
4 way. But I didn't go that way. So by him being my bud, because
5 they say we family. When we have meetings, everybody come, we got
6 to look out for each other. You know what I'm saying, so -- that
7 might be the guy that saves my life. Anybody -- it can be
8 anything. I just didn't want to just jump out there like every --
9 that's why I, I didn't think -- it was a serious issue, but by me
10 just telling, like, man, just stand up before you'll lose your
11 job. You know you got a family. You know you got kids. Come on,
12 man, you know what I'm saying. So I took it that route.

13 But once everything got out of hand, he started talking crazy
14 and doing all, you know what I'm saying, abusing the power, then
15 hey, this is the only way I'm going to stop you then, this what
16 got to be did.

17 Q. With regards to the crew aboard the ship, did you interact
18 with the crew members from the engine department when you were
19 having coffee or eating lunch or meals? And if you did, did you
20 ever hear any comments or concerns about how the engine room was
21 operated, or if there were any issues?

22 A. Yeah, I talked to the guys. Just like I said, we often -- it
23 was like family. We come to each other when we cook crab, we do
24 it all on the ship, we barbeque. We do our own thing. We don't
25 got to ask nobody or nothing like that right there.

1 We like family. So we didn't have to ask anyone. Normally
2 when you have a cookout on the ship, you schedule it. Everybody
3 come together and the steward department cooks it. But we have
4 our own grill. We cook out. We can do our own thing. But the
5 engine room never have problems. On every ship you probably go to
6 in the fleet, the engine room always just stick together. It's
7 the deck department. It's the deck department.

8 Q. And when you were conversing with engine department crew
9 members, did you ever hear that there were any problems with the
10 power plant or the engine room, in terms of mechanical issues?

11 A. I'm going to say no. I think it was a problem with the
12 boilers. Just like I say, I got the 4 to 8 watch, too. So if
13 there's a problem in the engine room, they call up to the bridge
14 pretty much on my watch or anything like that right there, if it's
15 a serious problem or something like that right there, or any kind
16 of problem. So I heard everything. So it's pretty much like if
17 there's a problem, I hear it. I know there was a problem with the
18 boilers, but it was never like an engine room problem like that
19 right there. There was never I problem, I'd say.

20 Q. Thank you. And we were discussing the loss of propulsion
21 earlier, you referred to it as losing the plant. Typically when
22 they lose the plant, the lights go out and it's complete darkness.
23 Is that the case or was it just a loss of propulsion when the main
24 engine wasn't working for a period of time?

25 A. Yeah, it was just, it was like loss of propulsion, but they

1 called it the plant. That's they say it, we lost the plant. So
2 I'm just speaking the ship terminology right now. So I think, I
3 think they got two engines or something. It's a steam -- it's
4 something -- it's tricky down there. It's like a steamship, so
5 it's kind of like it's different from other ships.

6 (Witness confers with Mr. Ware.)

7 THE WITNESS: Oh, yeah, and that's what it is, too. When the
8 -- when you do lose the plant, the emergency lights automatic come
9 on because they got the generator, the emergency generator. So
10 it's totally different from like, from another ship that I done
11 been on, too. So if the whole plant just die like right there,
12 the emergency generator kicks on.

13 BY MR. YOUNG:

14 Q. And was that the case in the incident you were discussing
15 where everything was lost and the emergency generator kicked on,
16 or was it just the loss of propulsion with the main engine.

17 A. I'm not an engineer, but I know I was laying in my bed and
18 the AC cut off. So I can't sleep in the hot so I know it was a
19 problem then. So when I went on watch, we were just floating, but
20 they were down there working. I think they got it-- well, just
21 like I say, we can get in port, and then the other guys had to
22 come and take it from there.

23 Q. And can you estimate about how long of a time you were just
24 floating?

25 A. I'd probably say about 2 days or something like that, 2½ days

1 or something like that. It was -- we sitting there just floating.

2 Q. And can you narrow it down, this time frame as to what month
3 or year you might be referring to?

4 A. No, that I don't. I don't even -- when I'm on the ship, we
5 don't even go off days. We go off time. I know 2000 come, I'm
6 off, or 0800, I'm off. We go off days -- I mean, off our time. I
7 don't even look at the days. No one that do. I'm talking anybody
8 who ship out, whoever done ship out, we don't even -- where it's a
9 whole other world.

10 Q. If you could please help me understand the issue you were
11 speaking about with the crack in the tank in the cargo hold? Did
12 you say the crack in the tank resulted in water coming into the
13 cargo hold?

14 A. Yes, just like I said, I'm not an engineer, but I'm going to
15 tell you what I heard, and I seen how the captain came up and
16 relieved the mate, and they went down and checked the, checked the
17 hold to make sure it wasn't too much. I don't know how big the
18 crack was. I don't even know. But I just know that the captain
19 was coming up, relieving. And that he put that in the -- and that
20 should have been in the standing orders, too. But he make sure,
21 even -- I think the third mate was going down there when they got
22 off watch. Something like that. They had something going on, but
23 just like I said, I be on the go. So I'm just -- whatever. I'm
24 listening to them, listening to them.

25 Q. Maybe you've been confusing standing orders with night

1 orders, that was having -- being updated based on this crack in
2 the tank?

3 A. I know standing orders and night orders. I know the
4 difference from both of them. One was kept in the folder behind
5 the chart house, and the night orders was kept on the chart table,
6 itself in the white folder. So standing and night is totally
7 different.

8 Q. And which one was being updated based on this incident?

9 A. Just like I say, captain -- when it happened, captain, he
10 going to make you do your job, and just like I say, a mate know,
11 everything got to be documented, because if anything happened,
12 they got -- the Coast Guard is going to look at that folder. So
13 everything's got to be updated and documented. Even when I say,
14 something, even, even -- I done seen them on the data recorder.
15 If we lose propulsion -- yeah, we don't have the ship right now,
16 but I can guarantee you, if you go back to that data recorder, he
17 done have them to write that position on the data recorder behind
18 the chart house and initial it, what mate, what mate did it.

19 Q. And just once again -- I'm not, I'm having a hard time
20 understanding how the crack in the tank was first witnessed or
21 even if it was revealed. But can you please explain how it was
22 identified?

23 A. I can't say how it was identified, but I know when the mate,
24 when the second mate -- they have to make rounds. And the chief
25 mate make rounds, too. So this day they have to make rounds. So

1 I don't know if it was noticed then or the engine room probably
2 could have called it up or something like that right there.
3 Because they got alarms. So if water is not supposed to be there
4 and water get in there, alarm going to go off. So it could have
5 been figured out that way or, you know what I'm saying. So it can
6 be either way. I don't know. But I know it was a crack and they
7 came and fixed it.

8 Q. And do you remember if the repair was inspected?

9 A. Yes, everything is inspected. Everything going to be
10 inspected when you come into something like this. Even the
11 captains, they don't ever -- they're going to cover themselves.
12 They covering themselves, so they get trained -- I'm going to say
13 trained, but they taught to cover themselves, everything. Because
14 anything can always happen, the mate going to jail. Or there's
15 something even crazy, the AB go to jail. So everybody got to
16 cover themselves.

17 Q. And can you recall at all the location, within which cargo
18 hold this crack may have occurred?

19 A. See that I don't know. I don't know. I'm only going to tell
20 you what I know. I'm going to tell you that I think was the
21 starboard side and it was a crack. And it was fixed. I ain't
22 going to say it was dumping a whole bunch of water in. I don't
23 know how much water was down there. But I just know it was a
24 crack. I know for a fact it was. That's any ship, though. A lot
25 of ships get it, though. If you hit rough seas, they have to have

1 a diver come in and look, make sure nothing was damaged on,
2 damaged up under the ship. So it's like, it's every ship. So it
3 could have been from, I don't know, age or it's bumpy because it
4 have -- but every ship. I done been on ships where they have the
5 divers come down, right there when we get in port, they come down
6 and check the hull out.

7 MR. YOUNG: Thank you for your answers to the questions.
8 Captain.

9 CAPT NEUBAUER: Ms. Bell?

10 BY MS. BELL:

11 Q. Good afternoon, Mr. Hearman. I just have a couple of
12 questions, mainly just to clarify some of the things that you've
13 already stated. But the first question, we've talked about issues
14 with the captain, Captain Davidson and the company regarding being
15 hired for the new ships and issues between the unlicensed crew and
16 the officers. Were there any issues between the captain and any
17 of the deck officers that you're aware of?

18 A. I could say yeah. They have a problem with Davidson.
19 Davidson and some of the officers because Davidson's going to make
20 you do your job. He going to make you do, and by him being on
21 that run and it's so laid back, they used to doing whatever they
22 want to do. And once you apply rules, you're going to always have
23 a problem. If I've been coming to the job 10 years and I've been
24 doing it my way, my boss going to let me do it my way, now you got
25 a new boss you got to submit to somebody else. Now that's the

1 problem where he tell you "I want it this way," and you telling
2 him, "No, I've been doing it this way." But no, he's the captain.
3 That's the way it is. That's when the problem occurred.

4 Q. Is there anything in particular that you're speaking about?

5 A. It's nothing particular, but even how they say the weather, I
6 seen him and Danielle, they were bumping heads about the weather.
7 He was telling her -- I guess, he teach some kind of, the stuff
8 they took at the school. And she was doing it wrong. But she's
9 like, no, I've been doing this right here forever; why I got a
10 change? He's like, hey, listen, I don't want you to take it that
11 way, but I'm the captain, and if I want it this way, this is the
12 proper way to do it.

13 Because a lot of it was seamen on that ship, being the
14 licensed, the only thing they knew was Jacksonville to Puerto
15 Rico. So yeah, they've been shipping 10 years, but they never
16 been on a car carrier. They never been in Korea or Thailand on
17 another ship. So the only way they know is the way that they've
18 been taught. So yeah, when you're trying to put somebody in a
19 spot like that right there, there's going to be -- it's going to
20 be -- there you go, you got this Captain Davidson, he done been
21 sailing 40 years, and he done tankers, car carriers, a variety of
22 ships. But you got one person who only know the steamship from
23 Jacksonville to Puerto Rico, now he tell you the proper way, and
24 that was a problem.

25 But technically it's not problem. He's telling you the right

1 way. So it was just, it's stuff like that. Little stuff like
2 that right there.

3 Q. You mentioned she. Are you speaking of Second Mate Randolph?
4 Is that who you're talking about?

5 A. Yeah, that was just one of the, one of the incidents or
6 whatever, but just like I say, they right back together talking.
7 But, you know what I'm saying, stuff like that. I was just using
8 that as an example. Like, yeah, he even had with the Second Mate
9 Charlie, where I forgot the thing, where the old school weather
10 thing, and it, as it goes they write some -- I forgot what that
11 machine is called. It's the weather. It's something that got to
12 do with the weather. It's a round thing, and it scratches the
13 stuff. He was telling him, he want, he want -- they wasn't using
14 it. He was saying, you all need to be using it because if this
15 technology fail, we messed up on --

16 (Witness confers with Mr. Ware.)

17 THE WITNESS: Oh, yes, sir. He was pretty much old school,
18 and they don't know old school. They just know Jacksonville to
19 Puerto Rico, so whatever the person taught them, then that's the
20 only thing they know. So that's why he was bumping heads with the
21 licensed like that right now.

22 BY MS. BELL:

23 Q. Moving on to a different area. You stated earlier that you
24 lost your brotherhood by something that could have been prevented.
25 Can you explain what you meant by "could have been prevented"?

1 A. This whole scenario could have been prevented, could have
2 been prevented. And what I mean by that is, I don't understand,
3 if you tell us to do 10 knots coming from Puerto Rico, and we do
4 13, 14 knots, you all call the satellite phone and say, hey, you
5 need to slow down. So you can't tell me that you all seen this
6 storm going out to sea, and you couldn't say alter course or go
7 200 mile this way or 100 miles that way. It all could have been
8 prevented.

9 Q. Just to clarify, do you mean if the company would have gotten
10 involved? I don't want to lead you into an answer here.

11 A. Yes, that's what I'm saying. I'm saying, if the company is
12 calling the ship while we at sea saying, slow down, you burning
13 too much fuel, because you're worrying about fuel, I'm trying to
14 figure out why the company didn't worry about 33 lives while the
15 hurricane was coming. That's the question I keep asking of me, I
16 keep asking but I can't get an answer. Because the satellite
17 phones was used. I was on the ship for 2 years. I seen, I heard
18 it. So, but nobody got an answer for that. If you can call to
19 worry about fuel, why you can't worry about 33 lives? I lost my
20 brothers for real.

21 Q. You stated that you're no longer sailing after 10 years,
22 around so -- about 10 years in the industry. Can you tell us why
23 you stopped sailing?

24 A. We don't have voice. They can have it. Yeah, I can go out
25 here and get killed. I'm just being for real. But with that, if

1 you say we family, we hold a safety meeting and say we're family.
2 If I tell you, hey man, I don't think that we should go out there
3 -- the same thing Danielle said. We should have been altering
4 course. Like, I don't -- I can't even imagine, like seriously. I
5 just, I just, I just don't get it. I don't. And the only thing
6 we got now, you got pointing fingers.

7 CARRIE BELL: That's all the questions I have. Thank you.

8 CAPT NEUBAUER: At this time, we'll go to the parties of
9 interest. TOTE?

10 UNIDENTIFIED SPEAKER: Captain, can we have a short break
11 please?

12 CAPT NEUBAUER: Yes, sir. The hearing will recess and
13 reconvene at 6:10.

14 (Off the record at 6:03 p.m.)

15 (On the record at 6:12 p.m.)

16 CAPT NEUBAUER: The hearing is back in, will come to order.
17 I'm sorry, the hearing is back in session.

18 BY CAPT NEUBAUER:

19 Q. Mr. Hearman, during the break, we looked at some records that
20 the Coast Guard had for the *El Faro* in regards to a tank top crack
21 the vessel experienced in early January 2015. We cross-checked
22 when you were on board the vessel. In that time frame, you were
23 on board. Does that, could that have been the issue that you were
24 talking about with the cracks, the cracks down below forward?

25 A. No, I know on the starboard side. That's what you all

1 talking about? I don't know if it's the same thing, but I know
2 they did, they had a crack on the deck inside the forepeak on the
3 starboard side, as soon as you walk into the -- because I had to
4 repaint it. It was steel, so I had to prime it and paint it. As
5 soon as you walk into forepeak, right there on the ground. I know
6 there was hole right there. So but I know for a fact it was the,
7 it was a crack. I seen it when I had to go check the hold and
8 make sure they was pumping it out. So --

9 Q. And when you say that you were sure that it was properly
10 inspected afterwards, did you -- were you including the ABS with
11 the U.S. Coast Guard in that assessment?

12 A. It's just -- see, it's just like I said to -- by us being in
13 port, I'm gone. But I know I seen -- it got to get inspected. I
14 remember the guy. I remember the guy. It had to get inspected,
15 because just like I say, even when they do the work, it have to
16 get primed and all that right there. All that stuff like that. I
17 guess it have to get covered up, or I don't know what the, what
18 the whole thing is with it, but I remember it. That was on the
19 starboard side up top, too. They cut it out. They had a company
20 come out and cut it out and replace that.

21 Q. Sir, when you say you remember the guy, though, was that an
22 ABS surveyor or a Coast Guard inspector that you're referring to?

23 A. It had to be like -- I think it might have been ABS, because
24 when the Coast Guard come they got them blue uniforms on, and
25 there's a bunch of them.

1 CAPT NEUBAUER: Yes, sir, thank you.

2 At this time we'll go to TOTE for questions.

3 JACK FORNACIARI: Thank you, Captain.

4 BY MR. FORNACIARI:

5 Q. Mr. Hearman, I want to see if I can understand something you
6 said in your testimony. I think it was to Mr. Fawcett. I thought
7 I heard you say that if someone makes a complaint at TOTE to the
8 DPA, he's going to be fired. Not for making a complaint, but
9 because of some pretext. Did I hear that correct?

10 A. I'm going to re-say it. I said, if you call the DPA on any
11 ship, and even on that ship, too, you will lose your job. It has
12 nothing to do with whatever the nature maybe, but by you calling,
13 following up the chain of command, you will lose your job. And
14 any seaman will tell you that, who been shipping.

15 Q. so have you actually seen this happen while you've been at
16 TOTE?

17 A. I haven't seen it happen at TOTE, but just like I said, we
18 all ship out and we know what the policy is, so that's why when we
19 reached out to Mr. Lawrence, he wasn't so busy worrying about what
20 the nature of the calls was. He was worrying about, as he stated,
21 who is you? Who is you? Versus, with us, if I'm the designated
22 person ashore and somebody send me a guy -- somebody send me
23 pictures of somebody sleeping, I'm going to handle it. Versus you
24 saying -- I'm not going say, who is you? I'm trying to really get
25 to the problem.

1 Q. Thanks, sir. Let's step back for a second. So how long were
2 you sailing for TOTE, total?

3 A. I had an ordinary job. I only had 30 more days left on my
4 contract before I went on vacation.

5 Q. So almost, what, a year and a half? How long were you at
6 TOTE sailing on ships?

7 A. About 14 or 15.

8 Q. So in that 15 months, do you know of anyone who made a call
9 to the DPA and then lost his job for whatever reason?

10 A. I can tell you on one instant -- yes, I can, I can vouch for
11 it. A buddy of mine who, I guess the money was messed up, the
12 paycheck, and he was trying to explain it. So he called
13 Mr. Lawrence, and after that right there, they was down with him.
14 But he didn't get fired. He quit. He had to quit because of the
15 nature in the engine room. They started nitpicking, this right
16 here, this right here. I want you to do this right here. No more
17 going home when we get in Jacksonville. Stuff like that they
18 normally letting him do, they stop. It came to a stop. But we
19 get that common sense.

20 So now you got, now you got this anger. Now that everybody
21 mad at you and the anger on the same stuff he'd been doing, and
22 did like 4 months it was never a problem. And so now all of a
23 sudden, you got -- you making the Gatorade wrong, or you can't go
24 home once you get through on lighter, once they get through
25 lighter, you can't go home. So just like I say, we all talk to

1 each other. And we're like family, so we know when something go
2 wrong.

3 Q. So I missed the name. Who was, who was this person?

4 A. It's a buddy of mine. He was a DU in the engine room.

5 Q. Can you give us his name?

6 A. His name is David McRoy.

7 Q. Okay, thank you. I want you to -- are you aware how many
8 calls are made to the DPA at TOTE?

9 A. I only know two incidents, the one we are stating about the
10 second mate sleeping, and I know I was the delegate. But he was
11 in the engine room, but he's the DEU, so he's deck and engine. So
12 that being said, he came to me, and I tried to correct the
13 problem. I said, listen, I'm cool with the captains, let's -- and
14 before we get the DP involved, let me just go up here and talk
15 with him, because he got a open door. I can always go up there
16 and talk to him. So by the time I talked to him, he still didn't
17 want to hear what I had to say, and the captain done told me,
18 because he wasn't getting answer, that's when he called him from
19 his phone and he talked to him personally. I don't know what was
20 said, but I know for a fact that he quit his job.

21 Q. There was another part of your testimony, I think it was also
22 in response to Mr. Fawcett, where you were explaining that the
23 chief mate who was sleeping during his watch was abusing his
24 power. And you were explaining ways in which he was abusing his
25 power. And I thought you said, one way he was abusing his power

1 was he was cutting the overtime of the ABs?

2 A. Yes, that's -- and I can explain that a little bit more.

3 What happened was, in our contract we can get cash, but the
4 problem occurred was when the Captain Davidson, he didn't like to
5 give cash out. He wanted to give you a check. And one of the
6 guys, the guys who he got into it with, his name is -- his last
7 name is Cash. So when the captain came to him, he said, what do
8 you want? But before that right there -- you are right there on
9 that draw ship, before we pull in port, you're right -- you go to
10 the captain, always outside his door, you put you want cash or you
11 want a check. He already got cash down, but Captain Davidson did
12 not like counting the cash for everybody. So that caused the
13 problem.

14 So when the captain came to the bridge, he said, hey, what
15 you want cash or check? He said, I want my last name. I like
16 cash money. That's what he said. And so, that caused a problem.
17 That caused a problem. So the second mate want to be the tough
18 guy. He didn't like how the guy responded to the captain, then he
19 got involved. So I break those two up, and I said, hey man,
20 listen, he like -- once I break those two up, because I'm the
21 delegate -- once I break those two up, he say, they have their
22 orders or whatever. And he's like, man, listen, you need to grow
23 up, because the chief mate only like 34, 35 years old. And he
24 say, I'm a grown man. The only thing I said was, I want cash
25 money. That's my last name; I like cash.

1 And so I go down -- once I diffused the problem, I go to my
2 room. I go to sleep. When I come on watch to relieve the guy, he
3 say, you know he done cut overtime? I said, what you mean he cut
4 overtime? So I go to the chief mate. That's my watch partner. I
5 say, man, chief mate, let me have a word with you. I said, why
6 overtime being cut? Oh, ask him because I don't want to do no
7 more talking. I said, huh?

8 But see, the old captain -- Captain Erik was on board then.
9 He didn't know what was going on. So that's when I went to
10 Captain Erik room, and I told him. He said, Marvin, are you sure?
11 I said, Captain, you never seen me come to your office like this
12 right here. I'm addressing the problem. It's a problem. It's a
13 big problem. He saying, Marvin, no, you probably heard wrong. I
14 said, Captain, I'm a grown man. I know what I heard. He cut our
15 overtime because of they got in, because of that, da, da, da, da,
16 there wasn't any.

17 But this was all the time. But it was just so much, even
18 when the guys -- when we pulled into Jacksonville, the dayman,
19 they get knocked off. They going home to their family unless
20 there's trash or stores that need to be did, then they would stay
21 on board. But he was just doing so much, using the power, but
22 nobody wasn't saying nothing. We were just taking the licks.

23 So that's when I -- that's when the whole problem occurred
24 like this. And this is going to stop right now. So that's when I
25 went up to Captain Erik and told him like this because Captain

1 Davidson really ain't going to want to hear like that right there.
2 But Captain Erikson [sic], he's going to cover himself.

3 CAPT NEUBAUER: Mr. Hearman, just a reminder, could you talk
4 a little slower. They're trying to capture all that, sir.

5 THE WITNESS: Okay, I'm sorry. I'm sorry. I'm so sorry.
6 I'm so sorry.

7 BY MR. FORNACIARI:

8 Q. So Mr. Hearman, one thing I don't understand about this
9 story, and you can clear it up for me is, did the chief mate
10 actually begin to cut the overtime for the ABs, or did he only
11 threaten?

12 A. It was never -- it was just that one incident right there,
13 for that one day. But once I had voiced my opinion, then he just
14 had the attitude like I'm the chief mate; he going to take my time
15 regardless of what.

16 Q. I think you also told Mr. Fawcett about him abusing his power
17 is that he threatened to cut, or he cut the overtime for the ABs
18 but he was, in fact, when the ship reached Puerto Rico, leaving
19 the ship and still putting in overtime for himself. Is that, is
20 that what you're testifying to?

21 A. Yes, correct. They know -- they got ways to, just like I
22 say, we got eyes. And when I wake up to go to watch at 4 o'clock
23 and you were here at your house, but I hear you on the radio.
24 It's not right. We both work for TOTE. We've got a job fill, and
25 that was a problem.

1 Q. So I think you also testified to Mr. Fawcett that the fact
2 that he was going to cut overtime and the fact that he, according
3 to you, was using a double standard because he was going home and
4 still collecting overtime, were important considerations to you in
5 texting the DPA those photographs you took. Is that right?

6 A. That's a whole other -- it was so much foolishness going on,
7 on that ship. I'm just being for real. That's a -- right now,
8 you're talking about what I'm -- I guess I'm talking too fast. I
9 don't -- that's about four or five incidents, and he never really
10 like threatened us to cut overtime. He did it. When I woke up,
11 when I went on watch, like I'm telling you, he's saying, hey, it's
12 final.

13 Q. All right. So let me see if I get this straight. Did you
14 take the pictures of the chief mate asleep?

15 A. I took some pictures. You got the dayman, Jackie Jones, came
16 up because they working overtime, they get up to work overtime 6
17 o'clock. They come on the bridge when you can't see us. So if I
18 was asleep, I still couldn't see him. But you can get, you can
19 get in motion where you can take the picture. Yes, so it's not
20 just us, or not just me. Everybody took the pictures.

21 Q. Okay. So, you took the -- you took some of the pictures of
22 chief mate asleep and were these the photographs, the pictures
23 that you texted to the DPA?

24 A. It was some of them.

25 Q. Did you have pictures from other people that you also texted,

1 or were they just your own?

2 A. Yes, there's other people. The whole ship knew that he was
3 asleep. And everybody was taking pictures, because we telling you
4 all and if I would have, if I would have got caught sleeping, I'm
5 fired, on the spot. Ain't no if, and, or but about it. So that's
6 why everybody start taking pictures, because we was letting people
7 know, and nothing was getting done.

8 Q. So I want you to focus on this question.

9 A. Okay.

10 Q. So you -- but you were the one who texted the pictures to
11 Mr. Lawrence?

12 A. Correct, me and another guy to him. Let's see, yes.

13 Q. Who's phone did you use to text the pictures?

14 A. My personal phone.

15 Q. Can you tell me the last four digits of the phone?

16 A. We downloaded an app called Text Plus, and we send it off the
17 app Text Plus because we know if it get traced back to us we would
18 lose our job.

19 Q. All right. So, if I understand correctly, some of the
20 pictures that you texted to Mr. -- or Captain Lawrence were taken
21 as early as November 2014. Is that right?

22 A. Correct.

23 Q. And you waited, and you waited till July to text him the
24 pictures?

25 A. Actually, everybody had pictures. That's just what I had on

1 my phone.

2 Q. But the point is, you had the pictures in November, but you
3 didn't text them to Captain Lawrence until July 2015?

4 A. Man, it's over, it's over 50 to 60 pictures with this guy
5 sleeping. So --

6 Q. So is the reason you waited so long --

7 A. Let me, let me finish talking please. I'm sorry, could you
8 let me finish talking? You got over 50 to 60 pictures of, then
9 add your own, you got pictures then add your own. The guy's down
10 there laughing at, with him right there. So really, it's not my
11 job to catch somebody sleeping. I didn't come there to catch
12 somebody asleep. I came there to make money to take care of my
13 family. That's my whole purpose.

14 Now once I addressed it and the captain, you -- TOTE captains
15 caught him sleeping, then it should it have got corrected right
16 there. So really it would have been 2 years down the line. Then
17 the problem should have been dealt with at that time right there.

18 Q. It sounds to me as though the reason you texted the pictures
19 to the DPA was because you were trying to get revenge against the
20 second mate because he was cutting --

21 A. Okay, I'm sorry.

22 UNIDENTIFIED SPEAKER: Chief mate, chief mate.

23 BY MR. FORNACIARI:

24 Q. Chief mate?

25 A. Yeah, chief mate.

1 Q. Because he was cutting your overtime?

2 A. He cut out one day, and we made up for the date. He cut out
3 one day and we made up for the date. Just like I'm telling you
4 right now, if you see this guy right now today, me and him never
5 had problems. So it's not a problem. It's not a revenge or
6 nothing like that right there. We never had a problem. But the
7 only thing I said was, he had a problem with the crew. It was my
8 watch partner. If I been wanting to bury him, I could been done
9 buried him. I chose not to do that. But I stepped to him as a
10 man and told him, hey, listen, get up before you lose your job.
11 That's what I said. So it's no grudge. If you see this man right
12 now, or if I see him right now he probably going to shake my hand
13 because they don't know that -- they still didn't know until today
14 that who actually sent the pictures. So it wasn't a problem then.
15 They just mad because they think that I took the pictures because
16 I was on watch.

17 Q. Okay, sir. In any event, you could have sent the pictures as
18 early as November, but you waited until the following July to send
19 them. Right?

20 A. Um-hum. Correct.

21 Q. It sounded from your testimony as though there was a lot of
22 dissatisfaction among the ABs about the way this chief mate was
23 using his power, as you call it. Is that right?

24 A. Correct. The way he using, the way he was using his power,
25 but once I addressed, -- but once I went to the captain's office

1 and let the captain know what was going on, on the ship, because
2 nobody didn't know, that's when the problem got corrected.

3 Q. So is there any reason you didn't go -- you are the union
4 delegate. Why didn't you, why didn't you go to the union and have
5 it file a complaint or have the union intervene for the people you
6 represented on the, on the crew?

7 A. When I get -- when I go aboard there, when I went aboard the
8 *El Faro*, I went on there to make money. I didn't have -- I'm not
9 trying to figure out how much fuel we're burning. They not paying
10 me to do that right there. The only thing they paying me to is
11 steer the ship, is steer the ship out of town. That's the only
12 thing I want. I didn't try to make friends. I didn't try to do
13 nothing, this right here. So to my, I says, I went there to work,
14 to do a job.

15 Q. All right. In your, in your direct questions that were asked
16 to you, you said that you had a job also as a delegate, and that
17 meant to protect the interest, according to you, of your fellow
18 ABs on board. Correct?

19 A. Not, I ain't even going to say the interest of the deck, of
20 the, of the -- my crew members. It's a job. I've got to do my
21 job.

22 Q. Why didn't you get the union involved?

23 A. When the third -- when I got into it with the second mate,
24 and the second mate told me he was going to kick my A, when I got
25 the union involved and TOTE came down and they told me, please

1 just give me one more chance where I work with us, nothing was did
2 then, so why am I going to keep calling the union on TOTE. Why?
3 I still haven't got any answers from that, why they drug tested
4 me, and I don't even smoke. But you talking about that dog, how
5 did it get in my room? Why? I'm asking all these questions, but
6 I never get an answer.

7 Q. So let's go into that. In July 2015, July 17th, you were on
8 the vessel and it was in Puerto Rico, at San Juan, correct?

9 A. I can't say correct, because I don't, just like I say, I
10 don't know. But if you tell me what you're talking about, I can
11 tell you if that was me or not.

12 Q. Okay. When you were in San Juan in July 2015, the CBP came
13 aboard the ship with a sniffer dog. Correct?

14 A. Correct. Correct.

15 Q. And the sniffer dog alerted in your state room. Is that
16 correct?

17 A. That's not correct, because -- let me explain that to you.
18 We just left Jacksonville on Wednesday. The same dogs at JAX port
19 came on the ship. We had a search in Jacksonville before we even
20 got to Puerto Rico.

21 Once we got to Puerto Rico, they brung some more dogs, but I
22 do my overtime in the morning when we're in Puerto Rico. I clean
23 the bridge up. I mop. I wipe down everything. I dust. I do all
24 that right there. So once they hear -- once I hear on the radio
25 that the Coast Guard is here, every -- go stand by your room.

1 That's the procedure. You go stand by your room.

2 So when I go stand by my room, I see the dog right there.
3 And I see the dog right there. The dog got the dude in my room.
4 No alert. No nothing. When it -- when the dog got a hit in your
5 room -- this is our union official right here -- they tear your
6 room up. They take the ceiling down. They take the beds and do
7 all this stuff, throw your stuff on the ground. That's what they
8 do when they got a hit. My bed still made up. My room's still
9 together. I'm right there looking at the dude. The dog -- it's
10 the same thing I'm telling the union official. The dog is right
11 there in my face. I'm looking at the dog in his eyes. It was no
12 hit. But you all still searched my room.

13 Q. So you've spoken in your direct testimony very complimentary
14 of Captain Axelsson, right?

15 A. He's a good captain, but to be honest, I got along with
16 Captain -- he did his job. But me and the Captain Davidson had a
17 more -- when I'm on vacation, he will call me up and check up on
18 how's the family. That's what kind of relationship that we had.

19 Q. So on July 17th, after the CBP with the sniffer dog was on
20 board, Axelsson wrote a report in which he reported the fact that
21 there were three CBP agents on the vessel with the sniffer dog and
22 the dog alerted in your room. Are you telling me he's lying?

23 A. That is a lie, because when it first happened, I notified my
24 union official right here. I called Mr. Archie on the phone and
25 the captain, how the Captain Erikson [sic] is, he don't want to

1 get involved with none of that stuff. He said, Marvin, just do me
2 a favor -- I even had to take a drug test. I even had to do this
3 right here.

4 But the whole thing was, the second mate just got me, the
5 chief mate just got -- was walking with the tough guys though. He
6 got into it with the steward, which is little LaShawn Rivera. So
7 they got into it. The chief cook, he got into it with him. So
8 now is the problem because me and LaShawn Rivera hang out
9 together, so they search both of our rooms. We were right there
10 looking at it right here.

11 I notified the -- I did the proper steps. I called him, I
12 said, listen, you know I don't smoke. You know I don't drink, but
13 I still don't feel like -- I still don't like the way they
14 violating me, making me do something and there's no -- it's no --
15 what they going to take me for? He said, well, Marvin, you
16 probably can lose your job. I said, why? Why can I lose my job?
17 And I'm right here looking at the dog in my room.

18 And then, first of all, just like, I went to the captain.
19 I'm the delegate. I told the captain, I said, listen captain,
20 this is a U.S. flag ship. There will be no more Spanish spoke on
21 the ship. You cannot speak Spanish on the ship. The Coast Guard
22 and the chief mate was speaking Spanish.

23 Q. So are you aware that, and I think you were told this, that
24 the CBP, one of the CBP agents told the captain that something was
25 there, meaning in your state room at some point, even though when

1 they searched the room they found no drugs. Were you aware of
2 that?

3 A. I've been aware. Just like I said. We just got searched
4 when we left Jacksonville on Wednesday. We only took -- what,
5 coming down was 56 hours from Jacksonville to Puerto Rico. Now
6 all of a sudden a dog come on board, the same canine. They had
7 two or three canines in Jacksonville. You'll bring on one canine
8 in Puerto Rico. And all of a sudden, you all speaking Spanish,
9 but you mad because he done got -- he found out about the
10 pictures. Now all this stuff, now it's all coming out. That's
11 when the problem occurred.

12 Q. So you're telling me that, and you're telling us, that
13 Captain Axelsson lied about the dog in order to get retribution
14 against you for the pictures you sent to the DPA; is that right?

15 A. I'm saying correct. This what I'm telling you. Captain
16 Axelsson was in his room. Chief Mate Torres was down there with
17 them. I'm right there watching the dog in my room. That's what
18 I'm telling you. I'm watching them as they got the dog. And he
19 will tell you, if they would have had a hit, they would have tore
20 my room up. That's how we know. They tear the ceilings up. They
21 tear the bed. They go up under with screw drivers. Not just one
22 person. The whole crew. They break they, they break the stuff
23 down looking for dope.

24 Q. So you went to the union and complained about the drug test
25 you had to take.

1 A. I didn't go -- I never went to the union. When they first
2 came aboard and they said they got a hit and I'm standing right
3 there, I said it's bull. I said it's bull crap. And that's when
4 I notified the union, while I'm in Captain Erikson [sic] office,
5 they talking about. And then they got the Chief Mate Torres
6 giving us the drug test.

7 CAPT NEUBAUER: Well sir, I'm going just interject for a
8 second, Mr. Hearman. Did you actually submit to the drug test?

9 THE WITNESS: Yes. Yes.

10 CAPT NEUBAUER: So after you submitted, then you went to
11 Captain Axelsson in person?

12 THE WITNESS: No. No, where the captain office is, the drug
13 test place is like, I think right behind the corner. No, it's the
14 next door down. So they told us, you going either take it right
15 here -- but before then, I said, listen, I'm the delegate still --
16 because originally it was just only for LaShawn Rivera. It was
17 never for me. Then that's when they said, oh, the drug, we have
18 the drug dog.

19 Because what it was, they found some blunts inside LaShawn
20 Rivera drawer. He's saying that he smoked blunts. That's fine.
21 You didn't never find no drugs, you didn't find nothing. But the
22 problem occurs when I go up there, he said, oh, no, they had a hit
23 in your room, too. And by me, I'm sitting right here telling you,
24 and I'm not going to change my story, I'm looking at this big old
25 black -- they had a canine, a furry canine. I've never seen one

1 of them before. He like a bear. And I'm looking at him in the
2 room, in my room. Not in -- I ain't talking about nobody else
3 room, because there's drug, a drug test -- I mean, not a drug test
4 but a search procedure.

5 If the Coast Guard, when you all come on board, the procedure
6 is, everybody go stand by your room. Everybody go stand by your
7 room. But I was doing sanitary on the bridge, so I'm coming down.
8 As I'm coming down, the canine end up -- the Coast Guard guy, they
9 are in my room. I'm looking at the dog. They're in my room. So
10 it was never no dog had a hit, none of that. They wanted to drug
11 test me because that was going to give them a reason, for blunts
12 they be saying that we had. That's what they accuse. So I can't
13 really say that. I ain't going to -- take that back. But we know
14 what it was.

15 CAPT NEUBAUER: And sir, are you sure it was a Coast Guard
16 official, not a CBP official?

17 THE WITNESS: Sir, it was the Coast Guard. I promise you it
18 was the Coast -- they had them blue uniforms. They had the
19 canine. Who are the people who deals with the canines? I'm just
20 asking. Who? I promise you. They had a black -- if you go, you
21 call and ask them if they got black furry canine. I've never seen
22 one of the likes, in my life. It looked like a big -- it got hair
23 on it like a Chow Chow. And I'm looking dead at them in my room.
24 That's why I called my union official, hey, what are they talking
25 about? Oh, you got to take a drug test. Well, I said, I'm not

1 taking a drug test; for what?

2 CAPT NEUBAUER: Sir, I understand.

3 THE WITNESS: Okay.

4 CAPT NEUBAUER: I think, I'm just going to take a recess just
5 to kind of let the atmosphere --

6 THE WITNESS: Okay, okay, okay.

7 CAPT NEUBAUER: We'll -- the hearing will reconvene at 6:50,
8 and Mr. Hearman, if you -- I want to get all the testimony on the
9 record, so, if you could speak a little slower.

10 THE WITNESS: Okay, I'm sorry. I'm sorry. I'm sorry. I got
11 to just calm down.

12 CAPT NEUBAUER: Yes, sir.

13 THE WITNESS: No problem.

14 CAPT NEUBAUER: We'll come back at 6:50.

15 THE WITNESS: All right.

16 (Off the record at 6:42 p.m.)

17 (On the record at 6:59 p.m.)

18 CAPT NEUBAUER: The hearing is now back in session. TOTE
19 will continue with their line of questions.

20 BY MR. FORNACIARI:

21 Q. So, Mr. Hearman, before we took the break, I think you were
22 telling me, or you told me that the whole incident with the so
23 called sniffer dog and alerting to your room was really
24 retribution for you sending us pictures, right?

25 A. I said that was part of the problem. That was one incident

1 that that was just -- I been on the last 2 years, so I can go on
2 and on with -- I can give you accusations all day and even like,
3 this -- if you read this right here, at the bottom where it said,
4 based upon the information that the union has received, it does
5 not appear that the captain had reasonable cause to test these two
6 crew members. It ain't illegal. But see how I knew there was a
7 problem was, in a -- if a dog -- the TOTE procedure -- I know all
8 this stuff here on file, too. If the dog get a hit, just say in
9 the kitchen, if a dog get a hit in my room, the whole ship is drug
10 tested. That's on file, too. When they found all them drugs and
11 all that stuff on the ship, just saying, everybody got drug
12 tested, because the same, the same thing the captain told me, oh,
13 you could have been using drugs in my room. Who to say who was
14 not in my room if you had a hit. So why everybody didn't get drug
15 tested? It all falls back on the pictures and all kind of stuff,
16 us voicing our opinion.

17 Q. So, Mr. Hearman, how could the sniffer dogs, the entire
18 incident with the so-called drug test, be in retribution for
19 sending the pictures, when you just told us a few minutes ago you
20 used an app to send the pictures and they were never signed by
21 your name?

22 A. Okay, I got some up in the court. You all got all these
23 documents. The same, get his documents from his phone or
24 whatever, or wherever I sent it to, it'll show you it that it came
25 from Text Plus app. It -- all -- it'll show you. So everything I

1 said, is right here in this document. And it's stating right here
2 that the union find that not -- it does not appear that the
3 captain had a reasonable cause to test the two crew member. It
4 was little games like this being played because of all kind of
5 stuff on that ship.

6 Q. So this should be a yes or answer, but if you need to
7 explain, go ahead.

8 A. Yeah, I'm going to explain it.

9 Q. You sent -- you text, you texted the pictures of the chief
10 mate asleep using a phone number that could not be traced to you.
11 Correct?

12 A. I took the pictures. Some of the pictures with my phone.
13 And I still have some of the pictures.

14 Q. It's not the pictures I'm asking you about, Mr. Hearman.
15 It's the phone number you used to text the pictures. It was not
16 your phone number, was it?

17 A. It was not my phone number but the Text app, I know you can
18 trace that back to my phone because I had to give all that stuff
19 right there. The Text Plus app, you have to give a phone number.
20 You have to -- they give you a phone number. That's how it was
21 sent. In other -- in all the other cases, when the captain seen
22 him asleep, the captain did nothing about it. Nobody did nothing
23 about it. So now you're sitting questioning me, why I didn't do
24 nothing about it. I'm not the one -- that's not my job.

25 CAPT NEUBAUER: But, Mr. Hearman, if you could -- I mean, he

1 is asking you specifics about --

2 THE WITNESS: Okay, I'm trying, I'm trying to understand. I
3 don't really --

4 CAPT NEUBAUER: But it, if we can --

5 THE WITNESS: Okay.

6 CAPT NEUBAUER: If you could just answer his question.

7 THE WITNESS: Okay.

8 CAPT NEUBAUER: Then at the end I'll give you a chance to say
9 anything, sir.

10 THE WITNESS: Okay. Go ahead.

11 BY MR. FORNACIARI:

12 Q. So the phone number that you used to text the pictures was
13 purposefully not your phone number so they couldn't tell who the
14 pictures came from, correct?

15 A. Correct, because as I stated before, the direct -- if you
16 call the DP, you could lose your job. That's it.

17 Q. And so the sniffer dog showing up with three CBP agents on
18 your -- on the vessel in your room could not have been in
19 retribution for you sending the, sending the pictures, right?
20 Because they didn't know who sent them?

21 A. They knew -- they couldn't really put their hand on it, and
22 if Chief Mate Ray Thomas, he will tell you that they knew I sent
23 it but they could not put their hands on it. That's why, when we
24 pulled into Puerto Rico -- it's so much leading to it, so I don't
25 really understand. I'm trying to explain what I'm trying to

1 explain. But it was -- you had other -- if I really wanted to get
2 the guy from the pictures, some of the other guys, I stopped them
3 so many times from doing it, just trying to make it good, because
4 I likely to do, but -- if I really wanted to just to hammer him, I
5 would have been and did it.

6 Q. So you have this SIU grievance letter in front of you?

7 A. Correct.

8 Q. In this letter, the union asked for evidence from TOTE to
9 justify the drug test, correct?

10 A. Correct.

11 Q. You're aware that TOTE gave them the evidence related to the
12 search by the CBP and the dog. And then the union withdrew their
13 grievance, didn't they?

14 A. What I -- I'm going to tell you what I'm aware of is, the dog
15 had a hit apparently in my room and LaShawn room after they found
16 the blunts, and they didn't drug test the whole ship like -- if
17 you look in you all files, if any drugs -- the dog got a hit on
18 the *El Faro*, or the *El Yunque* or anyone of you all ships, then
19 they would have searched the whole crew versus just singling out
20 two people.

21 CAPT NEUBAUER: But, Mr. Hearman, you did not answer the
22 question.

23 THE WITNESS: Okay, well --

24 CAPT NEUBAUER: Did the SIU withdraw the complaint?

25 THE WITNESS: I don't -- this is my union official right

1 here. You probably have to ask him. I don't know. I just -- he
2 sent me this letter right here in the mail because I know they
3 wasn't going to do nothing about it, and they just sent the thing.
4 But I know at the bottom -- the only thing I'm looking at, they
5 just, based upon the information that the union has received, it
6 does not appear that the captain has reasonable cause to test the
7 two crew members. That's what I see.

8 CAPT NEUBAUER: So you don't know if the complaint was
9 withdrawn?

10 THE WITNESS: Yeah, I don't know.

11 BY MR. FORNACIARI:

12 Q. Okay, so following the grievance, didn't you hire a lawyer to
13 make a claim against TOTE? Isn't that correct?

14 A. Yes. Correct. I made -- before we even got these letters
15 right there, we already -- one guy already had like two lawyers
16 already against TOTE or whatever. So I decided since nothing is
17 getting did, and you all violated me, what you all did, I'm just
18 being honest, I went and got my own lawyer, too. And they just
19 got back with me, too. They did a -- but they did some kind of
20 stuff, he was telling me about. And I know nothing was going to
21 happen. Then they telling me get my own lawyer, another lawyer.
22 Go ahead.

23 Q. And sir, and so your lawyer sent a claim by a letter to TOTE
24 making your claim against TOTE, right?

25 A. Say it again?

1 Q. Your lawyer, Mr. Gary Martoccio from the Spielberger Law Firm
2 sent this claim in letter form to TOTE. Correct?

3 A. I guess it is. Correct.

4 Q. And in this claim, the claim has nothing to do with the drug
5 test, or I should say, isn't only about the drug test. The claim
6 is that TOTE discriminated against you based on race and, in
7 particular, Captain Michael Davidson threatened you, threatened
8 your employment if Mr. Hearman does not complete menial tasks such
9 as making coffee or cleaning or, further, Captain Davidson forces
10 Mr. Hearman to submit to alcohol tests stemming from unfounded
11 allegations and Captain Davidson also told customs agents that
12 Mr. Hearman had drugs in his room, an egregious fallacy.

13 So this is the same Captain Davidson that you had a bond
14 with, right?

15 A. Correct. I don't -- some of this stuff right there, I don't
16 even know. Captain Erik, Captain Erikson [sic] was on board.
17 That other incident right there with Captain Davidson, we had
18 thing with the union, the union official got involved. They told
19 me that I have to make coffee for them -- for them. I said,
20 listen, don't get it twisted. I don't -- it's not my job to make
21 -- I didn't come on the ship to make coffee. I told them, that's
22 a courtesy thing. That's why that's involved.

23 And once again somebody from TOTE came down to the ship and
24 my union official told them that it's not his job. Show me in the
25 contract where my job is to make coffee. I'm not a coffee maker,

1 but I do it because of courtesy. I know the guy who's relieving
2 me wants to drink coffee. That's why I make it.

3 Q. Sir, you never make -- even though this letter says that
4 Captain Davidson, which was written on your behalf, forced you to
5 take a drug test based on a fallacy, that wasn't you?

6 A. Sir, if you look at the files, Captain Erikson [sic] was on
7 the ship. Captain Davidson was on vacation. If you look at it.
8 Captain Davidson --

9 Q. So regarding making coffee, regarding making coffee and
10 cleaning on the bridge, have you ever looked at the operations
11 manual of the vessel?

12 A. Yes, that's why the union official got involved. I clean. I
13 volunteer to clean for my overtime when we're in port, but just
14 like I told the captain, it was never a problem with me cleaning
15 because that's my job. That's in the contract. But making coffee
16 is not in the contract. I will not make coffee for a man that
17 disrespected me. I will not make it. Now if you say, Marvin,
18 could you please make me a pot of coffee; I would say yes. But if
19 you tell me, oh, you're going to make some coffee or it's
20 insubordination, you going to get fired, okay -- that's what I
21 told them; I said, well -- fire me, and watch how quick you hear
22 from my lawyer. That's how that got in, that's how that, that's
23 how that came apart.

24 Q. But in this letter, one of the things you claimed about that
25 cleaning is a menial task and you were being discriminated against

1 by asking to clean.

2 A. Sir, here's the --

3 Q. Is that wrong?

4 A. Yes, that is wrong. Here is my union official right here. I
5 clean up every morning except for weekends in the contract. It's
6 not problem for me. I clean. You only got from here to the table
7 to clean. It's not a problem. It was never a problem since I've
8 been on the ship for the 2 years. That's what I told Captain
9 Davidson or whoever, who else. It was never a problem. That was
10 never a problem. Making coffee, when you sit right here and say,
11 oh, you going to make me some coffee, and I'm going to show you
12 that I'm not going to make the coffee. That's why the union
13 official had to come down to the ship with a TOTE representative,
14 and we had to get that problem solved.

15 BY CAPT NEUBAUER:

16 Q. Mr. Hearman, I just want to understand this a little better.

17 A. Okay.

18 Q. To make sure I'm -- I read the letter from Spielberger Law
19 Group. Is it possible that they, that the lawyer involved used
20 Captain Davidson in some of the cases where he should have used
21 Captain Axelsson?

22 A. Yes. It was just like I said, it was so much stuff involved
23 on the ship. And when they -- when he asked me like, what was all
24 going on, I guess he just -- but if you look at the file, even
25 when I took the drug test on board, Captain Erikson [sic] was on

1 the ship. We called him, we called him right out of his office.

2 Q. Did you carefully review this letter before it was sent or --

3 A. I never -- I was at -- I was on this ship, and this guy, he
4 out of town. So it was never like I walked inside a lawyer's
5 office. You see what I'm saying? Everything was done on the
6 phone in Puerto Rico. You see what I'm saying? It's not even in
7 Jacksonville. Or I think he's down in Tampa or somewhere like
8 that right there, but it was never like I went in. I never even
9 met the dude. I just sent the dude my money.

10 Q. So you talked to him on the phone, sent him some money, and
11 he wrote the letter on your behalf?

12 A. Yes. I -- this is my first time, I think. I don't -- to be
13 honest, I don't even know what -- it's some of the allegations but
14 I think he just -- I think he put everything in. It's just like I
15 say, it was so much going on with, on the ship, so he just threw
16 everything in here.

17 Q. Understand. I just want to make sure I understand.

18 A. Okay.

19 CAPT NEUBAUER: We're going -- TOTE, are you making this an
20 exhibit, this Spielberger Law Group letter?

21 JACK FORNACIARI: Yes.

22 CAPT NEUBAUER: And Lieutenant Commander Yemma, what number
23 will that be?

24 LCDR YEMMA: 396, Captain.

25 BY CAPT NEUBAUER:

1 Q. I looked at -- do we know -- can you tell me the resolution
2 on this, Mr. Hearman?

3 A. I was on the ship, and me and three other guys went through
4 the same little company right here. If you look on file, we got
5 Jackie Jones, LaShawn Rivera, everybody, because we knew what was
6 going on, and that's the only thing was going to get --

7 Q. Sir, but I really want to focus on your case, though.

8 A. Okay, okay, okay.

9 Q. But what was -- do you still have, is this still active? Are
10 you still working with this attorney?

11 A. Like I said, they called me and told me the EEOC or something
12 like that right there, did their investigation and they can't find
13 nothing. And the same thing I told them, I said, listen, I got it
14 all right here for you. I got the union official. I got
15 everything, so I don't understand. So what he told me was, you
16 will have to, from this point on -- they done, the money that I
17 gave them, it done. You have to, you have to get another lawyer
18 for that, for that situation or whatever. If they, they reword
19 it. I can't actually say the words what they used because I guess
20 it was in another terminology, but I'm just telling you what they
21 said. But we can call him and they can explain it. I can call
22 him, come back tomorrow and call him, and he can explain it, and I
23 just have them whatever we need to do to get it straightened out.

24 CAPT NEUBAUER: Sir, I'm at the point, we're going to close
25 the door. We have to exit the building.

1 TOTE, you have more questions that we should reconvene
2 tomorrow morning? That's my question?

3 JACK FORNACIARI: I only have -- I only have two more
4 questions.

5 CAPT NEUBAUER: Mr. Hearman, I'd like to try to finish
6 tonight, if we can. TOTE, can you ask those questions?

7 JACK FORNACIARI: Yes, Captain.

8 BY MR. FORNACIARI:

9 Q. So Mr. Hearman, you also talked about the vessel floating
10 around for basically 2½ days. Remember that?

11 A. Um-hum.

12 Q. Can -- but you can't tell us when, and --

13 A. I'm sorry. Go ahead. I can't tell you when, because like I
14 said, I came to go to work. I'm not getting paid to keep track --
15 now if you pay me to keep records, then I'll do that. I'm just
16 being for real. But I'm not there to keep like how fast the ship
17 was going or even when the guys call me, like how fast we going.
18 That's not my job like, to be honest like. I'm there --

19 Q. And you can't tell us even generally where or whether the
20 emergency generator came on, can you?

21 A. The only thing I can tell you is, it came on and we was
22 coming back to Jacksonville. Now the other stuff, that ain't my
23 job, once again, like to try to figure -- I'm not even going to
24 sit right here and try to figure out a date, just to be honest,
25 when this right here, because you all should have a record. You

1 all work for TOTE. I don't work for TOTE no more. You all, all
2 this, I know for a fact it was documented.

3 Q. And my last question, the last question for you, Mr. Hearman,
4 is, do you recall that you were interviewed by CNN reporters in
5 October 2015, shortly after the accident. Do you recall that?

6 A. Okay, go ahead. I'm sorry, go ahead.

7 Q. Do you recall that?

8 A. Yeah, they was popping up at my house. Really like it's the
9 third time I'm really, since I did a story and I let them know how
10 I feel because I was really mad, like I am right now, just to be
11 honest about the whole situation that shouldn't never even
12 occurred. But they popped up at my grandmom my house. They
13 popped up at my granddad house. They popped up at my house.
14 Anybody house. They was everywhere.

15 Q. Sir, according to the article, Mr. Hearman, isn't it a fact
16 you told them that, while everything on the ship was old, everyone
17 felt safe. Isn't that right?

18 A. I just said the same thing as -- I'm saying the same thing.
19 When we go to a ship -- I can fly right now to Thailand. I'm not
20 inspecting the ship. I'm coming to go to work. So if I didn't
21 feel safe, I wouldn't even be going. But it still is an old ship.
22 The *El Faro* was a 40-year-old ship. But I'm not inspecting the
23 ship, let me walk around the ship before I get on.

24 CAPT NEUBAUER: But, Mr. Hearman, I don't want to cut you
25 off, but do you remember -- does that quote sound accurate?

1 THE WITNESS: Can you say it one more time?

2 CAPT NEUBAUER: While everything on the ship was old,
3 everyone felt safe?

4 THE WITNESS: I don't know. I probably said it, but I'm just
5 telling you how we feel at sea. We not going -- it's just like,
6 once again, I feel like driving a 40-year-old car to New York,
7 then, it is what it is. If I --

8 CAPT NEUBAUER: Sir, we do have that. We have your testimony
9 on that.

10 THE WITNESS: Okay. Okay. So I'll just going on testify
11 everything I told you that. Yeah.

12 MR. REID: Sir, you were asking about the resolution of this
13 matter, and we have the, we have the decision of the Florida
14 Commission on Human Relations, and we also got that for the
15 Board's consideration as an exhibit, please.

16 CAPT NEUBAUER: Thank you. And Mr. Hearman, I'm willing to
17 take any documentation you can provide on that case, also.

18 THE WITNESS: You talking about this, this right here?

19 CAPT NEUBAUER: You said there might be additional paperwork
20 you could provide. We'll accept any submission you provide on
21 that.

22 THE WITNESS: Okay. What I'm saying is, I can call him, and
23 we can get this straightened out, because just like I said, stuff
24 in here, on this one right here, it's, I guess by me not -- I
25 don't know if it would have been different if I would have been

1 there, but everything was done over -- it was so many problems, it
2 was so many problems, so many problems occurred on the ship, so it
3 was like, I didn't even call and tell him about the second mate,
4 the second mate situation when he said he was going to kick my
5 ass. I'm just, I'm just, I'm just being for real. So it's like,
6 so I guess they put everything in one little situation. But we
7 can -- I guess I can just call him tomorrow and say, hey, what's
8 what. Just let me know what I need to do.

9 CAPT NEUBAUER: Yes, sir.

10 THE WITNESS: Yeah, because I just give you my money and you
11 handle my business. That's what I think. I never had a lawyer or
12 nothing like that right there. But I know if you give them money,
13 that's their job to do what need to be did.

14 CAPT NEUBAUER: Is there any further questions from TOTE?

15 JACK FORNACIARI: No. No, thank you, Captain.

16 CAPT NEUBAUER: Mrs. Davidson?

17 MR. BENNETT: Thank you Captain. Thank you Captain. We'll
18 be very brief.

19 BY MR. BENNETT:

20 Q. Mr. Hearman, first off, my condolences. I know that it was
21 hard losing a lot of friends, so my condolences to you.

22 A. Right.

23 Q. I represent Captain Davidson's widow and I have a few
24 questions for you. First off, the incident that occurred with you
25 and the second mate, Captain Davidson was not present when that

1 occurred. Correct?

2 A. He was on the vessel. He was, we was leaving out of
3 Jacksonville, but we were just getting the ship around. That's
4 what the Chief Mate Ray was right there. He heard the whole
5 thing.

6 Q. But Captain Davidson wasn't an eyewitness?

7 A. No, he was not. He's just doing his job.

8 Q. And that incident was reported to Captain Davidson, right?

9 A. Correct.

10 Q. Now you're on board working through a union, correct?

11 A. Correct.

12 Q. And the officers, they're on board working through a union,
13 correct?

14 A. Correct.

15 Q. And then after it was reported to Captain Davidson, the two
16 unions and the company got together to mediate or solve that
17 problem. Correct?

18 A. Yeah, you know what? I'm wrong. I'm wrong. Captain
19 Davidson was -- Captain Erik was the captain. So Captain
20 Davidson, for the record, he was not with this right here. It was
21 Captain Davidson -- not Davidson, but Captain Erik. Because he's
22 the one mainly when we was in the office, he said, well -- well,
23 he said, where -- like I said, how can the second mate -- if I'm
24 over here coming down the steps, how did the second mate get from
25 over there to right here. He said -- Captain Erikson [sic] said,

1 are you sure that you think he probably couldn't hear you? I
2 said, so you got a second mate who's in charge of emergencies and
3 all this stuff right here, you mean to tell me --

4 Q. I don't mean to interrupt you, but that had nothing to do
5 with Captain Davidson, right?

6 A. But when the union official got involved, then Captain
7 Davidson was in the office then.

8 Q. Okay. Okay. Going to this next incident where there an
9 incident with the third mate, again, Captain Davidson wasn't
10 present but it was reported to him. Correct?

11 A. Correct. When I came to the watch the following morning,
12 Captain Davidson, just like I said, we talked and he pulled me out
13 on the bridge when he asked me, Marvin, what happened? And I told
14 him the same thing I'm telling everybody right now. Like, I
15 didn't see it but --

16 Q. And then that went through the process of both people getting
17 the unions, which was the correct process, right?

18 A. Correct.

19 Q. You also mentioned that you had a rapport with Captain
20 Davidson and because he respected you and he showed respect by
21 answering your questions and telling you how stuff works on the
22 bridge, right?

23 A. Correct.

24 Q. And he was the sort of guy that would call you on your
25 vacation and check up on your family, right?

1 A. He did.

2 Q. And that's the sort of captain you want to sail with because
3 it breeds a good environment to work on the ship. Doesn't it?

4 A. Yeah, it does, and just like I tell everybody about Captain
5 Davidson, he had a way -- we all have our ways, but at the same
6 time, he's going to make you do your job. And that's, that's when
7 the problem occurred, when he make everybody do their job.

8 MR. BENNETT: Thank you sir. No further questions.

9 CAPT NEUBAUER: ABS?

10 MR. WHITE: No, sir, no questions.

11 CAPT NEUBAUER: Are there any final questions at this time?

12 Just for the record, we are going to take any more
13 documentation that you have, Mr. Hearman. Did you ever get the
14 drug test results from that test that you took?

15 THE WITNESS: Oh yeah, it was good. Everything was good,
16 yes.

17 CAPT NEUBAUER: So the test was negative?

18 THE WITNESS: Yes.

19 CAPT NEUBAUER: And so, as a reminder, you can -- we'll take
20 the exhibits and put them in the record that you had mentioned.

21 At this time the hearing is adjourned. I'm sorry, I skipped
22 a step, Mr. Hearman.

23 THE WITNESS: I'm going to say, I have a question, too.
24 Could you like tell me what do I need to do, because like I said,
25 I don't know, but I know I see it right here on the paper, so --

1 CAPT NEUBAUER: Yes, sir. I have an attorney -- Mr. Bray is
2 right next to me. He will get with you, sir.

3 THE WITNESS: Got you. Got you.

4 CAPT NEUBAUER: Mr. Hearman, you are now released as a
5 witness of this Marine Board Investigation. Thank you for your
6 testimony and cooperation. If I later determine that this Board
7 needs additional information from you, I will contact you through
8 your counsel. If you have any questions about this investigation,
9 you may contact the Marine Board Recorder, Lieutenant Commander
10 Damian Yemma, or our legal advisor Commander Jeff Bray, Mr. Jeff
11 Bray.

12 The hearing is now adjourned, and will reconvene at 9 a.m.
13 tomorrow morning.

14 (Whereupon, at 7:25 p.m., the hearing was recessed, to
15 reconvene Wednesday, February 15, 2017, at 9:00 a.m.)

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CERTIFICATE

This is to certify that the attached proceeding before the


NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: MARINE BOARD OF INVESTIGATION
INTO THE SINKING OF THE EL FARO
ON OCTOBER 1, 2015

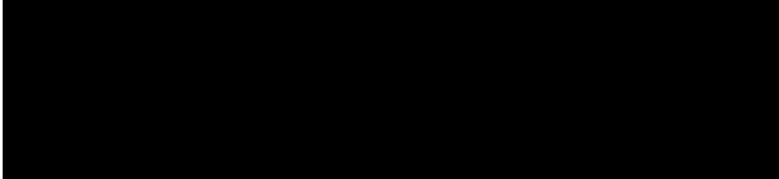
PLACE: Jacksonville, Florida

DATE: February 14, 2017

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.



U.S. Coast Guard
Official Reporter



Transcriber