

Transcript of the Testimony of:
Second Officer Philip G. Torculas

Date: May 22, 2019

Case: In Re: Energetic Tank
1:18-CV-01359-PAC

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the) DOCKET NO.
Complaint of) 1:18-cv-01359-PAC
ENERGETIC TANK, INC.,)
as Owner of the M/V ALNIC)
MC, for Exoneration From)
or Limitation of Liability)

Deposition of SECOND OFFICER PHILIP G.
TORCULAS, taken by counsel for the Petitioner,
pursuant to notice, under the Georgia Civil
Practice Act, before Georgia J. Winegeart,
Certified Court Reporter, at the offices of Blank
Rome, 717 Texas Avenue, Suite 1400, Houston,
Texas 77002 on Wednesday, May 22, 2019,
commencing at 9:12 a.m.

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1 BROWN - TORCULAS

2 SECOND OFFICER PHILIP G. TORCULAS,
3 having been produced and first duly sworn as a
4 witness on behalf of the Claimant United States
5 of America, and after responding "yes, I do" to
6 the oath, then testified as follows:

7 KARL E. ALBARILLO, INTERPRETER
8 being first duly sworn or affirmed to interpret
9 from English to Tagalog and Tagalog to English
10 the proceedings to the best of his ability.

11 MR. ALBARILLO: I do.

12 MR. BOATRIGHT: Ms. Court Reporter, if
13 you don't mind, just for the record before
14 you get started with your questioning, my
15 name is Caj Boatright. I'm here for
16 numerous of the plaintiffs in this case. I
17 work with the law firm of Arnold Itkin. My
18 pro hoc vice motion was submitted yesterday
19 with no objection from any of the folks in
20 this room or on the phone as far as I
21 understand it.

22 This morning at 5:30 a.m. Central Time,
23 we got a notice from the court that
24 indicates that the document has been
25 reviewed at the court and there are no

1 BROWN - TORCULAS

2 deficiencies by the clerk's office staff.

3 I'm not sure if that means it's been
4 officially granted or not. I just want to
5 make 100 percent sure that nobody sitting in
6 this room or on the phone has any objection
7 at all to me appearing at this deposition
8 today given the status of my pro hoc motion.

9 MR. BROWN: The United States has no
10 objection.

11 MR. WEIGEL: The petitioner has no
12 objection.

13 MR. ROBERTS: Tabak Mellusi Shisha has
14 no objection.

15 MR. CHINIGO: Hofmann & Schweitzer, no
16 objection.

17 MR. BARTLETT: Counsel for Jennifer
18 Simon has no objection.

19 MR. BOATRIGHT: Thank you.

20 MR. DRIPS: Roy Drips. I previously
21 sent a no objection by e-mail, and I still
22 have no objection.

23 MR. BOATRIGHT: Appreciate y'all.

24 MR. WEIGEL: Just for your information,
25 that is not -- what you got from the clerk's

1 BROWN - TORCULAS

2 office just says your papers are okay, that
3 they'll be giving them to the judge to
4 approve.

5 MR. BOATRIGHT: I suspected since we
6 didn't have an order granting it. I just
7 wanted to make sure that I've noted that for
8 the record and made sure there was nobody
9 that was going to have any objection at all.

10 MR. UNDERHILL: Appearances?

11 MR. WEIGEL: This is Alan Weigel for the
12 petitioner.

13 MR. BROWN: And Thomas Brown on behalf
14 of the United States.

15 MR. UNDERHILL: And Mike Underhill also
16 on behalf of the United States.

17 MR. BROWN: And you already do have
18 counsel on the phone in the record.

19 THE REPORTER: Please anybody on the
20 phone state your name if you make an
21 objection because I'm not going to remember
22 your voices.

23 MR. BROWN: So counsel on the phone, the
24 reporter asks please state your name if you
25 make an objection so she knows who is making

1 BROWN - TORCULAS

2 the objection.

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Good morning, Mr. Torculas. My name is
6 Thomas Brown. I'm an attorney with the United
7 States government representing the United States
8 in this case. I'm handing you Exhibit 304 which
9 is a notice of deposition. Have you seen that
10 document before, sir?

11 (Torculas Exhibit 304, Notice of
12 Deposition, was marked for
13 identification.)

14 THE WITNESS: No, only -- no.

15 BY MR. BROWN:

16 Q. It's just a piece of paper that says we
17 have asked for you to come today to participate
18 in this deposition. Are you willing to be
19 deposed today?

20 A. Yes, I agree. Yes, I am.

21 Q. I do want to get one matter of protocol.
22 I understand your English is quite capable, and I
23 will try to speak clearly --

24 A. Yes, sir.

25 Q. -- and not too fast for you today. If

1 BROWN - TORCULAS

2 at any time you don't understand my question and
3 need me to repeat it or rephrase it, let me know.
4 I'll do that. Okay?

5 A. Okay.

6 Q. And if you don't understand the question
7 because of any kind of language barrier between
8 us, please let us know that you need the question
9 interpreted and the interpreter will do that;
10 okay?

11 A. Understood.

12 Q. Thank you. Mr. Torculas, I'm going to
13 hand you the bridge logbook for the ALNIC MC.
14 And if you could please read into the record the
15 date on the cover of that logbook. Can you see
16 the dates on the cover, sir, on the front cover,
17 very front cover? What are the dates there?
18 July to September; correct?

19 A. July 12, 2017, until 01 September 2017.

20 MR. BROWN: And for the record, we have
21 deemed this Exhibit 13. And we've also used
22 excerpts from it previously on the record as
23 13-B and 13-C. Today the witness is going
24 to look at the original document.

25 BY MR. BROWN:

1 BROWN - TORCULAS

2 Q. Mr. Torculas if you could please turn to
3 August 21st, 2017, the date that ALNIC MC
4 collided with the USS JOHN MCCAIN. Are you on
5 that page, sir?

6 A. Yes I am.

7 Q. Do you see on there a page, loose paper
8 that's been stapled several times to the deck
9 logbook?

10 A. Yes, I can see now.

11 Q. Please lift that back without removing
12 it so we can look at the original ink entries on
13 the page. Do you recognize that page as
14 August 21st, 2017, from the ALNIC?

15 A. Yes, I can see it's my handwritten
16 notes.

17 Q. That's your handwriting at the top of
18 the page beginning at midnight, sir?

19 A. That's correct.

20 Q. And on that page in your handwriting, it
21 says that at 0300 Captain Nolasco was on the
22 bridge.

23 A. Yes, sir. My mistake.

24 Q. That was not true? He was not on the
25 bridge at that time, sir; correct?

1 BROWN - TORCULAS

2 A. No, he is not on the bridge.

3 Q. He was not on the bridge at 0300 on
4 August 21st; correct?

5 A. Yes, he is not on the bridge.

6 Q. So that entry in the log is a lie, isn't
7 it, sir?

8 A. Yes.

9 MR. WEIGEL: Objection.

10 BY MR. BROWN:

11 Q. If you look further on that same line,
12 do you see where it says that Captain Nolasco has
13 the CONN of the ship at 0300?

14 A. I just assumed during this time, sir,
15 because I called him around -- I don't
16 remember 0230 in the morning because we are about
17 to enter the Singapore TSS.

18 Q. I'm asking you, sir, if you look on the
19 right side of your 0300 entry --

20 A. Uh-huh.

21 Q. -- very small writing squeezed into the
22 margin, do you see where you have written in your
23 handwriting that Captain Nolasco has the CONN of
24 the ship?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. That was not a true statement in the
3 logbook; correct?

4 A. It's not true.

5 Q. So that's a lie as well; right?

6 A. Yes.

7 MR. WEIGEL: Objection to your
8 characterization of the witness's testimony.

9 BY MR. BROWN:

10 Q. And it also says, squeezed into the
11 margin at 0300, that the ALNIC MC was in what
12 mode of steering, sir?

13 A. It is -- which mode? I don't remember
14 which...

15 Q. Mr. Torculas, I think you misunderstood
16 there. I'm asking which mode of steering. Does
17 your log --

18 A. Which mode --

19 THE REPORTER: You're going to have to
20 talk one at a time.

21 BY MR. BROWN:

22 Q. Let me get the whole question out so she
23 can write the full question on the record, and I
24 will let you get the whole answer out; okay?
25 It's for the reporter's sake.

1 BROWN - TORCULAS

2 A. Okay, sorry.

3 Q. No problem.

4 So I'm specifically asking about mode of
5 steering, as in autopilot or hand steering; okay?
6 So if you could please look in the right side of
7 your 0300 entry written very small in the margin.
8 What mode of steering did you say the ship was in
9 at 0300?

10 A. I wrote here "switch to hand steering."

11 Q. And that was not true; correct, sir?

12 A. Not true.

13 Q. That entry is false and a lie; correct?

14 A. Yes.

15 MR. WEIGEL: Objection.

16 Mischaracterizes the witness's testimony.

17 BY MR. BROWN:

18 Q. Is that entry false, sir?

19 A. False. Yes, it's false.

20 Q. Was the ship in hand steering at 0300 on
21 21 August 2017?

22 A. It's in autopilot.

23 Q. It was in autopilot and you logged that
24 it was in hand steering at that time; correct,
25 sir?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. Did you know that it was in hand
4 steering when you wrote down that it was in --
5 excuse me, strike that.

6 Did you know that the ship was, in fact,
7 in autopilot when you wrote that it was in hand
8 steering?

9 A. Yes, it is in autopilot.

10 Q. And you knew that when you wrote that it
11 was in hand steering; correct, sir?

12 A. First of all, it is in autopilot. I
13 just only write hand steering because the
14 formality that we are going inside the port, we
15 should put hand steering, sir. That's my
16 mistake, sir.

17 Q. We can discuss that further perhaps.
18 But I'm asking about the ink entry what you wrote
19 with a pen in that logbook. You wrote that the
20 ship was in hand steering at 0300; correct?

21 A. No, it's in autopilot.

22 Q. Sir, in your own handwriting, you wrote
23 in that deck logbook that's in front of you --

24 A. Yes.

25 Q. -- that the ship was in hand steering at

1 BROWN - TORCULAS

2 0300.

3 A. Okay. I will just rephrase. In my
4 handwriting here I put hand steering, but the
5 truth is in autopilot.

6 Q. And when you wrote in your handwriting
7 that the ship was in hand steering, you knew the
8 truth was that ship was actually in autopilot;
9 correct?

10 A. Yes.

11 Q. Referring again to that page -- and for
12 the record is that page 41 of the deck logbook?

13 A. Yes, it is in page 41.

14 Q. Thank you, sir.

15 Do you see anywhere in your entry from
16 midnight to 0400 where you have lined through any
17 entries? Have you stricken out or altered any
18 entries?

19 A. Inside, I don't strike anything. I
20 don't change anything.

21 Q. So nothing you've written in that
22 logbook from midnight to 0400 was changed by you;
23 correct, sir?

24 A. Yeah.

25 Q. If you would look, please, sir, on the

1 BROWN - TORCULAS

2 page that's in the left side, that shows courses,
3 wind, running lights, and lookouts; correct, sir?

4 A. Here, yes.

5 Q. And who -- well, let me ask: Is that
6 your handwriting under "lookouts" where you list
7 the names Balili and Secang?

8 A. Yeah, I wrote this.

9 MR. BROWN: For the record, it's AB
10 Balili, B-a-l-i-l-i, and the other name is
11 Secang, S-e-c-a-n-g.

12 BY MR. BROWN:

13 Q. Do you see those names, sir?

14 A. Yes.

15 Q. Did you write in the logbook that those
16 were your lookouts during your watch?

17 A. Yes.

18 Q. Does this indicate that OS Secang was on
19 watch from midnight to 0400 on 21 August 2017?

20 A. He was -- actually he's not on the
21 bridge. That's only for the record, only for the
22 recording only, sir.

23 Q. Okay. So you build a -- you make a
24 record, this logbook that says he was your
25 lookout from midnight to 0400 --

1 BROWN - TORCULAS

2 A. Yes, yes.

3 Q. Let me finish the question, please,
4 before you answer for the reporter. You're doing
5 fine.

6 So you write in the logbook to make a
7 record that OS Secang was your lookout from
8 midnight to 0400. Is that what you said?

9 A. Yes. Here I have wrote he is on the
10 bridge.

11 Q. And was he, in fact, on the bridge from
12 midnight to 0400 on this day?

13 A. No.

14 Q. So that's also a false entry in the
15 logbook; correct?

16 A. Yes.

17 Q. That's also a lie that says OS Secang
18 was your lookout?

19 MR. WEIGEL: Objection, mischaracterizes
20 the witness's testimony. You can answer.

21 THE WITNESS: Okay, sir. He is not on
22 the bridge.

23 BY MR. BROWN:

24 Q. My question is: Was that a lie to write
25 down in this deck logbook that he was your

1 BROWN - TORCULAS

2 lookout during that time?

3 MR. WEIGEL: Same objection,

4 mischaracterizes the witness's testimony.

5 You can answer. You can answer.

6 THE WITNESS: Yes, it's a lie.

7 BY MR. BROWN:

8 Q. Do you know when OS -- strike that.

9 Not looking at this logbook but thinking
10 back in your own memory, do you know when OS
11 Secang came to the bridge during that watch?

12 A. I don't remember because -- can I say
13 something more?

14 MR. WEIGEL: No, no. You don't --
15 there's no question pending.

16 BY MR. BROWN:

17 Q. Do you have more to add to that answer,
18 Mr. Torculas?

19 A. I forget, sir, no.

20 Q. You forget. Okay.

21 Do you have any memory today whether or
22 not OS Secang was on your watch at all from
23 midnight to 0400?

24 A. He was not on the bridge. He was not
25 there.

1 BROWN - TORCULAS

2 Q. You never saw him at all until you got
3 off watch at 0400 on that day?

4 A. Yes.

5 Q. Did you see him after your watch ended
6 at 0400 that same morning?

7 A. I did not see him. After the collision,
8 I saw him. What time? I forgot the time.
9 That's it.

10 Q. So I understand it correctly, from the
11 time you were on watch at midnight until the
12 collision itself, you never saw OS Secang?

13 A. No.

14 MR. DRIPS: Roy Drips. Did he say, no,
15 he did not?

16 MR. UNDERHILL: That is correct.

17 (Torculas Exhibit 305, Stealth
18 Maritime Record of Hours of Rest of
19 Seafarers, Bates Nos. Energetic 015322 -
20 015323, was marked for identification.)

21 BY MR. BROWN:

22 Q. Sir, we have handed you Exhibit 305,
23 which states at the top "Record of Hours of Rest
24 of Seafarers," and the name listed is Secang,
25 George Anthony. Do you -- could you flip that

1 BROWN - TORCULAS

2 over, please, sir. Do you recognize this as a
3 crew rest log for OS Secang?

4 A. Yes.

5 Q. Looking at the page where it actually
6 lists the hours he worked -- are you generally
7 familiar with the way these rest logs are
8 completed?

9 A. Yeah, because -- wait a minute.

10 Q. Take your time.

11 A. Okay.

12 Q. You are generally familiar with the way
13 these logs are completed, sir?

14 A. Yes.

15 Q. And the X's indicate when a seafarer is
16 on duty; correct?

17 A. Yes, correct.

18 Q. If it's a blank spot for that hour, that
19 means the seafarer was on a rest period; correct?

20 A. Yes, correct.

21 Q. If you look with me at OS Secang's rest
22 log for August 21st -- do you see that line?

23 A. Yes.

24 Q. -- it shows he was resting from 0 --
25 excuse me, from midnight to 01, 01 to 02, and 02

1 BROWN - TORCULAS

2 to 0300; correct, sir?

3 A. Yes, I can see. It's empty.

4 Q. That's empty. So this record is
5 inconsistent with your deck logbook where you
6 said he was serving as the lookout from midnight
7 to 0400; correct?

8 A. Yeah.

9 MR. UNDERHILL: Madam Reporter, that was
10 a yes?

11 THE REPORTER: "Yeah."

12 (Exhibit 15-C, Bell Book for ALNIC
13 MC, was previously marked.)

14 BY MR. BROWN:

15 Q. The next exhibit for the record is -- I
16 have marked it as 15-C. It's an excerpt that
17 contains slightly different pages from prior
18 iterations. And, sir, do you recognize this as
19 the Bell Book for ALNIC MC?

20 A. Yes, I recognize.

21 Q. Now, you didn't actually use the Bell
22 Book to record bells on your ship; is that
23 correct?

24 A. No.

25 Q. You don't see anywhere in here where

1 BROWN - TORCULAS

2 it's indicated something like half ahead, slow
3 ahead; correct?

4 A. No, it's not indicated.

5 Q. If you'd turn please to the page that's
6 for August 21st, 2017, which is, for the record,
7 Bates Energetic 803. Are you on that page, sir?

8 A. Yes, I am. 803, yes.

9 Q. Now, this contains some similar log
10 entries to what we just reviewed in the deck log;
11 correct?

12 A. Correct.

13 Q. At 0300 according to the Bell Book --
14 well, let me back up. Is this your handwriting,
15 sir?

16 A. Yes.

17 Q. So you have made these entries at 0300?

18 A. Say again, sir.

19 Q. This is your handwriting that makes the
20 entry for 0300; correct?

21 A. Yes.

22 Q. There's an entry for 0400. Is that your
23 handwriting as well, sir?

24 A. Yes.

25 Q. Okay. At 0300 this like the deck log

1 BROWN - TORCULAS

2 says "master on the bridge." That's a false
3 entry; correct?

4 A. Yes.

5 Q. So your entry in the Bell Book like your
6 entry in the deck logbook is false; correct?

7 A. Yes.

8 Q. And then it goes on to say "master at
9 conning." That, too, is a false entry; correct?

10 A. That's correct.

11 Q. And it says "steering switched to hand
12 steering." That wasn't true, was it?

13 A. It is not true.

14 Q. You didn't switch to hand steering at
15 0300.

16 A. No.

17 Q. But you wrote in the Bell Book that you
18 had done that; correct?

19 A. Yes.

20 Q. Do you see anywhere on this Bell Book
21 where you have made a line through an entry that
22 you realized later was wrong? Have you made any
23 line-throughs?

24 A. No, I don't make any line after my watch
25 here. I didn't strike anything.

1 BROWN - TORCULAS

2 Q. At 0400 it says -- you wrote "steering
3 tested prior to arrival" and no remarks. Do you
4 see that?

5 A. Yes.

6 Q. Did you, in fact, test steering at 0400?

7 A. In fact --

8 Q. Did you test steering at 0400?

9 A. No.

10 Q. Why did you write at 0400 that you had
11 done that if it's not true?

12 A. Just for the recording, sir, and for
13 formality.

14 Q. You wanted to build a record for
15 formality even though it wasn't true.

16 A. Yes, sir.

17 Q. You wanted the records to make it look
18 like the ship had done certain things even though
19 the ship hadn't done them.

20 A. Yes, sir. I'm sorry for that.

21 Q. Okay.

22 (Exhibit 16-B, GPS Logbook, Bates
23 No. Energetic 000367, was previously
24 marked.)

25 BY MR. BROWN:

1 BROWN - TORCULAS

2 Q. Sir, the next exhibit I'm going to hand
3 to you we've previously used, it's Exhibit 16-B.
4 It's two sides. Do you recognize this as the GMS
5 logbook for ALNIC MC?

6 MR. WEIGEL: Which one is this?

7 MR. BROWN: 16-B.

8 THE WITNESS: Yes.

9 BY MR. BROWN:

10 Q. And this covers the period from April to
11 September of 2017; correct?

12 A. Yes.

13 Q. If you look on the back page -- first
14 can you explain for the record what is a GPS
15 logbook?

16 A. GPS logbook is record of the position
17 where we were during that time in every watch of
18 ours.

19 Q. When you're standing watch, you like --
20 you keep a record of where the ship has been at
21 least each hour; correct?

22 A. Yes.

23 Q. And you fill that position into this GPS
24 logbook; correct?

25 A. Yes, correct.

1 BROWN - TORCULAS

2 Q. Now, there is a Remarks column. Do you
3 see that?

4 A. Remarks, yes, on this column.

5 Q. And then --

6 A. One second. I'm on a different --
7 sorry, sorry.

8 Q. Take your time.

9 A. We have to go on the 21st. 20th, 21st.
10 Okay. 1900.

11 Q. Now you're looking at the local time,
12 0300 entry; correct?

13 A. I'm now in the -- correct. Okay.
14 Continue, sir.

15 Q. You see the 0300 local time entry on
16 August 21st; correct?

17 A. Yes.

18 Q. And just like with the deck logbook and
19 just like with the bell logbook, the GPS logbook
20 says at 0300 the master is conning. Do you see
21 that?

22 A. Yes. I just make coincide with the
23 other.

24 Q. So this is your handwriting; correct?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. And that's your initials to the right
3 where it says "signature"?

4 A. Yes.

5 Q. And you wanted to make this record
6 coincide with the false record you had built with
7 the logbook; correct?

8 A. I'm sorry for that.

9 Q. But that's correct, isn't it?

10 A. Yes.

11 Q. Sir, I want to go back with you to your
12 watch leading up to 0400 when you were relieved.
13 You were sailing in the South China Sea towards
14 Singapore; correct?

15 A. Yes, correct.

16 Q. Did you have much traffic in the South
17 China Sea?

18 A. During that time, not so much traffic,
19 sir.

20 Q. You don't recall it being busy in the
21 South China Sea?

22 A. No. During my watch, no.

23 (Discussion off record)

24 (Torculas Exhibit 306, Bridge's

25 Night Orders Book Excerpt, Bates Nos,

1 BROWN - TORCULAS

2 Energetic 000309-000329, was marked for
3 identification.)

4 BY MR. BROWN:

5 Q. Mr. Torculas, I've handed you
6 Exhibit 306. This says "Bridge's Night Orders
7 Book ALNIC MC"?

8 A. Yes, 306.

9 Q. Do you have that document, sir?

10 A. Yes.

11 Q. Are you familiar with the Bridge's Night
12 Orders Book from ALNIC MC?

13 A. Yes.

14 Q. This is the book the captain uses to
15 issue orders to you and his mates while they
16 stand watch during the overnight; correct?

17 A. Yes.

18 Q. This is just an excerpt, a small number
19 of pages from the bigger book. So you realize
20 this isn't the full book; okay?

21 A. Yeah.

22 Q. Okay?

23 A. Yes.

24 Q. Turn please to the Night Orders Book for
25 20th August 2017 Energetic 329. Do you have that

1 BROWN - TORCULAS

2 page, sir?

3 A. 20 August 2017.

4 Q. If you're standing watch beginning at
5 midnight on August 21st, this is the page of
6 night orders that would apply to you; correct?

7 A. This is on the 20th, yes.

8 Q. So when you come on watch at midnight or
9 you come to the bridge to take your watch at
10 midnight going into August 21st, would you read
11 the Night Order Book before taking your watch?

12 A. Yes.

13 Q. You can see highlighted on this page
14 instructions -- well, there's a set of
15 instructions from the captain on this page;
16 correct?

17 A. Yes.

18 Q. Were you obliged to follow his
19 instructions?

20 A. Yes.

21 Q. That was your responsibility; right?

22 A. Yes, that's true.

23 Q. And then you see where I have it
24 highlighted. It says, "Give a wide berth with
25 three nautical mile CPA to other vessels." Did I

1 BROWN - TORCULAS

2 read that correctly?

3 A. Yes, sir.

4 Q. You and the other officers have signed
5 or initialed this page; correct?

6 A. Yes.

7 Q. And that's your signature where it says
8 "2/O PG Torculas"; correct?

9 A. Yes, correct.

10 Q. Were you, in fact, able to give a
11 three-mile CPA or closest point of approach to
12 traffic when you were sailing in the South China
13 Sea --

14 A. Yes.

15 Q. -- heading into Singapore Strait?

16 A. Yes. As much as possible, we follow
17 that.

18 Q. As much as possible you follow the
19 orders?

20 A. I'm sorry, sorry, sir. Rephrase, sir.
21 Yes, according here, we are following that one,
22 sir.

23 Q. You followed the captain's order to
24 keep -- let me finish my question for the record.
25 You followed the captain's orders to keep a

1 BROWN - TORCULAS

2 three-mile CPA that overnight watch heading into
3 Singapore Straits; correct?

4 A. Yes.

5 Q. Do you recall having to call the captain
6 at any point during that watch to discuss traffic
7 or any other concerns you had?

8 A. I did not call him regarding for that,
9 but before we enter, I called him, if I remember
10 it correctly, around 0230 21st prior to entering
11 the TSS of Singapore.

12 Q. You recall calling Captain Nolasco at
13 around 0230 to --

14 A. Yes. I don't remember the time
15 actually, but I called him.

16 Q. I want to make sure I understand you
17 correctly. You don't remember exactly whether it
18 was 0230, but around that time you recall calling
19 Captain Nolasco to let him know where the ship
20 was; is that correct?

21 A. Yes.

22 Q. But that call wasn't about traffic?

23 A. No.

24 Q. If you had traffic that was going to
25 come within three nautical miles, come within

1 BROWN - TORCULAS

2 this limit that he set, would you have to call
3 the captain?

4 A. Yes, I would call him.

5 Q. Now, you're aware that we've had access
6 to the ship's Voyage Data Recorder in the course
7 of this litigation; right?

8 A. Yes, you have access. I know.

9 Q. And we can see the radar screenshots and
10 other data on there; correct?

11 A. Yes.

12 (Torculus Exhibit 307, Screenshot,
13 was marked for identification.)

14 BY MR. BROWN:

15 Q. The next exhibit is 307. Do you
16 recognize what that image shows just generally?

17 A. Yes.

18 Q. What does it show?

19 A. It's vessels around the ship and
20 together with us, heading the same with us, the
21 headings, their headings.

22 Q. This is an image from the radar
23 ALNIC MC; correct?

24 A. That's correct.

25 Q. Do you see what your -- do you know what

1 BROWN - TORCULAS

2 a VRM is?

3 A. Say again.

4 Q. Do you know what a VRM is?

5 A. VRM, variable range marker.

6 Q. Variable range marker. Can you see your
7 variable range marker on this screen?

8 A. Yes. That's the circle one.

9 Q. I'll represent to you and for the record
10 that I took this screenshot from ALNIC's VDR at
11 about 0300, which is one of the earlier moments
12 basically when we've been provided data, although
13 I know much more exists than we've been given.
14 Okay. What is the variable range marker set to,
15 what distance here? Can you read that number?

16 A. Variable range marker during this
17 time...

18 Q. I can show you on my screen there. It's
19 zoomed in a little. Does this say 2.35 miles,
20 sir?

21 A. 2.35. Sir, I cannot see here. No, sir.
22 I mean, differently than -- that's why I forgot
23 this screen. It shows 2.35, the ship itself...

24 MR. WEIGEL: Mr. Brown, perhaps you
25 might want to point out where on this image

1 BROWN - TORCULAS

2 that information is located.

3 MR. BROWN: Yes. Do you mind if I
4 approach and look over his shoulder?

5 MR. WEIGEL: Certainly.

6 BY MR. BROWN:

7 Q. Mr. Torculas, I'm referring you to the
8 bottom right corner. Do you see that number
9 there? That's your VRM distance or range;
10 correct?

11 A. Yes, sir.

12 Q. And you see -- and I've got it zoomed in
13 on the screen -- it's 2.35 miles; correct?

14 A. Uh-huh, that's correct. It's here.

15 Q. And can you see on this overall image
16 where the VRM ring is?

17 A. VRM ring is this one.

18 Q. That's that purple ring that circles
19 around your own ship; correct?

20 A. Yes.

21 Q. So do we agree that that purple ring --
22 is it measuring a distance of 2.35 miles from
23 ALNIC MC?

24 A. (Nodding head.)

25 Q. How many ships do you see within that

1 BROWN - TORCULAS

2 ring?

3 A. Inside of this ring is one, two,
4 three -- let's say four.

5 Q. And there's a few others that are very
6 close outside of it; correct?

7 A. Yeah.

8 Q. Okay. Does this show that you observed
9 the captain's night orders to maintain a
10 three-mile CPA during your watch?

11 A. Yeah, but I did not follow during this
12 time.

13 Q. This shows that you let a number of
14 ships get within three miles; correct?

15 A. Yes, sir --

16 Q. Go ahead.

17 A. -- but it's clear, sir.

18 Q. What's clear?

19 A. Passing clear. I mean, they are
20 together with us.

21 Q. So this didn't give you any concern?

22 A. No. But the caution is three miles that
23 we call the captain. I did not follow because I
24 can see from there it's clear.

25 Q. Would you agree with me that this shows

1 BROWN - TORCULAS

2 traffic throughout your radar screen?

3 A. Yes, that is there, traffic.

4 Q. There look to be well over a dozen
5 different contacts on this screen; correct?

6 A. Contact? No contact during this time.
7 I can see it's clear.

8 Q. Do you see -- well, I'm not referring
9 just to where you are but in the whole area and
10 what's coming ahead of you. There's a number of
11 vessels; correct?

12 A. Yes.

13 Q. Is that normal for the South China Sea
14 for it to be that congested?

15 A. Nautical mile, sir.

16 Q. It's heavy traffic over there; right?

17 A. Yes.

18 Q. If you had to maintain three miles
19 distance from all of these vessels, where would
20 your ship go?

21 A. Yeah, if I will go to maybe somewhere
22 here (indicating).

23 Q. And you're pointing to the east?

24 A. I mean -- okay. I will be doing zigzags
25 if I were to follow this three nautical miles

1 BROWN - TORCULAS

2 CPA.

3 Q. You would do what, sorry?

4 A. I would be doing zigzags if I did this
5 three nautical miles. I would go like that here
6 mostly, out of this course line.

7 Q. That would delay your estimated time of
8 arrival to Singapore; correct?

9 A. That's true, sir.

10 (Torculas Exhibit 308, NAV Bridge
11 Deck Schematic, Bates No. Energetic
12 001123, was marked for identification.)

13 BY MR. BROWN:

14 Q. Mr. Torculas, the next exhibit is marked
15 308. It says "accommodation arrangement." Do
16 you recognize this as the bridge deck of
17 ALNIC MC?

18 A. Yes.

19 Q. And this is for the record stamped
20 Energetic -1123. This shows the location of the
21 bridge and the chart room, the radio space, and
22 the head, the toilet, up there; correct?

23 A. Yes.

24 Q. I'll tell you one right up front. I
25 know that you had an ECDIS added after this

1 BROWN - TORCULAS

2 diagram. So I'm not trying to trick you. But
3 looking at this schematic, do you see anything
4 else that's different from the builder diagram
5 compared to when you were on the ship on
6 August 21st?

7 A. Actually, sir, I would say it's already
8 two years. I've not seen the bridge of ALNIC MC
9 for that reason other than the ECDIS. I don't
10 remember any other additional.

11 Q. And that's fair enough. But nothing on
12 this image seems wrong to you; correct?

13 A. Yeah.

14 Q. Okay.

15 MR. UNDERHILL: Yes, meaning he...

16 BY MR. BROWN:

17 Q. Yes, nothing seems wrong to you on this
18 image. This image looks to be a good
19 representation of how you remember the bridge on
20 August 21st, 2017?

21 A. Yeah. It's almost the same, sir.

22 Q. Thank you.

23 A. Same actually.

24 Q. Now, at 0400 I understand -- or around
25 that time, the chief officer relieved you from

1 BROWN - TORCULAS

2 the watch; is that correct?

3 A. Yes, for earlier 4 o'clock. Before
4 4 o'clock, he was already on the bridge.

5 Q. And that's customary to come up a few
6 minutes before the hour to relieve the watch;
7 right?

8 A. That's true.

9 Q. So a few minutes before 0400, the chief
10 officer has come to the bridge to relieve you;
11 correct?

12 A. Yeah. Exact time -- I don't remember
13 exact time, but it's already before 4 o'clock
14 he's on the bridge.

15 Q. At that time, was Captain Nolasco on the
16 bridge?

17 A. No.

18 Q. He still was not on the bridge when the
19 chief officer relieved you?

20 A. No.

21 Q. After you were relieved, where did you
22 go?

23 A. Chart table. I can -- shall I point you
24 here?

25 Q. I'll get there with you. I appreciate

1 BROWN - TORCULAS

2 that. We'll get into that detail.

3 Did you do any kind of security round of
4 the vessel or the accommodation after your watch?

5 A. Security round, no.

6 Q. Did you go below for refreshment or to
7 use the head or to take a rest?

8 A. No.

9 Q. So you stayed on this deck that's in
10 Exhibit 308 from the time you were relieved --
11 even after the time you were relieved; correct?

12 A. Yes.

13 Q. When you stayed on this bridge deck,
14 were you still working, or were you resting and
15 having time off?

16 A. Working.

17 Q. What did you stay in the chart room to
18 do?

19 A. We were in the -- not this chart. So
20 I'm just double-checking the charts,
21 double-checking the chart because we are going to
22 Singapore and I just expect that port state will
23 come and the vessel will be detained if they
24 found that the charts are not fully corrected.

25 Q. I understand you. So let me back up a

1 BROWN - TORCULAS

2 hair because our judge may not understand all of
3 the duties you had. You were the ship's second
4 mate at the time of the collision; correct?

5 A. Yes, correct.

6 Q. And the second mate or second officer is
7 responsible, in particular, for navigation of the
8 ship. You're the ship's navigator; right?

9 A. Yes, correct.

10 Q. As the navigator, one of your
11 responsibilities was to conduct passage planning;
12 correct?

13 A. Correct.

14 Q. And as part of passage planning, you had
15 to make sure you had up-to-date, corrected
16 charts; right?

17 A. Yes, correct.

18 Q. And a chart correction is your marking
19 on a paper chart when something about the
20 maritime environment has changed; right?

21 A. That's true, correct.

22 Q. So your testimony, if I understand
23 correctly, is that after you were relieved at
24 0400, you went to the chart room to apply chart
25 corrections; correct?

1 BROWN - TORCULAS

2 A. Yes, correct.

3 Q. And that was to apply corrections to the
4 charts you were going to use entering into
5 Singapore?

6 A. Yes.

7 Q. You were concerned because they had not
8 yet been corrected and you were going to be
9 arriving in a few hours; correct?

10 A. No, sir. Before we arrive, it's already
11 corrected. I'm just double-checking.

12 Q. Okay. I'm going to hand you a red pen,
13 sir. Would you please mark a small X where you
14 were in the chart room.

15 A. This chart space. Can I put like this?

16 Q. Well, then let me do it that way. You
17 were moving around the chart space. You didn't
18 stay in one spot; correct?

19 A. Yes, correct.

20 Q. I understand that the chart room is
21 surrounded by curtains.

22 A. Yes, correct.

23 Q. And just so you know, we had an
24 opportunity to go aboard ALNIC a few weeks ago in
25 San Francisco, so I've been able to see this

1 BROWN - TORCULAS

2 myself.

3 Would you please mark with a zigzag line
4 where you remember the curtains actually hang in
5 that chart space. In fact, let me stop you
6 before you do that. Let me help you out. I've
7 got some pictures here.

8 (Discussion off record)

9 BY MR. BROWN:

10 **Q.** Okay. Mr. Torculas, before you make
11 that marking...

12 **A.** Okay, now I remember.

13 (Exhibit 309, Photograph, was marked
14 for identification.)

15 MR. WEIGEL: This is going to be two
16 images on the front and back. Is this going
17 to be one exhibit?

18 MR. BROWN: Correct, one exhibit. I'm
19 saving paper. I'm with the government.

20 THE WITNESS: Okay, sir, now I saw.
21 This is the new addition before that
22 collision. This is for -- and this is not
23 on the ship.

24 BY MR. BROWN:

25 **Q.** Okay. Well --

1 BROWN - TORCULAS

2 A. Okay. One moment. This is not in the
3 ship because this monitor is like this. There is
4 a different ECDIS during the -- or after the
5 collision -- I mean, on the day of the collision.

6 Q. Okay.

7 A. It's a different ECDIS.

8 Q. I hear you. Let me slow down a bit to
9 make sure we get it right.

10 A. Okay.

11 Q. You're pointing to a computer screen, an
12 electronic chart screen --

13 A. Uh-huh.

14 Q. -- that's on the first page of
15 Exhibit 309, the marked side of the page.

16 A. Yes.

17 Q. Okay. And I'll tell you these are
18 photos we were able to take on board the ship
19 very recently, just a few weeks ago; okay?

20 A. Uh-huh.

21 Q. So this is not a photo from August of
22 2017. And you were just pointing to that
23 computer screen, and you said this screen was not
24 there when you were on board the ship?

25 A. There is one more ECDIS here.

1 BROWN - TORCULAS

2 Q. There was a different ECDIS here?

3 A. Yeah. It was a FURUNO ECDIS.

4 Q. You recognize that this equipment in the
5 photograph is from a different manufacturer?

6 A. Yeah.

7 Q. And thank you for that. I handed you
8 these photos in case it helped your memory of the
9 curtains. Does that help your memory, seeing the
10 curtains in these two photographs?

11 A. Yes, something came back to my mind.

12 Q. Now, having -- especially on the back
13 side, having looked at that, are you now able to
14 mark on the bridge schematic --

15 A. Yes.

16 Q. -- where the curtains were hanging?

17 A. Yes, I can.

18 THE INTERPRETER: A zigzag.

19 THE WITNESS: A zigzag.

20 MR. BROWN: Yes, thank you.

21 THE WITNESS: (Witness complies)

22 BY MR. BROWN:

23 Q. You can hold on to that for now, sir.

24 And just so it's clear on the record,

25 Exhibit 309, there is an image printed on both

1 BROWN - TORCULAS

2 sides of a single piece of paper and that's one
3 exhibit.

4 Okay. These are very heavy curtains;
5 right?

6 A. Yes.

7 Q. And they are meant to block any light
8 from coming through --

9 A. Yes.

10 Q. -- from the chart room out to the
11 bridge; correct?

12 A. Yes, can block.

13 Q. When you were in the chart room at 0400
14 working on your chart corrections, you must have
15 needed some light to see your work; right?

16 A. Yes.

17 Q. And I see on one side of Exhibit 309
18 there is a lamp or a light there?

19 A. Uh-huh, yeah. Yes.

20 Q. And was that light there when you were
21 on board the ship?

22 A. I don't remember with this light. I'm
23 sorry.

24 Q. Let me ask which way I'm going. When
25 you would do your chart work in the chart room,

1 BROWN - TORCULAS

2 would you have the overhead lights on, or did you
3 use a lamp?

4 A. The over light, the overhead.

5 Q. You had the overhead lights on; right?

6 A. Yes, yes.

7 Q. Now, if all of the curtains were open
8 and you've got the overhead lights on, what would
9 that do to the watchstanders' night vision?

10 A. Their vision will be becoming -- they
11 cannot see around the vessel.

12 Q. So the watchstanders on the other side
13 of the curtain from you need darkness for their
14 night vision; correct?

15 A. Yes, yes.

16 Q. And they wouldn't be able to keep a good
17 lookout if they had the curtains open; correct?

18 A. Yes.

19 Q. So I assume when you were doing your
20 chart work, you would keep the curtains closed;
21 is that correct?

22 A. Yes, it's closed.

23 Q. So at 0400 and following on August 21st,
24 did you have all of the curtains closed around
25 you in the chart room?

1 BROWN - TORCULAS

2 A. Yes, it's closed.

3 Q. And looking again at Exhibit 309 where
4 you see the -- strike that.

5 On Exhibit 309 I see the long curtain
6 with the lamp by it. That's looking forward;
7 correct?

8 A. Say again, sir.

9 Q. On the left side of the image, that long
10 curtain, that's looking forward; correct?

11 A. Yeah.

12 Q. And the image that has the ECDIS screen
13 on the left side, that's facing forward; correct?

14 A. Facing forward, correct.

15 Q. And then if you turn that over to the
16 back side of 309, can you agree with me that
17 you're looking to starboard?

18 A. This is starboard, yes.

19 Q. So is that image, the back side of 309
20 looking starboard -- no, the one you had, sir.

21 A. 309.

22 Q. The other one, yeah.

23 A. Okay. This one?

24 Q. Yes, sir. In that image, the overhead
25 lights are on; correct?

1 BROWN - TORCULAS

2 A. The lights on top, it's open.

3 Q. They're on; right?

4 A. Yes, they're on.

5 Q. Is that a good representation of what

6 your view was like from the chart room on

7 August 21st after you were relieved at 0400?

8 A. For me it's better to switch on this.

9 Because from this one, the lights is dim, so I
10 cannot see our corrections.

11 Q. You like the bright lights on in the
12 overhead?

13 A. Yes, yes.

14 Q. That picture, is that what your view
15 looked like from the chart room?

16 A. Yes, same as this.

17 Q. On August 21st, you were looking at
18 curtains; right?

19 A. Yeah.

20 Q. You cannot see the windows through the
21 curtains; right?

22 A. No.

23 Q. So you're not able after you were
24 relieved to be a lookout; correct?

25 A. Say again, sir. Say again.

1 BROWN - TORCULAS

2 Q. When you're in the chart room at 0400 on
3 August 21st applying your chart corrections,
4 you're not the ship's lookout, are you?

5 A. I am not.

6 Q. And you're not able to be a lookout
7 because there are curtains in your way; correct?

8 A. Yes, correct.

9 (Torculus Exhibit 310, Photograph,
10 was marked for identification.)

11 BY MR. BROWN:

12 Q. Mr. Torculus, I've handed you Exhibit
13 310 which is another photograph.

14 A. Uh-huh.

15 Q. Since we're on the topic of getting our
16 orientation on the bridge, I wanted to look at
17 this photo. Do you recognize this as looking aft
18 from the chart room into the head?

19 A. Yes.

20 Q. Do you recall the head being there
21 through the open stairwell?

22 A. No, it was closed during that time.

23 Q. No, I'm not asking you to tell me
24 whether the doors were open or closed. I'm just
25 asking if you recall that the ship's head was --

1 BROWN - TORCULAS

2 A. Yes.

3 Q. -- was immediately aft of the chart
4 room; correct?

5 A. Yes, yes.

6 Q. And did you see anyone go into that head
7 when you were in the chart room from 0400 on?

8 A. No.

9 Q. I should have asked you earlier, did you
10 go anywhere from the chart room between 0400 and
11 the collision?

12 A. As I remember, only I am on the bridge
13 in the chart room or sometimes I would go to the
14 computer to see some corrections if there is new
15 coming. That's it.

16 Q. Where is the computer you just
17 mentioned?

18 A. If this is the port side -- I mean, the
19 left side, it's over here (indicating).

20 Q. Look back with me on that schematic
21 which is Exhibit 308. Are you referring to
22 what's marked as the radio space there?

23 MR. BROWN: Alan, I'll point.

24 MR. WEIGEL: Fine.

25 THE WITNESS: Radio space is somewhere

1 BROWN - TORCULAS

2 around here (indicating).

3 BY MR. BROWN:

4 Q. Mr. Torculas, looking at the radio space
5 on Exhibit 308, is that where the computer was
6 you just mentioned?

7 A. Yes.

8 Q. So you looked on there to see if you had
9 any new chart corrections you needed to apply to
10 your paper charts; correct?

11 A. Yes, yes.

12 Q. Try and let me finish the question for
13 the reporter; okay?

14 A. Just getting excited, sir.

15 Q. You're doing well. I'm excited, too.

16 Other than working in the chart room
17 itself and back in the radio space, did you go
18 anywhere else between 0400 and the time of the
19 collision?

20 A. I don't remember actually, but I did not
21 go outside the -- I mean, from the bridge, as I
22 remember, I did not go down. I just stay on the
23 bridge.

24 Q. You don't remember going below the
25 bridge deck?

1 BROWN - TORCULAS

2 A. Yes. Sorry, yes. Only somewhere here
3 on the bridge only walking around and doing the
4 correction. That's it.

5 Q. Do you have any memory of where OS
6 Secang's stateroom was? What deck was he on? Do
7 you know that?

8 A. Say again, sir. His position during
9 that time, I -- as I told before, I did not see
10 him, did not saw him.

11 Q. Do you know where his stateroom was on
12 the ship, what deck did he live on?

13 A. Below. It's B Deck.

14 Q. Let's --

15 A. B Deck.

16 Q. One second. One second.

17 MR. BROWN: Could you mark this, please.

18 MR. WEIGEL: Do you want him to finish
19 answering the question?

20 MR. BROWN: I'm going to help him with
21 this.

22 MR. WEIGEL: All right.

23 (Torculas Exhibit 311, NAV Deck
24 Layout Photograph, was marked for
25 identification.)

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. Sir, I've handed you Exhibit 311 in case
4 that helps your memory. This is also a photo we
5 were able to take aboard ALNIC MC. Looking at
6 this, are you able to tell me where OS Secang's
7 stateroom was?

8 A. It's on the B Deck. B Deck. Which
9 room? I don't know which room. On the B Deck.

10 Q. B Deck is two decks below the bridge; is
11 that correct?

12 A. It's other side.

13 Q. Two decks below the wheelhouse itself?

14 A. Yes.

15 Q. He didn't live on the C Deck?

16 A. No.

17 Q. That C Deck is only for the officers;
18 correct?

19 A. Yes, correct.

20 Q. But, again, to be clear, you don't
21 remember seeing him at all from the time your
22 watch ended until the collision; correct?

23 A. No, I did not see him.

24 Q. You testified a few minutes ago that you
25 were working in the chart room; you weren't on a

1 BROWN - TORCULAS

2 rest period. Do I have that correct?

3 A. Yes.

4 (Torculas Exhibit 312, Stealth
5 Maritime Hours of Rest of Seafarers for
6 Philip Torculas, Energetic
7 015306-015307, was marked for
8 identification.)

9 BY MR. BROWN:

10 Q. The next exhibit we've handed you
11 Mr. Torculas is 312. Do you recognize this
12 document?

13 A. Yes.

14 Q. What is this?

15 A. Rest hours.

16 Q. This is your rest hours for August 2017;
17 correct?

18 A. Yes.

19 Q. Energetic 311. On the front page, it
20 says "Stealth Maritime Record Hours of Rest," and
21 it has your name on it; correct?

22 A. Yes.

23 Q. And it has your signature on it;
24 correct?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. If you look above the signature lines,
3 do you see where it says, "I agree this record is
4 an accurate reflection of the hours of work of
5 the seafarer concerned"?

6 A. Yes.

7 Q. Do you see that?

8 A. (Nodding head.)

9 Q. Yes?

10 A. Yes, sir.

11 Q. Did I read that correctly?

12 A. Yeah, I can see that.

13 Q. And you signed this; right?

14 A. Yes.

15 Q. If you look on the back side of this
16 exhibit, it shows your hours of work and rest;
17 correct?

18 A. Yes.

19 Q. August 21st, doesn't it show your work
20 period ending in the morning?

21 A. It ends at 4 o'clock.

22 Q. At 0400. According to your rest log
23 which you signed, you were off duty at 0400;
24 correct?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. You were in a rest period from 04 all
3 the way until 1300; correct?

4 A. Yes.

5 Q. According to this piece of paper which
6 you signed, you were not working --

7 A. No, not working.

8 Q. -- at 0400; correct?

9 A. No, not working. According to this rest
10 hour, I'm not working.

11 Q. Your testimony has been that you were --
12 during that same time working in the chart room;
13 correct?

14 A. It did not appear, sir.

15 Q. What did not appear?

16 A. I mean, it is not recorded here.

17 Q. Okay. So this record --

18 A. Does not help for the --

19 MR. WEIGEL: Objection to that
20 testimony.

21 THE WITNESS: Say again, sir.

22 MR. WEIGEL: And I think you have also
23 mischaracterized that document.

24 BY MR. BROWN:

25 Q. This record of your rest log has your

1 BROWN - TORCULAS

2 signature on it; right?

3 A. Yes.

4 Q. It says you were resting after 0400;
5 right?

6 MR. WEIGEL: Objection. It
7 mischaracterizes that document.

8 BY MR. BROWN:

9 Q. Does the document say whether you were
10 working or resting after 0400?

11 A. This document said I am resting.

12 Q. This document says you were resting
13 after 0400; correct?

14 A. Yes.

15 Q. You were, in fact, working according to
16 your testimony today at 0400; correct?

17 A. Actually I am working during this time.

18 Q. So this record is not correct; right?

19 A. It's false.

20 Q. It's false. Thank you.

21 Do you know how much rest you had?

22 A. In one day?

23 MR. WEIGEL: Objection. What period of
24 time are we talking about?

25 MR. BROWN: I'll clarify. Thank you.

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. In the 24 hours before the collision,
4 can you tell me how much rest you had?

5 A. After the collision?

6 Q. In the 24-hour period before the
7 collision, leading up to the collision, how much
8 rest did you have?

9 A. 16 hours supposed to be, but I have the
10 overtimes that I don't declare here on the rest
11 hour.

12 Q. So you work overtime on the ALNIC on a
13 daily basis?

14 A. Yes.

15 Q. But that's not indicated on this rest
16 log; correct?

17 A. Yes.

18 Q. Is this also one of the records that you
19 want to look good for the company?

20 MR. WEIGEL: Objection. You can answer.

21 THE WITNESS: Yeah, just we have to
22 follow the rest hours, supposed to be
23 submitted to the other authorities if there
24 is something -- anybody coming, this will
25 look good for them.

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. This is the record that will look good
4 to show the crew was well rested; correct?

5 A. Yes, correct.

6 Q. And this is the record that your company
7 would give to investigators after a casualty;
8 correct?

9 A. This is what I have, sir.

10 Q. Do you know why you had to maintain a
11 rest log on your ship? What required it?

12 A. What required for the rest hours for the
13 ship?

14 Q. You have to maintain a rest log because
15 of the STCW Convention; correct?

16 A. Yes, correct.

17 Q. And your ship, to be compliant, has to
18 maintain these rest logs; right?

19 A. Yes.

20 Q. But your ship was maintaining false rest
21 logs; right?

22 MR. WEIGEL: Objection, that
23 mischaracterizes his testimony.

24 MR. BROWN: Well, I think he said it was
25 false.

1 BROWN - TORCULAS

2 THE WITNESS: Sir --

3 MR. WEIGEL: No, he said that entry --

4 MR. UNDERHILL: We don't need counsel to
5 interpret what the witness says. That's why
6 the court reporter gets paid.

7 MR. WEIGEL: Let my make my objection,
8 please.

9 MR. UNDERHILL: Well, then make your
10 objection, which is objection to the form.

11 MR. WEIGEL: You're mischaracterizing
12 the testimony on the record and the
13 document.

14 BY MR. BROWN:

15 Q. This rest log was false; correct?

16 A. Yes, it's false.

17 Q. This made it look as if you were well
18 rested going into the time of the collision;
19 right?

20 MR. WEIGEL: Objection, mischaracterizes
21 his testimony.

22 BY MR. BROWN:

23 Q. This record shows you had 16 hours of
24 rest; correct?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. On August 20th and August 21st both, you
3 had 16 hours of rest according to this document;
4 correct?

5 A. Yes.

6 Q. But you were, in fact, working overtime;
7 correct?

8 A. Yes.

9 MR. BROWN: Alan, do we have the engine
10 order telegraph roll?

11 MR. WEIGEL: Right there.

12 (Torculas Exhibit 313, Photographs
13 of Kongsberg Printer Roll, was marked
14 for identification.)

15 BY MR. BROWN:

16 Q. Mr. Torculas, the next exhibit is 313.
17 I'll represent to you these are photographs we
18 also were able to take aboard the ALNIC MC a
19 couple of weeks ago. Do you recognize the piece
20 of equipment shown in this exhibit?

21 A. Yes.

22 Q. What is this?

23 A. It's an engine telegraph record log,
24 something like that.

25 Q. This is the engine telegraph printer;

1 BROWN - TORCULAS

2 correct?

3 A. Printer, yes.

4 Q. This is a Kongsberg equipment; right?

5 A. Correct.

6 Q. It says model OPU AC-C20; right?

7 A. Right.

8 Q. Do recognize this as the equipment you
9 carried aboard your ship at the time of the
10 collision?

11 A. Yes.

12 Q. You had this Kongsberg telegraph
13 printer; correct?

14 A. Yes, correct.

15 Q. As second mate, were you responsible for
16 navigation and bridge equipment?

17 A. Yes.

18 Q. Did your responsibility for maintaining
19 the paper supply of the electronic logs include
20 this printer?

21 A. Yes, that's my responsibility.

22 Q. If this printer ran out of paper, would
23 you be the person who changed it?

24 A. Sorry, sir. This is my mistake also,
25 sir. This is my mistake. I forgot to change the

1 BROWN - TORCULAS

2 paper, sir.

3 Q. Well, that's nonresponsive. Are you the
4 person who is responsible for changing paper on
5 board the ship?

6 A. The person changing? What I can say
7 supposed to be, this is for the engine side, but
8 since it is on the bridge, I change it. I change
9 this.

10 Q. You, as a second mate, had the job of
11 making sure this printer roll was changed;
12 correct?

13 A. Yes.

14 Q. In these images, do you see that there
15 is a tray that's been pulled out of the
16 equipment?

17 A. Yes.

18 Q. And there's two rolls there; correct?

19 A. Yes.

20 Q. If you look in the third image, the last
21 image --

22 A. Last image.

23 Q. -- you can see the roll -- there's a
24 roll in the right side; correct?

25 A. Yes.

1 BROWN - TORCULAS

2 Q. And there's a roll on the left side;
3 correct?

4 A. Yes.

5 Q. The one on the right side, that's the
6 supply roll. That's the new paper; right?

7 A. Yes.

8 Q. And then the system, after it prints, it
9 gets pulled into this roll on the left side;
10 correct?

11 A. Yes.

12 Q. So you interjected a minute or two ago
13 and said that it was your mistake; you forgot to
14 change the printer. Did I hear that correctly?

15 A. Yes, sir.

16 Q. Do you know for how long this engine
17 order telegraph printer was without paper?

18 A. Since we left Taiwan. About a few days.
19 Maybe six days, five days. Because, sir, it was
20 just something -- because when this was finished,
21 the paper -- what I mean, the paper's already run
22 out -- we have -- we just diverted to another
23 port. So when this was run out, I am working
24 with the other thing, because I thinking how much
25 this stuff is going to Singapore.

1 BROWN - TORCULAS

2 So when this was run out, I know that
3 this was run out and then I have another job to
4 make, so I go with another one first. After that
5 I forget to replace this. I am still working,
6 sir.

7 Q. When you --

8 A. Because this -- it takes around one
9 month before finish this roll.

10 Q. Right. One roll is usually good for
11 about a month; right?

12 A. Yes.

13 Q. Depending how much you're maneuvering,
14 it could be longer, it could be less?

15 A. Yes, yes.

16 Q. When it's time to replace the roll -- I
17 want to talk to you -- I want to talk to you
18 about the steps you take when you do replace a
19 roll.

20 A. Uh-huh.

21 Q. How do you know that the old roll is
22 empty?

23 A. There's a red light.

24 Q. Where does that red light appear?

25 A. Here on the error.

1 BROWN - TORCULAS

2 Q. Could you turn to the front page of
3 Exhibit 313 for me. And there's a white circle
4 under "error"; correct?

5 A. Yes.

6 Q. Would you mark with my red pen -- just
7 mark an X in that white circle, please. That
8 will be fine.

9 A. (Witness complies)

10 Q. So when the supply roll runs empty, that
11 red light turns on.

12 A. Yes.

13 Q. For reference, this piece of equipment
14 is on the bridge console; correct?

15 A. That's true, yes.

16 Q. And it's on the aft side of that
17 console --

18 A. Uh-huh.

19 Q. -- correct?

20 A. Yes.

21 Q. So if you're facing forward with the
22 console in front of you, you can see this
23 equipment; right?

24 A. Yes.

25 Q. So if you're at the console or anywhere

1 BROWN - TORCULAS

2 behind it on the bridge, you'd be able to see
3 that red light; right?

4 A. Yes.

5 Q. And that red light is an indication that
6 the telegraph printer is out of paper, it's not
7 running; correct?

8 A. Actually for that time, I did not
9 monitor this because some -- not this is -- not
10 only this equipment on the panel, plenty of
11 equipment was there.

12 Q. Were you able to see this piece of
13 equipment on August 21st?

14 A. Yes.

15 Q. If you're standing on the bridge, you
16 can see it?

17 A. Yes. That's the time I recall that, oh,
18 shit, I forgot to change the paper.

19 Q. And that was after the collision?

20 A. Yes, sir.

21 Q. So if you had noticed the red light and
22 remembered to change the paper, I want to talk to
23 you about the steps you would take. You need to
24 go get a new roll of paper; right?

25 A. Right.

1 BROWN - TORCULAS

2 Q. Where did you keep the new rolls of
3 paper?

4 A. I forgot which place, but there are
5 drawers.

6 Q. Did you have extra paper on board when
7 this last roll ran out on August 11th?

8 A. I have.

9 Q. After you get the new roll of paper out,
10 what's the next step you take?

11 A. I take this, this one (indicating), this
12 one, pull this, and this tray will come out.

13 Q. Okay. So let me redo that for the
14 record. You're pointing to a little metal lever
15 on the right side, right bottom side of
16 Exhibit 313, the first photograph; right?

17 A. Yes.

18 Q. When you pull that lever, that releases
19 the drawer; correct?

20 A. Yes. Moment, sir. Just place this
21 first, this on and off, then this one.

22 Q. So you pointed to the on/offline button.
23 You press that and then pull the metal tab;
24 correct?

25 A. That's correct.

1 BROWN - TORCULAS

2 Q. And then the drawer comes out; right?

3 A. Yes.

4 Q. Then what's the next step you take after
5 that?

6 A. Then take the roll of paper because this
7 one would be stuck here. I mean, it will roll in
8 this area. And this will -- then this will be
9 empty. This supply paper will be empty.

10 Q. So your supply paper's empty and your
11 take-up reel is full; right?

12 A. Yes.

13 Q. Which one do you take off first?

14 A. Take one -- take out first? I don't
15 remember.

16 Q. It may not matter, Mr. Torculas. But
17 let's talk about the take-up reel. You have to
18 take that off, right, because it's full.

19 A. Yes.

20 Q. And do you pull the side on the right
21 side off of the take-up reel?

22 A. Okay, sir. I remember something. This
23 one needs to be pulled because there's some
24 clipping on the paper. Pull this out so that it
25 will release that roll of paper which already

1 BROWN - TORCULAS

2 used and go in here.

3 Q. Very good. So the inside of the take-up
4 roll is clipped on to the roll itself --

5 A. Yes, yes.

6 Q. -- and you have to unclip it; right?

7 A. Yes.

8 Q. And after you unclip it, do you pull the
9 take-up roll off?

10 A. Yes.

11 Q. And then what do you do next?

12 A. Do next? Then I will get the new -- the
13 new paper roll. I will put here and put like
14 that (indicating) on there, of the tray going
15 here.

16 Q. Okay. So you take the new -- empty
17 roll --

18 A. Uh-huh.

19 Q. -- and you have to put it on this
20 roller; correct?

21 A. Yes, to be clipped again.

22 Q. And to get to that roller, if you go to
23 the third page of Exhibit 313, you have to
24 actually release a little lever here; right?

25 A. That I forgot, yes.

1 BROWN - TORCULAS

2 Q. And you release that lever to lift the
3 empty roll up; correct?

4 A. Yes.

5 Q. And then you have to slide the roller
6 through the cardboard of your new empty roll;
7 right?

8 A. Yes.

9 Q. And then you place it in. And you had
10 indicated with your hand, you run the paper
11 underneath --

12 A. Under.

13 Q. -- the tray and up to the take-up site;
14 correct?

15 A. That's correct.

16 Q. Okay. That sounds like that job takes
17 several minutes to do; right?

18 A. Only several minutes, sir.

19 Q. And you do that job no more than once a
20 month.

21 A. I forgot, yes, sir, supposed to be.

22 Q. So this isn't something you do every
23 day --

24 A. No, no.

25 Q. -- and you have a good memory.

1 BROWN - TORCULAS

2 A. No, not every day.

3 Q. You would agree with me that takes at
4 least several minutes to do that job.

5 A. Several minutes.

6 Q. Four, five, six minutes. Can you
7 estimate how long it takes you?

8 A. Yeah, around like that.

9 Q. Around like that?

10 A. Yeah, yeah, close. Four, seven minutes
11 or ten minutes. Then put it back, clip.

12 Q. Okay. And then once all the rolls are
13 in place again, you close the tray.

14 A. Uh-huh, yes. And then press feed so
15 that it will tighten the roll of paper.

16 Q. I understand. You say press the feed
17 button and the take-up reel will spin a little to
18 pull in the slack; right?

19 A. Yes.

20 Q. And when you had rolled that new paper
21 through, you had to clip it back on to the
22 take-up reel; right?

23 A. Yes, sir.

24 Q. Then after it's fed, do you press the
25 on/offline button again?

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2 A. It will be automatically in online once
3 you clip it, put it back.

4 Q. When you put the tray back in, does it
5 print any kind of record right away?

6 A. Yes, there is. One moment, sir. I
7 don't remember, sir. Sorry. I don't remember.

8 Q. Okay.

9 A. But I meant it only make the feed, then
10 it will become tightened.

11 (Torculas Exhibit 314, Bridge
12 Checklist 2 - Preparation for Sea, Bates
13 Nos. Energetic 002763 - 002781, was
14 marked for identification.)

15 BY MR. BROWN:

16 Q. The next exhibit is 314. This is an
17 excerpt from the Bridge Checklist. The beginning
18 Bates number is Energetic -2763. It goes to
19 -2781.

20 Do you recognize the pages in this
21 exhibit as checklists from the ALNIC MC?

22 A. Yes.

23 Q. On the very first page of Exhibit 314,
24 it's "Bridge Checklist 2, Preparation For Sea."
25 Did I read that correctly?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. This was completed, according to the
4 page, on August 15th at 1730; correct?

5 A. Yes.

6 Q. Do you know who completed this page?

7 A. I complete the page, but for the timing,
8 it's chief officer that make the writing here, I
9 mean, for the time. But I did the checks.

10 Q. Okay. So you, as the second mate, would
11 make sure the bridge equipment was prepared for
12 sea; correct?

13 A. Yes.

14 Q. So you would actually do the checks
15 yourself and mark the checks down this column --

16 A. Yes.

17 Q. -- on Exhibit 314; correct?

18 A. Yes.

19 Q. If you look at line 9 of this page, it
20 says, "Was the following equipment checked/tested
21 ready for use," and the next line says,
22 "Logbook/bridge movement book/course and engine
23 movement recorder." Did I read that correctly?

24 A. Yes.

25 Q. The engine movement recorder is this

1 BROWN - TORCULAS

2 Kongsberg equipment we just looked at; right?

3 A. Yes.

4 Q. So according to this page, the Kongsberg
5 engine telegraph printer was checked and was
6 good.

7 A. Yes, true.

8 Q. And that's on August 15th; correct?

9 A. Yes.

10 Q. So if the red light was on on
11 August 15th, would you have completed this check?

12 A. No, I wouldn't complete this check if
13 it's on red light.

14 Q. So if you did a check, that means that
15 you corrected the red light by then.

16 A. Yes.

17 Q. Or the red light wasn't on yet; right?

18 A. No, not yet, not yet on.

19 Q. Okay. So looking at this record, you
20 believe that the engine telegraph printer was
21 working at least until August 15th at 1730;
22 correct?

23 A. Yes.

24 Q. And you think it ran out of paper after
25 August 15th.

1 BROWN - TORCULAS

2 A. After.

3 (Discussion off record)

4 BY MR. BROWN:

5 Q. So after August 15th, you think that the
6 engine telegraph printer ran out of paper;
7 correct?

8 A. After we cast off the port, that's the
9 time -- after the cast off, I mean, we are
10 already underway. That's the time the printer
11 paper is out on this bridge recorder, on this
12 Kongsberg -- I forgot.

13 Q. You just said after you left the port or
14 cast off lines.

15 A. Yes, yes -- no, no. Already underway.
16 Pilot is already off and we are now underway.

17 Q. Underway from which port, sir?

18 A. From the Taiwan. We are already out of
19 Taiwan.

20 Q. So after this checklist was completed on
21 August 15th --

22 A. Everything is okay.

23 Q. Let me finish, please.

24 After you completed this checklist on
25 August 15th, then the printer ran out of paper.

1 BROWN - TORCULAS

2 Is that your testimony?

3 A. Yes, after.

4 Q. After August 15th.

5 A. After August 15th.

6 Q. After Taiwan.

7 A. After Taiwan.

8 Q. Thank you. The next checklist in this
9 same exhibit is Bridge Checklist 3, Preparation
10 For Arrival in Port. Do you have that?

11 A. Yes, I have.

12 Q. What date was this checklist completed
13 on?

14 A. 21st.

15 Q. 21st of August 2017; correct?

16 A. Yes.

17 Q. At what time, sir?

18 A. I put 0300. It's my watch.

19 Q. Was that when you, in fact, completed
20 this checklist preparing to arrive in Singapore?

21 A. Yes.

22 Q. So you did this checklist getting ready
23 for Singapore while you were on watch at 0300 on
24 August 21st.

25 A. Yes, yes.

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2 Q. If you go to the second page of that
3 same checklist, it's Energetic -2767. Line 17-A
4 says, "Has the following been checked, tested, or
5 verified: Steering gear tested and manual
6 steering engaged well in advance for the helmsman
7 to become accustomed before maneuvering
8 commences."

9 Did I read that correctly?

10 A. Yes. This one is not performed.

11 Q. I'll get there, sir. Trust me. Did I
12 read that correctly?

13 A. Yes.

14 Q. And this is your checkmark that at 0300
15 this task was performed; correct?

16 A. Yes.

17 Q. This is another false entry; correct?

18 A. Yes.

19 Q. You had not tested your steering gear at
20 0300 on the 21st; right?

21 A. No.

22 Q. We already talked earlier you had not
23 even tested at 0400; correct?

24 A. No.

25 Q. And you were not in manual steering at

1 BROWN - TORCULAS

2 that time; right?

3 A. No.

4 Q. The next line, 17-B, says, "Course and
5 engine movement recorders." The engine movement
6 recorder would be that Kongsberg telegraph
7 printer; correct?

8 A. Yes.

9 Q. And that says it's been checked;
10 correct?

11 A. Yes.

12 Q. So according to this, your Kongsberg
13 engine telegraph printer was running at 0300 on
14 August 21st; correct?

15 A. Yes.

16 Q. If you turn to the next page, which is
17 Energetic -2768, you see your signature there;
18 right, sir?

19 A. Yes.

20 Q. I'm sorry, Mr. Torculas, let me step
21 back one second. Looking again at Bridge
22 Checklist 3, please, I refer you to line 17-F,
23 which is on Energetic -2767. Let me know when
24 you have that?

25 A. Yes, letter F.

1 BROWN - TORCULAS

2 Q. What does that letter read, please.

3 A. 17 letter F, "Signal equipment including
4 whistles, flag, lights, shapes, et cetera."

5 MR. UNDERHILL: Could you read it into
6 the record.

7 BY MR. BROWN:

8 Q. So you checked off on this checklist
9 that the signaling equipment, including whistles,
10 flags, lights, shapes, et cetera, were in good
11 order; correct?

12 A. Yes, because --

13 Q. Go ahead.

14 A. Because we have this every noontime,
15 checking of these equipments. So I did the
16 testing of this every day.

17 Q. You tested the ship's whistle every day
18 at noon --

19 A. Yes, yes.

20 Q. -- correct?

21 Try and let me get my full question out
22 before you answer. It will help her a lot. I
23 know it's hard.

24 So you did not, in fact, check the
25 ship's whistle at 0300; right?

1 BROWN - TORCULAS

2 A. No.

3 Q. You would have woken everybody up;
4 right?

5 A. Yes.

6 Q. You put the check there even though you
7 didn't do that check.

8 MR. WEIGEL: Objection.

9 THE WITNESS: Yes.

10 BY MR. BROWN:

11 Q. You put the check there even though you
12 didn't do the check at 0300.

13 A. Yes, I did.

14 Q. You had done it at noon the day prior.
15 Is that your testimony?

16 A. Yes.

17 Q. You tested the ship's whistle daily.

18 A. Yes.

19 Q. To your knowledge, did the ship's
20 whistle work on August 21st, 2017?

21 A. Yes, it's working.

22 Q. Did it work? Did it have any problems?

23 A. No problem.

24 (Torculas Exhibit 315, Native Format
25 Bridge Equipment, Bates No. Energetic

1 BROWN - TORCULAS

2 0011270, was marked for identification.)

3 BY MR. BROWN:

4 Q. The next exhibit is 315. It's Energetic
5 -1127, which was produced in native as a
6 spreadsheet.

7 A. Yes, I have Energetic 001127.

8 Q. Do you recognize this as an inventory of
9 bridge equipment?

10 A. Yes.

11 Q. Is this a spreadsheet document you
12 controlled as the second mate on the ship?

13 A. Yes, I'm controlling this.

14 Q. You made the entries that are in this
15 document; correct?

16 A. Yes. I did the edits of this, yes.

17 Q. What is the date in the top right corner
18 of the spreadsheet?

19 A. Which one? Say again, sir.

20 Q. What's the date shown there?

21 A. 21 August.

22 Q. 21 August 2017; correct?

23 A. Yeah.

24 Q. Look, please, at line 57.

25 A. Line 57.

1 BROWN - TORCULAS

2 Q. That says, "Main engine telegraph
3 transmitter logger and printer"; correct?

4 A. Yes.

5 Q. That's a reference to the Kongsberg
6 equipment we had seen in the photograph a few
7 minutes ago; right?

8 A. Yes, correct.

9 Q. Is that your entry there where it says,
10 "The remark is satisfactory"?

11 A. Yes, yes.

12 Q. So according to this document, the
13 Kongsberg printer was working on 21 August;
14 correct?

15 A. Yes, sir.

16 Q. Mr. Torculas, I'm going to have you look
17 at the actual engine telegraph rolls we have from
18 your ship.

19 MR. UNDERHILL: Off the record for a
20 moment.

21 (Discussion off record)

22 (Torculas Exhibits 316 and 317,

23 Printer Rolls, were marked for

24 identification.)

25 BY MR. BROWN:

1 BROWN - TORCULAS

2 Q. For the record, I have two rolls
3 provided to us by the counsel for Energetic.
4 I've marked one Exhibit 316. And for people on
5 the phone, I've put the sticker on the reverse
6 side of the printer roll. And also for the
7 record, Exhibit 316 is the telegraph roll that
8 has the last entry order at sea, and the time is
9 00:44:25. So I'll hand you that, Mr. Torculas.
10 I'll explain to you what I want to look at in a
11 few minutes.

12 The other roll I've marked, also on the
13 reverse side of the roll, as Exhibit 317. And
14 this roll has a "first entry of order navigation
15 ahead, 004504." And I'll hand this Exhibit 317
16 to you as well, sir.

17 MR. WEIGEL: Why don't we take a break?

18 (Discussion off record and recess
19 from 10:31 a.m. to 10:45 a.m.)

20 BY MR. BROWN:

21 Q. Mr. Torculas, before the break I handed
22 you Exhibits 316 and 317, which are printer rolls
23 from the engine telegraph printer; correct?

24 A. Yes.

25 (Torculas Exhibit 318, Photographs,

1 BROWN - TORCULAS

2 A - D, was marked for identification.)

3 BY MR. BROWN:

4 Q. I'm going to hand you some photos I have
5 of those rolls, which is marked as Exhibit 318.
6 It's four photographs. I've lettered them A
7 through D.

8 A. Yes, I have 318 exhibit, Alpha.

9 Q. I'm going to talk to you about 318
10 compared to the rolls just so we have something a
11 little easier to handle to show our judge; okay?

12 A. Okay.

13 Q. If you look at 318-A, you see the top of
14 a telegraph roll; correct?

15 A. Yes.

16 Q. Could you please look at 316 and confirm
17 that that photograph is the top of Exhibit 316.

18 A. Yes, it's the same.

19 Q. Thank you. Turn to page B, please.

20 A. B.

21 Q. Would you please confirm that that's a
22 photograph of the bottom of Exhibit 317.

23 A. It's not clear. 104. Yes, it is the
24 same.

25 Q. Thank you. Turn to page C, please.

1 BROWN - TORCULAS

2 Does that look to be the bottom of -- the very
3 bottom of the roll --

4 A. Yeah.

5 Q. -- that's Exhibit 317?

6 A. Yes, it's the same.

7 Q. Thank you.

8 And on the last page, please, page D is
9 a close-up of the lines that appear, the printed
10 lines that appear at the bottom of 317. Can you
11 confirm that that's a match?

12 A. Yeah, it match.

13 Q. Thank you. Okay. Can you tell me when
14 Exhibit 316, which is our first roll -- when did
15 this roll run out of paper?

16 A. Run out of paper, it shows 11
17 August 2017.

18 Q. This roll ends at the time of 004425 on
19 August 11th, 2017; correct, sir?

20 A. Yes.

21 Q. And that's when this roll was all filled
22 up and out of -- empty paper; right?

23 A. Yes. It's long time, long time no
24 paper.

25 Q. If you look on Exhibit 317, which is the

1 BROWN - TORCULAS

2 second roll, when does that roll begin, if you
3 can tell?

4 A. This one started 21 August at 0059.

5 Q. If you look at the periodic log -- did
6 you see where that's printed, "Periodic Log," at
7 the bottom of Exhibit 317?

8 A. Bottom? This one?

9 Q. We're both pointing. Do you see where
10 it says "Periodic Log" right there?

11 A. Yes, Periodic Log.

12 Q. And that Periodic Log was printed on
13 21 August 2017; correct?

14 A. Yes, correct.

15 Q. At midnight on that day; correct?

16 A. Yes.

17 Q. And it goes on, it prints up the roll;
18 correct?

19 A. That's correct, going up.

20 Q. Can you tell there are six lines below
21 Periodic Log. Can you tell the date and time of
22 those lines?

23 A. The date for this? I cannot say for the
24 date here. Under here, I can see 21 August.

25 Q. You can't say -- sorry, go ahead.

1 BROWN - TORCULAS

2 A. Sorry, sir. Go ahead, sir.

3 Q. You can't say what date these six lines
4 were printed on because it's empty below them;
5 right?

6 A. Right.

7 Q. And on this record, you can only tell
8 the date of an event if you see a periodic log or
9 an event log that shows a date; correct?

10 A. Correct.

11 Q. Can you please compare the last time on
12 Exhibit 316 to the first time on Exhibit 317.

13 A. I will compare.

14 Q. Let's do this: I'll hold one right up
15 to the other, like so. Can you tell what's
16 happening with the engine on August 11th leading
17 up to the very end of this roll, Exhibit 316?

18 A. After August 11th, it is gone out of
19 paper.

20 Q. And what is the engine doing according
21 to the log?

22 A. At sea. At sea. And here, full
23 navigation ahead.

24 Q. So the last RPM shown on Exhibit 316 is
25 83 RPM; correct?

1 BROWN - TORCULAS

2 A. Yes, 83 RPM.

3 Q. And then we see the bell recorded as "at
4 sea"; correct?

5 A. Yes.

6 Q. And then there's no other entries on
7 Exhibit 316 to tell what happened after the
8 engine was put "at sea" on August 11th; right?

9 A. Yes, that's correct. Nothing.

10 Q. You told me earlier that it takes you
11 maybe five, six, even seven minutes to change the
12 paper rolls; correct?

13 A. Yes, correct.

14 Q. So if that was the last -- if this "at
15 sea 00:44:25" was the last event on this roll on
16 Exhibit 316 --

17 A. Uh-huh, yes.

18 Q. -- you wouldn't see another event
19 recorded until about five, six, or seven minutes
20 later; correct?

21 A. Correct.

22 MR. WEIGEL: Okay, continue.

23 BY MR. BROWN:

24 Q. Neither of these rolls show what the
25 ship's engine was doing on August 15th, 2017;

1 BROWN - TORCULAS

2 correct?

3 A. Correct.

4 Q. So there are missing days from
5 August 11th to August 21st in these two records;
6 correct?

7 A. Correct.

8 Q. Do you know where the engine telegraph
9 printer roll went that you were using on
10 August 15th when you left Taiwan?

11 A. No, I don't know.

12 Q. But as far as you can tell from these
13 two records, we don't have the August 15th roll
14 that showed what the ship's engine was doing
15 leaving Taiwan; correct?

16 A. It doesn't show.

17 Q. During the break, Mr. Torculas, I
18 realized I wanted to cover one other thing with
19 the deck logbook, which is still in front of you.
20 So if you want to move those papers up and then
21 lift the sheet that was stapled to it.

22 We've talked about the entries you have
23 in the far right margin where you say, "The
24 master is conning, and the engine is in hand
25 steering." Do you remember discussing those

1 BROWN - TORCULAS

2 entries with me?

3 A. Yes.

4 Q. They're squeezed into the margin.

5 They're not on their own line; right?

6 A. Yes.

7 Q. You could have written those on the next
8 whole line; right?

9 A. Supposed to be, yes.

10 Q. Supposed to be on the next whole line,
11 not squeezed into the margin; correct?

12 A. Yes.

13 Q. Did you add those after you had gotten
14 off watch at 0400?

15 A. Yes.

16 Q. You wrote in the margins after your
17 watch was done. You made a late entry; correct?

18 A. Yes.

19 Q. Does it indicate in the margin that that
20 is a late entry?

21 A. Late entry, yes.

22 Q. Does it say on that page that it's a
23 late entry?

24 A. Yes.

25 Q. Where does it say that it's a late

1 BROWN - TORCULAS

2 entry?

3 A. Because it is after my signature.

4 Q. Okay. So you write your signature and
5 then you squeeze the event into the margin, and
6 that means that you wrote it after you were off
7 watch; correct?

8 A. Correct.

9 Q. Do you recall when you wrote it? When
10 did you write that margin entry?

11 A. After my watch, sir.

12 Q. Was it after the collision?

13 A. Yes.

14 Q. And who talked to you about that entry
15 before you wrote it in the logbook?

16 A. Nobody.

17 Q. Did you talk to the captain about
18 needing to write that he was conning the ship at
19 0300 before you made that entry?

20 A. No.

21 Q. Did you talk to anybody from Stealth or
22 the company about needing to make that entry?

23 A. No.

24 Q. The 0400 entry is squeezed in above a
25 line; correct?

1 BROWN - TORCULAS

2 A. Yes, squeezed.

3 Q. Did you also write that after the
4 collision?

5 A. It is not my handwritten, sir, no.

6 Q. I may have misunderstood earlier. I
7 thought I asked you if that was your entry. So
8 the 0400 entry is not yours?

9 A. No, it's not mine.

10 Q. Did you make any other entries on that
11 midnight watch after the collision?

12 A. Only this, sir. Only until 0400.

13 Q. I may be confused. You tell me what
14 lines on that page had you written before your
15 ship collided into the JOHN S. MCCAIN.

16 A. Before colliding to -- all of this. All
17 of this I wrote after my watch. And the
18 collision happened 5:00, 5:24, 5:23. That's it.

19 Q. So you wrote all of those lines after
20 the collision occurred?

21 A. No. In my side -- in my side, sir, I
22 wrote this 0400 after my watch, 4:00.

23 Q. Okay.

24 A. Maybe 4:10, 4:15. Like that, sir.

25 Q. I understand now. So those first four

1 BROWN - TORCULAS

2 lines describing your watch you wrote in your own
3 hand in the logbook after you were relieved a few
4 minutes after 0400; correct?

5 A. Sorry. I wrote these sentences after my
6 watch. Let's say 0410, 0415.

7 Q. Okay. And then after the collision, you
8 wrote the entry that's in the margin about the
9 captain having the CONN and the ship being in
10 hand steering.

11 A. Yes, sir. You're correct, sir, yes.

12 Q. You made that false entry in the logbook
13 after the collision happened; right?

14 A. Yes, sir.

15 Q. Are you aware the ship's deck log is an
16 important legal document?

17 A. Yes, I am.

18 Q. And you're aware that it can be relied
19 upon by courts of law?

20 A. Yes, I am, sir.

21 Q. In fact, your ship's -- your company's
22 GMS manual describes that the logbooks are
23 important and can be relied upon by courts. Do
24 you know that?

25 A. Yes, sir.

1 BROWN - TORCULAS

2 Q. And you still made that false entry
3 after the collision happened?

4 A. Yes, sir. I'm very sorry.

5 MR. UNDERHILL: Just to make the record
6 clear, could we ask that post-collision
7 entries also be read into the record.

8 MR. BROWN: Very good.

9 BY MR. BROWN:

10 Q. Mr. Torculas, so it's very clear, I've
11 been making reference to your entries in the
12 margin. And I'll point, sir. We've been
13 referring to those marginal entries; correct?

14 A. Yes.

15 Q. So it's clear for the record, could you
16 please read out loud the entries you made after
17 the collision happened.

18 A. After the collision happened, sir? Sir,
19 this BML2 what I put is after my watch. Let's
20 say 0410 or 0415, just to make it clear, sir.
21 And this one, I squeezed it after my watch
22 because I have done -- I don't have some errors
23 here to be written. So I just squeezed in over
24 this area.

25 Q. We've been discussing the entry where it

1 BROWN - TORCULAS

2 says, "The master has the CONN," squeezed into
3 the margin; right?

4 A. Yes.

5 Q. And you told me several times now you
6 wrote that after the collision happened; right?

7 A. Make it -- I will repeat, sir. Not
8 after the collision. I put here -- I put this --
9 I put this -- no, sir, I'm sorry -- after my
10 watch, because I assumed -- because at 2:30 -- I
11 just repeat, sir, what I said before. At 2:30, I
12 call him because of entering the TSS. So I
13 assured that he would come at 3:00. And then
14 4:00 supposed to be he is on the bridge, but he's
15 not. I just only write it here that he was on
16 the bridge like that, sir.

17 MR. WEIGEL: I don't think that is
18 really responsive, but maybe you want to
19 clarify it.

20 THE WITNESS: Only formality what I did,
21 sir. Nobody knows that it will happen, this
22 collision, sir.

23 BY MR. BROWN:

24 Q. Did you write in the margin "the captain
25 had the CONN" -- did you write that after the

1 BROWN - TORCULAS

2 collision happened or before?

3 A. Before.

4 Q. All right. I must have been confused.

5 Okay.

6 A. Can I add more, sir?

7 MR. WEIGEL: No. Let him ask a

8 question.

9 (Torculas Exhibit 319, Voyage Plan,
10 Bates Nos. Energetics 015474 - 015475,
11 was marked for identification.)

12 BY MR. BROWN:

13 Q. Mr. Torculas, I've handed you
14 Exhibit 319. This is a voyage plan dated
15 May 4th, 2017; correct?

16 A. Yes.

17 Q. On this voyage plan -- did you complete
18 this voyage plan?

19 A. Yes, I did this voyage plan.

20 Q. That was one of your jobs as the ship's
21 navigator, to do voyage plans; correct?

22 A. Yes, correct, sir.

23 Q. Your signature appears on the back side
24 of this exhibit; correct?

25 A. Yes, correct.

1 BROWN - TORCULAS

2 Q. Captain Nolasco always reviewed your
3 voyage plan, didn't he?

4 A. I just put on the table. I see that
5 he's checking also, sir.

6 Q. Captain Nolasco is checking your voyage
7 plan?

8 A. Yes, I see that he is checking. After
9 that, he will go and sign it.

10 Q. After Captain Nolasco checks your voyage
11 plan, he signs it as well; correct?

12 A. Yes.

13 Q. The other officers on your ship, they'll
14 sign this too; right?

15 A. Yes, correct.

16 Q. This voyage plan reflects the ship
17 sailing from Sungai Linggi?

18 A. Sungai Linggi, sir, near Malaysia?

19 Q. In Malaysia?

20 A. Yes.

21 Q. And going to Singapore; correct?

22 A. Yes.

23 Q. On this voyage plan, what anticipated
24 bridge watch condition did you list?

25 A. I put II, sir.

1 BROWN - TORCULAS

2 MR. WEIGEL: For what times? What times
3 are you referring to?

4 BY MR. BROWN:

5 Q. I'll make a reference to the right-hand
6 side where it says, "Anticipated bridge watch
7 conditions," and it has three checkboxes: I, II,
8 or III. Do you see that?

9 A. Yes.

10 Q. That's right under where it says,
11 "Dispense pilot to pilot 121." Do you see that?

12 A. 121. Yes.

13 Q. And there you anticipated Bridge Watch
14 Condition II; correct?

15 A. Yes, sir.

16 Q. Is that a reference to the three levels
17 of bridge manning that your GMS describes?

18 A. Sorry, sir. I will tell you the truth.
19 My mistake here. I should have put III.

20 Q. I understand that. But here you checked
21 II on May the 4th.

22 A. Yes.

23 Q. And then in the table below, there's a
24 list of the waypoints you had selected for your
25 voyage; correct?

1 BROWN - TORCULAS

2 A. Correct.

3 Q. And at each waypoint, there's a bridge
4 watch level identified; correct?

5 A. Correct.

6 Q. And those are II's and I's, but no
7 III's; correct?

8 A. Yes, correct.

9 Q. This would have -- this voyage would
10 have taken the ship through the Singapore
11 Strait; correct?

12 A. Singapore Strait, yes.

13 Q. Would you please look at the deck
14 logbook from your ship from May the 4th.

15 A. May 4th.

16 Q. Do you have that page, sir?

17 MR. WEIGEL: Mr. Brown, did we mark
18 both -- did we deem both deck logs volumes
19 marked as separate exhibits?

20 MR. BROWN: It's a good question.

21 MR. UNDERHILL: Certainly the one the
22 day of the collision.

23 MR. WEIGEL: Right.

24 MR. UNDERHILL: I'm not sure about the
25 one before.

1 BROWN - TORCULAS

2 MR. WEIGEL: Maybe we should make sure
3 it's been marked as an exhibit or deemed
4 marked as an exhibit.

5 MR. BROWN: So --

6 MR. UNDERHILL: If you hold, I might be
7 able to tell you in one second.

8 MR. BROWN: So for the record, we're
9 deeming as Exhibit 320 the bridge logbook
10 dated from April to July of 2017. And
11 that's also, for the record, the produced
12 version starts at Energetic 119.

13 (Torculas Exhibit 320, Bridge
14 Logbook Dated April - July 2017, was
15 marked for identification.)

16 BY MR. BROWN:

17 Q. That was just a little housekeeping,
18 Mr. Torculas. Thank you for your patience. It's
19 important.

20 You're looking at page 23 from the deck
21 logbook; correct?

22 A. Yes, correct.

23 Q. That shows May 4th, 2017; right?

24 A. Yes.

25 Q. That deck log entry relates to the

1 BROWN - TORCULAS

2 voyage plan that we marked as Exhibit 319; right?

3 A. Yeah. Yes, sir.

4 Q. That is as the ship is doing the voyage
5 described in Exhibit 319, we see the events
6 recorded in the deck log at this page; right?

7 A. Yes. Correct, sir.

8 Q. And you'll see at 0954 on this date, we
9 have a master pilot exchange and BW3. Do you see
10 that?

11 A. Yes, I can see, sir.

12 Q. Is that a reference to Bridge Watch
13 Condition III?

14 A. Yes.

15 Q. And then later on in that same watch at
16 10:42, do you see the entry that says "pilot off,
17 BW2"?

18 A. 10:42, yes, I can see.

19 Q. And then the watch was relieved at noon
20 by you; correct?

21 A. Yes. Correct, sir.

22 Q. Your first entry, 1200 hours, says that
23 you took the watch; right?

24 A. Yes. Correct, sir.

25 Q. And then it goes on to say, "Vessel

1 BROWN - TORCULAS

2 underway under master conning, steering in
3 hand/manual mode, BWC2." Did I read that
4 correctly?

5 A. Yes, sir.

6 Q. And the next line, you wrote in your
7 handwriting, "Steering switched to autopilot,"
8 and it gives a position; correct?

9 A. Yes. Correct, sir.

10 Q. And later on that watch at -- you have
11 1800, it says, "NAV watch relieved by Third
12 Officer Garcia"; correct?

13 A. Yes. Correct, sir.

14 Q. And the next words, you say there are
15 "vessel transiting Singapore Strait"; right?

16 A. Yes.

17 Q. So you -- according to this log page,
18 you were transiting the Singapore Strait on
19 May the 4th in autopilot; correct?

20 A. Yes.

21 MR. UNDERHILL: The deck log is what was
22 marked as Exhibit 10-A, in the original, it
23 was deemed 10-A.

24 MR. BROWN: Okay.

25 (Torculas Exhibit 321, Voyage Plan,

1 BROWN - TORCULAS

2 Bates Nos. Energetic 015450 - 015451,
3 was marked for identification.)

4 BY MR. BROWN:

5 Q. Mr. Torculas, the next exhibit I've
6 handed to you is 321, which is a voyage plan for
7 May 6th, 2017. Do you have that document, sir?

8 A. Yes, I have, sir.

9 Q. Is this a voyage plan you prepared?

10 A. Yes, I did.

11 Q. Did you sign this voyage plan?

12 A. I signed, yes.

13 Q. Did Captain Nolasco review this voyage
14 plan after you prepared it?

15 A. All I know, sir, I put in the table.
16 Once he see this, he checked.

17 Q. So you know that he's signed this sheet.

18 A. Yes.

19 Q. Your understanding is --

20 A. Indicated, yes, sir.

21 Q. You said he indicated? Yes?

22 A. Yes.

23 Q. And your understanding is when Captain
24 Nolasco signs your passage plan, that means he's
25 reviewed it; right?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. The anticipated bridge watch condition
4 for this voyage was Watch Condition II; correct?

5 A. Yes.

6 Q. If you look down the bridge watch level
7 column with all of your waypoints, you have II's
8 and I's but no III's; correct?

9 A. That's correct, sir.

10 Q. This is a transit from Singapore to
11 India; correct?

12 A. That's correct, sir.

13 Q. This voyage would take you through the
14 Singapore Strait at least at some point; correct?

15 A. Yes, correct.

16 Q. Please turn to the May 5th page in the
17 deck logbook. Is that page 24, sir?

18 A. Yes, page 24.

19 Q. We see at 2054, "master pilot exchange,
20 Bridge Watch III." Do you see that?

21 A. Yes, I can see.

22 Q. And the pilot is off at 2118?

23 A. 2118, yes.

24 Q. What bridge watch condition did your
25 ship observe at 2118 according to this log?

1 BROWN - TORCULAS

2 A. Bridge Watch Level II.

3 Q. And then at 2300, it says, "Shift to
4 autopilot"; correct?

5 A. 2300, yes.

6 Q. And it goes on to say at that same time,
7 "Master gave the CONN to officer of the watch";
8 correct?

9 A. Yes, correct.

10 Q. Onto the next page, please, for 6 May.
11 An hour later, you take the watch; correct, sir?

12 A. Yes, correct.

13 Q. And you say that the vessel's transiting
14 the Singapore Strait; correct?

15 A. Yes, correct.

16 Q. At 0100 on this same day, you test
17 steering from auto to hand; correct?

18 A. Say again, sir. Say again. 0100?

19 Q. 0100, "Master hand over the CONN to
20 OOW"; correct?

21 A. Yes.

22 Q. That's you; right? The officer of the
23 watch?

24 A. Yes, that's me.

25 Q. And then at that same time, you tested

1 BROWN - TORCULAS

2 steering from auto to hand; correct?

3 A. Yes.

4 Q. And that means that you had been in
5 autopilot at least up until that test at 0100;
6 correct?

7 A. Yes. Tested.

8 (Torculas Exhibit 322, Voyage Plan,
9 Bates Nos. Energetic 015428 - 015429,
10 was marked for identification.)

11 BY MR. BROWN:

12 Q. Mr. Torculas, the next exhibit is 322.
13 This is a voyage plan for May 16th; correct?

14 A. May 16th, yes, sir.

15 Q. Also prepared and signed by you;
16 correct, sir?

17 A. Yes.

18 Q. This voyage plan also anticipates a
19 watch condition of Level II; correct?

20 A. Yes. Correct, sir.

21 Q. And like before, we see no bridge watch
22 level of any waypoint higher than II; correct?

23 A. That's correct, sir.

24 Q. To sail from India to Singapore, we have
25 to go through the Singapore Strait again;

1 BROWN - TORCULAS

2 correct?

3 A. Yes, sir.

4 Q. If you look at page 40 in the deck
5 logbook, please, which is May 21st.

6 A. May 21st. 21st.

7 Q. Your midnight entry at the top of the
8 page says you took the watch from the third
9 officer; correct?

10 A. Yes.

11 Q. You go on to say, "Vessel transiting
12 Singapore Strait, Bridge Watch Level I"; correct?

13 A. Yes.

14 (Torculas Exhibit 323, Voyage Plan,
15 Bates Nos. Energetic 015438 - 015439,
16 was marked for identification.)

17 BY MR. BROWN:

18 Q. Mr. Torculas, the next exhibit has been
19 marked 323. This is a voyage plan for May 26th,
20 2017; correct?

21 A. Correct, sir.

22 Q. Like the others, this is one you
23 prepared and your captain signed after you signed
24 it; correct?

25 A. Yes, sir.

1 BROWN - TORCULAS

2 Q. And like the others, your anticipated
3 the bridge watch condition is II; correct?

4 A. Yes. Correct, sir.

5 Q. Please turn to May 27th in the deck
6 logbook. I think that's page 46.

7 A. 46.

8 Q. And at 1200, you took over the watch
9 from Third Officer Garcia; correct?

10 A. Yes.

11 Q. And it says there, "Vessel transiting
12 Singapore Strait, Bridge Watch Level II";
13 correct?

14 A. Yes. Correct, sir.

15 Q. So these dates we've been looking at,
16 anyone who came on the ship after -- well, let me
17 do one more. Sorry. Strike that.

18 (Torculas Exhibit 324, Voyage Plan,
19 Bates Nos. Energetic 015482 - 015483,
20 was marked for identification.)

21 BY MR. BROWN:

22 Q. Mr. Torculas, Exhibit 324 is a voyage
23 plan for May 28th, 2017; correct?

24 A. Correct, sir.

25 Q. This was also prepared by you and signed

1 BROWN - TORCULAS

2 by you; right?

3 A. Yes, sir.

4 Q. And it's also been signed by Captain
5 Nolasco; correct?

6 A. That's correct.

7 Q. And like the others, this passage plan
8 shows Bridge Watch Condition II; correct?

9 A. Yes, correct.

10 Q. Now, to get from the Singapore EOPL
11 anchorage to the port in Malaysia that I won't
12 try to pronounce --

13 A. Okay.

14 Q. -- you have to sail through the
15 Singapore Strait; correct?

16 A. Correct, sir.

17 Q. Please turn to the May 29th page in the
18 deck logbook.

19 A. 29?

20 Q. Do you see your midnight entry at the
21 top of that page?

22 A. Yes, 000.

23 MR. WEIGEL: You're on page 48?

24 MR. BROWN: Yes.

25 BY MR. BROWN:

1 BROWN - TORCULAS

2 Q. This is page 48 of the deck log. And in
3 the produced version it's Energetic -220. Your
4 midnight entry says you took over the watch from
5 Third Officer Garcia; correct?

6 A. Yes, sir.

7 Q. And at that time, the vessel was
8 transiting Singapore Strait in Bridge Watch Level
9 II; correct?

10 A. Yes, correct.

11 Q. Not in Bridge Watch Level III.

12 A. No.

13 Q. So, sir, we've looked at voyage plans
14 from May 4th, 6th, 16th, 26th, and 28th, and they
15 all involved a transit of the Singapore Strait;
16 correct?

17 A. Yes, sir.

18 Q. And in all of those instances, your
19 voyage plan reflected watch condition no higher
20 than Level II; correct?

21 A. Yes, sir.

22 Q. Did anyone tell you after May 28th but
23 before the collision that you were supposed to
24 stay on Watch Condition III in the Singapore
25 Strait?

1 BROWN - TORCULAS

2 A. Told me? My mistake. I did not put
3 this --

4 MR. WEIGEL: No, no.

5 THE WITNESS: I did not follow the...

6 BY MR. BROWN:

7 Q. Yeah, I think you're trying to answer a
8 different question than what I asked. Let me try
9 again; okay?

10 I'm not talking about after the
11 collision. Just before the collision, had anyone
12 from your company or had Captain Nolasco told you
13 that you should have been in Bridge Watch
14 Condition III during these transits?

15 A. No.

16 Q. If someone had told you that, would you
17 have made voyage plans that put you in Bridge
18 Watch Condition III?

19 A. Yes, I will.

20 Q. So if you knew the company policy from
21 the GMS about standing Bridge Watch Condition III
22 when in the Singapore Strait, you would have
23 complied with that rule in your passage planning;
24 right?

25 A. Yes. I mislooked with this III anyway,

1 BROWN - TORCULAS

2 so forget it. I just put II. It's my mistake.

3 I should come to higher.

4 Q. So for those dates I just described, if
5 someone had been aboard your ship after May 28th
6 and looked in that deck logbook, they would have
7 been able to see in your handwriting that you
8 sailed in the Singapore Strait at Bridge Watch
9 Level I or II; correct?

10 A. Yes, sir.

11 Q. You didn't hide it anywhere that your
12 ship wasn't in Watch Condition III in the
13 Singapore Strait. You put it right in your deck
14 logbook; right?

15 A. Yes, right.

16 Q. So anyone from the company or if your
17 captain reviewed back in the deck logbook, they
18 could have seen what watch conditions you stood
19 in the Singapore Strait; correct?

20 A. Correct, sir.

21 (Torculas Exhibit 325, Voyage Plan,
22 Bates Nos. Energetic 001059 - 001063,
23 was marked for identification.)

24 BY MR. BROWN:

25 Q. For the record, we've marked

1 BROWN - TORCULAS

2 Exhibit 325. This is a voyage plan of
3 August 15th and it's Energetic -1059. This was
4 previously marked in a similar excerpt as
5 Exhibit 11. I have some different pages here so
6 I'm just marking it again.

7 MR. WEIGEL: Okay.

8 BY MR. BROWN:

9 Q. Mr. Torculas, this is the voyage plan
10 that your ship was executing at the time of the
11 collision; correct?

12 A. Correct, sir.

13 Q. This took you from Taiwan to Singapore;
14 correct?

15 A. Correct, sir.

16 Q. Like the voyage plans we've been
17 reviewing, this was prepared by you; correct?

18 A. Correct, sir.

19 Q. This was signed by you and then signed
20 by your captain; correct?

21 A. Yes.

22 Q. And like the others we've reviewed, this
23 voyage was going to be executed at no higher than
24 Bridge Watch Level II; correct?

25 A. Correct, sir.

1 BROWN - TORCULAS

2 Q. You didn't anticipate needing Watch
3 Level III when you prepared this passage plan.

4 A. I did not anticipate, yes, sir.

5 Q. And on this day, too, if someone from
6 your company had told you you should have been in
7 Watch Condition III to transit the Singapore
8 Strait, this voyage plan would have been prepared
9 anticipating Watch Condition III; correct?

10 A. Correct, sir.

11 Q. But that didn't happen, did it?

12 A. It didn't happen.

13 (Torculas Exhibit 326, Photograph,
14 Bates No. Energetic 013105, was marked
15 for identification.)

16 (Torculas Exhibit 327, Photograph,
17 Bates No. Energetic 013104, was marked
18 for identification.)

19 BY MR. BROWN:

20 Q. For the record, we've marked
21 Exhibit 326, which is Energetic -13105. It's a
22 photograph of a chart. And Exhibit 327 is
23 Energetic 13104. It's a different photograph of
24 a chart.

25 Mr. Torculas, earlier we compared these

1 BROWN - TORCULAS

2 engine rolls to some photographs.

3 A. Yes.

4 Q. I'd like to do the same thing with the
5 chart; okay? So I'm going to ask you to step
6 over to the chart and compare it to these photos.
7 And once we're good, we'll just work off of these
8 photos; okay?

9 A. Okay.

10 Q. We'll need to speak up nice and loud for
11 the reporter.

12 Mr. Torculas, we're looking at a copy of
13 BA -- British Admiralty Chart 3831; correct?

14 A. Yes.

15 Q. And the number your company has put on
16 here is Energetic -1031; correct?

17 A. Correct.

18 Q. Do you recognize this as the chart you
19 were using at the time of the collision?

20 A. Yes.

21 Q. Looking at Exhibit 327, the photograph
22 of the chart, is that an accurate photograph of
23 what you see on the right side of BA 3831?

24 A. Yes.

25 Q. So those words on the picture all appear

1 BROWN - TORCULAS

2 on the chart; correct?

3 A. Yes, correct.

4 Q. And similarly, Exhibit 326 is another
5 photograph showing Waypoint 9 and the area around
6 it off of this same chart; correct?

7 A. Yes.

8 Q. Does that photograph appear to be an
9 accurate depiction of this chart?

10 A. Yes.

11 Q. So we can sit back down. If you want to
12 look back at the original chart in answering any
13 questions, feel free to do so; okay?

14 In Exhibit 326, there's a latitude and
15 longitude given for Waypoint 9; correct?

16 A. Yes.

17 Q. Can you please compare that and just
18 confirm for me that it's the same as Waypoint 9
19 in your voyage plan, which is Exhibit 325?

20 A. 325, Waypoint number -- Waypoint No. 9.
21 Yes. Yes, it's the same, sir.

22 Q. The charted Waypoint 9 on that BA chart
23 is Waypoint 9 from the voyage plan you were
24 executing at the time of the collision; correct?

25 A. Yes, sir.

1 BROWN - TORCULAS

2 Q. And below that on the picture,
3 Exhibit 326, I see a Waypoint 10. And that
4 doesn't match Waypoint 10 from your voyage plan;
5 correct?

6 A. Yes, sir.

7 Q. Is that Waypoint 10 from a previous
8 trip?

9 A. I believe it's from the previous, sir.
10 I did not erase.

11 Q. So when you -- you're responsible for
12 laying out the track lines on the charts before
13 your voyage; correct?

14 A. That's correct, sir.

15 Q. And the chart that we just looked at has
16 a variety of markings. For instance, it tells
17 you where the water's too shallow; right?

18 A. Correct, sir.

19 Q. And it has handwritten notes on there
20 like we see in Exhibit 327 to help the bridge
21 watchstanders; correct?

22 A. Yes, sir.

23 Q. And it has -- looking back at 326, the
24 straight line is the track line your ship would
25 try to follow; correct?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. And so the line leading to and coming
4 from Waypoint 9, that's where you were going to
5 try and keep your ship; right?

6 A. Yes, sir.

7 Q. But this Waypoint 10 down here is
8 something you left for an outbound transit?

9 A. Yes, supposed to be. Yes, sir. I did
10 not erase it.

11 Q. You don't need to erase everything on
12 the chart between each trip; correct?

13 A. Yes.

14 Q. What do you erase after the voyage? Do
15 you erase the track lines?

16 A. Yes, I am. And also the positions. I
17 usually deleted it.

18 Q. The positions being the fixes where your
19 ship was?

20 A. Yes.

21 Q. Okay. But you can leave these markings
22 like on 326 where it says "monitor weather" --

23 A. "Under clearance" --

24 Q. I'll read it.

25 -- "under keel clearance" and now

1 BROWN - TORCULAS

2 "warnings"; correct?

3 A. Correct, sir.

4 Q. You leave those kinds of markings on the
5 chart between each trip?

6 A. Correct, sir.

7 Q. And the same thing with Exhibit 327
8 where we have your handwriting on this -- well,
9 let me back up. Is this your handwriting in this
10 box where it begins BML2?

11 A. This is not my handwriting, sir.

12 Q. Do you know who wrote this?

13 A. This is from the previous -- previous
14 officers in ALNIC MC.

15 Q. Okay. And I understand that the -- you
16 relieved a second officer who had to go home
17 unexpectedly; is that right?

18 A. Yes.

19 Q. Okay. So your testimony is that these
20 markings were on the chart before you joined the
21 ship?

22 A. Yes.

23 Q. So you didn't erase this box between
24 each trip; correct?

25 A. Yes. It's pointless to erase. I would

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2 write it again.

3 Q. You would write it again. So this box
4 which says "BML2," this would be available to
5 anybody who came on the ship while you were on
6 the ship? If they looked at that chart, they
7 would see BML2; correct?

8 A. Yes.

9 Q. And this matches, in fact, your voyage
10 plan that you would stand an anticipated watch
11 condition of bridge manning Level II; correct?

12 A. Correct.

13 Q. So can we agree that the marking on the
14 chart where it says BML2 in Exhibit 327, the
15 indication on your passage plan, Exhibit 325, and
16 the entry in the deck logbook all indicate Bridge
17 Watch Level II for this transit; correct?

18 A. Correct, sir.

19 (Torculus Exhibit 328, Crew
20 Appraisal Report, Bates Nos. Energetic
21 002880 - 002882, was marked for
22 identification.)

23 BY MR. BROWN:

24 Q. The next exhibit is 328, Energetic -2880
25 and following. This is a Crew Appraisal Report

1 BROWN - TORCULAS

2 with your name as the seafarer; correct?

3 A. Yes, sir.

4 Q. What is the date on this document,
5 please, sir?

6 A. The date is May 30th, 2017.

7 Q. On May 30th, 2017, you were appraised as
8 reflected in this document; correct?

9 A. Yes, sir.

10 Q. Were you ever given a chance to see this
11 document before you left the ALNIC MC?

12 A. No, I did not see this, sir.

13 Q. Have you seen it prior to today? Have
14 you seen it before?

15 A. Before, no.

16 Q. On this document, I'll go to the back
17 where it says "Company Comments Superintendent."
18 That's on page -2882. Do you see the
19 superintendent's name there?

20 A. Yes.

21 Q. What's that name?

22 A. Dimitris Theodosis-Zisimos, supposed to
23 be.

24 Q. And this was a superintendent from the
25 company who came out to your ship; correct?

1 BROWN - TORCULAS

2 A. Correct, sir.

3 Q. Do you recall meeting him in May of
4 2017?

5 A. Yes. He stayed on ship around 28 days,
6 I believe.

7 Q. How long?

8 A. Around 28 days or one month.

9 Q. Around 28 days or one month?

10 A. Yeah.

11 Q. Captain Theodosis-Zisimos was on board
12 your ship; correct?

13 A. Yes, sir.

14 Q. And during that time, your ship was
15 still sailing and going port to port; correct?

16 A. Correct.

17 Q. You weren't laid up or in the shipyard.
18 You were navigating your ship then; right?

19 A. Say again, sir.

20 Q. You were actually navigating your ship;
21 you weren't in a shipyard.

22 A. No, we are not in the shipyard. We are
23 navigating, sir.

24 Q. And on this report -- and I don't mean
25 to embarrass you, but Captain Theodosis says some

1 BROWN - TORCULAS

2 critical things. In his overall impression at
3 the top of page Energetic -2882, he says, "I
4 wasn't impressed from his skills and as for
5 navigation considered him as danger."

6 Did I read that correctly?

7 A. Yes.

8 Q. Did this captain ever tell you that he
9 had the observation that as for navigation, he
10 considered you as danger?

11 A. According to him, yes, sir.

12 Q. He told you that personally?

13 A. No.

14 Q. Okay. So you know he wrote it on this
15 piece of paper, but he never gave you that kind
16 of information?

17 A. Only this time I saw this paper.

18 Q. On the front page of Exhibit 328, do you
19 see the grades given for A-2, Awareness of Duties
20 and Responsibilities?

21 A. Yes.

22 Q. He gave you a grade of 2 out of 5;
23 correct?

24 A. Yes, sir.

25 Q. Did you know before today that you had

1 BROWN - TORCULAS

2 received a grade of 2 out of 5 on your awareness
3 of duties and responsibilities?

4 A. Say again, sir? Can you repeat?

5 Q. Did you know before coming here today
6 that you had gotten that grade of 2 out of 5?

7 A. I didn't know this, sir.

8 Q. And then on line 4, it says,
9 "Compatibility with company's GMS procedures and
10 policies." He also gave you a 2; correct?

11 A. Yes, sir.

12 Q. Did you know that before today?

13 A. No.

14 Q. Did you receive any company GMS
15 procedures training from Captain
16 Theodosis-Zisimos after this May 30th appraisal
17 was done?

18 A. I don't remember, but it's nothing, sir.

19 Q. You don't remember receiving any
20 training in GMS procedures?

21 A. But this is also in the computer. We
22 can check it any time, sir.

23 Q. What is in the computer that you --

24 A. GMS policy and manuals and that.

25 Q. I understand you're telling me that the

1 BROWN - TORCULAS

2 GMS manuals are available. You can look at them
3 if you want to; right?

4 A. Yes, sir.

5 Q. But no one from the company after this
6 date said to you, "we need to give you extra
7 training in the GMS procedures"; right?

8 A. Nothing, sir.

9 MR. WEIGEL: Objection. That
10 mischaracterizes the witness's testimony.

11 THE WITNESS: Sir, can I defend myself
12 here, sir?

13 MR. WEIGEL: No, no, no. Don't -- if he
14 asks you a question. Only answer a
15 question.

16 THE WITNESS: Okay, sir.

17 BY MR. BROWN:

18 Q. Energetic's counsel will have an
19 opportunity to ask you any questions at the end.
20 Okay, Mr. Torculas? Mr. Torculas?

21 A. Yes, sir.

22 Q. Energetic's counsel, their lawyer, will
23 be able to ask you any questions at the end;
24 okay?

25 A. Okay, sir.

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2 (Torculas Exhibit 329, Crew
3 Appraisal Report, Bates Nos. Energetic
4 002883 - 002885, was marked for
5 identification.)

6 BY MR. BROWN:

7 Q. Exhibit 329 is Bates stamped Energetic
8 -2883. This is another appraisal report, but
9 this one is dated August 31st, 2017; correct?

10 A. Yes.

11 Q. This is after the collision; correct,
12 sir?

13 A. Yes.

14 Q. This one is also -- excuse me, what's
15 the name of the superintendent who completed this
16 one?

17 A. I forgot his first name, but it's
18 Chelios, sir.

19 Q. Chelios. Is he another representative
20 from the company?

21 A. Yes, sir.

22 Q. Did he come out to the ship after the
23 collision?

24 A. Yes.

25 Q. Have you ever seen this appraisal report

1 BROWN - TORCULAS

2 prior to today?

3 A. No.

4 Q. Do you see the comments under
5 Mr. Chelios' name? I have it highlighted.

6 A. I can see, sir.

7 Q. It says, "The passage planning was not
8 satisfactory." Do you see that?

9 A. Yes, sir.

10 Q. Did Mr. Chelios ever explain to you what
11 about your passage planning was not satisfactory?

12 A. As I remember, sir, yes, he told me some
13 of it.

14 Q. What did he tell you?

15 A. I don't remember, sir. I already edit
16 and changed already the passage plan. That's it,
17 sir.

18 Q. Do you remember if he talked to you
19 about your passage plan having the wrong bridge
20 watch condition?

21 A. I don't remember, but something, yes,
22 sir.

23 Q. Something like that?

24 A. Yeah. But I did not focus on what he
25 said, sir.

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2 Q. I'm curious. If you look at the front
3 page of Exhibit 329, do you see the grade for
4 C-24?

5 A. C-24, yes.

6 Q. That's the grade for passage planning;
7 right?

8 A. Yes.

9 Q. What grade did he give you?

10 A. Three.

11 Q. If you look back at the last page, 3 is
12 satisfactory; right?

13 A. That's correct, satisfactory.

14 Q. But he had just said in the comments the
15 passage planning was not satisfactory; correct?

16 A. Yes, correct.

17 Q. And, in fact, you got 3's on every
18 single one of these elements after the collision;
19 correct?

20 A. Yes. Correct, sir.

21 (Exhibit 19, Vessel Internal Audit
22 Checklist, Bates Nos. Energetic 005925 -
23 005926, was previously marked.)

24 BY MR. BROWN:

25 Q. Sir, I'm going to hand you an exhibit we

1 BROWN - TORCULAS

2 previously used. It's Exhibit 19. And this is
3 an excerpt from the vessel's internal audit
4 checklist. If you look on the back side of that
5 sheet...

6 MR. WEIGEL: Sorry. Could you say again
7 the exhibit number?

8 MR. BROWN: 19. And it's Energetic
9 -592. That's cut off. I think it's -5925.

10 BY MR. BROWN:

11 Q. Okay. On the back page, sir, which is
12 Energetic -5926, do you see the row D-1, "Are
13 familiarization, handover, and all other relevant
14 GMS forms properly filled and duly signed?" Do
15 you see that?

16 A. Yes, sir.

17 Q. And the audit gave the ship a "no" on
18 that question; correct?

19 A. Yes, sir.

20 Q. What does it say under "Comments" there?

21 A. "Was missing the familiarization for
22 second officer," sir.

23 Q. "Was missing the familiarization for
24 second officer"; correct?

25 A. Yes, sir.

1 BROWN - TORCULAS

2 Q. Do you know what that is referring to?

3 A. For the GMS, it's a sheet, it's a paper,
4 but was misplaced during the time of -- but this
5 is found, sir, during this -- this paper, it was
6 missing during that time, but it was found.

7 Q. Okay. It's not missing for everyone;
8 it's just missing for the second officer --

9 A. Yes, sir.

10 Q. -- and that's you; right?

11 A. Yes.

12 Q. Is this familiarization form -- is it a
13 signature sheet?

14 A. Yes, sir, to be signed.

15 Q. Okay. So your signature was missing
16 from the sheet when they did this audit.

17 A. Yes, sir. It was missing, sir.

18 (Exhibit 8, Signature Page for GMS
19 Manual, Bates Nos. Energetic 005872, was
20 previously marked.)

21 BY MR. BROWN:

22 Q. I'm going to hand you Exhibit 8, which
23 we've also used before. Is this the signature
24 sheet you were just mentioning?

25 A. Yes, sir -- no, there is another sheet.

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2 Another sheet. I mean, seem like a checklist --
3 seem like a checklist. And during that time, it
4 was missing, sir, when they conduct this vessel
5 inspection of the checklist, sir.

6 Q. Let me make sure I have it right. Your
7 testimony is you had completed a GMS
8 familiarization checklist before June 8th, 2017,
9 when this audit happened; right?

10 A. Yes.

11 Q. But that checklist went missing;
12 correct?

13 A. Yes.

14 Q. And then you filled it out again after?

15 A. No, I did not fill it out. We found it
16 after.

17 Q. I understand. Thank you.

18 Mr. Torculas, as second mate, did you
19 have responsibility for maintaining the ship's
20 radars?

21 A. Yes.

22 Q. You weren't actually an electrician or
23 technician, I realize that, but you -- let me
24 finish -- you had to make sure that the ship's
25 equipment was functioning for the officers to

1 BROWN - TORCULAS

2 use; correct?

3 A. Yes, sir. Sir, just thinking regarding
4 with the maintenance -- can you say that again,
5 sir?

6 Q. Let's keep moving. I think it's going
7 to be clear in a minute.

8 You aren't responsible as an electrician
9 for the radars; correct?

10 A. No.

11 Q. And you don't go replace wiring or
12 motors; correct?

13 A. Oh, no, no, no.

14 Q. But as a second mate, you would keep
15 track of when a magnetron needed to be replaced,
16 for instance.

17 A. Yes, sir.

18 Q. So you wanted to make sure your officers
19 had working radars available to them; correct?

20 A. Yes.

21 (Torculas Exhibit 330, Photograph,
22 Bates No. Energetic 013509, was marked
23 for identification.)

24 BY MR. BROWN:

25 Q. Exhibit 330, which we've handed you, is

1 BROWN - TORCULAS

2 Energetic 13509. Is this a photograph of one of
3 the two radar consoles on the bridge of ALNIC MC?

4 A. Yes.

5 Q. You recognize this as your radar; right?

6 A. Yes.

7 Q. I may want to show the judge this so he
8 has an understanding of the layout. And it has a
9 keypad at the bottom; correct?

10 A. Yes.

11 Q. And a screen above; right?

12 A. Yes.

13 Q. It's not a touch screen. You have to
14 use the mouse; right?

15 A. Yes.

16 Q. Do you recall having a problem in July
17 of 2017 with the S-band radar not turning?

18 A. Yeah.

19 Q. The motor wasn't able to turn for some
20 reason; correct?

21 A. Yes, sir.

22 (Torculas Exhibit 331, E-mail
23 string/Ship Requisition/Photographs,
24 Bates Nos. Energetic 014341 - 014351,
25 was marked for identification.)

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. We've handed you Exhibit 331. And for
4 the record, this is Energetic -14341. It is a
5 three-page e-mail. And in the same exhibit, we
6 also printed the e-mail's original attachments
7 and included them here.

8 So, Mr. Torculas, the pages that follow
9 the e-mail, those were attachments to the e-mail;
10 okay?

11 A. Yeah.

12 Q. If you look at the -- let's start at the
13 bottom of this e-mail. Look at the bottom of
14 Energetic -14343.

15 MR. WEIGEL: When you say bottom, you
16 mean the first e-mail in the string, end of
17 the e-mail string?

18 MR. BROWN: Thank you. Correct. Yeah,
19 the beginning of the string.

20 BY MR. BROWN:

21 Q. We have an e-mail from the ship to Brave
22 and Stealth e-mail recipients, and it's dated
23 July 10th, 2017; correct?

24 A. Yes.

25 Q. And that's an e-mail from your captain;

1 BROWN - TORCULAS

2 right?

3 A. Yes, correct.

4 Q. He said he's attached a repair defect
5 form for his e-mail and the S-band radar is not
6 rotating; correct?

7 A. Yes, it's not rotating.

8 Q. And he's requesting shore service;
9 correct?

10 A. Yes, correct.

11 Q. That's on July 10th, 2017; correct?

12 A. Yes. Correct, sir.

13 Q. And the next e-mail up, we have Manos
14 Nikolakis, who is a superintendent engineer from
15 Stealth; correct?

16 A. Which page?

17 Q. That's at the top of -14343.

18 A. Okay, sir.

19 Q. Do you see that e-mail from
20 Mr. Nikolakis?

21 A. Yeah.

22 Q. He says, "Meanwhile, please check in the
23 brushes of the motor and advise by return with
24 your findings." Do you see that?

25 A. Yes, sir, I can see.

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2 Q. And the captain's response to that is
3 the next e-mail up, also on July 10th; correct?

4 A. Okay, sir. Go ahead, sir.

5 Q. And the captain says in response, "We'll
6 check at first daylight"; correct?

7 A. Yes, sir.

8 Q. And then the response to that later on,
9 on July 10th, Mr. Nikolakis says, "In addition of
10 our previous message, please to carry MSS bypass
11 as per the attachment received from maker."

12 Did I read that correctly?

13 A. Yes, sir.

14 Q. Do you recall getting instructions from
15 the radar manufacturer to bypass a circuit board
16 on the S-band radar?

17 A. I don't see this in the manual, sir.

18 Q. Do you recall for how long your S-band
19 radar was not working?

20 A. How long it's not working? I don't
21 remember, sir. But it is -- actually it was
22 carried out this -- it was fixed, only -- I don't
23 remember, sir.

24 Q. Mr. Torculas, I'll get to the fix. I
25 just wanted to ask if you remember how long it

1 BROWN - TORCULAS

2 was not able to spin.

3 A. Only -- I believe only that day.

4 Q. At the very top of this e-mail string --

5 A. I don't remember.

6 Q. -- Exhibit 331, Captain Nolasco says,
7 "Please find attached report after rectifying the
8 S-band radar antenna." Did I read that
9 correctly?

10 A. Yes, sir.

11 Q. That's dated July 11th; correct?

12 A. Yes, sir.

13 Q. So from July 10th, the defect is
14 reported, and on July 11th they submit a repair
15 form from the ship; correct?

16 A. Yes, sir.

17 Q. Were you involved in the repair to the
18 radar?

19 A. Only assist the electrician, sir.

20 Q. It was the electrician who primarily did
21 the work on the radar?

22 A. Yes, with instruction from the...

23 Q. Please turn to the third page of this
24 exhibit, which is Energetic -14344. It's a
25 maintenance/repair report on a Stealth Maritime

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2 form; correct?

3 A. Yeah.

4 Q. This describes that the S-band radar
5 antenna is not rotating; correct?

6 A. Yes, sir.

7 Q. In the comments, it says, "Open the
8 cover of antenna unit and bypassed MSS 7497 board
9 by removing a cable." Do you see that?

10 A. Yes, sir.

11 Q. Do you know what the MSS 7497 circuit
12 board does?

13 A. Totally no idea.

14 Q. Do you have any idea whether bypassing
15 that circuit board affects the way the S-band
16 radar works?

17 A. No, no.

18 (Torculas Exhibit 332, E-mail/Ship
19 Requisition/Photographs, Bates Nos.
20 Energetic 014336 - 014340, was marked
21 for identification.)

22 BY MR. BROWN:

23 Q. Mr. Torculas, we've handed you
24 Exhibit 332. This is an e-mail from July 12th,
25 2017; correct?

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2 A. Yes, sir.

3 Q. And in it, your captain is writing to
4 submit a requisition for -- or related to the
5 S-band radar antenna; correct?

6 A. Yes.

7 Q. And for the record, similar to
8 Exhibit 331, we have printed the e-mail
9 attachments and stapled them together in this
10 exhibit.

11 A. Yes, sir.

12 Q. If you look at the second page of this
13 exhibit, sir, it's Energetic -14337. It's a ship
14 requisition form on Stealth Maritime paper;
15 right?

16 A. Yes.

17 Q. This is an order for that same circuit
18 board, MSS 7497; correct?

19 A. Yes.

20 Q. Do you recall whether your ship ever
21 received this circuit board?

22 A. I don't recall, sir. Because this is an
23 engine part, so they are the ones to receive
24 this.

25 Q. You're not aware of any further

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2 electrical repair happening after July 11th to
3 the S-band radar?

4 A. I don't remember, sir.

5 (Torculas Exhibit 333, Monthly
6 Inspection of Bridge Equipment, Bates
7 Nos. Energetic 001038 - 001039, was
8 marked for identification.)

9 BY MR. BROWN:

10 Q. The next exhibit is 333, Energetic
11 -1038. This is your monthly inspection of bridge
12 equipment dated July 31st, 2017; correct?

13 A. Yes, sir.

14 Q. Would you go look at each piece of
15 equipment on this list before checking off that
16 it's good?

17 A. Yes, sir. Random check, sir.

18 Q. Does random mean you only looked at some
19 or did you look at every single item on this
20 list?

21 A. That's the day -- that's the day that I
22 was on the bridge. Every time I will check this
23 on the next day this one, and the next day this
24 one.

25 Q. Okay. So this says date of inspection

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2 31 July. You're telling me that that means you
3 did not look at each piece of equipment on
4 July 31st?

5 A. Yes.

6 Q. If you look on the back side of
7 Exhibit 333, it says "Other Remarks." Do you see
8 that?

9 A. Yes.

10 Q. And, again, from this July 31st
11 document, it says, "S-band radar MSS 7497
12 bypassing done by ship's crew as per ship's
13 personnel advice," and then it says, "See report
14 of July 11th." Do you see that?

15 A. Yes, sir.

16 Q. If you had received the new circuit
17 board by July 31st and it had been replaced,
18 would you have made a remark saying that the
19 circuit board was replaced?

20 A. Actually for the 31st, I don't know that
21 this ship board was received. And I did not see
22 also that it is replaced according to the part
23 that arrived.

24 Q. So you don't recall that circuit board
25 being received or replaced on your ship; correct?

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2 A. Yes, sir.

3 Q. So as far as you know, the bypassing of
4 that circuit board --

5 A. Still exists.

6 Q. -- still exists at least on August 21st,
7 2017, right?

8 A. Yes.

9 (Torculas Exhibit 334, Radar
10 Logbook, Bates No. Energetic 001079 -
11 001122, was marked for identification.)

12 BY MR. BROWN:

13 Q. The next exhibit is 334, Bates Energetic
14 -1079. Do you recognize this document, sir?

15 A. Yes, sir, the radar logbook.

16 Q. This is your radar logbook from
17 ALNIC MC; correct?

18 A. Yes, sir.

19 Q. This shows entries from July 10th until
20 at least into August; correct?

21 A. Yes, sir.

22 Q. And on July 10th, according to the
23 e-mail we just looked at, the S-band radar was
24 not turning; correct?

25 A. Yes.

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2 Q. And that it didn't get worked on until
3 the next daylight, according to your captain's
4 e-mail that we saw; correct?

5 A. Yes, sir.

6 Q. And then they did an MSS circuit board
7 bypassing to rectify it.

8 A. That's correct, sir.

9 Q. Do you see any indication in the radar
10 logbook that the S-band radar had stopped
11 turning?

12 A. No, it don't indicate, sir.

13 Q. And on page Energetic -1081, July the
14 10th, we have a list of entries by the ship's
15 officers; correct?

16 A. Yes, sir.

17 Q. Now, is this completed by the deck
18 officers on each watch of the day?

19 A. Yes, sir.

20 Q. So if you -- you stood two four-hour
21 watches a day; correct?

22 A. Yes, sir.

23 Q. If I understand correctly, then two
24 times a day you would go in this logbook and make
25 an entry about the radars; correct?

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2 A. Correct, sir.

3 Q. And your entry -- you would have stood
4 the noon to 4 p.m. watch; correct?

5 A. Correct, sir.

6 Q. Your entry on that watch on the 10th of
7 July is that the radar test is done and it's
8 okay; right?

9 A. Yes, sir.

10 Q. That indicates that both the X-band and
11 S-band radar were working according to this log;
12 correct?

13 A. Yes, sir.

14 Q. If you look at your next entry, which
15 would have been your midnight watch -- do you see
16 that on page -1082?

17 A. -1082. Okay, sir, I can see.

18 Q. According to your midnight entry there,
19 radar tests were done and the radars are okay;
20 correct?

21 A. Yes, sir.

22 Q. Was the S-band radar okay on that watch?

23 A. Yeah. For that time, sir, yes, we have
24 a reading on that, yes.

25 Q. Was your S-band radar turning?

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2 A. Yes, it is.

3 Q. Well, do you want to go back and look at
4 the captain's e-mail where he said it is not
5 turning?

6 A. I don't know. It's because of the
7 bypass. Maybe that's why it's turning.

8 Q. Okay.

9 A. Because there is a function that you can
10 do the slave, master and slave like that. If you
11 did the function, the other, it will turn.

12 Q. The other antenna will turn?

13 A. Yes, sir.

14 Q. So you're saying --

15 A. If I remember it correct, sir.

16 Q. So you're saying that from that radar
17 console we looked at, Exhibit 330, you could pull
18 up the feed from your X-band antenna or your
19 S-band antenna?

20 A. Yes, sir.

21 Q. So if your S-band antenna stops turning,
22 you would still say in the logbook that your
23 radars are okay because you can see X-band feed?

24 A. Sir, as I said, there is a function of
25 that one, sir, but for the motor, if it's a

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2 problem, I don't know, sir.

3 Q. Well, can you agree with me that if your
4 radar motor stops turning, the radar logbook
5 entry should say that the motor is not turning?

6 A. Not turning, sir.

7 Q. But you don't see any entries on
8 July 10th or 11th of Exhibit 334 reflecting that
9 your S-band motor was not turning; right?

10 A. Yes, sir, it doesn't reflect.

11 Q. If the S-band radar had stopped turning
12 like Captain Nolasco's e-mail says, then these
13 entries in the radar logbook are false; correct?

14 MR. WEIGEL: Objection.

15 Mischaracterizes his testimony.

16 THE WITNESS: I don't remember actually,
17 sir.

18 BY MR. BROWN:

19 Q. I didn't ask if you remembered. I said
20 assuming that the S-band motor is not turning
21 when Captain Nolasco says it's not turning, the
22 radar logbook should say it's not turning;
23 correct?

24 A. Yes, yes.

25 Q. If it's not turning and a mate says that

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2 it's okay, that's not a correct entry; right?

3 A. It's not a correct entry, sir.

4 Q. If it's not turning over multiple
5 watches, then you have multiple mates making an
6 incorrect entry in the radar logbook; correct?

7 A. Correct, sir.

8 MR. BROWN: Let's take a break.

9 (Discussion off record and recess
10 from 11:54 a.m. to 12:35 p.m.)

11 (Torculas Exhibit 335, Stowage Plan,
12 Bates Nos. Energetic 001075, was marked
13 for identification.)

14 BY MR. BROWN:

15 Q. Mr. Torculas, in front of you is
16 Exhibit 335, which is Energetic -1075.

17 A. Yes.

18 Q. I'll tell you right now I've got a few
19 very boring documents I need to just get through
20 to get on the record what they are. This won't
21 be terribly exciting. Is this the vessel's
22 arrival stowage plan for August 21st, 2017?

23 A. Yes.

24 Q. Did you work with the stowage plan at
25 all as the second mate of the ship?

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2 A. No.

3 Q. When you worked cargo, did you have any
4 responsibility to know where to put the cargo or
5 which tanks to remove it from?

6 A. Yes.

7 Q. Have you seen this document prior to
8 today?

9 A. Before. Yeah, it was posted on the
10 bridge.

11 Q. Okay.

12 A. It was on there.

13 Q. So you do recognize this as the ship's
14 stow plan for the voyage --

15 A. No, I --

16 Q. Let me finish. You do recognize this as
17 the ship's stow plan for the voyage that had the
18 collision with MCCAIN; right?

19 A. Right.

20 Q. Do you recall if your ship changed the
21 ballast after the collision?

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

23 Q. Do you recall if the chief officer
24 deballasted to get the bulbous bow higher out of
25 the water?

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2 A. No, I don't recall.

3 Q. In the course of serving as an officer
4 on ALNIC, did you ever make entries in a ballast
5 water log?

6 A. Yes.

7 Q. So you're familiar with the ballast
8 water log on the ship?

9 A. Yes.

10 MR. BROWN: Would you please mark that.
11 (Torculas Exhibit 336, Ballast Water
12 Handling Log, Bates No. Energetic
13 015499, was marked for identification.)

14 BY MR. BROWN:

15 Q. We've handed you Exhibit 337, which is
16 Energetic -15499. This is the ship's Ballast
17 Water Handling Log, and it's from August of 2017;
18 correct?

19 A. Yes.

20 Q. Do you see the August 15th entry?

21 A. Yes, I can see.

22 Q. Can you explain what start point volume
23 of 1,497 means?

24 A. This is in cubic meters, sir.

25 Q. Does that mean that the ship --

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2 MR. BARTLETT: I'm starting late. This
3 is Jim Bartlett.

4 MR. BROWN: No problem, Jim. We just
5 started back up.

6 BY MR. BROWN:

7 Q. Does this mean that the ship was
8 carrying about 1500 cubic meters of ballast on
9 August 15th?

10 A. Yes.

11 Q. And then what does end point mean where
12 it says 0 cubic meters?

13 A. It empty.

14 Q. So if I'm reading this line correctly,
15 on August 15th the ship deballasted from 1500 or
16 so cubic meters down to 0; correct?

17 A. Yes, sir.

18 MR. WEIGEL: Just so there's no
19 confusion later, it's not the ship's ballast
20 log; it's the ballast log for Tank 3-P.

21 MR. BROWN: Very good. Thank you.

22 BY MR. BROWN:

23 Q. Okay. And then on 24 August, your start
24 point is volume 0 cubic meters; correct?

25 A. Yes.

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2 Q. And then that Tank 3-P ballasted on that
3 day to take about 1500 cubic meters; correct?

4 A. Correct, sir.

5 Q. Do you recall if the ship -- does this
6 record help you recollect whether the ship
7 ballasted or deballasted immediately after the
8 collision?

9 A. No.

10 Q. You don't remember either way; right?

11 A. I don't remember, sir.

12 Q. In the record we had just looked at,
13 Exhibit 335, which is dated 21 August, towards
14 the bottom right corner it has arrival drafts in
15 Singapore; correct?

16 A. Yes.

17 Q. And that's the FA and M, and that's
18 fore, aft, and mid drafts; correct?

19 A. Yes, correct.

20 Q. And this document indicates 8.65 meters.
21 Did I read that correctly?

22 A. Yes. Correct, sir.

23 (Torculas Exhibit 337, Photograph,
24 Bates No. Energetic 013524, was marked
25 for identification.)

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2 BY MR. BROWN:

3 Q. Mr. Torculas, you're now looking at
4 Exhibit 337, which is Energetic -13524. This is
5 a photograph of the white board that's on the
6 bridge of ALNIC MC; correct?

7 A. Yes.

8 Q. This is showing information about the
9 ship's arrival to Singapore on 21 August 2017;
10 correct?

11 A. Yes.

12 Q. What does this show for the ship's
13 forward draft?

14 A. Forward draught shows 7.55 meter.

15 Q. And after draft, please.

16 A. After draught is 8.95.

17 Q. So this is different than the drafts
18 indicated on the arrival stow plan which is
19 Exhibit 335; correct?

20 A. Yes, sir, it's different.

21 Q. Does this help you recollect whether or
22 not the ship deballasted after the collision?

23 A. No.

24 Q. If the forward draft is a smaller number
25 than the after draft, that means that the bow is

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2 raised up; correct?

3 A. Yes. Correct, sir.

4 (Torculas Exhibit 338, Pilot
5 Boarding Card, Bates Nos. Energetic
6 002262 - 002266, was marked for
7 identification.)

8 BY MR. BROWN:

9 Q. I've just handed you Exhibit 338,
10 Energetic -2262, which is a pilot boarding card;
11 correct?

12 A. Yes, sir.

13 Q. When you were back in the chart room
14 after being relieved at 0400, did you prepare the
15 pilot boarding card for arrival to Singapore?

16 A. Yes, I did.

17 Q. Did you update the pilot boarding card
18 after the collision?

19 A. After the collision, it's the same, sir.
20 I don't change anything.

21 Q. Okay. Do you recall when you -- let me
22 ask, did you prepare personally this Exhibit 338?

23 A. Yes.

24 Q. And do you recall when you prepared it?

25 A. Before arrival.

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2 Q. Before arrival to Singapore?

3 A. Yes, sir.

4 Q. And that was the arrival on August 21st,
5 2017?

6 A. Yes, sir.

7 Q. But you hadn't prepared it back when the
8 ship was in Taiwan when you made your voyage
9 plan; correct?

10 A. Say again that one.

11 Q. You made your voyage plan when the ship
12 was still in Taiwan; correct?

13 A. Yes, correct.

14 Q. You didn't prepare this back when you
15 were still in Taiwan, did you?

16 A. No.

17 Q. This was closer to when you actually had
18 a pilot come on board your ship?

19 A. Yes, sir.

20 Q. But you don't remember the exact time
21 when you prepared this?

22 A. No.

23 (Torculas Exhibit 339, Compass Error
24 Book, Bates Nos. Energetic 002364 -
25 002366, was marked for identification.)

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2 BY MR. BROWN:

3 Q. And the next exhibit is 339 Energetic
4 -2364. This is the ship's Compass Error Book;
5 correct?

6 A. Correct, sir.

7 Q. I should say this is an excerpt from it;
8 correct?

9 A. Yes.

10 Q. There are various entries in this book
11 beginning on 11 August going through to 20
12 August. These entries are signed by the ship's
13 deck officers; correct?

14 A. Correct, sir.

15 Q. You did many of these entries yourself;
16 correct?

17 A. Yes, sir.

18 Q. Just to state for the record -- and tell
19 me if I have this wrong; okay? I think the
20 purpose of this book is to monitor whether your
21 compass is developing any error; correct?

22 A. Correct, sir.

23 Q. So you can watch the error of the
24 compass and see whether it's growing or not.

25 A. Correct, sir.

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2 Q. So if we wanted to find out what compass
3 error the ship's gyrocompass was experiencing, we
4 could -- is this record to see what you -- the
5 deck officers observed; correct?

6 A. Correct, sir.

7 (Torculas Exhibit 340, Photographs,
8 was marked for identification.)

9 BY MR. BROWN:

10 Q. The next exhibit is 340. I'll represent
11 to you these are photos we had the opportunity to
12 take when we were on board ALNIC MC a few weeks
13 ago. Do you recognize this as the ship's AIS
14 unit?

15 A. Yes, sir.

16 Q. Was the AIS unit one of those pieces of
17 navigation equipment that you were responsible
18 for as second mate?

19 A. Yes, sir.

20 Q. The display shown in this Exhibit 340,
21 it shows antenna positions; right?

22 A. Yes.

23 Q. And it's got numbers that measure
24 distances from the antenna to the bow, to the
25 stern, and to each side; correct?

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2 A. Yes, sir.

3 Q. When you were sailing as second mate, do
4 you recall what numbers you had entered into this
5 system for the ALNIC's antenna position?

6 MR. WEIGEL: Object to the form of the
7 question. You're assuming he entered the
8 numbers in.

9 MR. BROWN: No, I asked if he recalled
10 what those numbers were.

11 MR. WEIGEL: Okay. That's a different
12 question, and that question is not
13 objectionable.

14 MR. BROWN: Fine.

15 BY MR. BROWN:

16 Q. That's all I mean to ask. Do you
17 remember what the numbers were inside this unit
18 when you were sailing as second mate?

19 A. I don't remember the numbers.

20 Q. And I didn't expect you to. I needed to
21 make sure.

22 Did you, as second mate, ever go into
23 the system and change the numbers that were
24 loaded into this unit?

25 A. No.

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2 MR. WEIGEL: Mr. Brown --

3 MR. BROWN: Yeah, I should have said.

4 MR. WEIGEL: It's printed on both sides.

5 Is it the same photograph?

6 MR. BROWN: No, it's not. So
7 Exhibit 340 is also double-sided, saving
8 trees. The one side reflects the INT,
9 interior antenna position, and the other is
10 the exterior antenna position. And the
11 numbers are the same.

12 MR. WEIGEL: Okay, thank you. As a
13 matter of logistics, I don't have any
14 objection to any of these photographs
15 because they just depict what you saw, but
16 I'm assuming at some point we're going to
17 get a full set of the pictures that were
18 taken.

19 MR. BROWN: Well, they will be exhibits
20 to the record today.

21 MR. WEIGEL: But, I mean, there are more
22 than these obviously that were taken.

23 MR. BROWN: We'll talk about that later.

24 MR. WEIGEL: That's fine.

25 (Torculas Exhibit 341,

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2 Photographs A - C, was marked for
3 identification.)

4 BY MR. BROWN:

5 Q. The next exhibit is 341. These are also
6 photographs taken aboard the ALNIC in our recent
7 visit. And there are three photos which I have
8 marked within the exhibit as A, B, and C. Do you
9 have that document in front of you?

10 A. Yes, I have, sir.

11 Q. On Image A of Exhibit 341, do you
12 recognize this diagram of antenna positions?

13 A. Yes.

14 Q. Was this diagram in place when you were
15 sailing on board the ship as second mate?

16 A. Yes.

17 Q. And the second page is a closer view of
18 what the antennas are. Line 9 is AIS
19 transponder; correct?

20 A. Which one, sir?

21 Q. No. 9.

22 A. No. 9.

23 Q. That's the AIS transponder; correct?

24 A. Yes, sir.

25 Q. And if I look on the diagram and I see

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2 the No. 9 in the circle, that tells me where that
3 particular antenna is; correct?

4 A. Yes. Correct, sir.

5 Q. And on Image C, this was actually taken
6 with the ship's camera because of concerns of
7 inherent safety of the equipment and the ship
8 later provided to us. You see the antenna there
9 in the very corner. Do you recognize that
10 antenna as the AIS antenna?

11 A. Yes.

12 Q. It's a whip antenna with a GPS unit at
13 the bottom of it; correct?

14 A. Yes.

15 Q. Would you please circle that with this
16 red pen, circle the whip antenna that is the AIS.

17 A. I don't recall which one is the antenna,
18 sir.

19 Q. Feel free to refer back to that diagram
20 of the antennas if that helps your memory.

21 A. I don't recall, sir, which of these two
22 is the...

23 Q. If you don't recall, then you can't
24 circle it. That's fine.

25 At the time of the collision, your ship

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2 had an FURUNO ECDIS on board; correct?

3 A. Correct, sir.

4 Q. Were you familiar with how to use that
5 FURUNO ECDIS?

6 A. Yes.

7 Q. I understand from some of the records,
8 that the ship wasn't fully ECDIS certified at the
9 time of the collision; is that correct?

10 A. Correct, sir.

11 Q. And that's why you still maintained
12 paper charts aboard; correct?

13 A. Correct.

14 Q. But you were able to use the FURUNO
15 ECDIS to help you with your watchkeeping;
16 correct?

17 A. Correct, sir.

18 Q. Would you lay out your voyage plan
19 within the FURUNO ECDIS?

20 A. Yes.

21 Q. So you could see the track lines on the
22 ECDIS screen if you looked at it; right?

23 A. Right, sir.

24 Q. Would that tell you your cross-track
25 error at any time during the voyage?

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2 A. Yes.

3 Q. You know what a cross-track error is?

4 A. Yes, yes.

5 Q. That's how far you are from your track
6 line; right?

7 A. Correct, sir.

8 (Torculas Exhibit 342, Playback
9 Screenshot, Bates No. Energetic 013578,
10 was marked for identification.)

11 BY MR. BROWN:

12 Q. Exhibit 342 is Energetic -13578. Do you
13 recognize this as a screenshot from ALNIC MC's
14 ECDIS?

15 A. Yes.

16 Q. Now, this is an actual image taken from
17 a computer. This isn't someone holding a camera
18 and taking a photograph of a computer screen;
19 right?

20 A. Can I --

21 Q. Please.

22 A. -- answer that? This is taken as --
23 moment -- there is a function of this ECDIS for
24 the screenshot itself.

25 Q. So you're able to send the screenshot

1 BROWN - TORCULAS

2 onto a disk and take it off a computer; right?

3 A. Yes, sir, if I remember it correct, sir.

4 Because I been there many times now with ECDIS, I

5 forgot the function of this ECDIS different

6 functions have. Different model some have --

7 Q. Were you involved in taking

8 screenshots -- were you involved in taking

9 screenshots from the ECDIS and putting them on a

10 disk so they could be taken off the machine?

11 A. I don't remember with this photo, but

12 there a function on some of the ECDIS, sir. I

13 don't remember with the FURUNO.

14 Q. You don't remember if you took exported

15 data from the FURUNO after the accident?

16 A. Yeah. But I make also a picture of this

17 with the camera.

18 Q. You took a camera --

19 A. Yeah.

20 Q. -- pictures of the screen; right?

21 A. Yes.

22 Q. And this playback screenshot shows time

23 21:22:52 on August 20th; correct?

24 A. Yes. This is in the function of the

25 FURUNO itself.

1 BROWN - TORCULAS

2 Q. Within the FURUNO ECDIS itself, we're
3 doing a playback at that time; correct?

4 A. That's correct, sir.

5 Q. And this is in GMT. So this is just
6 moments before the collision; correct?

7 A. Yes, sir.

8 Q. And you see ALNIC depicted as the two
9 black circles inside the traffic separation lane
10 there; correct?

11 A. Correct, sir.

12 Q. Immediately to starboard and slightly
13 forward of ALNIC, do you see that red dashed
14 circle?

15 A. Yes, sir.

16 Q. Do you know what the red dashed circle
17 symbol signifies or means in the FURUNO ECDIS?

18 A. This is a dangerous target, close, close
19 to the vessel.

20 Q. The ALNIC -- I'm sorry, the ECDIS would
21 only track targets if one of the ship's two
22 radars was giving the ECDIS that information;
23 correct?

24 A. Correct, sir.

25 Q. So it would have to be either the X-band

1 BROWN - TORCULAS

2 or the S-band radar that gave that target over to
3 the ECDIS; correct?

4 A. Yes.

5 Q. It couldn't come from any other radar
6 because those are the only two radars you had;
7 right?

8 A. Yes.

9 Q. Do you agree with me that this playback
10 screen appears to show USS JOHN S. MCCAIN as a
11 target off ALNIC's starboard side at that time?

12 A. Yes.

13 Q. So you can see targets -- even if
14 there's not a ship transmitting AIS, you can see
15 targets on the ECDIS playback; correct?

16 A. Just a moment, sir. Can I say
17 something?

18 Q. Of course.

19 A. Here in this -- in this ECDIS, even if
20 we're going to acquire the target those far, it
21 is not registering here.

22 Q. If you're going --

23 A. I don't know how to explain, but...

24 Q. Why don't you explain to the
25 interpreter.

1 BROWN - TORCULAS

2 THE WITNESS: (Speaking Tagalog)

3 THE INTERPRETER: Mr. Philip is saying
4 that he's asked the representative of the
5 FURUNO device -- he asked them why some of
6 the vessels around them are not registering
7 in that radar. So also the representative
8 of the FURUNO device added that this is the
9 older model or the older version, which is
10 why they can't pick up everything or every
11 vessel that's around them.

12 BY MR. BROWN:

13 Q. But the FURUNO model did pick up that
14 contact that shows as the dangerous circle to
15 ALNIC's starboard side; correct?

16 A. Only this one, sir. Only this one
17 target only, the dangerous one only.

18 Q. But that one target did show up on the
19 screen; correct?

20 A. Yes, sir. I am the one that make this
21 playback to show --

22 Q. You're the one who made the playback.
23 Thank you.

24 A. Yes.

25 MR. BROWN: Alan, if I may, I'm going to

1 BROWN - TORCULAS

2 go on and show him the video.

3 MR. WEIGEL: Sure.

4 (Exhibit No. 1, Video was previously
5 marked for identification.)

6 BY MR. BROWN:

7 Q. This is Energetic -13552, a playback we
8 used at Captain Nolasco's deposition. I'm going
9 to play this for you, and I'm going to ask you if
10 you were involved in this video being made; okay?

11 A. Okay.

12 (Playing video)

13 BY MR. BROWN:

14 Q. I'll stop there at time 25. And my
15 question is: That is your voice I hear speaking
16 to the other gentleman?

17 A. Yes.

18 Q. Do you remember speaking to that
19 gentleman while you made the playback appear on
20 the screen?

21 A. Yeah.

22 Q. I'll keep playing.

23 A. I don't remember the face of the person.

24 Q. Can you say that again?

25 A. I don't remember the face of the person

1 BROWN - TORCULAS

2 I'm talking about.

3 Q. But you remember meeting with him on the
4 bridge of the ship and making this video?

5 A. Yeah.

6 (Playing video)

7 BY MR. BROWN:

8 Q. Did you hear the gentleman there say you
9 need to sign the time sheet?

10 A. Yes, I hear.

11 Q. Do you recall discussing signing time
12 sheets with that gentleman when you were on the
13 bridge?

14 A. I don't remember this time sheet, sir.

15 Q. Okay. And for the record, I stopped at
16 1 minute 38 seconds.

17 MR. WEIGEL: Before you start over,
18 could you -- you said one minute -- is that
19 the time on the video or the time on the
20 replay?

21 MR. BROWN: That's the time on this
22 exhibit's time stamp.

23 MR. WEIGEL: Okay. Thank you.

24 MR. BROWN: I'm playing again.

25 (Playing video)

1 BROWN - TORCULAS

2 MR. BROWN: So I have stopped at -- the
3 time stamp is 2 minutes and 54 seconds.

4 BY MR. BROWN:

5 Q. Did you hear the gentleman say,
6 "According to FURUNO, there is no way to save the
7 data"?

8 A. Yes.

9 Q. Do you recall discussing that with him?

10 A. Yeah, I asked him. Absolutely I asked
11 him if there is any possibility that this -- to
12 save this data, and he said -- okay, sir. What I
13 meant to say is those targets around are not
14 appearing here, so that one cannot be saved on
15 this FURUNO ECDIS itself. That's what I mean,
16 sir.

17 Q. I believe I understand you. So when
18 you're in this playback mode, you aren't
19 necessarily seeing all the same things that were
20 shown on the screen at the time of the watch?

21 A. Yes.

22 Q. Okay. Thank you for that. And also
23 right before I clicked the pause button there --
24 well, let me just back up a little. We'll listen
25 to that again.

1 BROWN - TORCULAS

2 (Playing video)

3 BY MR. BROWN:

4 Q. He said there, if you heard it, "It only
5 shows our vessel, not anything else"; correct?

6 A. Yes.

7 Q. But when it continues, we'll see that
8 red dashed line that shows the JOHN S. MCCAIN.
9 Do you recall that?

10 A. Yes.

11 Q. I'll hit play again. Before I do, let
12 me ask: It looks like out the windows when this
13 video was taken it's nighttime. Do you recall
14 this gentleman being on the bridge at night?

15 A. Who, this one talking?

16 Q. Yes, sir.

17 A. Those investigators came on ship already
18 daytime.

19 Q. Daytime?

20 A. Yeah.

21 Q. Do you recall when he was with you on
22 the bridge?

23 A. I don't recall actually, sir. But the
24 investigators came already daytime, together with
25 the NTSB or MPA together with them.

1 BROWN - TORCULAS

2 Q. I'll hit play again starting at the time
3 stamp 2:55.

4 (Playing video)

5 Q. Did you hear a gentleman just say, "But
6 it does show the vessel maintained course"?

7 A. One more time, sir.

8 Q. Yes. Playing video from 2:55.

9 (Playing video)

10 BY MR. BROWN:

11 Q. And I stopped at 3:01. Did you hear it
12 that time?

13 A. Yeah.

14 Q. Was that your voice or someone else's?

15 A. Someone else.

16 Q. Do you recognize whose voice that was?

17 A. No. Plenty of people, sir, after the
18 collision.

19 Q. All kinds of people on your bridge;
20 right?

21 A. Yes, sir.

22 Q. I'll hit play again at 3:01.

23 (Playing video)

24 BY MR. BROWN:

25 Q. I have stopped at 3 minutes and

1 BROWN - TORCULAS

2 24 seconds. Did you hear that gentleman saying
3 something like, "If this gets out, I can see the
4 headlines now. There was nobody driving the
5 car." Did you hear that?

6 A. Yes.

7 Q. Were you still standing on the bridge
8 with him when he said that?

9 A. I'm not sure, sir. I don't remember,
10 sir, because I am collecting also evidence. The
11 third mate is with me or -- yeah, third mate is
12 with me. Sometimes just left there. And I was
13 gathering...

14 Q. I understand. So now as you hear this
15 video, you can hear the gentleman saying that?

16 A. Yes.

17 Q. Do you agree with him that this image of
18 ALNIC going down the traffic scheme and not
19 changing course prior to the collision makes it
20 look as if there was no one driving the car?

21 A. Yes.

22 MR. WEIGEL: Objection. That
23 mischaracterizes. And it's just speculation
24 as to what is being said.

25 MR. BROWN: He said yes. Did you get

1 BROWN - TORCULAS

2 that on the record?

3 THE REPORTER: Yes.

4 BY MR. BROWN:

5 Q. Restarting at 3 minutes and 26 seconds.

6 (Playing video)

7 BY MR. BROWN:

8 Q. I stopped at 3:49. Did you hear the
9 gentleman say something like, "In a minute,
10 you'll see an echo or a strange target"?

11 A. Yeah.

12 Q. Do you know if he had had a chance to
13 see this playback before he made this recording?

14 A. I don't know, sir. No idea.

15 Q. And at this time, it's time stamped 3
16 minutes and 49 seconds. What does the clock time
17 there say on the playback?

18 A. GMT time, sir.

19 Q. What time is that?

20 A. Supposed to be -- it will be -- plus 8
21 in Singapore.

22 Q. I understand. Could you just please
23 read in the record, 21 hours and what?

24 A. 21:22:45.

25 Q. And at that time, can you see the

1 BROWN - TORCULAS

2 dangerous circle that is USS JOHN S. MCCAIN on
3 this screen?

4 A. Yes.

5 Q. I think that's all I have on this.
6 Thank you.

7 MR. UNDERHILL: And I believe that was
8 Exhibit 1 to Captain Nolasco's deposition.

9 MR. WEIGEL: I think you're correct.

10 MR. UNDERHILL: That was the longer
11 clip. There was a shorter clip.

12 MR. WEIGEL: Which was Exhibit 2.

13 MR. UNDERHILL: Correct.

14 MR. WEIGEL: Yes, I agree.

15 MR. BROWN: Thank you.

16 BY MR. BROWN:

17 Q. Were you the one holding the camera in
18 this video we just reviewed?

19 A. Yes -- no, no. Sorry, sir. I don't
20 remember actually, sir, because twice or thrice
21 I'm doing this, taking picture of this. Because
22 other person coming also. They want a picture of
23 this.

24 Q. So you recall --

25 A. So I'm assisting them also. So for this

1 BROWN - TORCULAS

2 guy, I don't know if I am that person.

3 Q. You don't recall for sure whether you --

4 A. Yeah.

5 Q. -- or he was holding the camera in this
6 one; correct?

7 A. Yes, I hear my voice.

8 Q. You hear your voice in the beginning so
9 you're at least near him; right?

10 A. Maybe I pass the camera to other guy.

11 Q. I think you just said a moment ago there
12 were multiple times where people came to
13 photograph or video this playback; right?

14 A. Yes, sir.

15 Q. So you helped multiple people take
16 videos of the playback; right?

17 A. Yes, sir.

18 Q. Prior to our watching this video just
19 now, have you seen this video played back before?

20 A. Yes.

21 Q. When did you see this video before?

22 A. After the collision. And we checked the
23 manual how to do this playback.

24 Q. Okay. So you had seen the playback
25 itself before; correct?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. But this video we just watched where the
4 man says there was no one driving the car, have
5 you seen that video before today?

6 A. It's because it was in autopilot that --

7 Q. Right. I understand that. And I agree.
8 Have you seen this video before?

9 A. For that video, I don't recall.

10 Q. Fair enough.

11 A. I think it's plenty of person I'm
12 assisting, sir.

13 Q. I understand.

14 (Exhibit 4, E-mail String, Bates
15 Nos. Energetic 012173 - 012177, was
16 previously marked.)

17 BY MR. BROWN:

18 Q. I'm handing you Exhibit 4, which has
19 been used in a previous deposition. This is
20 Energetic -12173. And I'm only going to look at
21 the very top of this one, sir.

22 At the very top, this is an e-mail from
23 Captain Nolasco to a person by the name of
24 Dretakis; right.

25 A. Dretakis.

1 BROWN - TORCULAS

2 Q. At the top of Exhibit 4, this e-mail is
3 from ALNIC MC; correct?

4 A. Yes, sir.

5 Q. It's to someone by the name of Dretakis;
6 correct?

7 A. Yes, sir.

8 Q. If you look in the signature block of
9 this e-mail, it's from Captain Nolasco; correct?

10 A. Yes, sir.

11 Q. And at the very first line of the
12 e-mail, Captain Nolasco says, "Kindly note that
13 the ECDIS when playback, it only shows our vessel
14 without any other targets." Did I read that
15 correctly?

16 A. Yes.

17 Q. But you agree with me, having looked at
18 the ECDIS playback and Exhibit 342, this
19 screenshot, you can see other -- the other target
20 of USS JOHN S. MCCAIN; correct?

21 A. For that, yes, I can see.

22 Q. You can set that aside, sir.

23 (Exhibit 38, Final Report Safety
24 Investigation, Bates Nos. Energetic
25 006206 - 606240, was previously marked.)

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. I'm going to hand you Exhibit 38 which
4 was used in Captain Nolasco's deposition. This
5 is a copy of the final report of the Singapore
6 investigation into the collision. Do you see
7 that each paragraph has a number, sir, within
8 this report?

9 A. Yes.

10 Q. See the paragraphs? Each has a number.
11 Okay. I'm going to refer to those numbers and
12 talk about a few of these paragraphs.

13 A. Which -- okay, -6212.

14 Q. If you could look at paragraph 1.2.3,
15 please. Now, this is someone else's report about
16 the collision.

17 A. Okay.

18 Q. I'm not asking you whether it's right or
19 wrong. I'm just asking you if you agree with
20 things it says about what you did; okay?

21 A. All right, sir.

22 Q. On this paragraph, it says, "According
23 to deck logbook entries made during the second
24 officer's watch, the master came up on the bridge
25 about 0300 on 21 August." Do you see where I'm

1 BROWN - TORCULAS

2 reading?

3 A. Yes, sir, I can.

4 Q. That's the entry we discussed at the
5 beginning of today's deposition that was false --

6 A. Yes.

7 Q. -- and not right.

8 A. Yes, sir.

9 Q. The logbook also stated that the master
10 conning steering was switched to manual. That,
11 too, we already discussed today was a false
12 entry; correct?

13 A. False, yes.

14 Q. At 0400, "The watch was handed over by
15 the second officer to the chief officer." And
16 I'll skip down. "The second officer continued to
17 remain on the bridge in the chart room." We have
18 discussed that today; correct?

19 A. Yes, correct.

20 Q. You remained on that same deck as the
21 wheelhouse, but you were in the chart room;
22 right?

23 A. Correct, sir.

24 Q. Thank you. It was separated by
25 curtains. We talked about that; right?

1 BROWN - TORCULAS

2 A. Correct, sir. Right.

3 Q. And it says here you went to perform
4 some pre-arrival port documents. Did you do
5 pre-arrival port documents, or did you do chart
6 corrections, or did you do both when you were --

7 A. Both of them, sir.

8 Q. It goes on to say, "But it was not a
9 part of the bridge team." Do you agree when you
10 were in the chart room, you were not on watch?

11 A. Yeah, I'm not on watch.

12 Q. After 0400, you were not part of the
13 bridge team; correct?

14 A. Yes.

15 Q. So you didn't serve any role within the
16 Bridge Resource Management responsibilities of
17 the bridge team; correct?

18 A. In my own, I just -- I can say just only
19 helping the chief officer do the position --
20 positioning on the chart because I am at the
21 chart table, so that they can perform the
22 lookout.

23 Q. That's nonresponsive. My question was:
24 Were you part of the bridge team when you were
25 relieved and off watch at 0400?

1 BROWN - TORCULAS

2 A. No.

3 Q. You had no formal role in terms of
4 bridge resource management in terms of helping
5 the chief serve his watch; correct?

6 A. No.

7 Q. Please turn to the paragraph 1.2.23.

8 A. 1.2.23.

9 MR. DRIPPS: Could I ask you a point of
10 clarification on that last answer?

11 MR. BROWN: Go ahead.

12 MR. DRIPPS: I wasn't sure if he was
13 agreeing with the question. The way he
14 answered was ambiguous.

15 MR. BROWN: Okay.

16 MR. DRIPPS: Could I ask the reporter to
17 read the last question and answer?

18 THE REPORTER: Question: "After 0400,
19 you were not part of the bridge team;
20 correct?"

21 Answer: "Yes."

22 THE WITNESS: No, no --

23 BY MR. BROWN:

24 Q. It's my job to keep it clear and not
25 have you confused; okay? At 0400, you were not

1 BROWN - TORCULAS

2 part of the bridge team; correct?

3 A. Correct.

4 Q. You were not part of the bridge team
5 then.

6 A. Correct, sir.

7 Q. At 0400, you did not serve any role in
8 terms of bridge resource management to help the
9 chief officer; right?

10 A. Right, sir.

11 Q. In paragraph 1.2.23 -- before I do that,
12 in the few minutes that preceded the collision,
13 do you remember hearing any of the discussion
14 that occurred outside -- in the wheelhouse?

15 A. Before the collision, sir?

16 Q. In the minutes before the collision,
17 could you hear any conversation from the people
18 on the bridge?

19 A. All I remember, sir, is that the chief
20 officer said that, "sir, we are going to
21 collide," and that's the time I went out of the
22 chart table.

23 Q. He said that in Tagalog?

24 A. Yes, sir, in Tagalog.

25 Q. He said, "Sir, we are going to collide?"

1 BROWN - TORCULAS

2 A. Yes.

3 Q. You told me earlier you stayed behind
4 the curtains all the way until the point of the
5 collision; is that right?

6 A. No, no, no, no, sir. Before the point
7 of the collision, before it hits on the JOHN
8 MCCAIN, I went out of the chart table maybe only
9 a few seconds, 30 seconds, 40 seconds, like that,
10 or a minute. Make it one minute. Because when I
11 came out of the chart table, I saw this blocking
12 the ALNIC MC. A few seconds, hits bang. That's
13 it.

14 Q. When you stepped out of the chart room,
15 at that point was JOHN MCCAIN or any part of the
16 ship already forward of your own bow?

17 A. Yes, sir, same like a letter T.

18 Q. So by the time you stepped out, JOHN
19 MCCAIN wasn't still on the starboard beam of
20 ALNIC; correct?

21 A. No, sir. This is ALNIC.

22 Q. Referring to this paragraph 1.2.23, the
23 report indicates that "The master," referring to
24 John S. MCCAIN, "remarked to his bridge team in
25 Tagalog, 'Good crossing action in the middle of

1 BROWN - TORCULAS

2 channel.'" Do you remember hearing anything in
3 Tagalog?

4 A. I don't remember that word, sir.

5 Q. Do you remember anything similar to this
6 being spoken?

7 A. No. Only that what I said -- can I say
8 to Mr. --

9 Q. Please do to your interpreter.

10 THE WITNESS: (Speaking Tagalog)

11 THE INTERPRETER: So Mr. Philip is
12 saying that the other officer told the chief
13 officer or the captain that they are going
14 to hit and that's all that he heard.

15 BY MR. BROWN:

16 Q. That's the only words you remember
17 hearing?

18 A. Correct, sir.

19 Q. You didn't hear anyone ask you to come
20 help with serving as a lookout; right?

21 A. No.

22 Q. You didn't hear anyone to ask you help
23 try to acquire any targets on the radars;
24 correct?

25 A. No, sir.

1 BROWN - TORCULAS

2 Q. Did anyone ask you to plot the ship's
3 position on the chart in the few minutes before
4 the collision?

5 A. No, just only my initial team, sir.

6 Q. In paragraph 1.2.26, the report
7 indicates that "AM" -- and I'll represent to you
8 that's ALNIC MC -- "AM did not make any sound or
9 light signals to attract JOHN S. MCCAIN's
10 attention prior to the collision." My question
11 to you is: Do you recall hearing any five short
12 blasts from ALNIC MC before the collision?

13 A. I'm not sure which one is first, the
14 five short blast or after the collision. I'm not
15 sure with these two.

16 Q. It's not clear in your memory whether --

17 A. Yes. But I heard that once, sir.

18 Q. You don't recall hearing -- or you can't
19 say for sure today whether you heard five short
20 before the collision?

21 A. I heard that one, sir, but I don't know
22 which one -- it hit already or before hitting
23 this MCCAIN.

24 Q. You may have heard some alarm after the
25 collision happened?

1 BROWN - TORCULAS

2 A. Plenty alarms, sir.

3 Q. Okay. Paragraph 1.3.7, please.

4 A. 1.3.7. Did I hear -- I didn't recall.

5 Q. Okay. 1.3.7, please.

6 A. 1.3.7.

7 Q. It says, "All key personnel had duly
8 recorded their hours of rest on a form."

9 A. I can see that one, sir.

10 Q. Do you know if that's a reference to the
11 STCW rest log that we looked at earlier?

12 A. Yes.

13 Q. That's the one we discussed that had --
14 you had not indicated overtime you had worked;
15 correct?

16 A. Yes.

17 Q. So you had worked more than the rest log
18 indicated; correct?

19 A. Yes, sir.

20 Q. You can put that aside, sir.

21 I understand you've come to the United
22 States on your present trip in order to join a
23 ship; is that correct?

24 A. Yes, sir.

25 Q. What ship are you joining?

1 BROWN - TORCULAS

2 A. Stealth FALCON and the name changed to
3 CLEAN THRASHER.

4 Q. Stealth -- what was -- the second word?

5 A. FALCON.

6 Q. And you said the name is going to be
7 changed?

8 A. To CLEAN THRASHER.

9 Q. And it's still going to be a Stealth
10 ship after the name changes?

11 A. Yes.

12 Q. When did you leave ALNIC after the
13 collision; what month?

14 A. When did I leave? If it's correct, sir,
15 October 15 or 16.

16 Q. Of 2017?

17 A. Yes.

18 Q. Do you recall what ship you joined after
19 that?

20 A. Different company, sir. I left the
21 company.

22 Q. Have you worked for Stealth since the
23 collision?

24 A. Since or after?

25 Q. Okay. You worked for ALNIC or on ALNIC

1 BROWN - TORCULAS

2 until October of 2017; right?

3 A. Yes.

4 Q. Have you had a job with Stealth since
5 then?

6 A. No.

7 Q. So you came to the U.S. and you're
8 giving your deposition today and you're preparing
9 to join a Stealth ship; is that right?

10 A. Yes, sir.

11 Q. When did you first learn that you had an
12 opportunity to join a Stealth ship this month?

13 A. After I signed up. Because this crewing
14 manager, they came to our house and the staff is
15 looking for us for this deposition and asking me
16 am I willing to join this company again.

17 Q. This is your house in the Philippines?

18 A. Yes.

19 Q. So Stealth came to your house in the
20 Philippines?

21 A. No, sir, the crewing manager.

22 Q. What's the name of the crewing manager?

23 A. Can I say this Mandivas (phonetic),
24 Robert Mandivas.

25 Q. It's not Selandia?

1 BROWN - TORCULAS

2 MR. WEIGEL: He may be -- you asked for
3 the name of the crewing manager, meaning a
4 person rather than a company. That's why
5 he's confused.

6 MR. BROWN: Thank you.

7 BY MR. BROWN:

8 Q. You work for a company that provides
9 mariners to the ships; right?

10 A. Yes, sir.

11 Q. Is that Selandia?

12 A. Selandia, yes. It's Selandia, sir.

13 Q. With Selandia, you've gotten jobs on
14 different ships; correct?

15 A. Actually I have only one contract in
16 Selandia. After the ALNIC MC, I left.

17 Q. So you didn't stay with Selandia after
18 the ALNIC MC job?

19 A. Yes. I am trauma. I got this trauma
20 from the collision. I had to leave.

21 Q. Are you going to be back with Selandia
22 now that you're joining Stealth FALCON?

23 A. Yes. I think I already adjusted.

24 Q. So your understanding was if you would
25 take this assignment on the Stealth FALCON, you

1 BROWN - TORCULAS

2 could come to the U.S. and have your deposition;
3 correct?

4 A. Yes, sir.

5 Q. Do you recall when that person came to
6 your door in the Philippines?

7 A. He came to our home April of -- I think
8 first week before the -- (Speaking in Tagalog)

9 THE INTERPRETER: Holy Week.

10 THE WITNESS: -- Holy Week.

11 BY MR. BROWN:

12 Q. That was April of this year; correct?

13 A. Sir?

14 Q. That was April of 2019; correct?

15 A. Yes.

16 MR. UNDERHILL: For us non-practicing
17 Catholics, when would Holy Week be?
18 Actually practicing non-practicing
19 Catholics.

20 THE WITNESS: Say again, sir, your
21 question.

22 MR. BROWN: We can Google it.

23 BY MR. BROWN:

24 Q. This was early April you said; right?

25 A. I thought it was. But before the Holy

1 BROWN - TORCULAS

2 Week, sir, before the Holy Week. First week,
3 second week, like that.

4 Q. First or second week of April, you got
5 the knock on your door; correct?

6 A. Yes, sir.

7 Q. Are you signing on to Stealth FALCON as
8 second officer or something else?

9 A. Second officer, sir.

10 Q. Before you flew to the United States to
11 join Stealth FALCON, did you do any training with
12 Stealth on their GMS?

13 A. Yes.

14 Q. Where did you do that training?

15 A. On the -- in-house training, sir, in
16 their office.

17 Q. Is that in the Philippines or somewhere
18 else?

19 A. In their office, Philippines.

20 Q. When you did that training before coming
21 here to join the Stealth FALCON, did they discuss
22 manning levels for different watch conditions?

23 A. Yes, sir.

24 Q. Did you discuss the need to maintain
25 Watch Condition III in the Strait of Singapore in

1 BROWN - TORCULAS

2 that training?

3 A. Yes, sir.

4 Q. Before being deposed today, did you meet
5 with any lawyers for Stealth or Energetic?

6 A. Him and the other guy.

7 Q. So you're referring to the two gentlemen
8 from Blank Rome in the office today; right?

9 A. Yes, sir.

10 Q. When did you first meet with them?

11 A. The day after, because we arrive around
12 1 o'clock in the afternoon of 20th. Let's say
13 2 o'clock. And then on the next morning, morning
14 on the next day. Let's say 21st, I met them.

15 Q. So yesterday and the day before; is that
16 right?

17 A. No. Like this, sir, I met them
18 personally yesterday morning. On the other day
19 on 20th, no, I don't meet them. Only by voice.
20 I don't know which two of them I'm talking with.

21 Q. That's fine. And I don't want to know
22 what you discussed.

23 Can you tell me approximately how long
24 you met with them yesterday morning, for how many
25 hours?

1 BROWN - TORCULAS

2 A. Two hours.

3 Q. Do you recall meeting Mr. Weigel in
4 Singapore after the collision happened?

5 A. I don't remember, but if I see -- I see
6 him, sir.

7 Q. He looks familiar, but you don't recall
8 having a meeting?

9 A. Yeah.

10 Q. That's fine.

11 A. And asking me what is -- who is -- I
12 forget. I don't know his name, what he looks
13 like. Because plenty people, sir. I see plenty
14 people went there for the investigation.

15 (Plaintiff's Exhibit 9B, GMS Manual
16 M4 Navigation Procedures, Bates Nos.
17 Energetic 004147 - 004239, was
18 previously marked.)

19 BY MR. BROWN:

20 Q. I'm handing you an exhibit we've looked
21 at before, which is 9B. This is from Captain
22 Nolasco's deposition. This is the company's GMS
23 manual and specifically their navigation
24 procedures; correct?

25 A. Yes, sir.

1 BROWN - TORCULAS

2 Q. This is Manual No. M4; correct?

3 A. Yes, sir.

4 Q. If you could please turn to the page
5 that's stamped Energetic -4157.

6 A. -4157. Yes, sir, I am in -4157.

7 Q. Okay. And on paragraph 2.1.1, it gives
8 a definition of bridge team management; correct?

9 A. Yes, sir.

10 Q. It says, "Bridge team management is a
11 concept that, when accepted by the mariner, is
12 the single most important method for eliminating
13 one person error." Do you see that?

14 A. Yes, sir.

15 Q. Do you agree that good bridge team
16 management or bridge resource management is a
17 safe way to avoid single person error?

18 A. I'm aware of that.

19 Q. So if mariners on the bridge work
20 together as a team, they can help avoid a mistake
21 that happens where just one person has made an
22 error; correct?

23 A. Yes, sir.

24 Q. And we can help each other out while we
25 are on watch and make sure that each person knows

1 BROWN - TORCULAS

2 what the other person is seeing or doing; right?

3 A. Right, sir.

4 Q. And, again, paragraph 2.1.2, it begins,
5 "The primary goal of bridge team management is
6 the elimination of one person errors." Do you
7 agree with that statement?

8 A. Understood, sir. I'm agreed.

9 Q. Turn, please, to page Energetic -4167.
10 Paragraph 9 on that page, the last sentence says,
11 "Helmsmen are not permitted to change the
12 steering mode, which must be carried out by the
13 officer of the watch." Do you see that?

14 A. Yes, sir.

15 Q. Now, go back in time to August 21st,
16 2017, the day of the collision. Was it your
17 understanding that helmsmen were not allowed to
18 change the steering mode, but only the officer of
19 the watch could do that?

20 A. Yes, I know that one, sir.

21 Q. So the AB wouldn't go change the
22 steering mode all on his own; right?

23 A. It's just only a single knob.

24 Q. It's a single knob to change from auto
25 to hand or hand to auto; correct?

1 BROWN - TORCULAS

2 A. Yes, sir.

3 Q. But do you agree that your company
4 policy is that changing the steering mode must be
5 carried out by the officer of the watch?

6 A. Correct, sir.

7 Q. Turning over, please, to Energetic
8 -4177.

9 A. -4177.

10 Q. Paragraph 2.3.6 is about helmsmen;
11 correct?

12 A. Yes.

13 Q. And near the end of that paragraph, it
14 says, "The changeover from automatic to manual
15 steering and vice versa must be supervised by a
16 responsible officer." Do you see that?

17 A. Yes, sir.

18 Q. Do you agree with me that it was Stealth
19 policy to only change over from automatic to
20 manual steering when supervised by a responsible
21 officer?

22 A. Yes, sir.

23 Q. Page Energetic -4181, please.

24 A. -4181.

25 Q. This is about the deck logbook; correct?

1 BROWN - TORCULAS

2 This page?

3 A. Yes, sir.

4 Q. And I'm going to look near the bottom.

5 It says, "All entries pertaining to the
6 navigation of the ship made in the deck logbook
7 should be written up by the officer of the watch
8 before leaving the bridge." Was that your
9 practice, to make sure you wrote all of your deck
10 log entries before you left the bridge?

11 A. Yes.

12 Q. On August 21st after you were relieved,
13 did you complete your deck log entry before
14 leaving the bridge?

15 A. Yes.

16 Q. Did you complete the entry in the GPS
17 logbook that we looked at earlier before you left
18 the bridge?

19 A. Yes.

20 Q. Did you complete your entry in the Bell
21 Book before you left the bridge that morning?

22 A. Yes.

23 Q. Turn one page over, please, to -4183.

24 A. -4183.

25 Q. At the very top of this page, it says,

1 BROWN - TORCULAS

2 "If an engine order printer is not fitted, then
3 engine movements are to be recorded in the deck
4 and engine movement books." Do you see that?

5 A. Yes.

6 Q. The deck movement book, that would be
7 the Bell Book we looked at; right?

8 A. Right, sir.

9 Q. Do you agree with me that Stealth's
10 policy was if your engine telegraph printer was
11 not working, the crew were supposed to make
12 entries in the Bell Book, recording bells?

13 MR. WEIGEL: Objection. You're
14 misrepresenting what this document says.
15 You can answer.

16 THE WITNESS: Say again, sir.

17 BY MR. BROWN:

18 Q. If your engine telegraph printer was not
19 working for any reason, do you think you should
20 have been using the Bell Book to record bells?

21 A. Yes, sir.

22 Q. But you weren't recording bells in the
23 Bell Book on August 21st before the collision;
24 correct?

25 A. No, sir.

1 BROWN - TORCULAS

2 Q. And a little further down on the same
3 page under 2.6.4, Documentary Evidence, it
4 says -- let me back up. Yeah, so immediately
5 below 2.6.4, it says, "All personnel should be
6 made aware that in the event of a marine casualty
7 involving the vessel, all bridge records may be
8 used as documentary evidence in a court of law."
9 Do you see that?

10 A. Yes, sir.

11 Q. We discussed that earlier today in your
12 understanding of this statement; correct?

13 A. Correct, sir.

14 Q. "It is imperative" -- it goes on. "It
15 is imperative that any corrections are made by
16 drawing a single line through the incorrect
17 entry."

18 Now, you didn't make any single
19 line-throughs in the deck logbook or the Bell
20 Book; correct?

21 A. I don't make.

22 Q. Even though those entries were false and
23 wrong, you didn't make a line-through; correct?

24 A. Yes.

25 Q. This goes on to say, "which should be

1 BROWN - TORCULAS

2 initialed by the officer making such correction.

3 Entries should only be corrected by the officer

4 who made the incorrect entry."

5 You never made a correction to your

6 incorrect entries on the deck logbook from

7 August 21st; correct?

8 A. Yes, sir.

9 Q. That's true that you never made a
10 correction, isn't it?

11 A. I don't make correction, yes, sir.

12 Q. Someone else typed something up and
13 stapled it to the logbook, but you never made a
14 line-through and a correction to your entries;
15 right?

16 A. Yes, sir.

17 MR. WEIGEL: This was -- I think this is
18 in already.

19 MR. UNDERHILL: It's Exhibit 28.

20 MR. BROWN: Take it off.

21 (Exhibit 28, M/V ALNIC MC - Master's
22 Standing Orders, Bates Nos. Energetic
23 002645 - 002649, Final Report Safety
24 Investigation, Bates Nos. Energetic
25 006206 - 606240, was previously marked.)

1 BROWN - TORCULAS

2 BY MR. BROWN:

3 Q. I've handed you what has previously been
4 marked as Exhibit 28. It's not Exhibit 343.
5 This is the master's standing orders; correct?

6 A. Yes.

7 Q. This is Captain Nolasco's orders to you
8 and the other deck officers on the ship that
9 applied on August 21st, 2017; correct?

10 A. Yes.

11 Q. You were bound to follow these just like
12 you were bound to follow the GMS manual; correct?

13 A. Correct, sir.

14 Q. On the front page --

15 MR. BROWN: And actually, Alan, let me
16 do this real quick. This is out of order.
17 The pages are out of order. You can see on
18 page -2647, it goes A through G and then H
19 picks up on -264.

20 MR. WEIGEL: I never noticed that
21 before.

22 MR. BROWN: I think that's fine. My
23 request is can you go back and look and make
24 sure there are no missing pages out of
25 order. It's no big deal. Make sure nothing

1 BROWN - TORCULAS

2 is omitted, please. Thank you.

3 BY MR. BROWN:

4 Q. Mr. Torculas, if you could look at the
5 second paragraph under "general."

6 A. Yeah.

7 Q. On the front page of this Exhibit 28, it
8 says, "The second officer shall be responsible
9 for making the passage plan at the start of every
10 voyage." And that was your responsibility;
11 correct, sir?

12 A. Yes, sir.

13 Q. "He shall discuss the plan with the
14 master at the planning stage." Would the
15 planning stage be while your ship was still in
16 Taiwan before you left for Singapore?

17 A. Say again, sir.

18 Q. This makes reference to the planning
19 stage of a passage plan. When do you plan your
20 passage?

21 A. When did I make the plan of this, the
22 passage plan?

23 Q. Yes, sir.

24 A. I prepared the plan before -- before the
25 departure of this Taiwan Strait -- I mean, the

1 BROWN - TORCULAS

2 Taiwan -- Taiwan.

3 Q. Thank you. Before you left Taiwan, you
4 had prepared the passage plan; correct?

5 A. Yes.

6 Q. And did you discuss the plan with the
7 master prior to leaving Taiwan?

8 A. Actually I did not discuss because we
9 already coming come into Singapore going to --
10 it's already known to him.

11 Q. You go there frequently --

12 A. Yes.

13 Q. -- and you know Singapore.

14 A. Yes.

15 Q. So on this trip, you didn't need to
16 discuss --

17 A. No, no need to discuss, sir.

18 Q. Let met finish, please.

19 On this trip, you didn't need to discuss
20 the passage plan in particular with the captain,
21 you think?

22 A. Yeah, that's what I think.

23 Q. We've already looked at the passage plan
24 that applied on your trip from Taiwan to
25 Singapore in August; correct?

1 BROWN - TORCULAS

2 A. Yes.

3 Q. And the captain you saw had signed that
4 passage plan; right?

5 A. Yes, right.

6 Q. So his signature, like yours and the
7 other deck officers, all appeared on that passage
8 plan; correct?

9 A. Correct, sir.

10 Q. Would you agree with me that the captain
11 had signed that passage plan before the collision
12 happened?

13 A. I don't remember, sir. Because I know
14 he signed it before -- before the collision, sir.

15 Q. Thank you. At the very bottom of this
16 standing orders page --

17 A. First page.

18 Q. -- first page. It says, "The lookout
19 shall not leave the bridge without the permission
20 of the officer of the watch. He is not to leave
21 the bridge for coffee or smoke, but shall take it
22 on the bridge. He shall also use bridge toilet
23 facilities." Do you see that?

24 A. Yes.

25 Q. Do you recall whether OS Secang used any

1 BROWN - TORCULAS

2 toilet facilities while you were in the chart
3 room prior to the collision? Do you have any
4 memory of that?

5 A. No.

6 Q. If he went to his stateroom two decks
7 down --

8 A. Uh-huh.

9 Q. -- would you agree with me that that's
10 not using the bridge toilet facilities?

11 A. Yes, he's not using if he's going down
12 because it's how many steps going, two decks.

13 Q. In your logbooks, page -2646, sir --

14 A. -2646.

15 Q. -- it says in the fourth sentence, "Any
16 errors shall be corrected by a line through them
17 and initial above or below." Do you see that?

18 A. Yes -- oh, wait. Yes.

19 Q. That's just like what we read in the GMS
20 manual; correct?

21 A. Yes.

22 Q. And then it says, "The Bell Book is to
23 be kept up to date during pilotage or
24 maneuvering. If the engine data logger is not
25 working, all engine movements are to be

1 BROWN - TORCULAS

2 recorded"; correct?

3 A. Correct, sir.

4 Q. And they're to be recorded in the Bell
5 Book; correct?

6 A. Correct, sir.

7 Q. So you agree with me that with the
8 telegraph printer not working, the Bell Book
9 should have been maintained; correct?

10 A. Absolutely correct, sir.

11 MR. BROWN: Let's take a quick break.

12 (Discussion off record and recess
13 from 1:40 p.m. to 1:42 p.m.)

14 MR. BROWN: I have no other questions at
15 this time. Thank you.

16 MR. WEIGEL: I'm going to have some
17 questions, but does the rest -- are there
18 other questions by counsel on the phone?

19 MR. ROBERTS: No, not as to Tabak
20 Mellusi.

21 MR. CHINIGO: Not from Hofmann &
22 Schweitzer.

23 MR. DRIPPS: None from Dripps.

24 MR. BARTLETT: None from Bartlett.

25 MR. BOATRIGHT: Nothing from Itkin at

1 BROWN - TORCULAS

2 this time.

3 MR. WEIGEL: Anybody else?

4 I just have one issue -- more than one
5 question, but just one issue. This is Alan
6 Weigel for those people on the phone who
7 don't recognize my voice. So I would like
8 the court reporter to mark this bundle of
9 documents.

10 (Torculas Exhibit 344, Contract of
11 Employment, was marked for
12 identification.)

13 CROSS-EXAMINATION

14 BY MR. WEIGEL:

15 Q. Mr. Torculas, I had the court reporter
16 put in front of you a bundle of documents which
17 we had marked as Exhibit 344.

18 A. Yeah.

19 Q. And do you recognize these documents?

20 A. Yes.

21 Q. Tell me what these documents are.

22 A. These are the documents that I had. And
23 on the front page, this is the contract of
24 employment. Do you want me one by one, sir?

25 Q. You don't go through them one by one.

1 WEIGEL - TORCULAS

2 In general, what is this bundle of documents?

3 A. This is for my contract to Stealth.

4 Q. That's the first document. What about
5 the rest of the documents in this bundle? What
6 are they in general?

7 A. These are the certificates that I have.

8 Q. Okay.

9 MR. WEIGEL: I'll represent on the
10 record some of these have been produced.
11 The rest of them the second brought with him
12 to Houston, and we had not seen them before
13 so we want to make sure you had gotten
14 copies of them. I just want to --

15 MR. BROWN: That would have been helpful
16 earlier in the day when I could have looked
17 at it over the break.

18 MR. WEIGEL: We just hadn't got copies
19 made during the break.

20 MR. UNDERHILL: In any event, Alan, we
21 haven't looked through them, but I think we
22 have an idea what they are. For the benefit
23 of the folks on the phone, can you generally
24 describe what the documents are.

25 MR. WEIGEL: Yes, yes. So what we have

1 WEIGEL - TORCULAS

2 is, as Mr. Torculas represented, the first
3 couple of pages are his contract, his
4 current contract with Stealth, and then
5 there is a physical examination report and
6 then the rest of the documents include his
7 licenses, his Philippine license, and then
8 after that it's all of the different
9 training courses, the certificates for the
10 different training courses that he has
11 attended. Most of them are prior to the --
12 prior to the collision. I only really want
13 to reference -- show him one. I'll find it
14 in just a second. The bundle of documents
15 is about 25 or 30 pages long.

16 MR. UNDERHILL: Alan, while you're doing
17 this, see if I've got this right.
18 Exhibit 43 [sic] essentially the current
19 contract that he is going to fulfill when he
20 boards the new Stealth or the next Stealth
21 vessel and the rest of it is essentially his
22 personnel file including prior
23 qualifications, some of which may have
24 existed or come about after the collision
25 and some of his qualifications preexisting

1 WEIGEL - TORCULAS

2 the collision.

3 MR. WEIGEL: Correct.

4 MR. UNDERHILL: Thank you. And there's
5 nothing in there, other than to the extent
6 you think they are relevant, to training for
7 the ALNIC --

8 MR. WEIGEL: Right.

9 MR. UNDERHILL: -- there's nothing
10 specific to this particular collision in
11 that document bunch.

12 MR. WEIGEL: Well, in terms of the
13 collision, there is one document I'm going
14 to refer to, I'm going to ask him about,
15 that probably does have relevance.

16 BY MR. WEIGEL:

17 Q. I'm going show to you one document which
18 I think we should mark separately as
19 Exhibit 344A.

20 (Discussion off record)

21 MR. WEIGEL: This is the document I want
22 to refer to.

23 MR. UNDERHILL: There are no Bates
24 stamps on this; correct?

25 MR. WEIGEL: No. We just got them

1 WEIGEL - TORCULAS

2 today.

3 MR. UNDERHILL: That's not a criticism.

4 I'm just trying to --

5 MR. WEIGEL: No, no. I'm just trying to

6 say the reason there's no Bates stamp

7 numbers is because we just got it today.

8 MR. UNDERHILL: Thank you.

9 (Torculas Exhibit 344A, SEATRAN

10 Certificate Safe Navigation Course, was

11 marked for identification.)

12 BY MR. WEIGEL:

13 Q. Okay. Mr. Torculas, I'm going to put in

14 front of you a document which the court reporter

15 marked as Exhibit 344A. And could you tell me

16 what that document is?

17 A. What this document is for, this is for

18 the safe navigation course. It means for the

19 passage planning and the chart correction for the

20 publications following with the agendas of the

21 company together with the ECDIS, how to use.

22 Actually it's written also at the back.

23 Q. And when did you attend that course?

24 A. February of 2017 before I joined

25 ALNIC MC.

1 WEIGEL - TORCULAS

2 Q. And where did you -- this says at the
3 top SEATRRAIN Maritime Training Center. Where is
4 SEATRRAIN Maritime Training Center?

5 A. It was conducted in the Philippines,
6 sir, in-house.

7 Q. In-house with Selandia? Is that what
8 you're referring to?

9 A. Yes, sir.

10 Q. And if you look on the back page, was
11 there any training included in this course on
12 bridge watch level manning?

13 A. Sir, on this chart, which was watch
14 level -- yes, sir, it is in here.

15 MR. WEIGEL: Okay. I have no further
16 questions.

17 MR. BROWN: I have a follow-up only
18 because you mentioned Mr. Torculas having
19 received ECDIS training at this event.

20 THE WITNESS: Yes, we have -- what they
21 call this -- a simulator, yeah, a simulator
22 on the ECDIS.

23 REDIRECT EXAMINATION

24 BY MR. BROWN:

25 Q. So this class lasted from February 1st

1 BROWN - TORCULAS

2 to February 3rd; correct?

3 A. Yes. Correct, sir.

4 Q. So it was two or three days long; right?

5 A. Yes.

6 Q. Have you had other ECDIS training in
7 your career --

8 A. Plenty.

9 Q. -- prior to the collision?

10 A. Plenty, sir.

11 Q. Okay. Were you already ECDIS certified
12 by the time you took this course?

13 A. Which one, sir? Come again.

14 Q. Were you certified for ECDIS operation?

15 A. Yes, I am.

16 Q. Were you certified before you took this
17 class?

18 A. Yes, I am.

19 Q. And then in the three-day class, you
20 studied all of the topics on the back page of
21 Exhibit 344A; correct?

22 A. Correct, sir.

23 Q. Did you take home any records or a
24 certificate from this class besides what we're
25 holding here? I don't want you to look through

1 BROWN - TORCULAS

2 your records. I don't want to take the time.

3 But did you get any -- did you take any tests
4 that they let you keep after you took this class?

5 A. Yes, we have one. What do they call
6 this? A brief examination in the Philippines
7 after this training.

8 Q. Did they give you a book --

9 A. Yeah.

10 Q. I didn't mean to interrupt you. I'm
11 sorry.

12 Did they give you a book or any printed
13 material to keep when you took this class?

14 A. Yes, but a thin one only, sir. A thin
15 one.

16 Q. A thin one only. But you got some
17 material from this course; right?

18 A. Yes. Still have.

19 MR. BROWN: I have no other questions.

20 MR. WEIGEL: Anyone else? I guess not.

21 Okay. Thank you very much.

22 (Witness excused)

23 (Whereupon, the deposition was
24 concluded at 1:51 p.m.)

25 - - -

1 BROWN - TORCULAS
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ATTESTATION

I, the undersigned, have read the foregoing transcript, and, with the exception of any corrections specified on the attached correction sheet, attest it constitutes a true and correct transcription of my testimony given at the time and place specified therein.

(Signed): _____
SECOND OFFICER PHILIP G. TORCULAS

WITNESS: _____

DATE: _____

1 ERRATA SHEET

2 STATE OF GEORGIA)
)
3 COUNTY OF CHATHAM)

4 I wish to make the following changes for
5 the following reasons:

6 PAGE LINE

7 _____ CHANGE: _____

8 REASON: _____

9 _____ CHANGE: _____

10 REASON: _____

11 _____ CHANGE: _____

12 REASON: _____

13 _____ CHANGE: _____

14 REASON: _____

15 _____ CHANGE: _____

16 REASON: _____

17 _____ CHANGE: _____

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20 REASON: _____

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23 (Signed) _____

SECOND OFFICER PHILIP G. TORCULAS

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CERTIFICATE

G E O R G I A :
CHATHAM COUNTY :

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing Pages 1 through 227 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 28th day of May, 2019.

Georgia J. Winegeart, RPR, CCR 2848

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