

The Florida Times-Union

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El Faro Investigation

Overwhelming flood, instability sunk ship

Analysis shows vessel couldn't handle multiple sources of water



Two pictures of Jill Jackson-d'Entremont's brother, Jack Edward Jackson, sit on the front row, one from when he entered the Navy, and a more recent picture (left), during the hearing of the sinking of the El Faro Monday. Jackson was one of 33 crew members of the El Faro. The third hearing into the sinking of the El Faro began at the Prime Osborn Convention Center. The ship sank in Hurricane Joaquin, on Oct. 1, 2015. (Photos by Bruce Lipsky/Florida Times-Union)

By Sebastian Kitchen
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The El Faro was likely doomed when it encountered Hurricane Joaquin, according to a preliminary analysis released Monday that found the cargo ship was unable to handle multiple sources of flooding and vulnerable to the flood water moving inside its hull as the vessel was lashed by high winds and stormy seas.

In presenting the analysis, naval architect Jeff Stettler with the U.S. Coast Guard Marine Safety Center said the El Faro operated with little flexibility to improve its stability at sea because of how it was loaded.

Stettler presented the stability analysis on the



Lt. Travis Noyes (left) sits with Jeff Stettler as Stettler delivers his analysis on the stability of the El Faro. The report said the El Faro operated with little flexibility due to loading issues.

first day of a third and final Coast Guard hearing into the ship sinking on Oct. 1, 2015, that killed all 33 on board. The hearing is the first since investiga-

tors released a more-than-500-page transcript of the audio recovered on the ship's voyage data recorder that included discussions, and the harrowing final minutes, on the navigation bridge during the ship's final 26 hours.

Stettler discussed a computer model and analysis of the ship's stability and answered questions from federal investigators and attorneys for several parties including the ship's owner.

Stettler said that based on recorded conversations captured on board the ship in its final hours there was more than one source of flooding on the El Faro. Water continued to rise even after a hatch was closed, Stettler said.

Capt. Jason Neubauer,

EL FARO continues on A-3

Human Rights Ordinance passes council committee — with exemption

Panel: Companies with fewer than 50 employees would be exempt from law

By Christopher Hong
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A proposed anti-discrimination law for LGBT people on Monday moved a step closer to a final vote by the Jacksonville City Council, although council members added a significant change that would weaken workplace discrimination protections.

The change, made during the first of three council committee reviews the legislation will face this week, would allow a greater number of small businesses to be exempt from the law's ban on employment discrimination on the basis of sexual orientation and gender identity.

The new exemption would only apply to employment discrimination, businesses and landlords would still be held to much stricter rules related to housing and public accommodations, like restaurants providing service to customers.

Still, the amended legislation, if enacted, would effectively create a two-tier anti-discrimination law for the city.

While workers who believe they were discriminated against because of their race, religion or six other protected categories could file complaints with the city against a company with 15 or more employees, those who believed they were discriminated against because they are gay or transgender could only do so if they worked for a company that had fewer than 50 employees.

Councilman Doyle Carter, who proposed the change during the Neighborhoods, Community Investments and Ser-

HRO continues on A-3

City looks to roll back faster pension payments

And police union leaders indicate they could accept a 401(k)-style plan

By Nate Monroe
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Officials in Mayor Lenny Curry's administration revealed on Monday that they want to roll back a major pillar of a hard-won 2015 reform agreement that requires City Hall to more quickly pay off its staggering pension debt.

Curry's negotiators had previously signaled that they were targeting the 2015 reform law for removal, but they were mum on the full reasons why. It's now clear they want to unshackle the city from a requirement that it make accelerated payments on its pension debt by spending \$350 million over a 13-year period above and beyond the minimum required by state law. That provision was considered at the time to be a tough but responsible sacrifice by taxpayers to fixing a long-standing problem.

The revelation was made in a collective bargaining session Monday with the local Fraternal Order of Police. Curry is hoping his team can convince union officials to permanently close the police and firefighter pension plan to future employees. He instead wants to place new hires in a 401(k)-style plan that the public-safety

PENSION continues on A-3



Curry

Analysis

Trump: Media is covering up terrorist attacks

President's approach: Suggest that news is buried for a political agenda

By Philip Bump
The Washington Post

Speaking to the U.S. Central Command on Monday, President Trump went off his prepared remarks to make a truly stunning claim: The media was intentionally covering up reports of terrorist attacks. "You've seen what happened in Paris, and Nice.

All over Europe, it's happening," he said to the assembled military leaders. "It's gotten to a point where it's not even being reported. And in many cases the very, very dishonest press doesn't want to report it. They have their reasons, and you understand that."

The comment immedi-

TRUMP continues on A-3



President Donald Trump, speaking to troops at MacDill Air Force Base Monday, suggested that the media was part of the problem in fighting terrorism. (Susan Walsh/Associated Press)

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HRO

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vices committee meeting, said he didn't believe the 15-employee cutoff went far enough to protect small businesses from dealing with frivolous complaints.

"The little guy doesn't have large resources to fight all the way to a court case. It'd be a tough issue," Carter said.

It's unclear how many more businesses would be included under the new exemption, although more than 80 percent of Jacksonville businesses have fewer than 15 employees, according to figures from the JAX Chamber.

John Crescimbeni, the lone no vote against the new exemption, expressed concern that the council had created a "two-tier system."

"That's insane," Crescimbeni said.

The committee's change isn't binding. It could be removed by the two other committees that will review the legislation later this week or when it's up for a final vote, which could be as early as next week.

NO CONSENSUS YET

The committee meeting offered council members their first chance to debate the legislation since a similar bill was introduced last year but withdrawn before they could vote on it. By the end of the meeting, it was still unclear where many of the committee's six members stood on the issue.

The committee first debated a substitute version of legislation introduced by Councilman Bill Gulliford that included many significant changes.

Under that bill, business owners wouldn't be forced to provide services or other public accommodations if they felt doing so was contrary to their religious beliefs. They would also be allowed to restrict bathroom usage to a person's biological and birth-given gender if they made reasonable accommodations available, like single-sex facilities.

Gulliford's substitute was rejected in a 4-to-2 vote.

The committee ultimately voted to recommend passing the legislation in a 4-to-2 vote, although committee votes are not binding and aren't necessarily an accurate prediction of a council member's final vote.

'WORDS ON PAPER'

The meeting saw two potential supporters, Joyce Morgan and Garrett Dennis, display mixed signals on the issue.

Morgan and Dennis both voted to expand the small business exemptions, which many supporters of the legislation believe waters down its discrimination protections.

Morgan later said she was concerned the expand-

ed exemption might "get us in trouble" and unsuccessfully pushed for a second vote on the change.

Dennis made a series of comments that provided little insight to how he'd vote on the issue.

At one point, Dennis noted that the legislation — as well as the city's current discrimination protections — doesn't go far enough to prevent discrimination and is just "words on paper."

"What's the path if I feel discriminated against?" said Dennis, who is black. "There's no place for me to go."

'POLICING PRIVATE BUSINESSES'

Under the city's discrimination law, complaints can be referred to the city's Human Rights Commission. The commission can investigate complaints and forward them to different agencies. The city's current discrimination prohibitions carry a penalty of \$500 and 90 days imprisonment.

Later in the meeting, Dennis pivoted topics and questioned whether the city should prohibit businesses from discriminating.

"I'm against discrimination, but I do take pause when we start talking about policing private businesses," Dennis said.

Dennis' comments puzzled at least one leading advocate of the bill, local attorney Jimmy Midyette, legislative director of the Jacksonville Coalition for Equality, which is organizing a campaign to pass the legislation.

In a brief but tense exchange after the meeting, Midyette approached Dennis while he was being interviewed by reporters and asked him to explain his comments. Dennis asked reporters to turn their tape recorders off and told Midyette he'd talk to him later on the phone.

Once the interview resumed, Dennis said he's spoken to small business owners who said their "sweet spot" would be exemptions for companies with fewer than 50 employees.

When asked, Dennis wouldn't say whether he'd vote for the anti-discrimination legislation when it comes up for a final vote. He said he hasn't made any commitments during private meetings with people who have lobbied him, like Jaguars owner Shad Khan, who supports it.

"Nobody has gotten a yes or no out of me," Dennis said. "When I meet with individuals, they talk about their issues, and I talk about mine."

The legislation will be reviewed by the Rules committee on Tuesday and the Finance committee Wednesday. It must clear both panels in order to be voted on during Feb. 14's council meeting.

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Public comments on Jacksonville's Human Rights Ordinance were heard Jan. 25 after going to midnight the previous day. Two council committees will review the proposed ordinance later this week. (Bob Self/Florida Times-Union)

PENSION

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unions have resisted so far.

The two sides made fragile progress Monday.

For the first time, police union leaders indicated that they could accept a 401(k)-style plan for future employees. But that is contingent upon a significant city concession: The pension benefits for current employees — and the terms of the proposed 401(k) plans for new hires — must be effectively guaranteed for life. City officials were not ready to go that far.

City Administrator Sam Mousa flatly ruled out such a proposal during this round of collective bargaining, but said the city could revisit it in the future. That refusal frustrated union leaders, who said they are ready to sign a deal with that guarantee in place.

"We came here today to get a deal done," said Steve Zona, president of the local Fraternal Order of Police, during the negotiating session. He added near the end of the meeting: "I

don't know where we're going to go from here."

The desire for a long-term guarantee on benefits stems from what union officials say is a trust gap with the city. It also helps address their primary objection to 401(k) plans for future employees — that such plans do not provide the same kind of retirement security as traditional pensions.

There is no set date yet for the two sides to meet again and reconcile the divide. City officials meet with firefighter union leaders Wednesday.

FASTER DEBT PAYMENTS

The city presented the police union with a proposal that called for eliminating the additional payments City Hall and the Police and Fire Pension Fund had agreed to make on the pension debt. The proposal crafted by Curry's office characterized that requirement as little more than a "placeholder" until a longer-term solution to the debt problem was found.

That is not how city leaders characterized the agreement when it became law in 2015. In-

stead, the accord, which is monitored and enforced by a federal court, was believed to have been a major step toward reforming Jacksonville's troubled employee retirement system. The requirement to more quickly pay down pension debt was inserted deliberately and was based on a philosophy that the sooner debt is paid off, the less burden taxpayers carry over time.

Curry, however, believes he found a long-term solution that changes the game.

Voters approved a referendum over the summer that would dedicate the proceeds of a half-cent sales tax to paying down the city's \$2.85 billion pension debt. Unlocking that revenue and applying it to the full pension debt first requires the city to close its three existing pension plans to new hires.

Curry has viewed that as an opportunity to get Jacksonville out of the pension business all together — a first among major cities.

The 2015 reform law sought to end what were viewed at the time as unsustainably costly benefits for current employees. It

also created a less expensive pension plan for new hires. To entice skeptical union leaders into accepting his 401(k) plan, Curry offered to restore to all current employees the more expensive pension benefits that existed prior to the 2015 agreement.

Until Monday, his office had said that was their primary reason for wanting to eliminate the reform law.

It's clear that at least some of what the mayor has put on the table — including a series of pay raises for employees across the board — would cost taxpayers many millions more each year. But measuring the full effects of the many changes contained within Curry's offers to police, firefighters, corrections officers and general employees would require a significant and complex financial study.

Curry's office has refused to release any such reports it may have conducted, citing an exemption in state law that allows them to keep records pertaining to collective bargaining strategy secret.

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EL FARO

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chairman of the Coast Guard Marine Board of Investigation conducting the hearing, said he asked the Marine Safety Center to conduct the analysis, which also addressed likely contributing factors to the sinking.

Before opening testimony on Monday, Neubauer recognized the families of those lost who were in attendance or watching online. He also had those in attendance stand for a moment of silence to honor the 33 who perished when the ship sank. The names of those 33 were shown on a projector during the silence.

Stettler said the "plausible sequence" of the ship sinking was: ship compartment No. 3 flooding; another compartment begins flooding through vent openings; the ship losing stability and partially capsizing with part of the deck awash; containers breaking loose from the deck; continued flooding through the vent openings; ship sinking; and ship returning upright because of fixed ballast.

Stettler said he doesn't believe the ship every fully turned upside down and that it remained somewhat upright due to the fixed ballast.

QUESTIONS ABOUT FATIGUE, CAPTAIN

Cmdr. Matt Denning, a member of the Marine Board, asked former El Faro chief mate Raymond Thompson about fatigue as it pertained to a captain receiving calls from the navigation bridge while asleep. Two top El Faro crew members called captain Michael Davidson to warn him about the ship's proximity to Hurricane Joaquin, but he declined to change course, according to the audio transcript.

"It makes me question whether the captain actually woke up sufficiently to have that conversation," Denning said of one of the calls.

"I can get up pretty quickly," Thompson said about receiving calls.



Capt. Jason Neubauer (left), USCG, and Mike Kucharski, of the NTSB, listen as Raymond Thompson, who once served as chief mate on the El Faro, answers questions about procedures. The third hearing into the sinking of the El Faro began at the Prime Osborn Convention Center on Monday. (Bruce Lipsky/Florida Times-Union)

During previous Coast Guard hearings, there has been a lot of discussion about who ultimately decides if a ship can alter course. Executives with ship operator Tote Services Inc. and other captains have testified the captain has the autonomy to alter the route if he deems necessary.

Thompson said if he were making a major deviation from the course, he would probably send the company an email.

Crew members indicated in conversations captured by microphones on the ship that the culture on board discouraged them from reporting concerns about conditions on the vessel.

Thompson said the mates and captain took concerns about safety from the crew seriously.

When asked about fatigue because of one El Faro crew member indicating to family and friends she was tired, Thompson said he was not fatigued and did not hear complaints from crew members about exhaustion. He was also asked about a chief mate falling asleep on watch, but Thompson said he was not on board at the time. The transcript indicates a chief mate fell asleep repeatedly, but was not disciplined.

"I didn't see fatigue as being an issue," Thomp-

son said.

Marine Board member Keith Fawcett asked who was responsible on the ship for ensuring the crew received enough rest. Thompson said the captain is ultimately responsible.

Since the El Faro incident, Thompson said, software is used to track the rest of the crew.

When asked about Davidson's management based on how he handled concerns of crew members leading up to the ship sinking, Fawcett asked Thompson if he ever had concerns about approaching the captain.

"I have never had a problem asking him anything," Thompson said. Davidson told the mates his door was always open, he testified.

DAVIDSON ATTORNEY RESPONDS

William Bennett, attorney for Davidson's widow, Theresa, vigorously defended the captain against questions about his decisions and attentiveness leading up to the sinking. While the transcript indicates the two calls from mates urging Davidson to consider changing course, Bennett pointed out microphones on the ship only capture conversations on the navigation bridge, and not those in the captain's office, in the engine room,

or during meals.

"We have to be careful when we review the VDR. It's not the Bible, correct?" Bennett asked.

The attorney led Thompson through areas in the transcript in which Davidson talks about and plans for the weather and orders the crew to prepare for the storm. He also outlined repeated visits by Davidson to the navigation bridge.

"Goes along with his reputation for being meticulous and cautious, doesn't it" Bennett said to Thompson after walking through Davidson's repeated stops.

He also pointed out the ship was not supposed to encounter hurricane-force winds and urged against second-guessing Davidson. During previous hearings, Bennett has pointed to the woefully inaccurate forecast for the storm.

"We cannot put ourselves in Captain Davidson's position," Bennett said, "because we were not there."

The two-week hearing continues at 9 a.m. Tuesday at the Prime Osborn Convention Center, 1000 Water St.

The public can attend the hearing, which can also be viewed on a live stream at: livestream.com/USCGInvestigations.

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TRUMP

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ately harked back to comments from senior adviser Kellyanne Conway on MSNBC last week.

"I bet it's brand-new information to people that President Obama had a six-month ban on the Iraqi refugee program after two Iraqis came here to this country, were radicalized and were the masterminds behind the Bowling Green massacre," she said. "Most people don't know that because it didn't get covered."

It was brand-new information to people because there was no "Bowling Green massacre." Conway had referred to the supposed terrorist attack previously, including in response to a question posed by TMZ. But the two Iraqis arrested in Bowling Green,

Ky., in 2011 never committed an attack in the United States. She later admitted that she'd misspoken.

Trump's comment goes far further than Conway's, though. Her statement that "it didn't get covered" probably referred to the alleged "six-month ban" from the Obama administration. (That this, too, didn't happen has been somewhat swept under the rug.) Trump is positing that the media actively suppresses news of terrorist attacks to fulfill a political agenda.

It's certainly true that not every terrorist attack receives broad coverage in the national media. FiveThirtyEight looked at the likelihood that a terrorist attack in a foreign country would be covered by the New York Times, looking at coverage of 40,129 attacks from 1968 to 2009. Not every attack received coverage over that

period. Last spring, the Los Angeles Times set out to log every single terrorist attack in the month of April, counting 180 attacks that killed 858 people. Not every one of those attacks made your local nightly newscast.

But filtering what to cover is very different than suppressing information. On any given day, local newspapers and news broadcasts decide what to spend resources on. If your home is burglarized, it may not make the cut. This probably isn't because the Channel 5 news director has a vendetta against you; it's that there are limited resources.

Trump's comment is very much in line with comments he made last June about President Barack Obama.

"Look guys, we're led by a man that either is not tough, not smart or has something else in mind," Trump said

about Obama's response to the attack at a gay nightclub in Orlando. "And the something else in mind — people can't believe it. People cannot believe that President Obama is acting the way he acts and can't even mention the words radical Islamic terrorism. There's something going on."

Was Obama on the side of the terrorists? Trump didn't quite say that the media was siding with the terrorists, just that the media would happily ignore terrorism if it made Trump look bad.

Interestingly, Trump himself ignored the mass shooting that occurred at a mosque in Quebec last week, killing six people. White House press secretary Sean Spicer told the media that the president and the Canadian prime minister had spoken, but Trump himself declined to

weigh in. (Spicer cited the attack mostly as somehow validating Trump's immigration policies.)

Trump has consistently seen attacks like that in Quebec — committed by a young man who espoused anti-Muslim politics and defended Trump online — as isolated incidents from mentally disturbed individuals, while attacks by Muslims are part of a broader pattern spurred by radical Islamism. He sees an institution behind attacks by Muslims that he doesn't see behind attacks like that in Quebec or in Charleston in 2015. That helps explain why he is willing to focus the country's anti-terrorism efforts solely on terrorism committed in the name of Islam: He doesn't see how other threats are systemic.

With his comments on Monday, Trump implied

that the media is complicit in making terrorists successful. It's part of a recent pattern of suggesting that others are standing in the way of his terrorism-fighting efforts, which includes disparaging a federal judge who halted his immigration executive order.

Conway's comments about Bowling Green earned her an enormous amount of public mockery — an undue amount, given the likelihood that her comments were a mistake rather than an intentional lie. Trump's comments are of an entirely different order and magnitude.

Trump's relationship with the media has never been strong during his time in politics. But he's never before tried to push the media into the "against us" circle alongside those who commit acts of terrorism — at least, not so explicitly.