

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FRANCISCO ORTEGA GARCIA,)	
Individually and as)	
Surviving Husband of)	
PATRICIA GUADALUPE GARCIA)	
CERVANTES, and as)	
Successor-in-Interest to)	
the Estate of PATRICIA)	CIVIL ACTION NO.
GUADALUPE GARCIA)	1:17-cv-00028
CERVANTES; AND as Next of)	
Friend of V.S.O.G., a)	
minor child,)	
Plaintiffs,)	
v.)	
UNITED STATES OF AMERICA,)	
MERCURY MARINE, a division)	
of BRUNSWICK CORPORATION,)	
and SAFE BOATS)	
INTERNATIONAL, L.L.C.,)	
Defendants.)	

The complete videotaped deposition
testimony upon oral examination of BRANDON MICHAEL
RAE, taken on behalf of the Plaintiffs, in Yorktown,
Virginia, on April 25, 2018.

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15 Also Present:

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17 Reid Attaway, Videographer

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1 I N D E X

2 WITNESS

3 ON BEHALF OF THE PLAINTIFF: PAGE

4 BRANDON MICHAEL RAE

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1 Videotaped deposition upon oral
2 examination of BRANDON MICHAEL RAE, taken on behalf of
3 the Plaintiffs, before Rebecca L. Braley, RMR, CRR, a
4 Notary Public for the Commonwealth of Virginia at
5 Large, commencing at 9:45 a.m., on the 24th day of
6 April, 2018, at the offices of York County Chamber of
7 Commerce, 4102 George Washington Memorial Highway,
8 Suite 101, Yorktown, Virginia.

9 THE VIDEOGRAPHER: We are now on the
10 video record. This is the beginning of Disk Number 1
11 to the videotaped deposition of Brandon Rae.

12 This deposition is being held at the
13 Yorktown Chamber of Commerce, in Yorktown, Virginia.

14 My name is Reid Attaway, and I will be
15 the videographer today. The court reporter today is
16 Rebecca Braley.

17 Would counsel please introduce yourselves
18 and state your affiliations.

19 MR. VILLARREAL: Javier Villarreal for
20 the plaintiffs. I represent Francisco Ortega Garcia
21 individually and as husband of Patricia Guadalupe
22 Garcia Cervantes, successor-in-interest of Patricia
23 Guadalupe Garcia and next friend of VSOG, a minor
24 child.

25 MS. DELEMARRE: Michelle Delemarre on

1 behalf of the United States.

2 MR. GRAY: Lieutenant Glenn Gray, agency
3 counsel, United States Coast Guard.

4 MS. LEONARD: Kelly Leonard of Clark,
5 Hill, Strasburger for Safe Boats International.

6 And appearing by phone, we have Elizabeth
7 Herrera for Mercury Marine.

8 THE VIDEOGRAPHER: Will the court
9 reporter please swear in the witness.

10 BRANDON MICHAEL RAE, called as a witness,
11 having been first duly sworn, was examined and
12 testified as follows:

13 EXAMINATION

14 BY MR. VILLARREAL:

15 Q. Sir, good morning.

16 A. Good morning, sir.

17 Q. Can you please state your full name for
18 the record.

19 A. My name is Brandon Michael Rae.

20 Q. Mr. Rae, my name is Javier Villarreal.

21 A. Yes, sir.

22 Q. And I represent the husband of Patricia
23 Garcia, and also I represent Patricia Garcia's estate
24 as well as Patricia Garcia's daughter. Do you
25 understand who I represent?

1 A. Yes, sir.

2 Q. And do you understand that we are here
3 today for an incident that occurred April 23rd, 2015,
4 in the Brownsville ship channel, down in Brownsville,
5 Texas?

6 A. Yes, sir.

7 Q. Where are we located today?

8 A. We are located in Yorktown, Virginia, at
9 the Chamber of Commerce.

10 Q. So approximately about 1,000 miles from
11 where this incident occurred?

12 A. Yes, sir.

13 Q. Okay. So that you know, your testimony
14 today is being recorded both by videographer in front
15 of you and a court reporter sitting to your right. I
16 would ask that all of your responses be verbal
17 responses. No uh-uhs or uh-huhs. Because the court
18 reporter can't -- won't be able to tell what your
19 answer is. Okay?

20 A. Yes, sir.

21 Q. Do you understand that this video
22 deposition is under testimony -- is under oath?
23 Excuse me.

24 A. Yes, sir.

25 Q. And this testimony that you are giving

1 today will be played to a federal district judge down
2 in South Texas, the Southern District of Texas, the
3 Brownsville division. Do you understand that?

4 A. Yes, sir.

5 Q. I don't expect that you will be
6 testifying live down in South Texas. I may be
7 mistaken. But for all intents and purposes, today's
8 deposition can be used as testimony in this trial.
9 Okay?

10 A. Yes, sir.

11 Q. If you don't understand one of my
12 questions, I don't want you to guess what the question
13 is. Just simply ask me and I will rephrase it so that
14 you can understand the question. Okay?

15 A. Yes, sir.

16 Q. I will give you a general outline of what
17 we are going to do today. I am going to ask you some
18 background, some personal information and then I want
19 to go into your training with the U.S. Coast Guard,
20 then we are going to go through some of the
21 navigational rules that you may have learned about
22 while you were attending the U.S. Coast Guard Academy
23 and then after that we will get into the incident of
24 April 23rd, 2015 and then we will talk a little bit
25 about the boat, how it is made and so forth. Okay?

1 A. Yes, sir.

2 Q. Can you please tell me: Where were you
3 born, Mr. Rae?

4 A. I was born in Albuquerque, New Mexico.

5 Q. And what is your current age?

6 A. I am 29 years old.

7 Q. So how old were you on April 23rd of
8 2015?

9 A. I would have been 27, 26.

10 Q. Okay. So April 23rd, 2015 is --

11 A. 26.

12 Q. -- approximately three years ago, right?

13 A. Yes, sir.

14 Q. And today is Wednesday. So Monday would
15 have been I believe the three-year anniversary of this
16 incident, correct?

17 A. Yes, sir.

18 Q. So you would have been about 26 years
19 old?

20 A. 26. Yes, sir.

21 Q. Did you grow up in Albuquerque?

22 A. No, sir. I grew up in Houston, Texas.

23 Q. What high school did you attend?

24 A. I attended Jersey Village High School.

25 Q. Where is that located?

1 A. It is in Jersey Village, Texas, right
2 outside of Houston.

3 Q. What year did you graduate high school?

4 A. I graduated 2007.

5 Q. Other than attending the U.S. Coast Guard
6 Academy, what is your highest level of education after
7 high school?

8 A. I have some college currently.

9 Q. As of April 23rd of 2015, how many
10 college hours have you had or how many years of
11 college?

12 A. Probably around 30 credit hours at the
13 time.

14 Q. That would be equivalent to how many
15 semesters, if you know?

16 A. I am not sure off the top of my head. It
17 is online college.

18 Q. Online?

19 A. Yes, sir.

20 Q. What online college did you -- did you
21 participate in?

22 A. Ashford University.

23 Q. And where are they located?

24 A. Out of San Diego, California.

25 Q. And what -- what were you pursuing? What

1 degree were you pursuing?

2 A. Business and entrepreneurship.

3 Q. And you did not attain a diploma?

4 A. I do not have one currently.

5 Q. Prior to attending the U.S. Coast Guard
6 Academy, what experience, if any, did you have
7 operating a vessel on the water?

8 A. I had no experience.

9 Q. No recreational experience on the water?

10 A. No, sir.

11 Q. No boating experience?

12 A. No, sir.

13 Q. Are you married?

14 A. I am married.

15 Q. It is my understanding you were married
16 back in 2015?

17 A. Yes, sir.

18 Q. What is your wife's name?

19 A. Rebecca.

20 Q. Last name, please.

21 A. Rae, R-a-e.

22 Q. Maiden name?

23 A. Is Way, W-a-y.

24 Q. It is also my understanding that
25 April 23rd, 2015, you had a -- you had a newborn?

1 A. I did. I had a newborn at the time.

2 Q. How many children do you have now?

3 A. I have two, sir.

4 Q. What is the oldest one's name?

5 A. James.

6 Q. And how old is he now?

7 A. He is three now.

8 Q. And the younger -- younger one?

9 A. Is Nate, Nathaniel.

10 Q. How old is Nate?

11 A. He is one.

12 Q. I want to fill in the gap between your
13 high school graduation and your attendance with the
14 U.S. Coast Guard Academy as far as employment is
15 concerned. When did you first obtain a job? Was it
16 right after high school, or did you work during high
17 school?

18 A. I worked during high school.

19 Q. Where did you work? What was your first
20 place of employment?

21 A. Kroger.

22 Q. And that was -- was that in 2007?

23 A. No, sir. I started working there back in
24 2004.

25 Q. What is your date of birth?

1 A. September 5th, 1988.

2 Q. So you would have been, what, 16 years
3 old?

4 A. Yes, sir.

5 Q. How long were you working at Kroger?

6 A. I worked at Kroger for about three years.
7 2007 is when I stopped working for Kroger.

8 Q. What was your position there, your
9 highest position there?

10 A. I was a customer service.

11 Q. Where did you work after Kroger?

12 A. I worked at a drug and alcohol
13 rehabilitation facility in Center Point, Texas.

14 Q. The name of the drug and rehab facility?

15 A. Starlight. It is spelled l-i-t-e,
16 though.

17 Q. From what year to what year?

18 A. I worked there from 2007 to 2009.

19 Q. And what was your job title there?

20 A. I was there -- I was a cook there.

21 Q. After working at the drug and rehab
22 facility, is that when you -- after that, did you join
23 the U.S. Coast Guard?

24 A. Yes, sir.

25 Q. There wasn't any other type of employment

1 in between the rehab facility and the -- and the Coast
2 Guard?

3 A. No, sir.

4 Q. What branch of government is the United
5 States Coast Guard?

6 A. Fall under the Department of Homeland
7 Security.

8 Q. And what motivated you to apply to the
9 U.S. Coast Guard?

10 A. My father worked a lot with different
11 Coast Guard members down at the Port of Houston, and I
12 was trying to decide what I wanted to do. I started
13 researching the job, the different, various jobs, and
14 became intrigued with the Coast Guard and decided to
15 join.

16 Q. How old were you when you joined the U.S.
17 Coast Guard?

18 A. I would have been 21.

19 Q. Is your father a -- ever been a captain
20 of a vessel?

21 A. No, sir.

22 Q. How -- just briefly, how did your father
23 work with the U.S. Coast Guard, in what sense?

24 A. He is a ship agent down in the Port of
25 Houston.

1 Q. Like a broker?

2 A. No. He represents foreign vessels as
3 they come into the United States.

4 Q. Like administratively?

5 A. For various needs.

6 Q. Take us briefly through your -- through
7 your U.S. Coast Guard career leading up to your
8 assignment of -- at Coast Guard South Padre Island.
9 Explain to the judge: Did you have to attend formal
10 training for -- like, boot camp with the U.S. Coast
11 Guard?

12 A. Yes, sir.

13 Q. How long was the boot camp?

14 A. Boot camp was eight weeks long.

15 Q. And where did you attend boot camp?

16 A. Attended boot camp in Cape May, New
17 Jersey.

18 Q. And what did boot camp consist of just
19 generally?

20 A. Got me prepared for a -- kind of more of
21 a military lifestyle. I learned various ranks and
22 rates of jobs and positions in the Coast Guard, the
23 various jobs that the Coast Guard has, basic
24 seamanship, line handling, tying knots. All very
25 basic nautical in relation to the Coast Guard.

1 Q. So it was a classroom setting where you
2 learned the rules of the road and so forth?

3 A. No, sir.

4 Q. Was it a classroom setting where you were
5 given textbooks regarding seamanship?

6 A. Yes, sir. We did have various textbooks
7 regarding seamanship and other -- other different
8 classes that we took while we were there.

9 Q. Was it a combination of, like, physical
10 exercise with some seamanship classes?

11 A. Yes, sir.

12 Q. While you were at boot camp, did you ever
13 board a vessel?

14 A. No, sir.

15 Q. Did you have to pass any written exams
16 having to do with navigation or having to do with
17 vessels in general while at boot camp?

18 A. Nothing to do with navigation but it was
19 more so learning classes and different types of boats
20 the Coast Guard has. Very basic.

21 Q. And so boot camp was your first exposure
22 to the U.S. Coast Guard?

23 A. Yes, sir.

24 Q. What happened after -- after boot camp?
25 Where would you -- did you attend any more training?

1 A. I -- after I left boot camp, I got
2 stationed down in the aids and navigation team, Port
3 O'Connor, Texas.

4 Q. Explain what aids and navigations team
5 entails.

6 A. So we worked the channels and waterways,
7 the markings, the lights, the buoys, within the ICW
8 and out within our AOR down in Port O'Connor.

9 Q. Okay. So ICW stands for intercoastal
10 waterways?

11 A. Correct.

12 Q. And AOR stands for what?

13 A. Area of responsibility.

14 Q. So you were aids and navigations team for
15 the ICW. What does that mean? Does that mean you
16 repair them or you --

17 A. You repair them, set new ones, set new
18 buoys, would replace things as they would get -- the
19 lights would extinguish. We would replace the lights.

20 Q. So the boaters, recreational boaters,
21 heading down the intercoastal canal in South Texas,
22 for example, and there are markers, there are green
23 markers, which are triangular, and there are red
24 markers, which are squares, all of those markers
25 belong to the U.S. government, is that correct?

1 MS. DELEMARRE: Object to form.

2 THE WITNESS: The question, could you --

3 BY MR. VILLARREAL:

4 Q. The markers down the intercoastal canal,
5 the green ones and the red ones, are you familiar with
6 those?

7 A. Yes, sir. I am familiar with the green
8 ones and the red ones.

9 Q. Okay. Do they belong to the U.S.
10 government?

11 A. Correct.

12 Q. And so the U.S. government is in charge
13 of maintaining those markers?

14 A. Correct.

15 Q. And you were in charge of maintaining
16 them when you were at Port O'Connor, correct?

17 A. When I was stationed there. Yes, sir.

18 Q. Were you -- how much experience did you
19 have on a vessel or what rank -- what was your highest
20 rank achieved when you were at Port O'Connor?

21 A. I was only to E-3, enlisted.

22 Q. What does that mean?

23 A. That means that I was still a nonrated
24 personnel. I didn't have a job-specific type task. I
25 was still learning. I was coming up. I was a seaman

1 just in training.

2 Q. Would you be considered a crew member?

3 A. I was a crew member when I was there. I
4 achieved crew member.

5 Q. And how long were you at Port O'Connor?

6 A. I was at Port O'Connor for three years.

7 Q. And what was your highest rank attained
8 at -- when you were -- when you left Port O'Connor?

9 A. I was an E-3 when I left Port O'Connor.

10 Q. How far is, if you know, Port O'Connor
11 from the U.S./Mexican border?

12 A. I am not sure off the top of my head,
13 sir.

14 Q. How far is Port O'Connor from South Padre
15 Island?

16 A. I am not sure. I would estimate about a
17 six-hour drive.

18 Q. Is Port O'Connor near Houston?

19 A. Port O'Connor is near Victoria, Texas.

20 Q. On the coast?

21 A. Port O'Connor is on the coast.

22 Q. South of Houston?

23 A. Be west of Houston.

24 Q. Okay. So approximately 250 miles from
25 the U.S./Mexican border?

1 A. I am not sure, sir.

2 Q. Just generally speaking, did you do any
3 patrols when you were at Port O'Connor or you were
4 just doing the -- fixing the navigation aids?

5 A. Solely just fixing the navigation aids.

6 Q. Do you -- was there a -- to your
7 knowledge, when you were at Port O'Connor, was there a
8 heavy traffic of UDAs, undocumented aliens, in Port
9 O'Connor?

10 A. Not to my knowledge.

11 Q. Was there interdictions that were being
12 conducted by U.S. Coast Guard vessels in Port O'Connor
13 of UDAs, undocumented aliens?

14 A. Not to my knowledge.

15 Q. How many hours did you acquire on the
16 water, on the vessel, while at Port O'Connor just
17 generally speaking?

18 A. We were underway about two to three times
19 per week for a couple of hours depending on what aids
20 we had to work on, how far away they were. Depended
21 on how long it would take us to get there, work the
22 aid and get back.

23 Q. About 300 hours underway?

24 A. I don't have a good estimate for that,
25 sir.

1 Q. You weren't certified to operate any
2 vessels while you were at Port O'Connor?

3 A. No, sir.

4 Q. The first time you were certified to
5 operate a vessel wasn't until you got to South Padre
6 Island Coast Guard Station?

7 A. Correct, sir.

8 Q. Do you recall when you arrived or when
9 you were assigned to Coast Guard Station South Padre
10 Island?

11 A. I was assigned there at September
12 of 2013.

13 Q. And if you recall, how many vessels were
14 being -- were being used or were available for patrol
15 at South -- Coast Guard Station South Padre Island in
16 September of 2013, when you first arrived there?

17 A. We had five vessels attached to the
18 station.

19 Q. Let's just go through them briefly, if
20 you want, from the smallest vessel to the largest
21 vessel. What was the -- what was the smallest vessel?

22 A. Smallest vessel we had at the time was a
23 24-foot, shallow-water vessel made by Metal Shark.
24 And then we had three 33-foot special purpose craft
25 law enforcement vessels. And we had one 41-foot

1 utility boat.

2 Q. What was the use of the 24-foot shallow
3 vessel?

4 A. The use of the 24-foot, the idea behind
5 it was there is a lot of shallows and flats around the
6 area and the arroyo and various areas down in that
7 area. So that was more of a shallow-response asset.

8 Q. Was that vessel used for drug or alien
9 interdictions missions or was it more for boarding
10 recreational vessels and inspecting them?

11 A. Not to my knowledge. It was
12 decommissioned shortly after I was there. So they got
13 rid of the vessel.

14 Q. Did you -- did you spend any time on that
15 vessel on the water?

16 A. No, sir.

17 Q. The three vessels, the special -- the
18 SPC-LE?

19 A. Yes, sir.

20 Q. What does SPC stand for?

21 A. Special purpose craft.

22 Q. And you say there was three of them when
23 you first arrived to South Padre Island. Were all
24 three of them the same type of vessel that is in
25 question today --

1 A. Yes, sir.

2 Q. -- the 33-foot special craft law
3 enforcement vessel?

4 A. Yes, sir.

5 Q. They were all identical?

6 A. Yes, sir.

7 Q. And all three of them had three outboard
8 engines?

9 A. Correct.

10 Q. And what was the purpose or use of the
11 41-foot utility boat?

12 A. The 41-foot utility boat was a response
13 boat. It was also for search and rescue or for
14 boardings. It was shortly after replaced by a 45-foot
15 vessel.

16 Q. I would like to talk just briefly about
17 the different purposes of these three different types
18 of vessels. Is the SPC-LE, which is the subject of
19 today's conversation, was that the only vessel that
20 was used -- type of vessel that was used for drug
21 interdiction in the Brownsville ship channel and also
22 illegal aliens, interdiction of illegal aliens?

23 A. No, sir.

24 Q. Which other vessels were used for that
25 purpose?

1 A. The 45 was used for that purpose, as
2 well, and the 41 before it disappeared or before we
3 got rid of the 41.

4 Q. The 41 and the 45, were they used in the
5 Brownsville ship channel?

6 A. They were.

7 Q. Do you know right off the bat what the
8 41-foot would draft?

9 A. I do not.

10 Q. What the 45 would draft?

11 A. Six feet.

12 Q. And how much would the 33 draft?

13 A. About six feet, as well, sir.

14 Q. Who makes the 45-foot vessel?

15 A. I can't remember off the top of my head,
16 sir.

17 Q. It is not Safe Boats?

18 A. It is not Safe Boats.

19 Q. Is that inboard engine or outboard
20 engine?

21 A. It is an inboard.

22 Q. Do you know the horsepower on that one?

23 A. There is two engines on there, and they
24 are about 400 horses apiece.

25 Q. Would the 33-foot SPC-LE be used in open

1 water?

2 A. Yes, sir.

3 Q. Meaning, offshore?

4 A. Yes, sir.

5 Q. Would the 24-foot be used in open water?

6 A. I am not sure, sir. I was never underway
7 on that vessel.

8 (Exhibit No. 1 was marked.)

9 BY MR. VILLARREAL:

10 Q. This is your notice of deposition, and I
11 am going to attach that as Plaintiffs' Exhibit
12 Number 1. It is going to be attached to this
13 deposition. It is just -- it is nothing really for
14 you to read. It is just notifying that we are having
15 the deposition -- the deposition here today. Okay?

16 A. Yes, sir.

17 Q. If you can hand that back to me.

18 (Exhibit No. 2 was marked.)

19 BY MR. VILLARREAL:

20 Q. I am going to hand over to you what I
21 have marked as Exhibit Number 2 to Rae's deposition,
22 and this is an interview of Lieutenant Michael Bell,
23 commanding officer of Station South Padre Island. And
24 it was -- it was made on Monday -- on Monday, May 11,
25 2015.

1 MS. DELEMARRE: Did you bring copies for
2 us of the exhibits?

3 MR. VILLARREAL: I did not. But I am
4 going to put it on the screen. And I do have the
5 entire --

6 MS. LEONARD: Can you send them to us?
7 Can you send all of the exhibits to us in a file
8 transfer link after the depo?

9 MR. VILLARREAL: Sure. Sure.

10 MS. LEONARD: Thank you.

11 MR. VILLARREAL: I am going to put them
12 up on the screen. I am going to put the Exhibit
13 Number 2 on the -- on the projector so that we all can
14 follow along. And, again, I apologize for not
15 bringing hard copies. I am going to be reading from
16 the projector, as well. Can I borrow that, please,
17 Mr. Rae? I am going to read the numbers into the
18 record.

19 Just for the record, I am handing over
20 Exhibit Number 2, which are Plaintiffs' Bates Stamp
21 13289 through Plaintiffs' Bates Stamp 13296, U.S.
22 Coast Guard Bates Stamp 4417 through U.S. Bates Stamp
23 4424. And that is what I have put up on the
24 projector.

25 BY MR. VILLARREAL:

1 Q. Can you see the -- what I have
2 highlighted on the screen? Should I refer to you as
3 Officer Rae? Or what would be the proper title?

4 A. Petty Officer Rae is fine.

5 Q. Can I call you Officer Rae? Petty
6 Officer Rae?

7 A. Petty Officer Rae. Yes, sir. He would
8 be officer, sir.

9 Q. Petty Officer Rae, the document that you
10 have in front of you, Exhibit Number 2, is it the same
11 document that is on the projector or on the screen?

12 A. The first page appears the same.

13 Q. We can go to the second page. I will
14 represent to you that this is the complete copy of the
15 summary interview of Lieutenant Michael Bell, and you
16 have a copy there in front of you. The only
17 difference being is that the one on the screen is
18 highlighted, and we are just going to go through the
19 highlighted areas for purposes of this deposition.
20 And you do have a complete copy in front of you,
21 correct, Petty Officer Rae?

22 A. Yes, sir. Sorry.

23 Q. And being that you have a complete copy
24 in front of you, if there is anything that you want to
25 add to your -- to your deposition or any comments that

1 you want to make, feel free to read through it or fill
2 in any gaps that you want to comment on. Okay?

3 A. Yes, sir.

4 MS. LEONARD: Objection. Form.

5 BY MR. VILLARREAL:

6 Q. So we will look at the -- if you will
7 look at the screen over here, I think it will go a
8 little bit faster, Petty Officer Rae. Do you agree
9 with me that Michael Bell was commanding officer,
10 Station SPI, since late June of 2014? Does that seem
11 accurate to you?

12 A. Yes, sir.

13 Q. And you arrived there in April -- excuse
14 me. What month of 2013?

15 A. September.

16 Q. September of 2013?

17 A. Yes, sir.

18 Q. September. So you had been -- you had
19 already been at Station SPI about nine months when
20 Lieutenant Michael Bell first arrived to -- was
21 assigned to Station SPI?

22 A. Yes, sir. That sounds about right.

23 Q. I want to talk about the first -- your
24 first nine months at Station -- Station SPI before
25 Lieutenant Michael Bell arrived. Okay. I want to

1 focus on that for a bit. And I want you to tell me
2 whether you agree or disagree with Lieutenant Bell's
3 assessment of the station back in -- when he first
4 arrived. I am going to turn your attention to the
5 first paragraph, which is highlighted, which begins,
6 "When I reported." Can you see the projector from
7 there?

8 A. Yes, sir.

9 Q. Okay. And you are -- feel free to
10 follow, if you want, on that document, since it is not
11 highlighted. "When I reported, the training program
12 was virtually nonexistent. The TPO had transferred
13 out" of "the same day" -- "out on the same day as the
14 change of command. There was no expectation" of "crew
15 training. There was a timeline indicated in the SOP,
16 but no one was held accountable to stay on their
17 timeline for" qualifications.

18 Do you agree or disagree with that
19 statement?

20 A. I agree. It was a little -- the word I
21 am looking for.

22 Q. Disorganized?

23 A. It was a little disorganized. Yes, sir.

24 Q. Explain to the judge, what do you mean?
25 So there was timelines that you had to meet and

1 anybody else that was there with the U.S. Coast Guard
2 had to meet as far as training is concerned?

3 A. Yes, sir.

4 Q. And those timelines were not being met
5 because there was a problem with the training regimen?

6 A. I am not aware of the training deadlines
7 not being met. But as far as the organization for
8 making sure that everything was set in stone, it was
9 slightly disorganized.

10 Q. Okay. You would be -- in other words,
11 you had deadlines but, then, the missions would fall
12 through or the training would fall through or people
13 would show up late? Or in what way -- can you explain
14 to the judge: How was it disorganized?

15 A. The best way I guess I can describe it is
16 it just wasn't fluent, it was -- just there was items
17 that were disorganized. And I think that depended on
18 person to person not on one person individually. So
19 it was whether or not a person took the initiative to
20 continue on and complete their training to the fullest
21 as opposed to somebody who didn't do so.

22 Q. So are you saying that there wasn't any
23 pressure being applied to -- to the petty officers or
24 the officers that were there, the crewmen, to get
25 their training done, it was more of a personal thing

1 on your personal schedule or --

2 A. It was pretty much on the member to seek
3 out the assistance, to seek out the time to get
4 underway, to ask the supervisors and the people
5 appointed above them to have the time to go out and
6 train.

7 Q. And as far as your perception of this
8 method back then, prior to Lieutenant Bell arriving to
9 SPI, is that something that you were in agreement with
10 or do you wish it had been a little bit more rigid or
11 a little bit more -- a little bit more -- do you feel
12 you should have gotten pushed along a little bit more
13 by the commanding officers?

14 A. I felt as if the people that I was
15 working with did a good job of helping me out and
16 working with me personally. As for other individuals
17 at the unit, I can't speak for them.

18 Q. Bottom of the screen there, the next
19 paragraph I will read out. "Little to no training
20 oversight existed." Do you agree with that statement
21 prior to the time of Bell's arrival?

22 A. There was training but a lot of times
23 operations and various patrols would sometimes get in
24 the way of training and eventually would take
25 precedence over training.

1 Q. Okay. I will continue. "Training
2 operations were limited and break-ins were struggling
3 to get underway time to qualify. The timelines that
4 were indicated in the SOP were not reasonable. I
5 don't believe the command was doing a good job of
6 tracking timelines, especially the TO who was
7 responsible to do that function." Do you agree or
8 disagree with that statement?

9 A. I agree.

10 Q. Can you elaborate a little bit on that,
11 the -- it says, "I don't believe the command was doing
12 a good job of tracking timelines." Who -- who would
13 be the command? The previous commander?

14 A. Would be the previous commander.

15 Q. And who was the previous commander?

16 A. His name was Lieutenant Saegers.

17 Q. Do you agree with me that training was
18 pretty lax at SPI Station prior to Lieutenant Bell's
19 arrival?

20 A. I wouldn't say that the training was lax.
21 It was just solely on a person to push for the
22 training, an individual who wanted the training to
23 push for it.

24 Q. The next highlighted portion. "I took
25 notice that our Operations Chief assigned to STA SPI

1 for about 2 years prior to my arrival had no
2 qualifications for any of the platforms." What does
3 that mean?

4 A. Meaning that the person who was put in
5 that position did not currently hold any
6 qualifications or certifications for the various
7 platforms we had at our unit.

8 Q. And what do you mean by platforms?

9 A. The vessels.

10 Q. So the person that was in charge of the
11 assignments, what is -- had no experience on those
12 vessels? He was in charge of what sort of
13 assignments? Assigning people on the vessels?

14 A. As per this, he was in charge of
15 operations and planning the operations and making the
16 timelines for our operations. And as far as not
17 having experience on said platforms, I am not -- I
18 have no insight on whether or not he has had prior
19 training on any of the said vessels.

20 Q. It says here in Lieutenant Bell's
21 narrative report, "The OPS" -- the operations chief --
22 "could not perform his department head job and qualify
23 at the same time; as a result, I put him on
24 performance probation and eventually relieved him" of
25 his -- "relieved him as" operations chief. Operations

1 chief. What does that mean, if you know?

2 A. To me it is just he couldn't perform what
3 he needed to do and the commanding officer took action
4 on that. But I am unsure of what all was entailed in
5 that decision-making process.

6 Q. Okay. And so the operations chief, I
7 guess, officer was a -- was a position higher than
8 you?

9 A. Was. Correct.

10 Q. And he was a person that was in charge of
11 your training regimen?

12 A. He was more so in charge of the
13 operations regimen, the actual missions.

14 Q. And so who was in charge of your
15 training?

16 A. We had a TPO. It was the individual we
17 discussed earlier. Training petty officer is what TPO
18 stands for.

19 Q. Next page, Plaintiffs' Bates Stamp 13290,
20 U.S. Bates stamp 4418. Top of the page. "Training
21 program was marginal at best," is what Lieutenant Bell
22 is saying. Do you agree with that statement or not?

23 A. I agree. My previous point still stands.
24 I really felt like it was up to the member to really
25 push for it.

1 Q. And so you would -- obviously, you --
2 when he arrived, you had already been there nine
3 months. So you have personal knowledge of what it was
4 like before he arrived?

5 A. Correct.

6 Q. And you would have had firsthand
7 knowledge of a lot of -- a lot of what he is writing
8 about, correct?

9 A. A lot of what the lieutenant is writing
10 about?

11 Q. Yes.

12 A. Some of which sounds familiar.

13 Q. I have highlighted, "We've had about 3-4
14 people on performance probation because they had
15 met" -- "they had met timeline requirements per unit
16 policy." Let me read that again. "We've had about
17 3-4 people on performance probation because they had
18 met timeline requirements per unit policy." What does
19 that mean?

20 A. To my knowledge, there was individuals
21 who went past the timelines that were put for them so,
22 therefore, they would put on a performance probation.

23 Q. Okay. Were you one of those individuals
24 that went past their timeline?

25 A. I was not. At this time, no.

1 Q. The next highlighted paragraph on the
2 screen, "The previous command did not allow break-ins
3 to be on any operations missions. Through sector
4 OPD" -- what does sector OPD mean? OPD?

5 A. Operations. I am not sure exactly what
6 the acronym is but it has to do with operations and it
7 is sector level.

8 Q. "Through sector OPD, we're required to be
9 on the U.S.-Mexican border every day. This is a
10 four-five hour patrol. If no break-ins are allowed,
11 that's a missed opportunity. So we open that up for
12 them; experience is just as important as dedicated
13 training."

14 So is it my understanding that prior to
15 Lieutenant Bell's arrival to SPI the break-ins were
16 not being allowed to take control of the vessel?

17 MS. DELEMARRE: Object to form.

18 BY MR. VILLARREAL:

19 Q. Or what -- from your personal experience,
20 were break-ins -- I guess break-in coxswains were not
21 allowed to operate vessels during missions or were
22 they allowed to operate the vessels?

23 MS. LEONARD: Form.

24 MS. DELEMARRE: Object to form.

25 THE WITNESS: I am having trouble

1 understanding the question, sir.

2 BY MR. VILLARREAL:

3 Q. Okay. And we are going to get into this
4 later on. It is my understanding that -- was it Petty
5 Officer Mondrala? Was he a petty officer back then?

6 A. Correct.

7 Q. Was a break-in coxswain when this
8 incident occurred?

9 A. Yes, sir.

10 Q. And from reading this document, I am
11 understanding that Lieutenant Bell would allow for
12 break-in coxswains to take over the -- over the vessel
13 during missions and operations, is that -- is that
14 correct?

15 A. That is correct.

16 Q. Prior to Lieutenant Bell taking over SPI
17 Station, were break-in coxswains allowed to operate a
18 vessel during -- during missions or patrols?

19 A. I am having trouble understanding the
20 question.

21 Q. Okay. And I will rephrase it.

22 A. Okay.

23 Q. Did the -- when Lieutenant Bell took over
24 the station --

25 A. Yes, sir.

1 Q. -- were break-in coxswains given more
2 margin to operate vessels while they were on the water
3 or did it remain the same?

4 A. I don't -- I don't feel like it changed.
5 It was on a training-by-training basis and who needed
6 what experience.

7 Q. Because as "the previous command did not
8 allow break-ins to be on any operations missions."
9 When he says "break-ins" that includes break-in
10 coxswains?

11 A. Yes, sir. I believe what this statement
12 is talking about is, when we have offshore patrols,
13 there's a specific mission that goes down and there
14 are specific individuals who hold specific
15 qualifications that have to maintain that
16 qualification at all times. And so they have specific
17 positions that have -- on the vessel when they are
18 playing out that particular mission during offshore
19 patrols.

20 Q. So this statement wouldn't apply as much
21 to the Brownsville ship channel?

22 A. No, sir.

23 Q. Thank you for clarifying that.

24 A. Yes, sir.

25 Q. Let's go briefly through a statement by

1 Lieutenant Bell. I want to talk a little bit more --
2 I want to shift gears and talk a little bit more about
3 the intel regarding undocumented aliens in the ship
4 channel per this document, this interview of
5 Lieutenant Bell. Okay.

6 A. Yes, sir.

7 Q. It is on Plaintiffs' Bates Stamp 13292,
8 U.S. Bates Stamp 4420. It says, "If a migrant is
9 swimming within the channel, it is treated as a PIW
10 case." That is person in water case?

11 A. Correct.

12 Q. Is that correct?

13 A. Yes, sir.

14 Q. And Lieutenant Bell says that the "shrimp
15 basin, Zapata boat ramp, and bluff areas are the three
16 well-known areas for migrant crossings; but again,
17 they utilize the entire Brownsville ship channel." Is
18 that correct?

19 A. That is correct.

20 Q. Is that something that you were
21 personally aware of at the time of this incident,
22 April 23rd of 2015, that the Brownsville ship channel
23 was a place regularly used by migrant crossings?

24 A. Yes, sir.

25 Q. That being undocumented aliens?

1 A. Correct.

2 Q. I am going to read from the following
3 page, Plaintiffs' Bates Stamp 13293, U.S. Bates Stamp
4 4421. "I hold a crewman" -- "I hold a crewman qual.
5 I have only been underway for about 8 hours at night
6 this currency, but I am usually underway more often.
7 With respect to my experience on the" Brownsville ship
8 channel "and my perception of the patrols within the"
9 Brownsville ship channel - normally, clutch ahead the
10 entire" Brownsville ship channel.

11 What does -- what does he mean by saying
12 "clutch ahead the entire" Brownsville ship channel?

13 A. It just means that the engines are
14 slightly engaged.

15 Q. Approximately, what -- how fast would the
16 vessel be going in nautical miles or knots?

17 A. Knots?

18 Q. Knots. Yes.

19 A. Be about four to six knots.

20 Q. "Given the purpose of the mission
21 (looking for illegal activity) and considering the
22 known hot spots for activity, clutch ahead speed or
23 just drifting in the middle of the channel in the
24 vicinity of three known hot spots is appropriate." Do
25 you agree with that statement?

1 A. I agree that it depends on the situation.

2 Q. It says, "Considering the known hot spots
3 for activity." In other words, are you aware that
4 these areas were hot spots for illegal alien
5 crossings?

6 A. I was aware that the entire ship channel
7 was a crossing for illegal aliens.

8 Q. And so when Lieutenant Bell says clutch
9 speed he is saying that four to five knots is
10 appropriate in the Brownsville ship channel, correct?

11 A. That is what he feels. Yes.

12 Q. Bottom of the page. "We have been
13 briefed by Intel that migrants use trash bags, floats,
14 wood, and anything else that they can get their hands
15 on and use for flotation. Since the accident, I made
16 it clear to the Station personnel that anything and
17 everything should be reported. If they run into a
18 float on the" Brownsville ship channel "it is required
19 it be reported appropriately."

20 Do you agree with this statement, do
21 illegal aliens, undocumented aliens, use all sorts of
22 devices to cross Brownsville ship channel?

23 A. I agree.

24 Q. That would include floats?

25 A. Agree.

1 Q. Inner tubes?

2 A. I believe anything they could.

3 Q. Plaintiffs' Bates Stamp 13294, U.S. Bates
4 4422. At the bottom of the page. There have been
5 real issues with Mondrala since I reported to the
6 station. Although, his personality presents itself as
7 a standoff attitude, I don't think he means any malice
8 by it. Did you --

9 MS. DELEMARRE: Could you read that
10 again, please. I think you misread it.

11 BY MR. VILLARREAL:

12 Q. Sure. "There have not been real issues
13 with Mondrala since I reported to Station. Although
14 his personality presents itself as a 'stand off'
15 attitude, I don't think he means any malice by it." I
16 can thank you for correcting me. Do you know when
17 Mondrala arrived to SPI Station?

18 A. Probably about a year after I did.

19 Q. Do you know any -- or is it in your
20 opinion that Mondrala had a standoff attitude? Would
21 you agree with that statement?

22 A. Not in my opinion. No.

23 Q. Okay. I believe I have already attached
24 that as your -- as an exhibit to your deposition.
25 Let's go ahead and move on.

1 (Exhibit No. 3 was marked.)

2 BY MR. VILLARREAL:

3 Q. The next document, Petty Officer Rae,
4 will be your qualification timeline. I just want
5 to -- briefly want to go through this document. Do
6 you have a copy of your qualification timeline in
7 front of you, Petty Officer Rae?

8 A. Yes, sir.

9 Q. And I am projecting it on the screen, as
10 well, as you can see this -- it says, Qualification
11 Timelines.

12 A. Correct.

13 Q. Will you come down to Number 3. It says,
14 "The first qualification that you will be required to
15 achieve in a 33' SPC-LE Coxswain."

16 Let me read that again. "The first
17 qualification that you will be required to achieve is
18 33'" SPC "coxswain." What does that mean?

19 A. So that means the first coxing
20 qualification that I would go for is for the 33-foot.

21 Q. Were you certified as a coxswain on any
22 vessel prior to this time?

23 A. I was not.

24 Q. Not on the 24-foot shallow?

25 A. No, sir.

1 Q. When you get qualified as coxswain, does
2 that automatically -- does that -- do you -- do you
3 keep that position as coxswain on each vessel or do
4 you have to achieve coxswain per vessel?

5 A. Per vessel.

6 Q. "You will be given until" January 23rd,
7 2015 "for this qualification." Is that your
8 understanding that you were given until
9 January 23rd --

10 A. Yes, sir.

11 Q. -- to achieve coxswain?

12 Okay. And then after that, you would get
13 qualified on the 45-foot as a coxswain. How much --
14 do you know how much time you were given to -- to
15 become certified as coxswain? Was that 90 days?

16 A. I believe initially it was six months,
17 and then --

18 Q. The memorandum came out January 13, 2015,
19 is that correct?

20 A. That is correct. That is what the date
21 says up here.

22 Q. Okay. When it says that you were given
23 until January 23rd, does that mean you were given ten
24 days to qualify or not necessarily?

25 A. For my understanding, this was the person

1 who replaced the TPO that was current, the one that
2 Mr. Bell spoke of in his statement previously. So
3 this was their first attempts to revamp the training
4 program correctly and issue out new guidelines for all
5 members.

6 Q. So just correct me if I am mistaken but
7 this doesn't mean you were given ten days to qualify
8 as -- to train for coxswain; in other words, you had
9 been training already for six months?

10 A. Correct.

11 Q. And this document basically set a
12 deadline for you to complete that training?

13 A. This was the document that had the formal
14 documentation of my completion date.

15 Q. Okay. Can I have that document back? I
16 don't want to clutter you with documents. If I can
17 have that one, also.

18 (Exhibit No. 4 was marked.)

19 BY MR. VILLARREAL:

20 Q. The next document I am going to give you,
21 Petty Officer Rae, is Exhibit Number 4, which is an
22 interview I believe that you gave on May 12th of 2015.

23 MR. VILLARREAL: Counsel.

24 BY MR. VILLARREAL:

25 Q. Do you have that document in front of

1 you?

2 A. I do.

3 Q. Can you verify that that is the interview
4 that you gave as part of this investigation?

5 A. Yes, sir.

6 Q. Okay. And is that your signature at the
7 end of this document?

8 A. Yes, sir.

9 Q. And I will represent to you that the
10 document up on the screen is an exact duplicate of
11 that exhibit. Okay?

12 MS. DELEMARRE: Except for the
13 highlighting.

14 MS. LEONARD: Except for the
15 highlighting.

16 BY MR. VILLARREAL:

17 Q. Except for the highlighting. There are
18 some highlights. The copy you have I believe does not
19 have highlights?

20 A. Correct.

21 Q. You will be happy I am using highlights.
22 It will go a lot faster.

23 So, again, it says here that you reported
24 to Station South Padre Island September 2013. That is
25 correct, right?

1 A. Correct.

2 Q. You stated that earlier. And then you
3 state here that -- that you missed your qualification
4 of coxswain, which was scheduled for January 23rd. Is
5 that an accurate statement, you missed your
6 qualification deadline?

7 A. I did.

8 Q. And that was -- was that due in part of
9 the fact that your wife was pregnant or was it more
10 so -- was it more so related to the fact that there
11 just wasn't enough time for you to complete your
12 training?

13 A. No. It was due to the fact that my wife
14 was pregnant and then when she had the baby, I was on
15 paternal leave.

16 Q. Okay. So and it says here in this
17 document, "I eventually got my coxswain qual on
18 March 3rd." Does that mean that you were certified as
19 a coxswain on the 33-foot SPC, on March 3rd of 2015?

20 A. Correct.

21 Q. And for purposes of timeline, March 13th
22 would have been approximately a month-and-a-half prior
23 to this incident of April 24, 2015, is that correct?

24 MS. DELEMARRE: Object to form. It is
25 March 3rd on the document, not 13.

1 BY MR. VILLARREAL:

2 Q. I am sorry. Yes. Correct. March 3rd.
3 That is about a month-and-a-half prior to the
4 incident?

5 A. Sounds about right.

6 Q. Okay. So just to clarify, when this
7 incident occurred, on the Brownsville ship channel,
8 with Patricia Garcia, you were the coxswain on the
9 33-foot vessel, correct?

10 A. Correct.

11 Q. And you had been certified as coxswain
12 for about 45 days?

13 A. About a month-and-a-half. Yes.

14 Q. About a month-and-a-half. Okay. And you
15 were the only person that was certified as coxswain on
16 that vessel on the date of this incident?

17 A. That is correct.

18 Q. What does it mean to be break-in
19 coxswain?

20 A. So he is in the process of still
21 completing his training.

22 Q. And that would be Mondrala was a break-in
23 coxswain?

24 A. Mondrala was a break-in coxswain.

25 Q. On April 23rd, 2015?

1 A. Correct.

2 Q. But he wouldn't have the ability to take
3 the vessel under his command without you -- without a
4 certified coxswain onboard, correct?

5 A. That is correct.

6 Q. The night of this incident, would you be
7 the person best suited to navigate or to operate this
8 vessel as coxswain?

9 A. I was the person in charge.

10 Q. May I have that document, Petty Officer
11 Rae. Thank you.

12 (Exhibit No. 5 was marked.)

13 BY MR. VILLARREAL:

14 Q. The next document will be labelled Rae's
15 Exhibit Number 5, and it is excerpts from the, Boat
16 Crew Members Seamanship Manual. And, again, I am
17 going to use the projector so that we all can see what
18 I am referencing.

19 A. Yes, sir.

20 Q. And I do have a hard copy here of the
21 excerpts. The manual I believe is a few hundred pages
22 long. I have only taken out the parts that we need
23 for today's deposition. And I am going to call out
24 just briefly the plaintiff Bates stamp numbers for the
25 record followed by the U.S. Bates stamp numbers.

1 Okay?

2 A. Yes, sir.

3 Q. So the Bates stamp -- the plaintiffs'
4 Bates stamp numbers are as follows -- I am just going
5 to call out the numbers -- 12115, Bates Stamp 12173,
6 Bates Stamp 12175.

7 MS. LEONARD: Javier, that is the front
8 and back-sided. Are you calling out the front sided?

9 MR. VILLARREAL: The front side. Yes.
10 Just the Bates stamps.

11 MS. LEONARD: Okay.

12 MR. VILLARREAL: Not through, just --

13 MS. LEONARD: Yes. But the copy you have
14 is front and back side. I didn't know if you were
15 calling on the Bates number that is both on the front
16 side of the page or the back side of the page.

17 MR. VILLARREAL: I am calling out the
18 Bates stamps that we are going to use.

19 MS. LEONARD: Got it.

20 MR. VILLARREAL: Yes. Okay. Bates Stamp
21 12175. Bates Stamp 12176. Bates Stamp 12177. Bates
22 Stamp 12178. Bates Stamp 12179. Bates Stamp 12180.
23 Bates Stamp 12181. Are you okay? Bates Stamp 12185.
24 Bates Stamp 12186. Bates Stamp 12233. Bates Stamp
25 12234. Bates Stamp 12236. Bates Stamp 12237. Bates

1 Stamp 12239. And Bates Stamp 12240. So they are all
2 in one place on the record.

3 I am going to call out now, as a courtesy
4 to the U.S. Coast Guard, the U.S. Coast Guard Bates
5 stamp number. Would you like for me to do that,
6 Ms. Delemarre?

7 MS. DELEMARRE: If you will give me a
8 copy of that document at some point after this depo,
9 then I am okay with you not calling those numbers out.

10 MR. VILLARREAL: Okay. May I do so when
11 I return back home?

12 MS. DELEMARRE: You may.

13 MR. VILLARREAL: All right. So we will
14 go ahead and proceed, Counsel.

15 BY MR. VILLARREAL:

16 Q. Petty Officer Rae, can you read the title
17 of the front page on that -- on Exhibit Number -- I
18 believe it is Exhibit Number 5, correct?

19 A. That is correct. Exhibit Number 5. It
20 is the Boat Crew Seamanship Manual.

21 Q. And the bottom of the page says,
22 September 2003?

23 A. That is correct.

24 Q. Now, I will represent to you that the
25 U.S. Coast Guard, through your attorney, has produced

1 these documents as relevant to this case. Is this the
2 manual that you -- that was used as part of your
3 training, the U.S. Coast Guard?

4 A. This is one of the manuals. Yes, sir.

5 Q. And, again, you have excerpts of the
6 manual in front of you, which I have shared with --
7 which I will provide a copy to defense counsel. I
8 want to turn your attention to Plaintiffs' Bates Stamp
9 Number 12173. And I have a highlighted copy of that
10 on the projector if you want to find it that way on
11 your hard copy. Do you have your place on the hard
12 copy?

13 A. I do have my place.

14 Q. Okay. It says here on this document that
15 there are three basic boat crew positions on Coast
16 Guard boats, first one being coxswain, then engineer,
17 then crew member. Do you agree with that statement?

18 A. I do, to an extent.

19 Q. Can you --

20 A. Now --

21 Q. Can you explain yourself?

22 A. Not all Coast Guard vessels are allotted
23 an engineer. So we don't at all times have an
24 engineer on all vessels.

25 Q. What does -- what does the engineer do,

1 just briefly?

2 A. Depending on the vessel, the engineer
3 will take care of basic engineering issues or anything
4 having to do with the engines if they start having
5 problems.

6 Q. Okay. Is there an engineer assigned to
7 the 33-foot SPC vessel?

8 A. We do not have engineers assigned to
9 them.

10 Q. And, obviously, there is a coxswain,
11 correct?

12 A. There is a coxswain.

13 Q. Are there crew members on the 33-foot
14 SPC?

15 A. Yes, sir. The crewmen on some of the
16 smaller platforms will kind of fill that void of the
17 engineer space or the engineer's position.

18 Q. Okay. Now, when -- we agree that when
19 I -- when I am referencing the 33-foot SPC-LE, we are
20 talking of the sort of vessel that was involved in
21 this incident, April 23rd, 2015, correct?

22 A. Yes, sir.

23 Q. What positions can a crew member fill in
24 for the engineer that aren't specifically just for
25 engineers?

1 A. Basic knowledge of what to do in case of,
2 for example, the vessel -- the engine catches on fire,
3 the basic casualties to do that, for losing fuel
4 pressure, the know how of procedures to mitigate that
5 situation.

6 Q. I want to bring your attention to
7 Plaintiffs' Bates Stamp 12175. You have a copy of it
8 on the projector, Petty Officer Rae.

9 A. I have my place.

10 Q. Okay. Description of boat crew member.
11 It says, "Crew members safely perform their duties
12 under the supervision of a coxswain." Do you agree
13 with that statement?

14 A. I do.

15 Q. So I guess my point is: When you are on
16 that vessel as coxswain, you have got the highest rank
17 on the vessel?

18 A. I do.

19 Q. And so the crew members are -- you
20 basically assign the crew members their duties,
21 correct?

22 A. I do.

23 Q. Will you please come down to Bates
24 Stamp -- Plaintiffs' Bates Stamp Number 12176. There
25 is a copy on the projector screen. And if you can

1 look at the coxswain description.

2 A. I have my place.

3 Q. I am going to read the highlighted
4 portion on the screen. "Coast Guard boats underway
5 must have a coxswain onboard who is certified by the
6 Unit Commander to operate that particular type of
7 boat." You were certified as a coxswain on the
8 33-foot SPC on the date of this incident, April 23rd,
9 2015, is that correct?

10 A. Yes, sir.

11 Q. However, we talked about this earlier,
12 you had been certified for about 45 days. Is that an
13 accurate statement?

14 A. That is an accurate statement.

15 Q. Before we move on, the -- what are the
16 responsibilities of a break-in coxswain?

17 A. The responsibilities of the break-in
18 coxswain would be to adhere to what the coxswain tells
19 them. So a break-in coxswain essentially is still
20 filling a crew member's position under the watch
21 performing -- maybe performing, depending on the
22 situation -- some of the coxswain's positions but it
23 is still under the direct supervision of the coxswain.

24 Q. And I have been saying coxswain this
25 whole time. It is coxswain?

1 A. Coxswain. Yes, sir.

2 Q. So at the end of the day, who is in
3 charge of the vessel, the coxswain or the break-in
4 coxswain?

5 A. The coxswain is in charge of the vessel.

6 Q. The person in command of the vessel would
7 be you?

8 A. Correct.

9 Q. Even if the break-in coxswain is
10 operating the vessel?

11 A. Correct.

12 Q. The next page, Bates Stamp Number --
13 Plaintiffs' Bates Stamp Number 12177. B.8, Knowledge
14 and Performance Skills. Does this section pertain to
15 the knowledge and performance skills of a coxswain?

16 A. Yes. It does.

17 Q. Highlighted portion says, "Demonstrating
18 boat handling skills to safely and prudently control
19 the movement of a boat while underway." Do you agree
20 with that statement?

21 A. I do.

22 Q. "Understanding the principles of risk
23 management and incorporating them into the
24 decision-making process. These principles include
25 detection, identification, evaluation, and mitigation

1 or control risk as part of making" -- "making
2 decisions." For example, "slow to safe speeds in a
3 restricted visibility, cast off a tow because the
4 assisted vessel is losing stability, speed and how to
5 maneuver to avoid a whale strike."

6 So part of -- part of your knowledge and
7 performance skills as coxswain is to make risk
8 analysis and operate your vessel accordingly?

9 A. And evaluate the situation. Yes.

10 Q. And evaluate the situation. Okay. Does
11 that mean you make adjustments in how a mission or
12 control is conducted according to your risk analysis?

13 A. I can.

14 Q. Would one of those factors include the
15 speed of the vessel?

16 A. Yes, sir.

17 Q. And does -- is one of those factors the
18 visibility on a particular day or night?

19 A. It can include that.

20 Q. And this is part of your -- your training
21 as certification as coxswain, correct?

22 A. This is correct.

23 Q. So far you agree with this, what we are
24 reading on the screen, correct?

25 A. Uh-huh. Yes. Yes, sir.

1 Q. I want to turn your attention to -- let's
2 see. Plaintiffs' Bates Stamp 12178, Lookout Watch.
3 Are you on that page?

4 A. I am on that page. Yes.

5 Q. C.1, Description. The navigational
6 rules, international, inland, "states that 'every
7 vessel shall at all times maintain a proper lookout by
8 sight and hearing as well as by all available means
9 appropriate in the prevailing circumstances and
10 conditions, so as to make a full appraisal of the
11 situation and'" the risks -- the risks of the
12 collision. Do you agree with that statement?

13 A. I do.

14 Q. What does that mean?

15 A. That means that at all times that I will
16 make sure that there is somebody assigned to be a
17 lookout and that those individuals are using all
18 available means including myself.

19 Q. Okay. And lookout for what? Obstacles?
20 Vessels?

21 A. For vessels, for -- a lookout just in
22 general, anything that we may see, hear or --

23 Q. What about a lookout for anything that
24 could potentially come in contact with the vessel?

25 A. That is --

1 Q. That is also included in this section?

2 A. That is also included.

3 Q. The following page. That is Plaintiffs'
4 Bates Stamp 12179. Top of the page. Assign and
5 Station. "Coxswains must assign" a "station lookout
6 properly in order to comply with the requirement noted
7 above." What does that statement mean?

8 A. So in regards to the above statement,
9 this is just giving an example of how the coxswain
10 should apply the lookout assignments.

11 Q. Okay. In other words, it is your job, as
12 the pilot in command of that vessel or person in
13 command of that vessel, to make sure that there is
14 proper lookouts, correct?

15 A. Correct.

16 Q. You can't say it is somebody else's
17 responsibility, it is just -- it is solely your
18 responsibility to assign people to that duty?

19 A. Everybody at all times on a vessel knows
20 that they are lookout. That is even a part of a crew
21 member's -- a crew member's description. That is one
22 of their jobs is to hold a lookout. So everybody at
23 all times will have a lookout. And I oversee those
24 lookouts. So I can insure that the individuals will
25 have lookouts and they will do their job but everybody

1 at all times will be a lookout.

2 Q. I want to turn your attention to the
3 next, Plaintiffs' Bates Stamp Number 12180. Lookout
4 Positioning. And there are six steps on this page.

5 A. Yes, sir.

6 Q. And, again, this relates, I believe,
7 directly with lookouts, correct?

8 A. Correct. Correct.

9 Q. Step Number 1, "Choose a boat speed that
10 enables lookouts to effectively and safely perform
11 their duties." Do you agree with that statement?

12 A. I do.

13 Q. Well, how does boat speed, how does that
14 correlate with the ability of someone to be a -- to do
15 a lookout? Does that affect someone's ability to
16 perform a watch or a lookout?

17 A. I believe it does.

18 Q. In what manner, can you explain that?

19 A. Just depending on the speed you are
20 going, what a person may be able to see or not see.

21 Q. The closest example that I can think of
22 is if -- if I am driving down the highway at 30 miles
23 per hour, I have a better chance of looking at the
24 landscape or catching more detail in the road than if
25 I am doing, you know, 70 miles down -- down the

1 freeway. Is that similar when you are driving a boat?
2 Is it -- is it easier to catch or to see what is in
3 front of you, to your sides if you are going slower
4 rather than faster?

5 A. Yes. I feel like it does depending on
6 the circumstances.

7 Q. Okay. Generally speaking, does going
8 slower on a vessel enable a person doing a lookout to
9 do a better job?

10 A. I think --

11 MS. DELEMARRE: Object to form.

12 BY MR. VILLARREAL:

13 Q. Sir, you can answer.

14 MS. DELEMARRE: You can answer.

15 THE WITNESS: I think it depends on the
16 person. If they can see at all times they are going
17 to provide lookouts, provide what they see on there.
18 We have all available means that we have possible on
19 that vessel at that time for whatever the circumstance
20 is to maintain the best proper lookout that we can.

21 BY MR. VILLARREAL:

22 Q. I am going to direct you now to Page
23 Plaintiffs' Bates Stamp Number 12181. Lookout
24 Equipment. And I will read from this document. Are
25 you on that document? It is Bates Stamp 12181.

1 A. It doesn't appear that I have that page
2 here.

3 Q. Okay.

4 A. It goes from 0 to 5.

5 Q. Can I borrow that?

6 MR. VILLARREAL: Do you need to take a
7 break?

8 THE WITNESS: If you don't mind, I would
9 like to take a break.

10 THE VIDEOGRAPHER: We are going off the
11 record at 11:06 a.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 video record at 11:15 a.m. Counsel may proceed.

15 BY MR. VILLARREAL:

16 Q. We are back on the record, Petty Officer
17 Rae, after a five-minute break. And I believe you
18 have now in front of you, as part of Exhibit Number 5,
19 Pages Plaintiffs' Bates Stamp Number 12181. Is that
20 correct?

21 A. That is correct. I have it.

22 Q. Would you mind just confirming, is that
23 Exhibit Number 5 that you have in front of you? It is
24 on the front of the page.

25 A. That is correct.

1 Q. And I will call your attention to the top
2 of the page. And I will read it out. C.5, Lookout
3 Equipment. "Standing a proper lookout watch means
4 using all available equipment to improve chance of
5 early detection. These items include binoculars,
6 sunglasses, and night vision equipment." Do you agree
7 with that statement?

8 A. I do.

9 Q. Next highlighted portion, "The use of
10 night vision equipment increases the chance of
11 detecting objects in the dark." Can you explain that?
12 How does night-vision equipment help you?

13 A. The night-vision equipment can just give
14 you a clearer picture at night of what you can see.

15 Q. Okay. I will continue reading. "This
16 equipment easily detects even the faintest source of
17 light. They can also be very useful when looking for
18 an unlit object if there is sufficient background
19 lighting. Care should be taken when using this
20 equipment, since pointing it at a bright light might
21 diminish" the "night vision and damage the equipment."
22 Do you agree with this statement?

23 A. I do.

24 Q. And so do night-vision goggles, do they
25 take the ambient light and magnify it, if you know?

1 A. I am not -- I am not sure.

2 Q. Night vision, does that mean thermal
3 imaging or -- in other words, it detects heat? Or do
4 you know if it is something else that it is using?

5 A. It is infrared, and it can detect heat
6 and transmit it back.

7 Q. Now, can you use -- when would you use
8 night-vision equipment? Would you use it when you are
9 underway while operating a vessel or does the vessel
10 have to be stopped?

11 A. The vessel doesn't have to be stopped.

12 Q. And the night-vision equipment is
13 something that goes over your eyes?

14 A. We don't have anything that goes over our
15 eyes. We have a handheld that you can put up to your
16 eye, single.

17 Q. In other words, it is not -- it is not a
18 piece of equipment that is attached to the vessel, it
19 is something that is more for personal use?

20 A. We have stuff that is of personal use,
21 and some vessels in the Coast Guard are outfitted with
22 a system that has a camera that does a similar --

23 Q. And that would be the FLIR?

24 A. The FLIR, MarFLIR.

25 Q. MarFLIR. Would that be night-vision

1 equipment?

2 A. Yes, sir.

3 Q. And we will get to that in a little
4 while. I want to bring your attention to Plaintiffs'
5 Bates Stamp Number 12185. And the portion that I want
6 you to look at, it says on the page, Night Lookout
7 Watch. Are you on that page?

8 A. I am on that page.

9 Q. C.112 (sic) Description. I will read
10 that. "Although the duties for day and night lookout
11 are the same, safety and caution during night watches
12 are especially important." Do you agree with that
13 statement?

14 A. I do.

15 Q. Is it harder or more difficult to do a
16 lookout at night than it is during the day?

17 A. I think it depends on the situation.

18 Q. Well, it says here, Caution during the
19 night watches are especially important. Do you
20 believe that they are especially important?

21 A. Yes.

22 Q. Why is that?

23 A. It is because of the reduced lighting.

24 Q. Which means it is harder to see with your
25 bear eyes at night, correct?

1 A. Correct.

2 Q. "Though it might be easier to acquire a
3 contact on the horizon at night because of its" --
4 "because of its navigation lights, it's obviously more
5 difficult to pick up unlighted objects such as rocks,
6 shoals, and buoys." Do you agree with that statement?

7 A. Correct.

8 Q. In other words, there are objects in the
9 water that you could come in contact that are not
10 lighted or that are not lit, correct?

11 A. Correct.

12 Q. So nighttime lookouts would be harder to
13 spot these objects than daytime lookouts, correct?

14 A. Correct.

15 Q. "Eyes respond slower at night and pick up
16 moving objects more readily than a fixed object." Do
17 you agree that eyes respond slower at night?

18 A. I agree.

19 Q. So, in general, do we agree that lookouts
20 at night are a little bit more difficult than lookouts
21 during the day?

22 A. Yes, sir.

23 Q. The next page, C.15, Night Scanning. Do
24 you see that on your document in front of you?

25 A. I do.

1 Q. I will read that out loud. "As a night
2 lookout, scan the horizon in a series of small sectors
3 allowing eyes to adjust to each. When looking at an
4 object, look all around it, not directly at it." Do
5 you agree with that statement so far?

6 A. I do.

7 Q. Why would you not look at an object
8 directly at night but, rather, perhaps use your
9 peripheral vision?

10 A. Because you can strain your eyes trying
11 to concentrate on that one -- that specific item and
12 if you can look around, kind of keep your vision
13 going, you can use your peripherals to see what is
14 going on around you.

15 Q. Do you -- do you know whether the
16 periphery of the eye, the cornea, is more sensitive to
17 light than the center of the eye?

18 A. I am not sure on the anatomy of the eye
19 in that instance.

20 Q. You have never been in a conversation or
21 in a classroom setting talking about the anatomy of
22 the eye and how night vision affects it?

23 A. I am aware of how night vision is
24 affecting --

25 Q. The eye?

1 A. -- how it can affect the eye.

2 Q. And we are talking about night vision
3 without any equipment, correct?

4 A. Correct.

5 Q. So, again, having read this and agreeing
6 with this, do you agree, in general, that scanning or
7 looking for objects at night is generally harder than
8 looking for objects during the day because of the --
9 just because there is less light? Do you agree with
10 that?

11 A. I agree.

12 Q. I am going to bring your attention now to
13 a different page, Plaintiffs' Bates Stamp
14 Number 12233. What is situational awareness, Petty
15 Officer Rae?

16 A. Situational awareness is the awareness of
17 what is going on around you at all times, being able
18 to be aware of what is going on around you and the
19 different circumstances.

20 Q. Does situational awareness encompass
21 knowing your exact position?

22 A. Knowing where you are. Correct.

23 Q. In relation to everything else?

24 A. Correct.

25 Q. And are there instruments onboard the

1 vessel that help you ascertain your exact location at
2 any given time?

3 A. There are.

4 Q. I will bring your attention to the
5 highlighted portion on this page. Step 1, "The
6 coxswain provides the mission coordinator and the crew
7 with mission status," current operations and perceived
8 location. What does that mean?

9 A. So that is the coxswain letting the crew
10 be aware of what the mission is, what we were doing or
11 what might be going on out there.

12 Q. Now, I will remind you, we are under the
13 section of situational awareness.

14 A. Correct.

15 Q. Does this mean that the coxswain is the
16 one ultimately in charge of telling everybody else
17 onboard where the vessel is at all times?

18 A. No. Everybody has that ability to be
19 able to see where they are at all times.

20 Q. Okay. But the situational awareness or
21 the exact location of the vessel, ultimately that
22 information falls on the coxswain or on somebody else?

23 A. I don't think that that applies to
24 anybody in specifically. If someone calls us via
25 radio asking for our position, anybody at any time has

1 liberty to disclose the information of where the
2 position is.

3 Q. The following page. Under, Coxswain
4 Responsibilities. I will read. Are you on that page?

5 A. I am.

6 Q. "The coxswain shall: Not get underway
7 without an understanding of the mission objective, the
8 known risks, and a plan of action." Do you agree with
9 that statement?

10 A. I do.

11 Q. What does that mean in general terms or
12 in laymen's terms?

13 A. That means that I will insure that I tell
14 the crew and discuss with the crew what the mission is
15 going to be.

16 Q. And does that mean that you have to
17 consider into your mission the risks that are out
18 there before -- before embarking on your mission?

19 A. Any risks that could apply to the
20 situation. Yes.

21 Q. That would include weather, for example?

22 A. Correct.

23 Q. That would be objects -- the possibility
24 of objects in the water?

25 A. Potentially.

1 Q. The potential of running aground?

2 A. Correct.

3 Q. Those are just a few of the factors to
4 name a few, right? Is that correct?

5 A. Yes, sir.

6 Q. On that same page, B.10, Coxswain
7 Responsibilities. Highlighted portion says,
8 "Consciously weigh the risks versus the gains.
9 Implement the best contingency or action to address
10 the situation." Do you agree with that statement?

11 A. I do.

12 Q. What does that mean in layman's terms?
13 How do you weight the risks versus the gains and then
14 implement it into your -- into your plan?

15 A. So for whatever the situation is, what
16 the risk may entail, what we might gain from that and
17 being able to discuss that with your crew and then
18 continued on to implement the best plans to address
19 that situation. So at any time if anything seems like
20 it changes and what the risk versus the gain is, I can
21 discuss that with my crew.

22 Q. So does this mean that circumstances
23 change as risks change, there is adjustments made in
24 the operation of the vessel, does that include that?

25 A. There can be. Yes.

1 Q. In other words, there is not one set way
2 of conducting a mission, it varies depending on the
3 risks?

4 A. It does vary.

5 Q. I will bring your attention to
6 Plaintiffs' Bates Stamp Number 12236. Are you on that
7 page?

8 A. I am.

9 Q. C.1, Four Rules of Risk Management. "To
10 use the risk management process correctly, the team
11 must follow four rules." Are you familiar with these
12 four rules, Petty Officer Rae?

13 A. I am familiar with them.

14 Q. Did you study these rules when you went
15 through -- through training with the U.S. Coast Guard?

16 A. I have seen these rules before through
17 training.

18 Q. Can you read out Rule Number 1, please,
19 just the highlighted portion, if you would like, or
20 the whole thing. Whatever you want to --

21 A. "Integrate risk management into mission
22 planning and execution."

23 Q. What does that mean in laymen's terms?

24 A. So to be able to discuss what is going to
25 go into the planning process and the execution, what

1 risks may be and then how to properly manage such
2 risks.

3 Q. Can you read Rule Number 2?

4 A. "Accept no unnecessary risks." Or risk.
5 Risks.

6 Q. Okay. I guess that is pretty
7 self-explanatory. Can you give us an example of,
8 like, an unnecessary risk?

9 A. If the weather is out of the parameters
10 for the vessel and we need to respond to something but
11 it would be more unsafe to get the boat away from the
12 pier at that point.

13 Q. Can you read out Rule Number 3?

14 A. "Make risk decisions at an appropriate
15 level. Many times mishaps occur because the level of
16 risk is not perceived by an individual."

17 Q. What does that mean in laymen's terms?

18 A. So being able to at the appropriate level
19 would be myself. I can make the risks -- or the
20 decisions. And making sure that you do it so to
21 insure that a mishap wouldn't happen.

22 Q. Okay. The first bullet point says,
23 "Understanding of risk is highly dependent upon
24 technical knowledge and expertise."

25 A. Correct.

1 Q. While you are planning a mission, does it
2 matter for purposes of risk assessment the -- your
3 level of experience or expertise as coxswain?

4 A. At that point, when I hold the
5 certification, that instates that the command has full
6 confidence and competence in me to carry out those
7 abilities of a coxswain and at that point I am pretty
8 much in direct reflection of the command. So by this
9 point, holding the certification, it -- I don't feel
10 like it should matter, your experience level and the
11 straight certification, if you have the --

12 Q. So you don't give yourself personal
13 limits? Would it be fair to say that you were a newly
14 certified coxswain --

15 A. Uh-huh.

16 Q. -- with 45 days -- being certified
17 45 days prior to this incident?

18 A. I would have -- I can say that there
19 could be some personal limitations that I would have.
20 But some personal limitations can coincide with the
21 actual limitations of the coxswain for said platform
22 and for various mission and the abilities. But as per
23 part of a lot of those situations, that is all taking
24 place in a training process to receive that
25 certification.

1 Q. Can you read out Rule Number 4, please?

2 A. "Accept the risks if benefit outweighs
3 cost. Eliminating unnecessary risk leaves risk that
4 is either acceptable or unacceptable for a mission
5 accomplishment."

6 Q. What does that mean?

7 A. So anything that is unnecessary to get
8 underway or to move the vessel for or to put your crew
9 in danger, you shouldn't -- you don't have to engage
10 in that if you feel like that is out of your
11 limitations at that point and you need to assess that
12 if the -- it may endanger more than you will get out
13 of it.

14 Q. Would you agree, basically, that there is
15 some aspect -- if there is an unnecessary risk you are
16 taking during one of your patrols, then that is --
17 that is something that should probably be eliminated,
18 unnecessary risks?

19 A. Any unnecessary risks that we can
20 eliminate from a point of origin, we can take time to
21 do so, to discuss that.

22 Q. If they are not essential to your patrol
23 or mission, then they are probably unnecessary? If
24 that risk is not -- is not essential to you carrying
25 out your mission, then it is probably an unnecessary

1 risk?

2 A. (Witness nodding head.)

3 Q. Do you agree with that?

4 A. I would agree with that.

5 Q. Let's go to the next page. We are almost
6 done with the -- this is my last section for the
7 rules, the seamanship rules, just so you know.

8 A. Yes, sir. Yes, sir.

9 Q. The next page is Plaintiffs' Bates Stamp
10 12237. And it is, Risk Management Process. And there
11 are seven steps to follow. Are you on that page?

12 A. I am on that page. Yes, sir.

13 Q. Can you read that Step Number 1?

14 A. Step Number 1 is the planning stage. "Is
15 there adequate time and information to develop a good
16 plan?"

17 Q. Where are you reading?

18 A. Is that -- I am sorry. I was reading it.
19 Sorry. Step 1 here, "Define the mission objective
20 and" the "tasks."

21 Q. Okay. Are you familiar with these seven
22 steps of risk management?

23 A. I am.

24 Q. Is this something that you studied
25 through your training?

1 A. Correct.

2 Q. And is this something that you would
3 regularly implement before undergoing or undertaking a
4 mission or patrol?

5 A. Correct.

6 Q. So define the mission objectives and
7 tasks. What is Step Number 2?

8 A. "Identify the possible hazards to the
9 boat and the crew. Hazards include anything that
10 could go wrong with the equipment, the environment, or
11 the team."

12 Q. What are examples of hazards in the
13 environment? And I am talking particularly about the
14 Brownsville ship channel. What is something that
15 could potentially be a hazard?

16 A. Vessel traffic. There are crossers,
17 smugglers. We have -- it could be something floating
18 in the water, there is always that possibility.

19 Q. So you take those hazards into
20 consideration when planning your mission?

21 A. Correct.

22 Q. What is this Step Number 3 on the
23 following page?

24 A. The following page.

25 Q. Let me see where Step Number 3 is.

1 Actually, it is on Plaintiffs' Bates Stamp 12239.

2 A. Okay.

3 Q. Step Number 3. Can you read that for us,
4 please?

5 A. "Risk is a function of severity,
6 probability and exposure."

7 Q. Okay. What does that mean?

8 A. So that would mean how severe the
9 situation may or may not be, how probable you may find
10 yourself in that position and then the actual exposure
11 to a specific risk. And what you have -- also
12 exposure will entail what you have, your equipment,
13 your people and what you have onboard.

14 Q. And I want to draw an example that I
15 think Step 3 might address and you can tell me whether
16 you agree or not. Is there a probability of smugglers
17 or undocumented aliens swimming across the Brownsville
18 ship channel at night?

19 A. There is a probability.

20 Q. And so you are more likely to come across
21 an undocumented alien on a ship channel -- swimming
22 across a ship channel than you would coming across
23 undocumented aliens swimming in the ocean?

24 A. I would say so.

25 Q. So the risk, for example, of coming

1 across a UDA across a ship channel is higher than
2 coming across a UDA out in open water, would you agree
3 with that?

4 A. Correct. Well --

5 Q. Is that something --

6 MS. DELEMARRE: Did you finish your
7 answer?

8 THE WITNESS: No. Offshore, to be
9 completely honest with you, I have ran into personally
10 on missions more UDAs, more undocumented aliens,
11 fisheries, Mexican national vessels that are fishing
12 in American waters. And my experience with actually
13 running into UDAs actually crossing the channel or
14 being a part of any said missions, I have no -- to my
15 recollection, there has been a few times where I have
16 been on the Brownsville ship channel and I have seen
17 border patrol detaining people on the side of but as
18 far as an actual crosser, I have no personal
19 experience. But I do have personal experience with
20 people out in open ocean who are undocumented are in
21 our country, in our waters.

22 BY MR. VILLARREAL:

23 Q. Let me -- let me just clarify my
24 question. My question was, I believe -- and I may
25 have misspoken -- the probabilities of coming across a

1 UDA swimmer, a person in the water, a PIW, would you
2 agree that it is higher in the Brownsville ship
3 channel than -- than finding a UDA in open waters?

4 A. I do.

5 Q. You are more likely to come across a
6 swimmer, an undocumented swimmer, in the ship channel,
7 right?

8 A. Correct.

9 Q. And that is something -- that is a risk
10 that you would take into consideration when planning
11 your mission or patrol?

12 A. It would be -- yes, sir.

13 Q. And you would adjust it accordingly to
14 try to minimize that risk?

15 A. Correct.

16 Q. Number 4. Can you read out Step
17 Number 4?

18 A. Step Number 4. "Unnecessary risk has to
19 be eliminated. What changes can be made to reduce
20 risks to an acceptable level without changing the
21 mission objective? This can be done by examining" the
22 following.

23 Q. Okay. What does that mean in laymen's
24 terms?

25 A. Basically, that unnecessary risk can be

1 eliminated.

2 Q. What about the part that says that you
3 can reduce risk to an acceptable level, do you agree
4 with that?

5 A. I do.

6 Q. Are there circumstances where you can
7 actually do something to reduce risk?

8 A. There can be.

9 Q. There can be?

10 A. Uh-huh. Yes, sir.

11 Q. Would a risk of coming upon an
12 undocumented alien in the Brownsville ship channel,
13 would the risk of colliding or running over an
14 undocumented alien in the ship channel, would that
15 risk be reduced if -- if you drive the vessel at
16 clutch speed versus going 30 knots or higher?

17 A. I think that the probability could still
18 stand that it could happen.

19 Q. We are talking specifically about Step
20 Number 4, the portion that says, "What changes can be
21 made to reduce risks to an acceptable level." In
22 other words, would a change in speed during a patrol
23 or mission at night in the Brownsville ship channel
24 reduce the risk of colliding with or running over, if
25 you will, an undocumented alien?

1 MS. DELEMARRE: Object to form.

2 THE WITNESS: It could.

3 BY MR. VILLARREAL:

4 Q. It could?

5 A. Well, could you reword that question one
6 more time.

7 Q. Sure. In other words, it says, "What
8 changes can be made to reduce risks to an acceptable
9 level," and my question is: Can a change in the speed
10 of the vessel, the speed of travel of the vessel at
11 night in the Brownsville ship channel, would that be a
12 way of reducing the risk per Step Number 4 here,
13 reducing the risk of colliding into an undocumented
14 alien that is swimming -- that can be swimming across
15 a ship channel?

16 A. Correct.

17 Q. Would you agree with that?

18 A. It could depending on a circumstance.

19 Q. When wouldn't it apply?

20 A. It just comes down to a judgment call of
21 how quickly we should be moving to go to where we are
22 going and what we are doing. There are certain things
23 that apply to certain parts of the mission. So,
24 therefore, various speeds will be conducted at various
25 times.

1 Q. Well, let me bring you back to I guess
2 doing a patrol. A regular patrol, not necessarily
3 this one, but any regular patrol having to do with --

4 A. Okay.

5 Q. -- with searching for illegal smuggling,
6 whether it be drug trafficking or illegal aliens, what
7 benefit is there to going fast versus slow and how
8 does that correlate with a level of risk? And we are
9 talking about a setting at night with low visibility.

10 A. Okay. The only benefit is could
11 potentially catching something at that said time.

12 Q. In pursuit, you mean?

13 A. Well, not necessarily in pursuit because
14 then if we are in pursuit then we have actually seen
15 something and we have a reason to engage. But that
16 is -- that is the only thing I can think of because it
17 just depends on a case-by-case circumstance.

18 Q. And I don't mean to be difficult but I
19 don't understand your answer. What -- can you give me
20 an example of when driving a vessel at night in the
21 ship channel would -- would be equivalent to starting
22 at clutch speed when it comes to risk?

23 A. When it comes to risk --

24 MS. DELEMARRE: Object to form. Sorry.

25 THE WITNESS: No. It is fine.

1 BY MR. VILLARREAL:

2 Q. We are talking specifically to Step
3 Number 4.

4 A. When it comes to risk -- so, based off of
5 this, this isn't geared towards a specific mission.
6 So say I was doing a search-and-rescue case and I had
7 to respond to somebody who we knew and we had intel of
8 them either drowning or being in the water or heart
9 attack or something like that on their vessel, our
10 speed going through that area is probably going to be
11 a lot higher because we are trying to respond to that
12 thing; therefore, there are risks, we understand the
13 risks. But that is what I mean by depending on the
14 circumstance, case-by-case, a situation. And then it
15 depends on your speeds in general as to what you can
16 and can't see.

17 BY MR. VILLARREAL:

18 Q. Okay. Now, sir, now let me bring you to
19 this hypothetical. Just a regular night patrol
20 through the Brownsville ship channel with low
21 visibility and when you are just searching for illegal
22 activity, whether it be drug smuggling or undocumented
23 aliens, do you -- is going fast through that channel
24 at 30 knots or faster the same level of risk as is
25 clutching ahead like Lieutenant Bell was --

1 A. No. Traveling at --

2 MS. LEONARD: Object to form.

3 MS. DELEMARRE: Hang on. I want to lodge
4 an objection to the question in terms of it not being
5 a fully accurate description of the patrol that night.
6 You can answer.

7 BY MR. VILLARREAL:

8 Q. Okay. Objection noted.

9 A. So as per that, traveling at speeds of
10 30 knots or more, to my knowledge, post the
11 investigations, was one-third of the patrol and there
12 were times that I would have the helmsman, my break-in
13 coxswain, come down, adjust the speed to a slower
14 speed to where we can perform our mission because
15 there was no reason to be up at that point. And at
16 that point, my point -- my position in charge, I made
17 the decision to say, hey, you need to slow it down,
18 or, hey.

19 And to my understanding post the
20 investigation, it was one-thirds out of two-thirds of
21 the patrol that there were higher speeds. And the
22 other parts of the patrol there were a lot of cruising
23 at a clutch speed, cruising slowly. There were a
24 handful of times where it would happen but I made the
25 judgment call and had the member who was on the helm

1 slow down at that point. And we weren't exceeding
2 30 knots for a graciously extended period of time.

3 Q. Okay. And I appreciate your response,
4 Petty Officer Rae, but I am not even talking about
5 this incident yet.

6 A. Okay.

7 Q. I was talking specifically about C.2.d
8 Step 4.

9 A. Correct.

10 Q. "What changes can be made to reduce risks
11 to an acceptable level?" And my question to you is:
12 Looking at this -- the reduction of risk, is -- and
13 this is a hypothetical. The hypothetical matches what
14 happened. We are not talking about what happened yet.

15 A. Correct.

16 Q. Just the hypothetical is this. You are
17 driving a vessel through the Brownsville ship channel
18 at night in low visibility going 30 knots and there
19 could potentially be illegal activity such as drug
20 smuggling or undocumented aliens swimming across the
21 ship channel.

22 A. Okay.

23 Q. Is driving at 30 knots or faster a higher
24 risk --

25 A. It is.

1 Q. -- than just clutching ahead?

2 A. It is.

3 Q. Is a -- is it -- is driving 30 knots or
4 faster a necessary risk?

5 A. It is not.

6 Q. And so it is something that you would
7 want to eliminate, correct?

8 A. Correct.

9 Q. To bring the risk to acceptable levels?

10 A. Correct.

11 Q. Can you read Number 5?

12 A. "Did the mission coordinator validate
13 that the risk assumed by the coxswain is worth the
14 mission objective? If risks seem unacceptable, can
15 the mission objective be modified to reduce risk to an
16 acceptable level?"

17 Q. Going back to my hypothetical. We are
18 not talking about this incident yet.

19 A. Okay. Yes, sir.

20 Q. If the coxswain or break-in coxswain
21 under your command is going at a high speed -- rate of
22 speed, can he do something to modify the risk?

23 A. He can.

24 Q. What?

25 A. He can come down. He can come down

1 slower -- to a slower speed.

2 Q. To reduce the risk?

3 A. Correct.

4 Q. And to reduce a risk to who?

5 A. To reduce the risk to any circumstance
6 that could be prevailing.

7 Q. To reduce a risk to the crew?

8 A. It can reduce the risk of the crew. Yes.
9 That is a possibility.

10 Q. To reduce the risk of the vessel?

11 A. Correct.

12 Q. To reduce the risk to any person or
13 object that you might potentially collide into at
14 night?

15 A. Correct.

16 Q. The following page, Petty Officer Rae,
17 Plaintiffs' Bates Stamp 12240. Can you read Step
18 Number 6?

19 A. Step Number 6. "The decision implements
20 the best option given the risks and gains. In
21 executing the decision, the crew is made aware of
22 what" is "expected outcome should be."

23 Q. What are the gains by coming down from
24 30 knots or more to a slower speed given my previous
25 hypothetical?

1 A. To be able to have better visibility and
2 to see.

3 Q. What is ahead of you?

4 A. See what is ahead of me. See what is all
5 around me.

6 Q. Can you read Number 7?

7 A. "Did the action achieve the desired
8 outcome? Are the risks within the mission changing?
9 If so, repeat the steps to manage those risks."

10 Q. If you are out on a mission, a patrol,
11 hypothetical, looking for illegal activity, whether it
12 be drug trafficking or illegal aliens, not on a search
13 and rescue or the hypothetical you gave me but rather
14 looking, just patrolling --

15 A. Okay.

16 Q. -- are there any benefits to you going
17 fast that you can think of, any benefits whatsoever?

18 A. The only benefit would be is if we see
19 something that we should respond to.

20 Q. Putting that aside, is there any benefit?

21 A. No, sir.

22 MR. VILLARREAL: We are going to go off
23 the record.

24 THE VIDEOGRAPHER: This is the end of
25 Disk 1. We are going off the record at 11:50 a.m.

1 (Recess taken.)

2 THE VIDEOGRAPHER: This is the beginning
3 of Disk 2. We are back on the record at 11:59 a.m.
4 Counsel may proceed.

5 BY MR. VILLARREAL:

6 Q. Thank you. Petty Officer Rae, we are
7 back from a short break. The videographer had to
8 switch out some tapes. Are you ready to proceed?

9 A. I am ready to proceed.

10 Q. May I please have Exhibit Number 5?

11 A. You sure can.

12 Q. This document, Plaintiffs' Exhibit 12459,
13 I called out earlier, it became detached from the
14 exhibit so I am going to make it part of Exhibit
15 Number 5.

16 MS. DELEMARRE: Okay.

17 BY MR. VILLARREAL:

18 Q. I haven't addressed it yet but I am going
19 to come back to it in a minute. So I am just
20 attaching it to the deposition.

21 (Exhibit No. 6 was marked.)

22 BY MR. VILLARREAL:

23 Q. And I am going to hand over to you what I
24 have marked as Exhibit Number 6. Counsel. And
25 Exhibit Number 6 are excerpts from the SPC-LE

1 operator's manual. Within that exhibit are the
2 following plaintiffs' Bates stamp documents, including
3 the cover page: Plaintiffs' Bates Stamp 10321,
4 Plaintiffs' Bates Stamp 10352, Bates Stamp 10353,
5 Bates Stamp 10455, Bates Stamp 10352, which I have
6 already said, Bates Stamp 10353, which I already
7 mentioned, Bates Stamp 10367, Plaintiffs' Bates Stamp
8 10465, Bates Stamp 10468 and Bates Stamp 10471.

9 Petty Officer Rae, can you read the title
10 to Exhibit Number 6? What is it entitled?

11 A. Special Purpose Craft - Law Enforcement
12 (SPC-LE), Operator's Handbook.

13 Q. What is this manual or this handbook,
14 Petty Officer Rae?

15 A. This is the operator's details of the
16 vessel, a description of the vessel and other various
17 information on the specific vessel.

18 Q. Prior to today or, rather, prior to
19 April 23rd, 2015, had you had an opportunity to look
20 at this document?

21 A. I have.

22 Q. Was it used as part of your certification
23 on the SPC vessel in question today?

24 A. It was.

25 Q. Who do you go through -- was there a

1 mentor or instructor that went through this manual
2 with you or did you go through it on your own?

3 A. Kind of went through it on my own. There
4 were times that I would go through it with a mentor
5 depending on tasks that I was trying to achieve. But
6 majority of which I went through on my own.

7 Q. And as far as the use of this handbook is
8 concerned and your certification as a coxswain, were
9 you tested on this manual or had you -- how did you
10 demonstrate to the U.S. Coast Guard that you were
11 proficient in the handling or the information based
12 out of this manual?

13 A. I was given a board in front of peers,
14 supervisors and the command where they asked me a
15 series of questions out of this manual.

16 Q. And the portion dealing with your board
17 regarding this manual, was it a -- how long would that
18 test take?

19 A. The board overall was a few hours long.

20 Q. And the portion having to deal with the
21 operator's handbook?

22 A. I can't remember, sir, specifically.

23 Q. Would it be less than an hour?

24 A. I can't remember specifically.

25 Q. Can you describe the picture here on the

1 screen? Is that the vessel that is in question today?
2 Maybe not the exact one but that is -- that is the
3 make and model?

4 A. That is. Yes, sir.

5 Q. And it is making a -- is it going
6 straight or is it making a turn portside?

7 A. It looks like it is making a turn.

8 Q. Can you tell which way?

9 A. It is turning to port.

10 Q. Based on the configuration that you see
11 on screen, do you have an estimated speed of that
12 vessel on screen?

13 MS. LEONARD: Objection to form.

14 MS. DELEMARRE: Yes.

15 THE WITNESS: I can't determine that.

16 MS. DELEMARRE: That was a late objection
17 but I object, too.

18 BY MR. VILLARREAL:

19 Q. In other words, that is not clutch speed?

20 A. That is not clutch speed. No.

21 Q. Clutch speed you wouldn't have that sort
22 of --

23 A. A wake.

24 Q. -- a wake on the sides, right?

25 A. Yes, sir.

1 Q. I am going to call your attention to
2 Bates Stamp 10352.

3 A. 2?

4 Q. 10352.

5 A. Yes, sir.

6 Q. And, in particular, Boat Specifications.

7 A. Yes, sir.

8 Q. Are you on that page?

9 A. I am. Yes, sir.

10 Q. So that the judge from the Southern
11 District of Texas has a better understanding of the
12 characteristics and the specifications of this vessel,
13 I would like to -- I would like to go down some of
14 these measurements, if you will.

15 A. Yes, sir. Yes, sir.

16 Q. Okay. What is the -- I thought this
17 vessel was 33 feet long; however, it says that the
18 hull is 35 feet long?

19 A. The length overall, design length of the
20 hull is 35 feet, 5 inches.

21 Q. Are we talking about the same vessel,
22 what is referred to as a 33-foot SPC?

23 A. Yes, sir.

24 Q. And let's see what else. The operational
25 draft of the engine's vertical is how many feet?

1 A. Three feet, five-and-a-half inches.

2 Q. That is without engines? Or why did you
3 say earlier six feet?

4 A. Six feet is our -- the draft that we
5 operate in, that we try not to exceed that draft.

6 Q. Okay.

7 A. So I stand corrected on that. Yes, sir.

8 Q. Okay. Let's move on to the following
9 page. What is the empty weight of the vessel?

10 A. The empty weight you said?

11 Q. Yes, sir.

12 A. I don't see it.

13 Q. Boat weight fully outfitted. What does
14 it mean by "fully outfitted"?

15 A. It means all of the equipment is onboard
16 but there are no persons onboard.

17 Q. Gassed or without -- or empty tanks?

18 A. I am -- I am unsure of that.

19 Q. So without the people onboard, how much
20 does that vessel weigh?

21 A. 13,700 pounds.

22 Q. That is approximately -- if 2,000 pounds
23 is a ton, that is approximately 7-and-a-half tons?

24 A. I would say that is an accurate estimate.

25 Q. Okay. Does that include the weight of

1 the engines, or is that just the vessel, if you know?

2 A. I am unsure. It doesn't specify.

3 Q. I think the next -- the next one, it
4 says, Boat Maximum Weight. What is the boat maximum
5 weight with 14 passengers fully fuelled -- fully
6 outfitted, rather?

7 A. 17,000 pounds.

8 Q. It is about 8 tons, a little bit more
9 than 8 tons?

10 A. That would be an estimate. Yes, sir.

11 Q. And what is the maximum speed of this
12 vessel?

13 A. Go up to 45 knots. 6400 RPMs.

14 Q. Have you ever operated the vessel at its
15 maximum speed?

16 A. I have.

17 Q. You have?

18 A. I have.

19 Q. Geographically speaking, the South Padre
20 Island area, where -- where would you have had that
21 opportunity to operate it at maximum speed?

22 A. It would be offshore.

23 Q. I am going to take you now to Page 10455.
24 10455. Can you tell us what that is a picture of?

25 A. That is a picture of the inside of the

1 pilothouse of the 33-foot SPC-LE.

2 Q. And so what is the seating capacity
3 inside the pilothouse?

4 A. Seating capacity as per seats in this
5 picture is four.

6 Q. What about in the vessel in question on
7 the night of April 23rd, 2015?

8 A. Those have been refabricated to have six
9 seats.

10 Q. On the night of the incident, it had six
11 seats?

12 A. Correct.

13 Q. And how many people were onboard on that
14 night?

15 A. There were four people onboard.

16 Q. Okay. Do you recall what percentage of
17 the mission or patrol was conducted while being inside
18 the -- you call it is the pilothouse?

19 A. The pilothouse.

20 Q. Was the majority of it while you were
21 inside the pilothouse?

22 A. I would say a good estimate would be the
23 majority of it was inside the pilothouse.

24 Q. While the patrol is being conducted, the
25 mission is being conducted, to the best of your

1 recollection, you were inside the pilothouse?

2 A. Correct.

3 Q. What amount -- what about if you do a man
4 overboard drill?

5 A. If we do a man overboard drill, it is
6 probably going to be at least two crew members aft on
7 the back deck in the duration of the drill.

8 Q. What about if you are traveling down the
9 Brownsville ship channel and everybody is -- everybody
10 is a lookout, basically, right?

11 A. Correct.

12 Q. Is the lookout normally or regularly
13 inside the pilothouse?

14 A. The lookout, sir, wherever the person is.
15 The crewmen assume the lookout. So if they are
16 inside, then they are a lookout inside. If they are
17 outside, then they are a lookout outside.

18 Q. In other words, you don't have to be
19 outside -- outside the pilothouse to be a lookout, you
20 can -- you can perform lookout properly from inside
21 the pilothouse?

22 A. Correct.

23 Q. Is there a minimum amount of crew members
24 required to operate the SPC-LE?

25 A. A minimum as per our unit, you could have

1 three people to operate it. That is mission
2 dependent. Actually going out on a specific mission,
3 a patrol, we strive to have four people or more if we
4 need it onboard.

5 Q. Generally speaking, if it was only three
6 crew members, what would those positions be? Coxswain
7 would be one of them?

8 A. Coxswain, a navigator and a crewman.

9 Q. Navigator and a crewman. Do you always
10 need a navigator?

11 A. You don't always need a -- let me
12 rephrase that. You always will have somebody
13 navigating the vessel. But as far as an assigned
14 person to a navigator position, that falls under your
15 crewmen positions and your coxswain responsibilities.

16 Q. And navigation entails situational
17 awareness?

18 A. Yes. Yes, sir.

19 Q. Coordinates and locations?

20 A. Coordinates, situational awareness and
21 any means utilizing your resources, your people and
22 following the guidelines for what is applicable to
23 your set position.

24 Q. Can the person navigating do anything
25 other than just navigate; in other words, can a

1 navigator also be at the helm operating the vessel?

2 A. The navigator could be at the helm
3 operating the vessel.

4 Q. And be assigned the duties of navigator
5 simultaneously?

6 A. They can take on and visually be able to
7 look over at the navigational equipment as well as
8 utilize their seaman's eye or the naked eye to
9 navigate that way. That is a possibility.

10 Q. Are there any manufacturing warnings on
11 the vessel that you recall or were aware of such as on
12 the steps or by the engines or any decals from the
13 manufacturer that you can recall?

14 A. I know that there are various decals in
15 various places but I can't remember what they are
16 and -- to my knowledge right at this moment.

17 Q. Are there any decals having to do with --
18 that you recall having to do with the outboard
19 engines?

20 A. Not that I recall.

21 Q. Are there any decals or warnings having
22 to do with the propellers on the outboard engines that
23 you can recall?

24 A. No. Not that I can recall.

25 Q. I am going to bring you back to 10352,

1 Bates Stamp 10352.

2 A. Correct. I am on --

3 Q. Again, given the specifications on this
4 particular page, how many engines are on this vessel?

5 A. There are three.

6 Q. And the -- it says that they are Mercury
7 Verado engines?

8 A. Correct.

9 Q. Do you know the horsepower on each one of
10 these engines?

11 A. The horsepower, as per the manual, is
12 275. The vessels that we have in South Padre were
13 rated a 300 horsepower.

14 Q. Now, we are talking about the -- in
15 particular now, I am asking you in regards to the
16 vessel in question on the night of April 23rd, 2015.

17 A. Correct.

18 Q. Were those three engines each 300
19 horsepower?

20 A. Correct.

21 Q. Were they the original engines that came
22 with the vessel, if you know?

23 A. I am not sure that the -- when they
24 changed it. I am not sure of the time frame they
25 changed it. But when I arrived at the station, to my

1 knowledge, they were 300-horsepower outboards.

2 Q. Are you saying that the cowlings have
3 300 horsepower on the outside of the cowlings?

4 A. The sticker. Yes.

5 Q. 300 horsepower?

6 A. Correct.

7 Q. Were they Mercury Verado engines?

8 A. They were.

9 Q. Are you saying that they were -- that you
10 have personal knowledge that those engines at some
11 point had been switched out on that vessel?

12 A. From 275 to 300 at some point.

13 Q. They were switched out?

14 A. Correct.

15 Q. And it is not a scenario where the 275s
16 were converted to 300, it is your understanding that
17 they were completely new engines or completely
18 different engines?

19 A. I honestly don't know what all went into
20 the decision-making process of how it was done. All I
21 know is that the manual says that and what the actual
22 engines say is 300 on the vessel.

23 Q. You don't -- you don't know if they just
24 switched out the stickers or whether they were
25 different?

1 A. I have no idea, sir.

2 Q. The engines in question on that vessel on
3 that night, were they four-stroke outboards?

4 A. Correct. Yes, sir.

5 Q. Meaning they had like a separate oil
6 compartment?

7 A. I am not sure if they had a separate oil
8 compartment. Meaning, it wasn't mixed, is that what
9 you are saying?

10 Q. Correct.

11 A. Yes. The oil was in part separate from
12 the gasoline.

13 Q. And can you read out the specifications
14 on the propellers per the manual?

15 A. It is a 14.625 by 19P, Mercury Revolution
16 4, four-blade propeller.

17 Q. Were you acquainted with the propellers
18 on this vessel?

19 A. I am.

20 Q. Did you ever have an opportunity to
21 inspect these propellers while the vessel was out of
22 the water?

23 A. I have.

24 Q. And we are talking about the propellers
25 in question for the night in question, correct?

1 A. For the --

2 Q. April 23rd, 2015.

3 A. Have I had the opportunity to inspect
4 them post?

5 Q. No. Prior to.

6 A. Prior to?

7 Q. Yes.

8 A. I have seen them before on that vessel.
9 Yes, sir.

10 Q. Did those propellers, were they -- do you
11 know if they met the specification or if they were
12 different propellers?

13 A. To my knowledge, they were -- met the
14 specification.

15 Q. Four blades meaning it has -- each
16 propeller has four blades. So at any given point,
17 there are twelve blades in the water?

18 A. I guess you can consider it that way.
19 Yes, sir. It is four per engine.

20 Q. Do you know, if you know, are the
21 original propellers put on these, on the
22 300-horsepower engines, or did it come with a
23 different set of propellers?

24 A. I am unsure of that, sir.

25 Q. Your personal experience being around

1 propellers -- being around the propellers that were on
2 the vessel the night of April 23rd, 2015, can you
3 describe them to us as far as were they sharp? Dull?

4 A. I wouldn't say they were sharp but they
5 are -- they had an edge, a flat edge. I can't tell
6 you the thickness of it. They were four propped. I
7 mean, that is about all I know. They are metal.

8 Q. Do you have an idea, an estimate, how old
9 these propellers were?

10 A. How old they were?

11 Q. Yes. On April 23rd, 2015.

12 A. I have -- I am not sure of that.

13 Q. Do you know if these propellers had been
14 changed at any point while you were at the South Padre
15 Island Station?

16 A. I am sure they have. But as to the
17 maintenance side of what goes into these engines, we
18 had a lot of contracted-out work. So I am not really
19 the person that knows the information on when and
20 where and why things would have been swapped out or
21 changed out. That wasn't my area of expertise. I
22 just drove the boat.

23 Q. In general terms, can you explain to the
24 judge how propellers pulsate a boat forward?

25 A. So looking down at here, the letter "P"

1 means pitch. Pitch means the length or the overall
2 distance that it can move within a fixed object over
3 one rotation. So this basically is saying that it can
4 move up to 19 inches with one forward rotation through
5 a fixed object, like, if you are going through a block
6 of jell or something like that. That is not
7 necessarily the case in water because you have other
8 elements, tides, cavitation, bubbles, things like
9 that, can disrupt that. But that is the general idea
10 that it can move 19 inches in one full rotation.

11 Q. Is there a low pressure created on the
12 front side of the propeller as it is spinning through
13 the water versus a high pressure on the other end that
14 is being propelled? Is that how a propeller
15 functions?

16 A. It pulls in water and then forces it back
17 out harder.

18 Q. As it pulls in, does it -- is it sucking
19 water in? Does it create a low pressure area?

20 A. I am not sure I understand what you are
21 asking. I know that the way that it is designed is
22 that it draws the water from forward around and then
23 propels it back out at a higher rate of speed allowing
24 you to propel through the water.

25 Q. Do you agree with me that propellers are

1 essentially very similar to a wing on an airplane
2 creating a low pressure on one side and a high
3 pressure on the other side?

4 MS. DELEMARRE: Object to form.

5 THE WITNESS: Yes. I am unsure. I am
6 not familiar with how the wing of an airplane works.

7 BY MR. VILLARREAL:

8 Q. Okay. Fair enough. Is there a low
9 pressure sucking an area created on one side of the
10 propeller as it is underway; in other words, does it
11 suck in whatever is in front of it, the water?

12 A. I would say so.

13 Q. And then it pushes on the other side,
14 correct?

15 A. Correct.

16 Q. So at any given time, you have three
17 propellers going down the Brownsville ship channel or
18 wherever, there is one side of it that is sucking in
19 water and the other side is pushing out the water?

20 A. Essentially.

21 Q. Is there inherent danger being in the
22 water near propellers?

23 A. Is there inherent danger being in the
24 water near propellers?

25 Q. Yes. Whether they are running or not

1 running. Just being near a propeller.

2 A. Not running, not so much. Running, yes.

3 Q. Is there a danger of getting sucked into
4 the propellers if you are on the wrong side of the
5 propellers and the propellers are running?

6 A. I mean, there is a danger of getting -- I
7 am unsure what you are saying. Getting sucked in?

8 Q. That is what I said.

9 A. I mean, I -- if you are in front of them,
10 I can say that there would be a danger of getting
11 pulled into the propeller.

12 Q. Okay. How far underneath the hull do the
13 propellers sit, if you know?

14 A. It goes back to --

15 Q. And I am -- and I am saying, just to
16 clarify my question, is: How farther down in depth do
17 the propellers sit if the engines are completely down
18 in relation to the bottom of the hull?

19 A. The offset, if I can give an estimate, it
20 is probably about a foot and a couple of inches that
21 it sits down below the actual hull.

22 Q. And why do the propellers sit lower than
23 the hull, if you can explain that to the judge? Why
24 don't they sit flush with the hull?

25 A. Because it needs to have no restriction

1 of movement of water. If they are up higher, then it
2 only has the water that is around it and the hull of
3 the vessel could actually impede that, that flow of
4 water. So when they sit down lower, there is less
5 obstruction for the water to run and for the propeller
6 to actually do its job.

7 Q. Do you agree with me that that is part of
8 the design of the -- of the vessel --

9 A. Yes.

10 Q. -- with the propeller shaft and
11 transmission of the propellers sit lower than the --
12 than the hull?

13 A. I would agree that that is how it is
14 designed. Yes.

15 Q. Do you know the length of the shaft on
16 these particular engines?

17 A. I do not know the length of the shaft.

18 MR. VILLARREAL: Do you have a question?
19 Do you need to take a break?

20 MS. DELEMARRE: Yes. Actually, I did.
21 No. I wondered what you meant by shaft. I have no
22 idea what you are talking about.

23 BY MR. VILLARREAL:

24 Q. Can you explain to Ms. Delemarre what the
25 shaft is?

1 A. What I would assume is what -- the part
2 that is sticking down that the propeller would be
3 attached to is shaft. Kind of helps turn it like a
4 drivetrain on a -- on a car, essentially. It turns
5 the wheels.

6 Q. Or a shaft on a helicopter?

7 A. Or a shaft. Yes.

8 MS. DELEMARRE: Okay. I am sorry to
9 interrupt. I just had no idea.

10 THE WITNESS: I guess that is a good
11 image to put it is if you turned a helicopter upside
12 down and put it in the water essentially.

13 MS. DELEMARRE: Thanks.

14 BY MR. VILLARREAL:

15 Q. And shafts vary from engine to engine?

16 A. They do.

17 Q. Let's talk a little bit about the
18 electronics onboard the vessel. And now we are
19 talking in particular the vessel in question on
20 April 23rd, 2015.

21 A. Yes, sir.

22 Q. Now let's get a little bit into the
23 forward-looking infrared. Was this vessel equipped
24 with forward-looking infrared?

25 A. It was.

1 Q. And the acronym is?

2 A. Forward-looking infrared light.

3 Q. Is FLIR?

4 A. MarFLIR.

5 Q. FLIR?

6 A. FLIR.

7 Q. What is the primary purpose of having
8 that onboard?

9 A. The primary purpose of having that
10 onboard is so that we can see during the night for
11 whatever the mission may be. It gives us a form of
12 night vision, essentially.

13 Q. So is it night vision or is it infrared
14 or is it thermal imaging?

15 A. It is -- it is infrared. That is what it
16 is. But that is what I mean. Just a form of being
17 able to see at night or in -- or so a
18 reduced-visibility situation. Or even to see
19 something from a farther distance because you can zoom
20 in or zoom out on the equipment.

21 Q. Can you effectively use that as
22 your -- as your forward-looking navigational device in
23 lieu or -- and replace you looking out the windshield
24 at night? I mean, is it that effective to where you
25 could navigate using just FLIR?

1 A. You -- you can to an extent. There are
2 spots on the vessel to where if you have it pointed
3 fully off the bow, the way that the boat rides in
4 certain -- certain times and even just at a clutch
5 speed, if you have it pointed directly off the bow,
6 there is a restricted -- there is other things for how
7 far the FLIR sits back, it catches parts of the
8 vessel. So you have -- at some points, you have
9 restricted visibility.

10 Q. Okay. Let's talk a little bit more about
11 that. Is the visibility of the FLIR affected by the
12 speed of the vessel?

13 A. In my experience, I have seen the vessel
14 moving fairly quickly and still able to pick up and
15 track and do its job.

16 Q. Is there a delay on what you see on the
17 screen versus what is out there?

18 A. If there is, it is hard to say unless the
19 equipment is operating faulty.

20 Q. Are you familiar with NexTrag?

21 A. I am not.

22 Q. Does the pitch of the vessel vary with
23 the speed of the vessel? The angle of the bow --

24 A. No. The pitch --

25 Q. Does the angle of the bow -- excuse me.

1 Does the angle of the bow vary with the speed of the
2 vessel?

3 A. The angle of the bow will vary. Yes,
4 sir.

5 Q. At what point would you say it is at its
6 most pronounced inclination, at what speed would that
7 be?

8 A. Probably around 15 knots. Between 15 and
9 20 knots is where it is going to -- the bow will sit
10 up the highest.

11 Q. How many degrees off center or off level
12 would you say that is?

13 A. I am not sure on the actual degrees that
14 it is off.

15 Q. When it is going 15 knots, is the FLIR
16 impeded in any way or, for instance, just the same as
17 if it were going clutch -- clutch speed?

18 A. It can be impeded a little more. It
19 would probably point up closer to the sky if it was
20 fixed on something. It can change. Yes, sir.

21 Q. Is the FLIR device sit -- does it sit on
22 top -- outside the pilothouse on top of the roof?

23 A. It does.

24 Q. Does it have a tilt?

25 A. It can tilt. It can go up and down, left

1 and right.

2 Q. Okay. And then the screen is inside the
3 pilothouse?

4 A. Correct.

5 Q. Do you know how much it will tilt up and
6 down, how many degrees?

7 A. From my knowledge, it can go all the way
8 up straight 90 degrees from 0 up.

9 Q. I see.

10 A. To my knowledge.

11 Q. Will it do a 360?

12 A. And it can do a 360.

13 Q. Horizontally? Okay. The name,
14 forward-looking infrared --

15 A. Correct.

16 Q. -- is it restricted just to being used
17 forward towards the bow?

18 A. No. It is not. No. It is --

19 Q. Forward can be in any direction?

20 A. It can be -- as far as how they chose the
21 name, I am not the expert on that. But it is designed
22 to be looked at at various angles, 360 all around the
23 vessel and even up into the area and even pointed down
24 lower if you need it.

25 Q. Is it primarily used or is it best used

1 at looking for unlit objects in the water?

2 A. Not necessarily. It is -- can be used to
3 track anything, movement, vessels. It is not specific
4 to one thing.

5 Q. I am sorry.

6 A. No. You are fine.

7 Q. Is it used to -- is it commonly used to
8 detect illegal traffickers, whether it be drug
9 smugglers or aliens, that might be on the -- along the
10 coast of the Brownsville ship channel on land?

11 A. Yes.

12 Q. Can it be used for that?

13 A. It can be used for that.

14 Q. Is it effective when used for that
15 purpose?

16 A. It can. If you have a good-enough image,
17 it can be effective.

18 Q. And even if those people, whether it be
19 the drug smugglers or the aliens, are completely in
20 the dark or unlit, the FLIR will still pick them up?

21 A. It can with the infrared. There are
22 times that it can pick them up.

23 Q. Describe, if you will, because we don't
24 have an image of this, what --

25 A. Okay.

1 Q. -- what would somebody up against -- on
2 the coast, on land, what would -- what would it appear
3 like on the screen? Would it be like a white-out
4 line?

5 A. It would be kind of a hot white. You can
6 adjust it. There are different -- there is white hot,
7 black hot and there are other various functions that
8 you can use and it might change or alter the picture
9 slightly. But when used in that function, you would
10 see it stand out white against the backdrop.

11 Q. And is the display of the individual or
12 object, is it, the hotness, is it black and white or
13 does it -- is it in color, as well?

14 A. No. It is not in color. It is a black
15 and white.

16 Q. Would you be able to -- when you -- when
17 you use the FLIR, have you ever used it to look at
18 recreational boats in the ship channel?

19 A. Yes. Yes, sir.

20 Q. And when we talk about the ship channel,
21 you understand I am talking about the Brownsville ship
22 channel, correct?

23 A. Correct.

24 Q. Will it pick up the image of the vessel
25 or just the people onboard, the FLIR?

1 A. It can -- you can see the vessel but you
2 can -- you will see the -- if there was an individual
3 standing there in sight of the equipment, you would be
4 able to see that person better than the vessel but you
5 can still see the vessel.

6 Q. So does it pick up on heat? In other
7 words, does it pick up on heat? In other words, if
8 you are looking at a vessel, recreational vessel,
9 would you normally see, like, the engine would stand
10 out more than the vessel because it is hotter or that
11 is not the type of -- that is not the way it works?
12 Let me rephrase my question. Does it pick up a heat
13 signature?

14 A. I would say, yes.

15 Q. So there is a person in the water.

16 A. Correct.

17 Q. Would it -- would it pick up a person in
18 the water?

19 A. It depends.

20 Q. How so?

21 A. It would depend on how much of that it
22 can actually see. The temperature of the water is
23 typically lower than are humans' core temperature. So
24 if only certain parts of the water can be seen out of
25 the water, then that is all that it will pick up.

1 Q. Okay. In other words, it won't pick up
2 the parts of body that are underwater?

3 A. Not to my knowledge. No.

4 Q. In other words, when you are looking at a
5 recreational vehicle, you can't pick up the
6 transmission?

7 A. Probably not. I can see probably the
8 outboard on the vessel but as far as what is inside
9 the water, no.

10 Q. Okay. What other -- do you use the FLIR
11 to patrol, back then, to patrol for illegal
12 activities?

13 A. We do. To search the shoreline.

14 Q. Okay. What other devices were onboard
15 the vessel that you can use to search for illegal
16 activity on the shoreline?

17 A. Depending on whether or not the boarding
18 officer brought the night-vision goggles, we can have
19 the night-vision goggles. And by goggles it is just
20 one single, not an actual, like, goggles. Binoculars,
21 if you can use them at night, if you can actually see.
22 And then the rest is just your eye, what you can see
23 with your eyes.

24 Q. And in your personal opinion, having used
25 both the FLIR and the night-vision goggles, what gives

1 you a better image or what allows you to see in the
2 dark better?

3 A. I would say that they are fairly
4 equivalent, it is just easier to utilize the FLIR
5 because it doesn't move as much. You kind of have to
6 focus and mess with the night vision from time to
7 time. But personally I -- if both of them are
8 operating appropriately, I prefer to use the FLIR. It
9 is a bigger image.

10 Q. And would night-vision goggles, based on
11 your experience, allow you to see any part of the
12 swimmer that is outside the water?

13 A. Not to my knowledge. I am not sure
14 because I haven't really used them and seen somebody
15 in the water.

16 Q. Okay. I am going to get away from the
17 FLIR now and talk about other electronics on the
18 vessel.

19 A. Okay. Yes, sir.

20 Q. Do you have a GPS?

21 A. We do.

22 Q. LORAN? Or what kind of GPS?

23 A. It is a digital GPS just based off of
24 satellites as guide.

25 Q. Do you know, is it Garmin? Or make and

1 model?

2 A. I believe it is -- it is Furuno, the
3 company is Furuno. And it is -- the actual display is
4 an RD-30.

5 Q. Does it -- does the GPS come standard
6 with the vessel from the factory?

7 A. The GPS is a separate company. All of
8 the navigation equipment is a separate company. I am
9 not sure, to be honest, what Safe Boat, who they work
10 with and who -- it just depends on who the Coast Guard
11 has contracts with.

12 Q. And I understand. But my question is:
13 When the vessel arrives to -- when it is -- if you
14 know, when it is turned over to the U.S. Coast Guard,
15 does it already come with the GPS and the FLIR? I
16 understand Safe Boat doesn't make you use these
17 electronics. My question is: Do they provide it to
18 the U.S. Coast Guard with those electronics already
19 included?

20 A. I do not know. I do not know.

21 Q. And the GPS, it gives you a track line
22 while you are underway?

23 A. No, sir.

24 Q. What is a track line?

25 A. A track line is going to come up on your

1 SINS package. There is a separate function that is
2 the second screen that is similar to the FLIR screen
3 that will have your -- a chart lit of where you are
4 navigating in and your track line would appear on that
5 device.

6 Q. And it is called SIMS?

7 A. SINS, S-I-N-S.

8 Q. What does that stand for?

9 A. Scaleable integration navigation system.

10 Q. Does that -- is that standard with the
11 boat, if you know?

12 A. It is standard -- it is standard on the
13 boat as per the manual. That is -- the SINS package
14 is in there.

15 Q. Okay.

16 A. As far as it coming from whoever, I am
17 unsure.

18 Q. And when you are tracking the speed of
19 the vessel, where is that displayed?

20 A. That can be displayed on one of the other
21 functions. You can also see it on the SINS package.
22 And you can also visualize it via the RPMs that the
23 engine gauges are giving you and you can convert that
24 to knots.

25 Q. Okay. So there isn't -- there isn't one

1 dedicated device just for the speed of the vessel?

2 A. There isn't one that is dedicated. Most
3 of the functions on the equipment on there is
4 multipurpose. You can kind of adjust it as you see
5 fit.

6 Q. Okay. Does the vessel have autopilot?

7 A. The vessel does not.

8 Q. Are there any other electronics versus --
9 other than the SISI, the GPS, the FLIR? Any other --
10 any other equipment that I haven't covered for
11 navigational purposes or for detecting, you know,
12 smugglers at night?

13 A. Nothing that is made for detection or
14 anything. I mean, you have radars that can pick up
15 your vessels and other things but that is not
16 typically used to detect something on the shoreline.

17 Q. Let's talk about nonelectronic equipment
18 onboard.

19 A. Okay.

20 Q. Flotation devices. What sort of
21 flotation devices are onboard?

22 A. There are various extra lifejackets that
23 we keep onboard that can act as a flotation device.
24 And we have a floating buoy ring on the back deck that
25 can act as a flotation device.

1 Q. The number of lifejackets on the vessel,
2 are they intended for the crew or do you have
3 lifejackets for purposes of search and rescue?

4 A. Their intention is for search and rescue.

5 Q. How many lifejackets are onboard?

6 A. So typically there is going to be, if I
7 can remember correctly, there is going to be two adult
8 and four children. I mean, two children and four
9 adult BFDs.

10 Q. Is it fair to say that this vessel
11 operates as a rescue boat, as well?

12 A. It can.

13 Q. Equipment used for rescue. Is there rope
14 used for rescue on the vessel, specifically used for
15 rescue?

16 A. We have rescue-heaving lines that we use
17 specifically that can be used as, like, an indirect
18 method to send a line out to someone.

19 Q. What about hooks?

20 A. We have a boat hook onboard.

21 Q. Is that for docking or for rescue?

22 A. The boat hook is multipurpose. If we
23 need it to reach something, we can. If we need it to
24 measure the depth of the water of something if our
25 depth sounder goes out and we are getting close to

1 shoal. It is a multipurpose tool. We can use it for
2 towing.

3 Q. I know you stated earlier that you have
4 never come across -- or prior to this incident, did
5 you state that you hadn't seen undocumented aliens
6 swimming across?

7 A. I have never personally seen people in
8 the water swimming across.

9 Q. But the intel would lead you -- you had
10 intel that there is people -- that there is
11 potentially people swimming across the channel?

12 A. Yes. There is intel that there were
13 people.

14 Q. Now, I want to ask you about intel
15 relating to the rescue of these people. Do you have
16 any intel or have you had a conversation about
17 rescuing undocumented aliens out of the Brownsville
18 ship channel?

19 A. I mean, if we are to come across it and
20 visually see it, our job would then switch from LE to
21 a search-and-rescue mission and that person would
22 become essentially a person in the water and we would
23 have an obligation to pick them up and bring them back
24 onboard, administer first aid, if needed, so on and so
25 forth.

1 Q. My next question is based on the intel
2 that you -- that you have received. Based on the
3 intel, are these people usually cooperative or not
4 cooperative?

5 A. It depends. It varies. People that I
6 have dealt with offshore, a fisherman, that is pretty
7 much my main contact that I have had. And it varies.
8 Sometimes they are very cooperative, and sometimes
9 they kind of argue. But, in the end, they are
10 cooperative.

11 Q. Okay. I am going to turn your attention,
12 we are still on the same exhibit, Page 10465.

13 A. I am there.

14 Q. And that section I believe is entitled,
15 Hull Exterior Lighting.

16 A. Correct.

17 Q. Just want to go briefly and explain to
18 the judge the types of lights, lighting, floodlights
19 and so forth available on this vessel.

20 A. Yes, sir.

21 Q. How many searchlights were on the vessel
22 on the date of this incident?

23 A. We have two searchlights, a handheld one
24 and a manual -- one that is fixed to the boat.

25 Q. Okay. And on Plaintiffs' Bates Stamp

1 10465, which is on the projector screen, is that the
2 one that is on the boat? Is that a picture of the one
3 on the boat?

4 A. That is.

5 Q. And it is 200,000 candle power?

6 A. That is correct.

7 Q. Is that the sort of searchlight that is
8 on barges or tugboats?

9 A. I am not sure, sir.

10 Q. How strong is that? I mean, how much --
11 explain -- explain to the judge, I mean, or to a
12 layman, how bright is that?

13 A. To be honest, it is fairly bright. I
14 can't give you an exact estimate of how far it can be
15 seen but it can be seen at far distances. If you were
16 to stare directly into it, you wouldn't be able to see
17 very much. Like the law enforcement-style flashlight.
18 It is fairly bright.

19 Q. Let's say on a night where you have
20 ten-mile visibility. Would it -- would it be fair to
21 say it will reach at least a mile?

22 A. I can say that is fair that it can be
23 seen in a mile.

24 Q. And out of that mile, in your best
25 estimate, how wide would it go? Would it -- would it

1 cover the width of the Brownsville ship channel?

2 MS. DELEMARRE: Object to form.

3 BY MR. VILLARREAL:

4 Q. If you know.

5 A. Yes. I am unsure.

6 Q. What about the handheld, does that come
7 with the boat or is that something that -- is that --

8 A. That is something that is separate on the
9 boat and it is basically just a flashlight, a
10 handheld -- like, it is a searchlight but it is -- it
11 is basically just like a flashlight. You hold it in
12 your hand. It plugs into like a cigarette lighter.

13 Q. And there is one -- there was one on the
14 vessel?

15 A. Yes, sir.

16 Q. Candle power on that?

17 A. I don't recall.

18 Q. Not as strong as the one on the boat?

19 A. No, sir.

20 Q. Down at Page Plaintiffs' Bates Stamp
21 10468. Figure 384. Up on top, is that a floodlight?
22 Or what is that?

23 A. Up on the very top?

24 Q. Yes.

25 A. That is the radar dome. And the thing on

1 the very top is the actual radar transmitter. It will
2 spin when it is engaged.

3 Q. These are floodlights right here?

4 A. Spread lights. They are floodlights.
5 Yes, sir.

6 Q. Are they used so you can see inside the
7 boat, or are they used to see outside the boat?

8 A. They kind of illuminate the outside deck
9 and then immediate around the vessel.

10 Q. They are not searchlights?

11 A. They are not searchlights. No, sir.

12 Q. Bates Stamp Number -- Plaintiffs' Bates
13 Stamp 10471. Figure 389. On the picture, that
14 is -- that is a tow light, correct?

15 A. The stem that is above that, is that what
16 you are referring to, sir?

17 Q. Right here. This one right here.

18 A. No, sir. That is just another -- they
19 are placed in all aspects. So we have one on the
20 starter, one on the port, one on the stern, one
21 forward.

22 Q. It is a floodlight?

23 A. Yes. Floodlight. Spreader light. Same
24 thing. Yes, sir.

25 Q. So as far as searchlights are concerned

1 for finding a person in the water --

2 A. We have the one that is --

3 Q. -- it is just two --

4 A. -- fixed to the boat. And then there is
5 a handheld-operated one. Plus, we have our
6 flashlights that we carry on our belts.

7 Q. A few more questions about the boat, and
8 then we will move on. Hydraulic steering --

9 A. Yes, sir.

10 Q. -- on the vessel, does it have --

11 A. It is hydraulic steering. Yes, sir.

12 Q. Is the throttle electronic or is it
13 connected by cables?

14 A. The throttle is electronic.

15 Q. How does the bow sit when the vessel is
16 traveling ten knots, if you know? Is it pretty --

17 A. If I had to guess, it would be up. It
18 wouldn't be --

19 Q. Flat?

20 A. -- parallel with the water. Yes, sir.
21 It would be kind of adjacent, kind of stick up a
22 little bit.

23 Q. The angle of the bow at five knots?

24 A. At five knots, it would probably be
25 pretty normal. That is, like -- five knots is about

1 clutch speed. It would sit about normal. So whatever
2 the weight of the engines put it and whatever we may
3 be driving into, the elements and stuff like that.

4 Q. Okay. All right. We talked earlier
5 about 15 knots and the angle of the bow. How does
6 traveling at 20 knots differ from traveling at 15
7 knots when it comes to the angle of the bow?

8 A. Once you get a vessel what is called on
9 plane -- and that will happen in between 20 and 25
10 knots -- the bow will drop back down very similar to
11 where it was at DIW or at a slow speed. And you will
12 have a lot more visibility at that point. And then
13 you can adjust your speed down lower. But as long as
14 the vessel is already on what is called a plane, it
15 will sit with the bow not riding up in the air.

16 Q. When the vessel is planing at 30 knots or
17 higher, is the angle of the bow similar to when it is
18 planing at 20 knots?

19 A. Yes. Once it planes out, it should sit
20 down. If it takes you awhile, and you are coming up
21 slowly, very slow, it can sit up until you hit 15, 20,
22 20-some knots and it will sit like that, almost riding
23 up in the air. And then it will take a lot longer for
24 the vessel to it is called plane out and get the bow
25 back down.

1 Q. Okay. Is the maneuverability of the
2 vessel affected in any way 20 knots versus 30 knots?

3 A. Not really. Your turning abilities,
4 everything else is about the same, it is just slightly
5 quicker.

6 Q. What about your ability to come to a
7 complete stop, 20 knots versus 30 knots? Is there a
8 difference?

9 A. It may take a little while to stop going
10 30 knots than it would be going 20 but I couldn't give
11 you an accurate guess on what it would be distance.

12 Q. You can't tell me if it would be 50
13 yards, 100 or 200 yards?

14 A. I couldn't tell you the difference. No,
15 sir.

16 (Exhibit No. 7 was marked.)

17 BY MR. VILLARREAL:

18 Q. I am going to hand you what I have marked
19 as Exhibit Number 7.

20 A. Yes, sir.

21 Q. And I don't have a Bates stamp number for
22 this but I can tell you it is Nautical Chart 101302.
23 And I am sure it is expired by now but --

24 A. Yes, sir. They come up with corrections
25 about every week, updates and things like that.

1 Q. Okay. Defense counsel. Can I have it
2 back?

3 A. Yes, sir.

4 MR. VILLARREAL: Do you want to take a
5 five-minute break?

6 MS. DELEMARRE: I am fine. Are you fine?

7 THE WITNESS: Do you need one, sir?

8 MR. VILLARREAL: I need a five-minute
9 break. Is that okay? Get something to drink.

10 THE VIDEOGRAPHER: We are going off the
11 video record at 12:54 p.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We are back on the
14 video record at 1:04 p.m. Counsel may proceed.

15 BY MR. VILLARREAL:

16 Q. Petty Officer Rae, we are back from a
17 short break.

18 A. Yes, sir.

19 Q. And are you ready to continue?

20 A. I am ready.

21 Q. Can you please describe to the judge the
22 exhibit, Exhibit 7? What is that?

23 A. This looks like one of the charts from
24 our area down in South Padre. One of the charts from
25 the area down in South Padre.

1 Q. I would like for you to mark the areas
2 referred to by Lieutenant Bell as areas for
3 illegal-smuggling activity. And I am going to point
4 you here to Exhibit Number 2, the second-to-the-last
5 paragraph, which says the shrimp basin.

6 A. It is the second-to-the-last?

7 Q. Can you read that?

8 A. "Shrimp basin, Zapata boat ramp, and a
9 bluff area are the three well-known areas for migrant
10 crossings; but, again, they utilize the entire BSC."

11 Q. Those three areas, can you point them out
12 on the -- on the map that you have in front of you?
13 Or let me -- so there is an extra mouse here. And if
14 you can point to it on that map, it should work. If
15 you can point out the areas that Lieutenant Bell is
16 talking about.

17 A. Sorry.

18 Q. I think the mouse is there. Do you have
19 the mouse?

20 A. Yes. Does it zoom in at all, sir?

21 Q. Yes. I have got it. Just hold on.

22 A. That is fine. I am waiting. Yes, sir.

23 Q. Are the areas that he is talking about
24 depicted on the projector?

25 A. Yes, sir. I see, this is the shrimp

1 basin here. The Zapata I believe is right here in
2 this area. And the bluff area -- I am not sure where
3 the bluff area is. But Zapata is in this area here.
4 And the shrimp basin is right here.

5 Q. As far as you sit here today, where did
6 this incident occur where you heard the thud
7 underneath the vessel?

8 A. I would say that it was somewhere in this
9 proximity here.

10 Q. Let me take Exhibit Number 2 from you.
11 Thank you. Just generally, so the judge
12 understands -- a lot of us are very familiar with this
13 area if we do recreational boating or fishing, some
14 other people aren't -- can you just generally explain
15 to the judge this canal that is depicted on Exhibit
16 Number 7, I believe? Is that the Brownsville ship
17 channel?

18 A. This is. The long stretch that looks
19 like it starts from offshore and goes all the way in
20 on a straight line.

21 Q. Feel free to use the mouse, if you wish.

22 A. So this, all of this area right here,
23 which is an accurate depiction of the Brownsville ship
24 channel.

25 Q. And this map is to scale, right? You

1 don't -- you don't have a ruler with you, though?

2 A. I don't have a ruler with me.

3 Q. Can you -- can you tell just from your --
4 based on your experience and -- do you know how
5 wide -- approximately how wide this channel is from
6 one coast to -- from coast to coast?

7 A. It varies.

8 Q. From what distances?

9 A. I would say from a few hundred yards up
10 to a mile.

11 Q. In width?

12 A. I mean -- not -- in length. Sorry. A
13 few hundred yards in width. And then some areas it
14 gets shallower or it gets narrower or wider.

15 Q. I am not talking at the canal itself, the
16 deep end. I am talking from south to north.

17 A. Yes, sir.

18 Q. It is -- you agree with me it is pretty
19 much the same throughout?

20 MS. DELEMARRE: You mean from bank to
21 bank?

22 THE WITNESS: Yes. From bank to bank.

23 BY MR. VILLARREAL:

24 Q. From south -- yes. From bank to bank.
25 Regardless of the depth.

1 A. No. I am not referring to the depth. I
2 am saying that the width will vary. There is a lot of
3 parts here it is pretty similar but it does -- it does
4 vary.

5 Q. Okay. And just so that we get a
6 reference, can you tell us where you -- where the
7 Coast Guard station is located in? Let me -- let me
8 zoom over here, too. Using the mouse, can you show
9 the judge where the station was located on April 23rd,
10 2015?

11 A. Station is in this area here.

12 Q. Okay. So it is south of the causeway?

13 A. It is south of the causeway.

14 Q. It is south of the old causeway?

15 A. It is south of the old causeway, as well.
16 It should pop up on this chart. It should say, Coast
17 Guard Station. I think it is right here, this little
18 dot. And it actually -- Coast Guard Station, Padre
19 Island.

20 Q. And that is -- that is where the patrol
21 begins? Or does the patrol begin at the Brownsville
22 ship channel?

23 A. No. The patrol begins at the station.
24 You depart the station and then move on to the
25 channel.

1 Q. Okay. Explain to the judge, what are the
2 dangers that you could encounter in the Brownsville
3 ship channel as you are patrolling through there? And
4 I will start you off by asking you: Are there
5 fishermen, recreational fishermen, on boats in the
6 ship channel?

7 A. Sometimes there are. There is fishermen,
8 shrimpers up and down. Sometimes there are barges
9 pushing -- tugs that are pushing barges up and down
10 the channel.

11 Q. What are all of the potential dangers
12 or -- that you would take into consideration when
13 doing a mission planning or risks, you know, of
14 collision or colliding into? Boats would be a
15 potential danger, correct?

16 A. Boats. Correct.

17 Q. What about fishermen on the banks
18 fishing? Their lines?

19 A. Not typically. We don't really navigate
20 that far in to a shoreline there to conflict with
21 that.

22 Q. So other commercial traffic. You said
23 tugboats?

24 A. There is commercial traffic, tugboats.
25 There is even your, just like we discussed earlier,

1 just recreational boaters.

2 Q. Okay.

3 A. From time to time.

4 Q. And you are confined to a certain -- to a
5 few hundred yards as far as the width of the
6 Brownsville ship channel, correct?

7 A. Correct.

8 Q. And then you are even more confined by
9 the area that you can actually navigate this vessel
10 through, correct, because of the draft?

11 A. There is -- there is a confinement but it
12 is a pretty broad -- there is enough where we could
13 turn around and we can make passing with larger
14 vessels and still be within our --

15 Q. Okay. So do you have an approximate
16 width, approximately the width of the center of the
17 canal or between the markers?

18 MS. DELEMARRE: Object to form.

19 BY MR. VILLARREAL:

20 Q. So the bank from bank to bank is one
21 length, 100 to maybe 200, 300 yards in width. But
22 does the canal itself, the portion where you -- where
23 you navigate, is it narrower than that?

24 A. It is. The markers, some of which are
25 placed in farther from the canal, where the water is

1 deeper.

2 Q. And so, relatively speaking, how narrow
3 is the canal generally or does it vary depending on
4 where you are in the Brownsville ship channel?

5 A. It varies. Sometimes it will come in a
6 little closer. Sometimes it will be a little bit more
7 spread out if they have the room.

8 Q. Are the markers ever more than 100 yards
9 apart, the markers, the width -- depicting the width
10 of the channel?

11 A. I honestly can't tell you, yes, or, no.
12 I wasn't attached to the -- there is a navigation team
13 down there. So I am not sure on how they measured it
14 out.

15 Q. Do different navigational rules apply to
16 the intercoastal waterways of the U.S. as opposed to
17 open water?

18 A. Correct. They are.

19 Q. They do? What sort of rules?

20 A. There is -- when you are operating in
21 arrow, narrower channels or confined waterways, there
22 is less maneuverability. The rule mainly pertaining
23 to larger vessels, for us to stay out of the way of a
24 larger vessel. But vessels who are conducting
25 fishing, or anything like that, within a channel are

1 required to keep out of the way of the normal traffic.
2 And offshores you have a lot more grace period, play.

3 Q. Are the probability of running around in
4 the intercoastal water on the Brownsville ship channel
5 system, are they greater than running aground
6 offshore?

7 A. Definitely.

8 Q. Why is that?

9 A. Because there isn't a whole lot of room,
10 like we discussed. You have your -- excluded to your
11 sides that you can navigate on; and the water, as you
12 get closer to the shoreline, gets shallower quicker.

13 Q. What about navigating this ship channel
14 the day versus the night? Are there -- is it more
15 challenging to navigate it at night or to stay in
16 center line at night than during the day?

17 A. Not particularly. If you can follow the
18 navigation, the aids. A lot of our aids are lit.
19 There is also range lights that are within the channel
20 that mark the center line of the channel. And if you
21 adjust your vessel, point it on those range lights,
22 you should be able to stay within the center line of
23 the channels. And then it is trusting your navigation
24 system.

25 Q. Do you have to rely more so on your

1 electronics and navigational equipment inside the
2 pilothouse at night than you would during the day?

3 A. I think it depends. It may depend on
4 your driving experience, what you are comfortable with
5 or not. Being familiar with the area that you are
6 operating in. But it is -- it is pretty much an even
7 distribution. You use both of them with each other if
8 you have them available.

9 Q. What about speed? Is speed a factor when
10 trying to stay or trying to keep from running aground
11 in the ship channel at night?

12 MS. DELEMARRE: Object to form.

13 BY MR. VILLARREAL:

14 Q. The speed of the vessel, is that a factor
15 to consider when trying to stay, you know -- trying to
16 keep from running aground in the channel?

17 A. I would say if you are deviating from
18 your said course, if you are following your track line
19 and you are following what you have plotted and you
20 are following where the aids are placed and you are on
21 track, speed shouldn't really have an issue with
22 running aground. If you deviate from what is said in
23 front of you and maybe turn to starboard or turn to
24 port and continue to operate at that speed, then at
25 that point you may have -- may be put into a situation

1 where that might be the case.

2 Q. And all navigation, in the Brownsville
3 ship channel, is manual, it is not automated, it is
4 not by autopilot?

5 A. No. It is manually operated.

6 Q. So the operator of the boat deviates from
7 center line. Is there a higher risk of running
8 aground at higher speeds than there would be at lower
9 speeds?

10 A. Not preferably. I mean, again, that
11 depends on the vessel's size and how much room you
12 have either to the right or the left of where you are
13 navigating.

14 Q. In other words --

15 A. If you are -- okay.

16 Q. In other words, slower, navigating at a
17 slower rate of speed is easier to get back on track or
18 faster than if you are -- if you experience that same
19 deviation at a higher rate of speed?

20 A. Not necessarily. It just depends on your
21 boat-handling abilities, really. Sometimes it is
22 actually more difficult to maneuver the boat at lower
23 speeds than it is. That is kind of how these boats
24 are designed. They are designed to be able to perform
25 turns and things like that at higher speeds.

1 (Exhibit No. 8 was marked.)

2 BY MR. VILLARREAL:

3 Q. I am going to give you what I have marked
4 as Exhibit Number 8.

5 A. Yes, sir.

6 Q. You want to give me Number 7. I am going
7 to leave this handy here for you. Sorry about that.

8 I have given to you what I have marked as
9 Exhibit Number 8. And I represent to you that this is
10 an interview summary of Lieutenant Erica Kelly, Chief
11 Intelligence at Sector Corpus Christi. She gave this
12 interview on May 7, 2015, which is -- you know, it is
13 after the incident of April 23rd, 2015. Okay?

14 A. Okay. Yes, sir.

15 Q. I am going to read the highlighted parts
16 and ask you if you agree or not. "Undocumented Alien
17 (UDA) activity in the Brownsville Ship Channel happens
18 regularly." Do you agree with that or not?

19 A. I agree.

20 Q. Next highlighted portion, "UDA," which
21 stands for undocumented alien, "crossings of the ship
22 channel have been known to occur during the day, but
23 the majority of" the "traffic occurs in the evening or
24 very early in the morning." Do you agree with that?

25 A. I agree.

1 Q. So do you agree that the majority of
2 the -- according to the intel that is being given to
3 you, the intel states that the majority of the aliens
4 swimming across or crossing the ship channel, majority
5 of that activity happens at night, right?

6 A. Or during times of low visibility.

7 Q. Why is that, do you know?

8 A. Because they don't want to be seen.

9 Q. Because they don't want to be seen.

10 Okay. Is this intel, is this information that you
11 knew prior to the incident of April 23rd, 2015?

12 A. I did.

13 Q. And do you know Lieutenant Erica Kelly?

14 A. I do.

15 Q. Next highlighted portion, "UDA activity
16 across the Ship Channel is usually Mexican nationals."
17 Do you agree with that?

18 A. I would agree.

19 Q. Okay. And it says, next paragraph, "More
20 UDA activity on the ship channel also occurs during
21 the warmer months, due to the cold temperature of the
22 channel." Do you agree with that?

23 A. I agree.

24 Q. So they are less likely to cross in
25 December, or during cold weather, right, swim across

1 the ship channel?

2 A. Correct.

3 Q. Next paragraph. "Estimated that 2-4 UDAs
4 are apprehended a month attempting to cross the ship
5 channel." Do you agree with that?

6 A. Say that --

7 Q. Estimated that 2 to 4 -- right here --
8 are apprehended a month crossing the ship channel.

9 A. If that is the report, then, yes. As
10 much as that being the Coast Guard apprehending those
11 individuals, not to my knowledge that that is an
12 accurate assessment of what we do.

13 Q. Okay.

14 A. But --

15 Q. But you -- but you don't have any reason
16 to disagree that they are apprehended by law
17 enforcement whether it be --

18 A. By some sort of a law-enforcement entity.
19 Yes, sir.

20 Q. "Some months vary where" it will be --
21 "we will get reports of 4-5 individuals crossing. We
22 believe there are a lot more that go undetected." Do
23 you believe there is a lot more that go undetected?

24 A. I believe so.

25 Q. You don't think everyone is captured,

1 right?

2 A. (Witness shaking head.)

3 Q. No?

4 A. No, sir.

5 Q. "For the last 2 years, the Brownsville
6 Ship Channel has been mentioned every week
7 highlighting the times and days" that "the activity
8 may be occurring and intelligence recommendation for
9 patrols." Is that true?

10 A. I mean, it is discussed. Yes, sir.

11 Q. So is it your testimony that every week
12 at the station you were told or there is a discussion
13 including you where undocumented aliens crossing the
14 ship channel was?

15 A. Not necessarily a discussion including
16 myself but the command often held discussions every
17 oncoming day and they would discuss with the people
18 who were in charge for the said days. So if it was
19 mentioned then, then it was.

20 Q. So there is no question in your mind that
21 illegal aliens would swim across the ship channel on a
22 regular basis, right?

23 A. Yes, sir. Yes, sir.

24 Q. That was something that you knew?

25 A. I knew.

1 Q. And you knew that they would -- they
2 tended to do so more at night?

3 A. Yes, sir.

4 Q. So prior to going on your patrol the
5 night of April 23rd, 2015, you already knew that you
6 could potentially come up against an alien, whether it
7 be a drug smuggler or an undocumented alien, swimming
8 across the Brownsville ship channel? That -- that
9 would concur with what the lieutenant is saying?

10 A. It could. It could happen. It can.

11 Q. It could happen, possibly, probably. I
12 mean, there is a high incidents of --

13 A. Yes. There is a -- there is a
14 probability, just like you said before.

15 Q. There is a -- there is a high probability
16 that -- I mean, that is why you are out there, right?

17 MS. LEONARD: Object to form.

18 THE WITNESS: Well, I wouldn't
19 necessarily say it is a high probability but it would
20 be a probability because as to say exact amount, I am
21 not sure. Like I said, before what I have seen and
22 what I have heard from a Coast Guard standpoint, I
23 haven't seen it, I hadn't witnessed it. I hadn't
24 heard of any of our people attached to our unit, you
25 know, up until this event, pulling people out of the

1 water that I personally knew or was part of a
2 conversation. But, yes, sir, I knew that --

3 BY MR. VILLARREAL:

4 Q. I mean, that is --

5 A. -- crossing does happen.

6 Q. That is the whole -- the whole point of
7 your patrol that night or -- well, maybe not the whole
8 point but part of your patrol -- patrols include
9 looking for drug smugglers or aliens that are trying
10 to come across the ship channel, right?

11 A. Correct. Correct. So I would say that
12 there is a probability.

13 Q. Yes. Okay.

14 A. And that was considered.

15 Q. Because there -- otherwise, it would
16 defeat the purpose of you doing the patrol?

17 A. Yes, sir.

18 Q. So explain -- explain to the judge: Why
19 are people crossing the ship channel?

20 MS. DELEMARRE: Object.

21 BY MR. VILLARREAL:

22 Q. What is it about Highway 4, Highway 48?
23 Do you know if they are trying to get around a
24 checkpoint?

25 A. I would say that they are just trying to

1 avoid being seen altogether. This is probably one of
2 many routes that I am even unaware of that go down the
3 entire border of Texas not even including the Rio
4 Grande or the Brownsville ship channel.

5 Q. Okay. You don't --

6 A. So I don't have an accurate estimate or
7 reason as to why they choose this particular area over
8 others.

9 Q. Okay. Bates Stamp 13283, which is the
10 following page. Highlighted, "We are aware that the
11 shrimp basin has been an area of pick up for the UDAs.
12 It has been this way for many years." Do you agree
13 with that statement?

14 A. I do.

15 Q. The shrimp basin is where the shrimpers
16 park their vessels?

17 A. Can you ask the question again? I am
18 sorry. I was trying to find my spot.

19 Q. The shrimp basin is where the shrimpers
20 dock their shrimp boats?

21 A. The shrimp basin is where they dock their
22 shrimp boats.

23 Q. And that is in the Brownsville ship
24 channel?

25 A. Correct.

1 Q. "We have a lot of reports on the Shrimp
2 Basin; there have been illegals encountered there and"
3 the "UDAs on boats that we get regularly."

4 Let me read that again. "We have a lot
5 of reports on the Shrimp Basin; there have been"
6 illegal encountered -- "illegals encountered there and
7 UDAs on boats that we get regularly." Do you agree
8 with that statement?

9 A. I agree.

10 Q. It says "regularly" not -- I mean,
11 regularly, you understand that to mean -- do you agree
12 with that, that on a regular basis people are crossing
13 through the shrimp --

14 A. I agree that as this is written that
15 regularly they are found in the vicinity of shrimp
16 boats and picked up off of other vessels. That is --
17 that is how I am understanding this statement.

18 Q. Okay. "The Coast Guard has participated
19 in a handful of UDA interdictions crossing the channel
20 this past year." Do you agree with that statement, in
21 2015/2014, the U.S. Coast Guard --

22 A. I can agree because, like I said before,
23 other law enforcement vessels -- and I can even give
24 an example. If border patrol calls us and says, hey,
25 we found these people, will you come pick them up, and

1 we do and we will detain them until further notice,
2 until they go through an interview process or whatever
3 the outcome may be.

4 Q. When you pick up a UDA, undocumented
5 alien, do you hand them over to border patrol after
6 that or do you process them?

7 A. In my experience, the only time that we
8 have done it was offshore that I have been a part of
9 it. And -- or even if we do pick someone up that
10 border patrol drops us off with, more than likely we
11 either go down to the ICE detention center, which is
12 in Port Isabel, and we will wait there for whoever is
13 going to interview them or pick them up from there, or
14 we take them back to the Coast Guard Station where
15 they can either be interviewed by Lieutenant Kelly or
16 whoever is in charge of that job at that time and
17 whatever agencies interview them and then border
18 patrol will come and pick them up afterwards.

19 (Exhibit No. 9 was marked.)

20 BY MR. VILLARREAL:

21 Q. Okay. I am going to hand over to you
22 what I have marked as Exhibit Number 9.

23 A. Yes, sir.

24 Q. I will represent to you that this is an
25 interview of the Intel officer detached to South Padre

1 Island. So this is an Intel officer giving this
2 interview, is that correct?

3 A. Correct.

4 Q. And this is somebody that you would work
5 with on a regular basis or communicate with on a
6 regular basis?

7 A. Yes, sir.

8 Q. What is the name on -- who is this? I
9 can't read their signature.

10 A. It is Lieutenant -- I can picture his
11 face but I am drawing a blank for his name.

12 Q. And, you know, the name is not as
13 important as long as, you do agree that there was
14 somebody --

15 A. It is Rivera. I know his last name is
16 Rivera. I don't remember his first name. It is a
17 Lieutenant Rivera.

18 Q. Okay. And he is an Intel officer?

19 A. Yes, sir.

20 Q. Highlighted portion. "The Wednesday
21 prior to the incident, I did the quarters training.
22 There" was "about 50 members of the crew in
23 attendance." The Wednesday prior to the incident, do
24 you remember attending that?

25 A. I can't recall.

1 Q. "I briefed that on April 3rd," 20 days
2 prior to this accident, right? "I briefed that on
3 April 3rd, OAM" interdiction -- "interdicted a raft
4 full of migrants trying to cross the" Brownsville ship
5 channel. Do you remember this incident?

6 A. I do.

7 Q. Were you a part of the patrol that was
8 involved in it?

9 A. I was not.

10 Q. Tell us a little bit about this incident.
11 So what happened just in your -- your recollection of
12 this.

13 A. As far as I know, that is -- that is what
14 I hear is that it was noticed, that is what was
15 reported and they discussed it.

16 Q. So 20 days before this incident that we
17 are here for today, there was a raft full of migrants
18 crossing the Brownsville ship channel, correct?

19 A. Correct.

20 Q. And you were informed of this the
21 Wednesday just prior to April 23rd, 2015, correct?

22 A. I mean, if that -- if that was the time
23 frame. I am just -- I am not 100 percent sure if that
24 is the date. But we -- I can remember the story.

25 Q. Okay. It says, "I described that the"

1 migrants -- "the smugglers" -- excuse me -- "were
2 trying to circumvent the checkpoint at highway 4."
3 Are you familiar with the checkpoint on Highway 4?

4 A. Yes, sir.

5 Q. So they brought the people to the
6 southern bank of the BSC in a vehicle, dropped them
7 off with some inflatable rafts. They would -- would
8 try to cross the -- the Brownsville ship channel.
9 Then the vehicle would go past Highway 4 empty, I
10 guess, past the checkpoint, right? Right?

11 A. I would assume so.

12 Q. Then go to Highway 48 to the north bank
13 and pick them up. What -- what is she describing?
14 Give the judge just a general understanding. Because
15 we were trying to discuss this earlier. Are they
16 trying -- is their reason for them crossing in part
17 because they are trying to avoid the checkpoint on
18 Highway 4?

19 MS. DELEMARRE: Object to form.

20 BY MR. VILLARREAL:

21 Q. Is this something that you were informed
22 of or that you were --

23 A. Well, like I said, if that -- that is
24 definitely something that they would want to avoid but
25 just like anything else in the situation, they are

1 trying to avoid being caught or seen in any situation
2 not even just narrowing it down to one thing. So,
3 yes, it is common talk that people try to avoid the
4 checkpoints. It is common talk that people try to
5 cross the Brownsville ship channel. It is common talk
6 for them to try to get -- avoid being seen or picked
7 up, period, to my knowledge.

8 Q. Okay. I am going to read the last
9 sentence of the highlighted portion. "At that point I
10 didn't have an exact location, but pretty much all
11 crossings occur between the Gayman Bridge just east of
12 Zapata Boat Ramp, and the start of the Shrimp Basin."

13 The Gayman Bridge, are you familiar with
14 that bridge?

15 A. I am.

16 Q. Highway 4. Do you have -- looking at
17 this map, just in reference to the ship channel, where
18 is -- where is this checkpoint? It is south of the
19 Brownsville ship channel, right, on Highway 4? Do you
20 agree with that?

21 A. I believe that it is south of the ship
22 channel. As per where it is via the chart, I honestly
23 couldn't tell you.

24 Q. Do you see on this area right here that
25 is marked as the Boca Chica Road?

1 A. Yes, sir.

2 Q. And there is a four right there with a
3 circle.

4 A. Yes, sir.

5 Q. Now, based on your personal knowledge and
6 recollection of having -- you have traveled on
7 Highway 4?

8 A. I have not.

9 Q. You have not traveled on Highway 4?

10 A. I have not traveled on Highway 4.

11 Q. Do you have any reason to believe that
12 this wouldn't be the depiction of Highway 4?

13 MS. DELEMARRE: Object to form. And how
14 would he know?

15 MS. LEONARD: Form.

16 THE WITNESS: I don't know.

17 BY MR. VILLARREAL:

18 Q. What about the -- do you know where the
19 checkpoint is?

20 A. I do not know the exact location of the
21 checkpoint. I know that there is a checkpoint but, as
22 of right now, I don't recall the exact location.

23 Q. This does say Boca Chica Road, right?

24 A. Correct.

25 Q. Do you know Boca Chica Road is dubbed as

1 Highway 4?

2 A. Yes.

3 Q. So this would be Highway 4, then, because
4 it says, Boca Chica Road, right?

5 A. Okay.

6 Q. You agree with it -- with that or --

7 A. I agree.

8 Q. Okay. Do you see the airport?

9 A. I do.

10 Q. Is the checkpoint between -- is it east
11 of the airport?

12 MS. DELEMARRE: Object to form.

13 THE WITNESS: No. I don't -- I don't
14 remember where the checkpoint is, sir.

15 BY MR. VILLARREAL:

16 Q. You said you have never been to the
17 checkpoint?

18 A. I have never been to the checkpoint, and
19 I have never traveled past the Brownsville
20 International Airport.

21 Q. And you haven't studied these maps; in
22 other words, you haven't been given any intel as to
23 where the checkpoints are located?

24 A. I mean, I have been given intel. I have
25 been briefed on areas. I have been. But I am saying

1 right now, standing -- sitting here, I don't -- I
2 don't recall it. That is what I am trying to get at
3 is I don't -- I don't remember.

4 Q. And just to clarify, I am not trying
5 to -- you don't know if it is east of the airport?

6 A. I do not know.

7 Q. So Highway 4 would -- the location of
8 Highway 4 on this map would coincide with what is on
9 that report, right, that Highway 4 is south of the
10 Brownsville ship channel?

11 A. I can see that.

12 Q. Okay. And then Highway 48 is north of
13 the ship channel?

14 A. Correct.

15 Q. Does Highway 48 run parallel to the ship
16 channel?

17 A. Pretty decently. Yes, sir.

18 Q. I mean, this is Highway 48, right?
19 Right?

20 A. Up above the north side? Yes, sir.

21 Q. Okay. So where is the Gayman -- Gayman
22 Bridge? You have a mouse right there.

23 A. I believe -- scroll it over here some --

24 Q. I can do that for you, if you want. Do
25 you want to go left?

1 A. Left, please.

2 Q. It is west of the basin?

3 A. It is going to keep going. No. The
4 other way. I am sorry.

5 Q. East?

6 A. Yes, sir. Sometimes this stuff is
7 inverted and it is hard with the mouse.

8 Q. No. I understand. Just so you know,
9 this is facing north. Okay?

10 A. Yes, sir.

11 Q. Top is north. Do you want me to keep
12 going east?

13 A. Keep going. Yes, sir. All right. Now
14 it has gone too far. I don't know if you can actually
15 see it on this map unless it is in -- where Zapata
16 boat ramp is, there was another cut.

17 Q. There is a -- the Zapata boat ramp is --

18 A. Is that right there.

19 Q. Is this right here, right?

20 A. The inlet right there. The Zapata.

21 Q. This is it?

22 A. Uh-huh. And that is what we called the
23 Highway 48 bridge. And there was another bridge that
24 was a little bit smaller, to my recollection, that was
25 a little bit farther in, a little bit farther up. And

1 there was another narrow cut. And to what I can
2 recall, that, to the best of my knowledge, is where
3 the Gayman Bridge would be.

4 Q. Okay.

5 A. But I can't accurately see it on this
6 chart.

7 Q. And just, lastly, on Bates Stamp
8 Number 13286, the Intel officer states, We as Intel
9 highlight the Brownsville ship channel because it is a
10 hot area for drug smuggling. Do you agree with that
11 statement?

12 A. I agree.

13 (Exhibit No. 10 was marked.)

14 BY MR. VILLARREAL:

15 Q. I am going to hand over to you what I
16 have marked as Exhibit Number 10.

17 A. Yes, sir.

18 Q. You would agree with me that visibility
19 is a -- it is something that you would -- that you
20 would take into consideration in mission planning?

21 A. Yes.

22 Q. Visibility would include the illumination
23 by the moon, if -- if the moon is visible or not,
24 right? That is something you take into consideration?

25 A. I would.

1 Q. And then you would also take into
2 consideration whether it was cloudy or not --

3 A. Yes, sir.

4 Q. -- to determine the amount of
5 illumination --

6 A. Yes, sir.

7 Q. -- for a particular mission, correct?

8 A. Correct.

9 Q. And you would assess or plan accordingly
10 given -- given these factors, correct?

11 A. Correct.

12 Q. So do you agree with me that the higher
13 the moon illumination, at any given night, the more --
14 the more light you have?

15 A. I would agree.

16 Q. All right. And does the moon
17 illumination help you navigate at night?

18 A. It can.

19 Q. It certainly doesn't hurt you to have
20 moon illumination?

21 A. It doesn't hurt to have more light,
22 absolutely not.

23 Q. Can you tell the judge: What was the
24 moon illumination on April 23rd, 2015?

25 A. It says that it is a .24.

1 Q. Okay. Do you have any reason to disagree
2 with this chart?

3 A. I do not.

4 Q. Okay. .24 would mean that it is a
5 quarter moon?

6 A. I am not sure exactly but I know that it
7 was getting smaller, the luminosity.

8 Q. It was not a full moon? It was not a
9 full moon?

10 A. It was not a full moon.

11 Q. Let me ask you this. And we will go over
12 this in greater detail. But do you recall that there
13 was overcast that night or could you see the moon, if
14 you recall?

15 A. I can't recall.

16 Q. Do you agree with me that if it is
17 overcast, it would be darker than if it was clear?

18 A. It would block out the rest of the
19 remaining light. Yes, sir.

20 Q. Of the moon?

21 A. Of the moon.

22 Q. Can I have that, please.

23 (Exhibit No. 11 was marked.)

24 BY MR. VILLARREAL:

25 Q. I am going to hand over to you what I

1 have marked as Exhibit Number 11. That is the final
2 investigative report. Do you have that in front of
3 you, Petty Officer Rae?

4 A. I have the packet in front of me. Yes,
5 sir.

6 Q. Have you seen this document prior to
7 today?

8 A. I have.

9 Q. What is a final investigative report?

10 A. It is the final report that the mishap
11 analysis board concluded after they concluded their
12 investigation.

13 Q. So it is referred to as a mishap,
14 correct?

15 A. Yes, sir.

16 Q. I have been referring to it as an
17 incident. Some people might refer to it as an
18 accident. But when you say "mishap" you are talking
19 about the -- in particular about Patricia Garcia, my
20 client, I guess being hit by this vessel, correct?

21 A. The mishap. Yes, sir.

22 Q. That is the mishap. Okay.

23 And who is -- who is the board? Who
24 comprises the members of the board that did the
25 investigation?

1 A. The members of the board are comprised up
2 at the district level up in headquarters, actually,
3 where Lieutenant is from.

4 Q. Where is that?

5 A. In Washington, D.C. And the team is put
6 together there. That is about to the knowledge that I
7 have.

8 Q. You don't know how many members on the
9 board?

10 A. I think it can vary. What I can recall
11 was a captain, another officer who was a legal
12 background, some subject-matter experts on the vessels
13 and there was a scribe, someone who was taking notes.
14 To the best of my knowledge is what I can remember.

15 Q. And they -- they make findings of facts?

16 A. They make findings. They try to pull out
17 all of the facts. They -- they are the ones that do
18 the investigation.

19 Q. And then they render an opinion?

20 A. And they render an opinion in the end.

21 Q. Tell -- tell me in your own words: What
22 happens as you -- as you are coming out of the -- out
23 of the station and you are coxswain --

24 A. Coxswain.

25 Q. Coxswain. You are the coxswain on the

1 vessel. Mondrala is the break-in coxswain. You have
2 two crew members?

3 A. I do.

4 Q. Onboard. And you head out to the
5 Brownsville ship channel on the night of April 23rd,
6 2015, around 10:30 p.m.? Or what time do you head
7 out?

8 A. I believe it was to be underway by
9 10 o'clock. We started making our preparations and
10 getting ready by about 9:40, if I can recall.

11 Q. And you make a decision to -- to run the
12 vessel dark, meaning that no nav lights?

13 A. No. That decision was not made. That --
14 I am actually not in favor of that. That is a
15 decision that is to the discretion of the coxswain at
16 that time when LE emissions were in effect. But from
17 my understanding, it wasn't -- we weren't aware or I
18 was not aware that the navigational lights were on
19 until shortly after into the patrol.

20 Q. That they were on or you weren't aware?

21 A. They were not on.

22 Q. That they were not on.

23 A. I was --

24 Q. Inadvertently, for a portion of the
25 patrol, you were running the vessel dark, meaning, no

1 navigational lights?

2 A. Yes. No navigational lights.

3 Q. So and --

4 A. It was allowed to do that at discretion.

5 Q. Correct.

6 A. But to my knowledge, I was unaware that
7 they were. And I personally don't run them dark.

8 Q. Because it is safer to run with lights
9 on?

10 A. It is just more of a comfort level for
11 myself.

12 Q. And nav lights are not so much, I mean,
13 for -- to avoid you hitting someone, it is more so to
14 avoid somebody hitting you, right?

15 A. Yes. So someone could see us.

16 Q. And you are heading into the Brownsville
17 ship channel at night, and you inadvertently are
18 running in the dark?

19 A. Correct.

20 Q. You think you have the lights on but you
21 don't until you are warned by -- who advises you that
22 you are running dark?

23 A. CAROL M is a tug that was pushing down
24 the channel. We got in contact with them via radio,
25 and we discussed that the lights weren't on. And we

1 engaged them at that point.

2 Q. You are advised by the captain of the
3 tugboat that your lights were not on?

4 A. We were advised. Yes.

5 Q. At that point, you turned it on?

6 A. We turned it on.

7 Q. Nav lights?

8 A. Nav lights.

9 Q. Aft light, the white light?

10 A. The aft light, the stern light and the
11 two side lights, port and starboard.

12 Q. Separate from the nav lights?

13 A. No. They are -- all three are together
14 when your -- your underway lights are on.

15 Q. When you are advised that your nav lights
16 aren't on and you switch them on, do you turn on the
17 spotlight?

18 A. I do not turn on a spotlight.

19 Q. Okay. And your FLIR, I believe, in
20 something that I read, says that you were pointing the
21 FLIR towards the shoreline, the southern bank, is that
22 correct?

23 A. That is correct.

24 Q. Why not forward?

25 A. Because what we were looking for is on

1 the southern bank. That is what we had discussed is
2 we were looking for potential congregation on the
3 southern bank. That is what we were keeping an eye
4 on.

5 Q. What you were doing was in response to a
6 particular tip or information you had or is it just a
7 regular patrol?

8 A. Just a regular patrol.

9 Q. Your man overboard drill, you performed
10 one before the captain of the tugboat called you or
11 after the tugboat called you?

12 A. That was before.

13 Q. Explain -- so just take us through that
14 timeline. You drive up to the ship channel and do a
15 man overboard?

16 A. We do. Well, we were in the ship
17 channel. Right before we got deep into the patrol,
18 the break-in coxswain requested if we do a man
19 overboard at night so that he can get some more
20 practice, more training. And I told him that it was
21 okay and we could do it. And so we ran through the
22 drill. Finished the drill. And then continued on our
23 patrol.

24 Q. Okay. Were you authorized to do the man
25 overboard?

1 A. I had discretion at that point.

2 Q. Did you have to call it in and say you
3 were doing it?

4 A. I did not.

5 Q. You did not have to call it in?

6 A. I did not have to call it in and say that
7 I was doing it.

8 Q. And while you are doing the man overboard
9 with the break-in coxswain, you are inside the
10 pilothouse?

11 A. We are. Myself and the break-in
12 coxswain.

13 Q. Are the two other crewmen outside?

14 A. They were.

15 Q. And you are simulating one of them being
16 overboard?

17 A. I am not sure exactly how we simulated it
18 that night but both of my crewmen assisted in the
19 completion of the man overboard.

20 Q. Okay. In the findings of facts, just
21 briefly. This is from the final investigative report.
22 And you have that in front of you?

23 A. What page is that, sir?

24 Q. That is Plaintiffs' Bates Stamp 10005.
25 That is Page 4 of the investigative report.

1 A. Yes. I have it in front of me.

2 Q. And I will read what is highlighted on
3 the screen. "The unit's primary missions are search
4 and rescue and maritime law enforcement." Do you
5 agree with that statement?

6 A. I do.

7 Q. Part of it is rescue?

8 A. I do. I agree with that.

9 Q. "Typical law enforcement operations
10 include interdiction of illegal Mexican vessels
11 fishing within the U.S. waters in the Gulf of Mexico,
12 and deterrence and interdiction of illegal
13 immigrants." Do you agree with that?

14 A. I do.

15 MS. DELEMARRE: I would just note that
16 you haven't finished the whole statement. There is
17 more. "Illegal immigrants and drug smugglers
18 throughout the Area of Responsibility (AOR)."

19 MR. VILLARREAL: Thank you.

20 BY MR. VILLARREAL:

21 Q. Okay. Mission, on the same page.
22 Highlighted. "The purpose of Coast Guard law
23 enforcement patrols in the" Brownsville ship channel
24 "is to deter and interdict immigrants and narcotic
25 smugglers, ensure safety," and so forth. Do you agree

1 with that statement?

2 A. I would say, to an extent, that that is
3 part of the mission.

4 Q. Exactly.

5 A. We are also -- there is other things that
6 we are doing but that is part of the mission.

7 Q. Yes. And I am just trying to highlight
8 that part of it is illegal. And I think we have gone
9 over it over and over again.

10 A. Okay.

11 Q. I am just saying it is part of the final
12 report that you agree that they acknowledge it is a
13 hot area for smugglers?

14 A. I do.

15 Q. And aliens?

16 A. I do.

17 Q. Illegal aliens?

18 A. Yes, sir.

19 Q. Again, under the, Findings of Facts,
20 these are findings of facts, Bates -- Plaintiffs'
21 Bates 10007, Page 6 of the report. Again, Findings of
22 Facts. I will read the highlighted. "Migrant and
23 drug smuggling activities have occurred along the
24 length of the" Brownsville ship channel, "most
25 commonly under the cover of darkness, at night and in

1 the early morning." This -- this correlates with what
2 we heard earlier from the Intel personnel Kelly?

3 A. Yes, sir.

4 Q. "Undocumented immigrants and smugglers
5 typically use flotation devices, including inner
6 tubes, to assist them to cross the BSC." And there is
7 an inner tube involved in this incident, correct, in
8 this mishap?

9 A. Yes, sir.

10 Q. The sole -- the type that they are
11 describing here? An inner tube, right?

12 A. I don't know if that is the type they are
13 describing, too, but there was an inner tube involved.

14 Q. And so it says here that the break-in
15 coxswain is operating the vessel. That is Mondrala,
16 correct?

17 A. That is correct.

18 Q. Under your supervision up until the
19 moment of the mishap?

20 A. Yes. He was -- he was driving the boat.
21 Is that what you are asking?

22 Q. Yes. Did he continue to drive the boat
23 after the mishap?

24 A. Yes.

25 Q. He drove it all the way back to the

1 station?

2 A. Yes. He drove.

3 Q. Under your command?

4 A. I drove it for a little bit and then we
5 switched out, he drove just very briefly.

6 Q. You drove it after or before the mishap?

7 A. Actually, no. I didn't. I am sorry. To
8 restate. As soon as the mishap was done, turned
9 around and got back on patrol, he continued on the
10 mission.

11 Q. Okay. The patrol proceeded without
12 incident to the -- to a location in the Brownsville
13 ship channel in the vicinity of the Jaime Zapata boat
14 ramp. You made it up to the boat ramp without
15 incident?

16 A. Say again.

17 Q. You made it up to the Zapata boat ramp
18 without incident?

19 A. Yes. There is no incidents.

20 Q. And around 10:30 you came across the
21 tugboat coming in the opposite direction?

22 A. I would say so.

23 Q. And at that time, you went ahead and
24 turned on your nav lights?

25 A. Yes. That is correct.

1 Q. And then did you conduct the man over
2 drill after passing the tugboat?

3 A. I can't remember if it was after or
4 before. I think after our discussion there, when they
5 reviewed where things were located on the chart, it
6 made more sense that we did it afterward but that was
7 such a small blip that I don't -- I don't recall if it
8 happened before or after but I --

9 Q. Okay.

10 A. Yes, sir.

11 Q. So at some point after the man overboard,
12 after the tug goes by, you decide to bring the vessel
13 up to plane, correct?

14 A. I was asked to, and I told him that he
15 could.

16 Q. By?

17 A. To bring it up and continue on the
18 patrol.

19 Q. In other words, the break-in coxswain,
20 Mondrala, who was operating the vessel, asked you for
21 permission to bring up -- the vessel up to plane?

22 A. Yes. He said, Can I come up? And I told
23 him, Yes, you can.

24 Q. And the Findings of Fact say about 19.2
25 knots. That is about the speed for plane?

1 A. About 19.2, 20 is what I have in my head.

2 Q. The next highlighted portion says that
3 vessel, the SPC-LE, then transmitted for approximately
4 30 seconds at an average speed of approximately
5 30 knots until all members of the crew heard a thud or
6 a thump sound under the hull. Do you agree with that
7 under the findings of facts?

8 A. I am not sure of the timeline but that
9 does sound familiar.

10 Q. Do you have any reason -- let me ask you
11 this. Do you know if they have, the people doing this
12 report, the findings of fact, do they have access to
13 the data -- to the data on the vessel that tracks your
14 speed?

15 A. They have whatever access they have.
16 They had access to all of our stuff, all of our
17 electronics, everything.

18 Q. Do you have any reason to disagree with
19 their finding of fact being that the vessel was
20 traveling for approximately 30 seconds at an average
21 speed of 30.86 knots?

22 A. I don't know the exact. This is their
23 opinion based off of what they calculated. But as for
24 myself on that boat at that time, I am unsure of the
25 actual speed we were going when the incident happened,

1 when we heard the thud or the thump.

2 Q. So as you sit here today, you are telling
3 the judge you don't know what speed you were going,
4 the exact speed?

5 A. As on the come up in this approximate
6 30 seconds, I personally don't know the exact speed in
7 that 30-second span.

8 Q. But it is your job, as coxswain, to know
9 the speed because you --

10 A. That is my job as the coxswain. But to
11 be able to gauge that in that amount of time, when you
12 are coming up on plane and you are in that 30-second
13 period, it is not like my attention was on that. I
14 stood a lookout watch. I stood multiple other roles
15 at that particular point in time. So I can say that
16 my attention wasn't solely on that when that happened.
17 So I was unsure of the actual speed that we got up to.

18 Q. Okay.

19 A. But, like I said, I can agree with this
20 statement, I am just personally unsure of the actual
21 speed we were making up on the incident.

22 Q. But at the time that the incident
23 happened, at the time that you -- that the vessel is
24 traveling, you do have the capability of determining
25 the exact speed of the vessel?

1 A. I have the capabilities. Yes.

2 Q. And you agree with me that speed is part
3 of your risk analysis?

4 A. Correct.

5 Q. And you agree with me that there is no
6 reason for you to be going that fast -- there is no
7 reason to assume that risk because you are not gaining
8 anything out of going that speed, you agree with that?

9 MS. LEONARD: Form.

10 MS. DELEMARRE: Object to form.

11 BY MR. VILLARREAL:

12 Q. Isn't that what you stated earlier?

13 MS. LEONARD: Form.

14 MS. DELEMARRE: Same objection.

15 THE WITNESS: Yes. I am not.

16 BY MR. VILLARREAL:

17 Q. There is no reason -- you agree with me,
18 there is no reason, there is nothing gained by the
19 mission by going over 30 knots that night?

20 MS. DELEMARRE: Object to form.

21 MS. LEONARD: Form.

22 BY MR. VILLARREAL:

23 Q. You agree with that statement?

24 MS. LEONARD: Form.

25 THE WITNESS: That is -- I am not sure

1 how that applies back to the initial question.

2 BY MR. VILLARREAL:

3 Q. Okay. Let me ask it to you this way.

4 A. We discussed on a gauge between 20 and
5 30 knots and then we are moving above 30 knots
6 earlier. So I am still --

7 Q. In your mind, is it acceptable to go
8 30 knots with the -- with the weather that night being
9 that it was overcast, being that you have a moon
10 illumination of .24, being that you are driving
11 through a known area known for illegal aliens and drug
12 smuggling and so forth, is it prudent, in your
13 opinion, to be going in excess of 30 knots for
14 approximately 30 seconds at night?

15 A. It is not prudent, in my opinion, to
16 travel above 30 knots.

17 Q. Can you repeat that again? I am sorry.

18 A. It is not -- it is not prudent, in my
19 opinion, to travel above the 30 knots, period. But,
20 like I said, in this span of 30 seconds, there were a
21 couple of times where I had to have him adjust the
22 speed and that is not instantaneous, it doesn't just
23 happen. And 30 seconds goes by pretty quick. So as
24 soon as -- I can fully assure you that if I am aware
25 of that, I would correct that.

1 Q. So you weren't aware that you were going
2 that fast is what you are saying?

3 MS. DELEMARRE: Object to form.

4 THE WITNESS: I wasn't aware of the speed
5 that we hit in that 30 seconds span at that time
6 before and after the situation.

7 BY MR. VILLARREAL:

8 Q. And you are not behind --

9 A. That is what I am saying.

10 Q. And you are not behind the throttle, it
11 is --

12 A. I am not the one behind the throttle. I
13 am not the one controlling it. I am the one who is in
14 charge of it and -- but that is -- that is all that I
15 am saying.

16 Q. And the throttle is electric?

17 A. It is electric.

18 Q. So it is not like the cables are pulling
19 forward or back on it?

20 A. No.

21 Q. Once it is set, it stays there, correct?

22 A. Correct.

23 Q. So had you known -- had you known you
24 were going next to 30 knots, you would have -- you
25 would have brought down the speed?

1 A. I would have brought down the speed but I
2 don't think it would have changed the time span very
3 much at that time. Like I said, that's pretty quick.

4 Q. Are you saying it takes 30 seconds to
5 bring that boat up to -- up to plane?

6 A. That is not what I am saying, that it
7 takes 30 seconds to bring that boat up to plane.

8 Q. How many seconds, in your experience,
9 does it take to bring up -- the boat up to plane?

10 A. It takes awhile. You come up on speed
11 and the boat rides up high for a while and it can
12 vary. There has been studies done on it. I
13 personally haven't driven the boat in over three
14 years. So I can't really give an accurate depiction
15 of how long it takes. But if I had to give an
16 estimate, it would be about 20, 25 seconds before you
17 get yourself fully back to where you want to be.

18 Q. Is 25 knots enough to bring up -- the
19 vessel to plane and then bring it back to 20 knots?

20 A. I mean, it is but it just all depends.
21 We are trained to bring it up all the way to get the
22 boat and then you adjust your speed from there. So
23 where it hits in between that.

24 Q. So what was the purpose of you coming up
25 to plane? Why not just keep clutch forward, you know,

1 five knots? What was -- what was so important that it
2 required you to take that risk?

3 A. I don't think that there was an
4 importance or anything. It was just a judgment that I
5 made. He asked if we could come up; and I said, yes.
6 I had no anticipation of the speed getting that high
7 but he asked if we could come up and I said, yes. I
8 made the judgment call and said, yes, that is fine.

9 Q. So the speed was brought up for no
10 particular reason is what you are telling the judge?

11 A. No. I said that that was the judgment
12 that I made, that that is all. I just said that you
13 can come up.

14 Q. But for --

15 A. I am not --

16 Q. I don't mean to talk over you. I am
17 sorry.

18 A. No. It is fine.

19 Q. And I will ask my question again. Was
20 there any particular reason why your decided to come
21 up to plane or was it done for no particular reason?

22 A. It was just because we were -- he asked
23 if we could, and I told him that we could.

24 Q. So you agree there is no reason for you
25 to come up to plane?

1 MS. DELEMARRE: Object to form.

2 BY MR. VILLARREAL:

3 Q. No?

4 A. I --

5 Q. Were you chasing somebody?

6 A. No. We were not chasing anybody.

7 Q. This will be the last time I ask you.

8 Was there any particular reason why you decided to
9 come up to plane or your coxswain decided to come up
10 to plane?

11 A. There -- we just --

12 MS. DELEMARRE: Break-in coxswain you
13 mean.

14 BY MR. VILLARREAL:

15 Q. The break-in coxswain. Yes. Sorry.

16 A. The break-in coxswain. The only reason
17 was he asked me and I said, yes, he can come up to
18 plane, he can come up and get it on plane. We were
19 approaching towards the end of our area. We didn't
20 see anything while we were down. We made an accurate
21 assumption. I made a determination of where we were
22 at. And I decided that it was safe and it was fine to
23 come up at that point.

24 Q. Tell us about the what -- tell us about
25 the mishap, the -- what did you hear or what did the

1 crew hear that caused you to come off plane, to come
2 back down from plane?

3 A. All that I can recall is hearing a subtle
4 thud. I can't speak for them but that is all that I
5 recall hearing. And I remember looking over and
6 instructing Petty Officer Mondrala to come down.

7 Q. From plane?

8 A. Well, just come down in general.

9 Q. How many -- if you recall, how many
10 seconds after the thud did he come back on the
11 throttle?

12 A. He brought it down as soon as I told him
13 to.

14 Q. Was it one sudden stop like he jerked on
15 the throttle or was it a gradual stop?

16 A. I can't recall.

17 Q. What would you compare that sound to?
18 You would compare it to a wake?

19 A. That is what I would compare it to. That
20 is what it sounded like. If you hit a soft chop, or
21 something like that, that is the sound that it sounded
22 like.

23 Q. Did it make sense that it would be wake
24 at that given point in time?

25 A. At that given point in time, I didn't

1 know what the sound was. I had no determination. So
2 that is why we came down to -- to look. I had no idea
3 what the sound was.

4 Q. Did the bow move?

5 A. No. I don't recall the boat moving, the
6 bow moving. I only recall the sound.

7 Q. And I want you to look at Plaintiffs'
8 Exhibit 100010. That is Page 9 of the report. Figure
9 6. Is this the actual inner tube that was found that
10 night in the Brownsville ship channel?

11 A. It looks like it.

12 Q. When you hear the thud, you instinctively
13 press the "man overboard" button?

14 A. Correct.

15 Q. Why is that?

16 A. Because that is an initial reaction. If
17 we were to have hit something, that is an initial
18 reaction that I am taught.

19 Q. Okay. Do you customarily press the "man
20 overboard" button when you hit wake?

21 A. No.

22 Q. So there is something inside of you that
23 told you something was wrong and you -- instinctively
24 triggered you to press that button, isn't that
25 correct?

1 MS. LEONARD: Form.

2 THE WITNESS: There was -- I didn't know
3 what the sound was. I didn't know if there -- I
4 didn't know if there was a wake out there. I didn't
5 know. It had been calm. So instinctively, we hear a
6 sound, just like we are trained, I came down. We hit
7 the "man overboard" button.

8 BY MR. VILLARREAL:

9 Q. And you initiate a man overboard search?

10 A. No. I initiated a collision with a
11 submerged object search. It is not even a search. It
12 is just a drill. It is just a standard because we
13 thought, that was a strange sound, let's see what it
14 was.

15 Q. Before the impact, before the thud, which
16 way was the FLIR pointing?

17 A. I can't tell you right now. I don't know
18 right now. I believe it was pointed at the shore
19 still.

20 Q. And who turns the boat? The break-in
21 coxswain?

22 A. Well, he is the one driving so he would
23 make maneuvers. Yes.

24 Q. And is -- you basically drop the waypoint
25 in the water when you hit the "man overboard"?

1 A. Yes.

2 Q. You navigate straight back towards that
3 waypoint?

4 A. No. We drop the waypoint, and then you
5 turn around and go back to try to see if there was
6 something. You start investigating the engines,
7 seeing if there is anything. And then we turned
8 around and went back to where we thought we might have
9 heard it and started looking.

10 Q. Okay. Do you go back to that waypoint?

11 A. No. The waypoint is where we were at the
12 time that I pushed it. So it is just marking of a
13 general vicinity of the area that whatever happened
14 happened.

15 Q. Okay. And so do you know how far off
16 that waypoint you found the flotation device?

17 A. I don't. I don't recall off the top of
18 my head right now.

19 Q. Do you turn on the searchlights at that
20 time?

21 A. We did. Turn on the searchlights.

22 Q. And so who spots the flotation device?

23 A. One of my crew members spotted the
24 flotation device. I turned on -- we came around and
25 everyone started looking. I had two crew members up

1 on the bow. We turned on the searchlight, and we
2 looked around. And one of my crew members spotted the
3 flotation device.

4 Q. An inner tube?

5 A. An inner tube.

6 Q. The type that has been described in some
7 of these interviews as the type of interview (sic),
8 which would commonly be used by an undocumented alien
9 crossing the Brownsville ship channel?

10 A. It was the first time that I had seen
11 that specific thing. So I can't answer that
12 accurately.

13 Q. No. But that is intel you had prior to
14 the mishap?

15 A. That is intel that I had that they used
16 flotation devices to cross. Yes.

17 Q. And the area of the thud, where you hear
18 the thud, is in the Brownsville ship channel in an
19 area commonly known or an area known for illegal alien
20 crossings?

21 A. The entire Brownsville ship channel is
22 known for that. Yes.

23 Q. And so you conclude that this thud is
24 from this flotation device?

25 A. We didn't know what that was. That is --

1 that is what I was saying. We -- that is the initial
2 reaction to what you do. I didn't know if we had hit
3 something. Nobody knows if we had hit something. And
4 upon our search and our sense of search and we were
5 looking around, that is what we came across. And we
6 looked around more using all available means that we
7 have as crewmen and lookouts. Didn't hear anything
8 else. Didn't see anything else.

9 So I informed him, All right, we will go
10 ahead and pick it up, mark it, we will continue on.
11 There is no way if that is what that was because none
12 of us have ever been in a situation where we have
13 actually had that really happen. So we determined if
14 that is what it was that it did no damage to the boat
15 and we continued on our patrol.

16 Q. Okay. You said something really
17 important. You said you used all available means to
18 conduct your search.

19 A. Yes.

20 Q. Did you use night vision to conduct your
21 search?

22 A. I can't recall. We just used what we
23 had. We had searchlights. We looked around. I had
24 people up on the bow, they had their flashlights. So
25 I used what means I had at that time.

1 Q. Do you specifically recall that you had
2 night-vision equipment on you that night?

3 A. I can't recall if I had an actual goggle
4 system or not.

5 Q. You had the FLIR onboard?

6 A. We had the FLIR onboard. Yes.

7 Q. And you didn't use the FLIR?

8 A. No, sir. The FLIR is kind of hard,
9 though, anyways, to see off the bow and that -- that
10 aspect, the actual vessel kind of impedes that vision
11 anyway directly off to an extent. But, no. I did not
12 use the FLIR system. We had all of the searchlights
13 on and we were looking that way. That is what my main
14 focus was.

15 Q. Do you believe it was reasonable for you
16 to -- is it reasonable for you to believe that you may
17 have hit an undocumented alien swimming across the
18 channel when you -- when you found the flotation
19 device?

20 A. I didn't think that at all. I didn't
21 determine that at all. The first thing that went
22 through my head was, oh, this is a beach toy. We live
23 on South Padre Island. It is a beachy area. And that
24 is, honestly, the first thing that popped into my
25 head. And we looked around, didn't see anything else,

1 like I said, and we picked it up.

2 Q. And I am not asking what you felt back
3 then. I am asking as you sit here today, three years
4 later.

5 A. And that is -- that is where it is
6 different because there is a conclusion now so.

7 Q. Let me -- let me ask you my question,
8 though. As you sit here today --

9 MR. VILLARREAL: Yes, ma'am.

10 MS. DELEMARRE: No. Nothing. I am
11 waiting.

12 BY MR. VILLARREAL:

13 Q. As you sit here today, three years later,
14 do you believe it was reasonable for you to think that
15 there possibly -- that there could have been an
16 undocumented alien using that flotation device to
17 cross the Brownsville ship channel?

18 A. I do not.

19 MS. DELEMARRE: Object to form.

20 BY MR. VILLARREAL:

21 Q. You do not?

22 A. Because at the time I didn't know what
23 that was, I didn't know what the sound was.

24 Q. Okay.

25 A. I had no idea.

1 Q. So your search lasted five minutes?

2 A. I don't recall how long the search
3 lasted.

4 THE VIDEOGRAPHER: I need to go off the
5 record and change disk. This is the end of Disk 2.
6 We are going off the record at 2:14 p.m.

7 (Recess taken.)

8 THE VIDEOGRAPHER: This is the beginning
9 of Disk 3. We are back on the record at 2:28 p.m.
10 Counsel may proceed.

11 BY MR. VILLARREAL:

12 Q. Petty Officer Rae, we are back from a
13 short break.

14 A. Yes, sir.

15 Q. I just want to recap a little where we
16 left off. We were talking about the flotation device,
17 is that right?

18 A. Yes, sir.

19 Q. And we were -- we were talking about the
20 fact that you came back and picked up the flotation
21 device, correct?

22 A. Correct.

23 Q. I am going to ask you a series of
24 questions.

25 A. Okay.

1 Q. Given the weather conditions at night and
2 given the findings of the subsequent investigation, do
3 you believe you were operating the vessel at an
4 excessive rate of speed when the mishap occurred?

5 A. You said in lieu of the post
6 investigation?

7 Q. Yes.

8 A. Based off of those numbers, I do believe
9 that the boat was going a little too quick.

10 Q. Okay. Given the following factors, the
11 thud --

12 A. Yes, sir.

13 Q. -- on the hull, the inner tube --

14 A. Yes, sir.

15 Q. -- in the water, the time of day, the
16 intel available regarding the crossings near the
17 shrimp basin, would it have been reasonable to believe
18 that you may have had hit an undocumented --
19 undocumented alien swimming across the Brownsville
20 ship channel?

21 A. It could have been reasonable. Yes.

22 Q. Did you break protocol that night in any
23 way?

24 A. I didn't believe that I was.

25 Q. If you could do it all over again, would

1 there be anything that you would change about the way
2 that boat was operated on April 23rd, 2015?

3 A. No.

4 Q. And bringing you back to the Exhibit -- I
5 believe it is Exhibit 11 on the front of your -- the
6 first page.

7 MS. LEONARD: Yes.

8 THE WITNESS: 11. Yes, sir.

9 BY MR. VILLARREAL:

10 Q. Plaintiffs' Bates Stamp Number 10010 up
11 on the screen. Just touching up again on the findings
12 of facts.

13 A. Yes, sir.

14 Q. And they are highlighted on the
15 projector. And I am going to start reading here.
16 "The Crewmember stated that his typical protocol for
17 LE patrols was to use the MarFLIR to scan the southern
18 shorelines because undocumented aliens and smugglers
19 stage themselves and/or hide on" the "side of the"
20 Brownsville ship channel. "He stated that he kept
21 the" FLIR "pointed toward the southern shoreline on
22 the night of the incident. In addition, he stated
23 that he left the" FLIR "station immediately upon
24 hearing the thump sound, and went out on the forward
25 deck during the search. He did not scan the area of

1 the thump when he returned to his" FLIR "seat because
2 the SPC-LE was back underway in the opposite
3 direction."

4 Do you agree with that statement? Is
5 that a correct finding of fact?

6 A. I do.

7 Q. So, in other words, the FLIR was at no
8 point used to search for anyone in the water?

9 A. No, sir.

10 Q. It was not?

11 A. It was not.

12 Q. And it wasn't until the following day
13 that a -- that the body of my client, Patricia Garcia,
14 was found floating in the Brownsville ship channel, is
15 that your understanding?

16 A. To my understanding, that is what -- we
17 were called into the commanding officer's office and
18 he had informed us that this is the situation that we
19 have been approached with and it is in occurrence to
20 the time frames that you guys were underway. And that
21 is all that I was given at that time.

22 Q. Do you know the propellers were taken to
23 the medical examiner's office to see if they matched
24 up with the injuries sustained by my client?

25 A. I know that the Coast Guard investigators

1 took them at some point but I am not sure when -- when
2 it happened or when it -- when they were taken.

3 Q. Is there any question in your mind
4 that -- that the vessel hit Patricia Garcia?

5 A. I didn't -- I had no idea. I didn't know
6 what to think at that time. I honestly can't tell you
7 what was going through my head at that time.

8 Q. As you sit here today, though, do you
9 accept that the vessel hit Patricia Garcia as she was
10 swimming across the Brownsville ship channel?

11 A. Based on the facts and what they have
12 concurred, I would agree that it was our vessel. Yes,
13 sir.

14 Q. It says, "The injuries" -- this is on
15 Page -- Plaintiffs' Page 10011. It is Page 10 of the
16 report. "The injuries on the Undocumented Alien were
17 consistent with the shape of the SPC-LE propeller
18 blades, and also the" distance "between the outboard
19 engine propellers. The CGIS agents and the Coroner"
20 conclude "a direct match, confirming the involvement
21 of the SPC-LE in the incident." Do you agree with
22 that statement?

23 MS. DELEMARRE: Object to form.

24 MS. LEONARD: Form.

25 BY MR. VILLARREAL:

1 Q. You can answer.

2 A. Can you ask the statement again?

3 Q. Yes. Basically, what is highlighted on
4 there, do you agree with what is highlighted on there?
5 Do you have any reason to disagree with that findings
6 of fact that the propellers match the injuries? Or do
7 you have any reason to doubt that that is accurate,
8 what is in the investigative report?

9 MS. DELEMARRE: Object to form.

10 MS. LEONARD: Join.

11 THE WITNESS: I am unsure.

12 BY MR. VILLARREAL:

13 Q. Okay. That is okay. Is this the
14 weather?

15 A. Yes, sir.

16 Q. Page Plaintiffs' Bates Number 10012, 11
17 of the report. Just to confirm that -- are you on
18 that page, under weather?

19 A. Yes, sir.

20 Q. Cloud cover, overcast, low clouds. Do
21 you agree that it was overcast and that there were low
22 clouds that night?

23 A. Yes, sir.

24 Q. Under, Medical, on Page Plaintiffs' Bates
25 Stamp 10013, the highlighted portion says that, with

1 the exception of yourself, the crew had been away for
2 approximately 17 hours. Is that normal or is that
3 outside the limits to be awake for 17 hours at the
4 time of mishap?

5 A. That is -- that is normal. I mean, you
6 have your normal workday; and then once the workday
7 concludes, then people do their own -- their own
8 things until in between patrols and whatnot.

9 Q. And it says here, on the next page, that
10 you have been certified for just over a month having
11 achieved 35 hours on that vessel as a coxswain, is
12 that correct?

13 A. That is correct.

14 Q. And you were the only certified coxswain
15 on that vessel that day?

16 A. I was.

17 Q. Traveling speed analysis, on Bates
18 Stamp -- Plaintiffs' Bates Stamp 10014, it says here
19 that the SPC-LE had just come up on plane and I was
20 traveling approximately 30 knots for a period of
21 40 seconds at the time of the incident. Do you agree
22 or disagree with that statement?

23 A. I am not sure because it conflicts with
24 the other statement.

25 Q. Okay. And just Number 2, it says, "As

1 previously stated, there were no speed limits
2 designated for the " Brownsville ship channel "law
3 enforcement patrol at the time of the incident.
4 Hence, the decision as to what speed to operate the
5 SPC-LE is the responsibility of the person(s)
6 operating the vessel, in this case the " BAC "and CC.
7 The Inland Navigation Rules apply on all waters that
8 are inward of the U.S. demarcation line, and Rule 6 of
9 the Inland Rules requires all vessels to operate at a
10 safe speed to avoid collision. This rule lists
11 certain factors that the operator of a vessel should
12 take into account when determining the safe speed at
13 which to operate (Enclosure 9). Several of" these
14 "conditions," include "backlighting, reduced
15 visibility due to overcast skies and darkness, and the
16 known smuggler crossing point near the Shrimp Basin
17 were present on the night of the incident."

18 Do you agree with that statement? I
19 think we have been through this before. In other
20 words, speed is a factor that is -- the determination
21 of speed is, in part, determined by other factors such
22 as weather and the area where you are traveling, do
23 you agree with that?

24 A. Yes. The coxswain's determination of the
25 speed. Yes, sir.

1 MR. VILLARREAL: The next exhibit will be
2 marked Exhibit 12.

3 (Exhibit No. 12 was marked.)

4 BY MR. VILLARREAL:

5 Q. Do you have Exhibit 12 in front of you,
6 Petty Officer Rae?

7 A. I do.

8 Q. And I have got it up on the projector as
9 this is the interview of the XO Station South Padre
10 Island. Is that what you have in front of you?

11 A. It is.

12 Q. What is the -- what does the XO do?

13 A. The executive petty officer is second in
14 command to the commanding officer. He mainly is in
15 charge of personnel and overseeing the various
16 departments are being run properly so the commanding
17 officer can perform his duties.

18 Q. Is it safe to say that this person has
19 a -- is more experienced on the water than you do at
20 the time that this mishap occurs?

21 A. Yes.

22 Q. Is the person writing this report
23 certified as a coxswain on the same vessel?

24 MS. DELEMARRE: Object to form.

25 BY MR. VILLARREAL:

1 Q. If you know. Just from your
2 recollection.

3 A. From my recollection, I can't recall when
4 he received his coxswain certification on this
5 platform. I am not sure the time frames.

6 Q. He has senior status to you?

7 A. He does have senior status to me. Yes,
8 sir.

9 Q. I want to bring you to Plaintiffs' Bates
10 Stamp 13303. Highlighted. And I am going to read the
11 highlighted portion. It says -- are you on there?

12 A. I am there. Yes, sir.

13 Q. "I've been down the Brownsville ship
14 channel. I did a check ride at night the week before
15 the incident. We were very concerned about getting
16 off" rack -- "off track. When you're going 20 knots
17 it, if you're not steering the right course it would
18 be really easy to run aground."

19 What is he saying there about the
20 Brownsville ship channel there about the speed that
21 you are operating a vessel?

22 A. So if you are not paying attention to how
23 you are steering, you can quickly find yourself in a
24 position where you could potentially run aground.

25 Q. Is he saying that -- but he is saying

1 20 knots. In other words, is he saying that the
2 faster you go the more dangerous it is or the more
3 likely it is to run aground?

4 MS. DELEMARRE: Object to form.

5 THE WITNESS: No. I think what he is
6 referring to is not really so much the speed, it is
7 the fact of whether or not you are steering the right
8 course.

9 BY MR. VILLARREAL:

10 Q. And this says, "The ladder at the Shrimp
11 Basin was pointed out to me as a crossing point."
12 That is a ladder that is in the water?

13 A. It is not in the water. It is on the
14 shore. It is, like, near the water but it is on the
15 shore.

16 Q. The thud, the mishap occurred how far
17 from the shrimp basin, if you know?

18 A. Do you mind if I look at this chart here?
19 I don't --

20 Q. No. Please.

21 A. If you don't mind pulling it up there.

22 Q. It was west of the Jaime Zapata ramp, is
23 that correct?

24 A. Correct.

25 Q. And it was east of the shrimp basin?

1 A. Yes. Yes, sir.

2 Q. I have zoomed that portion.

3 A. I believe it took place somewhere in this
4 area here.

5 Q. To the best of your recollection, that is
6 the area?

7 A. To the best of my recollection, it is.

8 Q. Can you go ahead and circle that with my
9 pen?

10 A. Yes.

11 Q. And put "thud" or "mishap," rather.

12 A. (Witness complies.)

13 Q. The bigger you write the better. Okay.
14 Thank you.

15 A. Can you see it? Sorry. I was writing
16 before -- before you said that.

17 Q. Yes. That is fine. That is okay.

18 MS. DELEMARRE: So the record reflects
19 that the witness has drawn a circle on Exhibit 7, and
20 put the word "mishap" on there. Do you want it back?

21 MR. VILLARREAL: Okay. No. I am good.

22 (Exhibit No. 13 was marked.)

23 BY MR. VILLARREAL:

24 Q. The next document I am going to label
25 Exhibit Number 13.

1 A. Yes, sir.

2 Q. I have given you -- do you have Exhibit,
3 is it 13, in front of you, Petty Officer Rae?

4 A. Yes, sir. Exhibit 13.

5 Q. And this is an interview summary of the
6 the TO Station South Padre Island. Is that -- is that
7 your training officer? If you look at the last page.

8 A. That would have been the training officer
9 at the time, the training petty office.

10 Q. What is the name of the training officer?

11 A. The actual training officer, that is
12 another role of the executive officers. He is the
13 training officer. The training petty officer is kind
14 of like the head person in that position. So it is
15 essentially the same role.

16 Q. Well, it says, Training Officer Riley
17 Portwood, right?

18 A. Correct.

19 Q. Are you saying he is also the XO?

20 A. No. I am saying that the XO has that
21 title, training officer, as well. He is the officer
22 appointed over training but this guy is the training
23 petty officer.

24 Q. This is somebody else's report?

25 A. Yes, sir.

1 Q. Is this the person that trained you --

2 A. This --

3 Q. -- or one of the people that trained you?

4 A. He came about a year after I was here,
5 stationed here.

6 Q. Okay.

7 A. And he kind of took over this job as
8 training petty officer.

9 Q. Did he have seniority over you?

10 A. He had seniority over me. Yes.

11 Q. I want to read some excerpts. On
12 Plaintiffs' Bates Stamp 13297. Again, the highlighted
13 portion. But pretty much the entire Brownsville ship
14 channel is known for crossing up through the turning
15 basin. Correct? Do you agree with that?

16 A. I agree.

17 Q. "I was always leery of driving the"
18 Brownsville ship channel "at night. I have driven it
19 a few times. I was told by the BM1 that was breaking
20 me in, that he had come across people swimming across
21 at night and since then I have been leery. I would
22 like to go slow through the channel because we are
23 there in order to find something. I have been
24 underway with most of the coxswains and they" -- "they
25 all use caution. I've never felt uncomfortable where

1 I would need to speak up. I see a dangerous speed as
2 a speed where you can't identify a hazard in the
3 water. If it was overcast" on "a small pleasure craft
4 in" this "area, I would like to go a speed of 10
5 knots."

6 On the night of the incident, of the
7 mishap, it was overcast, correct?

8 A. Correct.

9 Q. And the 33-foot vessel, the SPC, was --
10 was a -- would it be considered a small craft for the
11 purpose of the U.S. Coast Guard?

12 A. Yes. It is a small craft. Yes, sir.

13 Q. And, yet, this training officer seems to
14 think that -- feels comfortable at going at a speed of
15 10 knots?

16 A. Correct.

17 Q. However, you would feel comfortable going
18 higher than that in the Brownsville ship channel?

19 A. I feel comfortable based on my judgment.
20 At this point in time, I had done more patrols in this
21 area than he had done. And to mention, too, I had a
22 break-in on the helm, too, who was trying to gauge and
23 learn how to do his speed appropriately.

24 Q. Okay. Can I have it back?

25 A. You sure can.

1 Q. Thank you, sir.

2 A. Yes, sir. And I placed the other one
3 there, as well.

4 (Exhibit No. 14 was marked.)

5 BY MR. VILLARREAL:

6 Q. The next one is Exhibit Number 14.

7 A. Yes, sir.

8 Q. Do you have that document in front of
9 you?

10 A. I do.

11 Q. Okay. This is a boarding officer's
12 interview for the mishap of April 23rd, 2015. Is this
13 one of your crew members?

14 A. I am not seeing the name.

15 Q. The boarding officer.

16 A. We had several boarding officers at our
17 unit.

18 Q. Feel free to kind of read through it.

19 A. I am trying to make out the signature,
20 too.

21 Q. Do you feel comfortable that this was
22 someone that was onboard at the time of the mishap?

23 A. Yes. Some of the stuff that they are
24 talking about I know that -- it sounds like it -- I
25 know who it is.

1 Q. Who do you think it is, if you know?

2 A. Is it Petty Officer Jordon?

3 Q. Okay. Well, let me -- let me bring you
4 to Plaintiffs' Bates Stamp 13271. And I want to talk
5 a little bit about the weather again. It says, in
6 highlighted, "It wasn't foggy out; it was just
7 that" -- "it was just that dark of a night. We
8 couldn't see anything."

9 In your opinion, was it a dark night?

10 A. It was a dark night. Yes, sir.

11 Q. What does that mean to a laymen? I mean,
12 what -- can you explain that to a laymen? I mean, to
13 me, night is night. The night is dark. But what is
14 the difference between having -- being dark and --

15 A. Well, like we discussed earlier with the
16 luminosity, the moon visibility and other background
17 lightings being able to light up an area, when there
18 are no lights at all prominent and you kind of -- it
19 is a lot darker, it kind of takes away from that
20 visibility factor.

21 Q. Lower visibility?

22 A. Yes, sir.

23 Q. A little bit about the search.

24 Plaintiffs' Bates Stamp 13272. At the end, the last
25 sentence.

1 A. The very last sentence, you said?

2 Q. Yes.

3 A. Okay.

4 Q. Where it says, "They had the searchlight
5 going from inside the cabin." Who is he referring to?
6 You had the searchlight on or the break-in?

7 A. You activate the outside searchlight from
8 inside the cabin.

9 Q. Who pressed the button?

10 A. It would have had to have been Petty
11 Officer Mondrala. He was -- it is right next to the
12 throttles.

13 Q. And he says that he almost immediately
14 saw something reflect off the bow. Is that your
15 recollection that inner float immediately reflect off
16 the bow after the searchlight was turned on?

17 A. I personally didn't see. That is what I
18 am saying. They called out what they saw and reported
19 it back to me.

20 Q. And when you strike a submered object or
21 strike an object in the water, are you supposed to
22 report it back to the station?

23 A. Yes. When you have an actual collision
24 with a submerged object, you --

25 Q. Did you actually call the station back to

1 report the collision?

2 A. I did not call the station back. We
3 didn't inform the OOD until we arrived back at the
4 station.

5 Q. Okay. By not calling back, did you break
6 protocol?

7 A. Well, at the time we didn't determine if
8 it was the float that we had had a -- sorry -- that we
9 had had a collision with a submerged object. So at
10 that point, I made the judgment that that is not what
11 it was and we continued on.

12 Q. Regardless of whether you thought it was
13 a float or something else, you knew that you had hit
14 something, right, because you heard a thud?

15 A. I had thought that I had hit something.
16 That is what we determined. And then we determined
17 that it was a life ring, the flotation device.

18 Q. And you didn't inspect the engine or
19 transmission for damage?

20 A. Not to my knowledge. I can't remember.
21 I remember Petty Officer Jordon back there checking
22 and he said that the engine seemed fine and everything
23 looks good, something along those lines, to the best
24 of my knowledge.

25 Q. Is it -- are you -- were you concerned

1 about damaging the asset, damaging the vessel, is that
2 one of your concerns when you hit an object?

3 A. Yes. Definitely.

4 Q. It is an expensive boat?

5 A. It is an expensive boat. Yes, sir.

6 Q. And it says here, the next page, "After
7 finding the inner tube, we did continue to search for
8 something else for about five minutes." Did you, in
9 fact, continue to search for something else after five
10 minutes?

11 A. After five minutes?

12 Q. For about five minutes. Excuse me. Let
13 me -- let me read that again. "After finding the
14 inner tube, we did continue to search for something
15 else for about five minutes." In other words, I think
16 what that is saying is that you find the inner tube
17 and then you keep searching for five minutes. Is that
18 your recollection of what happened?

19 A. I don't remember how long the time frame
20 was recalling back from now, everything went so quick.
21 But I have stated before that we picked it up and we
22 continued to look more just in case there is
23 something, whatever, if there was a log in the water
24 or if there was something else out there, just in
25 case. And once we determined that there was nothing

1 else, we didn't hear anything, see anything, smell
2 anything, there was no other determination, we made
3 the call, or I made the call, to continue on the
4 patrol.

5 Q. Were you -- were you convinced that the
6 thud came from the inner tube as you were searching
7 for the next five minutes?

8 A. Well, when I couldn't find anything else
9 and that is all that I saw, that is what I determined
10 it had to have been.

11 Q. So initially you didn't think the thud
12 came from the inner tube?

13 A. I didn't know initially what it had come
14 from.

15 Q. On the -- the last page of this
16 interview, Bates Stamp 13274.

17 A. Yes, sir.

18 Q. It says, "On the way back, we did not
19 conduct another search." So, basically, you continued
20 westbound after you did -- after you found the float
21 and then you did a U-turn and came and tracked back
22 through the area where you heard the thud, correct?

23 A. Well, we had to pass right --

24 Q. Exactly.

25 A. -- through where we were at. Yes, sir.

1 Q. But you didn't stop again to do a search?

2 A. We didn't stop again to do anything else.

3 Q. Were you -- on the way back, were you
4 using a searchlight or was the searchlight off?

5 A. I can't recall. I know on the way back
6 at that -- around that area of time is where we
7 spotted another vessel that we were discussing going
8 into and doing a boarding on. That is -- that is all
9 I can recall.

10 Q. And so is it fair to say that you -- I am
11 sorry. Is it fair to say that your attention shifted
12 to the other -- to the recreational vessel after the
13 thud --

14 MS. DELEMARRE: Object to form.

15 BY MR. VILLARREAL:

16 Q. -- after -- after finding the inner tube
17 and doing the search?

18 MS. DELEMARRE: Same.

19 THE WITNESS: That was much later on in
20 the patrol, sir, where we spotted the individual.

21 BY MR. VILLARREAL:

22 Q. Regardless, there wasn't a second search
23 done for what may have caused the thud?

24 A. No. We didn't do another search.

25 MS. DELEMARRE: Let him finish the

1 question.

2 THE WITNESS: Yes, ma'am. Sorry.

3 (Exhibit No. 15 was marked.)

4 BY MR. VILLARREAL:

5 Q. The next document will be Exhibit
6 Number 15. I believe you have in front of you Title
7 33, Code of Federal Rules, Section 83.04. I am going
8 to draw your attention to 83.06, which is, Safe
9 Speeds, which I believe is -- this is Enclosure
10 Number 9 from the U.S. Coast Guard's discovery.

11 MS. LEONARD: Do you mean in my report or
12 discovery? It is enclosed in the report and
13 investigation.

14 MR. VILLARREAL: No. It is part of your
15 discovery produced, I believe, Enclosure Number 9.

16 MS. LEONARD: Yes. Enclosure but it is
17 Enclosure 9 to the report not to the discovery.

18 MR. VILLARREAL: Yes. Correct. Yes.

19 BY MR. VILLARREAL:

20 Q. Are you familiar with this rule, Petty
21 Officer Rae, this section of the CFR, Safe Speed?

22 A. I am familiar with it.

23 Q. Are you -- do you agree that this is the
24 section of the federal rules that dictate or offer
25 guidance as to what safe speed would be under

1 particular circumstances?

2 MS. LEONARD: Form.

3 MS. DELEMARRE: Object to the form.

4 BY MR. VILLARREAL:

5 Q. What is this section talking about?

6 A. This section is talking about safe speed.
7 It is by allowing the person who is operating the
8 vessel to determine, based on their judgment, what
9 they feel is a safe speed in said conditions or form.
10 There is no approximate or exact speed listed on here.

11 Q. Okay. So when determining speed, I am
12 going to read a portion of this, starting with where
13 it says, In determining speed. Do you see that?

14 A. Yes, sir.

15 Q. Okay. "In determining a safe speed the
16 following factors shall be among those taken into
17 account: By all vessels: The state of visibility."
18 Do you think that is important in determining speed?

19 A. Yes.

20 Q. "The traffic density including
21 concentration of fishing vessels or any other
22 vessels." Do you think that is important in
23 determining speed?

24 A. Yes.

25 Q. The maneuverability of the vessel with

1 special reference to stopping distance and turning
2 ability in prevailing conditions. Is that important
3 in determining speed?

4 A. Yes.

5 Q. "At night the presence of background
6 light such as from shores lights or from back scatter
7 of her own lights." Is that important in considering
8 speed?

9 A. Yes.

10 Q. "The state of wind, sea, and current, and
11 the proximity of navigational hazards." Is that
12 important to determine speed?

13 A. That is.

14 Q. "The draft in relation to the available
15 depth of water." Is that important?

16 A. It is.

17 Q. Number 4, "The possibility that small
18 vessels, ice and other floating objects may not be
19 detected by radar at an adequate range." Is that
20 important to determine speed?

21 A. It is in correlation to the effectiveness
22 of your radar and being able to pick up said objects
23 with your radar. That is a little bit earlier on in
24 the rule.

25 Q. Number 5, "The number, location, and

1 movement of vessels detected by radar." Is that
2 important to determine speed?

3 A. That is.

4 Q. Number 6, "The more exact assessment of
5 the visibility that may be possible when radar is used
6 to determine the range of vessels or other objects in
7 the vicinity." Is that important?

8 A. That is important.

9 Q. And you considered all of these factors
10 while operating on the Brownsville -- in the
11 Brownsville ship channel on the night of April 23rd,
12 2015?

13 A. I do, and I did.

14 Q. You did. You agree that you were
15 traveling in an excess rate of speed just prior to
16 hearing the thud on the night of April 23rd, 2015
17 given -- given the factors that we just reviewed?

18 MS. DELEMARRE: Object to form.

19 MS. LEONARD: Join.

20 BY MR. VILLARREAL:

21 Q. Do you want me to ask that again?

22 A. Yes, please.

23 Q. You agree with me that you were traveling
24 at an excessive rate of speed at the time you heard a
25 thud in the Brownsville ship channel, on the night of

1 April 23rd, 2015, do you agree with that statement?

2 MS. DELEMARRE: Object to form.

3 THE WITNESS: Can you try to rephrase it
4 one more time?

5 BY MR. VILLARREAL:

6 Q. Do you agree that you were traveling at
7 an excessive rate of speed at the moment you heard the
8 the thud in the Brownsville ship channel, on
9 April 23rd, 2015?

10 MS. DELEMARRE: Object to form.

11 BY MR. VILLARREAL:

12 Q. Were you traveling in an excessive rate
13 of speed?

14 A. I don't feel like I was traveling in an
15 excessive rate of speed. The opinion and the facts
16 that we got shows otherwise. At the time, I
17 personally didn't think that we were. We were coming
18 up and coming up as instructed and as taught to a
19 break-in crew member how to do when the situation
20 occurred.

21 Q. You agree with me that the state of
22 visibility was it was a dark night?

23 A. I do.

24 Q. It was overcast?

25 A. I do.

1 Q. And the moon illumination was about a
2 quarter moon?

3 A. I do.

4 Q. You agree with me that the traffic
5 density, in the Brownsville ship channel, is -- can,
6 at times, be congested, in fact, there was a
7 recreational boat that was in the vicinity right about
8 the time that you heard a thud, correct?

9 MS. DELEMARRE: Object to form.

10 THE WITNESS: It can be. The BSC can be
11 heavily traffic there. But that night, we didn't see
12 that vessel until a little bit later on. And the only
13 other vessel we really I recall seeing was the CAROL
14 M. So there were only two other vessels. So making
15 my decision at that time, I didn't see another vessel
16 out there. When we made a determination that we were
17 safe to come up, and I told him that it was okay to
18 come up, at that point in time, my judgment, I felt
19 that it was okay to come up and get the boat on plane.

20 BY MR. VILLARREAL:

21 Q. Number 3 says the maneuverability of the
22 vessel, and my question to you: Is the
23 maneuverability of that vessel going 30 knots in the
24 intercoastal -- in the Brownsville ship channel is --
25 its turning ability is limited, isn't it, because of

1 the width of the Brownsville ship channel?

2 A. Not so much. Like I said before, it
3 depends on where you are at. And these boats are
4 actually very capable of making maneuvers if you need
5 to.

6 Q. Can you stay in the center line or can
7 you stay in the deepest part of the canal and
8 effectively turn the vessel back going 30 knots?

9 A. I said that it is possible.

10 Q. You don't sound too convinced.

11 A. Well, I mean, there is -- there is turns,
12 there are things that they teach us that if you are
13 going at a rate of speed that you can turn that boat
14 around pretty quick and start going back the opposite
15 direction, almost a full 180.

16 Q. So as you sit here today, then, just to
17 make sure that I am understanding correctly, you don't
18 believe you were traveling at an excessive rate of
19 speed by traveling in excess of 30 knots that night in
20 the Brownsville ship channel?

21 A. At the times that I -- sorry. I didn't
22 mean to cut him off. Can you ask that again? I
23 apologize.

24 Q. No. It was my fault.

25 A. No.

1 Q. So just so that the judge is clear and
2 just so that I am clear --

3 A. Okay.

4 Q. -- you don't believe you were traveling
5 in an excessive rate of speed by traveling greater
6 than 30 knots that night in the Brownsville ship
7 channel?

8 MS. DELEMARRE: Object to form.

9 BY MR. VILLARREAL:

10 Q. Is that an accurate statement?

11 A. What I had said before was I didn't
12 feel -- any time at which we reached a speed that I
13 felt was unnecessary and I noticed it, I told him to
14 come down because I wasn't going to travel at
15 30 knots. That's not what the intention was. That is
16 not what my plans were. That is not what my goal was
17 to go out there and do the whole mission at 30 knots.

18 Q. I believe, if I am not mistaken, what you
19 stated earlier was that had you known the speed you
20 would have asked him to go slower, is that an
21 accurate --

22 A. Well, every time I found out that the
23 speed was getting high, I would inform him to bring --
24 bring it down and come slower. Yes.

25 Q. What is "getting high" mean? What speed

1 is that?

2 A. It is just, if we are getting in the
3 vicinity of 30 knots.

4 Q. So to you, in the vicinity of 30 knots is
5 getting high; in other words, you would rather go
6 slower than maintain 30 knots?

7 A. Correct.

8 Q. Because is it -- would it be accurate for
9 me to say that 30 knots, in your opinion, would have
10 violated some of these rules that are on Exhibit 15?

11 MS. DELEMARRE: Object to form.

12 MS. LEONARD: Form.

13 THE WITNESS: No. Because that still
14 goes into interpretation. That is a different rule
15 altogether. The rule of 30 knots doesn't have to do
16 with this rule here.

17 BY MR. VILLARREAL:

18 Q. Okay. Well, given the circumstances --
19 the location, the weather and so forth -- you don't
20 believe that 30 knots -- in excess of 30 knots
21 violates any of these rules in Exhibit 15?

22 A. I don't.

23 MS. DELEMARRE: Object to form.

24 MS. LEONARD: Form.

25 BY MR. VILLARREAL:

1 Q. You don't?

2 A. I don't feel --

3 MS. LEONARD: Form.

4 THE WITNESS: I am trying to -- what I am
5 trying to say is that this rule, I am trying to apply
6 it to what you are saying now. Could you ask the
7 question one more time? I apologize.

8 BY MR. VILLARREAL:

9 Q. Yes. In other words, do you agree with
10 me that these rule set parameters for you to be able
11 to determine what is a safe speed? Do you agree with
12 that?

13 MS. DELEMARRE: Objection. Form.

14 BY MR. VILLARREAL:

15 Q. What does this section have to do with,
16 Section 83.06?

17 A. Say again, sir.

18 Q. What is this section pertaining to,
19 Section 83.06?

20 A. It is pertaining to safe speed.

21 Q. Okay. And you agree with me that this
22 comes from the Title 33 Code of Federal Rules?

23 A. I do.

24 Q. So these are federal rules, right?

25 A. Okay.

1 Q. Having to do with the navigation of
2 vessels?

3 A. Correct.

4 Q. Do you -- and it enumerates -- enumerates
5 factors that you would take into consideration to
6 determine what a safe speed is, right?

7 A. Right. Yes. You are correct.

8 Q. I mean, there are numbers there. There
9 is the state of visibility, the traffic density, the
10 backlighting at night. Those are factors that you
11 would consider in determining what a safe speed is,
12 correct?

13 A. Correct. Correct.

14 Q. And do you think going 30 knots or higher
15 is a safe speed in the Brownsville ship channel at
16 night given -- given those exact conditions the night
17 of April 23rd, 2015?

18 MS. DELEMARRE: Object to form.

19 BY MR. VILLARREAL:

20 Q. Do you think that going 30 -- going
21 30 knots or higher or faster falls within, you know,
22 these parameters? Do you think it is a safe speed?

23 A. I think that it is based off of a
24 determination at the time. At the time, we determined
25 to come up on plane. So in that time, if it exceeded

1 30 knots, we corrected ourselves, that is what we were
2 doing. At the time, I didn't plan on going 30 knots
3 at any point during the patrol. This rule barely --
4 clearly states off the determination that the operator
5 makes what is safe speed.

6 Q. Okay.

7 A. So there is no specified speed, for one.
8 For two, with the break-in helmsman onboard learning
9 his roles and his -- where he can play and how he can
10 adjust his speed, that is part of being a break-in.
11 And at the time I made the determination, based off of
12 where we were and what we could see, that we could
13 come up at that time.

14 Q. Okay. But you are not blaming the
15 break-in for this? Ultimately, it is your
16 responsibility, correct?

17 A. It was my responsibility. Yes. I am not
18 blaming the break-in. I am just saying as a training
19 process.

20 Q. And I understand what you are saying.
21 You are saying that you didn't know you were traveling
22 in excess of 30 knots, is that what you are saying?

23 A. Correct.

24 Q. And you are saying that had you known you
25 would have come slower, correct?

1 A. Correct.

2 (Ms. Leonard withdrew from the deposition
3 room.)

4 BY MR. VILLARREAL:

5 Q. But the facts show that you were, in
6 fact, traveling 30 knots or higher?

7 A. The facts on that opinion, yes.

8 Q. The facts on the final investigative
9 report that we reviewed, if the facts show you were
10 traveling at a rate in excess of 30 knots, you would
11 agree with me that that is excessive?

12 MS. DELEMARRE: Object to form.

13 THE WITNESS: I don't agree that it is
14 excessive. I just agree that I was traveling at a set
15 speed.

16 BY MR. VILLARREAL:

17 Q. So I feel like you are contradicting
18 yourself because you just said earlier that had you
19 known you were going at 30 knots or faster you would
20 have -- you would have asked the break-in to come
21 down, to slow down.

22 A. Okay.

23 Q. How do -- how do we pair up that prior
24 statement to you saying that it is not excessive?

25 A. Because, like I said before, I didn't

1 realize I was going or we were traveling at that rate
2 of speed at that said time. So this is after the fact
3 that this was determined that this is what it was.
4 But at the said time in the seat making the
5 determination, that is not what the case was.

6 Q. Okay. I think I see what you are saying.

7 A. Okay.

8 Q. Let's forget about the mishap. Okay.

9 Assume that I am going to be operating this vessel, I
10 am the break-in, and assume that the same conditions
11 apply, we are doing -- we are -- you know, it is dark,
12 it is a dark night in the Brownsville ship channel in
13 April and I decide, I am the break-in coxswain, and I
14 decide to go 30 knots. And it is -- there are
15 30 knots on the dash saying that I am going next to
16 30 knots. And I ask, Is it okay for me to go 30 knots
17 or higher, would that be acceptable? Would you say,
18 yes, that is fine?

19 MS. DELEMARRE: Object to form.

20 BY MR. VILLARREAL:

21 Q. Will you give me permission as coxswain
22 in command to let me, the break-in, go 30 knots or
23 higher in the Brownsville ship channel under the same
24 conditions?

25 A. At that point, I would have informed the

1 helmsman to bring his speed down. When I saw that,
2 based off of what you are saying, and I look down and
3 I saw that that is the speed we were traveling at, me,
4 I would have told him, you need to come down.

5 Q. Why?

6 A. Because the SOP clearly states that we
7 don't go over 29.9 knots without helmets or seatbelts.
8 So, therefore, by traveling at a speed above 30 knots,
9 that would be violating what the SOP says for our
10 unit.

11 And then in that, I had the helmsman
12 driving, like I said before, he is learning. He is
13 learning his processes. So there is going to be
14 corrections. There is going to be times that I am
15 going to have to tell him, hey, you need to come down.
16 Not necessarily putting a scale on what is excessive
17 or not, it is just more of a comfort zone, I want you
18 to come down, that is all.

19 (Exhibit No. 16 was marked.)

20 BY MR. VILLARREAL:

21 Q. Okay. I am going to hand over to you
22 what I have marked as Exhibit Number 16.

23 A. Okay. Do you mind if I use the restroom
24 real quick?

25 Q. We can take a break.

1 THE VIDEOGRAPHER: We are going off the
2 video record at 3:17 p.m.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We are back on the
5 video record at 3:24 p.m. Counsel may proceed.

6 BY MR. VILLARREAL:

7 Q. Petty Officer Rae, we are back from a
8 short break again. Are you ready to proceed?

9 A. I am.

10 Q. We left off talking about speed. And I
11 was asking you, before we took the break, whether, in
12 your opinion, you thought going 30 knots or faster in
13 the Brownsville ship channel was an excessive rate of
14 speed and what you -- you gave your opinion. I would
15 like to continue on that thread. Okay?

16 A. Roger that.

17 Q. I have given you what I have marked as
18 Exhibit Number 17. And these are -- these are
19 excerpts from the South Padre Island Station, the
20 standing orders of the station. Okay?

21 A. Yes, sir.

22 Q. And let me begin with Plaintiffs' Bates
23 Stamp Number 13056. 13055. Okay. Do you have that
24 in front of you?

25 A. I do.

1 Q. There is one sentence that sticks out
2 there in the middle of the -- of the document that
3 says, High speed, defined as speed of 30 knots or
4 greater. Do you agree with that statement that a high
5 speed, as defined by the U.S. Coast Guard,
6 specifically the South Padre Island Station, is
7 30 knots or greater?

8 A. I do.

9 Q. That is considered high speed, yes?

10 A. I do.

11 Q. Let's begin with the top highlighted
12 portion. It says, "High speed, tactical maneuvering,
13 and rapid acceleration/deceleration of a boat involve
14 inherent risk of injury to crewmembers." Do you agree
15 with that statement?

16 A. I do.

17 Q. Why is that? How can high speed, in
18 other words, in excess of 30 knots or greater, how
19 does that inherently risk injury to crew members?

20 A. Because this pertains to a
21 noncompliant-vessel pursuit, which would, therefore,
22 mean that you would have members of your crew
23 potentially outside of the vessel when you are making
24 these types of maneuvers.

25 Q. So is it considered high speed in the SPC

1 if you are inside of the pilothouse going 30 knots or
2 faster? Do you know if that is considered high speed?

3 MS. DELEMARRE: The SPC?

4 MR. VILLARREAL: SPC, small --

5 MR. VILLARREAL: SPC-LE?

6 BY MR. VILLARREAL:

7 Q. Yes. SPC-LE.

8 A. If you are going 30 knots or higher, I
9 would consider it -- I agree with that.

10 Q. High speed. Okay. Regardless of whether
11 you are in pursuit or not, whenever you are just on
12 patrol, that is high speed?

13 A. I agree with the SOP.

14 Q. My question to you is separate and apart.
15 Not involving vessel pursuits. If you are just on
16 a -- on a patrol like you were on the night in
17 question, April 23rd, 2015 --

18 A. Yes, sir.

19 Q. -- would going 30 knots or in excess of
20 30 knots be considered high speed?

21 A. Yes, sir.

22 Q. "Standards of Conduct at High Speed - All
23 coxswains shall operate their boats in a professional
24 manner with full knowledge of the consequences of
25 improper unnecessary maneuver execution. High speed

1 maneuvers and rapid acceleration/deceleration are
2 stressful to the crew and boat and should only be used
3 when absolutely necessary for training and
4 operations." Do you agree with that statement?

5 A. I agree.

6 Q. So what was it about April 23rd, 2015
7 that was absolutely necessary for training and/or
8 operations that required you to go -- to travel at a
9 high speed?

10 A. So like I said before, going back to a
11 training perspective, these vessels are known that
12 when you bring them up, if you want to get the plane
13 and the bow down, like I mentioned earlier, you have
14 to push the throttles all the way down in order to get
15 your bow down quick. Now, when that bow starts to
16 settle out, between 20 and 25 knots, you then bring
17 your speed back down to adjust that. Now, how long it
18 takes you to get your speed back down to that point,
19 you have the potential of reaching or exceeding that
20 30 knots.

21 And in this particular case, we were
22 doing such that. We were coming up and getting the
23 boat back on plane. So somewhere in that time
24 engaging, we exceeded that at that point.

25 Q. But you did so for no particular reason?

1 A. No. We had a reason. He asked me if he
2 could come up. It is training. I said, Yes, you can
3 come up. He is the break-in coxswain. We are okay
4 with coming up. We determined that there was no
5 inherent danger, there was nothing around us at that
6 specific point in time. So we came up to get the boat
7 on plane. And doing so, we accidentally exceeded
8 30 knots around the same time that this situation
9 occurred.

10 Q. So what you are saying is that you
11 exceeding 30 knots, given the weather conditions,
12 given the area -- the location you were traveling, was
13 reasonable?

14 A. It happened. I didn't say it was
15 reasonable.

16 Q. Let's move down to, "Use of High Speed
17 and Specialized Tactics - As required; only pursuit
18 certified coxswains and crewmembers shall engage in
19 pursuit activities." Are you certified in pursuit
20 activities?

21 A. I am not.

22 MS. DELEMARRE: Object to form.

23 BY MR. VILLARREAL:

24 Q. You are not?

25 A. I am not certified in pursuit activities.

1 No. Not currently.

2 Q. No. Were -- back then, on April 23rd,
3 2015, were you certified in pursuit activities?

4 A. I was not certified in pursuit
5 activities. Pursuit involves chasing vessels
6 offshore.

7 Q. Which would potentially necessitate you
8 going over 30 knots, correct?

9 A. It can.

10 Q. Farther down in the highlighted portion,
11 it says, "All coxswains shall operate at prudent
12 speed, based on the mission for which they are
13 engaged." Do you think you were operating at a
14 prudent speed by exceeding 30 knots the night of the
15 mishap?

16 A. I think that I was operating at a prudent
17 speed when making the judgment to come up and get the
18 boat on plane and may have potentially exceeded that
19 for a moment of time and that happened. Yes.

20 Q. Well, we agree that you did exceed
21 30 knots, right? I mean --

22 A. Exactly. Exactly.

23 Q. And we agree that you did so
24 inadvertently, correct?

25 A. Inadvertently. Yes. Unknowingly.

1 Q. And do you -- do you agree that you did
2 so in a negligent manner?

3 A. Say again.

4 Q. Do you agree that you did so in a
5 negligent manner?

6 A. I do not.

7 MS. DELEMARRE: Object to form.

8 BY MR. VILLARREAL:

9 Q. You do not?

10 A. I do not.

11 MS. HERRERA: Form.

12 BY MR. VILLARREAL:

13 Q. I will read again. "All coxswains shall
14 operate at a prudent speed, based on the mission for
15 which they are engaged, the weather they are operating
16 in." Given the weather conditions.

17 A. Okay.

18 Q. It is a dark night. You said so
19 yourself.

20 A. Correct.

21 Q. You believe you were operating that
22 vessel reasonably by exceeding 30 knots?

23 MS. DELEMARRE: Object to form.

24 BY MR. VILLARREAL:

25 Q. Do you believe your speed was reasonable

1 given the weather conditions?

2 MS. DELEMARRE: You have asked this
3 question like five times.

4 MR. VILLARREAL: I haven't gotten an
5 answer yet.

6 THE WITNESS: I have given you an answer,
7 sir.

8 BY MR. VILLARREAL:

9 Q. What is your answer?

10 A. I have told you that, in the process of
11 what was going on, it was in a portion of the time
12 where we were having to come up to get that vessel on
13 plane. Unknowingly, we exceeded 30 knots. No, I do
14 not feel like that I was acting negligently. No, I do
15 not feel like that I didn't have a reason. We
16 determined that it was safe. The individual is
17 learning how to drive a boat. I had made an
18 assumption, I said, yes, you can do this and this is
19 based off of my judgment. We came up knowing good and
20 well that this is how you have to bring the boat up
21 and we brought it up and got it on plane. That is
22 what we were trying to do.

23 Q. So you were teaching the break-in
24 coxswain how to drive that boat at that speed,
25 basically?

1 A. The whole night I was teaching the
2 break-in coxswain on how to do things.

3 Q. And you determined that it was safe to --
4 to go in excess of 30 knots as part of his training
5 regimen in the --

6 A. I have told you --

7 Q. -- in the Brownsville ship channel?

8 A. I have told you that I had no intention
9 of exceeding 30 knots nor was I willing to exceed
10 30 knots, that it happened unbeknownst to me and
11 unknowingly to myself.

12 Q. Following page is Plaintiffs' Bates Stamp
13 13057, and it pertains to the ports, waterways and
14 coastal security tactics. Does this document pertain,
15 when it says, waterways, does it -- does it pertain to
16 the -- would it pertain to the Brownsville ship
17 channel? Is the Brownsville ship channel a waterway?

18 A. Which page is this, sir?

19 Q. That is Bates Stamp -- Plaintiffs' Bates
20 Stamp Number 13057.

21 A. 57. What was the question again, sir?

22 Q. Let me ask a different question. So the
23 previous document pertains to noncomplying-vessel
24 pursuit, correct?

25 A. Correct.

1 Q. You made a point of saying, well, this
2 did not apply because it was not a vessel pursuit,
3 correct?

4 A. Correct.

5 Q. All right. Well, let's go over to this
6 other document, which is Bates Stamp 13057. Does this
7 document -- does this standing order encompass or
8 cover the Brownsville ship channel because it is a
9 waterway?

10 A. It would.

11 Q. So high speed in the Brownsville ship
12 channel would be defined as anything 30 knots or
13 greater, do you agree?

14 A. I agree.

15 Q. Would it be safer to train the break-in
16 coxswain at speeds of 30 knots or higher in open
17 water? Wouldn't that be safer?

18 MS. DELEMARRE: Object to form.

19 BY MR. VILLARREAL:

20 Q. Why do so in the Brownsville ship
21 channel?

22 A. I never said I was training the coxswain,
23 break-in coxswain, in speeds of 30 knots or higher. I
24 never testified to that. I never said that at all.
25 That is not what I did that night. I said that it

1 exceeded that and it happened but I was not training
2 that. It was unbeknownst to me. If I was training in
3 that, then I would be fully aware that that had
4 happened.

5 Q. Okay. At all times, did you stay within
6 the channel that night?

7 A. I did. I stayed within the channel the
8 entire night.

9 Q. Let me go ahead and give you the next
10 document. I am going to label it as Exhibit
11 Number 17.

12 (Exhibit No. 17 was marked.)

13 MR. VILLARREAL: Michelle.

14 BY MR. VILLARREAL:

15 Q. Do you have the document in front of you?

16 A. I do.

17 Q. Can you tell the judge what this document
18 is?

19 A. This is a memorandum stating the
20 decertification of my coxswain qualification.

21 Q. Okay. In laymen's term, what does that
22 mean, that you were decertified as coxswain?

23 A. Basically, I had my coxswain
24 certification suspended at this time.

25 Q. Was it suspended as a direct result of

1 your actions or inactions of the night of April 23rd,
2 2015?

3 A. No. It was suspended in lieu of -- I am
4 sorry. Ask the question again.

5 Q. Yes. In other words, did the
6 decertification come about as a result of what you may
7 have done or failed to do on the night of April 23rd,
8 2015? Are they directly correlated?

9 A. This decertification is a standard
10 process whenever there is a mishap involved or a
11 situation happens across the Coast Guard. It is
12 somewhat customary to hold a qual, suspend things and
13 carry on until further notice and then a
14 requalification process exists after the fact.

15 Q. Just for reference, we are looking at
16 Plaintiffs' Bates Stamp Number 13245.

17 A. Okay.

18 Q. And the first sentence that has been
19 highlighted says that, Due to deviations of Coast
20 Guard and unit policies during the 23rd -- during
21 April 23rd, 2015 night patrol, you have been
22 decertified of your basic coxswain qualifications. So
23 you agree with that statement?

24 A. I agree with that statement that is
25 there.

1 Q. In other words, the decertification came
2 about as a result of what happened on the night of the
3 mishap?

4 A. Correct.

5 Q. And it says that, farther down, that you
6 agree that you failed to have your crew members put on
7 their seatbelts or helmets when you were operating at
8 30 knots or higher?

9 A. I don't agree with that.

10 Q. You did have them wear their seat belts
11 and helmets?

12 A. No. I didn't have them wear their
13 seatbelts or helmets, but I don't agree with the
14 statement.

15 Q. What part of the statement, Petty Officer
16 Rae?

17 A. The times where we reached 30 knots or
18 greater were for short periods of time in which were
19 corrected on the spot; so, therefore, there was no
20 need to go in and put helmets and seatbelts on in that
21 amount of time and then take them right back off in
22 that amount of time. So I corrected it on the spot
23 when it happened throughout the night.

24 Q. Okay. Your patrol started at South Padre
25 Island Station and went down west of the shrimp basin?

1 A. Correct.

2 Q. That is about, what, 15 miles?

3 A. 15 miles.

4 Q. And so -- or is it more than 15 miles?

5 A. It is about 15 miles.

6 Q. So back west and east, that is about a
7 30-mile patrol?

8 A. Correct.

9 Q. It says, in Letter B, highlighted, "The
10 CG 33124," which is the vessel in question, do you
11 agree? Yes?

12 A. I agree.

13 Q. "Was also found to be operating at" a
14 speed "of over 30 knots for approximately for over a
15 third of your patrol." That is -- that would be over
16 10 miles, wouldn't that be? If your patrol is 30
17 miles, then what they are saying is that you were
18 operating that vessel for 30 knots or greater for 10
19 miles?

20 A. Okay.

21 Q. Do you agree with that statement?

22 A. I can agree with that.

23 Q. Does it take 10 miles to bring the vessel
24 up to plane?

25 A. No. But I don't agree with the fact

1 that -- what I am trying to say is -- I am sorry. I
2 retract my statement. I don't agree with that. I
3 agree that at times over maybe a ten-mile span all
4 together we hit knots at 30 degrees -- 30 knots or
5 more. I don't feel like we were excessively going all
6 out at that speed for that amount of time. That is
7 the part that I don't agree with.

8 I was on the vessel at the time. Any
9 time I would see that we were going at speeds, various
10 speeds, I would adjust for such. That is the part
11 that I don't agree with. I do agree that we did hit
12 30 knots throughout the patrol at various times. Yes.
13 I do agree with that.

14 Q. After that it says, "High speed
15 operations at night time or during periods of low
16 visibility are not advisable." Do you agree with that
17 statement?

18 A. I agree with that statement.

19 Q. "The effectiveness of FLIR and Boat
20 Crew's reaction time is greatly reduced during non
21 essential high speed night time operations." Do you
22 agree with that statement?

23 A. I think it just depends on the situation.

24 Q. And this came down from -- you disagree
25 with some of these statements, correct?

1 A. Some of these.

2 Q. And this is coming from your lieutenant
3 commander?

4 A. Correct.

5 Q. Who is essentially your -- in command
6 of -- telling you what to do, right?

7 A. He is.

8 Q. And teaching you how to do things?

9 A. Yes.

10 Q. What is the difference between having
11 certified hours and noncertified hours?

12 A. Certified hours are hours which you hold
13 the certification. If they are noncertified hours you
14 don't hold the certification.

15 Q. Okay. This next document will be
16 labelled Exhibit Number 18.

17 A. Okay.

18 (Exhibit No. 18 was marked.)

19 MR. VILLARREAL: Here you go, Michelle.

20 BY MR. VILLARREAL:

21 Q. So I have handed over to you what I have
22 marked as Exhibit 18. And I will bring your attention
23 to -- your name comes up on Bates Stamp Number 13181.

24 Do you see where your name comes up, Petty Officer
25 Rae?

1 A. I do.

2 Q. And it says, Certified individual boat
3 hours, 1,282 hours and 89 -- .89?

4 A. Correct.

5 Q. Is that certified in all vessels or just
6 the SPC-LE? I guess the total, right?

7 A. Yes. That is the total amount of hours
8 for the vessels that are there.

9 Q. And on the certified hours on the -- on
10 that vessel, the SPC-LE, is 200 hours?

11 A. 200 hours. That is correct.

12 Q. So as of the date of the incident, you
13 have driven the vessel for -- you have been in command
14 of the vessel 200 hours or just onboard the vessel?

15 A. No. That -- that is the 200, it says
16 that it is uncertified hours. So that is --

17 Q. Okay. Uncertified.

18 A. -- hours that I have spent time on the
19 vessel.

20 Q. And how many hours certified on the
21 vessel as of the date of the mishap?

22 A. I'm not seeing the actual certified hours
23 in this document.

24 Q. Okay. Of the uncertified hours, how many
25 hours at night on this particular vessel?

1 A. On the uncertified, it has 61 hours at
2 night.

3 Q. Can you tell us how many hours were
4 certified?

5 A. Like I said, there is no certified hours
6 for this, for my stuff here.

7 (Exhibit No. 19 was marked.)

8 BY MR. VILLARREAL:

9 Q. Okay. The next one, Exhibit Number 19.

10 A. It is actually no certified hours for any
11 of these individuals on this.

12 MR. VILLARREAL: Michelle.

13 MS. DELEMARRE: Sorry.

14 BY MR. VILLARREAL:

15 Q. Let's see if this other document gives us
16 the amount of certified hours. This is Bates stamped
17 13185. Do you know how many certified hours you had
18 on this vessel on Exhibit Number 19?

19 A. Certified -- it has total certified hours
20 together is 83 and 24 night.

21 Q. Is that uncertified or certified? I am
22 looking over here at the projector screen. I am
23 confused by --

24 A. Okay. So this -- I think it is because
25 this -- the way that the timing is is that it has my

1 certified hours on here but because of when he printed
2 this off, they had already decertified me by this
3 time. So that is why it is showing up uncerted. But
4 those are actual certified hours just in the system
5 posts the thing, that is why it is saying certified.
6 Sorry for the confusion there.

7 Q. I see. That is why we brought it up.
8 That is why I brought it up. Thank you.

9 A. So -- and this -- and this right here
10 pertains to this -- just this specific cycle of hours.
11 That is total at the unit, the whole time I was there,
12 and this is in that currency cycle I had 70 hours
13 certified and 20 hours at night.

14 Q. And how many -- okay. 20 hours. So what
15 you are -- what you are telling the judge is that you
16 had 20 hours on this vessel as a certified coxswain at
17 night?

18 A. At night. As myself being the certified
19 coxswain. Yes, sir.

20 Q. How many missions would that be at night
21 to accumulate 24 hours?

22 A. The missions roughly run about anywhere
23 from four hours, they can go up. But typically they
24 are about four hours long. So it is about four night
25 missions that I had where I was in charge.

1 (Exhibit No. 20 was marked.)

2 BY MR. VILLARREAL:

3 Q. Okay. I am going to go ahead and move on
4 here to Exhibit Number 20.

5 A. Yes, sir.

6 Q. I am going to call your attention to
7 Plaintiffs' Bates Stamp 11061. Do you have that? It
8 is also on the screen.

9 A. That first page, sir?

10 Q. I believe so. It is Plaintiffs' Bates
11 Stamp Number, again, 11061. Do you have that?

12 A. Yes, sir.

13 Q. Okay. Was there damage to the -- to the
14 asset, to the SPC-LE, as a result of the mishap of the
15 night of April 23rd, 2015?

16 A. I am unsure.

17 Q. Okay. Well, if you look at the top of
18 the screen, Problem, Entered, April 24, 2015. Would
19 that be the -- the day following the mishap?

20 A. That would be.

21 Q. Do you know what sort of work was
22 performed the day after the mishap?

23 A. I do not know. The date that we woke up
24 that morning and we discussed what -- the last night
25 with our commanding officer, CGIS was already there

1 and there was already people there starting their
2 investigation. So I don't know if that had to do with
3 this. This is the first time that I am seeing this
4 documentation, and I have not seen it before. So I am
5 unaware of what work they might have done. I don't
6 know what they did at this time.

7 Q. So you don't know the work performed
8 was -- was related to the incident, to the mishap?

9 A. Yes. I am unsure. Like I said before, I
10 have not seen this documentation. I know they
11 immediately started going in that day and pulling
12 stuff off the boat. So I don't know if it had to do
13 with that. I am not the person to ask for this
14 specific document here, sir.

15 Q. Okay. There is a -- the following page,
16 there is actual repair estimates -- I mean, actual
17 repair cost of \$23,003.39. Do you see that on
18 Document -- Plaintiffs' Document 11062?

19 A. I do.

20 MS. DELEMARRE: Objection. He just told
21 you he is not the person to ask.

22 MR. VILLARREAL: I am asking if he can --
23 if he sees it on the paper in front of him.

24 THE WITNESS: I see it. Yes.

25 BY MR. VILLARREAL:

1 Q. Do you see that?

2 A. I am unfamiliar with it. I don't know
3 what it is or what it is for. I wasn't a mechanic.
4 That wasn't my job. I didn't have contact with any of
5 these people. I don't know what any of this is.

6 Q. If you know, is this page the total
7 for -- does it relate back to the previous page, if
8 you know? Is it part of one single invoice?

9 A. Like I said before, I don't -- I don't
10 know.

11 Q. You don't know. Okay.

12 MR. VILLARREAL: Can I go off the record?

13 THE VIDEOGRAPHER: Absolutely. We are
14 going off the video record at 3:51 p.m.

15 (Recess taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 3:52 p.m. Counsel may proceed.

18 BY MR. VILLARREAL:

19 Q. Okay. Let's go ahead and I want to shift
20 my attention a little more again towards the vessel.
21 Okay?

22 A. Okay.

23 Q. Do you consider it a rescue vessel?

24 A. It is multi-purpose.

25 Q. Part of it -- part of it is missions or

1 part of it is -- I mean, it has the capability of
2 performing rescues?

3 A. It does.

4 Q. What -- what does rescue entail? Does
5 that entail finding people? Bringing people out of
6 the water? What is your definition of rescue?

7 A. Anything from rescuing, finding people in
8 the water, distressed vessels that may be on fire.
9 Any sort of distress situation out on the water could
10 be grounds for a search and rescue.

11 Q. I am going to label the next document as
12 Exhibit Number 21.

13 (Exhibit No. 21 was marked.)

14 MS. DELEMARRE: I am handing the witness
15 Exhibit 21, which appears to be 46 CFR Chapter 1 dated
16 October 1, 2012. This witness is not a lawyer.

17 MR. VILLARREAL: No. I understand.

18 BY MR. VILLARREAL:

19 Q. Do you have Exhibit Number 21 in front of
20 you?

21 A. I do.

22 Q. And I want to call your attention to I
23 believe it is Plaintiffs' Bates Stamp -- actually,
24 there are no Bates stamps on these, I don't think.
25 Page 251. I have got it up on the projector.

1 Number 11.

2 A. Number 11 you said, sir?

3 Q. Yes. Having to do with propeller guards.

4 And I understand you are not a lawyer.

5 A. Okay. Yes, sir.

6 Q. And I am just going to read it out loud.

7 "Propeller guard. Each propeller on a rescue boat
8 must be fitted with a propeller guard with a maximum
9 opening of 76" millimeters "on all sides on which a
10 person is likely to be exposed." Do you see that
11 section?

12 A. I do.

13 MS. DELEMARRE: I am going to object to
14 the form of the question. This is beyond his area of
15 any form of expertise whatsoever. I am not going to
16 allow him to interpret regulations. He is a
17 layperson.

18 MR. VILLARREAL: No. I am not going to
19 ask him to.

20 MS. DELEMARRE: Okay.

21 BY MR. VILLARREAL:

22 Q. So are you -- have you ever seen in the
23 U.S. Coast Guard -- have you ever been or seen
24 propeller guards on outboard engines?

25 A. I have not.

1 Q. Have you ever seen propeller guards on
2 any U.S. Coast Guard rescue boats?

3 A. Not to my knowledge, I have not.

4 Q. Okay. Have you ever been part of a
5 discussion, either personal or in the U.S. Coast
6 Guard, any discussion having to do with the use of
7 propeller guards?

8 A. I have not, sir. Like I said, I don't
9 know anything on this matter. The vessels that we
10 have have the small propellers. I don't know what
11 goes down with the -- all entails with a propeller
12 guard. And the other vessel we had is in drive, it is
13 a jet-driven boat.

14 Q. Which one is that?

15 A. The 45. There is no propellers on that.
16 And I don't know anything about this.

17 Q. Do you have an opinion on whether jet
18 drive presents less of a risk for a PIW, person in the
19 water?

20 MS. DELEMARRE: Object to the form.

21 MS. HERRERA: Objection. Form.

22 THE WITNESS: I don't. No. I have no
23 opinion on that. I am not sure.

24 BY MR. VILLARREAL:

25 Q. Is -- do you know -- only if you know --

1 A. I don't know.

2 Q. -- if a -- let me ask the question. Do
3 you know if a jet-driven propeller is -- is exposed,
4 in other words, in an area where a swimmer could
5 potentially get sliced up by it?

6 MS. DELEMARRE: Object to form. I am
7 sorry if you hadn't finished your question.

8 MS. HERRERA: Form.

9 BY MR. VILLARREAL:

10 Q. Do you know if -- let me -- let me
11 rephrase my question. What is a jet-driven propulsion
12 system, if you know?

13 A. I am not sure. I haven't been certified
14 on a boat for a while.

15 Q. Have you ever operated any vessel with a
16 jet-driven propulsion system?

17 A. I have.

18 Q. Jet ski?

19 A. It is like a jet ski. Yes, sir.

20 Q. A jet ski or something else?

21 A. Well, it is -- it is like a jet ski. But
22 I don't know anything about this, sir. To be
23 completely honest, I have no opinion on this matter.
24 I am not an expert in this. I don't know.

25 Q. Just to clarify it on the record, you

1 said a type of jet ski. Were you on a jet ski? Or
2 what was it that you -- you have experience on?

3 A. No. I have experience on a 45-foot boat
4 that is a jet-driven boat. But, again, I don't have
5 anything in regards to propeller guards or what is
6 better or what is preferred. I am not sure. I
7 haven't been a part of any sort of discussion on it.
8 I haven't -- like, this is beyond my level of
9 expertise here.

10 Q. Let's leave the propeller guards aside.
11 Let's not talk about propeller guards. Do you have
12 any -- are you certified as a coxswain on the 45-foot
13 vessel?

14 A. I am not.

15 Q. You are not. Do you have uncertified
16 hours on the 45-foot vessel?

17 A. I have -- not in a while. It has been a
18 long time since I have touched that boat.

19 Q. Are the propellers exposed in the 45-foot
20 vessel?

21 MS. DELEMARRE: Object to form.

22 MS. HERRERA: Objection to form.

23 BY MR. VILLARREAL:

24 Q. Are they inside the vessel or are they
25 outside the vessel?

1 MS. DELEMARRE: Do you know?

2 THE WITNESS: There are no propellers on
3 a 45.

4 BY MR. VILLARREAL:

5 Q. There are no propellers. Okay.
6 Basically, the jet-driven one, they shoot out water,
7 right? It shoots out water as the propulsion system?

8 MS. HERRERA: Form.

9 THE WITNESS: Sir, I -- honestly, I
10 don't -- I don't feel comfortable answering these
11 questions. I am not at all on a level of expertise
12 for this.

13 MS. DELEMARRE: Give her just a second
14 before you answer.

15 THE WITNESS: I am sorry. I apologize.

16 BY MR. VILLARREAL:

17 Q. I am going to hand over back to you
18 Exhibit Number 5, which are excerpts from the Boat
19 Crew Seamanship Manual. It is the last page. It is
20 Plaintiffs' Bates Stamp Number 12459. Do you see that
21 document?

22 A. I do.

23 Q. Did you cover water jets in your training
24 with the U.S. Coast Guard?

25 A. I mean, it is in the seamanship manual.

1 Q. Then you must have, correct?

2 A. Correct.

3 Q. And I will read this briefly. Are you on
4 there?

5 A. I am.

6 Q. "A waterjet is an engine-driven impeller
7 mounted in housing." Do you agree with that?

8 A. I agree.

9 Q. "The impeller draws water in and
10 forces" -- it "forces it out through a nozzle." Do
11 you agree with that?

12 A. I do.

13 Q. "The suction (inlet) side of the waterjet
14 is forward of the nozzle, usually mounted" on "the
15 deepest draft near the after sections of the hull.
16 The discharge nozzle is mounted low in the hull,
17 exiting through the transom. The cross-sectional area
18 of the inlet is much larger than that of the nozzle.
19 The volume of water entering the inlet is the same as
20 being" -- "the same as being discharged through the
21 nozzle, so the water flow is much stronger at the
22 nozzle than" -- "than at the intake. This pump-drive
23 system is strictly" direct-thrust drive arrangement --
24 "directed-thrust drive arrangement. A waterjet
25 normally" -- "a waterjet normally has no appendages,

1 nor does it extend below the bottom of the vessel
2 hull, allowing for operation in very shallow water."

3 Do you agree with this statement?

4 A. I mean, that is the facts of --

5 MS. HERRERA: Form.

6 THE WITNESS: -- of the vessel.

7 MR. VILLARREAL: What specifically is
8 your objection, Michelle (sic), when you say form?

9 MS. HERRERA: My objection is that he has
10 already testified that he has no knowledge of what a
11 propulsion-driven system operates like and now you are
12 asking him about a propulsion-driven system.

13 BY MR. VILLARREAL:

14 Q. You do have knowledge, don't you, sir?
15 It was part of training.

16 A. I have partially knowledge. But I have
17 no determination as to whether or not which one is
18 better than the other or which one is more preferred.
19 I --

20 MS. DELEMARRE: Don't interrupt him.

21 THE WITNESS: I don't have any sort of
22 knowledge on a preface. Like I said before, I was
23 never a part of any sort of formal board of officers
24 that discussed the differences. I am clearly an
25 operator. I drive. And that's -- that's that.

1 BY MR. VILLARREAL:

2 Q. And I don't know if you recall --

3 MS. HERRERA: Beyond -- beyond that, I
4 think he also testified he didn't know how technically
5 it worked.

6 BY MR. VILLARREAL:

7 Q. So I asked you earlier forget about the
8 prop guards. We are not talking about prop guards,
9 which one is better or which one is -- which one is --
10 you know. I am just asking you about water jets.
11 Okay. And I just want to make sure that you actually
12 did cover water jets in your U.S. Coast Guard
13 training.

14 A. Yes. I mean, I have read this before.

15 Q. Okay. I am going to ask you to turn to
16 Plaintiffs' Bates Number 12749. 12749 out of the same
17 exhibit, Exhibit 5.

18 MR. VILLARREAL: What is -- what is the
19 time?

20 THE VIDEOGRAPHER: You have been on the
21 record for 5 hours and 23 minutes.

22 MR. VILLARREAL: Okay. Thank you.

23 BY MR. VILLARREAL:

24 Q. Did you turn to that page, Petty Officer
25 Rae?

1 A. I am on that page.

2 Q. Okay. Maneuvering a boat to recover a
3 PIW. Maneuvering a boat to recover a PIW. Are you on
4 that page?

5 A. I am.

6 Q. I am going to read what is highlighted.
7 "If someone falls overboard, the boat may have to be
8 maneuvered for a pickup. In most cases, it starts by
9 turning in the same direction the person fell
10 overboard. Turning towards the same side" of the --
11 "the person fell overboard will 'kick' the stern away
12 preventing the propellers from injuring the PIW."

13 What does PIW stand for?

14 A. Person in the water.

15 Q. Can you -- can you explain that maneuver?

16 A. So taken from this how I explain it is
17 this is a man overboard or a person in the water that
18 fell off of my vessel that I saw or we are aware of
19 and the crew men is immediately to call off what side
20 he is the throw-over so that we can maneuver the boat
21 appropriately.

22 Now, this in other hands is more
23 applicable to vessels that are moving at a slower
24 speed that have, you know, bigger vessels -- like,
25 Cutters and things like that are bigger boats --

1 because they have a much slower turning ability. Now,
2 from my experience in the Coast Guard, more of our
3 small crafts, if we are moving at a quicker rate of
4 speed, we are going to be clear of the person who fell
5 over to begin with. So turning to a side or the other
6 it is not as big of a deal.

7 Q. So I want you to forget about the mishap
8 for now for purposes of what I am asking you.

9 A. Okay.

10 Q. My question initially was: Is this
11 vessel a rescue vessel? And you say that, in part, it
12 is a rescue vessel, correct?

13 A. It can be.

14 Q. It can be. So, I mean, you could
15 conceivably be pulling people out of the water?

16 A. Correct. And not a man overboard. This
17 wasn't a man overboard. You are referring to a man
18 overboard person in the water.

19 Q. Well, I am talking about person in the
20 water. Person in the water could be foreseeably an
21 alien who you have come across and you are trying to
22 pull out of the water. That could be a PIW, correct?

23 A. That could be. But where is the
24 definition for that?

25 Q. No. I am asking you --

1 A. I understand what you are saying, sir.

2 Q. So we are talking about from injuring the
3 person in the water.

4 A. Correct.

5 Q. And I am asking -- setting this aside, I
6 am asking you, with this vessel, you could conceivably
7 expect to pull someone out of the water whether it be
8 a drug smuggler or an alien that is swimming across
9 the water?

10 A. You can.

11 MS. DELEMARRE: Objection. Asked and
12 answered.

13 BY MR. VILLARREAL:

14 Q. You could, right? You can answer. Yes?

15 A. That is -- that is all I said is you
16 could pull someone out of the water with this vessel.

17 Q. And according to this section of the --
18 of Exhibit 5, is -- do you agree it is telling you
19 just to be aware that there are propellers out there
20 and keep the propellers away from the person in the
21 water, correct?

22 MS. HERRERA: Objection. Form.

23 MS. DELEMARRE: Objection. Form.

24 BY MR. VILLARREAL:

25 Q. As coxswain, you want to keep the

1 propellers --

2 MS. LEONARD: Objection. Form.

3 BY MR. VILLARREAL:

4 Q. -- you want to keep the propellers away
5 from the person in the water?

6 MR. VILLARREAL: Do I hear, say that
7 again?

8 BY MR. VILLARREAL:

9 Q. As coxswain, you agree with me, you want
10 to keep the propellers away from the person in the
11 water?

12 MS. HERRERA: Objection. Form.

13 THE WITNESS: In regards to the man
14 overboard, yes. Because I know where that person was
15 and that person was stated and called out, this person
16 is here. So, therefore, I would keep my propellers
17 away from that person. Yes.

18 BY MR. VILLARREAL:

19 Q. Let me give you a scenario. You are
20 coming up -- you are coming up on someone who is in
21 the water, a smuggler, an illegal alien. You spot
22 them. And now -- now you are going to rescue them out
23 of the water. That is the hypothetical.

24 A. Okay. Correct.

25 Q. Do you want to keep those propellers away

1 from that person?

2 MS. HERRERA: Objection. Form.

3 MS. LEONARD: Form.

4 BY MR. VILLARREAL:

5 Q. Yes? Do you want to keep the propellers
6 away from -- or it doesn't matter?

7 A. If I see somebody in the water --

8 Q. Yes.

9 A. -- and I am having to make a specific
10 approach, I have a specific approach that I would make
11 that would make things go in that instance. But that
12 is not a man overboard recovery. That is not what
13 this is. So we are talking two different things here
14 and two hypothetical things. Whereas, if I see
15 something personally, how I would do something would
16 be one way.

17 Q. Okay. Let me -- and I am going to try to
18 wrap it up here. If it is a man overboard scenario --

19 A. Correct.

20 Q. -- do you keep the props away from that
21 person?

22 A. If it is a man overboard scenario, I will
23 keep the props away from that person when I turn to
24 the direction away from where they were called out in
25 the man overboard scenario.

1 Q. Why -- in your opinion, why is it
2 important to keep the props away from the man who went
3 overboard?

4 A. Because of what it says right there, you
5 keep the way -- you keep the props away from the
6 person in order to --

7 Q. To prevent injury to the person in the
8 water, right?

9 A. Correct. Sorry.

10 Q. And if you were pulling an undocumented
11 alien out of the water --

12 A. Correct.

13 Q. -- you would do the same thing, you keep
14 the propellers away from that person?

15 A. Correct. And I am also --

16 MS. HERRERA: Objection. Form.

17 THE WITNESS: -- trained to do so, in the
18 case of a man overboard, once we have our initial
19 approach, we are in neutral and the propellers aren't
20 moving.

21 BY MR. VILLARREAL:

22 Q. Okay.

23 A. And that is how things operate. So there
24 is no propellers moving when it comes in the recovery
25 aspect of it. That is how we are trained to do that.

1 Q. But in the approach, the propellers are
2 moving?

3 A. It could be. Or it could be that you
4 have speed and you take off speed and you let your
5 elements take you down on top of the person that you
6 are pulling up, which is a method that is taught, as
7 well.

8 Q. Have you ever done a man overboard on the
9 45 jet-driven vessel?

10 A. I have.

11 Q. And did you -- is a prop strike a concern
12 when you are -- when engaged in the 45-foot jet-driven
13 vessel?

14 A. A prop strike --

15 MS. HERRERA: Objection. Form.

16 THE WITNESS: A prop strike --

17 BY MR. VILLARREAL:

18 Q. Is that a concern?

19 A. -- is not a concern. But the jet-driven
20 vessel itself has its own concerns of things that
21 could happen and that is particular circumstance.
22 Depending on the maneuverability going one way or the
23 other could propel the stern the inappropriate way.

24 Q. You are not certified on that 45-foot
25 vessel?

1 A. I am not certified on that 45-foot boat.

2 MR. VILLARREAL: Can we go off the record
3 for five minutes?

4 THE VIDEOGRAPHER: We are going off the
5 video record at 4:13 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are back on the
8 video record at 4:20 p.m. Counsel may proceed.

9 BY MR. VILLARREAL:

10 Q. Petty Officer Rae, we are back on the
11 record after taking a short break. And I know it has
12 been a long deposition.

13 A. Yes, sir.

14 Q. We have been at it for about
15 five-and-a-half hours. And I appreciate your
16 patience, and I appreciate you sitting here and
17 answering my questions.

18 A. Yes, sir.

19 Q. I do know that you are trying to do this
20 to the best of your ability.

21 A. Thank you.

22 Q. All right. I have some follow-up
23 questions. You know, this accident happened -- last
24 Monday would have been three years since the date of
25 this incident, right?

1 A. Correct.

2 Q. Your son was two years old?

3 A. At the time, no. My son was --

4 Q. He was a newborn?

5 A. Newborn. Yes, sir.

6 Q. I want to ask you a little bit about, if
7 you have an opinion, what is the value of a human
8 life?

9 MS. DELEMARRE: Objection. No. No.

10 MR. VILLARREAL: No?

11 MS. DELEMARRE: I am not letting him
12 answer that.

13 BY MR. VILLARREAL:

14 Q. Is your life worth more or equal to the
15 life of an undocumented alien?

16 MS. DELEMARRE: Objection. I am not
17 letting him answer that, either.

18 MR. VILLARREAL: Okay.

19 BY MR. VILLARREAL:

20 Q. Did you go to the medical examiner's
21 office?

22 A. I did not.

23 Q. Okay.

24 MS. DELEMARRE: Hang on. What are you --
25 are you -- do you have another exhibit?

1 MR. VILLARREAL: Yes.

2 MS. DELEMARRE: What is it? Would you
3 step out, please. Yes. Would you step out, please.
4 I will call you back when I want you back.

5 (The witness withdrew from the deposition
6 room.)

7 MS. DELEMARRE: Is that -- why are you
8 showing him the autopsy?

9 MR. VILLARREAL: It is not the autopsy.
10 It is pictures.

11 MS. DELEMARRE: Why? Give me a reason.

12 MR. VILLARREAL: I want to see if he --
13 if -- if he has seen anything that --

14 MS. DELEMARRE: He hasn't.

15 MR. VILLARREAL: -- any resemblance to
16 this. You can lodge your objection.

17 MS. DELEMARRE: No. I am not going to
18 let you show him autopsy pictures. That is terrible.
19 Why would you do that? Why would -- why would you do
20 that?

21 MR. VILLARREAL: This is what happened.

22 MS. DELEMARRE: I know that is what
23 happened. Why would you show him the autopsy
24 pictures?

25 MR. VILLARREAL: I believe that my

1 clients are entitled to have me show -- show Mr. Rae
2 the autopsy pictures.

3 MS. DELEMARRE: I don't think you are.
4 Let's talk to the magistrate about it. I don't see
5 any legitimate reason for you to show him those
6 pictures at all.

7 MR. VILLARREAL: I do.

8 MS. DELEMARRE: You have asked him
9 whether he has seen anything after the incident, and
10 he didn't. Asking him whether he has seen that isn't
11 going to change anything.

12 MR. VILLARREAL: I want to know if he
13 accepts responsibility for the -- his actions on the
14 night of April 23rd, 2015, and I think that --

15 MS. DELEMARRE: You don't need to show
16 him a picture to ask him that question.

17 MR. VILLARREAL: Well, that is not your
18 decision. You want to take it up with the magistrate
19 Ignacio Torteya or Judge Olvera? You can take it up.
20 I am two blocks away from the courthouse.

21 MS. DELEMARRE: Well, I don't think we
22 need to go to Texas to take it up. We have a phone.

23 MR. VILLARREAL: No. I insist that he
24 show up in person.

25 MS. DELEMARRE: Why would you do that?

1 MR. VILLARREAL: Because you are making a
2 big deal out of it.

3 MS. DELEMARRE: Because I don't think
4 that you need to show --

5 MR. VILLARREAL: I can introduce them
6 right now.

7 MS. DELEMARRE: -- these autopsy pictures
8 to this witness. I don't see any legitimate purpose
9 to that at all.

10 MR. VILLARREAL: Well, I have gone
11 through a great expense to come all the way out here
12 to Yorktown, and I am not going to make this expense
13 again. So if you want to take it up with the judge,
14 we can talk about it down there in South Texas, and
15 then I am going to ask you to bring Mr. Rae down to
16 South Texas to finish my deposition.

17 MS. DELEMARRE: Let me consult with my
18 client.

19 THE VIDEOGRAPHER: We are going off the
20 video record at 4:24 p.m.

21 (Recess taken.)

22 THE VIDEOGRAPHER: We are back on the
23 video record at 4:32 p.m. Counsel may proceed.

24 MS. DELEMARRE: This is Michelle
25 Delemarre on behalf of the United States. Our

1 position regarding showing this particular witness
2 autopsy photos is that there is not a legitimate
3 reason to do that. We view this as harassing of the
4 witness. And we would prefer right now to call the
5 magistrate and find out if he will allow it. That is
6 our position.

7 MR. VILLARREAL: And my response is given
8 the gravity of the situation, that we have the death
9 of a young lady crossing the Brownsville ship channel
10 and she was shredded to death by three propellers in
11 the water, that I should be entitled to show these
12 pictures to the person in command of the vessel and
13 ask him if he accepts responsibility for the damages
14 to my client, the personal injury damages that led up
15 to her death.

16 So on behalf of my clients, Mr. Francisco
17 Ortega, his daughter, Stephanie, and on behalf of my
18 deceased client Patricia Garcia, I believe that I am
19 entitled to show these pictures to Petty Officer Rae.

20 MS. DELEMARRE: All right. So at this
21 point, I think we need to call the magistrate and
22 discuss with him the problem and have him rule on
23 whether or not you can do that. And once he tells us
24 what is permissible, then we can continue on.

25 MR. VILLARREAL: I think we can take it

1 up on -- when we get back to Brownsville. I mean, we
2 are not going to be able to --

3 MS. DELEMARRE: No. No. We can deal
4 with it now.

5 MR. VILLARREAL: That is fine, I mean, if
6 we can get ahold of him. I will be glad to.

7 MS. DELEMARRE: Okay.

8 MR. VILLARREAL: I don't think the
9 judge's schedule revolves around your schedule. It is
10 a matter of you being able to get ahold of him.

11 MS. DELEMARRE: That is right. I don't
12 think so, either. But, obviously, it is most
13 efficient for us to try to get a resolution with the
14 assistance of the court right now while everybody is
15 in the same place as opposed to trying to force the
16 United States to bring Mr. Rae to Brownsville to
17 answer questions pertaining to those autopsy pictures
18 in the event that the judge allows it.

19 MR. VILLARREAL: Okay. Let's try to make
20 that phone call, then.

21 THE VIDEOGRAPHER: Off the video record?

22 MS. DELEMARRE: I think so.

23 MR. VILLARREAL: Yes. I guess off the
24 record.

25 THE VIDEOGRAPHER: We are going off the

1 record at 4:35 p.m.

2 (Recess taken.)

3 MS. HERRERA: I also object to showing
4 this deponent any autopsy photos as he has already
5 stated he doesn't have any knowledge of regarding
6 this, hasn't seen them. And there is no reason to do
7 this other than to be difficult, Javier.

8 (A discussion was held off the record.)

9 MS. DELEMARRE: We are calling because we
10 have encountered a dispute regarding the scope of
11 available discovery and we are wondering if there is
12 any chance at all that we can quickly speak with
13 Magistrate Judge Torteya and get his assistance in
14 resolving this dispute while all of the parties are
15 still here together in Yorktown.

16 THE CLERK: The judge is out of town. He
17 actually is in a seminar in Harvard, at Harvard. Can
18 you hold one minute, please.

19 MS. DELEMARRE: Yes.

20 (A discussion was held off the record.)

21 MR. VILLARREAL: Good afternoon, Sally.
22 This is Javier Villarreal.

23 MS. DELEMARRE: And Sally had only told
24 me off the record that they were trying to get a
25 message to the judge and that she was going to call me

1 back at my phone number but then she asked me what the
2 dispute was about and the dispute is this: The
3 witness, who is being deposed today, was the coxswain
4 of the boat involved in the incident.

5 MR. VILLARREAL: Captain.

6 MS. DELEMARRE: Or captain. He has
7 already testified that he did not ever see the
8 decedent after the accident and, of course, he has not
9 got any kind of medical training or experience and he
10 has never seen the autopsy photos. Mr. Villarreal
11 wants to show this witness the autopsy photos and
12 apparently ask the witness if he takes responsibility
13 for the accident that night.

14 Our objection is we feel there is no
15 legitimate purpose to show this witness these images
16 and we feel that it is harassing of the witness and we
17 wish to prevent that from happening.

18 Javier, you can speak your peace.

19 MR. VILLARREAL: Hello, Sally.

20 THE CLERK: Let me get back to you all as
21 soon as I hear from the judge.

22 MR. VILLARREAL: Sally, my position is I
23 am out here taking this deposition and I do have
24 pictures of the autopsy and, you know, it is --
25 directly goes to the night of the incident, you know,

1 showing the injuries sustained by my client and which
2 goes to damages and I want to know -- I want to be
3 able to ask him if he accepts responsibility for what
4 happened that night. That is why I want to show him
5 the pictures. And, basically, they are pictures of
6 the deceased. So that is my position.

7 THE CLERK: Okay. Yes. Got that. Okay.
8 I have both down. Okay. Let me give you all a call
9 back.

10 MS. DELEMARRE: Okay. Thank you.

11 THE CLERK: Thank you. Bye-bye.

12 (A discussion was held off the record.)

13 MS. HERRERA: This is Elizabeth. We
14 don't have any questions today. We are going to
15 reserve.

16 MR. VILLARREAL: Any cross?

17 MS. DELEMARRE: No.

18 (A discussion was held off the record.)

19 MS. DELEMARRE: Judge Torteya.

20 THE COURT: Yes. This is him.

21 MS. DELEMARRE: This is Michelle
22 Delemarre. I am an attorney with the Department of
23 Justice, and I am defending a deposition in the Garcia
24 case, which involves an undocumented alien who was hit
25 by a Coast Guard boat while crossing the Brownsville

1 ship channel --

2 THE COURT: Correct.

3 MS. DELEMARRE: -- at night. And we are
4 about five-and-a-half hours into the deposition. I
5 believe we are reaching the end of the deposition.
6 And Mr. Villarreal intends to show the witness autopsy
7 pictures of the deceased, undocumented alien,
8 Ms. Patricia Garcia Cervantes.

9 MR. VILLARREAL: Your Honor, this is
10 Javier Villarreal. I just wanted to let you know that
11 I wanted -- I want to do this line of questioning and
12 there is an objection. And, basically, his testimony
13 has been that he thought all this time he hit a
14 flotation device. And I would like to be able to show
15 him the damage that was caused by the vessel.

16 And, Your Honor, I will be honest, the
17 pictures are not -- I mean, they are a bit gruesome
18 but they are what they are. And I would like to ask
19 him if he accepts responsibility for -- for the death
20 of my client.

21 MS. DELEMARRE: And, Your Honor, if I
22 may, we have an objection to the use of the photos.
23 We do not see legitimate reason to show this witness
24 these photos. He never saw the woman on the night of
25 the accident. He never saw her afterwards. He

1 doesn't have any kind of medical training. We don't
2 see a legitimate reason to show him these photos. I
3 think it borders on harassment.

4 And I also don't -- I would object to the
5 question that Mr. Villarreal intends to pose as to
6 whether the witness accepts responsibility for the
7 accident as that is a conclusion that Your Honor would
8 have to make at trial.

9 THE COURT: As far as the picture, I
10 would agree, for purposes of the question intended to
11 be posed by the plaintiffs, I don't think there is any
12 need for this particular witness, despite the fact
13 that he was a captain of the boat in question, I don't
14 think that the photos of the autopsy are necessary at
15 this point to present it to the witness. So I will
16 sustain any objection regarding that photograph being
17 shown to the witness.

18 MR. VILLARREAL: And I am okay with that,
19 Your Honor. I am just glad we got a ruling on that.

20 MS. DELEMARRE: Thank you, Your Honor.

21 THE COURT: No problem. Anything else?

22 MS. DELEMARRE: Yes. There is also the
23 question as to whether or not this particular witness
24 accepts responsibility.

25 MR. VILLARREAL: I'm not -- no more

1 questions.

2 MS. DELEMARRE: Okay. No more questions.
3 Then we have no more questions. The depo is now over.

4 MR. VILLARREAL: I am going to wrap it up
5 with him and say, I am done, for purposes of the
6 record.

7 MS. DELEMARRE: All right. Thank you so
8 much, Your Honor.

9 MR. VILLARREAL: Thank you, Judge.

10 THE COURT: Thank you.

11 MS. DELEMARRE: Bye.

12 (The witness returned to the deposition
13 room.)

14 THE VIDEOGRAPHER: We are back on the
15 video record at 5:03 p.m. Counsel may proceed.

16 BY MR. VILLARREAL:

17 Q. Petty Officer Rae, we are back from a
18 short break. And I was just looking over my notes and
19 talking to your attorney and I am pretty much done
20 asking you questions, maybe just a couple more for
21 purposes of --

22 MS. DELEMARRE: You just told me off the
23 record that you have no more questions.

24 MR. VILLARREAL: No more questions.

25 BY MR. VILLARREAL:

1 Q. Have all of your -- have all of your
2 answers been truthful and to the best of your ability?

3 A. They have.

4 Q. They have. Okay. And if at any point
5 you had any questions about my -- what I was asking
6 you, you got an opportunity -- I rephrased them so
7 that you would understand them?

8 A. Correct.

9 MR. VILLARREAL: I want to thank you for
10 your time. I know it was a long deposition. And I
11 have no further questions at this time. Okay.

12 THE WITNESS: Thank you, sir.

13 MR. VILLARREAL: Thank you, sir.

14 MS. DELEMARRE: Now let's get our other
15 parties on the record to see if they have questions.

16 MS. HERRERA: This is Elizabeth Herrera
17 representing Mercury Marine. And we are going to
18 reserve our questions for the time of trial.

19 MS. LEONARD: This is Kelly Leonard. We
20 will reserve.

21 MS. DELEMARRE: And on behalf of the
22 United States, we have no questions at this time. The
23 depo is over.

24 THE VIDEOGRAPHER: This is the end of
25 Disk 3 and the end of the deposition. We are going

1 off the record at 5:04 p.m.

2 (The proceedings were concluded at

3 5:04 p.m.)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2

3 I, Rebecca L. Braley, RMR, CRR, a Notary Public
4 for the Commonwealth of Virginia at Large, of
5 qualification in the Circuit Court of the City of
6 Virginia Beach, Virginia, and whose commission expires
7 April 30, 2019, do hereby certify that the within
8 deponent, BRANDON MICHAEL RAE, appeared before me at
9 Yorktown, Virginia, as hereinbefore set forth; and
10 after being first duly sworn by me, was thereupon
11 examined upon his oath by counsel; that his
12 examination was recorded in Stenotype by me and
13 reduced to typescript under my direction; and that the
14 foregoing transcript constitutes a true, accurate, and
15 complete transcript.

16 I further certify that I am not related to nor
17 otherwise associated with any party or counsel to this
18 proceeding, nor otherwise interested in the event
19 thereof.

20 Given under my hand and notarial seal at
21 Virginia Beach, Virginia, this 20th day of
22 May, 2018.

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Rebecca L. Braley, RMR, CRR
Notary Public, 7097551

DEPOSITION ERRATA SHEET

Assignment No. 40925

Case Caption: FRANCISCO ORTEGA GARCIA, et al.

vs. UNITED STATES OF AMERICA, et al.

Witness: BRANDON MICHAEL RAE - April 25, 2018

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20__.

BRANDON MICHAEL RAE

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public

My commission expires_____

1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE: _____

25 BRANDON MICHAEL RAE

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25 BRANDON MICHAEL RAE