

# Deposition Testimony of:

## **Charles Henry**

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Page 373:02 to 373:02

00373:02 the 30(b)(6) deposition of Charlie Henry.

Page 373:22 to 375:22

00373:22 Q. Right.  
23 Okay. I wanted to first turn  
24 your attention to Exhibit 8897 C which is  
25 behind Tab 27. This is a one-page document  
00374:01 entitled "Estimation of the Oil Released from  
02 Deepwater Horizon Incident April 26, 2010."  
03 Do you see that?  
04 A. Yes.  
05 Q. Is Exhibit 8897 C a copy of a  
06 one-page analysis that Dr. Lehr provided to  
07 you on or about April 26, 2010?  
08 A. Yes.  
09 Q. And the transmittal note from  
10 Dr. Lehr to you is set forth in Exhibit 8897  
11 B?  
12 A. Which is behind 26?  
13 Q. Which is behind Tab 26.  
14 A. Yes.  
15 Q. And then finally -- we'll come  
16 back to those documents. But, finally, if  
17 you look at Exhibit 8897 A, it is an e-mail  
18 from you dated April 28, 2010 to George  
19 Graettinger. Do you see that?  
20 A. Yes.  
21 Q. Okay. Who is George  
22 Graettinger?  
23 A. George Graettinger is -- he was  
24 a NOAA employee in the Office of Response and  
25 Restoration, and he was part of what we -- we  
00375:01 call the ERMA team, the data management team  
02 putting together the -- one of our products  
03 called ERMA.  
04 Q. ERMA, E-R-M-A?  
05 A. ERMA, E-R-M-A, yes.  
06 Q. And so what was  
07 Mr. Graettinger's role as of April 28 on the  
08 Deepwater Horizon response?  
09 A. He -- I remember George was -- I  
10 believe -- if my memory serves, George was at  
11 the area command, I believe, at the time, and  
12 he was part of the data -- you know, the data  
13 management team and he may have had a few  
14 other roles, but he was assigned to the ERMA  
15 team, trying to put together the -- the --  
16 it's a database that we use. It's a tool to  
17 basically maintain and show data. So it was  
18 kind of a backbone to a lot of our ways to  
19 provide situation information and other  
20 things. So that was George's role as part of

21 the data management team. If he had other  
22 duties at the time, I don't remember.

Page 376:20 to 377:18

00376:20 Q. Did you -- did you provide BP  
21 with a copy of Dr. Lehr's analysis in late  
22 April or the first week of May?  
23 A. I personally did not. Not that  
24 I can recall.  
25 Q. Did you provide anyone at --  
00377:01 in -- with the Coast Guard a copy of  
02 Dr. Lehr's analysis?  
03 A. Not that I can recall. I mean,  
04 I should say that most of my interactions  
05 within the Unified Area Command were all  
06 straight in people's face, verbal  
07 discussions. I don't recall sending an  
08 e-mail to someone specifically like that.  
09 Q. Let's turn our attention back to  
10 Exhibit 8897 C. Is this a copy of the  
11 analysis that you indicate -- you indicated  
12 yesterday Dr. Lehr provided to you in late  
13 April 2010?  
14 A. Yes.  
15 Q. And is this the -- the  
16 scientific analysis that you relied on in  
17 providing Admiral Landry with a flow rate  
18 estimate?

Page 377:20 to 378:03

00377:20 A. This is the analysis that Bill  
21 Lehr prepared, and I relied as much, probably  
22 more so on my discussions with Bill Lehr and  
23 communications with Admiral Landry.  
24 Q. (BY MR. FIELDS) What  
25 communication -- outside this document prior  
00378:01 to April 28 what additional -- what  
02 communications did you have with Dr. Lehr  
03 about NOAA's flow rate estimate?

Page 378:05 to 378:16

00378:05 A. On the 26th -- and I don't  
06 remember the exact time in the -- of the day  
07 in the afternoon. It was probably early  
08 afternoon, mid -- you know, early,  
09 midafternoon I had a long phone discussion,  
10 said, okay, Bill tell me what you found out,  
11 what you got. He answered the questions that  
12 I asked. And Bill gave me a discussion, you  
13 know, so that I understood what he was doing

14 and what he thought and how he approached it.  
15 I said -- and we talked a little bit and I  
16 said, great, thanks.

Page 379:06 to 380:05

00379:06 Q. Okay. Tell us what you recall  
07 Dr. Lehr saying about his analysis in the  
08 phone call that you had on April 26.  
09 A. Well, that he used information  
10 on the area based on some satellite  
11 information, and he used discussions with  
12 Debra Simecek-Beatty and the overflight --  
13 the overflight maps, and then he applied, you  
14 know, values for the sheen and the heavier  
15 oil and made assumptions as what might be  
16 lost by evaporation, dissolution, and  
17 natural -- and dispersion or any other  
18 recovery, very simple and it was a  
19 conservative estimate and even with that on  
20 the conservative side it comes out to be  
21 roughly 10,000 barrels potentially on the  
22 surface. Which if you account for loss --  
23 rough accounts for loss and four days for  
24 the -- you know, since the sinking, would be  
25 roughly 5,000 barrels.  
00380:01 Q. 5,000 barrels per day?  
02 A. If you pulled it back from a  
03 surface estimate to try to extrapolate to a  
04 subsurface release, you would come up to  
05 5,000 barrels by those numbers.

Page 381:25 to 382:15

00381:25 Q. So when you say that this is a  
00382:01 conservative estimate, did that mean that you  
02 believed that the flow rate could be much  
03 higher than 5,000 barrels per day?  
04 A. At that time I didn't know what  
05 the flow rate was. This was just another  
06 activity to say, look, we don't know. If we  
07 do this type of analysis, even using in this  
08 case, you know, as Bill defined them,  
09 conservative values, there's more out there  
10 than a thousand barrels; and that was still  
11 trying to get back to efficiencies on  
12 dispersant activity on that 209 form that we  
13 tried to get those issues worked out, but I  
14 don't -- I didn't have -- I didn't believe  
15 strongly that that was the definitive answer.

Page 386:17 to 387:24

00386:17 Q. What was your purpose in talking  
18 with Dave Rainey about Dr. Lehr's analysis?

19 A. Dave Rainey and I had been  
20 working at different times during the day on  
21 values associated with the mass balance of  
22 the 209 form. And Dave Rainey had been my  
23 contact to try to get additional information  
24 about the chemistry, the ratio of gas to oil  
25 and water and other pieces of information to  
00387:01 try to provide to the home team to help us as  
02 we were trying to understand the problem  
03 better.

04 Q. And what information did you  
05 convey to Dave Rainey on the 26th regarding  
06 Dr. Lehr's analysis?

07 A. Dave provided me kind of -- kind  
08 of a summary of what he had been working on  
09 and included what we had been discussing,  
10 which was some rough ideas of what fate, how  
11 much might have evaporated, et cetera. And  
12 he had in his range for the values 1 to 6,000  
13 barrels and I said, well, Bill Lehr's  
14 analysis comes up to 5,000 barrels. And the  
15 depth how long that discussion went on, I  
16 don't know, but I know that we discussed it  
17 because I remember that he -- I said, well,  
18 Bill's getting -- Bill's estimate comes out  
19 in the range that you have here. Now whether  
20 that's right or wrong, that's what we were  
21 at.

22 Q. And that was in the afternoon of  
23 the 26th?

24 A. Yes, sir.

Page 388:14 to 389:13

00388:14 Q. Let's take a look at  
15 Exhibit 8897 C, which is behind Tab 27. Did  
16 you ever provide Admiral Landry with a copy  
17 of Exhibit 8897 C?

18 A. I don't believe I did.

19 Q. One of the statements that  
20 Dr. Lehr has in Exhibit 8897 C is "Estimating  
21 oil volume by the visual appearance of the  
22 slick is a highly unreliable process." Do  
23 you see that?

24 A. Are you referring to the first  
25 sentence after No. 1?

00389:01 Q. That's correct.

02 A. That is -- I think that's a true  
03 statement, because you have to make some  
04 judgment calls, yes.

05 Q. He also says, at best, one can  
06 calculate an answer only to an order of  
07 magnitude. Do you -- do you agree with that

08 statement?  
09 A. Yes. You know, the better --  
10 that is kind of a general range. We think  
11 about spills as order of magnitudes, and I  
12 think this technology is one that fits in  
13 that scale.

Page 391:08 to 391:14

00391:08 Q. What are the common standards  
09 that are used?  
10 A. One of them's referenced often  
11 is the ASTM standard. That's one of them  
12 that's been around for a long time. And then  
13 the more recent adaptation of the Bonn, you  
14 know, agreement.

Page 400:21 to 401:14

00400:21 Q. Let me ask the question a  
22 slightly different way. When you reviewed  
23 the surface oil volume estimation analysis  
24 performed by Dr. Lehr, do you be- -- did you  
25 believe that it supported the conclusion that  
00401:01 the maximum amount of oil flowing from the  
02 well at that time was only 5,000 barrels per  
03 day?  
04 A. What I -- and what I took from  
05 my discussions with Bill and his analysis was  
06 that his analysis said if you do this math,  
07 it's 5,000 barrels, which is more than the  
08 thousand that was being used as the -- more  
09 than the thousand that was being used by area  
10 command to track the spill at the time as our  
11 best guess, and the purpose was really to say  
12 we need to reevaluate this. I was never  
13 taking this as the definitive final answer or  
14 anything but point for discussion.

Page 402:19 to 404:07

00402:19 Q. Was the conversation that you  
20 had with Dr. Lehr on April 26 focused on his  
21 es- -- the estimation that he performed using  
22 visual observations?  
23 A. Yes.  
24 Q. When you look at the second  
25 sentence -- or, actually, I guess it's the  
00403:01 third sentence under Item 2, it talks about  
02 the velocity of the material and the plume is  
03 estimated by visual observation to be between  
04 7 centimeters per second and 30 centimeters  
05 per second; do you see that?

06 A. Yes.

07 Q. Do you -- do you know the basis  
08 for that statement?

09 A. I believe so. When following  
10 up -- they're now putting on as the 30(b)(6)  
11 witness when I asked Bill where some of his  
12 information came from, you know, for some of  
13 his analysis, and he said that he had called  
14 different people and tried to find  
15 information as far as to help him with some  
16 of his calculations, and so I would have to  
17 say that those values must have come through  
18 some of those phone calls.

19 Q. Okay. Did he tell you that  
20 these values came from the phone calls that  
21 he had with different people that he was  
22 consulting to help him in his analysis?

23 A. He was not as -- he did not  
24 define for sure which ones were specific  
25 numbers from different people in his own  
00404:01 assessments, but he said he did talk to  
02 different people, and I think that's one of  
03 the reasons he ranges specifically -- I  
04 cannot say that that specific value come from  
05 the exact conversation or him combining  
06 conversations and then using his own  
07 professional judgment.

Page 405:24 to 406:06

00405:24 Q. And at the time you had your  
25 conver- -- conversation with Dr. Lehr on  
00406:01 April 26 in which you talked about the  
02 surface oil volume estimation process that he  
03 used, did you understand that this was a  
04 rough analysis based on the data that  
05 existed?

06 A. Yes.

Page 414:08 to 414:16

00414:08 Q. (BY MR. FIELDS) If you go back  
09 to -- toward the end of the **article** under  
10 "Conclusion," Dr. Lehr says, While the  
11 calculations -- while calculations will be  
12 uncertain, volume estimation of oil sheen to  
13 an order of magnitude is possible.

14 Do you see that?

15 A. Yes.

16 Q. Do you agree with that?

Page 414:18 to 414:21

00414:18           A.       It's a very safe margin. Order  
19 of magnitude is a pretty safe margin. So I  
20 would say, yeah, within an order of  
21 magnitude.

Page 416:12 to 416:19

00416:12           Q.       (BY MR. FIELDS) And the last  
13 question on the **document** is Dr. Lehr in this  
14 draft says, Here, accuracy in estimating  
15 sheen thickness is often of little value in  
16 determining total spill volume.  
17                   Do you see that?  
18           A.       Yes.  
19           Q.       Do you agree with that?

Page 416:22 to 417:05

00416:22           A.       If the spill was only sheen, I  
23 guess it would add up to a big percentage of  
24 it, but if the sheen is a minor component to  
25 the thick oil -- more oil is in the  
00417:01 thicker -- more visible black oil than in the  
02 very thin sheen. So I think that's the  
03 simple point he's making, that thin sheens  
04 that are very thin do not have as much oil as  
05 thicker slicks.

Page 419:25 to 420:03

00419:25           Q.       Okay. And you are aware -- you  
00420:01 were aware as of April 2010 that there were  
02 challenges of using visual observations to  
03 reliably predict oil spill volumes?

Page 420:05 to 420:10

00420:05           A.       Yes.  
06           Q.       (BY MR. FIELDS) Okay. Given  
07 that there are challenges of using visual  
08 observation to reliably predict oil spill  
09 volumes, why did NOAA rely on this technique  
10 to estimate the flow rate?

Page 420:12 to 420:19

00420:12           A.       NOAA did not rely -- NOAA was  
13 not making a definitive statement as far as  
14 what the flow rate was with that analysis.  
15 NOAA -- as the SSC I asked can we look at --  
16 use it this technique to evaluate what we see  
17 on the surface to put in context does it fit



18 with what our understanding of the spill is.  
19 It's one piece of that discussion.

Page 421:02 to 421:07

00421:02 Q. Sure. I understand that you're  
03 saying that it wasn't a definitive answer to  
04 the flow rate, but that the -- the analysis  
05 was provided to NOAA -- to -- I'm sorry, to  
06 Unified Command in support of a flow rate  
07 estimate, correct?

Page 421:09 to 421:13

00421:09 A. It was -- it was -- it was  
10 provided to Unified Command and said if we  
11 look at the oil on the surface and do this  
12 simple calculation, it comes up to 5,000  
13 barrels, yes.

Page 422:05 to 422:11

00422:05 Q. Okay. Other than the analysis  
06 that was performed by Dr. Lehr on or about  
07 April 26, 2010, what other scientific  
08 analyses were performed that supported the  
09 Unified Command's 5,000 barrel per day flow  
10 rate estimate that was announced on  
11 April 28th?

Page 422:13 to 423:01

00422:13 A. The only thing I can connect it  
14 to was this simple analysis.  
15 Q. (BY MR. FIELDS) And when you  
16 say "simple analysis" you're specifically  
17 referring to Dr. Lehr's analysis?  
18 A. Right. Which I -- and I don't  
19 want to characterize simple analysis as  
20 anything more than it is. It is -- the whole  
21 concept of doing surface -- estimation of oil  
22 volume based on surface, actually, it's a  
23 very simple analysis. It's size, thickness,  
24 simple math. So based on that simple  
25 analysis it's the only thing I can connect  
00423:01 5,000 barrels to.

Page 424:13 to 425:01

00424:13 Q. (BY MR. FIELDS) In this press  
14 conference Admiral Landry says that NOAA  
15 expert -- experts believe that the output

16 could be -- can be as much as 5,000 barrels.  
17 Had you told Admiral Landry that NOAA  
18 believed the output could be as much as 5,000  
19 barrels?

20 A. I don't believe those are words  
21 I used, no, sir.

22 Q. Okay. What specific words did  
23 you use to Admiral Landry about the flow rate  
24 from the Macondo well based on the NOAA  
25 analysis?

00425:01 A. I --

Page 425:03 to 425:17

00425:03 A. (Continuing) I stated that  
04 based on the analysis of Bill Lehr that the  
05 estimate is 5,000 barrels, and it could --  
06 and with caveats, I'm sure. I've always used  
07 caveats in this discussion. It could be more  
08 or less because there is uncertainties in how  
09 this analysis is done. But I think that's  
10 how I characterized it.

11 Q. (BY MR. FIELDS) At any point in  
12 time prior to the press conference on  
13 April 28th had you told Admiral Landry that  
14 the -- that NOAA believed the maximum outflow  
15 from the Macondo well was 5,000 barrels per  
16 day?

17 A. No.

Page 427:03 to 427:23

00427:03 Q. (BY MR. FIELDS) When did you  
04 advise -- on what date did you advise Admiral  
05 Landry of NOAA's flow rate analysis?

06 A. I don't recall specifically. I  
07 don't know if it was on Monday evening or  
08 Tuesday. I know that -- I don't know if I  
09 even saw her Monday evening. It could  
10 have -- if I did, I would have. If not, it  
11 would have been on Tuesday morning.

12 Q. What day would that be in the  
13 month, do you know?

14 A. I'm sorry, Monday would have  
15 been the 26th, so the 27th, so in that time  
16 frame I think she was very busy and I was  
17 very busy. We didn't have as much time to  
18 even be in the same room together for long.

19 Q. Okay. How long of a  
20 conversation did you have with Admiral Landry  
21 about NOAA's flow rate estimate?

22 A. It was actually very short, just  
23 a few minutes.

Page 436:08 to 436:14

00436:08 Tab 43, please. And Tab 43 will  
09 be marked as Exhibit 8935. And Exhibit 8935  
10 is a copy of an e-mail that you sent to  
11 Christine Blackburn and copying several  
12 others, including Dr. Lehr, Dr. Conner on  
13 April 14th, 2010?  
14 A. Yes.

Page 439:16 to 440:17

00439:16 Q. Right. I want to focus  
17 specific -- not on what you might have been  
18 saying in response to the press conference  
19 that Admiral Landry gave, but what  
20 specifically you told her prior to the press  
21 conference.  
22 A. That is what I was -- I'm sorry.  
23 That's what I was stating. I said during  
24 those early -- those days in April, and, you  
25 know, we're talking about late April, my  
00440:01 recollection is that when I -- the way I most  
02 often characterized the estimate from Lehr,  
03 from Bill Lehr, is that if you do the math  
04 the way Bill Lehr did, it comes out to 5,000  
05 barrels, which means could be as much as  
06 5,000 barrels or more. That's the most  
07 common way I expressed it.  
08 And I think in answering to  
09 Christine on this -- this e-mail, you know,  
10 it was, like, did you ever say this?  
11 I was, like, oh, I can't think,  
12 five months I may have said it this way, I  
13 probably -- I might have said it a different  
14 way. But the most common way I expressed it  
15 was always, this is the estimate, could be as  
16 much as 5,000 barrels and -- or more,  
17 reflecting there some uncertainty.

Page 444:01 to 445:16

00444:01 Q. If you go down a little farther,  
02 it talks about BP and MMS, and there is a  
03 statement that says, "They repeated Bill's  
04 effort with different values and came up with  
05 numbers lower and higher, including something  
06 like 10,000 barrels per day, but that was  
07 only table top playing with the data."  
08 Do you see that?  
09 A. I read it. I want to read it  
10 one more time. Let me see if I can find it.  
11 Yes.

12 Q. In this sentence you -- who are  
13 you referring to when you say "they"?

14 A. That was the person we  
15 identified as Tony that I testified earlier  
16 that was redoing some of the similar type  
17 sheen calculations, yes.

18 Q. Okay.

19 A. And I only looked over his  
20 shoulder. Informally talked with him a  
21 couple times.

22 Q. And you said, but they -- but  
23 that was only tabletop playing with the data.  
24 What did you mean when you said it was only  
25 tabletop playing with the data?

00445:01 A. It was taking the same basic  
02 framework and then just changing the numbers.  
03 And I think I stated in a more scientific  
04 method when I testified other, it was kind of  
05 like a sensitivity analysis would change  
06 values, what goes up and what goes down.

07 In talking with my colleagues, I  
08 use kind of a very more common speech, kind  
09 of colloquial things coming from down here,  
10 and I tend to sometimes in my writing to my  
11 colleagues. And I said playing the data --  
12 making those changes to look at how it  
13 adjusts and how it changed.

14 Q. And in your experience, is it  
15 customary to perform these types of  
16 sensitivity analyses?

Page 445:18 to 445:22

00445:18 A. It's -- usually you have  
19 variables, you have uncertainty. Changing  
20 things to see how it affects the total  
21 volumes is a -- is a good scientific  
22 approach.

Page 448:16 to 451:01

00448:16 Q. (BY MR. FIELDS) Why don't we  
17 turn to Tab 30, which will be Exhibit 8937.  
18 Okay. Mr. Henry, my first  
19 question is whether or not back in April 2010  
20 or early May 2010 you saw part or all of the  
21 documents that are set forth in Exhibit 8937.

22 MS. HANKEY: Objection; scope.

23 A. Let me go through them one at a  
24 time.

25 Q. (BY MR. FIELDS) Sure.

00449:01 A. Okay. First, I just have

02 Page --

03 Q. 899.

04           A.       -- 899, 900, 901. I would -- I  
05 would not have seen this as like a product,  
06 but this was the type of work Tony was  
07 working on when I had those casual  
08 engagements. I at one time characterized as  
09 kind of looking over his shoulder. This was  
10 the type of work he was performing.  
11               The overflight map specifically  
12 from --  
13           Q.       Can I -- can I -- before you get  
14 to the next page. So with respect to the  
15 first three pages, 899 through 901, these  
16 were the types of spreadsheets that you were  
17 seeing on Tony's computer when you were  
18 looking over his shoulders and you were  
19 having a discussion with him about --  
20 generally about it?  
21           A.       I think he had a computer and I  
22 think he had some printout, but this -- I  
23 remember -- and I don't remember if it was  
24 this one or what, but it was a similar type  
25 spreadsheet and he was looking at different  
00450:01 numbers and looking at it different ways and  
02 we had a chat and I thought what he was doing  
03 was fine. I --  
04           Q.       Okay.  
05           A.       I was kind of glad he was doing  
06 it. But it -- but it was -- you asked had I  
07 seen these prior to and I said in some form,  
08 but I do not recall ever getting handed final  
09 products --  
10           Q.       Okay.  
11           A.       -- at that time.  
12           Q.       You said it was on a computer  
13 screen. Do you ever recall receiving  
14 handouts or copies of these types of  
15 spreadsheets back in April or May 2010?  
16           MS. HANKEY: Objection; scope.  
17           Q.       (BY MR. FIELDS) What I'm  
18 talking about is the -- the documents similar  
19 to 8937 -- sorry, 899 to 901.  
20           A.       I didn't -- I don't recall  
21 getting--  
22           Q.       Okay.  
23           A.       -- getting this. You don't --  
24           Q.       What about with respect to back  
25 in late April, early May, seeing the other  
00451:01 information that's set forth in Exhibit 8937?

Page 451:03 to 451:11

00451:03           A.       I remember this activity, and I  
04 don't remember where it went from there.  
05 That's the best I can remember.  
06           Q.       (BY MR. FIELDS) Okay. Can you

07 turn to one specific page in Exhibit 8937,  
08 and that's on the page ending in Bates  
09 No. 903. Do you recall in late April 2010  
10 seeing a copy of the document that ends in  
11 903?

Page 451:13 to 453:07

00451:13 A. You're asking did I see this  
14 piece of paper?  
15 Q. (BY MR. FIELDS) Correct.  
16 A. On the 26th of --  
17 Q. Or thereabouts, yes.  
18 A. On the 26th of April I saw this  
19 piece of paper.  
20 Q. Okay. And on the page that ends  
21 in 903, there is a statement here that says,  
22 "not in disagreement based on our initial  
23 discussion. CBH." Do you see that?  
24 A. Yes.  
25 Q. Okay. And is -- are -- is CBH  
00452:01 your -- those are your initials?  
02 A. Yes.  
03 Q. Okay. Did you review this  
04 document on April 26 and put this nota- --  
05 notation "not in disagreement based on our  
06 initial discussions"?  
07 A. I'd like to say that it reflects  
08 what -- what I've already testified to Bill  
09 Rainey and I working on --  
10 Q. Dave Rainey?  
11 A. I'm sorry, thank you, sir. Dave  
12 Rainey. And my comment here was when Dave  
13 came back later in the afternoon, it was  
14 related to try and work on the 209 and some  
15 of the mass balance issues, trying to -- you  
16 know, to help that piece of documentation in  
17 the Unified Command. And Dave Rainey came  
18 back and said, sign this or initial this.  
19 And I said, well, you know, I --  
20 I said, look -- says, well, this is what  
21 we've been talking about, but, I mean, I'm  
22 not saying these are the final values.  
23 He says, we got -- you need to  
24 initial it.  
25 And I thought, okay, you know, I  
00453:01 didn't want to push -- I had lots of other  
02 things going on, and so I signed it this way  
03 and said I'm not in disagreement that this  
04 reflects what we discussed.  
05 But that's the level I -- my  
06 understanding. I didn't want to say, oh, I  
07 say these are real numbers. Yeah.

Page 454:01 to 454:12

00454:01 Q. So with respect to either the  
02 analysis that -- or the document that Dave  
03 Rainey handed you or the analysis that  
04 Dr. Lehr performed, from your standpoint,  
05 this was just the beginning of the discussion  
06 about the flow rate from the well?  
07 A. Yes, I believe there was a lot  
08 we still didn't understand, yes, sir.  
09 Q. Do you recall having any  
10 discussions with Dave Rainey after April 26  
11 regarding the analysis that he or Mr. Parkin  
12 were performing?

Page 454:14 to 454:15

00454:14 A. My memory, I don't recall any  
15 discussions.

Page 456:07 to 456:10

00456:07 But the question I have with  
08 respect to the attachment to Exhibit 8938,  
09 had you ever received a copy of the  
10 attachment?

Page 456:12 to 456:18

00456:12 A. I don't recall seeing this.  
13 Q. (BY MR. FIELDS) Is the -- the  
14 attachment and the spreadsheets that are in  
15 the attachment, is this also the type of work  
16 that you saw on Tony Parkin's computer and  
17 about which you and Tony Parkin had a  
18 discussion?

Page 456:20 to 456:24

00456:20 A. Kind of the first page -- I  
21 remember -- what I remember visually, that,  
22 you know, in my mind, was there was kind of  
23 the low, best, high kind of bar graphs. This  
24 is the part I have some recollection of, yes.

Page 457:01 to 457:10

00457:01 A. But the other part, as far as  
02 the summary part on the back and the mass  
03 balance values --  
04 Q. What about Page 2 --  
05 A. -- I don't remember seeing this

06 specifically.  
07 Q. What about Page 2, do you recall  
08 seeing on Mr. Parkin's computer something  
09 that looked like what's on Page 2 of the  
10 Attachment?

Page 457:12 to 457:21

00457:12 A. Page 2?  
13 Q. (BY MR. FIELDS) Correct, yes.  
14 A. Just to make sure. Like I said,  
15 this clearly matches the format. I don't  
16 remember the details, and that's the same as  
17 the first page that I said that we looked at.  
18 But I -- my memory doesn't say which numbers  
19 or any references he had. They were just  
20 spreadsheets set up in this way.  
21 Q. Thank you, sir.

Page 461:20 to 463:07

00461:20 Q. Mr. Henry, my name is James Orr  
21 and I'm representing Transocean today along  
22 with my colleague Nick Zugaro and we've got  
23 some questions for you. It sounded like to  
24 me that including your time at LSU under  
25 contract with NOAA that you had had about 20  
00462:01 years of experience -- spill response  
02 experience; is that about right?  
03 A. At least 20 years, yes, sir.  
04 Q. Okay. And I believe you  
05 testified earlier that you've responded to  
06 more than 100 oil and chemical spills with  
07 about two-thirds of those being oil related;  
08 is that right?  
09 A. That was very general numbers,  
10 yes, sir.  
11 Q. And in those spill situations  
12 you've worked with responsible parties,  
13 correct?  
14 A. Yes, sir.  
15 Q. In your years of experience as a  
16 spill responder have you found that it is  
17 important to have full and open communication  
18 with the responsible party?  
19 A. It's -- in general, you know,  
20 the better -- the more open -- or the better  
21 that you work together to solve problems by  
22 providing information that's available -- I  
23 have a hard time saying that would not be a  
24 better approach.  
25 Q. Okay. All right.  
00463:01 A. I mean, it's very broad. Sorry.  
02 Q. That's all right. And is it --



03 is part of the reason for having these open  
04 communications that the responsible party may  
05 have information that you don't have?  
06 A. Oh, they clearly have  
07 information we don't have, yes.

Page 464:05 to 465:14

00464:05 Q. Right, right. And in a flowing  
06 well situation one factor in figuring out how  
07 much oil is escaping would -- would be the  
08 flow rate, correct?  
09 A. Yes, sir.  
10 Q. Okay. So in that situation the  
11 flow rate could be important in determining  
12 the appropriate response effort; is that  
13 right?  
14 A. If we -- are we talking a  
15 specific spill or in general.  
16 Q. In general.  
17 A. In general, knowing the volume  
18 of oil for planning purposes, for capacity,  
19 for responses is also important. But all  
20 spills are different and so, you know, we're  
21 only speaking very generally right now?  
22 Q. Right. And I'm talking about  
23 generally right now.  
24 A. Right.  
25 Q. And I'm talking about what could  
00465:01 be.  
02 A. Right. Okay.  
03 Q. So it could be important for  
04 example, in determining the -- how many  
05 skimmers are needed and where to place those,  
06 correct?  
07 A. Speaking in general, not  
08 specific to this -- this incident?  
09 Q. Right.  
10 A. Knowing your capacity of  
11 response equipment compared to how much oil,  
12 potentially, you're going to be recovering,  
13 yeah, it's something that we calculate and  
14 plan.

Page 466:02 to 466:19

00466:02 Q. All right. You testified  
03 earlier that in a spill situation NOAA  
04 normally relies on the responsible party to  
05 provide information on the amount of oil or  
06 chemical released or expected to be released.  
07 Do you recall that testimony?  
08 A. Yes, and if I said NOAA, that's  
09 how NOAA usually gets that information, but

10 it's the incident command -- Coast Guard has  
11 the -- they're the authoritative lead. We're  
12 in a support role.  
13 Q. Right.  
14 A. But those numbers most often  
15 come from the responsible party.  
16 Q. Okay. And does -- why does NOAA  
17 or the incident command rely on the  
18 responsible party to provide that  
19 information?

Page 466:21 to 467:15

00466:21 A. They have more intimate  
22 knowledge of the -- you know, we're talking  
23 general again so.  
24 Q. (BY MR. ORR) Right.  
25 A. Whether it's a vessel, they  
00467:01 would have the accounting information for the  
02 tanks, how much oil was in it before and  
03 after from the gauges. Whether it's a  
04 pipeline, they know the flow rate of the  
05 pipeline and pressures -- pressure drop could  
06 potentially calculate volumes. If it's a  
07 well, wild well release, they may have  
08 information depending on if it was a well in  
09 production before. But they have some --  
10 they have information where to us coming in  
11 on scene it's pretty much an unknown.  
12 Q. And I believe you also testified  
13 that the -- the responsible party normally  
14 takes the lead in providing oil spill release  
15 information, correct?

Page 467:17 to 467:24

00467:17 A. My experience has been on -- on  
18 most incidents the responsible party provides  
19 the information as far as the volume spilled  
20 into the environment, yes, sir.  
21 Q. (BY MR. ORR) Okay. And when  
22 you said takes the lead on that you mean the  
23 responsible party takes responsibility from  
24 the outset?

Page 468:01 to 468:22

00468:01 A. I -- I could say it that way,  
02 yes. I mean, I should restate it to be sure  
03 we're correct, but as a responsible party  
04 they have the responsibility to inform the  
05 federal government and the response what the  
06 situation is, which includes how much oil is

07 being spilled into the environment, yeah.  
08 Q. (BY MR. ORR) All right, all  
09 right. Now in this situation, the Macondo  
10 oil spill situation, you testified that you  
11 expected BP as the responsible party to  
12 provide release and flow rate information to  
13 NOAA, correct?  
14 A. Well, to the Unified Command.  
15 Q. Okay, Unified Command?  
16 A. NOAA is there to support the  
17 Coast Guard and Unified Command, but I mean  
18 specifically to the Unified Command.  
19 Q. Okay. And that's consistent  
20 with what you -- in your experience is  
21 normally the case; is that right?  
22 A. Yes, sir.

Page 474:17 to 475:17

00474:17 Q. And this was previously marked  
18 as Exhibit 8935.  
19 A. Okay.  
20 Q. The Bates number is  
21 NOA016-000623 through 624 and this is an  
22 e-mail chain, I guess, dated October 14th  
23 from you to Ms. Blackburn and you -- you  
24 identified this earlier.  
25 A. Yes, sir.  
00475:01 Q. And you've addressed the 5,000  
02 barrels of oil per day in this estimate. Let  
03 me direct your attention to a little more  
04 than halfway down the page, the sentence that  
05 begins, "That estimate..."  
06 A. About halfway down the page  
07 or --  
08 Q. Yeah, a little more, right after  
09 the reference to USCG.  
10 A. Yes, I found it.  
11 Q. Okay. That estimate. Do you  
12 see that sentence?  
13 A. Yes, sir.  
14 Q. That estimate -- and you were  
15 referring to the 5,000 dollar estimate,  
16 corrects?  
17 A. Yes, sir.

Page 475:19 to 476:08

00475:19 Q. (BY MR. ORR) "That estimate was  
20 only prepared to argued that the 1000 barrel  
21 value was clearly low... we applied what  
22 science we could at the time, and that effort  
23 indicated the value was closer to 5000  
24 barrels. An estimate is an estimate... It

25 was the best working number we had at the  
00476:01 time." It was generated to put pressure on  
02 BP's experts to provide a better release  
03 estimate as they had more information than  
04 anyone else...but the -- they didn't.  
05 Did I -- did I read that  
06 correctly?  
07 A. Yeah, with my bad grammar, yes,  
08 sir.

Page 477:04 to 478:22

00477:04 Q. Okay. So the -- the generation  
05 of estimate at that time -- during that time  
06 period is what -- is what you're talking  
07 about?  
08 A. Yeah. I mean, did BP come out  
09 with a -- well, I'm not supposed to ask  
10 questions. But what did I mean by this? To  
11 answer your question -- I was trying to  
12 answer your question, is that the working  
13 number was a thousand barrels. Didn't seem  
14 to match -- didn't seem to be matching up  
15 with some of our issues on the 209 form and  
16 other questions. No other numbers were  
17 coming forth. Not that -- whether at the  
18 time or not I knew, but at -- at that time I  
19 took an effort to say what could it be by  
20 this method to kind of stir that discussion  
21 more, because the numbers weren't matching  
22 up.  
23 Q. Okay. And in stirring the  
24 discussion part of what you were looking for  
25 was for BP to come back with a better flow  
00478:01 rate estimate, right?  
02 A. And I'm -- speaking as the NOAA  
03 SSC, and I have to be careful that I'm not  
04 the incident commander --  
05 Q. Right.  
06 A. -- for Unified Command as a  
07 whole, but the process normally does go that  
08 during the evolution of a response the  
09 responsible party is, actually, engaged on  
10 trying to keep the best numbers pos- --  
11 provide the best numbers possible as far as  
12 the amount of oil that we're responding to.  
13 Q. All right.  
14 A. I mean, I have -- I could not  
15 provide an official one because they were --  
16 you know, I think they're a key player on  
17 trying to provide that information.  
18 Q. Right. And you said in the  
19 e-mail that they had more information than  
20 anyone else. What -- what type of  
21 information did you think BP had that others

22 did not have?

Page 478:24 to 481:09

00478:24 A. Well, that's a very broad  
25 statement. Probably reflects more the fact  
00479:01 that there's a lot I didn't know, because I  
02 don't have the intimate knowledge of the well  
03 development, the exploration. They're  
04 petroleum engineers and experts and other --  
05 other folks that worked on the well. So I  
06 think it reflects the fact that since it's --  
07 you, you know, to be fair -- I usually use  
08 the responsible party under oath and not only  
09 BP to step forward from the oil side, but I  
10 was more -- you know, there was more folks  
11 that were involved. But if people that were  
12 working the well and development of the well  
13 would have more information than I would as  
14 just a NOAA scientist walking on scene.

15 Q. (BY MR. ORR) Okay. Let me ask  
16 you to turn to Tab 46. Let's label this  
17 Exhibit 8941.

18 A. Okay.

19 Q. All right. And just for the  
20 record, Exhibit 8941 is an e-mail chain dated  
21 May 16th, 2010, with Bates numbers 9 --  
22 N9G040-006258 through 6260, and the top  
23 e-mail on the page -- first page indicates  
24 that this e-mail chain was sent to you and  
25 others, correct?

00480:01 A. Correct.

02 Q. Okay. And then I want to ask  
03 you to look at the e-mail at the bottom of  
04 the page written by Mr. Lehr. Do you see  
05 that?

06 A. Yes.

07 Q. And the last sentence on that  
08 page which begins, "NOAA/ORR"; do you see  
09 that?

10 A. Yes, sir.

11 Q. And what is ORR?

12 A. It stands for the Office of  
13 Response and Restoration, so that's our  
14 parent office, my parent office.

15 Q. All right. "NOAA/ORR," I'm  
16 reading here, "has arranged for fluid  
17 dynamics experts to repeat and extend the  
18 methods of Professor Wereley, but we need BP  
19 to confirm the above points, provide us with  
20 their best information on the exiting  
21 gas-liquid constituent properties, and give  
22 us a much longer video clip of the pipe  
23 release."

24 Did I read that correctly?

25 A. Yes, sir.  
00481:01 Q. And then the last sentence of  
02 that paragraph reads, "The continuing  
03 stonewalling of BP to repeated requests for  
04 the video are not in the best interests of  
05 anyone." Did I read that correctly?  
06 A. Yes, sir.  
07 Q. Were you aware of requests by  
08 NOAA to BP for a longer video clip of the  
09 pipe release?

Page 481:11 to 481:22

00481:11 A. I remember -- my recollection is  
12 that Steve Lehmann had been working to try to  
13 get videotape, additional videotape to Bill  
14 Lehr, and I think that's probably the reason  
15 of this. So I knew there was efforts to try  
16 to get videotape, and when that concluded --  
17 when they were able to get videotape that was  
18 to Bill Lehr's satisfaction, I do not  
19 remember.  
20 Q. (BY MR. ORR) Okay. Were you  
21 aware of BP's response or lack of response to  
22 that request?

Page 481:24 to 482:06

00481:24 A. My recollection and is that  
25 there was video provided. Bill asked for  
00482:01 either higher resolution or longer or both,  
02 and I remember that being a topic, including  
03 both the Coast Guard and others, about the  
04 middle of May period. So I remember this  
05 discussion, but I don't remember a lot of  
06 real details to it.

Page 482:20 to 483:05

00482:20 Q. All right. If you'd turn to  
21 Tab 40, please.  
22 A. Tab 40?  
23 Q. Yes, Tab 40. And this has been  
24 previously labeled Exhibit 5063. There is a  
25 sticker to that effect. And this is an  
00483:01 e-mail chain dated April 28, 2010. I'm  
02 not -- I'm just going to -- I'm going to ask  
03 you to turn to -- well, have you ever -- have  
04 you ever seen this document?  
05 A. I've never seen this.

Page 483:09 to 483:20

00483:09 Q. Okay. You've had a chance to  
10 look at that?  
11 A. Yes.  
12 Q. Let me ask you to look at the  
13 chart at the bottom of the page ending in  
14 Bates No. 5263. And there are estimates  
15 ranging from 2,523 barrels of oil per day to  
16 65,171 barrels of oil per day; do you see  
17 that?  
18 A. Yes, sir.  
19 Q. Did BP send this chart to you or  
20 anyone else at NOAA?

Page 483:22 to 484:05

00483:22 A. I would not know if they sent it  
23 to anyone else in NOAA. I don't recall ever  
24 seeing this chart.  
25 Q. (BY MR. ORR) Okay. After the  
00484:01 5,000 barrel estimate was made public on  
02 April 28th, did anyone from BP call you or  
03 anyone else at NOAA and say that based on  
04 BP's modeling, the flow rate could be between  
05 2,523 and 65,171 barrels of oil per day?

Page 484:08 to 484:09

00484:08 A. I have no -- I have no  
09 recollection of ever being told that or...

Page 487:06 to 487:07

00487:06 Q. Okay. Would you have been  
07 interested in receiving these numbers?

Page 487:09 to 487:17

00487:09 A. Well, I -- I think if this --  
10 this report was available, I'd be spec- --  
11 well, I'd always be interested in  
12 information. I mean, that's kind of had --  
13 that's an easy segue.  
14 Q. (BY MR. ORR) All right. Let me  
15 ask you to turn to page -- Tab 45, which  
16 we'll label Exhibit 8942.  
17 A. Okay.

Page 487:22 to 489:09

00487:22 Q. Have you had a chance to look at  
23 it? Have you ever seen this document before?  
24 A. No, sir.

25 Q. Okay. It's an e-mail with  
00488:01 attachments. The e-mail is dated April 28th,  
02 2010. And you see that in the attachments  
03 eight different cases, Case 1 through 8, were  
04 considered; do you see that?  
05 A. Yes, sir.  
06 Q. And Case 1, for example, is the  
07 flow path is up the casing with no drill  
08 string. Do you see that one, the --  
09 A. Yes, sir.  
10 Q. It's Case 1, okay. And do you  
11 see the estimated flow rate in Case 1 is  
12 138,300 barrels of oil per day?  
13 A. Yes.  
14 Q. And do you see that on Case 2  
15 the estimated oil rate is 110,000 barrels of  
16 oil per day?  
17 A. Yes, sir.  
18 Q. In Case 3 it's 93,000?  
19 A. Yes, sir.  
20 Q. Case 4 it's 64,000?  
21 A. Yes, sir.  
22 Q. Case 5 it's 146,000?  
23 A. Yes.  
24 Q. Case 6 it's 77,000 barrels of  
25 oil per day?  
00489:01 A. Yes.  
02 Q. Case 7 it's 69,500?  
03 A. Yes.  
04 Q. And then in Case 8, there is a  
05 range of 51,800 to 1,000 barrels of oil per  
06 day; do you see that?  
07 A. Yes.  
08 Q. On April 29th, did BP send these  
09 estimates to you or anyone else at NOAA?

Page 489:12 to 489:21

00489:12 A. I can only -- I haven't -- I  
13 never saw -- I did not receive these, to my  
14 knowledge, and I cannot speak for the rest of  
15 NOAA.  
16 Q. (BY MR. ORR) All right. On  
17 April 29th or after, did BP call and tell you  
18 that its consultant had run eight case  
19 scenarios, and that in seven of the eight,  
20 the estimated flow rate was 64,000 barrels of  
21 oil per day or higher?

Page 489:23 to 490:01

00489:23 A. No.  
24 Q. (BY MR. ORR) Okay. Is this the  
25 kind of information you would have wanted to



00490:01 receive?

Page 490:03 to 490:14

00490:03 A. Well, it's the kind of  
04 information that would fit into our better  
05 understanding of what the situation was that  
06 we were responding to, yes.  
07 Q. (BY MR. ORR) All right. If  
08 you'd turn to Tab 38, please. And if you  
09 could put sticker -- 8943 is the exhibit  
10 number on that for me, please.  
11 MS. HANKEY: It's already got a  
12 sticker, 9157.  
13 MR. ORR: Well, let's save that, then.  
14 Let's call it what it is, Exhibit 9157.

Page 490:22 to 492:13

00490:22 Q. (BY MR. ORR) Have you had a  
23 chance to look at it?  
24 A. Yes, sir.  
25 Q. Okay, thank you. The e-mail is  
00491:01 dated May 6th, 2010, with attached charts,  
02 and the e-mail states that the attachments to  
03 the e-mail are WCD plots, defined as  
04 worst-case discharge plots; do you see that?  
05 A. Yes, sir.  
06 Q. And if you look at the first  
07 attachment, please, the one ending in Bates  
08 No. 50783, which has several lines on it; do  
09 you see that?  
10 A. Yes, sir.  
11 Q. And one of the lines starts at  
12 about 160,000 barrels of oil per day and ends  
13 at about 120,000; do you see that?  
14 A. Yes, sir.  
15 Q. Okay. And then the next line  
16 down the page starts at about 115,000 and  
17 ends at about 80,000, right?  
18 A. Yes, sir.  
19 Q. The next one starts at about,  
20 let's say 55,000, ends at about 45,000?  
21 A. Yes.  
22 Q. Another one starts at 20,000,  
23 another one starts at 10,000, and another one  
24 starts at 5,000. Do you see those three  
25 lines?  
00492:01 A. Yes, sir.  
02 Q. After the 5,000 barrel estimate  
03 was announced, did BP send this chart to you  
04 or anyone else at NOAA, to your knowledge?  
05 A. I do not recall seeing this  
06 chart. I cannot speak for the rest of NOAA.

07 Q. Okay. And then the next page,  
08 the chart ending in Bates No. 783, what about  
09 that one, did -- did BP send this one to you  
10 or anyone else to NOAA, to your knowledge?

11 A. I did not recall -- yeah, I -- I  
12 don't recall seeing this, and I cannot speak  
13 for anyone else at NOAA.

Page 493:04 to 493:05

00493:04 Q. (BY MR. ORR) So this provided  
05 more detail than you'd previously seen?

Page 493:07 to 493:19

00493:07 A. Well, as I said early on, just  
08 trying to understand what the potential  
09 worst-case discharge would be, discussions  
10 were made that the worst case wouldn't -- it  
11 actually is reflected here because there was  
12 stuff in the borehole and -- and that's  
13 what's reflected in here.

14 But I was not -- it seems  
15 like -- again, I do not recall seeing these  
16 documents, and they would have potentially  
17 been value -- a value to those that were  
18 developing the release rate, which I didn't  
19 feel that we had the appro- -- the lead on.

Page 493:22 to 494:19

00493:22 Q. Let me ask you, then, to look at  
23 Tab 36, which has been previously marked as  
24 Exhibit 8866.

25 Okay, you've had a chance to  
00494:01 look at it. Have you ever seen this e-mail  
02 before?

03 A. No, sir.

04 Q. It's an e-mail chain dated  
05 May 10, 2010, and the top e-mail from  
06 Mr. Rygg states, "Kurt, based on the  
07 observation from the video you shoved" -- I  
08 think it means "showed" --

09 A. Uh-huh.

10 Q. -- "me Yesterday I did some  
11 rough estimations. I do not think it can be  
12 ruled out that the flow out at seabed is in  
13 the order of 40,000 barrels of oil per day."

14 Did I read that correctly?

15 A. Yes, sir.

16 Q. Did BP inform you or anyone at  
17 NOAA on or after May 10 that their consultant  
18 thought that a flow rate of 40,000 barrels of

19 oil per day could not be ruled out?

Page 494:21 to 495:05

00494:21 A. I don't recall that --  
22 Q. (BY MR. ORR) Okay.  
23 A. -- that activity or that action.  
24 Q. If you would look at Tab 41,  
25 please.  
00495:01 A. And I just want to be sure that  
02 I'm answering. When I said I don't recall, I  
03 have no memory of seeing that.  
04 Q. Right.  
05 A. I want to be clear.

Page 495:08 to 496:20

00495:08 Q. Yes, 41, previously labeled  
09 Exhibit 3220.  
10 A. Okay.  
11 Q. Have you ever seen this e-mail  
12 before?  
13 A. No, sir.  
14 Q. Okay. It's an e-mail chain  
15 dated May 16, 2010. If you'd look at the  
16 e-mail at the bottom of the page, which is  
17 actually dated May 15, 2010, from Mike Mason  
18 to Andy Inglis; do you see that?  
19 A. Yes, sir.  
20 Q. And Mr. Mason writes, "I just  
21 read an article in CNN May 14, 2010,  
22 1:00 p.m., stating that a researcher at  
23 Purdue believes that the Macondo well is  
24 leaking up to 70,000 barrels of oil per day  
25 and that BP stands by a 5,000 barrel of oil  
00496:01 per day figure. With the data and knowledge  
02 that we currently have available, we cannot  
03 definitively state the oil rate from this  
04 well. We should be very cautious standing  
05 behind a 5,000 barrel of oil per day figure,  
06 as our modeling shows that this well could be  
07 making anything up to a hundred thousand  
08 barrels of oil per day, depending on a number  
09 of unknown variables, and then he lists some  
10 variables.  
11 Did I read that correctly?  
12 A. Yes, sir.  
13 Q. Did anyone with BP inform you on  
14 or before this date, May 15, 2010, that you  
15 or NOAA should be cautious standing behind  
16 the 5,000 barrel figure because BP's modeling  
17 showed that the flow rate could be up to  
18 100 -- hundred thousand barrels of oil per  
19 day, depending on certain variables?

20           A.       Not to my knowledge.

Page 497:19 to 497:22

00497:19   With respect to the 1,000  
20   barrels of oil per day and the 5,000 barrels  
21   of oil per day estimates in April of 2010,  
22   did NOAA have any input from Halliburton?

Page 497:24 to 498:05

00497:24           A.       I recall from -- not that I can  
25   recall.  
00498:01           Q.       (BY MS. RICHARD) And  
02   Halliburton didn't provide any data to come  
03   up with those estimates of 1,000 barrels of  
04   oil per day and 5,000 barrels of oil per day,  
05   correct?

Page 498:07 to 498:12

00498:07           A.       To my knowledge I recall, I  
08   don't have any recollection they did, yes.  
09           Q.       (BY MS. RICHARD) Right. And  
10   those estimates of 1,000 barrels of oil per  
11   day and 5,000 barrels of oil per day were not  
12   sent to Halliburton, either, correct?

Page 498:15 to 498:15

00498:15           A.       Not by me.

Page 498:19 to 498:22

00498:19           Q.       Okay. Do you have any knowledge  
20   of anyone else sending those estimates of  
21   1,000 barrels of oil per day and 5,000  
22   barrels of oil per day to Halliburton?

Page 498:24 to 498:24

00498:24           A.       No.

Page 499:09 to 500:10

00499:09           Q.       (BY MS. RICHARD) Okay. You --  
10   were you a member of the Unified Command?  
11           A.       Yes.  
12           Q.       Okay.  
13           A.       I -- let me make sure there's  
14   clarity in what that definition means.

15 Q. Certainly.  
16 A. Okay. Because the Unified  
17 Command -- or what I transitioned to is  
18 Unified Area Command, which is over several  
19 command posts. The Unified Area Command is  
20 made up of a variety of different folks. The  
21 incident commanders, though, represent the --  
22 the responsible parties, the U.S. Coast  
23 Guard, and the states that are potentially  
24 affected. NOAA serves more as a advisory  
25 role to the FOSC. We may be considered part  
00500:01 of her commanding general staff, but we don't  
02 have the official roles like the incident  
03 commanders and all. So my capacity is in  
04 support to the Coast Guard of Unified  
05 Command.  
06 Q. All right, thank you, sir. And  
07 to you -- did you see anyone out there where  
08 you were located who was affiliated in any  
09 way with Halliburton?  
10 A. Not that I recall, I mean.

Page 500:14 to 500:19

00500:14 Q. Thank you. Do you have any  
15 knowledge about any conduct on the part of  
16 Halliburton that occurred between April 22nd  
17 of 2010 through September 19th of 2010  
18 relating to the attempt to stop the flow of  
19 oil from the Macondo well?

Page 500:21 to 501:02

00500:21 A. I was not really involved in  
22 that, so, no. I mean, that was not my area.  
23 Q. (BY MS. RICHARD) Okay. Do you  
24 have any other information or -- or knowledge  
25 outside of those dates regarding HESI's --  
00501:01 I'm sorry, regarding Halliburton's  
02 involvement in the relief efforts?

Page 501:04 to 501:04

00501:04 A. Again, I have no knowledge.

Page 502:03 to 503:07

00502:03 Q. Do you personally have any  
04 criticism about any of Halliburton's conduct  
05 related to any relief efforts in your  
06 individual capacity?  
07 A. I did not -- I don't recall  
08 working on any specific issues with

09 Halliburton to have anything to add to that.  
 10 So I have nothing to -- nothing I can recall  
 11 with Halliburton interacting with me that I  
 12 have a complaint with because I don't think  
 13 I've worked with Hal- -- Halliburton on -- on  
 14 its response.

15 Q. Okay. So is it fair to say  
 16 that, then, that you have no criticisms about  
 17 any of Halliburton's conduct relating to the  
 18 relief efforts?

19 A. It actually becomes the default  
 20 of that, yes, so...

21 Q. Thank you, sir. Did you hear of  
 22 anyone else having any criticisms about any  
 23 of Halliburton's conduct relating to any  
 24 relief efforts? And I'm asking you this in  
 25 your individual capacity.

00503:01 A. No.

02 Q. Okay. Do you -- do -- did  
 03 anyone from Halliburton give you any  
 04 suggestions regarding how to proceed  
 05 regarding -- related to any of the activities  
 06 that you were involved in with regard to  
 07 the -- to the response?

Page 503:09 to 503:18

00503:09 A. Not that I recall. I don't  
 10 recall working -- I'm sorry. I don't recall  
 11 working with -- you know, and I am -- I just  
 12 want to for clarity. Often I may not even  
 13 know what companies some people work for when  
 14 we're in the house mix. But I don't remember  
 15 working with any Halliburton- -- any -- I  
 16 don't remember working with any scientists or  
 17 engineers from Halliburton on these issues,  
 18 so...

Page 533:19 to 534:21

00533:19 Q. Okay. For the next two days the  
 20 rig's on fire until it sinks approximately  
 21 midday on April 22nd, right?

22 A. It was in the afternoon on the  
 23 22nd, yes, sir.

24 Q. All right. Did -- did you get  
 25 out to see it before it sank?

00534:01 A. No, sir.

02 Q. Okay. Did you see it on video?

03 A. Yes, sir.

04 Q. And it was pretty shocking in  
 05 terms of what the video showed?

06 A. Yes, sir.

07 Q. Okay. And it certainly looked

08 like there was a tremendous amount of  
09 hydrocarbons on fire at that point in time?  
10 A. Yes, sir.  
11 Q. I'm sure you didn't try to  
12 quantify them then, right? You didn't know  
13 what you had?  
14 A. Well, if I would follow through  
15 with testimony I gave earlier, I think it was  
16 pointed out in one of my e-mails reports to  
17 my home team, I said I wouldn't be surprised  
18 if it was 10 to 20,000 barrels burning. So I  
19 guess I would have to be -- to be following  
20 through on that, I think I made a guess, I  
21 think that's how it was characterized.

Page 535:10 to 536:08

00535:10 Q. Sure.  
11 A. Once you look at the video, it  
12 looked like a -- what we would call a wild  
13 well type situation, like a full, you know,  
14 gas in the well, burning at the well.  
15 Q. And at that point in time it  
16 certainly did not look like it was a thousand  
17 barrels a day, during the time that rig was  
18 on fire and flames were up through the crown?  
19 A. Yes, sir.  
20 Q. Okay. It looked like it was  
21 bigger than that, although, of course, you  
22 had no idea how big?  
23 A. Yes, sir.  
24 Q. Later were you still involved on  
25 the matter when they actually had containment  
00536:01 and they put in the riser insertion tool and  
02 then they started doing some containment?  
03 A. Yes, sir.  
04 Q. And they started capturing  
05 several thousand barrels a day, correct?  
06 A. Yes, sir.  
07 Q. But they were not capturing, by  
08 any means, all of the oil, right?

Page 536:10 to 536:10

00536:10 A. Correct.

Page 537:15 to 537:20

00537:15 Q. (BY MR. WILLIAMS) Once the  
16 containment procedures were in place and they  
17 were capturing oil, but they weren't  
18 capturing everything, that certainly  
19 confirmed that it was a very significant

20 spill?

Page 537:24 to 538:04

00537:24 A. Well, if I can restate, one --  
25 at the times when we were collecting oil and  
00538:01 measuring those it was at least that amount  
02 of oil being released, yes.  
03 Q. (BY MR. WILLIAMS) Plus more?  
04 A. Plus more.

Page 538:12 to 538:18

00538:12 Q. Now because I -- the thrust of  
13 your testimony, as I understand it is, you're  
14 not really qualified to sit here and give us  
15 some expert opinion over how much oil in --  
16 measured in barrels, escape from the Macondo  
17 wellhead?  
18 A. That is true.

Page 539:07 to 539:17

00539:07 Q. Where were you physically  
08 working? Where were you physically stationed  
09 in May and June?  
10 A. In May and June?  
11 Q. Uh-huh.  
12 A. In May and June I was in --  
13 well, at some point we transitioned the  
14 Unified Area Command from Robert, Louisiana  
15 to New Orleans, and that occurred, I believe,  
16 sometime in -- sometime maybe late May,  
17 may -- you know, maybe early June.

Page 539:22 to 541:14

00539:22 Q. Were there BP personnel in there  
23 with you at wherever you were physically  
24 located working?  
25 A. Yes, sir.  
00540:01 Q. Who?  
02 A. Large --  
03 Q. You don't have to give me every  
04 name. A large gro- -- several people?  
05 A. Right. In fact, those are on,  
06 I'm sure on the record but it would be at the  
07 Unified Area Command and there were several  
08 hundred, so...  
09 Q. Okay. Who was kind of in charge  
10 of them?  
11 A. Early at that time Doug Suttles  
12 would be.



13 Q. Okay. So Doug Suttles was there  
 14 with y'all at the Unified Area Command?  
 15 A. Yes, sir.  
 16 Q. And he was with BP, as we know,  
 17 right?  
 18 A. Yes, sir.  
 19 Q. Wasn't he at most of those press  
 20 conferences that you attended with Admiral  
 21 Landry?  
 22 A. Yes, sir.  
 23 Q. Wasn't he standing next to  
 24 Admiral Landry during most of those press  
 25 conferences?  
 00541:01 A. Yes, sir.  
 02 Q. At most of those press  
 03 conferences didn't Doug Suttles himself give  
 04 interviews and answer some questions at those  
 05 press conferences?  
 06 A. Yes, sir.  
 07 Q. Okay. How many of those press  
 08 conferences did Doug Suttles stand up and say  
 09 I want to emphasize that Admiral Landry's  
 10 numbers may be too conservative because we  
 11 think it may be more serious? How many times  
 12 did Doug Suttles in May and June 2010 at  
 13 those press conferences say that or something  
 14 like it?

Page 541:16 to 542:16

00541:16 A. I don't recall him making a  
 17 statement like that in those press  
 18 conferences.  
 19 Q. (BY MR. WILLIAMS) Okay. How  
 20 many times privately did Doug Suttles say to  
 21 you, Charlie Henry, with NOAA, look, you guys  
 22 are saying a thousand, you guys are saying  
 23 5,000; I'm telling you we have a lot of work  
 24 out here that indicates it could be a whole  
 25 lot worse than that? How many times did Doug  
 00542:01 Suttles say that to you?  
 02 A. Doug Suttles -- I don't recall  
 03 Doug Suttles stating anything to me in that  
 04 context.  
 05 Q. Okay.  
 06 A. To be fair, he would state the  
 07 unknown factor, but not in the context you  
 08 stated.  
 09 Q. Sure. How many times would Doug  
 10 Suttles say to Admiral Landry, who was  
 11 handling this matter and kind of you were  
 12 aiding her, that was one -- part of your job  
 13 responsibilities, as I understood it?  
 14 A. Yes, sir.  
 15 Q. To assist her, right?

16           A.       Yes, sir.

Page 542:21 to 543:02

00542:21           Q.       Okay. How many times did Doug  
22   Suttles say to Admiral Landry, Admiral  
23   Landry, you got to know we got a lot of  
24   analysis that indicates this spill is much,  
25   much more serious than a thousand barrels a  
00543:01   day? How many times do you remember Doug  
02   Suttles saying that to Admiral Landry?

Page 543:04 to 543:08

00543:04           A.       I don't remember stating it that  
05   way, but I do recall discussions on how much  
06   it might be, but it's the tone thing. I  
07   didn't -- so there were discussions on how  
08   much oil was really coming out.

Page 543:22 to 545:07

00543:22           Q.       (BY MR. WILLIAMS) Okay. How  
23   many times did Doug Suttles say to you, look,  
24   BP's interests are not a hundred percent  
25   aligned with NOAA, so we're doing an analysis  
00544:01   and we're not going to tell you about it?  
02   How many times did Doug Suttles say that to  
03   you?  
04           A.       Doug Suttles never said that to  
05   me.  
06           Q.       Sure. How many times did Doug  
07   Suttles say to Admiral Landry in your  
08   presence, look, BP is doing a lot of  
09   analysis, but we're not going to share that  
10   analysis to you? How many times did Doug  
11   Suttles tell BP that -- I mean, tell NOAA  
12   that in your presence?  
13           A.       I never heard that statement.  
14           Q.       Okay. Did you ever hear anyone  
15   with BP go to Admiral Landry and say, look,  
16   we're doing a lot of analysis and we got a  
17   lot of different flow rate and flow rate  
18   models, but we're not sharing it with NOAA?  
19   How many times did you ever hear that said  
20   that by a BP person to Admiral Landry?  
21           A.       None.  
22           Q.       How many times was it ever said  
23   to you, any BP person came to you and said  
24   we're doing a lot of flow model analysis, but  
25   we're not going to share it with NOAA?  
00545:01           A.       None.  
02           Q.       Okay. Would you like to have

03 known that? Would you like to have known  
04 that BP was doing a lot of analysis behind  
05 the scenes and they had made a decision that  
06 they were not going to share that analysis  
07 with you?

Page 545:09 to 545:20

00545:09 A. Well, I guess the incident  
10 commander would much prefer knowing because  
11 I'm just in support to her, but, I mean --  
12 Q. (BY MR. WILLIAMS) Okay, I'll  
13 switch it.  
14 A. Yeah.  
15 Q. Do you think Admiral Landry in  
16 trying to discharge her duties to the  
17 country, to the Gulf, to the people, to the  
18 media, do you think she would want to know  
19 that BP was doing flow model analysis and had  
20 made a decision not to share it with her?

Page 545:22 to 545:25

00545:22 A. It would be speculative on my  
23 part, but in a general sense, she would  
24 like -- always like to know whatever  
25 information is available.

Page 551:07 to 551:25

00551:07 Q. Okay. So this was really the  
08 first time you encountered a deepwater spill  
09 that was from the drilling -- on the drilling  
10 and exploration side?  
11 A. Yes, sir.  
12 Q. Okay. And, of course, these  
13 spills become technologically very  
14 challenging because the blowout preventer is  
15 5,000 feet away from you on the ocean floor,  
16 right?  
17 A. Yes, sir.  
18 Q. That means the wellhead is 5,000  
19 feet away from you on the ocean floor, right?  
20 A. Yes, sir.  
21 Q. And there is a limited amount of  
22 equipment you've got that you can reach the  
23 wellhead and with which you can reach the  
24 BOP?  
25 A. Yes, sir.

Page 556:24 to 558:11

00556:24 Q. Fair enough. And, of course, if

25 the oil is only leaking about a thousand  
00557:01 barrels a day -- we can all agree any oil  
02 spill is a bad thing negatively, right? It's  
03 an environmentally negative event. Can we  
04 agree with that?  
05 A. Yes.  
06 Q. Generally, the smaller the  
07 better? If we have to have a negative event,  
08 the less oil we have, that would be better,  
09 correct?  
10 A. I'd think that would be logical.  
11 Q. Sure. Okay. And if it's a  
12 thousand barrels a day, there is not much  
13 chance that oil is ever going to reach the  
14 shores of Louisiana, Mississippi, Alabama,  
15 Florida, and Texas, correct?  
16 A. Not -- not an appreciable amount  
17 would, yes.  
18 Q. But if it's 50,000 barrels a  
19 day, you have to immediately start worrying  
20 that it's going to reach the shores of  
21 Alabama, Mississippi, Louisiana, Florida, and  
22 Texas?  
23 A. Yes.  
24 Q. So it's better to know sooner  
25 rather than later if it's 50,000 barrels a  
00558:01 day and not just 1,000 barrels a day; would  
02 you agree with that?  
03 A. I would agree with that, but I  
04 would also agree that the response actions  
05 were not based solely on the volume at the  
06 time. It was still kind of a -- responding  
07 to a worst case and trying to get enough  
08 resources out there to encounter the oil.  
09 This spill was very different just even in  
10 the initial oil that reached the surface was  
11 already a challenge for -- for the response.

Page 561:05 to 562:16

00561:05 Q. Okay. The -- and I want to make  
06 sure I understand this thousand dollar a  
07 day -- thousand barrel a day number that  
08 originally got mentioned, I believe, on  
09 April 24th. Do you remember that line of  
10 questions you've been asked about that?  
11 A. Yes, sir.  
12 Q. Okay. Here's what I want to  
13 make sure I understand: That number didn't  
14 come from you? You didn't come up with that  
15 thousand barrel a day number, correct?  
16 A. Correct.  
17 Q. You heard Admiral Landry  
18 announce that at a press conference, correct?  
19 A. I -- I -- my first recollection,

20 it was -- it was stated in a conference call  
21 to the national response team.

22 Q. Okay. In your preparation for  
23 this deposition you asked Admiral Landry  
24 where she got that number, and she told you  
25 Captain Hanzlik?

00562:01 A. Yes.

02 Q. And in your preparation for this  
03 deposition -- Captain Hanzlik, of course, is  
04 with the United States Coast Guard?

05 A. At the time, yes, sir.

06 Q. Right. And you ask -- did  
07 you -- and you also asked Captain Hanzlik  
08 where he got that number, correct?

09 A. Yes, sir.

10 Q. And he told you he got that  
11 number from BP?

12 A. Yes.

13 Q. Who at BP did Captain Hanzlik  
14 tell you, or did he remember?

15 A. He stated that he could not  
16 remember.

Page 562:19 to 562:23

00562:19 Q. Any equivocation in Captain  
20 Hanzlik where he says maybe it came from  
21 somebody else, maybe it came from the Coast  
22 Guard, or was he pretty confident that it  
23 came from BP?

Page 562:25 to 563:03

00562:25 A. He, in my opinion, you know,  
00563:01 took some time and thought about it. He said  
02 he believed from his memory and he stated was  
03 that I got that information from BP.

Page 564:21 to 564:25

00564:21 Q. Right. Okay. Did the Coast  
22 Guard have the ability -- did it have the  
23 physical information on April 24th where it  
24 could have come up with its own estimate of  
25 how much oil was escaping from the wellhead?

Page 565:02 to 565:05

00565:02 A. I don't believe so, no, sir.

03 Q. (BY MR. WILLIAMS) Okay. My  
04 point is what source existed for a thousand  
05 barrels per day other than BP?

Page 565:07 to 565:08

00565:07 Q. (BY MR. WILLIAMS) To your  
08 knowledge?

Page 565:10 to 565:12

00565:10 Q. (BY MR. WILLIAMS) Was there any  
11 other source that that number could have come  
12 from that you know of?

Page 565:14 to 565:14

00565:14 A. No.

Page 566:15 to 567:04

00566:15 Q. And does NOAA have a  
16 decision-making or authoritative role within  
17 Unified Command?  
18 A. No.  
19 Q. Now, are you here to testify as  
20 a 30(b)(6) witness for the United States?  
21 A. Yes.  
22 Q. Are you here to testify as a  
23 30(b)(6) witness for the Unified Command?  
24 A. No.  
25 Q. And would testifying on behalf  
00567:01 of the Unified Command require that you  
02 testify on behalf of BP?  
03 A. BP is a member of the Unified  
04 Command, and, yes.

Page 567:15 to 568:01

00567:15 Q. Sure. Do you have any  
16 information about what BP believed the flow  
17 rate to be other than what they provided to  
18 you?  
19 A. No.  
20 Q. And so if you were asked  
21 questions about what scientific analysis the  
22 Unified Command performed, what information  
23 regarding BP's scientific analysis would you  
24 have?  
25 A. Only that that was provided, you  
00568:01 know, to me in the response.

Page 569:22 to 571:02

00569:22 Q. At any time frame, are you aware

23 of BP ever providing an analysis to Admiral  
 24 Landry to support a flow rate estimate of  
 25 6,000 barrels per day?

00570:01 A. My only recollection is is I  
 02 knew that there was some work -- some -- that  
 03 one sheet of paper from Dave Rainey that  
 04 showed a 1 to 6,000 barrel range, but I have  
 05 no knowledge what discussion happened with  
 06 Admiral Landry related to that.

07 Q. And, actually, if we can turn to  
 08 Tab 30, I think it is, and that was  
 09 previously marked as Exhibit 8937, and at  
 10 Bates stamp Page 903, that's correct, if you  
 11 turn to the Bates stamp Page 903.

12 A. Yes.

13 Q. Is this what you're referring  
 14 to?

15 A. Yes.

16 Q. And you'll see at -- where it  
 17 says "oil emitted," it has a range of 1,000  
 18 to 6,000 barrels?

19 A. Yes.

20 Q. Was any scientific analysis  
 21 provided to you to support the range of 1,000  
 22 to 6,000 barrels?

23 A. No.

24 Q. And, to your knowledge, was any  
 25 scientific analysis to support a flow range

00571:01 of 1 to 6,000 barrels ever provided to  
 02 Admiral Landry?

Page 571:04 to 571:04

00571:04 A. Not that I have knowledge of.

Page 571:19 to 572:17

00571:19 Q. Was it unusual for you to have  
 20 verbal conversations with representatives of  
 21 BP?

22 A. No.

23 Q. And, to your knowledge, was it  
 24 unusual for the admiral to have verbal  
 25 conversations with representatives of BP?

00572:01 A. No, it's kind of the foundation  
 02 of -- of the Unified Command.

03 Q. And would you always document  
 04 these conversations in writing?

05 A. No.

06 Q. To your knowledge, was BP  
 07 documenting the conversations in writing?

08 A. No.

09 Q. And, in fact, you know, what  
 10 percentage of your contacts that you had with

11 the -- the Unified Command would you say  
 12 occurred verbally?  
 13 A. Almost all. Within the Unified  
 14 Command, you know, it was always face to face  
 15 and meetings. So most -- you know, almost  
 16 all of it. I don't know if that answers your  
 17 question, but, sorry.

Page 576:15 to 577:02

00576:15 Q. And regarding the 5,000 barrel  
 16 estimate analysis performed by Dr. Lehr, do  
 17 you know whether Mr. Rainey and Dr. Lehr ever  
 18 had a conversation regarding that analysis?  
 19 A. I know I attempted to connect  
 20 the two so that they could talk directly,  
 21 and -- and I -- and I -- I think, yes, they  
 22 had conversations, yes.  
 23 Q. Well, do you know if during  
 24 those conversations they discussed the Bonn  
 25 Agreement?  
 00577:01 A. No, I -- I do not know the  
 02 content.

Page 577:08 to 579:13

00577:08 Q. And now I'm going to ask you to  
 09 turn to Tab 27, and this was previously  
 10 marked Exhibit 8897 C.  
 11 A. Yes.  
 12 Q. And if you look to the  
 13 second-to-last sentence under SSC 1, it says,  
 14 Thick oil volume, using average thickness of  
 15 a hundred microns, 1 percent average coverage  
 16 and 50 percent water content yields an oil  
 17 Volume 1,000 cubic meters equals 6,000  
 18 barrels equals .25 million gallons.  
 19 Did I read that correctly?  
 20 A. Yes.  
 21 Q. Do you know where Mr. -- or  
 22 Dr. Lehr derived the 1 percent average  
 23 coverage?  
 24 A. He stated that it was derived  
 25 from discussions with one of our aerial  
 00578:01 observers, Debra Simecek-Beatty, and that  
 02 they discussed -- and she had provided, you  
 03 know, in this simple breakdown of sheen to  
 04 dark oil that dark oil values may have been,  
 05 you know -- and I wasn't there for the  
 06 discussion, but I think the provision was  
 07 that it may have been as much as 3 percent or  
 08 about 3 percent from what she saw.  
 09 Q. And so why did Dr. Lehr use  
 10 1 percent?



11           A.       When I asked him that, he stated  
12 that because he felt that in talking with  
13 Debra that maybe she didn't see -- at the  
14 time maybe not have seen the whole slick and  
15 was concentrating more where the heavy oil  
16 was, and so he made a judgment of -- you  
17 know, all these numbers have some  
18 professional judgment and decision-making  
19 associated with them, that maybe she was  
20 focusing more where the heavy oil was instead  
21 of the satellite imagery, which -- which was  
22 large issue, it was hundreds of miles. And  
23 he made the decision that -- that maybe that  
24 was not reflective because she was probably  
25 nearer the heavier oil.

00579:01           I think he also said that in  
02 retrospect talking to her later on -- this  
03 was in my position as a 30(b)(6) witness --  
04 he said, you know, well, in follow-up  
05 discussions much after this that, you know,  
06 maybe she was more right than not as far as  
07 maybe 3 percent might have been a value worth  
08 using.

09           Q.       And so if you had used 3 percent  
10 average coverage, that would raise the  
11 estimate of the flow rate from these  
12 calculations?

13           A.       It would, yes.

Page 583:16 to 585:07

00583:16           Q.       Mr. Henry, in the examination  
17 conducted by the United States there were  
18 some questions asked about potential  
19 conversations between Dave Rainey and  
20 Dr. Lehr. Do you recall that, the testimony  
21 you gave?

22           A.       Just a few minutes ago?

23           Q.       Yes.

24           A.       Yes.

25           Q.       And you indicated that you had  
00584:01 been trying to get the two of them to talk  
02 together; is that correct?

03           A.       All I said was on that afternoon  
04 on -- I remember, you know -- what I remember  
05 was that I wanted to ensure that -- I wanted,  
06 basically, Dave Rainey and Bill to talk  
07 together and getting me out of being the  
08 middleman. Because they were talk -- both  
09 talking about, you know, one was talking  
10 about the amount of oil and I passed that  
11 information to Dave -- and I tried to get  
12 them to connected, and they did talk.

13           Q.       Okay. And how do you know  
14 that -- how many conversations did Mr. Rainey

15 and Dr. Lehr have?

16 A. I have no knowledge of that, of  
17 how many.

18 Q. And how -- how do you know that  
19 they talked that day?

20 A. I was told they talked. I mean,  
21 that's all I have. I have -- so I have  
22 indirect knowledge of that.

23 Q. Okay. Who told you that they  
24 talked on April 26th?

25 A. I think that -- you know, trying  
00585:01 to remember, but I feel confident they did  
02 because I gave the phone number and they  
03 connected and -- and I believe I followed and  
04 said y'all -- could y'all get together, you  
05 know, that kind. So my belief is that they  
06 connected, but I wasn't -- I don't have  
07 detail past that.

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00585:12 Q. And your recollection is that  
13 what you're talking about is one conversation  
14 they may have had on -- on or about  
15 April 26th, 2010?

16 A. Really, I think my fault was  
17 that y'all connect and that's -- that was  
18 really the level I'm at.

19 Q. Right, but the phone  
20 conversation that you alluded to earlier was  
21 a phone conversation that occurred on or  
22 about April 26, 2010?

23 A. Yes, sir.