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# *Public Hearing*

before

## ASSEMBLY TASK FORCE ON WATERWAY SAFETY

*“Testimony on boat safety regulations in other states and on possible partnerships that might be forged between the State and the insurance industry to facilitate safe boating practices”*

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**LOCATION:** Borough Hall  
Pine Beach, New Jersey

**DATE:** March 7, 2003  
2:00 p.m.

**MEMBERS OF TASK FORCE PRESENT:**

Assemblyman Robert J. Smith II, Chairman  
Assemblyman Gordon M. Johnson  
Assemblyman Jeff Van Drew  
Assemblyman Jeffrey W. Moran



**ALSO PRESENT:**

Wendy S. Whitbeck  
*Office of Legislative Services*  
*Task Force Aide*

Beth Schroeder  
*Assembly Majority*  
*Task Force Aide*

Jerry Traino  
*Assembly Republican*  
*Task Force Aide*

***Hearing Recorded and Transcribed by***  
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**ASSEMBLYMAN ROBERT J. SMITH II (Chairman):** I think we can get started. Maybe we can start with the roll call.

I spoke to Assemblyman Jeff Van Drew. He is arriving today. He is just running a little bit late, so we're going to get started anyway.

MS. WHITBECK (Committee Aide): Assemblyman Moran.

ASSEMBLYMAN MORAN: Present.

MS. WHITBECK: Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: Here.

MS. WHITBECK: And Assemblyman Smith.

ASSEMBLYMAN SMITH: Here.

MS. WHITBECK: We have a quorum.

ASSEMBLYMAN SMITH: I just wanted to open by thanking the mayor and governing body for their hospitality. And before we get started, I'd like to call the mayor up -- Russell Corby.

Russell, if you would just introduce yourself and say a few words.

**MAYOR RUSSELL K. CORBY:** Thank you, Mr. Chairman, and welcome to Pine Beach--

ASSEMBLYMAN SMITH: Thank you.

MAYOR CORBY: --to you and the members of the Committee.

My name is Russell Corby. I am, indeed, the Mayor of Pine Beach, here, and particularly pleased to welcome the Legislative Committee today on an issue that is, really, quite relevant to us here in this small town, but to all of us who live along the river, the many towns, who live along the river, and all the people we welcome every year to enjoy the recreational opportunities of the shore, the back bay, and the river, if you will. Most of the

focus is always on the shore. Most of the people have the most fun here on the river and in the back bays.

But the issue of boating safety is one which is ever present here in the community, in our community, and others. Boating is part of our lifestyle. There are about six yacht clubs, alone, along this river, where our children begin their association with the waterfront and boating at very early ages -- 5-, 6-, 7-years-old. As we know, our recreational resources are always under strain, if you will. We're a very densely populated state. And we have witnessed some of the tragedies, if you will, of overuse or negligence or other accidents involving boating and the water.

We would like to think that your Committee, Mr. Chairman, and you as members, and the Legislature itself, will understand that regulation, if you will, in dealing with this lifestyle is a very important issue, not only for this generation but for the generations which will follow us.

Again, Mr. Chairman, I think you have important business to do. I am just very proud to be your host today -- you and the members of the Legislature -- and do, in fact, support more and more of an emphasis on the public consciousness in terms of boating and our lifestyle here on the river and the back bay, and wish you well in your endeavors.

So, again, thank you very much, Mr. Chairman, for being here, and to all of you.

ASSEMBLYMAN SMITH: Thank you, Mayor.

Just by way of background, for those of you that may be here for the first time, this is our third and, probably, our last public hearing that we've had throughout the State of New Jersey on the issue of boating safety. We've

had the Coast Guard here. We've had the State Police. We've had representatives from the marine trade industry, commercial/recreational fishermen, as well as just ordinary voters, or boaters -- what am I talking about, voters. (laughter) Most importantly, though, we have with us today Rosemary Decker, and Rosemary is really the reason why I asked the Speaker to form this Task Force.

She came to me, probably, at least a year-and-a-half, two-years ago, had a very significant tragedy in her family with her husband and her husband's friends off of the New Jersey coast. And Rosemary has been to every hearing that we've had, and she's made it a commitment to see through what we're trying to initiate and the information that we're trying to glean from this Task Force.

So, Rosemary, I just wanted to say thank you for, initially, coming today. Thank you for attending every Task Force meeting that we've had, and I'm quite confident that after hearing all the testimony and putting our heads together, we're going to come up with something very substantive in terms of boater safety in the State of New Jersey. I know that, as a result of these hearings, we've had at least two, maybe three, pieces of legislation introduced addressing, very specifically, the issue of boating safety. So I'm confident -- and that was part of the mandate that the Speaker placed on me as a Chairman, to make sure that we get the information and we work together and come up with a resolution, if you will, for boater safety in the State of New Jersey. And you have my commitment, as a Chairman, that we will do that, and, certainly, the commitment of all the Committee members here today.

So, thank you, Rosemary.

All right. I'd first like to begin with Bill Gossard, the National Transportation Safety Board. I believe that Bill has a brief presentation and then some testimony.

And Steve Blackistone, as well. Thank you, Steve.

**BILL GOSSARD:** Thank you, Mr. Chairman, and Assemblymen. It's a pleasure to be here today from the National Transportation Safety Board. Just a brief introduction so you know who the National Transportation Safety Board is, so there's no confusion. We are an independent Federal agency of the Federal government. We have five presidential members that sits as a board, appointed by the President and confirmed by the Senate. And then, of course, we have technical staff and persons such as myself who are safety advocates.

Basically, our role in the Federal government is to investigate serious accidents in all modes of transportation and make recommendations. We do not issue any laws, any rules, any regulations. We make recommendations. And we hope, of course, that the recommendations we issue -- whether they're to the states, the Federal Aviation Administration, or other organizations -- would, hopefully, do those. So that's basically what our function is.

Within the Safety Board, Steve and I work for a safety advocacy group called the Office of Safety Recommendations and Accomplishments. Within that group, we have all modes of transportation. I happen to be the Program Manager for Recreational Boating Safety within that group. The Safety Board is pleased to be here today, and we know this is a very serious issue. We followed very closely the casualty that occurred in New Jersey -- that

involved Mrs. Decker's relative and friends -- and we are very aware, cognizant, of how serious these accidents are and the impact that they have for families and for those loved ones that are involved.

Recreational boating fatalities are very high, even exceeding fatalities in general aviation. As a matter of fact, recreational boating fatalities and injuries are probably the second highest group of transportation fatalities that we can clearly segment. Obviously, highways is off the charts, and we're well familiar with the problems in that particular area. But recreational boating, of itself, is a very important issue to address in terms of reducing fatalities and injuries.

The U.S. Coast Guard, who has already testified, has probably told you that, in 2001, we had 681 people die in the nation in recreational boating casualties; 4,274 persons were seriously injured; and 6,419 reports that were sent by the states, the Coast Guard. And we have to remember that those reports are provided by boaters themselves. That's the key thing, and I'm sure you'll have other people testify this later, but just so that you remember this: They're reported by the boaters themselves. The states then take them and then bundle them up and, however they process them, put them in their state stats, and then send them to the United States Coast Guard.

We have other information, though, that's available on recreational boating casualties, and this is where, I think, you'll find some interest. The American Red Cross, in a survey that they did earlier in the '70s and the '80s -- they indicated more than 355,000 persons were injured in recreational boating accidents. And in, probably, 40 percent, it was more than

first aid. So it was a serious kind of accident, but it was not, obviously, reported.

Even more recently, in 1997, the Centers for Disease Control found, just in personal watercraft alone -- and I'm not trying to just highlight them as a bad actor -- they had 32,000 injuries that the Center of Disease Control could indicate, and that's a large number. All right. Certainly, we're not getting that report to the United States Coast Guard.

Also -- and I'll probably provide this to you later, if I can, Chairman Smith -- the Emergency Nurses Association, currently, is doing a study, right now, on injuries admitted to hospitals -- a study which I think you all will find very interesting. I don't have it with me, unfortunately. Today I just, kind of, collect -- oops, I forgot this one. They had some preliminary information. But it will provide us even, I think, some better data, and I think that will be done by April. So I'll try to provide that report to the Task Force as soon as I can, so that you can take a look at that, also, as you deliberate on these issues.

Now, in my statement, which I'm not going to read, ad nauseam, we had some examples of accidents in here for your information, which highlights that mandatory education is a very important thing we should look at. I will point out that the Board investigated a really serious one in 1995, which isn't in this statement, in Arkansas. And this is, kind of, typical of some of the things that you have in these accidents. There were nine people on a very small johnboat. And if you're familiar with a johnboat, they're generally 14 feet, maybe 13 feet, maybe 15. They're flat-bottomed. They use them on calm waters. You don't go out where you have tidal operations.

This boat was definitely overloaded. They had no PFDs. The children were all very young. It only had freeboard, maybe, of a few inches. They went out on a very nice day. Great weather. No problems. The river was the river -- I mean, it runs and it's fairly quick. And they got on it, and the boat, apparently in the front, obviously, because it was overloaded, began to take on a little water. The children were sitting in the front, and they panicked. They stood up. As soon as they stood up, it swamped. All right. It swamped, and it nosed down, and they were all thrown in the water. And, of course, surprisingly, five children and two adults died. And not only that, fishermen were close to the banks. They launched their boats as soon as they could, but it was just too late. Two of the more senior girls on the boat managed to survive; one got to shore, and a fisherman got the other one.

But this is a, kind of, typical kind of an accident, and I put another one in here to read at your leisure.

Now, what we've found, of course, from all the accidents that we looked at, and I provided the 1993 study we did on recreational boating safety-- And believe me, I can state, unequivocally, that nothing has really changed in the industry. We've dropped some of the fatalities down, but basically that study is just as good today as it was in 1993. Nothing much has changed, except, I'll point out what has, in terms of mandatory education.

What these cases studies, that we looked at in this accident study, pointed out -- that regardless of their level of experience, all right, people operated their vessels in a manner inconsistent with the basic knowledge of the rules of the road, and understanding of safe boating practices, and proficiency in operating skills. In other words, it didn't matter how much "experience"

you had. If you didn't know safe boating practices and rules of the road, you're going to find yourselves in jeopardy.

So, unlike general aviation and other motor vehicle operations, an operator of a recreational boat in many states -- and I can highlight, of course, that New Jersey has taken an effort in mandatory education to have its boaters have some certificate and some training -- generally they have no understanding of safe boating rules or an ability to safely operate their boat. And generally, we find the range of the -- only the fatalities now, this is what we can get our hands on -- fatalities, between 80 percent and 84 percent have had no education at all in their recreational boating safety operations. This is very, very high.

Now I pointed out, in the statement, that Alabama finally became -- we call it the first state with a comprehensive operator licensing requirement. We're well aware that New Jersey does have an operator license requirement since 1954, which I understand has been improved somewhat since then. All right. And you do have, as I believe it's for, like -- I want to say tidal waters. You have to have some kind of certificate. And then you do have mandatory education requirements, I think, it's '79 and up, so you're getting there. But it's a very slow, tedious process moving forward.

At least 19 states, and you're one of them, the District of Columbia and Puerto Rico have enacted legislation that does establish some requirements for mandatory boating education, and I congratulate New Jersey for that. Generally, there's a certificate for review by a boating law officer if there is some kind of problem on the water, and that's good that you have that.

Now, a couple of states have indicated that they've had some really good success with mandatory education, and one of those is Connecticut, which everyone now has an operator competency certificate. They reviewed it in 1996, and found out that their accident experience reported uneducated boaters had five times more accidents than did educated boaters, and they based that on their study in 1996.

And Maryland, which has had their mandatory education program even a little longer than New Jersey, in terms of this 1979 age -- indicates that in the first year, that they had a decline of 12 percent after they had full certification for all personal watercraft. So, just in that vessel alone, they had a great drop in accidents. So I think that mandatory education does help. I'm not saying it's a cure-all or the panacea, but it does help.

Now in the remaining states, of course, we have a great problem, because we have boat operators out there operating vessels that can do speeds of, in excess of, 70 miles per hour. Personal watercraft, generally, can crank up to 50, even off the lot, and some may even go higher. But we have other boats that are very high speed that any child, any age can operate without any education, which is just, really, a travesty, basically. It's very, very dangerous.

I was just out testifying in Nebraska. I'll just give you another example. Way out in west Nebraska, they have a little lake, and they had a father towing two children on the tubes, the big inner tubes, which is fun. They had two kids that were 14 years old operating personal watercraft and no training whatsoever, probably no, apparently, parental guidance or anything else, who were out on the lake operating very dangerously. The father pulling the two children, towing, decided he'd better get in. The situation was just

getting out of control. They were jumping the wakes. They were jeopardizing the children he was towing. As he turned to come in to get off the lake, one of the jet skis jumped the wave and landed right on top of the girl, who was not his daughter. But it greatly impacted Nebraska, and I can report to you that I was just out last week. Nebraska is following a model to try and accelerate -- of course, they don't even have mandatory education -- but to accelerate it, have everybody in that state, probably, done in five years, have mandatory education.

Unfortunately, it takes a serious tragedy like that, and it's very unfortunate that it takes a tragedy to move people to understand the seriousness of the situation. But nevertheless, I'd like to report that to you, just so you know.

Now, I wanted to just point out, also, that personal watercraft -- because many people focus on that, because they are high speed. They're very mobile. Kids love them. Most everybody under age 25 likes to get on -- I even like to get on them. All right. But you have to operate them safely. But what the record shows me is that education and training of personal watercraft operators is no different than the education or training of all other boaters that are involved in casualties. So, if you put them all together, there's no difference. So just having personal watercraft people train, although that's fine, that helps, you got to have all boaters trained. This is my point. Okay. So I just wanted to point that out. Although they may make a lot of noise, and that's another issue -- but, in terms of safety, they're just as safe as all other boat operators in accidents and fatal accidents.

Now, I'd like to conclude real quick. I figured, well, I'd try to bring you some kind of visual thing to look at, if you don't mind. It will just take a second. If I can find the turn-on switch, I hope, on the top. No. Is this it? I'm sorry. I apologize. I'm very weak at this.

(begins slide presentation)

These are the states right now, okay, that we consider have -- a man in blue -- that have a mandatory education requirement, which eventually will get all boaters. As you can see, if you grandfathered every year, it might take you 40 or 50 years to have everybody that doesn't have any education have education. So New Jersey, you can see, is among those states. So there's, basically, 19 states -- D.C. Puerto Rico has it, which we don't have on here, because it's a territory -- just dealing with states. And Alabama, which we consider has a mandatory full operator license. That's where we are.

Now, let me show you the states. And just for interest, I'll try to make this quick, because we have to move in terms of time. These are the states, right now, that are considering mandatory education. The ones with the little X, which I put in, and I also colored them in, just so you'd have something better to look at. The ones, an X, actually have introduced legislation. In some cases, it didn't go anywhere, and in some cases, we're still arguing over it, like in Missouri, Nebraska, Washington state. We're hoping to have a full bill introduced next year. Utah, we hope, comes back with another bill. Some states, like Oklahoma, introduced it, but had no great luck, but they want to try again. So we're trying to form a coalition of safety folks to overcome some minor opposition. Maine and Massachusetts, we've talked

to both states. They're both very keen on introducing it, but they've had some political changes. So, you know, you have to wait for some fallout on that.

Nevertheless, we're hoping within the next, maybe, five years that two-thirds of the nation will have mandatory education. If we get two-thirds with mandatory education-- And we may have a good sense that, maybe, perhaps, the United States Coast Guard might even act on making a national requirement for mandatory education, much like they did for PFDs. As you're well aware, New Jersey has a PFD law. We have 10 states that don't have it. The Coast Guard just completed its interim final rule, as of December of 2002, and we expect those other states, then, will probably fall in line. Because it is, kind of, embarrassing, when the Coast Guard has made a national policy and most states have PFD requirements, that they don't follow it.

So we hope that all the other states will join New Jersey, at a minimum, with the kind of program you have, all right, which is what we call the National Association of State Boating Law Administrator Models. But there are other models. The other models are that you don't do it year by year by year. You do it by a set date, like Nebraska, and I think I've even seen legislation introduced in New Jersey that would accelerate that process to get people with education sooner. Because education is just a pivotal part, not that it's going to be the end all to stop recreational boating accidents, but that with other things is part of the puzzle to make our water safer. And, believe me, they're congested waters.

I talked earlier with Assemblyman Moran, and I know they're crowded up here. I'm from Annapolis, and I think it's like kamikaze alley coming out of Annapolis roads. (laughter) Okay. I mean, you don't know

what you're going to be confronted with or when or at any time. So you must be alert. You must know the rules of the road, and you have to operate your vessel safely. This is what you learn in your mandatory education courses. And I don't care who does it, whether the State of New Jersey does it, the U.S. Power Squadron, United States Coast Guard Auxiliary, or you do it by private firms. It's just important that it be done.

Canada has taken the other model, kind of like Connecticut. All right. Just get everybody. All right. Well, it's kind of like the Nebraska model, and then if New Jersey does it, you'd have the same. By the year 2009 or 2010, everybody in the nation of Canada is going to have a certificate that they've taken boating education. And believe it or not, their statistics, based on their number of population, are worse than ours. Much of Europe is very similar. And so, I might even note to you that this issue has gone international, rec boating. Probably most people wouldn't even have thought of it as a serious issue, but you all have. Okay. But it's becoming an international safety issue, so it's very important, also.

(end of slide presentation)

But anyway, I just thought I'd share that with you. And that's, basically, it. I'd be happy to answer any questions.

And thank you very much for having us up. We really like coming to the states. I mean, all we can do is tell you what's going on.

ASSEMBLYMAN SMITH: Sure. I'll start off with a few questions. What is Connecticut mandating in terms of education?

MR. GOSSARD: Well, Connecticut has a full education program. I believe they have to have at least eight to 10 hours of education. And if you

want to operate a personal watercraft, you have to take another course, which I believe is two hours, and I think you have to demonstrate that you know how to use the vessel.

ASSEMBLYMAN SMITH: Okay.

What type of public reaction has there been, particularly among boaters, for the mandating of education?

MR. GOSSARD: Well, I can tell you, when I did the study, we looked at a number of surveys done by states in *BoatU.S.* and a number of organizations. And the boating public, in general, if you look at the survey results, overwhelmingly believe that mandatory education is appropriate. They certainly don't want people operating on the water -- particularly good boaters don't want people operating on the waters that don't know the rules of the road, don't know how to pass and safely navigate, particularly in narrow and congested waterways. So, by and large, the American public, I think, as a whole-- But they're the silent-- You have to remember, as anything, when people-- On issues where there's a large number, they're very silent. They don't come forth and complain about it. Okay. But, by and large, I think those results have run anywhere from 66 percent to, in excess of, 80 percent in favor of mandatory education.

They're not in favor of an operator license. I can note that the Board recommended an operator license -- that we haven't gotten much luck with that particular issue. But in terms of mandatory education, I think it's highly favorable.

ASSEMBLYMAN SMITH: Are they allowing, for example, the Coast Guard Auxiliary, their State Police, private firms -- anywhere they can get the education is sufficient?

MR. GOSSARD: Yes. Different states do it different ways. By and large, most states-- Well, in the state of Maryland, the state of Maryland has its course it uses. But if people have the Coast Guard Auxiliary course or the Power Squadron course, that is the same as taking the state course. But many of the Coast Guard Auxiliaries and the Power Squadron people are the trainers for the state course.

**STEVE BLACKSTONE:** Mr. Chairman, there is a national model that has been established by the National Association of State Boating Law Administrators, which are the state officials that run the boating programs in most states. Most of the state laws we've looked at specify that the boaters have to have a course that meets those minimum standards without any specification as to who provides the course, but rather just that they meet the minimum standards.

ASSEMBLYMAN SMITH: Okay.

How about the issue of retraining for somebody that, maybe, took a course 10 years ago or 15 years ago?

MR. GOSSARD: Unfortunately, if they settle the model up in the State law that they accept-- For instance, Power Squadron or Auxiliary courses that were taken earlier, they're acceptable. Then there's usually not any retraining requirements at all. Basically, once you get the certificate, you generally have it for-- Well, you can't have it for life. I mean, in some states it's simply a certificate you get, and you get it one time. It can't be taken

away. But, if you have alcohol, for instance, violations or something that may be handled by some other mechanism--

MR. BLACKISTONE: The analogy might be to driver's education. You take a driver's education course or go through the process when you first get your license, but you are never, in most states, required to take recurring training.

ASSEMBLYMAN SMITH: But unlike a vessel or a boat, whether it be a personal watercraft or a boat, even if you owned one, you probably operate it far less hours than what you would an automobile when you leave your house every day. So I guess my question is, is there any studies or any thoughts that you may have on somebody that may have had a boater education course 10 or 15 years ago, just a refresher course?

MR. GOSSARD: Well, the Board itself has not said anything about it. We've been arguing heavily just to get, first of all, mandatory education, and nationally. I think your point, of course, is well-taken. We've had cases where we've investigated casualties, like the Morning Dew, in which the father apparently had had a boating education course -- reportedly, again, because there are no records -- much earlier in his career. But then, the very actions he took, taking out three children and himself, were fatal for everybody involved.

So, yes, certainly my personal opinion is, I could always -- I would be much well in favor of recertification process, but by and large, right now, we're still fighting the battle simply to get mandatory education in all states on the books. New Jersey, of course, you're fortunate. You already have a

mandatory education course. You've already taken some kind of operator licensing kind of approaches, which is much further than many, many states.

ASSEMBLYMAN MORAN: Mr. Chairman, can I ask Bill a question?

ASSEMBLYMAN SMITH: Sure, absolutely.

ASSEMBLYMAN MORAN: A couple of things. First of all, I don't think, in New Jersey, we have to reinvent the wheel with the test, because I believe that the test we presently have on the books for the '79 act is functional. I think what we've got to re-examine is those people that are required, in fact, to take the course for certification, number one. Number two, I think the other thing -- and there's other people in the audience today that will probably be able to answer this better than you, Bill -- is, is there a difference when you go out and you buy a 35-foot boat, and you mortgage it for 50, \$60,000. Do you or do you not get a discount rate in your financing, when you finance it, because you have a certificate and/or a license, and number two, do you also have some type of an incentive when you have the boat, not only when you buy it and pay for it, but when you insure it?

So there's two questions. There's, number one, is, does the bank give you a better deal because they're investing their money to you with some type of security, that you have some type of experience in dealing with that piece of equipment that they actually hold a paper on? And the other one is, the insurance companies, do they give you a better break because you have some training?

I can remember when I started boating as a youngster -- and as Mayor Corby had described -- just about every youngster in our communities

here -- and I live right here -- go through a sailing program, go through a boating program. We emphasize it in our schools -- where I was assistant superintendent of Toms River schools -- we emphasized safety and boating, because it was a natural way of life for everyone here.

Our summer programs are not only for youngsters. We run extensive programs starting in April for adults. But the problem is, is that the adults from our immediate community are the ones that get involved, whether it be through the Coast Guard, whether it be through one of the yacht clubs, or some other groups-- But the thing is, is that it's not the people that come here.

I've lived here for over 33 years. I love the river. I love the bay. But I don't go out there on Saturday and Sundays, because the people that are out there on Saturday and Sundays aren't the people that live here, aren't the ones that have been trained, aren't the ones that have been brought up and live on the water. It's the people that live outside of our immediate geographic area that come here. And we've learned, over the years, stay away and let them do their thing. And if you look at the statistics, the accidents here happen on the weekends. It's not during the week. Because it's during the week that we go out and we do our recreational boating, and we know each other. We know the courtesies involved in safe boating, and we know the rules of the road, and we know the waters.

I mean, you can go right outside of the river here, out to the bay, Boy Scout Point. I walk that every year. I walk that every year to see what the drift is, and I find out that this year it's, maybe, three-and-a-half foot of water.

Last year, it was 12 inches of water, because of the drought, and we didn't have a water surge.

But when you go out there sometimes on a weekend, a day does not go by that you don't have a \$100,000 boat sitting high and dry, the bottom ripped out. And you stop and you think of the safety involved and the people that were involved in that boat, whether that person knew what he or she was doing, the poor bank that's holding the paper on that boat, and the poor insurance company that insured this guy, all the people that are hurting. Not only the people, but the boat, and where were their brains? Why didn't they just take the time out to study the water, learn how to read a map of the water, and get some basic training?

There's great markings out there. All you have to do is follow the buoys and the markers, and you'll never have any trouble. And if you only know the simple rules of the road, it would be much, much safer. I think those are the kinds of things that not only you can help us with here in New Jersey, but the insurance industry, the banking industry, and most of all, those people that sell the boats. When you sell a boat to somebody that comes in, I think one of the first things you should be asking the person -- obviously, you're interested in selling the boat and making a commission and getting a sale -- but what kind of experience do you have, and what kind of a boat should we place you in, and what kind of a course should we put you into to handle this kind of a boat?

MR. BLACKISTONE: Absolutely, those are all valid points. The Board, in its investigations, didn't look particularly at the role of insurers or the financial side of the industry.

MR. GOSSARD: I think you'll have speakers here that can better address that than us. The Safety Board's role is very narrow. Our role is, basically, to look at safety and make recommendations, specifically, to that. All right. Insurance issues and banking issues and things are probably better served by other groups that have expertise in that. We're accident investigators, basically.

MR. BLACKISTONE: Yes.

MR. GOSSARD: So, we're looking at it in terms of what those people can do, themselves, to make their operations safer. But your points are well-taken.

ASSEMBLYMAN MORAN: Being someone who lives here on the water and spends a great deal of time, our interest here is not only my legislative interest to represent the State and my particular district. But I think it's extremely important that, whether you live in East Orange or North Jersey and you come down here on a weekend, we want you to enjoy it. We want you to have a good time. If you own a boat or you rent a boat, we want you to have a safe, pleasant experience, because we want you to come back. I think if we have some type of a mechanism in the State where we could take -- similar to the Ciesla bill -- where you can take a period of time, in two years or three years or whatever, and phase everybody in, not by alphabetical order, by age -- as we did in '79 -- but some mechanism where everybody can get their certification, and they can get a training so that we can have this period of time so that everyone can get out there.

So everybody in New Jersey that steps on board a boat that is going to be responsible on that boat, not as a guest or something, but the

person responsible on that boat holds a license, or I should say a certificate of certification, that they have fulfilled the obligation of this course.

MR. GOSSARD: Well, we certainly support that, okay. The Board's recommendation says, "demonstration of -- operator has skills and knowledge of the vessel he's operating." So the models that are available vary greatly, but we do support the fact that, if New Jersey wants to accelerate its folks into mandatory education, we certainly think that's appropriate. And we'd also like to have states like New York and others, which don't have it, currently, except for personal watercraft, we'd like to move them that way also. So we're hoping that we move New York forward on that. Pennsylvania has just done it, again, but they're using the grandfathered model again, so that they increase it here. Maryland, of course, already has it, Delaware, the states around you.

So, yes, we do support that. Absolutely. Absolutely.

ASSEMBLYMAN MORAN: Okay. Thank you very much.

MR. BLACKISTONE: And that's something you may want to look at as a factor, because you do have so many neighboring states, a lot of your boaters come from out of state.

ASSEMBLYMAN MORAN: Thank you, Mr. Chairman.

ASSEMBLYMAN SMITH: Questions?

ASSEMBLYMAN VAN DREW: I was going to kid the Assemblyman. I come from Cape May County. We stay off, not only off the water on the weekends, we try to stay off the streets on the weekends in the summertime. (laughter) We try to stay in the house. It's a huge change.

MR. GOSSARD: You walk, right?

MR. BLACKISTONE: We'll be glad to talk to you about highway safety, too.

ASSEMBLYMAN VAN DREW: I hear you. God help us. We need it, especially on Route 9 and the Parkway.

Online courses -- are there other states that are using them? Are they successful? Do you think it's appropriate? Has there been much done with that?

MR. GOSSARD: I can just tell you that--

ASSEMBLYMAN VAN DREW: It would be a great way to get everybody on board.

MR. GOSSARD: This is a very, I won't say, esoteric debate, but there's a big debate on this. Some states do allow online courses. *BoatU.S.*, which you may be familiar with, has an online course which some states allow. *BoatU.S.*, after you've completed the course, they add their seal -- and the *BoatU.S.* seal -- and that suffices for a boating education course. There are other states, of course, that do not agree with that -- think that the person has to be in the course, because you learn by synergy and persons who teach boating safety. You get more than looking at a computer screen and filling in an answer and, then, going back and correcting it if you don't know what it is.

Both are excellent training tools. So we have tended not to get into that particular argument. If the State thinks that online is going to make a difference and they want to give it a shot, the more information we get can't hurt us. That's my bottom position.

ASSEMBLYMAN VAN DREW: Are there other states using it?

MR. GOSSARD: Yes. There are a number of states using it.

MR. BLACKISTONE: There are some states using it. I don't think any state has yet evaluated their experience to be able to say that people who take online courses are or are not as well trained as those who do it in person. It's too early to tell.

MR. GOSSARD: Yes. But there are states that definitely do it.

ASSEMBLYMAN VAN DREW: Thank you.

ASSEMBLYMAN SMITH: Questions?

Assemblyman.

ASSEMBLYMAN JOHNSON: Yes. Thank you, Mr. Chairman.

I have one question that I'm concerned about. During your research of these other states that require certificates for boating, are there other states that will exclude those with DWI convictions or DUI convictions from being certified to operate a boat?

MR. GOSSARD: Well, yes. Well, certainly, yes. There's a number of-- I'm talking different states. But many states apply the DWI violations on boating directly to the motor vehicle licenses of folks within their state. And if, in fact, they get one, you get certain penalties. If they get two, there's another penalty. If they get three, they might lose their license there, their certificate on boating, as well as their operator's license on the highway. So there are states with that model.

Some states, it's simply increasing penalties with nothing against the certificate, because the certificate "is for life," meaning you've taken the training. You know how you're supposed to boat, but the alcohol itself is a serious issue. According to state law, it has serious penalties.

MR. BLACKISTONE: Typically, in the states, operating a vessel is a privilege granted by the state, and so the state has the right to suspend or revoke that privilege, even if there's not a license such as there is on the highway. We've seen some states where, in fact, what they've done is merely added language to the state's drunk driving statute saying, "operating an automobile or boat in excess of the legal limit," and in that way, incorporated the two modes of transportation into the same statute. So that, if you get a violation on one mode, it would then automatically be applicable to the other. You could lose your driver's license for--

MR. GOSSARD: Or your pilot certificate.

MR. BLACKISTONE: Yes.

MR. GOSSARD: In some, like North Carolina, you have it all.

MR. BLACKISTONE: So there are a variety of different models out there. And states are moving more and more to tie the two together.

ASSEMBLYMAN JOHNSON: Okay, thank you.

ASSEMBLYMAN MORAN: Mr. Chairman, we did do that. We do have -- you can check.

ASSEMBLYMAN SMITH: Yes. If you're found guilty of operating while under the influence while operating a vessel, you lose your driving privileges for three months and your boating privileges for six.

Right, Trooper?

MR. GOSSARD: Yes. Trooper Edwards (phonetic spelling) is here.

MR. BLACKISTONE: Yes. And, in fact, one other small aspect of that is in terms of flying. Many states have flying-while-intoxicated statutes,

even though it's a violation of the Federal regulations, that's something that is enforced by the states, not by the FAA. So, in some states, even flying an airplane while intoxicated is tied into your driver's license.

ASSEMBLYMAN SMITH: How about the reverse, just out of curiosity? Because I'm also a prosecutor, just as an aside. If you're found guilty of driving DWI on the road, it doesn't effect your airline license, no?

MR. BLACKISTONE: I don't believe so. I can check, but I'm not familiar enough with the Federal aviation regulations, to know whether or not--

ASSEMBLYMAN SMITH: The State Police were saying, no, behind you.

MR. BLACKISTONE: Okay, no.

ASSEMBLYMAN SMITH: I just have one last question. What do you think of the idea of testing out of an exam, if you are an "experienced" boater -- meaning somebody that has operated hands-on for a while?

MR. GOSSARD: Well, yes, that's basically a model. I think it's a very germane question. And, in fact, if you can test out on it, that would be fine. As a matter of fact, many people take the test and flunk it, who are great boaters -- they think they're great boaters. They don't even know the rules at all. It's really surprising, because that's what happened, kind of, in Alabama. They all waited to the end. They all went in and took the test, and they all flunked it. Much to their surprise, because then guess what? If you flunk it, you got to go take the course, all right, and get some training, because it's obvious you don't really know what you're doing.

MR. BLACKISTONE: I'd say the one key to that is what they did there, and that is if you failed the test there are some consequences. You then have to go take the course--

MR. GOSSARD: Take the course, yes, somewhere.

MR. BLACKISTONE: --to regain your privilege of boating.

MR. GOSSARD: And generally, the courses don't cost a whole lot, and they're very friendly to try and get you there. I mean, you're not trying to penalize people. We get this argument about that, but it's just really not germane.

MR. BLACKISTONE: Yes.

ASSEMBLYMAN SMITH: Okay.

Thank you very much.

MR. GOSSARD: You're welcome. Thank you very much for having us.

MR. GOSSARD: We appreciate the opportunity.

ASSEMBLYMAN SMITH: Yes, Rosemary.

**R O S E M A R Y D E C K E R:** I'm Rosemary Decker. We all need a driver's license, right? We need a license to pilot a plane. But why is it so hard to get a license to drive a boat? That's my question.

ASSEMBLYMAN SMITH: Bill?

MR. GOSSARD: You want me up here, right?

ASSEMBLYMAN SMITH: Yes. Everything is on the record, as you know.

MS. DECKER: We all need a license to drive a car. We need a license to pilot a plane, right?

MR. GOSSARD: A license. Yes, ma'am.

MS. DECKER: And when you get those, you have to be tested by -- and for your license -- the State Police. You have someone with you to make sure that you know how to do this. Correct? Correct?

MR. GOSSARD: I'm not familiar with New Jersey procedures, but--

Trooper?

ASSEMBLYMAN SMITH: For aviation?

MS. DECKER: I'm talking about a driver's license.

MR. GOSSARD: Oh, you're talking about the driver's license.

ASSEMBLYMAN SMITH: Oh, driver's license.

MS. DECKER: You have a State Policeman sitting in the seat with you, and he tests you.

ASSEMBLYMAN SMITH: When I took my test, yes.

MR. GOSSARD: Yes, that's correct.

MS. DECKER: And what about when you drive a plane?

MR. GOSSARD: Well, yes. I mean, if you're going to fly a plane, you have to have--

MS. DECKER: Exactly.

MR. GOSSARD: --rigorous landing and take-off procedure. You have to know what you're doing.

MS. DECKER: Exactly. Why is it so difficult to get licensing for boating? Why shouldn't they be tested just like those two things going on? Somebody sitting there making sure that they know that this buoy does this, this buoy does that, or whatever.

ASSEMBLYMAN SMITH: Well, I guess the question is--

MS. DECKER: I did take the boating safety test. And I can tell you, I could not drive the boat in any of the waterways--

ASSEMBLYMAN SMITH: On the water test, you took?

MS. DECKER: No. I took the boating safety course, and I could not drive a boat today, because I haven't had any experience.

ASSEMBLYMAN SMITH: Okay. Do you have any statistics, between those states that may have a licensing requirements, if there are any, compared to--

MR. GOSSARD: Well, we only have one that has, sort of, a license, and that's Alabama. So we don't really have anything to go on. I mean, the point is very germane. If you don't know how to operate your vessel, you probably shouldn't be on the water. The Board's recommendation is that you demonstrate that you can operate your vessel. I mean, that's our recommendation, mind you. All right. But we've, politically, have not been able to move -- with the exception of Alabama, who lost three children, infants, and did it -- we've had no other states move that way. And as you can see, we're still arguing just trying to get mandatory boater education, which is the course you're talking--

I mean, Mrs. Decker's points are well-taken. The Board would like to see a demonstration that you know how your boat operates. In other words, if you're going to operate a personal watercraft, please show somebody that you know how to operate it safely. If you're going to operate a Donzi, you better go take the week course, so you know how to do it so you don't kill yourself, because you're going so fast, when you hit the pier, you won't even

know you're in it. Okay. Or if you're going to operate a sailboat, obviously -- most sailors even take training courses, because they're not very good sailors if they don't take one at all. As a matter of fact, they won't even know how to get out of the harbor, probably out of the dock. Okay. Well, they might use their engine, but in terms of sailing itself, you have to have some training or you have to have a knowledgeable person teach you how to operate the vessel.

Unfortunately, the Board, we have not, politically, been able to muster enough strength with the public, but we're building coalitions, and I think, eventually, we're probably going to get there.

MS. DECKER: It's just a real slow process.

MR. GOSSARD: We're trying. It's just a very slow process, much like when we did seatbelts for children. Remember when we got seatbelts on kids, but the adults were flopping and flying out of the cars left and right, so we had a lot of orphans. It took us a long time, publicly, to get people in seatbelts. Now we have 70, 80 percent in seatbelts. We've dropped casualties, short of the other problems we have in highway -- but we've dropped fatalities. It is a long, slow process.

We agree with Mrs. Decker. We'd like to see people not only get their certificate of education -- that they've shown that they can operate this kind of vessel -- kind of like the highway model. But this is very difficult and slow in coming. That's the short of the answer.

MS. DECKER: Well, that's why I'm here. I'm going to try to push that. I'm trying to push that.

MR. GOSSARD: Well, but that's it. We need people in the public who know what the problems are to push that, and we'd certainly join with them in pushing that. I want you to know that, okay?

MS. DECKER: Okay. All right, thanks.

MR. GOSSARD: That's where I'm at. Okay.

MS. DECKER: All right, thanks.

ASSEMBLYMAN SMITH: Great. Thank you. Thank you.

The next gentleman we have up is Dan Rutherford, from Ocean Marine Specialties. I've had the fortunate, or unfortunate, opportunity to have known Dan for the last two or three months. We've been working together on a project. Dan is somebody that has investigated probably thousands of boating accidents, has a master license -- I think it is -- and I'll allow you to explain the rest of your credentials.

**DANIEL K. RUTHERFORD:** My name is Dan Rutherford. I'm from Ocean Marine Specialties. I'm a marine surveyor, handling marine accident investigations, basically for insurance companies and underwriters. I do not have a master's license--

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: --but I have been on the water for the better part of my 44 years on this earth. I am also qualified to do accident reconstruction, and I teach accident reconstruction for the American Boat and Yacht Council. I have a brief statement, if I may--

ASSEMBLYMAN SMITH: Sure.

MR. RUTHERFORD: --and then I have, sort of, an agenda here.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: Thank you, first of all, for allowing me to speak, members of the panel, Mr. Chairman -- also, to the New Jersey State Police representatives who may be here. The issue is boating safety today, and what we, as members of the professional boating community, can do to help make boating safer, while still allowing the feeling of freedom that boating brings to each one of us while we're out on the water.

The good news is that boating fatalities have decreased almost consistently each year, while the number of boaters on our waterways has steadily increased. There are many misconceptions about what causes a boating accident. Some think it to be speed. Some think it to be alcohol and drug use while boating. Some think it to be a lack of boating education. All are contributing factors. The waterways can be a dangerous place. We like to think that a fun Sunday or Saturday trip out on the boat is pure pleasure and freedom. But with that freedom comes responsibility. Responsibility to understand and practice good seamanship in all forms. Responsibility to know your boat, understand its operational characteristics, and responsibility to know the waterways and the rules of the road. A fun day on the water can turn into a nightmare in a split second if you let complacency take over.

I'm just going to give you my father's little rule, and that was, a 360, 60, 60. My father was a master unlimited mariner of all oceans and a river pilot in the Delaware River. Three-sixty, 60, 60, stands for a 360-degree view every 60 seconds of every 60 minutes of every hour.

Some keys points: New Jersey, as of 2000, ranked 20th in the nation for registered vessels, excluding nonmotorized boats 12 feet or less, with 243,281 registered vessels, as of that time. This was a 9 percent increase over

the one-year period from 1999 to 2000. New Jersey boating fatalities in 1999 were numbered at seven. New Jersey boating fatalities in 2000 numbered at 17. The general overall decline in boating fatalities to an all-time low of an estimated 645 nationwide, in 2001, was based on data collected as of 01/22/02. New Jersey related fatalities in 2002 went to nine, according to the Coast Guard published reports, but 14 according to the New Jersey State Police records. The 2002 data wasn't available when I wrote this.

There are some differing statistics. The North American Safe Boating Campaign shows 17 fatalities, resulting from 12 fatal accidents for 2001. The statistics also show 79 nonfatal injury accidents, 108 property accidents, for a total of 199 reportable boating accidents, resulting in \$238,400 in property damage. I want you to remember that.

This figure is most likely less than 10 percent, and perhaps far less than 10 percent, of the actual reportable accidents that occur in this state annually. Smaller vessels have higher proportion of drowning deaths. As the vessel size increases, the proportion of drowning deaths, as compared to "other" deaths decreases. In 2000, 84 percent of fatal accidents involved operators reporting no instruction. The leading causes of accidents, based on the United States Coast Guard BAR, or Boating Accident Reconstruction study, a report study, the number one was operator inattention. Number two was operator inexperience, followed closely by careless and reckless operation. After that was excessive speed and failure to post a lookout.

Interesting, however, is the following statistic. Events in fatal boating accidents show that falls overboard -- falls overboard -- are the primary factor in fatalities, followed by capsizing. While collision, which is something

everyone is looking at here, thinking about the speed and the crowded waterways and the Saturdays in Toms River and so forth -- while collision with another vessel is consistently the number one cause of boating accidents, it only represents 2 percent of the fatalities, as compared with 34 percent with falls overboard and 40.8 percent with capsizing.

In 2000, there were seven drownings and 10 fatalities classified as other, with a total of 108 injuries reported here in the state. In 2000, there was -- five of the 17 fatal accidents showed some form of alcohol involvement, 10 of the 108 injuries were attributed to some alcohol involvement, and 14 of the reported 199 boating accidents involved alcohol.

Here comes the crux of what I want to say. What do these statistics tell us? Well, in my opinion, they tell us that our statistical analysis is wrong. Why? Underreporting of accidents. If you have an automobile accident, will the insurance company pay claim without a copy of the police report? The answer is no. But do the insurance companies require proof of an accident by means of a boating accident report prior to handling a claim or making a claim's payment? Unfortunately, the answer is still no.

For every one boating accident report filed, there are, perhaps, 10 or more that go unreported. Last year, my office alone handled over 125 reportable accidents. Just my office. I'm only one guy doing this one job. So of the reported 199, I handled 125. I don't think so. Reporting of boating accidents is the lynchpin to understanding what causes accidents. If suddenly you were to realize, this panel and the State, that there was 10 times the number of accidents in the State of New Jersey than you think there are, what

would be your reaction? Would you solicit more funding to patrol and make our waterways safer?

I know that the New Jersey State Police, and I can't speak for them, certainly, but I know that they're under a tremendous budget crunch, and I know that their resources have been cut to the bone, cut to the bone. Some of these guys are out there patrolling miles and miles and miles of waterway by themselves, the only people on the water for miles of our waterway. If you understood that it was 10 times more, would you solicit more funding to make boating education the first step towards safe boating? You bet you would.

Better and more accurate accounting of the number of boating accidents is essential to solving some of these problems. I'm here today to help forge a new and better alliance between the marine insurance community and the State. Better cooperation between the parties, a better understanding of the roles that each party plays in boating safety and accident investigation are key to success in helping reduce boating accidents and increase boating safety awareness. The ultimate goal for me is to keep the freedom of boating alive. Because when you're out there, that's what boating is all about -- being out and have a good time. But at the same time, try to make the waterways in the State of New Jersey safer.

That's it.

ASSEMBLYMAN SMITH: Great. That's good.

Questions from Committee members? I think there's a lot of questions that need to be asked.

ASSEMBLYMAN MORAN: I just have one, Mr. Chairman.

Of the 125 investigations that you did, how many of those had police reports -- accident police reports?

MR. RUTHERFORD: You know, I sat there thinking I should have brought that with me. But I would say that -- aside from the fatal accidents that I investigated, which, of course, have boating accident reports -- I would say, no more than a half a dozen had a boating accident report included.

Now, when I had my office in Boston and I was running my business up out of New England, I worked with the Massachusetts Environmental Police on a regular basis. In fact, one of their lead guys had his office in my office. One year I got ahold of the boating accident statistics. That year, I had handled more boating accidents-- And when I talk about boating accidents, I'm not talking about collisions resulting in fatalities or heavy injuries, I'm talking about other reportable accidents. I have every document you could imagine right here that says what a reportable boating accident is. But right now, let's just say it's either injury or death or property damage accident -- resulting from collision or other causes, that are reportable causes -- of over \$500.

That year, in Massachusetts, I had more claims and more investigations than the state had on file of accidents. And that's when I became aware of this problem, and that's when I started a program whereby every single assignment that came through my office, I sent a BAR out. The owner of the vessel got the BAR. They were required to fill it out. I sent it into the state, and I copied the insurance companies.

ASSEMBLYMAN SMITH: What's a BAR?

MR. RUTHERFORD: Boating accident report.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: I have something for everyone here. (handing out material) One of the underwriters that's out there now is beginning to take a stand on this. They work with the Coast Guard. This is Metropolitan Life. Again, I'm not here to represent them, but I'm just here to show you what they do. They issue this boating safety guide to their policyholders. One of the things in there is the boating accident report, and a sample copy of the boating accident report, and also what type of accident makes a boating safety report required.

So it becomes -- getting to the same subject as the folks from NTSB -- education is the key. And it's not just education about how to operate your boat and how to use your boat and understanding the rules of the road, but it's also understanding what your responsibilities as a boat owner are. This is a key one right here, because we're missing the boat. No pun intended. We really are. We've well less than 10 percent of the reportable boating accidents on the record.

ASSEMBLYMAN SMITH: So, if I understand your testimony, in real summary, it would be lack of sufficient resources, lack of education, and, as a subproblem, it would be insufficient reporting, which would bolster the need for resources and the need for education. Is that the essence of your testimony?

MR. RUTHERFORD: I absolutely believe that better education will make better boaters. No doubt about that.

To answer your question, Assemblyman Moran, a lot of the insurance companies-- There are different types of insurance companies. There are insurance companies that are, kind of, general insurers, that include boating insurance as one of their ancillary lines. It's not a big product for them. They do it as an accommodation. Then there are other insurers who are in the marine field, specifically. Most of the underwriters and insurers in the marine field, specifically, do offer discounts for boating education. If you have an approved Coast Guard Auxiliary Course or Power Squadron Course, you do get a discount as an incentive on your underwriting, just to answer that one question.

ASSEMBLYMAN MORAN: Thank you very much.

ASSEMBLYMAN SMITH: Also, I have USAA on my boat, and they give me a 10 percent discount for the certification. So I think a lot of them do.

ASSEMBLYMAN MORAN: Now, do you have that with an umbrella, or is it a liability for the boat?

ASSEMBLYMAN SMITH: I have my homeowners, my auto policy, and my boat policy, which is all separate. And under the boat policy, I have a liability aspect, and I have property damage. And what they do is, they give you a 10 percent discount--

ASSEMBLYMAN MORAN: Right.

ASSEMBLYMAN SMITH: --on both liability and property, if you can prove to them that you have the boater safety certification. I think BoatU.S. is the same way.

MR. RUTHERFORD: That's correct. I believe they are.

ASSEMBLYMAN SMITH: So a lot of the more progressive insurance companies are offering financial incentives for the boater certification.

ASSEMBLYMAN MORAN: Can I follow that up with the second part, so whoever out there who might be able to answer it is -- how about financing? You go out to finance a \$100,000, you have a certification that you've completed -- not only a certificate that you went through the boating safety course, but maybe you have a six-pack license or a 500-ton license. Do you get a better deal with the bank, as obviously you get a better deal with the insurance company?

ASSEMBLYMAN SMITH: My gut is I doubt it, but--

MR. RUTHERFORD: I have never seen a program like that in my years of seeing boat purchases and sales. The finance world is a very competitive world, but with the interest rates the way they are, there's no room for deep discounts, that's for sure.

ASSEMBLYMAN MORAN: Okay. Thank you very much.

ASSEMBLYMAN SMITH: You had said the number one cause of, maybe it was fatalities or accidents, was inattentiveness.

MR. RUTHERFORD: Let's see, the leading cause is operator inattention. That's correct.

ASSEMBLYMAN SMITH: Okay. And what was the second cause?

MR. RUTHERFORD: Operator inexperience.

ASSEMBLYMAN SMITH: Would you say that falls--

MR. RUTHERFORD: Perhaps that might be the same stat. So if you'll stand by--

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: They might lump those two together. It's operator inattention and operator experience, I believe, they actually put in one category. The second category is careless or reckless operation. And then, excessive speed and failure to post a lookout.

ASSEMBLYMAN SMITH: Okay. How much of inattention is attributed to lack of education? For example, your father taught you 360, 60, 60. I took the course, and certainly paying attention and looking 360 was a part of the course, but I'm not so sure it was emphasized like your father did. How much of it is a function of education?

MR. RUTHERFORD: Well, I don't know. All I can say is, according to the Coast Guard statistics done in the boating accident cases, that I believe the number is 84 percent of fatalities. Out of all the fatalities, this is again dealing just with fatalities, that's the only way it's broken down -- 84 percent with the boat operator showing as no operator instruction whatsoever.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: As compared to 5 percent with private instruction, 7 percent with state instruction, and 4 percent with a combination of Coast Guard Auxiliary, Power Squadron, and American Red Cross.

ASSEMBLYMAN SMITH: Okay.

If you were a legislator and you could convince the Governor to sign your legislation, what would you do? A straight-forward question.

ASSEMBLYMAN VAN DREW: You'd be more successful than we are. (laughter)

ASSEMBLYMAN MORAN: And you had all the money in the world. (laughter)

ASSEMBLYMAN SMITH: Yes. And you had all the money, and there was no \$5 billion deficit.

MR. RUTHERFORD: With respect to boating accident reports?

ASSEMBLYMAN SMITH: With respect to the whole issue of trying to reduce and minimize accidents, serious injury, property damage, and fatalities on the waterways.

MR. RUTHERFORD: Well, that's a tough one. That's why you're having this whole-- That's the \$64,000 question.

ASSEMBLYMAN SMITH: This is the essence of what this Task Force is for. So we're going to ask you the ultimate question.

MR. RUTHERFORD: Well, I believe in mandatory education. No doubt about that.

ASSEMBLYMAN SMITH: Okay. Do you believe in the law that says ones born after '79-- Is it after? After '79, that you're required, or do you think we ought to, like, try to get people educated quicker. I mean, how would you structure that?

MR. RUTHERFORD: I think it ought to be for everyone, period.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: It doesn't matter to me whether you're 50, 60. There have been a lot of people out there on the water who have been running their boats the wrong way for a very long time.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: It's just that simple.

ASSEMBLYMAN SMITH: Right.

MR. RUTHERFORD: So I don't think it matters. I don't mind, I think the idea of, perhaps, opting out on a test, if you can do that, fine, without having to take the course. There are a lot of people out there who, absolutely, know what they're doing on the water, very safe boaters, regardless of whether they have a license or not.

ASSEMBLYMAN SMITH: So you would agree with testing out on a course.

MR. RUTHERFORD: I think testing out would be fine.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: But I think mandatory education and certification would be in the right direction. Would I like to see a license? I have, but, only one thing. I know Mrs. Decker would love for me to say I would like to see a license, and I would love to see a license, to be quite honest with you. I have only one problem with the whole license thing, and that all comes down to money and where the money goes. You see, if there's going to be a charge of \$40 or \$50 for a license, I want \$40 or \$50 to go to boating.

ASSEMBLYMAN SMITH: Right.

MR. RUTHERFORD: I don't want it to go to highways.

ASSEMBLYMAN SMITH: Sure.

MR. RUTHERFORD: I don't want it to go to bridges. I don't want it to go to anyplace else. I want it to go right back to boating. I want it to go to better waterway safety. I want it to go to the New Jersey State Police

and to the marine patrols. I want it to go to proper buoys and signage on the water, aids to navigation, things like that. That's where all this money has to go. It can't go anyplace else. Other than that, boy, I think it'd be great.

Inherently, Bob, there--

ASSEMBLYMAN SMITH: Okay. So what you're saying -- bottom line is, you don't trust the State government to-- (laughter)

MR. RUTHERFORD: Well, I would never say that. My biggest problem is that-- When I was selling boats for a living years ago, when I was in college, it didn't matter. A guy could walk in and be 17 or 18 years old, and he could buy a 45-foot boat and drive away. In the magazines, you're reading about -- I forget what pop stars they are right now, but a couple of hip-hop-type pop stars that are out there that have multi-millions of dollars, and they're going out and they're buying 200- and 220-foot Feadships. All right. I'm sure they're going to have a captain, because they have the money to have the captain. But the fact of the matter is, they could buy those boats and run those boats with absolutely no license whatsoever.

Now, how are you going to implement licensing? That's the difficult thing. Are you going to have everyone test on a 16-foot boat? Are you going to have everyone test on a 24-foot boat? Are they going to test on a 60-foot boat, a 70-foot boat, or are they going to have to test on their own boat? And if they test on their own boat, and their own boat today is a Scarab, but next week they go out and buy a 45-foot Hatteras, are they going to be able to drive that 45-foot Hatteras, when they tested on a Scarab or on a 16-foot johnboat? Very, very difficult. The range of boats goes from rubber

rafts and canoes to 220-foot Feadships. It doesn't matter. Difficult -- you have a tough job ahead of you.

ASSEMBLYMAN SMITH: Okay.

Questions from Committee members?

ASSEMBLYMAN VAN DREW: I just have two quick questions. I just want to make sure I understand. So, really, a lot of what we're discussing -- some of the statistics that we're basing what our decisions would be on -- in some sense may be skewed. Is that correct?

MR. RUTHERFORD: I think that, and I'm not a statistical analyst, but I think if you were to base your decisions, if it had to do with the numbers game and you were looking at the numbers, you're looking at numbers in any of these Coast Guard stats, any of these boating accidents or resource statistics that you can get, they're at least 10 percent low, in my professional opinion. Whether they're wrong, as far as the number of fatal accidents, probably not. Because when an accident gets to the point of being a fatal accident, it's going to be reported. When it gets to be the point of a serious injury, it's going to be reported. If you have a multiple-boat collision with pretty heavy-duty property damage -- larger-type collision, even if there's no injuries -- chances are it's going to be reported. If law enforcement is there, it's absolutely going to be reported. If there's a need to tow the boats, for instance, or salvage the boats, chances are that's going to be a reported accident. What you're not seeing, as far as reportable accidents, is you're not seeing all of the other collisions that occur, all of the minor injuries that don't require hospitalization, but are still reportable, all of the accidents involving

groundings, you know, striking -- elisions involving docks, things like that. Those are the items that you're not seeing currently.

ASSEMBLYMAN VAN DREW: So, through the Chair, certain numbers that look like they may be going down, in your personal opinion -- that may not be an accurate reflection of what's really happening out there. It would be a little bit difficult to tell, because there's not a direct correlation between what's being reported and what may be happening, especially on the more minor level. There could be, as you would call, on the road, a lot of fender benders that, just, people aren't hearing about.

MR. RUTHERFORD: That's absolutely true. But I think the good news in what you're saying is that all of the fatals are being reported. So if you were to look at the fatals and say, out of  $X$  number of accidents -- and I don't know what the total number is right here -- but out of the total number of reportable accidents, and they're saying we had 681, for instance -- let's see if I knew what it was-- Well, just for instance, if they say we're at 681 last year, but we're only reporting or recording less than 10 percent of the actual accidents, that makes that statistic sound a lot better, doesn't it? All right. Because the 681 is a firm figure. That's not going to move, because all of those fatals are being reported. We're not going to increase them by 10 percent. They're not increasing by 10 percent. All the other accidents will increase. So it will make that number seem much, much less as a percentage of the total number of accidents, which I think is a plus. I mean, that's a good thing.

ASSEMBLYMAN VAN DREW: Okay.

Through the Chair, and you might have discussed this before the Committee, are there certain types of boats that just, in your experience --

other than, I know we always hear about the personal watercraft -- but are there certain types of boats or certain-- For example -- and I may be completely off on this -- I would wonder if the very large vessels, people would tend to be a little bit more educated when they're utilizing them, as opposed to some of the smaller vessels. Do you find any correlation with that -- speed boats as opposed to fishing boats?

MR. RUTHERFORD: Open motorboats--

ASSEMBLYMAN VAN DREW: Right. Obviously, sail boats.

MR. RUTHERFORD: --represents the largest number of accidents by boat type, followed by personal watercraft, followed by cabin or motorboat. So to answer your question, open motorboats -- the small, day, runabout-type of motorboats -- represent the number one accident type, as far as boat type is concerned. For instance here, of the 10,984 reported accidents -- that's what it is total -- 10,984 accidents reported in 2000 for the country: 4,318 were open motorboat, 3,268 were personal watercraft. Now, of the open motorboat, the 4,318 number, 1,530 were collisions with another vessel. Okay. Of the personal watercraft, 2,287 were collision with another vessel. As you get into the larger vessels -- cabin, motorboat -- 731 were collision with another vessel. But most of the accidents were collision with fixed objects.

I know there's a stat in here, because I'm sure there is, of the type of accident or accidents by length. It's difficult, and I wish I had known that we could put a chart up, difficult to see, but, actually, of the total number of accidents in 2000, based on this Coast Guard statistics, 10 feet, believe it or not, is the highest range of accident by length. Now 10 feet is about the right length of a PWC, give or take. The total was 1,613 -- involved vessels versus,

for instance, 16 feet at 508. All right. However, the highest total number of deaths, of 66, based on footage, was at 16 feet, with a cluster around the 15-, 16-, 17-foot area.

ASSEMBLYMAN VAN DREW: Through the Chair, why do you think that is?

ASSEMBLYMAN JOHNSON: From falling over.

MR. RUTHERFORD: Well, at that point, the 15-, 16-, 17-foot range, again, you're going to get a lot of falls overboard. They're very unstable platforms. Generally speaking, they're run -- I'm not going to generalize, but I will say it -- recklessly more often than other types of vessels. There's been a push by the public, I guess, really, the consumer, to make them lighter, make them faster, make them more energy efficient. They become less stable.

ASSEMBLYMAN MORAN: And less expensive.

MR. RUTHERFORD: And less expensive.

ASSEMBLYMAN MORAN: And I think that's the big thing.

MR. RUTHERFORD: And less expensive.

ASSEMBLYMAN MORAN: The cheaper, the more reckless.

MR. RUTHERFORD: There has been a real shift in boating and the way boating has become over the years. And I'm not saying it's a bad thing, but boating has become a marketing thing now. Manufacturers and all the different parts of the consumer end of the game, and the marketers have gotten to the point where boating is marketed constantly, marketed to the masses. I'm not saying it's a bad thing or a good thing, but it's become marketed to the masses. It's now not uncommon, where it used to be uncommon for just anyone to go out and buy a boat and have a boat, other

than perhaps a small boat somewhere. It's not uncommon anymore for someone just to go out and buy a 30-footer, finance that boat for 20 years, have a payment of \$300-and-some-odd a month, not know a thing about boating whatsoever, but get that boat and go out and go boating. It used to be a craft. It used to be an art to go out boating. It's not a craft or an art anymore for many people, in my opinion. And we've got more totally uneducated people out on the water.

ASSEMBLYMAN SMITH: Sure.

ASSEMBLYMAN VAN DREW: The last question, through the Chair. Regionally, have you noticed -- anecdotally, I know you can't, but have you--

MR. RUTHERFORD: Oh, Cape May County is great, Jeff, don't worry about it. (laughter)

ASSEMBLYMAN VAN DREW: I figured. I was going to say that, but I didn't want to-- No. But have you noticed any difference -- I'm curious -- from, say, Monmouth to Cape May, or it's pretty much the--

MR. RUTHERFORD: Well, I can tell you that--

ASSEMBLYMAN VAN DREW: I think it's more compressed here, but I don't--

MR. RUTHERFORD: I don't want to say anything bad about our host here, right here in this Toms River area. But I can tell you, I was out sailing with a friend of mine this summer. Again, it goes down to the rules of the road and it goes down to good seamanship and so forth. But we were sailing out of Toms River, and it was very much like Bill said in Annapolis, it was a speedway. It was craziness. It was incredibly crowded. I think where

you're going to have problems are going to be in the crowded and congested areas, where you have high concentration. And I won't say that it's the-- I don't agree with the mayor who said that the local people have a lot of a sense of safety, and so forth and so on, when they go out boating. But the weekend boaters aren't necessarily the problem. It's the fact that on the weekend we all have leisure time.

So whereas on the Barnegat Bay, for instance, we might have -- I don't know -- 5,000 boaters on a weekday, on the weekend we have 25,000 boaters. They're everywhere. They're running everywhere. It's not a roadway. There's no double yellow line. There's no stop light. There's no 90-degree angles. It's 360-60-60. Because the guy could be coming from here, from here, from here, from here, from any direction at any time.

ASSEMBLYMAN MORAN: Dan--

If I may, Mr. Chairman, I think you have to emphasize, too, is that the description you're making, coming out of the river going into the bay, you have the traffic coming from the north underneath the bridge--

MR. RUTHERFORD: North, south--

ASSEMBLYMAN MORAN: --which is blinded in many cases, and they don't realize it, especially with the sun coming through at 4:00 in the afternoon.

MR. RUTHERFORD: Well, I can give you the exact--

ASSEMBLYMAN MORAN: No. Coming from the south, coming north, on that side, on the right-hand side of the bay, it's very, very shallow. So you have to come over to the left-hand side. People coming from under the bridge, coming out of the river, they're -- 90 percent of the people turn right.

They go out to the Barnegat Inlet. They don't go left, because it's shallower water over there, and especially if you're sailing, it's difficult getting under the bridge. So what happens is, that's a traffic bottleneck right there.

MR. RUTHERFORD: That's right.

ASSEMBLYMAN MORAN: And many of the accidents that I've witnessed, personally, in my days of boating and sailing, take place right there. And a lot of it is because people don't know where they're going, don't know the rules of the road, don't know who has the right-of-way when you're coming out of the river going into the bay, or if you're coming from the north going left into the river or coming from north turning right into the river. People just get totally mixed up, and I think that's why training -- I think education is extremely important.

You go out there on Saturdays, we have the BBYRA. How many boats do we have out there in that particular triangle on a BBYRA Saturday?

MR. RUTHERFORD: On a Saturday, about 175 sailboats.

ASSEMBLYMAN MORAN: Right. So you try to navigate your 30-foot CrissCraft that you have a \$60,000 mortgage on, and you're out there impressing your friends, and you don't know what you're doing, and you're going to have an accident. If you don't run into a boat, you're going to run aground.

MR. RUTHERFORD: It comes down to good seamanship. That's what it comes down to. Good seamanship is not just knowing the rules of the road, it's knowing what a boat does and how a boat reacts. It's knowing that when you're in the middle of the Townsend Inlet and there's four- or five-foot seas, that you don't anchor your boat stern to the seas, which is something that

happened down south -- I don't know whether it was Townsend this past summer, right? You don't anchor your boat stern to the seas and allow the waves to come over the stern of your boat and swamp your boat. It's a matter of good seamanship. I don't know whether good seamanship can be taught in a one-week course or an eight-hour course or a 16-hour course. It, unfortunately, has to be taught over a long period of time, a lifetime of boating. But that's the goal. You have to be able to recognize the hazards. It's not good seamanship to go through the triangle of sailboats that are out there racing, if you can go around them. You know, you may have the "right-of-way," but it's not good seamanship. So it comes down to a lot of judgment calls all the time.

ASSEMBLYMAN SMITH: Any further questions? (no response)

I just wanted to relay an experience. About five years ago I was stripe bass fishing with a couple of friends in some of the back waterways in Cape May County. And it was probably 2:00 in the morning, and we heard a call go out over the radio. It might have been Channel 16 that we were monitoring. It was a group of young people, apparently, and I think it was all females, or mostly females -- they were operating the radio anyway. They did a soft landing, and one of the occupants of the boat was ejected forward and apparently there was some type of -- not life threatening -- but there was some type of head trauma involved. There was constant communications going on between the Coast Guard or the State Police -- I can't remember. I think it was the Coast Guard and the people in the boat that had the soft landing. They weren't really able to identify to the State Police or the Coast Guard where they were located, number one. Number two, there was constant

communication between the two vessels, the Coast Guard, the State Police, and the vessel that soft landed.

But about 20 minutes into it, the communications was absolutely cut off. And what had happened was, they were able to get the person back in the boat, get the boat pushed off the soft landing, and they said, "You know what? Forget about the State Police. Forget about the Coast Guard," because somebody was probably drinking or they, obviously, did something wrong. So that's an example of a fairly serious accident that, while it was reported over the radio, never made it anywhere else.

So I think your point is well-taken when you talk about no reporting. Because if you're involved in a car accident, you must pull over immediately and exchange information with the other person, and you must report it to the police if there's more than \$500 in property damage. If you don't, there are very, very serious consequences for that.

MR. RUTHERFORD: Well, Mr. Chairman, you also have to understand that, probably, if you're involved in an automobile accident and you're out there trying to talk to someone about the damage that might have been done, probably within a few minutes there'll be a law enforcement officer driving by, just because he's there. Well, on the water, they're not there. There's no funding for them to be there. So all of this becomes a problem. The Coast Guard has shifted much of their focus, now, to homeland security. God knows they're working as hard as they possibly can. But they're not out there -- as much as they would like to be -- patrolling the waterways, just lending a helping hand, not necessarily doing enforcement activity, but just making a presence, being there to make things safer. I think it's important.

ASSEMBLYMAN SMITH: All right. Thank you very much, Dan.  
Assemblyman, do you have a question?

ASSEMBLYMAN JOHNSON: Yes.

ASSEMBLYMAN SMITH: Great.

Sorry.

ASSEMBLYMAN JOHNSON: Not so fast. (laughter)

What determines how much an insurance policy is? Is it the size of the boat and type of boat? If I were going to a--

MR. RUTHERFORD: Do you mean what the premium is?

ASSEMBLYMAN JOHNSON: Yes, the premium.

MR. RUTHERFORD: Sure. The premium is based -- and again, I'm not an underwriter -- but I know enough to tell you this pretty well. A premium is based on a number of factors. The value of the boat, obviously. There are different types of insurance policies. There are replacement cost policies. There are, actually, cash value policies. So the type of the policy, the value of the boat being insured, the type of the risk, okay. A sailboat, for instance, will have a much lower premium per thousand dollars insured than a high-performance powerboat. Okay.

Basically, I would say those are the three biggest factors in premium and what causes premium dollars to go up or go down.

ASSEMBLYMAN SMITH: Dan, I can tell you, just from my personal experience with USAA. Because my boat can go faster than 40 miles an hour -- and it's not a speedboat, it's a fishing boat -- because it goes greater than 40 miles an hour, they, as a matter of policy, send it to underwriting, and the premium is, like, doubled because it goes over 40 miles an hour.

ASSEMBLYMAN JOHNSON: So the operator's background is not part of the equation when it comes to determining--

MR. RUTHERFORD: It is part of the equation. It absolutely is part of the equation, but it's a smaller part. You might get a -- I'm just going to throw a number out -- you might get a 2 percent premium reduction on the liability or the comprehensive, if you will, the liability -- the *P* and *I* that they call the protection and indemnity portion of the policy, if you're an operator who's been educated or carry a certificate. All right. But it's a smaller percentage, as what Chairman Smith was saying, if your boat goes fast or faster than 40, 45, 50, depending on the company cut-off, then your premium could double, instead of 2 or 3 percent. It could literally double.

ASSEMBLYMAN JOHNSON: Okay. Thank you.

ASSEMBLYMAN SMITH: Thank you, Dan.

MR. RUTHERFORD: I can go now. Are you sure?

ASSEMBLYMAN SMITH: Yes.

We have Alliance of American Insurers, Richard Stokes, and we have Insurance Council of New Jersey. Since it's similar, we can come up together.

ASSEMBLYMAN JOHNSON: I should have asked them the question.

ASSEMBLYMAN SMITH: Yes, I know. That's what made me call them up next.

**MAGDALENA PADILLA:** Well, thank you for the opportunity to be before you, and thank you also for calling Richard and me together. We

frequently have had many opportunities at the State House to do an in-tandem presentation, so we welcome the chance to do it, here again, before you.

My name is Magdalena Padilla. I'm with the Insurance Council of New Jersey. The focus for the Insurance Council of New Jersey is how this dialogue affects our ICNJ members who write homeowner policies. Our ICNJ members underwrite 72 percent of the homeowner policies written in the state. The reason why that's a significant section of this discussion is because, one of the issues that has arisen, so far, is how the standard boat endorsement of homeowner policies affects the conversations that we've had. The difference between the standard boat endorsement policies available under homeowner policies and the marine insurance policies that Dan Rutherford had discussed is substantial. Under your homeowner policy, if you just select the standard coverage, it's rather minimal, admittedly, rather minimal. There's a criteria that most homeowner policies have their policyholders' satisfy in order for them to be eligible for the standard homeowner policy. And some of the criteria has already been discussed.

For example, the standard boat coverage under the homeowner policy requires that the boat be 50 horsepower or less; that it be 16 feet or less, or, in the case of a sailboat, that it be no more than 26-feet long. Those are the general three criteria for the standard homeowner policy boat coverage. If those criteria are not satisfied, then the policyholder must elect for the marine insurance policies that have been discussed here.

The other issue that was discussed that I wanted to bring to your attention, and that Assemblyman Moran had discussed briefly, earlier, was the issue of discounts. Discounts are available, not on the standard homeowner

policy. The discounts are available under the marine insurance, and they are called -- this is just insurance vernacular and this was provided to me by the Department of Banking and Insurance -- those are called independent packages, and those are to be distinguished from the kind of coverage that's available under the standard homeowner policy.

So the discounts that are available in New Jersey under the independent packages, they vary in the spectrum of 10 percent discount to 15 percent discount, and that's a discount off of the boat premium. I've also been advised that the discounts that are available through New Jersey's companies are regulated by the Department of Banking and Insurance, however, only for those boats that are noncommercial. Commercial boats and their premiums and their discounts, I've been advised, are not regulated by the Department of Banking and Insurance. I think that's an important distinction for you to bear in mind, as you entertain and continue your dialogue about safety issues and the consequences for discounts and how relevant they are to safety.

The third issue I wanted to discuss with you is one that the NTSB and Dan Rutherford have already mentioned. Boat accidents are extremely underreported in the insurance industry. I conducted a very brief -- as soon as I got a phone call from the Committee aide, I called my members and asked them to let me know about the boat claims that have been filed. My members have responded uniformly that the claims are either minimal or null. In fact, only one company reported, immediately, that they had two claims within the whole year, and even those were just for hull damage.

Clearly, the issues of safety, mortality, bodily injuries that the NTSB and Dan Rutherford were discussing are just not rising to the level of

phone calls to the insurance carriers. Those are the three issues I wanted to bring to your attention immediately -- the distinctions between the independent packages available under the marine insurance versus the homeowners' insurance, the issue of discounts, and the underreporting of accidents.

Thank you.

ASSEMBLYMAN SMITH: Questions?

ASSEMBLYMAN JOHNSON: Yes.

ASSEMBLYMAN SMITH: Go ahead.

ASSEMBLYMAN JOHNSON: I'm up?

To reiterate what you said before. You said if you had a 16-foot boat or smaller--

MS. PADILLA: Sixteen foot or less.

ASSEMBLYMAN JOHNSON: --or less--

MS. PADILLA: Fifty horsepower or less.

ASSEMBLYMAN JOHNSON: --or less.

MS. PADILLA: Or if it's a sailboat, 26 feet or less. That's for the standard homeowner policy. Well, I used that phrase as the--

ASSEMBLYMAN JOHNSON: Okay. Because this goes back to the statement that Assemblyman Moran mentioned before. He stated that the 16-foot boats are the cheapest kind, or the most inexpensive, when it comes to boating. So I can go out and buy an inexpensive, 16-foot boat, put it on my homeowners' insurance, and go boating.

MS. PADILLA: Right. It would be an endorsement on your homeowners, and you can go boating. But should you be injured, you would

not be covered, because the standard homeowner does not cover you for liability or medical payments. It only covers your boat. That's a big *ahh*.

ASSEMBLYMAN JOHNSON: So you're covered through your health insurance.

MS. PADILLA: That's correct.

ASSEMBLYMAN MORAN: But not your liability.

ASSEMBLYMAN JOHNSON: So you'd still be covered.

ASSEMBLYMAN MORAN: God forbid somebody gets hurt.

MS. PADILLA: Unfortunately, that's correct.

ASSEMBLYMAN MORAN: You just lost your house.

MS. PADILLA: Yes.

ASSEMBLYMAN MORAN: If you let your kids out on the boat, they just lost your house for you.

ASSEMBLYMAN JOHNSON: Okay. Thank you.

MS. PADILLA: You're welcome.

ASSEMBLYMAN MORAN: And that's why most people get an umbrella, even with a homeowners. It costs you \$98 for a million bucks, not a bad deal.

MS. PADILLA: Oh, that reminds me. The Department of Banking and Insurance had also informed me, because I asked them directly, what is the average premium that DOBI sees, the Department of Banking and Insurance? And at least on the standard, if you're going to pursue a boat endorsement, it can run anywhere from \$38 to \$100 a year, however, noting, as the Chair had mentioned earlier, there are a variety of variables that may affect how low or how high that premium is. But based on DOBI's

information, it generally runs between \$38 to \$100, and that's just for a very basic -- and that's just for those boats that meet that criteria that I had shared with you. Anything outside that criteria and, obviously, anything that adds additional variables, will be beyond that normal range.

ASSEMBLYMAN SMITH: Just to clarify. Assemblyman Moran, you can get a million-dollar umbrella under homeowners, and it will cover liability on your boat?

ASSEMBLYMAN MORAN: For you. Your son or your daughter get out on the boat, they're not covered. That's additional.

ASSEMBLYMAN SMITH: Okay.

ASSEMBLYMAN MORAN: And depending on what -- if they have the certificate. I think a good point that you're making is extremely important for the Joe Q. Public out there to understand. Everybody here understands that. But the poor guy that Gordon was just talking about that goes out and he buys that 16-foot Runabout and it's got a 50-horsepower Evinrude on it, he's ripping up this river. And his kids are going to get hurt. He's going to get hurt. And when he's cruising down, coming underneath the bridge on a Saturday afternoon, and you've got 150 sailboats out there, I could rest assure you he's going through them. Because if he tries to turn, he's going to flip.

ASSEMBLYMAN SMITH: Assemblyman Van Drew.

ASSEMBLYMAN VAN DREW: Through the Chair, did I understand you correctly that most people are not reporting their accidents to the insurance company?

MS. PADILLA: That appears to be our experience at ICNJ. I will also offer that three of the rather larger companies that do write marine policies are within our membership. They, too, had reported that there is very little activity, if any, on boat accidents being reported to them.

ASSEMBLYMAN VAN DREW: So that would leave you to believe when people are having a minor or moderate accident, they are taking care of the damages themselves and--

MS. PADILLA: They're taking care of the damages themselves, assuming that it's a property damage, or if they are physically injured, they're just going under their regular health insurance plan, or just paying it out-of-pocket. I had this discussion just because it was so incredible to NTSB and to myself. We had this discussion for the last several days, how could their numbers just be so huge? My membership, for example, reporting, "Oh, there's very little activity."

The numbers that were provided by the NTSB are consistent with the numbers that the United States Coast Guard has, and yet, irrespective of those two as resources, what we're getting back from the carriers is, as Dan Rutherford had mentioned, very little reporting to the industry.

ASSEMBLYMAN VAN DREW: Through the Chair, an amazing difference in pattern of behavior between automobile insurance and boating.

MS. PADILLA: Yes.

ASSEMBLYMAN VAN DREW: I know it happens sometimes with automobile insurance, but to think those numbers are that low.

MS. PADILLA: The numbers are just amazing. To me, they were shocking. And so, the NTSB and I were talking for several days about this, just

trying to reconcile the information. I went back to my members and shared with them, "This is what the NTSB is telling me. This is what the Coast Guard has said. Can you double-check?" And I just got back the same response.

ASSEMBLYMAN VAN DREW: And the sense is, because most people who are in those accidents would rather that no one know, or--

MS. PADILLA: I will be honest. The NTSB and I were just trying to develop -- we were just conjecturing on our own. We're just trying to figure out why would this be.

ASSEMBLYMAN SMITH: I have a question.

Dan, maybe if you could just step up so it's on the record.

How many files do you open a year?

MR. RUTHERFORD: I open between 125 and 150. I can say this about what was just said: The companies -- you represent mostly homeowners?

MS. PADILLA: No.

MR. RUTHERFORD: But there are others?

MS. PADILLA: The only reason I mentioned that here is, because what's relevant for us is the effect of this discussion on homeowner policies.

MR. RUTHERFORD: The claims departments of the major marine underwriters are receiving tens of thousands of claims a year. The underreporting is going between the boat owner and the State via the BAR. They're definitely reporting insurance claims. As I said, myself, I'll handle between, again, 125 and up.

Bob Gibble (phonetic spelling), over here, is a marine surveyor. He does the same work that I do. He does 200-plus a year. There are many

more here within our State, that do what we do, that handle over a couple hundred per year -- easily way more than is being reported.

MS. PADILLA: If I may add?

ASSEMBLYMAN SMITH: Yes.

MS. PADILLA: The difference, of course, just to reiterate what he just said, may be a matter of the true marine insurance writers versus those that would be under my umbrella, which are more the homeowner.

ASSEMBLYMAN SMITH: Mostly homeowners.

MS. PADILLA: Yes.

ASSEMBLYMAN SMITH: Who are some of your clients -- insurance companies? USAA, obviously.

MR. RUTHERFORD: USAA, obviously -- BoatU.S., Zurich, Travelers.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: There are a number of specialty writers.

ASSEMBLYMAN SMITH: Of the four that you mentioned, the only one that's, I would say, is exclusive marine is BoatU.S., right?

MR. RUTHERFORD: That's correct.

ASSEMBLYMAN SMITH: Okay. USAA does everything.

MR. RUTHERFORD: They do everything.

ASSEMBLYMAN SMITH: So does Travelers, and Zurich does.

MR. RUTHERFORD: But they have specific marine policies.

ASSEMBLYMAN SMITH: Yes, right.

MR. RUTHERFORD: For instance, at USAA, you don't have to be a homeowner or an automobile customer. You can go to USAA, as long as you qualify for USAA insurance, and get just a yacht policy.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: Okay.

ASSEMBLYMAN SMITH: I know my policy is separate. I mean, my auto is separate. My homeowners is separate. My marine is separate.

MR. RUTHERFORD: Right.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: Right. And marine insurance is not regulated from the standpoint that it's not required. You don't have to have marine insurance. You can be out there boating with no insurance at all.

ASSEMBLYMAN SMITH: Right. Okay.

MR. RUTHERFORD: You'd be a fool, but--

ASSEMBLYMAN SMITH: So the customers of your insurers, you don't find that there's a lack of reporting to the insurance company. There may be a lack in reporting to the State Police or the Coast Guard, whoever has jurisdiction.

MR. RUTHERFORD: Again, I handle larger claims. I don't handle real small ones.

ASSEMBLYMAN SMITH: Sure.

MR. RUTHERFORD: I handle larger claims. So they're absolutely being reported. I'm sure my clients would love to sit up here and say they would love people to stop reporting them. (laughter)

ASSEMBLYMAN SMITH: Yes.

MR. RUTHERFORD: But they're absolutely reporting them. Where we'd have the shortfall is those that are being reported to the insurance company, but not being reported via a BAR, so that they become part of the statistics.

ASSEMBLYMAN SMITH: Okay.

ASSEMBLYMAN VAN DREW: Maybe I'm just-- I still see a little discrepancy between what the two of you are saying. Am I correct, that there is a little discrepancy in what you're saying?

MS. PADILLA: I think that the difference is, as I'm trying to stress--

ASSEMBLYMAN SMITH: Is different insurers.

MS. PADILLA: --is different insurers. So my focus is to alert you to the fact that there are two separate kinds of carriers you need to look at.

ASSEMBLYMAN VAN DREW: That I understand.

MS. PADILLA: So I think what Dan is saying is that, at least, with respect to the marine insurance reporting, that's working well there. That may also be a consequence of the kinds of boats that are involved, the exposures involved there, the policyholders that are, perhaps, more inclined.

ASSEMBLYMAN VAN DREW: But the smaller boats that have the homeowners are not reporting their accidents.

MS. PADILLA: Correct.

ASSEMBLYMAN VAN DREW: You both agree on that?

MS. PADILLA: Correct.

ASSEMBLYMAN VAN DREW: Okay.

MR. RUTHERFORD: I agree. Most likely, with the homeowners carriers you're dealing with the canoes, with the rowboats. A jet ski is not going to fit into a homeowner's carrier policy because it has a horsepower of more than 50. So most of these small boats and the 26-foot sailboat and under, that also has to have -- that can't be powered by more than, I forget what horsepower, very, very small horsepower-- So all of those types of vessels that homeowners' carriers are adding to their policies via endorsements or included in, for instance, an HO4 policy, which is a standard homeowners, or an HO3 or an HO5, something like that. All of those boats are, I want to say, the benign boats. They're the boats that really don't get involved in accidents like property damage accidents. All right.

Now the statistics bear out that those types of boats do get involved in a number of fatalities with falls overboard and drowning. All right. Those types of cases are going to be reported to the State or to the government via a BAR, but there may be no liability, so they don't go to the insurance company until an attorney grabs it and tries to get it there.

ASSEMBLYMAN SMITH: All right.

Stand by. (laughter)

**RICHARD STOKES:** All right. I'll save the seat for him.

Thank you, Mr. Chair.

ASSEMBLYMAN SMITH: Sure.

MR. STOKES: I'm Richard Stokes with the Alliance of American Insurers. We're a national trade association. And similar to Magdalena's membership, a lot of our members have policies or writers or, actually, endorsements for boat policies. We fall into the same similar categories. We

do have some companies that write the larger marine tanker-type of shipping around the world -- in fact, one member that, I guess, originated 200, 300 years ago to do that.

But one point I would try to bring to the table, too, is there is -- even though there is a standard policy, or somewhat of what we in the industry call a standard policy, the diversity of the industry is very much there, not only from a marketing perspective, but from records keeping to just customs and how they operate in terms of collection of data, and things of that sort. And even though there may be a dearth of information concerning the smaller crafts, accidents and things of that sort, I think there's still -- the system, somewhat, seems to be working in terms of trying to follow through with this. But maybe for this purpose, maybe the appearance is that it is not.

I would also just point out that I have talked to a couple of our members, and it does seem like they do offer the liability side of the coverage as well as the damage side. I don't know if your policy with USAA includes both. I would assume it does.

ASSEMBLYMAN SMITH: Yes.

MR. STOKES: But it does follow very closely to the homeowners' side of it. So, if your homeowners' total liability coverage is \$500,000, that's pretty much what you would have on your boat as liability coverage as well.

It's an interesting and fascinating -- I came today really to learn more about this side of our business and to see where this Task Force is headed, just because, coming from the Somers Point area, which we see the same situations on weekends with all the boaters out, it's a very fascinating area.

I would just say that the Alliance of American Insurers is willing to work with this Task Force to help supply whatever information you might need, as you go forward in further deliberations on this issue. We think it is a very important issue. It's something that has not been studied that much.

And to answer -- I think it was the Chairman's question -- as to what we would offer, we would say beef up the State Police efforts in this. We've seen first-hand experience in the Somers Point area, the lack of resources, and the need for State Police. I think that that would be, certainly, a key area, from my personal perspective.

And with that, I'd be happy to answer any other questions you might have, or maybe you'd have Dan come back and help me. (laughter)

ASSEMBLYMAN SMITH: I'm okay.

Are there any Committee members? (no response)

MS. PADILLA: Thank you. Thank you.

ASSEMBLYMAN SMITH: Dan, I have another question for you, if you don't mind. The first question is real easy. With the clients that you represent, the insurers that you represent, if there's a significant property claim or a liability claim, is a BAR required?

MR. RUTHERFORD: No.

ASSEMBLYMAN SMITH: No.

MR. RUTHERFORD: No.

ASSEMBLYMAN SMITH: That's interesting.

The second question that I have is, do you know why?

MR. RUTHERFORD: No. Paperwork.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: Costs money.

ASSEMBLYMAN SMITH: Okay.

The third question is, and I know this is off the topic for today, but it's certainly a very relevant issue in the State of New Jersey, what are the implications for insurance fraud?

MR. RUTHERFORD: You're striking right at the heart of me now. I'm the northeast regional director for the International Association of Marine Investigators, which was formed to combat marine theft and marine fraud. They branched out into other areas including accident investigation and boating safety issues. Fraud is rampant in the marine insurance business, rampant, from everything that you'd expect with automobiles, varying deductibles, you name it, to out-and-out misrepresentations to seek coverage under an insurance policy for damage that isn't covered.

ASSEMBLYMAN SMITH: I deal, as a prosecutor, with crimes, if you will, and motor vehicle offenses on land. But I would say, one of the major deterrents to filing a false insurance claim is you would have to file a false report with the police, which is a crime in and of itself. Do you see any -- well, it's twofold -- do you see any deterrent value in having a BAR, number one, for insurance fraud, and number two, in order to better assess the safety issues facing the State of New Jersey?

MR. RUTHERFORD: Yes. I absolutely think that filing BARs deters marine fraud. I know from personal experience and professional experience in Massachusetts, when I was filing a BAR and issuing a BAR to everyone of my insureds, as I received a claim, that I would receive, on occasion -- I would receive calls and they'd say, "What's this boating accident

report that you sent me?” I’d say, “Well, this is a requirement. You stated that you struck a submerged object and now your engine doesn’t work any more. You need to state this, and I need to file this with the State.” I’d get a call a little while later, and it would be, “I’ve decided that -- I talked to my mechanic, and I’m just going to take care of this myself,” and they would withdraw their claim.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: So there is a deterrent value to BARs.

ASSEMBLYMAN MORAN: But Dan--

Mr. Chairman, has it ever been proposed to the insurance committee that we require a--

MR. RUTHERFORD: I don’t know the answer to that. I know that--

ASSEMBLYMAN MORAN: --BAR when an insurance claim is presented.

MR. RUTHERFORD: I don’t know the answer to that. I know that I’ve recommended to my clients -- and I might be out of a job tomorrow -- but I’ve recommended to my clients for years, using the same argument I gave here, and that is: You can’t have an auto claim without an accident report.

ASSEMBLYMAN MORAN: Right.

MR. RUTHERFORD: How can you have a boat claim without an accident report? But, again, and I’m sure the folks from the insurance institute here are ready to come out here and choke me, but--

ASSEMBLYMAN SMITH: But why? I mean--

MR. RUTHERFORD: Well, there is a deterrent--

ASSEMBLYMAN SMITH: If the bottom line is, how much is--  
A typical police report is no more than two pages.

MR. RUTHERFORD: It should be a mindless, easy thing to do.  
I don't see a problem with it whatsoever.

ASSEMBLYMAN SMITH: They have to commit an additional  
crime besides insurance fraud. And you're saying that oftentimes it deters  
claims and, in some instances, people will withdraw their claims.

MR. RUTHERFORD: Will withdraw their claims.

ASSEMBLYMAN SMITH: Yes. I don't want to-- That's  
probably a subject for another committee, but getting back to the reporting  
requirement. Let's assume that there are very few resources that change the  
State Police for this fiscal year and the next fiscal year. Is there any way that  
you can imagine or envision a BAR system, that is not overly cumbersome and  
time consuming for the State Police, that would work to determine causes for  
accidents, number one, and as an added bonus, prevent fraud? Like I thought,  
off the top of my head, perhaps, with a motor vehicle you have to do it  
immediately. Okay. Maybe a boat, it can be a couple of days. You don't have  
to sit on the water for three hours for a State Police officer to get to you.

MR. RUTHERFORD: Well, that's not the requirement at all.  
Actually, the BAR requirement -- and it's probably in my folder over here -- but  
it gives you X number of days--

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: --to fill out a BAR, as it is. It's just a  
matter that the general public -- public awareness isn't there. They don't know  
that they're required to fill out this BAR. They think that they need to fill out

a BAR, for instance, when they get involved in a collision that results in serious injury, or they think they need to do it when, maybe, their boats sinks or whatever the case is. They don't realize that they need to do it when they strike a dock or when they have a collision with another vessel that doesn't result in serious injury but results in property damage of over \$500, or they run aground. By running aground, they damage their vessel to the tune of over \$500. So public awareness needs to be bolstered so that they know that this BAR is something -- it's their responsibility, as boaters, to do.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: And that needs to be stressed in any educational program that the State puts forth.

ASSEMBLYMAN SMITH: Okay.

Thank you, Dan.

MR. RUTHERFORD: Sure.

ASSEMBLYMAN SMITH: Willie de Camp, Save Barnegat Bay.  
Did he leave? Okay.

Are there any other witnesses?

Yes. Jerry Donofrio. Thank you, Jerry.

**JERRY DONOFRIO:** Thank you, sir. Thank you to the Committee and the Chairman for an opportunity to speak today with regard to boating safety in New Jersey. I'm representing the Boater Voter Coalition, as Chairman, also the Delaware River Yachtsman League as First Vice President, and I'm Director of Legislation for the Chesapeake Bay Yacht Clubs Association. The Chesapeake Bay Yacht Clubs Association, the CBYCA, represents about 65,000 boaters in five states, from Virginia through New

Jersey. The Delaware River Yachtsman League is a member of the Coalition also, and a partner, as is the Chesapeake Bay Yacht Clubs Association.

My boating experience, like many of the people who testified to you, goes back to, about, when I was 13. Being 62, that puts a lot of years of water underneath me. In that time, I've certainly seen about every type of boater that's available -- good, bad, and indifferent. I've operated about every kind of boat there is from very small to very large. However, local knowledge is one of the most important things any boater is going to have when it comes to safety of working in close waterways along the intercoastal areas. Whether they have all the education in the world or not, they can never really understand where a submerged object is and, oftentimes, unless you're operating a sailboat at 5 miles an hour, you don't have time to follow a chart. The charts often aren't accurate. In many cases, the waterway isn't properly marked.

We heard testimony that we need more police on the water. Well, police on the water aren't going to provide anyone with intuitive knowledge, and they usually come to the case after the fact, rather than before the fact. The reality is that we do have things in place in our State government today which are underutilized.

One mentioned today was aids to navigation. Underneath the DEP, we do have an Aids in Navigation (*sic*) division. However, their activity is probably minimal, and certainly the expenditures that they have also are minimal, because there's not enough money afforded to Aids to Navigation in the State of New Jersey.

In all the years that I traveled on the Delaware River, I watched sailboat after sailboat after sailboat find grounding in a low area called Dredge Harbor. Dredge Harbor holds about, maybe, 3,500 to 4,500 vessels in various marinas. And on any given weekend, I could sit there at anchor and watch at least one, or two, or maybe three boats a weekend sit on a shoal until the tide switched. And, of course, they all panicked, because they were worried they were going to sink, but the Coast Guard said, "Well, are you taking on water?" "No, I'm just listing really hard." "Well, you'll be listing, I'm afraid, until the tide turns again." I used to sit there and laugh a lot.

But then, I thought, well, as a chairman of the Boater Voter Coalition, what can I do to improve waterway safety in this little inlet. I started to investigate, and I finally found out that there is an Aids to Navigation. So I petitioned the Aids to Navigation for buoyage. And they said, "Well, okay, what would you suggest?" So I gave them a chart, and I said, "Well, let's put in three red and three green, and this will help boaters know where the channel is, because it's a very narrow channel." Well, that year went by and another year came. And now, I thought, what am I going to do to get this off dead center?

If you remember, a few years ago, down here in Barnegat, an unfortunate circumstance for a powerboater was that he ended up hitting a shoal. He ended up dying because his face hit his dashboard on his boat. I used that as an instance to the Aids to Navigation people. I said, "I'm telling you where there's a dangerous shoal that's not marked, and like a pothole, it should be fixed by the State. It should be fixed by way of markage and buoyage. Now, I'm giving you 24 hours notice." I said, "If that law doesn't

really work, I'm going to try to get that law to work." Well, what do you know? That was on Monday. On Wednesday, I got a call from the superintendent, and he ended up showing me that he could put in buoyage by Friday. Now those buoyages are in there for the past three years, and there's been no more shoaling instances in that inlet.

So, I guess, my point is that the organizations which I work through, as a boater, have great knowledge as to where problems lie. We all support safe boating. We all support education. Most of us would be called organized boaters, because we belong to yacht clubs. We're involved in boating. It's part of our life. It's in our blood. So, yes, we don't want to see these idiots out there. But pending legislation shows that the law is going to allow idiots on the water anyway.

The first thing you want to do is educate people 35, 45, 55. This is marvelous. I'm for that. We've all taken, for the most part, boating education safety courses anyway. So it's not going to be a big deal for us to get a certificate. But the newest sections of the legislation that I've read on the Internet are that you're going to allow people who buy a boat -- and we all heard about people buying boats, running out there, wildly operating boats because they've got 50, \$60,000 or \$100,000. They want to buy a boat this weekend and go flying -- you're going to allow these boaters to go out, if they get an education from the guy who sold them the boat -- if he took a course and if he's been certified, and provided that he is a salesman and not a private boater. Well me, as a private boat owner and experienced boater, could probably give a whole lot more education. And I have sold boats, and I have given education to people and told them how to operate their boats more safely

and given them books, and given them a copy of Chapmans or something and tell them to read it. But here we have a dealer, a marine trade specialist, who is going to sell somebody a boat on a Saturday. He's going to teach him for a couple of hours how to operate his boat, theoretically, and send him out on the waterway for 60 days in the summertime. So I can still see that same idiot driving down the waterway without a proper education and no pre-emptive qualification test.

The other one is, we heard from Assemblyman Moran about all of the idiots he gets down here on weekends, and the same thing in Cape May. Well, these are, for the most part, not local people, and in fact, they're not New Jerseyans, they're probably from Pennsylvania and Delaware, and they're in here as out-of-staters. And now the legislation shows that we're going to allow people to boat in our community waters, in our State waters, for 90 days without a license, if they're from out of state. If I'm in-state, God forbid, I'd better have a license. If I just bought a boat, God forbid, I don't need a license.

I don't understand the analogy. If we're really looking for safe waterways, we ought to take our money, put it into safer waterways, put it into safer education. Certification is nice. We were looking, today, to find out what other states are doing.

Pennsylvania, as an example, you can take an online course. You can take an online test. The Delaware River Yachtsman League is working with the Fish and Boat Regulatory Commission from Pennsylvania, working with them, to offer members and non-members of our organizations free education. Free -- totally free education, sponsored through and by the Fish

and Boat Commission in Pennsylvania. The glitch is that, after you've taken the course, and take the test -- you can take your test submission, either online or off-line, and submit that to the state, and they'll give you a certification for \$10. That's pretty reasonable.

In Maryland, I just got an e-mail from our past Commodore for the Chesapeake Bay Yacht Clubs Association, that he has come wind of, that Maryland is looking for certification now. At least they have education now, they're looking for certification. He is going to be our poll runner on this, and he is going to be working with, and be put on, a committee down there to help develop reasonable requirements for certification.

We were looking at stats before. I think that stats are important. The small boat, the fast bass boat, all these fishing boats that people are falling out of over the course of time -- everyone is wondering, why do people fall out of small boats? I think the statement was that they're unstable platforms. You're sitting down in the middle of a boat, and the fisherman is standing and he's been drinking soda, beer -- whatever he's drinking -- the next thing he has to do is, he has to relieve himself. And I can't tell you how many times they've pulled people out of the Delaware River who were relieving themselves, falling overboard because they're close -- the boat just flips over. It's historical. These aren't mystical reasons why people die on small boats. It's because they're not stable. They're just, simply, not stable boats.

We had a case this past year -- you want to talk about waterway safety -- how about communication? Communication is a very important aspect of boating. We heard a case story where these girls were trying to get off of a shoal area -- the Chairman was relating to that -- and they were

communicating, and nobody knew where they were. Well, the same thing happened on the Delaware River. Now, it's not too hard to see Pennsylvania and New Jersey on the Delaware River, and it's not too hard to tell where you are when you're at a bridge -- the Betsy Ross Bridge is pretty big.

There was an injury this passed summer that resulted in death. An incident where, in fact, it was a Delaware River Yachtsman League member, which was part of the saving of the person -- attempted saving of the person. They were honored this year as Persons of the Year. They happen to have been sailboaters from one of our local clubs. They were going down the river under the Betsy Ross Bridge, and they heard and saw, both, a collision between a boater -- a 23-foot powerboater and a buoy -- about 7:45, 7:30 at night. Plenty of daylight, about like it is now. So this is a matter of inattentiveness, another incident of boater safety. The person, of course, died. They hit the buoy. The lady died. The man was arrested for drunken operation. Later, it proved out, through the prosecutor's office, in Camden, that he wasn't drunk at all. But he did have a beer that day, so immediately he was arrested. He never did get a chance to see his wife. He was taken to jail. I think that's an unfortunate circumstance.

What I'm trying to say here is, however, that in this accident, when the people were on the cell phone reporting to 911 and reporting to the Coast Guard -- you never want to report an accident to the Coast Guard because they're going to ask you 50,000 questions. They'll want to know if you have your life jackets on, do you have an anchor, how many people are on board, what kind of boat it is, where you're at. And even then, after you've told them where you're at, they don't know where you're at -- unless you have

an exact buoy marker. Then they have to get their charts out, and it's 20 minutes before they even think about where you're at. But dial 9-1-1 and the operator has no idea where you're at. They don't know who to send. It was 40 minutes before anybody was able to get a response on the Delaware River in the middle of Camden and Philadelphia, before anybody was able to determine what agency was going to be responding. The State Police had no idea where this was either. So even though they were given a buoy marker and they were given a physical location -- three-quarters of a mile south of the Betsy Ross Bridge, I'm listening to it on the radio -- no response.

So waterway safety is more than education. Waterway safety is an infrastructure. It's an infrastructure of proper marking, proper dredging, proper education, and, I would feel, certification. I would feel happy about certification in our State, that people who are on the waterway boating with me are educated. And also, in that, I would say that these laws, which are being presented now, all represent power boating. I would think that it would say all boating -- sailboaters and powerboaters. I'm unclear by reading this whether or not a person when he's operating a sailboat with maybe 300- or 400- horse-power full sails, in full bloom -- whether or not he has to have certification that he's operating safely, too, and has been educated. Just about the same as a person who's operating a powerboat. So I think all boat operations should be certified.

The facts are that, in fact, more deaths have occurred in smaller boats, such as kayaks and canoes, in Pennsylvania waters than any other fatality in their state. So all boat operations should be looked at.

I have one more issue. Oh, yes. I think that the Power Squadron and the Coast Guard Auxiliary are probably the best areas and avenues that we should look to for education. They have, historically, educated boaters over the years. And all those boaters who have taken their courses have gone on to better boating. I don't know that the State should be involved in educating. I've seen what's happened in our State, in New Jersey, with education. That is, the pamphlet which the State Police hand out is about the only type of product that we have in our State which is educational. It's dismal.

Years ago, I asked the State Police to consider making and publishing, along with their booklet, a little adhesive sticker that somebody could stick onto their dashboard or their helm station, which would indicate buoyage, what the buoys mean, what a center channel buoy means, who got the right-of-way in passing and crossing situations. It's done in New York state. New York state -- I boated there for 14 years. I got these little stickers, and I stuck them on my helm. After a while, you don't need them. But for the new boater, they certainly could use them.

The State Police said, "Well, why doesn't your organization do it?" Hello. We're volunteers. The State collects a lot of money. Let's use the money that the State is going to garner from certification, registrations, sales tax, and gasoline tax. Let's take that money and put it back into boating, and then we'll have safer waterways.

I have no other statements.

ASSEMBLYMAN SMITH: Questions?

ASSEMBLYMAN VAN DREW: Let me make sure I understand -- first of all, I think that last idea is a good idea. I think it's worth, at least,

looking into a little bit more. I understand what you're saying about the infrastructure. And I guess my question would be, with that being said, and understand that you think there is a lot more we need to do with all of that, you would still agree that more education for our boaters, certainly, is a worthwhile goal, correct?

MR. DONOFRIO: Absolutely.

ASSEMBLYMAN VAN DREW: Okay. And just so you know, I mean, this is one piece of legislation. There are multiple pieces of legislation. The purpose of this Committee, and the Chairman can really explain that more, though, is to craft new legislation that incorporates the best of everything to go forward.

MR. DONOFRIO: I'm really concerned about the special portions of the legislation which have been created, sir, where the marine trade association has put a clause in there that allows them to sell a boat to a new boater, because he got money--

ASSEMBLYMAN VAN DREW: Sixty days.

MR. DONOFRIO: --and allow these persons to go on the water because a salesman trained him. I know some of these salesmen. They couldn't train people even how to start the boat, let alone how to operate the boat safely.

ASSEMBLYMAN VAN DREW: Through the Chair, if that salesperson was required to go through a certain process themselves to be certified to do that, would you feel more comfortable?

MR. STOKES: If you certified to be an educator, but they're not. Just because he took a course doesn't make him an educator. I know a fellow

who has all the money in the world. That was a statement made earlier -- if you had all the money in the world, how would you change the situation? I wouldn't have sold my buddy a boat. He went off and bought a 42-foot Bayliner and tried to take it to Florida. He grounded it on an oyster shoal in top sail. He picked up five crab traps on the way down there and tried to go up a waterway that was only three-and-a-half feet deep and filled with piles, cut-off piles. I mean, this is the kind of guy that I like, but not as a boater.

ASSEMBLYMAN VAN DREW: This is why I don't boat.  
(laughter) I've got enough trouble driving.

MR. DONOFRIO: That's why he took me with him, because I -- the second time, I brought his boat back for him, because it cost him, like, \$7500 just to get his boat there for repairs.

Thank you.

ASSEMBLYMAN SMITH: Thank you.

Any further questions? (no response)

Are there any other witnesses or interested parties who would like to testify?

Yes, sir.

**R I C H D I M I N N O:** I just had a couple quick thoughts. I'm a local boater. I've sailed in these areas for about 10 years now. I have a few observations to make. I'm completely in agreement that education is very important. A lot of people out on the bay, obviously--

ASSEMBLYMAN SMITH: I'm sorry. If you would, just for the record, I forgot. Everything is being recorded and transcribed. So, if you would just state your name and address for the record.

MR. DIMINNO: Of course. My name is Rich Diminno, and my address is 825 Huntington Avenue, Pine Beach, New Jersey.

ASSEMBLYMAN SMITH: And your last name is spelled?

MR. DIMINNO: D-I-M-I-N-N-O.

ASSEMBLYMAN SMITH: Thank you.

MR. DIMINNO: I am in complete agreement that education is vitally important. It's obvious, any time you go out on the bay on a weekend, that a lot of the boat operators are not educated. Almost every weekend I spend out there, I see a dangerous situation or another that, God forbid, could result in a horrible tragedy. So far, I think, we've just been real lucky.

But I think something that's real important, that we seem to be missing here, is: All the education in the world isn't going to change human nature and isn't going to change the way people are going to react out there on the water. One of the reasons everyone is so reckless out there is there's absolutely no State Police or Coast Guard presence on the bay. I've been sailing for 10 years, and I can tell you, regularly, I'll see a State Police officer at 5:30 or 6:00 at night, when he makes his one run up to Toms River and back to wherever the State Police barracks are. I guess they're obligated to visit the river once a day, and that's when I'll see him out there. But never, never, do I see the State Police or the Coast Guard in the most dangerous spot in the river -- that you were discussing yourself -- right in the mouth of the Toms River. So without some effort put forth to enforce these laws, all the education in the world isn't going to save that poor kid who's going to get run down. But if the boaters were--

I mean, you don't speed through town, because you're afraid you're going to get a ticket or you're going to get arrested. You don't speed on the highway, because you're afraid of the State Police. And unfortunately, that's what I think it takes -- is a little fear of the consequences being a part of these people in the water, and that doesn't exist out there. There is, simply, not enough law enforcement presence on the water. And I know that's a difficult problem to solve because of budgetary issues, but it's a vital one. I think that it should not be overlooked, and should be a focus for this council to get greater law enforcement presence on the water.

ASSEMBLYMAN SMITH: Thank you.

Are there any questions? (no response)

Thank you very much.

MR. DIMINNO: Thank you.

ASSEMBLYMAN SMITH: Trooper, would you have the time for one question from me?

**TROOPER JEFF ANDRES:** Absolutely, sir.

ASSEMBLYMAN SMITH: If you would just -- name, title.

TROOPER ANDRES: My name is Jeff Andres. My last name is spelled A-N-D-R-E-S. I'm a Trooper in the Division of State Police, assigned to the Marine Services Unit.

ASSEMBLYMAN SMITH: Okay.

Jeff, would you happen to know offhand, if the Marine Division issues a citation for a violation on the waterway, how the fines, penalties, court costs are distributed between the various entities? Like I know, some of the

road violations -- the county gets a piece of it, the municipality gets a piece of it, the State gets a piece of it. Do you know how it's distributed?

TROOPER ANDRES: No, sir. I'm sorry. I don't know the answer to that question.

ASSEMBLYMAN SMITH: Okay.

TROOPER ANDRES: I don't want to give you an inaccurate one.

ASSEMBLYMAN SMITH: Okay. That's the only question I had. Thank you.

MR. RUTHERFORD: Bob?

ASSEMBLYMAN SMITH: Yes.

MR. RUTHERFORD: Without subjecting myself to more-- (laughter) I'm a glutton for punishment.

I just had, based on some comments before by some of the speakers, I had three things to, just simply, point out. One, don't forget that boating, especially boating in New Jersey, is highly transient in nature. We've got boaters going north and south depending on the type of season. We have, as was pointed out, we have vacationers who come to our State to boat and to enjoy our waterways, because we have beautiful waterways. So it's highly transient in nature.

One of the things that we have here, and this is an enforcement issue. We have a lot of out-of-state boaters and a lot of out-of-state boats that stay here all year and all summer, but don't pay taxes, aren't titled here in the State. They come from Delaware. They're Delaware corp vessels. They're Pennsylvania residents who keep their boats here tucked away, and there's no enforcement of that. That's an issue.

Again, when it comes to the whole boating safety, if you're going to try to get safety certificates or better education, you're leaving out a large populace of the boaters in that a lot of these people do come from out-of-state, are not New Jersey residents. Okay.

ASSEMBLYMAN SMITH: Just one quick question. You said don't pay taxes. Are they obligated?

ASSEMBLYMAN MORAN: Registration taxes.

ASSEMBLYMAN SMITH: Registration.

MR. RUTHERFORD: Registration fees.

ASSEMBLYMAN SMITH: Okay.

MR. RUTHERFORD: And perhaps sales taxes. There is a large amount of sales tax violation and sales tax fraud, if you will. I'm not quite looking for the -- to get the right word here -- where you've got people who register their boat-- They're New Jersey residents. They live in New Jersey. They register their boat in Delaware, or they register their boat in Pennsylvania, keep their boat here, and take advantage of certain tax benefits or don't pay sales tax at all, or bring a boat from another state. We have a lot of that going on here. I'm just letting you know that from a -- that's a separate side and has nothing to do, necessarily, with the boating safety end of the game.

With respect to the State Police on the waterways, I couldn't agree more. I would love to see more presence out there, not just by State Police, but other agencies, as well, that may have the authority to be out there. But I would hope that that would not be a presence just as a reactionary force.

Boom, there's a boating accident. We're going to go. We're going to see what's going on, and so forth. But as a prevention.

I love the idea of a boat being out there at the end of the Toms River on a Saturday afternoon when there's a million people. It's a good prevention method or benefit.

That's all.

ASSEMBLYMAN SMITH: Great. Thank you, Dan.

Assemblyman Moran, any questions?

ASSEMBLYMAN MORAN: No. I just wanted to close and welcome -- thank everybody for coming to beautiful, downtown Pine Beach. For those that don't know, I live right here. It's a great place to live and great place to bring your kids up.

Mr. Chairman, I want to thank you for coming here to Ocean County, in the 9th district in particular, and I hope you all know how to get out of here. (laughter)

ASSEMBLYMAN SMITH: Make a right at the Roy Rogers. (laughter)

ASSEMBLYMAN MORAN: Right. If you go out here in front of the Borough Hall to the first -- going left, go to the traffic stop, turn left, it will take you straight out to Route 9. If you go right on Route 9 and stay on Route 9, you'll get on the Parkway. And the Parkway here only goes north. We're not allowed to go south from here. (laughter) But you go up to the next exit, Route 30 -- the next exit you can do a loop-around and head south again. And if you're going towards Cherry Hill, you can get off at the next exit and take

Route 37 West, that will take you right to Route 70. You can't go east from here. I hope you--

MR. DONOFRIO: Oh, I thought you were giving directions to your house for beer. (laughter)

ASSEMBLYMAN MORAN: I'm the first house to the left.

I hope you enjoyed coming to our community.

Thank you again.

ASSEMBLYMAN SMITH: Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: Oh, in closing, yes.

I'd like to thank Russell Corby, the Mayor of this fine town, and the people of Pine Beach for having me down, because I'm from Bergen County. What I've heard today, I guess, I can call educational. This is our third time together, our third meeting. I'm still convinced that we need more enforcement on the waterways. I believe that having enforcement means deterrents. I believe that the State Police, or maybe the county agencies or municipal agencies, need the resources and personnel to better patrol our waterways. I think, as I've said before, the law enforcement is a deterrent to -- is a safer environment for all the recreational boaters and fisherpeople. (laughter) PC, you know.

Again, Mr. Chairman, thanks for allowing me to be on this panel.

Thank you, Congressman -- geez -- Assemblyman Moran, for having us down. (laughter) It slipped.

ASSEMBLYMAN MORAN: Surrogate, surrogate. (laughter)

ASSEMBLYMAN JOHNSON: Yes, right. Strike that from the record.

And the people of the area, thank you for having me.

Thank you.

ASSEMBLYMAN SMITH: Assemblyman Van Drew.

ASSEMBLYMAN VAN DREW: Equally, as well, it's good to be here. I'm probably the only one that said I was coming north to come up here. Actually, there's a few other folks.

Obviously, to me, education is the most important part of this, to make sure people know what they're doing when they are out there, and it's clear that not everybody does. It's kind of amazing, in the year 2003, that people are operating such a potentially dangerous vehicle with very little education, with very little knowledge on the operation of it, that they can purchase a vehicle that has the ability to do what it can do and yet not know the safety features, not know all that they should know as they go forward into the water.

So I think we're going to have to strike some sort of a balance here, as we go forward, to find a way with the limited resources that we have and, unfortunately, are going to continue to have. That's not going to change. The process is going to be difficult, for a few years, to find a way to make our waterways safer, and I think that, in some way, would be -- in a gentle, but yet, firm way, at the same time -- to mandate this educational process. So that at least we know that everyone who is out there has had the opportunity to know the right way to go about boating.

I'd like to thank the Chairman for holding these meetings. I'd like to thank Assemblyman Moran for, also, inviting us to his beautiful little community here.

ASSEMBLYMAN MORAN: Thank you.

ASSEMBLYMAN SMITH: I just want to conclude by thanking all of the witnesses that came out and lent their expertise in our search for the truth in how we can try to minimize, reduce boating accidents in the State of New Jersey. I have to be quite frank. I thought that we had heard a lot, and almost we had maxed out, after our second hearing -- after talking to the State Police, the Coast Guard, and a variety of interested groups. But I have to tell you, truthfully, I thought that this hearing was just as helpful as the first one where we gathered a lot of information.

Dan, I think your perspective -- and Rich and everybody else, the insurance company perspective -- shed a lot of light on safety issues. And I'm particularly interested in the reporting requirement. Because if you don't have good stats, then it's virtually impossible to try to come up with a reasonable conclusion about what we should do to make our waterways more safe.

So I just want to say, again, thank you for all the witnesses, for your expertise, and the light that you've shed on this very important issue. And, of course, I'd like to thank the Mayor, Assemblyman Moran -- as the host and the governing body -- for allowing us to come to this beautiful community.

Thank you. Thank you very much.

**(HEARING CONCLUDED)**