

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

No. 3AN 89-7217; 3AN 89-7218

OMNIBUS HEARING
NOVEMBER 27, 1989
PAGES 1 THROUGH 211

VOLUME I

NOTE: Due to the poor quality recording prepared by Alaska Court System Personnel, "indiscernible" portions appear throughout this transcript, primarily the "Bench Conferences".

INVENTORY OF HAZELWOOD TRANSCRIPTS

State of Alaska v. Hazelwood

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THIRD JUDICIAL DISTRICT
AT ANCHORAGE

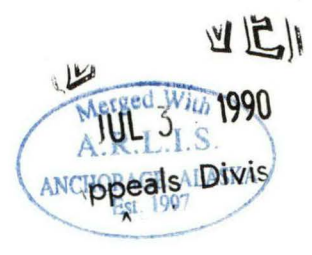
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Original

H & M Court Reporting
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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
November 27, 1989
8:35 o'clock a.m.

APPEARANCES:

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1 PROCEEDINGS

2 NOVEMBER 27, 1989

3 (Tape: C-3499)

4 (000)

5 (On record - 8:35 a.m.)

6 THE CLERK: ...the Honorable Karl S. Johnstone
7 presiding, is now in session.

8 THE COURT: You may be seated. Thank you.

9 It's the time set for proceedings in the State
10 of Alaska vs Joseph J. Hazelwood. Case is 89-7217 and
11 7218 in Anchorage. Everybody is present.

12 Before we go into the substantive portion of
13 this, I want to take care of some administrative
14 matters. I don't know if we need to go on the record
15 with this. I want to go through some media coverage
16 guidelines and try to accommodate all the parties
17 involved. We can stay on the record or we can go off
18 the record as counsel may preference.

19 MR. FRIEDMAN: No, Your Honor.

20 MR. LINTON: My preference is to stay on,
21 Judge.

22 THE COURT: Okay, we'll stay on the record,
23 then. I've had numerous media requests and as a result
24 of what I anticipate to be media interest, I
25 sequestered the media courtroom, Courtroom "C", and for

1 the duration of these hearings, we'll meet in Courtroom
2 "C". Your media requests that you make today will
3 fulfill requirements for any media attendance
4 throughout the duration of this hearing and trial as
5 well, so you don't need to do it twice. It will cover
6 for the duration.

7 I understand all media requests that when
8 signed, will have to be taken downstairs and you will
9 have to get a badge of some sort. That's an
10 administrative policy here which I do not set, but I am
11 concurring. So, I will sign these media requests. If
12 you have not filed a media request during the first
13 break we take, I have additional forms here you can
14 fill out and take them downstairs for your badge.

15 We're in the media courtroom, but I went
16 through the back room last week and I think it's wholly
17 inadequate to give adequate coverage to any case that
18 it was implemented back in the dinosaur days when we
19 try to avoid pictures of defendants and other persons
20 involved. So, I'm going to permit -- and it cannot be
21 altered without some drastic change or something, so
22 I'm going to permit some cameras in the jury box which
23 can be pooled to some extent and the audio hook-up can
24 be made with the Gyre machine.

25 If you wish to go in the back room, you can

1 hook your equipment up in the back room with the
2 assistance of our technician. You'll see what cameras
3 are available there and you can pool what resources you
4 need back there as well. I intend on only allowing two
5 video cameras in the jury box and as far as still
6 cameras, a couple of still cameras. I think you can
7 pull that; two ought to be sufficient in the jury box.

8 If you think that's insufficient, you'll have
9 a fairly high burden of showing me why. You can pull
10 your video coverage from the jury box. I'm going to
11 permit two cameras there. I don't know where your
12 still cameras want to be, but if you want to put a
13 couple of technicians in the jury box with still
14 cameras, that would be adequate as well. But, I can't
15 have a bunch of equipment in that jury box going off,
16 worrying and clicking and clacking a lot. It will be
17 somewhat distracting before I can tolerate.

18 I'm going to bar the first row there. We're
19 going to put some tape on the first row of spectators
20 so that nobody will be able to sit there and the
21 purpose is so you cannot overhear conferences between
22 counsel and their parties. I don't want any recording
23 of conferences between counsel, witnesses sitting at
24 counsel table or the representatives of the party or
25 the party themselves. That's to effectively deter

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that.

If we run out of room in the court, then we'll move counsel tables up a little bit and we'll fill up the first row, but it looks like we have some room now.

Now, a few people came into my office this morning and filed media requests and I said that I would entertain any suggestions of these specific complaints you have with the system we have here now. If you have a problem with what I've just said, two still cameras and two video cameras, and you think you can convince me well, there should be some changes, you can raise your hand and tell me now, but you have a high burden to overcome. Is there any problem with what I've just set forth?

Yes, sir, your name, please?

MR. WALSH: My name is Pat Walsh. I'm with Channel 11. There are three television stations in this town. In fairness to all three of us, is there any way that the three of us can be in that box?

THE COURT: Well, that's not sufficient. We've always had three television stations in town and generally, I only allow one camera, Mr. Walsh. So, that's not a good enough reason. Is there any other problem with what we've set forward here?

MR. JOHNSON: Your Honor, I'm just curious

1 about what -- I'm with the "Anchorage Times". My name
2 is Walt Johnson and I'm foreseeing some media in the
3 future -- if there is more than two still cameras,
4 what's going to determine who gets in the jury box and
5 who doesn't?

6 THE COURT: Well, you're going to need one
7 person for each camera and you'll have to work that
8 out. Our media coverage guidelines says you folks work
9 that out. If you can't work it out, they say that
10 you're to be excluded. So, I don't want to take any
11 drastic steps like that. I'm sure you all can work
12 that kind of thing out with the cameras.

13 Now, when we break, we don't have a security
14 problem here. We have some security personnel here
15 just to make it look impressive, I suppose, but there's
16 not a security problem. When we break, I don't want to
17 have a bunch of interviews going on in court. These
18 folks have got more important things to do than
19 interview in the courtroom.

20 If you want to get some statements from the
21 players, you can wait until they get out of the
22 courtroom. I'm not going to permit any interviewing in
23 the courtroom during the course of the hearings and
24 we'll take 15, 20 minute breaks. I always say 10
25 minutes, but it lasts a lot longer, so you'll have

1 plenty of time to hook and unhook, so when we come back
2 in, everybody would be in place.

3 UNIDENTIFIED SPEAKER #1: What about the
4 additional media request (indiscernible - away from
5 mike)?

6 THE COURT: Yeah, I have some here. As soon
7 as we take a break here, Mr. Purden will distribute
8 those forms to those who have received one and take
9 them down to me and I'll sign them as quickly as I can
10 so you can go downstairs, and we'll wait until you all
11 get geared up here. We'll give you an appropriate
12 length of time, but then we're going to start and we
13 won't be moving cameras in and out during the course of
14 the proceedings.

15 UNIDENTIFIED SPEAKER #1: You mentioned
16 cameras and still cameras, but on the radio, we just
17 hook it up and then we don't need to sit back there,
18 but we can hook it up (indiscernible - away from mike)?

19 THE COURT: You can hook it up back there for
20 radio. You don't need to come up here. We have many
21 plug-ins back there. Do we have a technician here for
22 -- is our tech here?

23 UNIDENTIFIED SPEAKER #2: (Indiscernible -
24 away from mike)

25 THE COURT: Okay, our techs can show you what

1 to hook up to back there for -- you might look back
2 there before you think that it's not adequate because
3 there may be some portions of it that are adequate
4 where you can hook up your camera equipment, your movie
5 camera equipment, video camera, and your soundtracks
6 back there and you may find it just as easy back there.
7 You can talk back there to some extent. It's sound-
8 proof to some extent and you might be able to
9 communicate among yourselves back there. So, take a
10 look at it and I'll leave it up to you what you want to
11 do.

12 Anything further?

13 UNIDENTIFIED SPEAKER #1: Your Honor, you said
14 no interviews in the courtroom. Would right out in the
15 hallway be okay?

16 THE COURT: Sure, in the hallway is fine, but
17 not in this room here. Okay, what I plan to do is take
18 a break and let everybody get their requests in and as
19 I say, these requests are going to be good through the
20 duration of this proceeding involving this case. So,
21 you don't have to continue and these rules in Courtroom
22 "C" will apply throughout the proceedings, these
23 hearings and any subsequent hearings that may become
24 necessary.

25 Okay, we'll take a brief recess and we'll come

1 back in when everybody gets set up. I'll leave that up
2 to Mr. Purden to get that arranged. Will you have
3 anybody else at counsel table with you, Mr. Linton?

4 MR. LINTON: No, Your Honor.

5 THE COURT: Okay, we'll stand in recess.

6 THE CLERK: Please rise. This court stands in
7 recess subject to call.

8 (348)

9 (Off record - 8:43 a.m.)

10 (On record - 9:19 a.m.)

11 THE COURT: Be seated. Thank you. To resume,
12 just for counsel's information, I have all day
13 available, so I would plan on taking a normal lunch
14 hour. Going back after a reasonable lunch hour and go
15 until 4:30. Tomorrow, we would only be able to go
16 until about 1:30 and I think I've got things on the
17 calendar Wednesday, too, but we'll see how it works
18 out.

19 All right, I'll just address one of you and
20 since you're looking at me, Mr. Friedman, you'll be the
21 person. How would you like to proceed? You have
22 several motions. I understand you like to take care of
23 the immunity issues first and how would you like to
24 proceed on that? And, then, Mr. Linton, you can give
25 me your input in it.

1 MR. FRIEDMAN: Your Honor, as I suggested in
2 the brief, I think it would be helpful to both parties,
3 I don't know how the court feels about this, but that
4 it would be helpful to both parties to present the
5 legal arguments to the Court relating to independent
6 source and the inevitable discovery. If you're in a
7 position to rule on that after the oral arguments, we
8 may not need to take any testimony or on the other
9 hand, if you're not in a position to rule, I think that
10 it would be helpful to you in terms of crystallizing
11 what you're interested in hearing in terms of
12 testimony.

13 If you don't want to hear oral argument as
14 such, I would ask for maybe five minutes to give what
15 would amount to a small opening statement of what we
16 expected of the facts to show and how they tie into the
17 law.

18 THE COURT: Mr. Linton, do you concur in legal
19 arguments first or would you rather proceed with
20 opening statements, get all the evidence under your
21 belt and then do legal arguments at the conclusion?

22 MR. LINTON: The latter, Your Honor, and I
23 state that because the question isn't purely a legal
24 one, I don't believe. That is, if Your Honor were to
25 conclude as a matter of law that the report of a

1 grounding is independent of a report of a spill, but
2 there's an independent duty, that still doesn't show
3 that there would have been a similar response to that
4 report as opposed to the report of the oil spill. That
5 is, would -- in fact, assuming it's an independent
6 source, would the same response have occurred. That's
7 a factual question as opposed to a legal one.

8 There's some authority in the 9th Circuit in
9 the Crossan (ph) case that you can decide those matters
10 on affidavits and I had affidavits that I would be
11 willing to submit to fill out that portion of the
12 requirement of law, that there be some factual basis to
13 conclude that there would have, in fact, been a
14 response.

15 But, the Defense might want to cross examine
16 those witnesses and it seems to me we're going to be in
17 a state where we're going to need to take testimony
18 anyway and since that I would ask that we have the
19 factual basis as well as the legal one on that score,
20 on whether it's an independent source or not, and the
21 Defense is going to want to cross examine and I think
22 we're kind of at loggerheads and I think the smarter
23 way to go is to go ahead with the immunity question,
24 both prongs of it, independent source and inevitable
25 discovery with witness and then argue the whole thing

1 at the end.

2 (500)

3 THE COURT: All right, Mr. Friedman, am I
4 interpreting in your remarks that there is no longer an
5 issue on whether or not the scheme of immunity that
6 would be afforded Captain Hazelwood would be
7 transactional versus use/derivative use?

8 MR. FRIEDMAN: I guess my thought, Your Honor,
9 is that use/derivative use as a cleaner legal area.
10 The transactional immunity argument we made under the
11 state Constitution, I think it's well briefed. I think
12 you're going to make your decision. I'm not sure you
13 need a whole lot of argument on it. I guess I sort of
14 assumed that if you were going to decide in our favor
15 on transactional immunity, you probably have a pretty
16 clear idea of that and if you decide it against us, we
17 need to then address use/derivative use.

18 THE COURT: Do you wish argument on that issue
19 or are you willing to present it on the briefs?

20 MR. FRIEDMAN: I'm willing to rely on the
21 briefs, Your Honor.

22 THE COURT: Mr. Linton are you willing to...

23 MR. LINTON: Yes, Your Honor.

24 THE COURT: All right. So, I'm inclined to go
25 along with Mr. Linton's request here to present

1 evidence, do a brief opening statement if you need to.
2 I know what the issues are here and if you need a brief
3 opening statement to outline how you're going to
4 present it, that would be somewhat helpful, but as far
5 as tell me what you're going to offer, I think I know
6 what you're going to offer both sides.

7 It seems to me that the burden here is on the
8 state using a use/derivative use immunity scheme. I
9 pretty much made up my mind that the Defendant is not
10 entitled to a broad transactional immunity under our
11 legislation. I think under Kastigar and under our
12 statute and subsequent case, that it's a use/derivative
13 use. That's the way I'm feeling now and I don't think
14 there's much you can say to change my mind, but if
15 during the course of the proceedings something comes
16 up, I'll certainly entertain it, but that's the way I'm
17 proceeding at this time.

18 So, why don't we go ahead? I think that the
19 facts in the law are so interconnected here that for me
20 to have a full understanding of the parties' positions,
21 I'm going to need to hear evidence before I can make a
22 final determination on the law to be applied. So, why
23 don't we proceed on that basis, Mr. Friedman?

24 If you want to, Mr. Linton, you're going to
25 present your evidence first. If you want to give me

1 some summary of how you intend on proceeding, you can
2 do so, or you can call your first witness.

3 MR. LINTON: I would like to give a brief
4 summary, Judge.

5 THE COURT: Okay.

6 MR. LINTON: Judge, if we start with the
7 proposition that both federal and state law give the
8 master of a vessel use immunity for the report of an
9 oil spill, there are two doctrines of law under which
10 the state may avoid that immunity. One is what's
11 referred to as an independent source theory. The other
12 is an inevitable discovery theory.

13 Briefly stated, an independent source theory
14 is where there is some report which is received by the
15 government which would cause the investigation to go
16 forward in the form in which it did. In the common
17 case, somebody else sees it and reports it either
18 before or simultaneous with, in some instances even
19 after, but not substantially after, the spiller makes
20 his report.

21 The other is a doctrine of inevitable
22 discovery. That is, our position is that at some
23 point, the consequences of the spill become so great
24 that persons would have become aware of it even if
25 there had been no report. In fact, even if the master

1 of a vessel had exercised his 5th Amendment rights
2 which he shouldn't really have and simply remained
3 silent. That is, if the vessel had gone aground and
4 Captain Hazelwood, in this case, not made any report at
5 all, would this spill have been found and when?

6 I would like to give you a brief overview of
7 the testimony. I expect to cover those two theories
8 and then witnesses who will testify that the state was
9 aware of this problem and took steps to segregate
10 lawyers who might be exposed to materials which were
11 immunized, properly immunized, from those which are
12 not.

13 Judge, I've got basically three groups of
14 witness that I'll be calling. The first are a group of
15 witnesses who made decisions about whether to go out to
16 the Exxon Valdez. They are Commander Steve McCall, who
17 was head of the Coast Guard Unit. Number 2, Lieutenant
18 Commander Thomas Falkenstein, who was second in command
19 of the Coast Guard unit in Valdez and Warrant Officer
20 Mark Delozier, who was an investigator who went along
21 with Commander Falkenstein to the Exxon Valdez that
22 morning.

23 I have two other witnesses, one would be Dan
24 Lawn, an employee of the Alaska Department of
25 Environmental Conservation and finally, Michael Fox, an

1 officer of the Fish and Wildlife Protection Division of
2 the Alaska State Troopers.

3 Judge, the gist of the testimony that I expect
4 to elicit from these people is this: given their
5 knowledge of Prince William Sound, and of the kind of
6 vessel involved here, had they learned simply that the
7 vessel was fetched up hard aground on some rocks in
8 Prince William Sound, they would have gone to that
9 location and done an investigation even if there had
10 been no report of an oil spill.

11 Now, Judge, I have Dan Lawn and Michael Fox
12 here this morning and are prepared to go with them here
13 this morning. Commander Falkenstein and I have Mark
14 Delozier coming in this afternoon. Commander
15 Falkenstein couldn't get away this week and wouldn't be
16 available until next Monday and the same is true with
17 Commander McCall and I may even have to request the
18 Court that he be permitted to testify telephonically at
19 some point here this week.

20 (800)

21 But, those are the five witnesses I expect to
22 call on the question of an independent source. Then,
23 Judge, I got a group of witnesses who will address
24 themselves to the inevitable discovery theory and they
25 are in three separate groups. First, to some extent,

1 Commander Falkenstein will cover that, but more
2 importantly, the captain of the Chevron California will
3 cover that.

4 Judge, referring to a chart of Chart Number
5 16700 of Prince William Sound, the Exxon Valdez was on
6 the rocks at roughly midnight, give or take 10 minutes,
7 at this location, Bligh Reef. This is the Bligh Reef
8 bell and this little area here is Bligh Reef. The
9 vessel was outbound from Valdez Harbor. There is
10 vessel traffic separations, which is actually portrayed
11 on this 16700 chart. It's this blue area here.

12 There is a northbound, inbound lane, the
13 traffic area starting at Hinchinbrook entrance to
14 Prince William Sound. There is an inbound, northbound
15 lane on the east side of the zone laid out on the map.
16 There is a southbound lane on the west side portrayed
17 here and in between, a separation zone, which is
18 denominated as such on the chart.

19 The Chevron California was here at
20 Hinchinbrook Entrance at about 12:00, maybe a quarter
21 after 12:00. It was inbound and it was going to be
22 going directly into Valdez Harbor. That is, there were
23 times when ships back up at the entrance in trying to
24 get into the docks at the terminal. They will actually
25 wait in an anchorage area located off Knowles Head,

1 here, and they'll sit and wait their turn to come in to
2 load up before they head south.

3 But, on this occasion, on the night of March
4 23rd and 24th, there were no other vessels waiting to
5 get into the dock, so that they just took Alyeska
6 Terminal so that the Chevron California could come
7 straight in from his position here.

8 As the Exxon Valdez had been outbound, reports
9 had been heard that there was ice in the traffic lanes.
10 The Columbia Glacier sits right here and ice breaks off
11 of the Columbia Glacier, comes out Columbia Bay and
12 then slides, moves into the traffic lanes from time-to-
13 time and on this particular evening, the vessel that
14 had gone ahead of the Exxon Valdez had encountered ice
15 and had reported that to the Coast Guard station in
16 downtown Valdez and they, in turn, had reported it to
17 the Exxon Valdez as it was leaving.

18 So, that as the master and the pilot on board
19 came out and left the port of Valdez, they had been
20 told that there was ice in the lanes, which they should
21 be alerted for. Similarly, the Chevron California was
22 concerned about ice in those lanes because it was going
23 to have to be making a transit shortly thereafter and
24 that there were radio communications between the Coast
25 Guard station in Valdez and the Chevron California as

1 it was coming in saying "We have reports of ice in
2 these traffic lanes, so you might want to talk to the
3 Exxon Valdez when the two of you start coming closer
4 together." That is after the Exxon Valdez had gotten
5 out of it, through the ice, probably passed Bligh Reef
6 and points further south in the inbound, and then you
7 can talk to him and get up-to-date reports of what the
8 ice conditions were there.

9 So, the Chevron California was, "anxious" is
10 too strong a word, but interested in talking to the
11 Exxon Valdez to find out what the ice conditions were.
12 Now, the channel that's used by vessels to communicate
13 from the reef area at Hinchinbrook Entrance with the
14 Valdez Coast Guard station is the same channel that
15 ships use to talk in the Prince William Sound area from
16 bridge to bridge. So, that the communications from the
17 Coast Guard station to Valdez may be overheard assuming
18 there is no interference with radio transmission,
19 atmospheric conditions, or whatever there is. It may
20 be overheard by other vessels in the system and vice
21 versa. That is, if they're talking to the Coast Guard,
22 other vessels can overhear their conversations.

23 Given the testimony then, we'll proceed under
24 the theory that the state is advancing, that the Exxon
25 Valdez, to give the Captain the absolute benefit of his

1 5th Amendment right, let's assume that he never
2 reported being aground or spilling oil. He would then
3 have been sitting at this location, having said
4 absolutely nothing to anyone about his situation. Had
5 that been the case, given the normal speed with which
6 it travels from the Hinchinbrook Entrance, the Chevron
7 California would have been in a position at Bligh Reef,
8 at roughly 3:00 to 3:30 in the morning. It has radar
9 on it, two sets of radar, actually, which carry 12 and
10 24 mile ranges of radar that advance to other scales,
11 but normally just on those.

12 The scale on this chart of this would be 10
13 nautical miles. So, at the point it reached its
14 position in the inbound lane off of Bligh Reef, it
15 would have been within two or three miles, five at the
16 outset. That's 10 -- two, three, four miles from the
17 Exxon Valdez. It would have seen it on its radar. It
18 could distinguish this little bell which would have
19 shown up on radar from a ship 1,000 feet long, 900 some
20 feet long, and would have been the position to say to
21 the Coast Guard "Hey, I've been looking for the Exxon
22 Valdez. I didn't pass it. I would have seen it on my
23 radar if I passed it. I haven't seen it and I've
24 gotten up here and now I find there's something off
25 Bligh Reef on my radar that's big enough to be a ship.

1 I can maybe see the lights on the ship. And, the Coast
2 Guard station, as of 3:30, I'm telling you that the
3 Exxon Valdez is aground on Bligh Reef."

4 So, that as of roughly 3:30 in the morning,
5 the location of the vessel was -- and the fact of it
6 being aground would have inevitably been discovered.
7 Actually, Judge, there is another route by which you
8 get to that. A fellow I expect to have testify next
9 Monday, a fellow named of Bruce Blandford who works in
10 the Coast Guard station.

11 One of the means of operating this system is
12 to have reports made to the Coast Guard. That is,
13 before you come to the Hinchinbrook Entrance, you're
14 supposed to report when you're going to arrive here so
15 they know how much traffic is coming in. You report
16 when you arrive here so they know where people are.
17 And, then, there's another reporting station off of
18 Naked Island, this position abeam Naked Island.

19 That's an intermediate point where the Coast
20 Guard can make sure they know where you are and you
21 report when you get abeam Naked Island, they can know
22 where you are in your transit outbound or your transit
23 inbound. And, there is actually regulation which
24 requires the report at that position when you are
25 traveling in this traffic separation scheme, coming and

1 going from Valdez.

2 Before he went aground, Captain Hazelwood
3 called the Coast Guard station and estimated that it
4 would be abeam Naked Island at 1:00 a.m., 01:00. He
5 did say that as he was making is diversion out of the
6 traffic lanes to go around ice, that he might have to
7 update that report. He might have to amend it because
8 of the additional time needed to travel outside the
9 lane and make whatever maneuvers he needed to avoid the
10 ice.

11 Well, by 1:00, the Coast Guard station was
12 expecting some kind of report from the Exxon Valdez.
13 It might have had some fudge factor for the fact that
14 he was going to take a little longer going around ice,
15 but at roughly that time, they were expecting some kind
16 of report. Had the Exxon Valdez been aground here,
17 they would have tried to contact them. "Where are you,
18 Exxon, Valdez? How far have you gotten? Have you
19 gotten to Naked Island, yet? It took longer or it did
20 not take longer than you estimated? Where are you now
21 because we've got the Chevron California coming in."

22 Had they started looking at that time, the
23 Coast Guard would have been able to actually see the
24 vessel on its radar. That is, as it was when the
25 vessel went aground and reported it, the Coast Guard

1 station was able to make out the position of the vessel
2 on the reef. They had not been tracking it as it went
3 out, but at the time it was called to their attention,
4 they could see the position of the vessel on the reef.

5 So, that as of roughly the 1:00 time, had the
6 Coast Guard started looking, they might have been able
7 to see it on the reef, but when you add the Chevron
8 California's report, then the Coast Guard station for
9 sure could have identified the thing on the reef as the
10 Exxon Valdez.

11 (1280)

12 Those are two witnesses that will be called.
13 Judge, there are then four other witnesses. Three of
14 them are residents of a town called Alamar that sits
15 right here on the mainland. It's not really a town;
16 it's just a collection of houses and a man named Dave
17 Lindenaugh lives there. And, lived there in a position
18 where he has a view between the island of Bligh Island
19 and I think this is Busby Island on the north, to the
20 north of where he can see between those islands and see
21 out to the position on Bligh Reef.

22 He got up at roughly 6:00 or 7:00 that
23 morning, looked out his window and saw the Exxon Valdez
24 aground on the reef. Turned on his radio and then
25 began hearing all this press coverage. Radio and

1 television had already started up at the hour that he
2 saw it. But, he, then, himself, went out to the
3 vessel, went around it, to the south, and saw that it
4 was leaking oil. The back of his boat slowed down as
5 it came into the oil, it was so thick.

6 So, as of roughly 7:00 to 8:00, he has not
7 only perceived it, but he is out there at the vessel,
8 itself, seeing the oil on the ground. He has been in
9 maritime businesses for about 20 years and he is
10 prepared to say that "When I turned on the radio, had I
11 not heard that everybody knew about this thing already,
12 then I would have told somebody that this vessel was in
13 distress, but as it was, it seemed apparent that
14 everybody knew that already, so I didn't need to do
15 that.

16 There are two other people, the Heston family,
17 James and Lucinda and Cindy Heston. They live in
18 Alamar, too, and they could see the vessel on the rocks
19 and actually James Heston went out in a boat himself at
20 roughly the same time in the morning to go out to the
21 Valdez and go around it and look at it.

22 There was another person, a resident of the
23 village of Tatitlek, a little bit further south from
24 Alamar, who heard reports on the radio and hoping he
25 could find work, went out around the vessel and saw the

1 vessel at roughly that 8:00 time in the morning.

2 A little later in the day, there was a fellow
3 named Gary Graham who was a pilot who works in Cordova,
4 Alaska. He flew a route which went from Cordova to the
5 village of Tatitlek. He was to fly a flight at roughly
6 9:00, 9:30 that morning and his route would have taken
7 him to Tatitlek from which position, he says, he would
8 have been able to fly about 1,600 feet high. So, at
9 the altitudes he was flying, he would have been able to
10 see the Exxon Valdez when he did that. In fact, he had
11 heard about it on the radio earlier and flown out in a
12 private plane just to look the situation over and gone
13 back and gotten to do the mail flight. But, he would
14 have seen it had he been on the mail flight.

15 Judge, with those witnesses, we ask the Court
16 to find that, to roughly sum up conservatively, the
17 Exxon Valdez would have been found aground. The
18 Chevron California probably places it close to 3:30,
19 really, but even most conservatively, at the time these
20 other people are seeing it, it would have been
21 discovered on particularly, Dave Lindenaugh.

22 That means that if you add to that travel time
23 for someone to get the report and then to get on a boat
24 from Valdez and go out there to see it themselves, the
25 investigation would have begun. We placed that as

1 roughly 8:30 in the morning.

2 Judge, as you listen to the testimony, we ask
3 that you focus on some of these times because it makes
4 a difference. The two theories that the state has do
5 not lead to the same result. That is, if indeed the
6 report of the grounding made as part of the same
7 conversation, but nonetheless an independent duty on
8 the part of the Captain, if that is an independent
9 source, then actually all over the state, all of the
10 evidence gathered, would be admissible against Captain
11 Hazelwood.

12 However, if only the inevitable discovery
13 theory applies, then one must find time when that would
14 have occurred because that time, then, serves to define
15 what observations which fell before it, would not be
16 admissible in evidence and which observations
17 thereafter would be admissible. For example,...

18 (Side conversation)

19 MR. LINTON: Roughly 12:04, the grounding,
20 12:28, the report. The Coast Guard arrived at
21 approximately 3:30. Dan Lawn of the Environmental
22 Conservation on board. It's roughly 3:30 that the
23 Chevron California would have come by and it was
24 roughly 1:00 that the Naked Island report would have
25 been made. It's roughly -- got up at 6:00, roughly

1 7:00 that the Alamar people see the vessel.

2 The Coast Guard people actually left about
3 1:30 and traveled roughly two hours. The Coast Guard
4 people called Michael Fox at roughly 4:00. He left at
5 roughly 5:00. Got there at 6:15; traveled an hour and
6 15 minutes. But, then once he arrived, things happened
7 on the vessel. There's an interview by Mr. Delozier,
8 with Trooper Fox sitting in, with Kagan, the helmsman
9 of the Exxon Valdez at roughly 7:45.

10 Thereafter, Mr. Cousins is interviewed, the
11 third mate. At roughly 10:00 a.m., blood samples,
12 blood and urine samples are taken from members of the
13 crew including Captain Hazelwood. At roughly 1:00
14 p.m., Captain Hazelwood is interviewed by Mr. Delozier
15 with Trooper Fox sitting in.

16 So, that if you find, for example, that the
17 evidence that we present doesn't show it would have
18 been found until 3:00 in the afternoon, then things
19 which fell before then would not be admissible in
20 evidence and that means that those things, for example,
21 the blood and urine, will not be admissible and the
22 Hazelwood statement would not be admissible under the
23 inevitable discovery doctrine.

24 Of course, as I said, under the independent
25 source doctrine, everything from report time, actually,

1 on down, would be admitted. And, if you found it fell
2 at the time that they suggest, roughly 8:30, then what
3 would be properly suppressed would be things which
4 occurred before then like the observations of Dan Lawn
5 when he first arrived there, like the observations of
6 the Coast Guard people when they first go out there and
7 everything that fell in between the report and that
8 time will be properly suppressed.

9 (1767)

10 Now, with that, I would like to talk about the
11 third group of witnesses that I proposed to call
12 because the third group of witnesses go through this
13 point. Judge, the state anticipated that this might be
14 a problem in this prosecution and as early as March
15 27th, roughly four days after the grounding, began to
16 talk about the problem and how to handle it.

17 We recognized that an inevitable discovery
18 doctrine might be one of the exceptions to the
19 reporting requirement. We also knew that it would be
20 improper to use the report, itself, in any fashion.
21 The problem was defining when at that point these thing
22 inevitably would have been discovered.

23 It was a task we decided required two sets of
24 prosecutors and investigators. That is, one set would
25 go ahead and learn everything it could about all these

1 circumstances all the way down and we learned about
2 everything. The other set would not give information
3 which would not be admissible under this inevitable
4 discovery theory. That is, they were not going to be
5 given anything in this prohibited area. They could get
6 none of that to work from.

7 Even as late as April, mid-April, that line
8 wasn't a clear line. That is, we didn't know when on
9 the 29th we could show a judge in your position that
10 this spill would have inevitably been discovered and an
11 investigation started. So, from roughly mid-April, we
12 set up a second set of prosecutors and investigators.

13 Since I have gone to Valdez on the 26th, have
14 been there since then and knew some things which fell
15 on both sides of the line, it was decided that I would
16 be a person to be on the team that knew everything and
17 the set of investigators that had gone with me, we all
18 gathered in Valdez to work on the case initially, they
19 would be on this team who spend the entire
20 investigation. It was then my job to separate stuff
21 out and give to an new set of prosecutors who had not
22 been involved in the case earlier. They were Mary Anne
23 Henry, initially, Brent Cole joined the unit later and
24 then at a later date, Sam Adams joined that team.
25 Similarly, they got their own investigators.

1 At that point, the Captain had not been
2 charged by the grand jury. An information charging
3 only misdemeanors had been filed in Valdez, but the
4 grand jury had not yet convened on the case. And, so,
5 prior to the grand jury, I began screening materials
6 and giving them to the prosecution team.

7 The criterion that I used was this. Because
8 it's not clear when this line -- if we ever find that
9 that line was drawn, whether it would be here at 8:30
10 or back here at 3:30 or back here at 1:00 or somewhere
11 thereafter, I said to myself "Let me be careful and
12 exclude anything that occurred on March 24th, 1989 from
13 the time of the report all the way through the end of
14 the day, to midnight, 12:00 p.m."

15 So, that the material then that Mary Anne
16 Henry and Brent Cole were given to present the case to
17 the grand jury did not include, for example, the
18 evidence of alcohol, blood-alcohol test results. It
19 did not include the statement by Captain Hazelwood to
20 Mr. Delozier with Trooper Fox present. They got a tape
21 in one exhibit, for example, that they played.

22 They played a tape recording of the
23 communications between the vessel, the Exxon Valdez,
24 and the Coast Guard station starting from about the
25 time that Captain Hazelwood takes over from the pilot

1 and that tape that they played before the grand jury
2 ran up to the time of the report, but it did not
3 include the report, so that the tape that the grand
4 jury heard of the communications between the ship and
5 the Coast Guard station did not include the
6 conversation in which Captain Hazelwood first says
7 "We've fetched up hard aground on Bligh Reef. We're
8 losing oil." That was not given to the prosecution
9 team nor to the grand jury in preparation for just this
10 kind of a day.

11 So, the third group of witnesses are people
12 who can say that we've played by those rules, Judge,
13 and that's the way we did it. They would include
14 Alaska State Troopers on the initial team, Sergeant
15 John McGhee, Trooper Julia Grimes, Trooper Paul Burke,
16 Trooper Chris Stockard. It includes Trooper Fox. It
17 includes an investigator for the Department of Law in
18 the Office of Special Prosecutions and Appeals, Gayle
19 Savage. It then includes a trooper who was on the
20 prosecuting team, James Stogsdill, S-t-o-g-s-d-i-l-l.
21 And, then it includes the lawyers, Mary Anne Henry,
22 Brent Cole and me.

23 Judge, just to comment about the "me" part of
24 that, Judge, ordinarily a lawyer is not permitted to be
25 both a witness and to argue a case. In this instance,

1 I had such great exposure to both the facts in terms of
2 being able to present the case to the Court, but that
3 same exposure made me an ideal witness as well. But, I
4 ask permission of Mr. Friedman to whether I could do
5 that if I did not do what the canon of ethics prohibit
6 and that is a lawyer argue his own credibility.

7 So, with that caveat, with that understanding,
8 we're proceeding now with this posture when I had
9 expected to be the last witness in this series of
10 witnesses. We will have another lawyer come in for
11 that to do whatever direct or cross examination or
12 redirect examination there may be of me. If the Court
13 still feels that it's appropriate at the end of -- that
14 that procedure is appropriate, then I will argue the
15 case without arguing my credibility one way or the
16 other and we hope it doesn't come to that, but if Your
17 Honor wishes to insist that we have somebody else
18 prepared to argue the motion, we can make those
19 arrangements, but we would prefer not to.

20 Anyway,...

21 THE COURT: Okay, why don't we resolve that
22 right now? Did you object to that procedure?

23 MR. FRIEDMAN: No, not at all, Your Honor.

24 THE COURT: I assume we'll probably go along
25 with the agreement of counsel on this. Unless I find

1 some good reason not to, you can expect to argue the
2 case.

3 MR. LINTON: Very well, Your Honor.

4 THE COURT: You did not mention Mr. Adams'
5 name as one of the lawyers. Was that your intention?

6 MR. LINTON: That's correct. He got into it
7 so far down the road that I didn't expect to call him.
8 If it became apparent that it would be important to do
9 that, I'm prepared to that, but I had not planned on
10 it, Judge. And, that's how I expect to proceed, Judge.

11 THE COURT: All right. Mr. Friedman?
12 (2314)

13 MR. FRIEDMAN: Thank you, Your Honor.

14 THE COURT: I've been told by Mr. Purden we're
15 having a hard time getting audio pick-up, so if you can
16 maybe move this microphone closer to you?

17 (Side conversation)

18 MR. FRIEDMAN: Your Honor, Mr. Linton has
19 candidly admitted that what their trying to do here is
20 avoid Mr. Hazelwood's congressionally granted immunity
21 and the state's problem in doing that stems from the
22 inherent facts of this case. Ordinarily, an
23 investigation is started, a body is discovered, a phone
24 call is made, something takes place that starts an
25 investigation and as the authorities investigate, they

1 cast an ever widening net of information.

2 Sometimes they decide that a particular
3 witness has evidence that they need and they need it so
4 badly that they're willing to grant that witness
5 use/derivative use immunity and I'm sure the Court's
6 read the cases now and is familiar over and over again
7 that is the posture in which these immunity cases are
8 decided.

9 A prosecutor grants a witness immunity and
10 then, of course, from that witness' testimony, a
11 variety of other information is obtained. If the
12 prosecutors at that point decide that they want to
13 prosecute this witness, everyone agrees that they
14 cannot use this evidence. That is, evidence that they
15 only would have been led to by this witness' testimony.
16 But, if they can prove an independent source for this
17 evidence, they can use it against this witness.

18 And, the way prosecutors' offices,
19 particularly federal prosecutors' offices, try to deal
20 with that issue is when the immunized testimony is
21 presented, when this witness is examined in grand jury
22 or whatever, but a totally different prosecutor, not
23 the one conducting this investigation, but the one
24 conducting this -- or, a separate one is brought in to
25 question this witness. So, this prosecutor can

1 honestly say "I haven't been exposed to this witness'
2 testimony and we were led to all of this stuff by our
3 own pleads. We had nothing to do with this."

4 And, as you read the cases that talk about the
5 Kastigar hearings, that's often what they're fighting
6 about. Were the prosecutors led to this information by
7 the immunized testimony or did they have independent
8 sources? Here, the entire investigation began right
9 here. There were no independent sources. There was
10 nothing else that triggered the investigation. The
11 immunized testimony, itself, triggered the varying
12 investigation that they're trying to use here.

13 And, that's the inherent problem. They're
14 trying to use, the state is trying to use techniques
15 that were developed for this situation, they're trying
16 to use those techniques where they have this situation
17 and that's why they don't work and I'll show you why
18 in a moment.

19 Now, one of the state's arguments and they
20 will be presenting evidence on this is that there's an
21 independent source here. That when Captain Hazelwood
22 said "We're hard aground, leaking oil", that the "hard
23 aground" is separate from the "leaking oil". I would
24 ask you to keep in mind as you hear comments about
25 independent source, the Kastigar language, which is a

1 wholly independent source.

2 They have to prove an independent source that
3 whatever they're claiming is the independent source was
4 wholly independent of the immunized testimony and I
5 will argue that, at the end of the hearing, the legal
6 standard, but for present purposes, I would point out
7 to the Court and I would ask you as you hear the
8 testimony to keep in mind how -- that if you take the
9 state's position, that only the words "leaking oil" are
10 immunized and everything around them is not immunized,
11 then there is no immunity.

12 If Captain Hazelwood, if the only way he could
13 get immunity is to call up and say "Hi, I'm leaking
14 oil, but I'm not going to tell you where I am, who I am
15 or how it happened." If that's what Congress wanted
16 him to do to get immunity, then the statute doesn't
17 make any sense. We're going to be asking the Court at
18 the end of the hearing for a common sense
19 interpretation of the statute and we have some
20 authorities to cite to you in support of that common
21 sense interpretation.

22 (Side conversation)

23 MR. FRIEDMAN: Your Honor, Mr. Linton spent a
24 long time this morning and he will spend a long time
25 during the next couple weeks explaining or arguing to

1 you what might have happened, what could have happened,
2 what should have happened. This chart is designed to
3 show you what did happen and it's very important
4 because it will illustrate some of the problems with
5 the state's case and later I'll ask to mark it as an
6 exhibit. You'll hear me asking questions somewhat out
7 of context to build the foundation for this and we'll
8 be moving to move it into evidence at the end of the
9 hearing.

10 When Captain Hazelwood first made his radio
11 calls, he reported he was aground leaking oil, that
12 there had been a problem with the third mate and that
13 he was trying to get the ship off the reef. When
14 Investigator Delozier first came aboard in response to
15 this radio call, Investigator Delozier and several
16 others went out to the ship as quickly as they could.

17 When they got there at approximately 3:35
18 a.m., Investigator Delozier will tell you that he
19 immediately smelled what he believed was alcohol on
20 Captain Hazelwood's breath, he says, within moments.
21 So, as of 3:35 a.m., what's happened is we have radio
22 calls and the investigators respond immediately and
23 immediately smell alcohol. As of 3:35 a.m., they have
24 three, what Kastigar calls, investigatory leads, or as
25 Kastigar says, focuses of the investigation.

1 Captain Hazelwood has focused the
2 investigation for them and they have three theories,
3 three leads to follow up on. One, was he properly
4 getting off the reef? Two, was alcohol involved in the
5 accident? And, three, was there some sort of problem
6 with the third mate?

7 Now, when we cross examine Mr. Cole, I expect
8 that he will say that the case he intends to present to
9 the jury, the allegations that he's going to make,
10 factual insertions he's going to make at trial are one,
11 that Captain Hazelwood somehow responded improperly to
12 the grounding. Either that trying to get off the reef
13 was improper or that the way he got off -- or, his
14 failure to try to get off the reef was improper.

15 He's going to tell us that he has witness to
16 say "Captain Hazelwood smelled like alcohol, smelled
17 like he had alcohol on his breath." By the way, Your
18 Honor, there are lots of witnesses to contradict all of
19 this, but obviously at this hearing, we're not arguing
20 the merits of the criminal case. We are trying to
21 recreate the state's case.

22 So, the state has some witnesses who say that
23 he had alcohol on breath. A witness who believes he
24 exhibited guilty type behavior at the scene. Some
25 witnesses who saw him in bars that day. A witness who

1 thinks he had red eyes. One who thinks he had a sway
2 in his step. One who thinks he had a different mood.
3 There was a blood-alcohol which the state will argue is
4 elevated in proof that at the time of the accident, he
5 had an elevated blood-alcohol. Those all relate to the
6 alcohol.

7 I think Mr. Cole will also say that the final
8 portion of the state's case, that he gave the con,
9 that's the bridge, turned it over to an unqualified
10 officer. That he, himself, was not on the con in
11 required waters and that he did not give specific
12 instructions to the people he left in charge of the
13 con. That's the basis for their recklessness charges,
14 the felony charges.

15 What you see then is the very things that they
16 had. The investigative leads that they had as of 3:35.
17 What is that? About 2, 2 and a half hours after his
18 calls. They wind up with the exact same theory of the
19 case he gave them that time.

20 The question, of course, is do they use this?
21 Well, again, in this situation, his calls clearly
22 precipitated everything that came after. We're going
23 to be looking at...

24 (Side conversation)

25 MR. LINTON: By the way, Your Honor, I hope to

1 have a smaller one of this to give you at some point
2 for your own use during the hearing. But, this does
3 not represent everything that was done in the
4 investigation, but it shows you the main threads of the
5 investigation and what you'll see as an example is from
6 the smell of alcohol, Mr. Delozier begins to suspect
7 that Captain Hazelwood is exhibiting guilty behavior.
8 He makes efforts to get someone out to the ship to test
9 blood-alcohol and a corpsman named Connor is in town,
10 but is actually on his way to the airport. He is
11 flagged down on the way to the airport and asked to
12 come out. He arrives on the ship, collects blood-
13 alcohol and you get an elevated blood-alcohol.

14 I won't go through all of these now, but there
15 are several points that are illustrated by this chart
16 that are going to be important to the Court's decision.
17 Our position, as you know from the briefs is that the
18 inevitable discovery doctrine doesn't apply in this
19 case. That, legally, it makes no sense. It has a
20 totally different doctrinal basis and in fact, the
21 language of inevitable discovery smashes right into a
22 brick wall when it hits the language of Kastigar saying
23 you can't use his call as investigatory leads to focus
24 the investigation. That's just inconsistent with the
25 concept of inevitable discovery. Kastigar focuses on

1 what actually happened, not what might have happened.

2 But, if you decide that you are going to go
3 for some sort of inevitable discovery theory in theory
4 and find that it could be applied, this chart will help
5 illustrate for us the impossibility in this case of the
6 state meeting its burden in that respect.

7 I should emphasize that nobody is denying that
8 inevitably the ship and the oil would have been
9 discovered, but that's not the state's case. The
10 state's case is not "There's a ship aground leaking
11 oil, therefore you're guilty." This is the state's
12 case and the question is would the facts supporting
13 this case have inevitably been discovered?

14 So, the state first has to prove to you when
15 the ship, itself, would have been discovered and in
16 essence, what the state is arguing is "We would have
17 found this all; we would have found the ship and we
18 would have gotten out there." I guess, from listening
19 to Mr. Linton, he's saying "At least by 8:30, we would
20 have walked onto the boat instead of 3:30."

21 But, there is an important difference which
22 he's either not recognizing or not owning up to which
23 is had Captain Hazelwood not called, had he remained
24 silent, when they walked on the boat at 3:30, they
25 would not have the investigatory lead of getting off

1 the reef. They wouldn't have smelled alcohol because
2 there are witnesses who said that definitely there was
3 no smell of alcohol on him, and they wouldn't have had
4 his indication that there had been a problem with the
5 third mate.

6 (3040)

7 So, rather than just moving all this down to
8 8:30, which is what they're suggesting that you do,
9 they're walking on board at 8:30 knowing nothing other
10 than there's a ship aground leaking oil. And, again,
11 you have to assume that Captain Hazelwood would not
12 have spoken to them. And, so, the question is, and
13 what they have to prove to you is that all of this
14 would have happened later on if they had started with a
15 clean slate.

16 Now, what they're prepared to do, of course,
17 is bring investigators on who now, with the help of
18 20/20 hindsight, now that they have, in fact, used all
19 of this stuff, now that they have, in fact, put their
20 case together, they're now prepared to work backwards
21 and say "Well, we would have found all of this anyway.
22 We would have done a careful investigation and we would
23 have found everything anyway."

24 I would remind the Court that what Kastigar in
25 the subsequent cases say that the state has to present

1 the Court with each piece of evidence it plans to use
2 at trial and show an independent source or a non-
3 Kastigar taint for each piece of evidence. If you're
4 going to somehow try to graph the inevitable discovery
5 doctrine on to Kastigar, you're going to have to find
6 that each piece of evidence they want to use at trial
7 would have been inevitably discovered and that is a
8 task that I'm not sure anybody would ever be up to.

9 They're asking you, to, in essence, make a
10 leap of fate and say "When we walked on board knowing
11 nothing, we still would have been able to recreate all
12 of this." There are some things we'll be able to prove
13 to you, Your Honor, that they could not have gotten.

14 For example, the blood tests that I mentioned
15 before; had they walked aboard at 8:30 and started
16 their efforts to get someone to test the blood alcohol,
17 at that point, Connor would have been on his airplane
18 flying to Anchorage. They wouldn't have gotten blood-
19 urine tests at 10:00 or 10:50, somewhere in that range.
20 It would have been hours later, if at all.

21 We can show you that for a fact, they couldn't
22 have inevitably wound up with it. It would not have.
23 On many of the other things, we're going to have to
24 rely upon their inability to prove inevitable discovery
25 because all we are is in this never-never land of

1 trying to determine what could have happened, what
2 might have happened, what should have happened.

3 The final point I would ask the Court to be
4 alert to as we go on, in fact, if I understood Mr.
5 Linton correctly, he told us that it was in mid-April
6 that the state decided that they better do something
7 about this immunity problem and so they're setting off
8 a separate set of investigators, separate set of
9 prosecutors who they're going to somehow try to
10 separate from this information, only give them this
11 information.

12 Oh, I guess I should talk about that for just
13 a second. Remember Kastigar says you can't use it as
14 an investigatory lead. And, anything that you're
15 immunized testimony leads you to also gets thrown out.
16 Their argument is that if you draw a line across here
17 somewhere, wherever that line might be drawn and it's
18 probably a line like this, I suppose, that if you only
19 let the prosecutor see this stuff, you've done your job
20 on your Kastigar.

21 But, Kastigar says "No, you can't use this
22 stuff if you were led to it by the immunized
23 testimony." So, their efforts with regard to
24 separating prosecutors from the top of the pyramid
25 doesn't help them under Kastigar because they still get

1 the benefits of all that investigation down here. And,
2 in that regard, I would like to point out to the Court,
3 and I think we will be asking questions and illicit
4 this testimony from various of the state's witnesses.
5 We don't intend to call any witnesses ourselves or at
6 most, one or two. We'll try to make our points through
7 their witnesses.

8 But, I think we can show that before the state
9 took any efforts to immunize their prosecutors or
10 investigators, they had interviewed more than 46
11 people. They compiled approximately 100 pages of
12 police summaries that blood and urine samples were
13 taken, of course. Two experts were fired. They
14 received reports from various sources. Two search
15 warrant hearings were conducted. Two search warrants
16 issued; two searches conducted.

17 Experts were given the benefit of the material
18 seized in those searches. The experts, themselves,
19 went out to the scene, reviewed documents, worked with
20 the prosecutors. But, information, criminal
21 information was sworn out, charging three misdemeanors,
22 a probable cause statement supporting the information
23 and by the way, that probable cause statement
24 incorporated all of this information that they're now
25 almost conceding is immunized.

1 An arrest warrant was issued and Captain
2 Hazelwood was arrested. All of that happened before
3 they took their efforts to unring the bell, if you
4 will. After that time period, virtually nothing has
5 been done. They have this Investigator Stogsdill who
6 is their immunized or their sanitized investigator, I
7 suppose.

8 Other than go to the scene and take some
9 pictures and help or try to help put their inevitable
10 discovery arguments together, Mr. Stogsdill hasn't done
11 much and the point is this, if the entire investigation
12 was completed or virtually the entire investigation was
13 completed before they took any actions to protect
14 Captain Hazelwood under this immunity claim. What that
15 means is that they really are trying to unring the
16 bell. All of this was put together before they even
17 addressed the immunity issue.

18 When they finally addressed the issue, they
19 are trying to cut this off, get the benefits of
20 everything, all his statements, everything that were
21 led to from his statements without paying the price
22 that Congress, and in our case, the state. The state
23 regulatory agencies expect it.

24 The final thing, Your Honor, which I think is
25 implicit in what I said so far is if you adopt the

1 concept that inevitable discovery applies, the legal
2 concept can apply. What you're going to need to do as
3 this hearing goes on is try to figure out not just
4 which of those strands -- for simplicity's sake, we've
5 put on a diagram, would have inevitably been
6 discovered, but every fact they want to present at
7 trial, you're going to have to decide and make a ruling
8 that it inevitably would have been discovered.

9 Whether that burden is clear and convincing,
10 as we've argued in the brief, or more probable than
11 not, preponderance of the evidence, obviously hasn't
12 been decided yet, but which ever standard it is, they
13 are going to be unable to meet it as to any significant
14 fact and that's all I wanted to present at this time.

15 THE COURT: All right. Who's your first
16 witness going to be?

17 MR. LINTON: We call Dan Lawn; Your Honor.

18 THE COURT: Let's get a start on him. And, do
19 we have other witnesses that are in the court and is
20 there any reason to exclude them or not exclude them?

21 MR. FRIEDMAN: I would ask that witnesses be
22 excluded, Your Honor.

23 THE COURT: All right, and I think that we'll
24 do that. So, if there are any witnesses that expect to
25 be called, they'll have to remain outside.

1 MR. LINTON: He's outside now, Judge. I'm
2 going to have to watch to see when he comes in. It's
3 going to be a little hard to do. He's feeding a meter.

4 THE COURT: I wonder if we could have that
5 thing taken down.

6 THE CLERK: Sir, you'll find a microphone
7 there. Please attach that to your sweater and remain
8 standing.

9 (3718)

10 (Oath administered)

11 A I do.

12 DANIEL JOSEPH LAWN

13 called as a witness in behalf of the plaintiff, being
14 first duly sworn upon oath, testified as follows:

15 THE CLERK: Would you please state your full
16 name, and then spell your last name?

17 A Daniel Joseph Lawn, L-a-w-n.

18 THE CLERK: And your current mailing address?

19 A Post Office Box 1483, Valdez, Alaska, 99686.

20 THE CLERK: And your current occupation, sir?

21 A I'm an environmental engineer for the
22 Department of Environmental Conservation in
23 Valdez.

24 THE CLERK: Thank you.

25 THE COURT: Let's plan on taking a break

1 around a quarter of, and keep an eye on the clock or
2 I'll interrupt you.

3 MR. LINTON: Yes, sir.

4 DIRECT EXAMINATION OF MR. LAWN

5 BY MR. LINTON:

6 Q How long have you worked for the Alaska
7 Department of Environmental Conservation, sir?

8 A Approximately 12 years.

9 Q What are your responsibilities for them?

10 A I deal with various forms of investigation
11 enforcement for the Department of Environmental
12 Conservation, having to do with oil, water,
13 sewage; all the regulatory elements the
14 Department deals with.

15 Q Do your investigations result in both civil
16 actions and in criminal actions?

17 A Yes.

18 Q How long have you been in the Valdez office of
19 the Alaska Department of Environmental
20 Conservation?

21 A All the entire length of my employment with
22 the Department.

23 Q How long has that been compared to the time
24 that the TransAlaska Pipeline has been operating
25 and ships have been coming and going from Valdez?

1 A Just about the entire time. I believe I
2 joined the Department about a month after the
3 first shipment of oil.

4 Q Some time on the early morning -- the early
5 morning hours of March 24th, 1989, did you
6 receive word about a problem with the Exxon
7 Valdez?

8 A Yes, I got a call around 1:00 a.m. from
9 Alyeska OCC, that's their Operational Control
10 Center. They advised me that the Exxon Valdez,
11 outbound to avoid ice, had been out of the
12 shipping range, and had run aground on Bligh
13 Reef, and may be leaking some oil. I tried to
14 questioned them some more, and they really had no
15 additional information.

16 Q What did you do next?

17 A I immediately told my wife that we had a major
18 problem here, and then I immediately called the
19 Coast Guard.

20 Q Who did you talk to?

21 A Well, the phone was answered by someone there
22 in their Vessel Traffic System, and I announced
23 who I was and immediately the phone was taken
24 away by Commander McCall. Commander McCall and I
25 discussed the infor -- the report that I had just

1 received from Alyeska, and -- in more detail. At
2 that time, I told him, and had known intuitively,
3 that we had a major problem, and the potential
4 for a catastrophic spill. We discussed a plan of
5 action which included the use of dispersants; it
6 included mobilizing Coast Guard Forces and DEC
7 forces that one -- that the Coast Guard would be
8 sending some people out. He asked me if I would
9 like to go. I told him, "Of course." And it --I
10 told him I'd be down there as soon as I could.
11 He told me that the boat would be coming in soon.

12 Q Did he tell you anything more specific about
13 what the problem was on board the vessel?

14 A Just -- we had probably had the discussion of
15 the reason the ship was over there. It was
16 trying to avoid ice, and it has run aground. I
17 can't say at the initial phone conversation we
18 discussed it in any more detail than that.

19 Q When you talked -- it was during that
20 conversation that you talked to him about
21 dispersants?

22 A Correct.

23 Q What are dispersants?

24 A Dispersants are a chemical additive you put on
25 oil to combat an oil spill; to make it break up

1 so that the environment can handle it in a more
2 ready fashion.

3 Q And how -- why was it important to talk about
4 those at that point?

5 A Well, I knew intuitively, when I was told the
6 ship ran aground, that we had a major
7 catastrophic spill, and you need all the weapons
8 at your command, and dispersants is one of those
9 weapons.

10 Q You said you talked about other resources of
11 both your agency and his being called in...

12 A Yes, I...

13 Q What did you talk about?

14 A We talked about the strike teams, the Coast
15 Guard strike teams.

16 Q What are they?

17 A They are groups of oil spill response experts
18 that the Coast Guard has located around the
19 United States.

20 Q Where is the nearest one?

21 A I think they're in the San Francisco area.

22 Q But not -- at least, not inside -- not in the
23 state of Alaska.

24 A No, there's none normally in Alaska.

25 (Tape: C-3500)

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(0099)

Q What happened next?

A I called -- I called my boss, Bill Lamoreaux, in Anchorage, and gave him the limited information I had, and it was still very limited. I told him that I had been notified by OCC; they didn't have much information. I called the Coast Guard and talked to McCall, he gave me a little bit more, and, in essence, the Exxon Valdez, outbound from the terminal to avoid ice, had left the ship outbound lanes and had run aground at Naked Island -- excuse me, at Bligh Reef. And I indicated to him that this was -- the ship had -- minimal reports of the ship leaking oil. But I did tell him that this was the nightmare that I had been dreading, or that we all had been dreading, and that I didn't need to go look at the ship to know that we had a major catastrophic event, and that I wanted certain people in the Department headed this way right away. I asked him to notify those people.

 He questioned me as to whether or not it could wail 'til morning. I told him, "No." You don't run a ship aground in Prince William Sound without it being a major event, and you can

1 always turn the people around if you do not need
2 them.

3 I told him that I would call one individual
4 when I got to the office, and asked him to call
5 the rest of them. I also discussed with him the
6 fact that we would be using dispersants so that
7 the RRT would need to be notified, and that I
8 would continue to have conversations with him
9 throughout the night and the morning as I went
10 out to the ship.

11 Q Where were the people you were asking him to
12 gather?

13 A Well, they were scattered throughout the
14 state. Two individuals that are normally in the
15 Valdez office were in Anchorage for training, and
16 I didn't know where they were staying so I had to
17 track them down. And I wanted Joe LeBeau who was
18 in Wasilla, and I wanted John Janssen who was in
19 Fairbanks, Al Kagler in Juneau; several of our
20 immediate first response people. I knew
21 intuitively that we would need a good hand --
22 half a dozen to a dozen people immediately. I
23 also discussed with him getting oil spill experts
24 informed, including the AG's office.

25 Q How long did that telephone conversation

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take...

A Oh, I suspect, just in conversation, it took five or 10 minutes. I had subsequent conversations with both McCall and Lamoreaux within the next few minutes. I went to the office and called John Janssen, advised him of the situation, asked him to get mobilized. He's our DEC oil spill expert in Fairbanks, and I had advised him that Lamoreaux would be making some contacts with him also.

Q How long did you stay at the office?

A Oh, I suspect I was at the office 10 or 15 minutes; maybe 20. Had to kind-of look around for some gear. My normal response gear was -- most of it was in my vehicle which happened to be in the state DOT shop overnight, and I couldn't get access to it, so I had to find some other gear. And then from there I went to the Coast Guard, and met with McCall, and Falkenstein and Delozier was there in and out; they were scurrying around trying to get some gear together also.

Q How long did you stay at the Coast Guard station before you boarded a boat to go to the Exxon Valdez?

1 A I would suspect we were there a half hour to
2 45 minutes. During that period of time we
3 discussed various options and various
4 notifications, and the fact that Alyeska
5 personnel had stopped by the terminal -- or
6 stopped by the Coast Guard station on their way
7 to the terminal. They were going to dispatch
8 equipment from the terminal. We discussed that
9 apparently Captain Hazelwood and Commander McCall
10 had a discussion about rocking the ship back and
11 forth at high water to remove the ship from the
12 reef. As I recall, that would happen sometime
13 while we were on our way to the ship.

14 We were waiting there for the pilot boat to
15 come in and pick us up. It was apparently the
16 fastest boat, the closest one available. So, we
17 had to wait until it got into the dock. Again,
18 we discussed with McCall the use of dispersant --
19 dispersement -- dispersants and the -- his
20 notification of the federal -- or the Coast Guard
21 strike teams.

22 Q What time did you get on the pilot boat and
23 actually leave the harbor in Valdez?

24 A I don't know the exact time. I suspect it was
25 around 3:00.

1 Q That you...

2 A Between 2:45 and 3:00. Maybe a little before
3 that.

4 Q What time did you get to the ship?

5 A Well, as we were approaching the ship, I took
6 some video footage of that. And when we first
7 saw it, it seems to me that it was about 3:15
8 a.m., and we were up along side or fairly close
9 to it at about 3:35 or so. The pilot latter was
10 apparently not in a position where it could be
11 easily accessed, so, while the pilot latter was
12 being moved, we -- and the pilot tried -- was
13 trying to stay out of the oil, went around the
14 backside of the vessel, the stern of the vessel,
15 to the south side, and just took a look at what
16 we could see. Saw oil in the water, and just
17 waited for the latter to be moved.

18 Shortly thereafter, the -- we were told that
19 the latter had been moved, and we transferred
20 from the smaller pilot boat to a larger one to
21 use as a -- get us a little higher off the water;
22 made it easier to get aboard the pilot latter.

23 As I was stepping off of the pilot boat and
24 ahold of the latter, as I went up, I noticed that
25 the oil surface next to the ship was elevated

1 from the surface of the liquid just a foot or two
2 out from the ship. Recollection is that I could
3 see a good foot of difference. In other words,
4 there was oil moving up along the side of the
5 ship, welling up, and it sticks in my mind as I
6 climbed the pilot ladder. After the...

7 Q Excuse me. You mean the oil was a foot away
8 from the side of the vessel?

9 A The oil along side the vessel was higher than
10 the liquid surface; immediately, let's say a foot
11 or two away from the vessel. And I can't say it
12 was higher than the water zone 'cause we were in
13 oil. So I don't know where the water was in
14 relationship to the oil, but as the oil left the
15 ship, it came up along the side as a rolling
16 boil, if you will. And so there was a different
17 -- difference in elevation of the two liquids.

18 Anyway, we -- I climbed the pilot ladder,
19 carrying my video camera and the other gear I had
20 with me. And when the -- all three of us, the
21 two Coast Guard personnel and I, were together,
22 we went to the ridge of the vessel.

23 Q Would you explain to the judge, then, what you
24 did -- how did you remain on board the vessel?

25 A Oh, I don't recall what time I got off, but it

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was in the neighborhood of 6:30 or 7:00 p.m.

Q On March 24th.

A Correct.

Q What did you do in the space of time that you were on board the vessel?

A Well, when I got on the bridge, I saw Captain Hazelwood standing on what would be the porch side, up near the window; very quiet, pensive, stroking his beard. I introduced myself and the Coast Guard was there. The Coast Guard dealt primarily with Captain Hazelwood and other folks. I tried to confine my activities to the oil pollution incident; what we could do to mitigate that. And so that meant that I spent most of the time with the chief mate, who was gauging the vessel; that's measuring how much oil was remaining in it, trying to determine how much was lost. I gave him the directive to gauge it at least every two hours so we'd get some kind of a leak rate; see whether we were slowing down.

Had various conversations through this period of time with the Coast Guards. We were keeping tabs with each other; mine more letting them know about the pollution, then they'd deal with me about their investigation of what happened. I

1 was not particularly concerned about what
2 happened, but how we were going to deal with the
3 pollution incident.

4 And I made several telephone calls from the
5 vessel. I called my boss, Bill Lamoreaux in
6 Anchorage again and advised him of the situation;
7 requested additional help; suggested that we hire
8 some additional people to help us with this
9 incident. And that he updated me on where he was
10 in the notification process, and who was headed
11 down to Valdez for help, and about what time they
12 would get there.

13 And that happened periodically through the
14 morning. I had a phone conversation with
15 Alyeska, with Larry Shier, who was the man that
16 had gone to the terminal to dispatch the
17 equipment. We discussed the situation; apprised
18 him how much oil had leaked; what the leak rate
19 was; that -- where I suspected that it was. I
20 had advised that he should, one, notify his
21 dispersant contractors, get the claims headed
22 this way that were in Arizona; two, that he get
23 CIRRO (ph), that's regional response -- or Cook
24 Inlet clean-up response team; that he get all
25 available personnel and equipment; suggested him

1 -- to him to get a helicopter out of Anchorage.
2 In Valdez, we normally don't have helicopters
3 immediately available. I had made the same
4 suggestion to my boss, Bill Lamoreaux, to get the
5 twin engine helicopter down there to help us.
6 And tried to provide the information that I had
7 learned over my 12 years dealing with oil
8 pollution and the various oil spill clean-ups
9 that had taken place.

10 Shier advised me that the equipment was
11 essentially on the way. I did tell him that I
12 would call him back right after first light to
13 give a more definitive position of where the oil
14 was. During that -- some time during that period
15 of time, between 4:30 and 7:00, I was asked by
16 Delozier whether I had been -- had smelled any
17 alcohol on the Captain -- on Hazelwood's breath,
18 and I had replied that I was never close enough
19 to him to get any indication, and I really hadn't
20 spent any time talking to him about it either.

21 Later I had passed Captain Hazelwood in the
22 stairwell, between the bridge and the radio room,
23 and I did detect something that smelled to me
24 like there was alcohol of some description.

25 THE COURT: When you say later, what time are

1 you referring to?

2 A I'd say that was -- I didn't -- I really
3 didn't mark the time down, but I would say that
4 that was between 5:30 and 7:00. Again, I didn't
5 -- I wasn't dealing with Captain Hazelwood and
6 what caused the incident. I was dealing with the
7 fact that we had oil in the water and that we had
8 to take immediate steps to reduce environmental
9 damage.

10 When -- I did become aware during that period
11 of time that the Coast Guard was interested in
12 getting someone on board to administer certain
13 tests related to alcohol. And that was kinda
14 going on around me. I wasn't directly involved
15 in that.

16 When Trooper Fox arrived we had a very limited
17 conversation about that, and I told him what I
18 had observed, and later identified the smell that
19 I had smelled about Captain Hazelwood in the
20 stairway, and that was -- there was a -- some
21 kind of a near-beer or a low alcohol beer on
22 board the vessel that -- when Mike Fox opened a
23 bottle of it, that was the smell that I had
24 detected. And, again, I was not dealing with
25 that particular aspect of it; the Coast Guard was

1 and then when Mike Fox got there, he was dealing
2 with that, and I was, again, trying to confine my
3 activities to deal with the pollution incident.

4 Q (Mr. Lawn by Mr. Linton:) Did you interview
5 witnesses like the helmsman, the third mate,
6 Captain Hazelwood, other members of the crew...

7 A No. No.

8 Q ...to find out how it happened?

9 A No.

10 Q Did you prepare reports that you submitted to
11 a criminal prosecutor...

12 A No.

13 Q ...on what you observed?

14 A No. I had been interviewed one time by
15 someone connected with the state.

16 Q Mr. Lawn, would you have gone to the Exxon
17 Valdez had the report been only of a grounding?

18 A Yes. I've got a clear written record of my
19 concern about ships running aground in Prince
20 William Sound. I knew intuitively -- no one had
21 to tell me the ship was leaking oil. I knew
22 intuitively that it was leaking oil. It would be
23 a miracle if it would not be leaking oil. There
24 is no place that you can run a ship aground in
25 Prince William Sound where you won't leak oil.

1 And we -- in 1980 or so there was a vessel called
2 the "Prince William Sound" that drifted in Prince
3 William Sound for around 17 hours without power.
4 During that period of time the seas became
5 progressively worse, and the tug boats that went
6 out to assist were unable to assist the vessel
7 because there was no way to get a line from the
8 tug boats up to the vessel. After that period of
9 time, the Department spent a good deal of effort
10 with Alyeska trying to prevent oil spills. And
11 that eventually required all of the tankers
12 coming to Prince William Sound to have a towing
13 bridle that is passive; that, in other words, you
14 don't need power on the boat at all, you
15 can throw pieces of this over the side and a tug
16 boat can come along and collect this bridle and
17 hook up without needing power from the ship. And
18 that was a major, major focus.

19 Even Alyeska retrofitted one tug to do a
20 better job because during the Prince William
21 Sound incident, we almost -- a tug almost sank.
22 We had 20 foot waves and a 65 foot Fish and
23 Wildlife boat was surf-boarding down these waves.
24 So, Prince William Sound can be very, very
25 dangerous. During that period of time, it became

1 real obvious that you can't drop an anchor in
2 Prince William Sound in most places, particularly
3 if you're drifting over a knot, a knot in a half,
4 without a good chance of the anchor line parting,
5 and...

6 Q Why are you -- why are -- why is dropping an
7 anchor significant?

8 A Well, dropping an anchor is -- if you're a
9 drift there and you don't want to hit the beach,
10 you would normally anchor. But from my -- the
11 experience I've had and many conversations with
12 tanker captains and other knowledgeable people,
13 most of them have told me that a knot, knot in a
14 half, is the maximum speed at which you can do
15 that, and maybe it won't part; most likely it
16 will. But the other thing about Prince William
17 Sound, it's a series of submerged mountain ridges
18 and there is no real shallow water until you get
19 right up next to the beach. So, by the time you
20 drop your anchor line, and it didn't pull off the
21 boat, and you get enough scope out to form your
22 anchor line to actually hold the ship, your steer
23 of the vessel is gonna be on the beach.

24 And it's -- the industry has recognized that,
25 and that's why they spent several million dollars

1 in retrofitting ships, to have these towing
2 bridles. And they have periodic exercises, some
3 of which are at the Department's request or
4 instigation. We have just had an exercise to
5 test this equipment back in November of '88, just
6 four months before this -- it was actually -- end
7 of -- I think it was the 28th of November.

8 So, it's recognized that there is no place to
9 run a ship aground in Prince William Sound
10 without it being a major catastrophic event.

11 THE COURT: Excuse me...

12 Q (Mr. Lawn by Mr. Linton:) Is that statement
13 based on...

14 THE COURT: I think we'd better take a break;
15 we're running past a little bit.

16 MR. LINTON: Yes, sir.

17 THE COURT: We'll take a 15 minute break.

18 THE CLERK: Please rise. Court stands in
19 recess subject to call.

20 (0819)

21 (Off record - 10:55 a.m.)

22 (On record - 11:14 a.m.)

23 THE COURT: Can I get a feel for how long this
24 is -- we're gonna need? Are we gonna -- sounds like
25 we're gonna need a whole two weeks from what I'm

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hearing now. Is that a pretty good estimate?

MR. LINTON: I'm low to judge on the basis of one witness, Judge.

THE COURT: Okay. Let's try to confine our questions and responses to the issues that are germane. I don't want to try the whole case here.

MR. LINTON: Understood.

THE COURT: Okay.

Q (Mr. Lawn by Mr. Linton:) In addition to the factors you pointed out, is there something about the geography or the nature of the bottom of Prince William Sound that is the basis for your statement that you would've gone out anyway?

A Yes, there's a number of reefs and rock pinnacles there that really aren't covered with any mud. There's not any soft bottom, so that when a vessel runs aground there, it's going to - - it indicates to me that there will be an oil spill. Even if it doesn't initially have an oil spill, the way the weather changes in Valdez, it can have one before you can get the ship off the reef.

MR. LINTON: Nothing further, Your Honor.

(0887)

*

1 CROSS EXAMINATION OF MR. LAWN

2 BY MR. FRIEDMAN:

3 Q Mr. Lawn, My names's Rick Friedman and I'm one
4 of Captain Hazelwood's lawyers. When you first
5 got the call, who was that that called you?

6 A It was the Alyeska Operational Control Center.

7 Q All right. And then you said that after
8 receiving that call, you called your boss in
9 Anchorage?

10 A No, I said that I called the Coast Guard. The
11 OCC really had no information other than some
12 very basic -- the ship had run aground and may be
13 leaking some oil. So, I immediately called the
14 Coast Guard; talked to Commander McCall.

15 Q And McCall told you that it was leaking oil?

16 A He -- yes. He indicated that it was leaking,
17 but he really didn't have any information about
18 how much oil was leaking either.

19 Q Okay. And at that point you called your boss
20 in Anchorage?

21 A After my -- hung up with Commander McCall, I
22 called Bill Lamoreaux.

23 Q Okay. And what was the last name?

24 A Lamoreaux.

25 Q Lamoreaux. Okay. And Mr. Lamoreaux asked you

1 if it couldn't wait 'til morning, or something of
2 the kind?

3 A Yes.

4 Q And you said, no, it couldn't.

5 A Correct.

6 Q Why couldn't it wait 'til morning?

7 A Well, I tried to impress upon Bill Lamoreaux,
8 and I did finally, that I didn't need to go look
9 to see whether it was leaking oil; I knew that it
10 was a major catastrophe, and that it was -- if it
11 wasn't right then leaking oil, it was only a
12 matter of a few hours before it would be leaking
13 oil. And I believe my exact words to him were,
14 "I do not need to go look. We need to make this
15 happen now."

16 Q Let me ask you this: given how extensive the
17 damage to the ship turned out to be, did it do
18 any good to get out there so soon?

19 A Well, I believe it gave us an opportunity to
20 get things in motion faster because we were there
21 on site. I think the adequacy of response,
22 initial response, by those parties is another
23 argument. But my firm belief is that if people
24 had a done what they were supposed to a done, it
25 would've made a difference.

1 Q That amount of time would've made a difference
2 if...

3 A Absolutely.

4 Q ...people had been prepared to do the right
5 things.

6 A Absolutely.

7 Q Okay.

8 A If they hadn't followed the contingency plan,
9 it would've bought some more time when we needed
10 more time.

11 Q And that time is important in a catastrophe of
12 this kind.

13 A Absolutely.

14 Q Okay.

15 A It's that -- that immediate response is
16 important on any oil spill to prevent down stream
17 damage.

18 Q So, the sooner you get there, the better.

19 A Absolutely.

20 Q Okay. Now, you said that when you first
21 thought you smelled alcohol on Captain Hazelwood,
22 you were already aware that the Coast Guard
23 personnel were making some efforts to have him
24 tested?

25 A I don't believe I said that. I believe that I

1 said that Mark Delozier had asked me whether I
2 had smelled alcohol, and I had replied to him,
3 no, but I hadn't been close enough to him to find
4 out. Sometime thereafter, as I was going from
5 the radio room, just on the first step below the
6 bridge to the bridge, or back and forth, I passed
7 Captain Hazelwood in the stairway, and I did
8 smell something that I determined was alcohol.

9 Q Would -- when Mr. Delozier asked you whether
10 you smelled alcohol on the Captain's breath, was
11 that the first time you became aware of alcohol
12 as a potential issue in the incident?

13 A Yes.

14 Q Okay. When you talked to Commander McCall
15 back in -- when you were still in Valdez, he
16 didn't mention that to you.

17 A There was no discussion of it.

18 Q Okay. And when you met with McCall at the
19 Coast Guard station, and Falkenstein was in and
20 out, and so on...

21 A I hadn't -- never had a discussion with him
22 about that.

23 Q Okay. Now, did I understand correctly you
24 said that you believe you got off board around
25 6:30? You left the ship about 6:30?

1 A It was in the evening; 6:30, 7:00. It was
2 probably closer to 7:00.

3 Q Okay. In the evening.

4 A In the evening.

5 Q All right. And, finally, when you were going
6 out to the ship in the pilot boat you were aware
7 that there had been some discussion between the
8 captain and Commander McCall about getting the
9 ship off the reef.

10 A Yes, that's correct.

11 Q All right. On your -- during your first trip
12 to the vessel on the 24th, did you yourself seize
13 any records, or look at any records of the
14 vessel?

15 A I seized no records. Records of the vessel,
16 if you include the pieces of paper that we were
17 writing on with the gaging and making some notes
18 on, I did see those records, yes.

19 Q Okay. Did you subsequently seize any records
20 from the ship?

21 A I do not believe that I seized any records.

22 Q Did anyone working for you with the DEC seize
23 any records that you're aware of?

24 A I don't believe I ever had a discussion with
25 anyone who told me that they personally seized

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records.

Q Okay. Let me tell you why I'm asking that and maybe you can enlightening me a little bit. There's a criminal pleading that was filed in the case, it's the information -- it's a charging document; charging Captain Hazelwood with some misdemeanors. And then there's a sworn statement from Mr. Linton, which is part of that complaint. And part of the sworn statement says, "The records of the vessel, Exxon Valdez, obtained by investigators of the Alaska Department of Environmental Conservation," and then he goes on to say what they talk about. Are you aware of the DEC seizing any records?

A There was another investigator by the name of Joe LeBeau that relieved me on the vessel, and he was involved more in the investigation of what happened with Captain Hazelwood. And I was not -- I really wasn't involved in that.

Q Okay. Good enough. Thank you. I don't have any other questions.

THE COURT: Thank you. You may step down.

(1200)

MR. LINTON: We call Michael Fox, Your Honor.

THE COURT: Mr. Fox, come on up to the witness

1 stand, please.

2 THE CLERK: Sir, could you please attach that
3 microphone. Please raise your right hand.

4 (1275)

5 (Oath administered)

6 A I do.

7 MICHAEL J. FOX

8 called as a witness in behalf of the plaintiff, being
9 first duly sworn upon oath, testified as follows:

10 THE CLERK: Would you please state your full
11 name, and then spell your last name?

12 A My name is Michael James Fox; last name is
13 F-o-x.

14 THE CLERK: Your current business mailing
15 address.

16 A Post Office Box 650, Valdez, Alaska; that
17 would be the office of Fish and Wildlife
18 Protection.

19 THE CLERK: Your current occupation?

20 A I'm an Alaska State Trooper assigned to the
21 Division of Fish and Wildlife Protection.

22 (1285)

23 DIRECT EXAMINATION OF TROOPER FOX

24 BY MR. LINTON:

25 Q How long have you been an Alaska State

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Trooper?

A Since January 1979.

Q How long have you been in Valdez?

A Since February of 1981.

Q On March 23rd and March 24th, 1989, were you assigned to Valdez?

A Yes.

Q What were -- what are your resp -- normal responsibilities as a -- with the Fish and Wildlife?

A My priority would be enforcement of Fish and Game regulations; commercial fishing, trapping, hunting, et cetera. As part of the Department of Public Safety, I'm also responsible to handle State Trooper responsibilities on a secondary nature; if the trooper's out of town or if he needs additional help.

Q Is there a trooper assigned to Valdez?

A Yes, Tim Alexander.

Q Was he in Valdez on March 23rd or 24th, 1989?

A No, he was vacationing out of the state.

Q Sometime on the evening of March 24th, 1989, did you get a call regarding the Exxon Valdez?

A Yes, sir, I received a call; it was around 2:30 in the morning. Actually, on the 25th --

1 24th -- it was midnight -- it was in the morning
2 of the event. Yes, 2:20 on the 24th.

3 Q 2:20?

4 A Yes, a.m.

5 Q 2:20 on the 24th. And from whom did you get a
6 call?

7 A The Coast Guard station.

8 Q And what was communicated to you?

9 A I believe it was Chief Peterson of the Marine
10 Safety Office told me that the Exxon Valdez was
11 hard aground on Bligh Reef.

12 Q Did he tell you his purpose in calling you?

13 A He said that our agency was on their list of
14 notification. They go down a list when something
15 happens, and if your name's on it, they call you
16 and tell you.

17 Q What did you do?

18 A Well, I asked him a few of the details, and
19 then we hung up, and then I woke up a little bit
20 more and called him right back and asked him if
21 there was any fire, injuries, threat of eminent
22 disaster, and what that might be. And he said,
23 well, no, it's just hard aground; doesn't look
24 like it's gonna go anywhere.

25 Q Did he say anything about leaking oil?

1 A Yes, he said it was leaking oil.

2 Q As a result of that conversation, did you take
3 any action?

4 A No.

5 Q Did you receive another call later in the
6 morning about the Exxon Valdez?

7 A Yes, about 4:30 the phone rang again. I don't
8 think I was actually asleep again. I think I was
9 still thinking, I guess. And at this time they
10 said that the captain had been drinking and they
11 wanted me to come out; they wanted a trooper.

12 Q What did you do?

13 A Well, I asked for a few of the details. And
14 the second call was made by the commanding
15 officer, Steve McCall, I believe. And I asked
16 for a few of the details, and he said that Tom
17 said that the captain had been drinking, and they
18 wanted a trooper to come out. And so I took it
19 to mean that he said -- he was referring to Tom
20 McCardy at DEC. He has often -- well, I
21 shouldn't say often, but as a regular course of
22 business we assist DEC when they have problems.

23 If it's an unhappy landowner who wants to
24 throw them off their property; if it's a
25 restaurant person who doesn't want to be

1 inspected, or whatever, a lot of times they'll
2 call the troopers to help them deal with
3 otherwise un -- impossible situations.

4 So, I had in mind that Tom McCardy of DEC was
5 calling me to come out there and help them deal
6 with a drunk sailor. So, I -- drunk driving was
7 the immediate thought. I called the Anchorage
8 dispatch office, got a message to the on-duty
9 District Attorney, who was Gene Cyrus, through
10 Sergeant Lowden at the troopers. And I asked for
11 some advise on drunk driving because right from
12 the beginning I realized that this was gonna be a
13 big thing.

14 Q What do you mean by that?

15 A Well, it was just amazing to me that there was
16 a tanker on Bligh Reef, and I spent quite a bit
17 of time wondering what circumstances possibly
18 could have placed the tanker on Bligh Reef. And
19 then when they came back and said that the
20 captain had been drinking, I just figured that it
21 was a case of incompetence or impaired
22 operations, and I knew (indiscernible - bad
23 recording) drunk driving case (indiscernible -
24 bad recording).

25 So, I wanted to have some pretty good advise

1 on what to do, and seeing as I'm a Fish and
2 Wildlife trooper, I haven't gained any experience
3 really in drunk driving cases. So I wanted to
4 know the elements I needed to prove and what
5 steps I should take as an outline for my own
6 activities when I got out there. And Sergeant
7 Lowden told me, he said, well, just -- the
8 elements would be control and impairment, and
9 just try to gather whatever physical evidence I
10 could find, or statements in regards to those two
11 elements.

12 So, I arranged with the Coast Guard to meet
13 them at 5:00, I believe it was, at the dock. And
14 I ran down there, and hopped on their boat, and
15 went out.

16 Q What time did you get out to the Exxon Valdez?

17 A We arrived along side at about 6:45, and it
18 took a while to get on board because of the oil
19 that was -- the oil was coming out of the ship so
20 fast that it was pressing up out of the water, up
21 above the level of the water. It was like
22 someone had a hose pointed under the water and
23 pressing up; it was actually coming up out of the
24 water all along -- well, for a good section along
25 its starboard side.

1 So, as I was trying to board the boat, the
2 Coast Guard boat had a hard time laying along
3 side to put me off. And the deck of the Coast
4 Guard boat was icy and snow-covered, and the rope
5 ladder that I was to climb was about chin high.
6 So I was standing on this icy platform with this
7 hot oil swirling up around me, and it took quite
8 a while.

9 We ended up having to go back around to the
10 other side, the port side of the boat, where they
11 were able to get the ladder a little bit lower
12 and there was less oil moving outside the ship,
13 and I was able to climb up.

14 So, from about 6:45 to 7:05, I was along side.
15 Then I was on the deck from 7:05.

16 Q What did you do when you got on board?

17 A There was two crewmen in coveralls, hard hats;
18 they met me at the top of the ladder and escorted
19 me to the wheelhouse.

20 Q And when you got there what did you do?

21 A In the wheel house there was Dan Lawn, DEC;
22 Mark Delozier for the Coast Guard; the XO, Tom
23 Falkenstein of the Coast Guard; and the second
24 mate on the boat. I believe his name is Mr.
25 LeCain.

1 And I got up on the bridge fully expecting to
2 have to deal with a drunk-type situation, and it
3 wasn't that at all. It was very quiet, dark; guy
4 just kinda gazing out the window. It was a very
5 quiet and a very sad kind of atmosphere.

6 Q Was Captain Hazelwood on the bridge at the
7 time?

8 A No, he wasn't.

9 Q What happened then?

10 A Well, I -- I figured, what I have to deal with
11 -- what was the problem; why were we there; who
12 was in trouble; who needed help; et cetera? And
13 I talked to the XO Falkenstein, 'cause he'd been
14 the ranking officer with the Coast Guard there.
15 And that's when I realized that he was Tom; that
16 was the "Tom" they were referring to, not the Tom
17 McCardy of DEC. It was Tom Falkenstein of the
18 Coast Guard. So, I assumed what the deal was,
19 and he said that he and Delozier both had smelled
20 alcohol on Captain Hazelwood's breath, and they
21 wanted me to haul him off, and take a blood
22 sample, and do whatever.

23 And I explained to them that I really couldn't
24 do that if there wasn't a crime going on. We can
25 investigate it, but I wasn't gonna go ahead and

1 go to the guy's room, and wake him up, and arrest
2 him while he was in his room. They told me he
3 was in his bed sleeping when I got there.

4 So, I talked to them about what they could do
5 and what I could do. And they told me that they
6 could take blood. And I said, "Well, fine; let's
7 get this show on the road. Let's go ahead and do
8 it."

9 Q And that conversation took how long then?

10 A Oh, just a few minutes. Right away, when I
11 got there, I realized that it was gonna have to
12 be a Coast Guard investigation, per se. I didn't
13 want to start a search or investigation that
14 could later be invalid 'cause of no viable cause
15 or no evidence in front of me, which is why I
16 didn't immediately go to the captain's room and
17 arouse him, and start interviewing him.

18 Q Did you discuss with Mr. Delozier or Mr.
19 Falkenstein at any point whether it would be
20 appropriate to take the captain from the vessel
21 into town for...

22 A Oh, yes, for sure. We...

23 Q ...an intoximeter test?

24 A The Coast Guard was anxious to get urine and
25 breath, or blood samples, and we discussed how we

1 could do that. There was a lot of options. For
2 some reason, they were under the impression that
3 I could take blood, and I don't know how they
4 believed that, but I couldn't -- I'm not gonna be
5 taking blood from anybody. I can take them to a
6 facility where we can take blood if it's the
7 smart thing to do, or we can get a nurse, or a
8 doctor, or an EMT-3 of which there are several at
9 the police department, for example.

10 At that time, the police department had a
11 unified force that was both EMT-3, EMT-2s, and
12 policemen. And it would've been a very simple
13 matter to get one of those guys out 'cause they
14 can do injections and take blood.

15 And I had, before I left town, told the police
16 department that I was doing this and to be ready
17 for a call if I needed help. And we discussed
18 all the options, and the Coast Guard said, well,
19 we can do this without any problem. I said,
20 "Well, let's do it then. And I'll just help you
21 do whatever you need to do."

22 And they kinda just took over the blood
23 sampling process. And Mark Delozier told me that
24 he would be doing the investigation into the
25 cause of the accident. And the lieutenant -- I

1 believe he's a lieutenant -- Lieutenant Commander
2 Falkenstein told me that he would be doing the
3 oil spill end of the thing.

4 So those two guys were on the phone to town a
5 lot, trying to get somebody out to take blood.
6 and I kept offering my knowledge, because I'm
7 more familiar with what's in there, as to where
8 they could get that -- a doctor, a nurse, or lab
9 tech, or EMT-3, or one of those people.

10 Q Did Mark Delozier conduct some interviews that
11 you sat in on, and/or tape recorded?

12 A Yes, sir. He -- pretty much right away we
13 started finding out who was at the wheel; who was
14 the look out, who was in charge of the con, et
15 cetera, and started arranging to interview these
16 people. And they'd go on and off ship, and go to
17 bed, and what not. And it's kind of difficult to
18 organize who you are going to do first, and what
19 not. And eventually they decided that they were
20 going to interview Mr. Kagan, who was a helmsman.
21 And Mr. Delozier invited me to sit in with 'em on
22 the interviews and to help him develop questions
23 or whatever during the interview. So, I said,
24 "Fine, I'll go in there with ya'."

25 And I was off making a phone call or something

1 from the radio room and came back to the
2 wheelhouse, and Delozier was gone. And I said,
3 "Well, where is Delozier?"

4 And they said, "Well, he's interviewing Mr.
5 Kagan."

6 And I said, "Where's that?"

7 And then I ended up with -- I believe it was
8 the chief mate -- maybe the second mate, I don't
9 know which one, walking all over the place
10 looking where these guys might be. And
11 eventually we found them in a spare officer's
12 quarters, I believe it was. So I arrived for Mr.
13 Kagan's interview, oh, probably five or 10
14 minutes into the interview.

15 Q What time was that?

16 A That was at approximately 7:50 a.m.

17 Q At approximately 8:30 did you meet the
18 captain?

19 A Yes, sir.

20 Q Is that a time that you recorded in your
21 notes?

22 A Yes.

23 Q What happened then?

24 A We were between interviews. We were going to
25 interview a third mate, Mr. Cousins. And when

1 you're walking around on that ship, it's pretty
2 narrow and there is no real gathering area. I
3 was walking through a hall, and here was another
4 guy that I hadn't met. And I just said to
5 someone, "Who is this?"

6 He said, "The captain."

7 And I said, "Hello, Joe." And I told him who
8 I was, and introduced myself.

9 Q What transpired then?

10 A Well, in the process of me telling him who I
11 was, it's not clear why a game warden would be on
12 your ship. So I told him I was representing the
13 state, and we were trying to find out how this
14 happened, and why it happened, and just what the
15 heck the problem was. Because we were all, you
16 know, "How did this happen? What was the
17 problem?"

18 And he said to me, "You're lookin' at it."

19 I said, "Well, we'll talk later then."

20 Q Did you communicate with anyone higher up in
21 your organization after meeting with the Captain?

22 A Yes, sir. I made more than one call to my
23 lieutenant who is stationed in Palmer. They have
24 a phone there on the ship that you could just --
25 I, with the assistance of the radio officer,

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could just dial up whoever I needed to talk to.
And I called up my lieutenant and told him that
this was a real big problem, and that a lot of
things had to get done.

Q Did you suggest any lines of investigation to
him at that point?

A Yes, sir. One of the first things I did was,
I told him that -- I mean right -- it was real
obvious that this was a real big deal. And I
knew right from the minute I got there, just from
the volume of oil that come out of this thing.
And we live with tankers. You know, we see them
coming and going, and we practice various things;
we practice oil spills; we talk about separation;
all this stuff. I mean, it's what we focus on in
Valdez, is oil, oil, oil.

And when I saw this, I knew this is the big
baby. I mean, I knew this was gonna be what it
is. And I told the lieutenant, I said, "We're
gonna have to find out what the (indiscernible -
bad recording), because the governor is gonna
want to know; the public's gonna want to know.
We have to have our own conclusions. We can't
rely on the Coast Guard; we can't rely on
(indiscernible - bad recording), we have to have

1 our own conclusions.

2 And I suggested that we send a trooper or
3 troopers from somewhere else to go to Valdez and
4 start an investigation and (indiscernible - bad
5 recording).

6 And I suggested right off the bat that they
7 contact ALAMAR, which are the shipping agents.
8 Because I know that the agents represent the oil
9 companies with the tankers. The individual
10 agents come and go from the tankers at the
11 arrival and departures. They have intimate -- I
12 should say, close contact with the crew and
13 captain right at the time of departure. And I
14 knew that an agent would have information on the
15 condition of the captain and the crew immediately
16 prior to sailing.

17 I also knew that there's a pilot that's on
18 board. It's a standard operating procedure. I
19 know where the pilots get on and off, and I knew
20 that they had to have a pilot. So I suggested to
21 my boss to have a trooper come down and
22 investigate any leads they might uncover through
23 the shipping agent, at Alaska Maritime, and the
24 pilot through the Southeast Pilots Association,
25 for starters.

1 Q And that was in a conversation which occurred
2 when?

3 A Well, it was early in the morning prior to the
4 captain's interview, I know that. I don't know
5 what time it was. I called them several times
6 telling them how things were progressing, and how
7 much oil was dumped in the water.

8 Q Did you sit in as Mr. Delozier interviewed
9 Gregory Cousins, the third mate?

10 A Yes, sir, I did.

11 Q Did that occur at 8:43 in the morning?

12 A Yes, sir.

13 Q At -- some time after your interview with --
14 Mr. Delozier's interview with Mr. Cousins, did
15 you become aware of the blood testing process?

16 A Yes. It was a major concern of myself and Mr.
17 Delozier. You know, when was this gonna take
18 place. And we talked about it all the time. And
19 there was a great deal of conversation between
20 the boat and the Coast Guard station over getting
21 somebody out there to do this blood testing.

22 And because I was in an agency assistant
23 position, I never really made any decision, who's
24 saying this, who's saying what. And I never
25 really got down to the point where I directed

1 anybody to do anything.

2 And it was very frustrating to me, because I
3 knew it had to be done, and I knew that time was
4 important. And no one seemed to be able to tell
5 me what the problem was.

6 And some time before lunch, it was 10:00,
7 10:30, somewhere in there, I said to Delozier --
8 I said, "We gotta get this blood sample. I mean,
9 what's goin' on here."

10 And he said, "Oh! We got a guy doin' it."

11 I said, "Well, good. Fine."

12 And it turned out that there was some sampling
13 kits on board the boat from the beginning that
14 they carry with them, and it was just a matter of
15 getting a person out there to do the lab work --
16 to take the sample.

17 (2230)

18 And then I went into the captain's stateroom,
19 which is right across from the radio room there,
20 and they were taking blood from one of the look
21 out's, a lady, Maureen, something or other. And
22 -- Maureen Jones. She was sitting there at the
23 captain's desk, and the medic was taking her
24 sample.

25 And I asked the medic, I said, "How ya' doing

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this? Are you sealing this stuff up, so that it's gonna be good evidence, and all that?"

He said, "Oh, yeah."

He showed me a container, and it was a standard blood and urine sampling kit that was taped closed, signed and dated by him. And -- so I saw that and I said, "Well, that looks good to me." And I made no steps to secure it as evidence, because he already was securing it as evidence.

And then after he left, I asked Delozier what happened to the sample. And he said that the medic took them with him. So I was confident that their integrity would be safe. You know, chain of custody.

Q Do you know what time actually the blood tests were...

A No, I couldn't tell you that. It was late in the morning. It was late in the morning. Before lunch.

Q What time is lunch?

A Right around noon we ate.

Q Did you see bottles of a substance labelled Moussy?

A Yes. There was Moussy, I believe is the

1 pronunciation, non-alcoholic brew, I believe is
2 what it says on the label. It's a green bottle
3 with a foil top; like a beer bottle.

4 And they were in the refrigerator in the
5 captain's -- or, in the officer's mess. And
6 there was also a couple of bottle in the
7 refrigerator in the captain's office/stateroom
8 suite.

9 Q After lunch what did -- how many bottles were
10 there that you saw in the...

11 A In the captain's room there were probable two,
12 I guess. And in the officer's mess there was a
13 lot -- a case or two, I suppose, in the
14 refrigerator. It's a glass fronted case full of
15 pop and what not, juice and milk, and there was a
16 whole shelf of them in there.

17 Q After lunch did you sit in on an interview
18 with Captain Hazelwood conducted by Mr. Delozier?

19 A Yes, I did.

20 Q And was that tape recorded?

21 A Yes, I tape recorded it.

22 Q After the interview with Captain Hazelwood,
23 did you go look at the Moussy bottles again?

24 A Well, after he said that he had drank some, I
25 thought it would be a good idea to have a sample

1 of this stuff. So I went back to the officer's
2 mess and I took two bottles out of there. And
3 one of the bottles, I opened it and smelled it,
4 and offered Delozier, and Dan Lawn, and Mr.
5 Falkenstein, that they could smell it and see if
6 it resembled what they smelled on the captain's
7 breath.

8 And then later Delozier took another one out
9 of the captain's stateroom and gave it to me, and
10 eventually I took it to town and delivered it
11 back to their Coast Guard station there. So I
12 ended up with one bottle and the Coast Guard
13 ended up with one bottle, and the other one I
14 opened and dumped some out...

15 Q What time did you leave the ship?

16 A It was around 3:00, I believe, in the
17 afternoon.

18 Q Trooper Fox, would you have gone to the Exxon
19 Valdez in response to the report of a grounding
20 alone, had there been no report of leaking oil?

21 A No doubt.

22 Q Explain why?

23 A It's my back yard. Well, I'm the only Fish
24 and Wildlife Trooper there. It's my beat. It's
25 where I work. It's where I live. You get news

1 like this, you go check it out.

2 Q Did you make efforts over the next few days to
3 get help with the investigation?

4 A Yes, from the beginning.

5 Q Tell the judge what you did?

6 A The maps review what I did from the boat.
7 After I got back to down I continued to call my
8 lieutenant and the colonel, the head guy in our
9 division, and said -- tried to impress upon them
10 the size of this problem. And everybody was
11 listening, but nobody was saying much.

12 And then on Sunday the commissioner called me
13 up and he said, "What's going on?" And so I told
14 him. And then I talked to Michelle Brown of the
15 Attorney General's Office, she came to town. And
16 by Sunday night I had gotten word that the
17 District Attorney's Office was sending someone
18 and the State Trooper's headquarters was sending
19 someone.

20 And, in fact, we ended up with one person in
21 the AG's office; one person from the DA's office
22 -- this is, like, on the first day; Sergeant John
23 McGhee of the Troopers. And then the next day,
24 about three more troopers showed up.

25 Q Sometime did you receive instructions that you

1 should not get information from the National
2 Transportation Safety Board investigators who
3 were in Valdez working on an investigation on
4 their own?

5 A Actually, before they were even there. It was
6 well before anyone came. It was in the very
7 early parts of the investigation, and we became
8 aware of NTSB's efforts to investigate the crime.
9 And the Coast Guard told us that the NTSB was
10 going to do everything, they weren't going to.

11 So I felt that there was the state people and
12 there was the NTSB people. And the NTSB people
13 were a one way operation. You tell them things,
14 they tell you nothing. So from the very
15 beginning, what we did is, we weren't going to
16 get any help from the NTSB anyways, so we just
17 went about our business, and then eventually the
18 NTSB caught up with me and sorta drug me in for a
19 couple hour interview.

20 However, right from the very beginning we
21 never had any exchange of information with either
22 the federal investigation or the NTSB.

23 Q Did you receive specific instructions not to
24 get information from them?

25 A Yes, from you.

1 Q When did that happen?

2 A I really can't say the date and time, but I
3 know in the very first part of the investigation
4 I was told to clear every bit of information
5 through your office first, or through you, and to
6 not necessarily share anything with any other
7 agencies. But to strictly limit my contact with
8 other investigators, to the point where I didn't
9 really have any.

10 Q Did you ever, for example, send reports to
11 Mary Anne Henry or Brent Cole in the District
12 Attorney's Office?

13 A No. Never. Everything I ever generated went
14 to Sergeant McGhee, who was organizing our
15 things, or directly to you. Anything written
16 went to Sergeant McGhee, who was organizing a
17 report. A lot of information, investigative
18 leads that needed checking for follow-up, what
19 not, I discussed with you prior to doing it.

20 Q At some later point did you receive
21 instructions -- an explanation about the
22 inevitable discovery doctrine and an
23 investigation that you were being asked to help
24 in regarding that?

25 A Yes. Yes.

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Q Explain to the judge what your understanding was and what you understood your role to be?

A Sure.

THE COURT: Maybe you could tell me when you got your instructions, first.

(2814)

A Oh, boy. Well, it was prior to interviewing Mr. Lindenaugh (ph), this specific group.

(Pause) I talked to Mr. Lindenaugh on 5/12. And we hadn't done anything, or I hadn't done anything involving the investigation for some time prior to that. For a couple of weeks, probably.

Then I received a call from the DA's office saying, go out and find these people and interview them. And the subject of the interview was supposed to be, "What would you have done had you not already known that this ship was on the rocks? When would you have seen it? What would your actions have been? Did you, in fact, see it, and what, in fact, did you do?"

And it was explained to me at that time, really not in very great detail, because I didn't ask, I just went on with the job. It was explained to me that we needed to have an idea of

1 when we would have inevitably discovered this
2 thing. And my little part of it was to talk to
3 these people.

4 So I went and talked to Mr. Lindenaugh and Mr.
5 Brodigan and Mr. Heston, and they offered some
6 advice on who else we might contact. Spotter
7 pilots for herring; Fish and Game; other
8 commercial traffic, et cetera.

9 But I couldn't say -- before actually doing
10 that work with Mr. Lindenaugh, I couldn't say
11 when I actually knew about it. However, it seems
12 like I've known it from the beginning, because we
13 were doing our one little group. We were not --
14 the NTSB or anyone. And there weren't any other
15 investigators in town until much later when
16 Trooper Stogsdill came to town.

17 Q At some point did you suggest that an
18 investigation could go in the direction of
19 talking to guards at the Alyeska Pipeline
20 Terminal?

21 A Oh, yeah. That was -- prior to -- when I knew
22 that the help was coming -- additional help was
23 coming, what I thought I should do is try to have
24 some of the ground work done. A list of people
25 who needed to be interviewed; a list of offices

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that we could contact, so we had an organized approach to the investigation.

And because I'm a long time Valdez resident, I had a lot of contacts. I deal with these people every day. And I knew the people and the places. So I made a list of everybody we needed to talk to, and as soon as some help arrived we sort dispatched ourselves to interview all these people.

And one of the first places we went was the Terminal. Because when people go in and out of the Terminal they are screened by the guards for contraband. It's face-to-face contact. And I thought that perhaps the guards could give us information in regards to the condition of the crew. And I wanted to get right to them as quick as we could before their memories faded, et cetera, et cetera.

And that was on the weekend -- Sunday, I believe, is when I called them up over there.

Q How about as to a cab company?

A When you go to the guard shack they give you a log -- if you ask for it, they give you a log of who goes in and out. And they had them coming in on a Yellow Cab, which they...

1 Q Excuse me. What do you mean by "they had"?

2 You say "they had them coming".

3 A The guards had them logged into the Terminal
4 via Yellow Cab. I know the guy who runs the
5 Yellow Cab company, so I called him up and said,
6 "Who was your driver on this night?" And he told
7 me. And I put his name on the list of people to
8 interview.

9 Q How about a woman, Patricia Caples?

10 A Pat Caples. She's usually referred to as Tiny
11 Caples. She's a long time, life long Valdez
12 person. I know her family well. She works for
13 ALAMAR, Alaska Maritime.

14 And I didn't know that she was the agent,
15 right off the bat. However, the manager -- the
16 office manager of ALAMAR is a good friend of
17 mine; I've known him for a long time. And I knew
18 that he would know who it was. So I called him
19 up and said -- his name is Bob. I said, "Who was
20 the agent that saw the Exxon Valdez off?" And he
21 told me it was Tiny Caples. I said, "Okay.", and
22 I put her on the list of people to talk to.

23 Q How about identifying the pilot?

24 A That was pretty easy. I called the pilot's
25 business phone there in Valdez to talk to them.

1 And the guy who answered the phone was the same
2 pilot who escorted the ship out; that was Mr.
3 Murphy. So I made an appointment to talk to him.
4 Q Okay. Let me distinguish talking to the pilot
5 from identifying the pilot. When did you learn
6 who the pilot was?
7 A He told me on the phone. I think it was
8 Sunday. It might have been Monday.
9 Q Did you learn in the course of talking to
10 Captain Hazelwood on the 24th?
11 A Yes. Captain Hazelwood told us that Mr.
12 Murphy was the pilot.
13 Q So you knew the name "Murphy" as a result of
14 the conversation with Captain Hazelwood...
15 A Right.
16 Q ...on the 24th?
17 A Right.
18 Q Then to locate him you simply called the
19 Southwest Pilot's and he answered?
20 A Right.
21 Q Were there leads like that one that you got
22 from the conversation with the captain?
23 A Sure. He told us that he had been by florist.
24 He told us that he had been by the Pipeline Club;
25 the Pizza Palace. He told us he was in the

1 Yellow Cab. He told us he had been next door at
2 the bar from the Pizza Palace. Certainly all
3 those were the leads that we followed up.

4 MR. LINTON: Nothing further, Your Honor.

5 THE COURT: Do you want to take lunch?

6 MR. FRIEDMAN: It would probably be about
7 right.

8 THE COURT: All right. We'll take about an
9 hour and a quarter. Come back about 1:15. We'll stand
10 in recess.

11 THE CLERK: Please rise. This court stands in
12 recess subject to call.

13 (Off record - 12:01 p.m.)

14 (On record - 1:25 p.m.)

15 THE COURT: Be seated. All right, Mr.
16 Friedman.

17 MR. FRIEDMAN: Thank you, Your Honor.

18 (3154)

19 CROSS EXAMINATION OF TROOPER FOX

20 BY MR. FRIEDMAN:

21 Q Trooper Fox, I want to ask you a couple
22 questions that Mr. Madson may be interested in in
23 a week or two, relating to you being on the
24 vessel when you first arrived, and were told
25 about the Coast Guard's suspicions about alcohol.

1 At that point in time, did you feel that you
2 had probable cause to arrest Captain Hazelwood?
3 A No.
4 Q And at any point during the 24th, did you feel
5 that you had probable cause to arrest him?
6 A No.
7 Q Thank you. Now, as I understand it, your
8 first phone call regarding the spill was
9 basically to tell you that there has been a
10 grounding and a spill, but you weren't
11 specifically asked for any assistance, is that
12 correct?
13 A Correct.
14 Q And you didn't take any action in regard to
15 that first phone call, or in response to that
16 first phone call?
17 A Other than I called them right back and asked
18 them about the public safety aspect.
19 Q And after they told you there was no immediate
20 public safety danger, in essence you -- you
21 didn't go back to sleep, you stayed at your
22 house?
23 A Right.
24 Q Next you got a call asking for your
25 assistance, is that correct?

1 A Right.

2 Q And that was for your assistance regarding an
3 alcohol issue, although you may have
4 misunderstood. Somehow there was a lapse in...

5 A I thought that it was wrestling a drunk type
6 of call, yes.

7 Q Right. Okay. Now, you told Mr. Linton that
8 if you had only been informed of a grounding, you
9 eventually would have gone out to the vessel
10 anyway?

11 A For sure, yeah.

12 Q Okay. Do you know how soon you would have
13 gone out there?

14 A I would have waited until I could call my boss
15 without waking him up. Probably 7:30 or so, I'd
16 probably try him at his house -- 7:00, 7:30 at
17 his home. And then I would have run to where I
18 keep -- I have a Boston Whaler skiff that I keep
19 in a state of readiness in a warehouse on a
20 trailer in the winter, because if you leave it in
21 the water it gets filled up with snow and it's
22 real hard to use it.

23 So I would have run to the warehouse and
24 launched it and gone out. It would have taken,
25 oh, maybe 30 minutes to put it in the water

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total, and another 30 minutes to run out there before I left.

Q All right. And would you have gone out there to investigate in an official capacity, or how would you characterize your activities if this were the chain of events?

A Information gathering. See how bad is it. What are we looking at. Certainly I'm not going to rely on the Coast Guard's information on whether or not it is a hazard. I could make my own judgments on that. Because as the tide changes and as things develop, I thought it would be important for me to come to my own conclusions.

Q Okay. Now, in fact, around -- did you say around 4:00 o'clock in the morning you got a call requesting assistance?

A I think it was 4:30.

Q All right. And at that point you knew that they needed assistance with regard to alcohol, and thought that they had a problem with a drunk?

A That's the way I heard it, yes. It was a very brief message, you know. When someone's calling for your help you don't really go into a lot of detail. The first thing you do is get moving,

1 and hopefully, between the time you get moving
2 and get there, you'll have more of the story.

3 Q When you arrived out at the -- well, I'm
4 sorry, at that 4:30 phone call, that was
5 Commander McCall?

6 A I think it was, yes.

7 Q Did he tell you anything about who had been in
8 charge of the vessel, or whether there was
9 attempts to get it off the reef, anything of that
10 kind?

11 A No.

12 Q You arrived at the vessel at approximately
13 6:45?

14 A Right.

15 Q And when you met with the Coast Guard
16 personnel at 6:45, they told you that they
17 suspected that Captain Hazelwood had alcohol on
18 his breath -- or, they thought they smelled
19 alcohol?

20 A I arrived at the vessel at about 6:45. I was
21 actually up in the bridge where the Coast Guard
22 fellows were, closer to 7:05, 7:10. And those
23 two people, Delozier and Falkenstein, told me
24 that they had smelled alcohol on the captain's
25 breath.

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Q Okay.

A And I went on and to question them in regards to sobriety. You know, slurred speech, stumbling gait, et cetera, and they had not observed that.

Q Now, they also told you in that first conversation that the third mate had been on the con at the time of the grounding?

A Yes.

Q Now, did you think the fact that the captain may have had alcohol on his breath was a significant fact?

A Oh, for sure, yeah.

Q And something that warranted further investigation by yourself?

A Yes.

Q That's why you asked that series of questions about, did he have a stumbling gait?

A Well, sure. If you get called to a drug call, that's the first thing on your mind. You know, is it the truth or not. Is it a problem or not.

Q Okay.

A And so you'd have to investigate whether or not it is an accurate summons for your help, and you have to figure out what your role is going to be.

1 Q Okay. Is it fair to say that during the rest
2 of the time -- your time on the vessel that day,
3 you did your best, given the constraints you were
4 under, to investigate that issue of alcohol as a
5 factor in the accident?

6 A No, I -- when I say I did my best, I did what
7 I felt was correct. But if I had my way -- if I
8 had actually been doing investigation, it would
9 have been different.

10 Q Okay.

11 A The Coast Guard told me they could get the
12 blood sample; they could get the urine sample.
13 And I just allowed them to do that. And
14 certainly we talked about it. Certainly I made
15 suggestions and encouragement, but to say that I
16 really did it is not really fair, because I was
17 having a hard time not...

18 Q I'm not trying to hold you responsible.

19 A ...to do it. I was having a hard time not to
20 do it. I did it.

21 Q Fair enough. I guess what I'm getting at is -
22 - that's what I meant by, within the constraints
23 that you had.

24 For example, you asked various people about
25 potential alcohol use?

1 A Yes.

2 Q And that was as a result of having been told
3 that the people had smelled alcohol on the
4 skipper's breath?

5 A Right.

6 Q And as another example you looked around the
7 captain's cabin for signs of alcohol use?

8 A Well, actually I was in his cabin and I looked
9 around for things obvious. I was in his cabin
10 where Mr. Delozier gave it a more thorough
11 search, you could say. What I did certainly was
12 not a search. However, I was there when Mr.
13 Delozier looked in his wastebasket in his
14 stateroom; I was standing right there in the
15 office part.

16 Q And you had some input into that, in that you
17 discussed the looking around for alcohol signs?

18 A Sure. "What did you find? What could you
19 see."

20 Q Now, as to the issue of the third mate being
21 on the con at the time of the grounding, was that
22 something that you thought was significant at the
23 time?

24 A Sure.

25 Q And is that something, again, within the

1 constraints you were operating under; something
2 that you pursued as you talked to people on down
3 the line?

4 A I'm not sure there was much of a focus on the
5 third mate. Certainly, when we did our
6 investigation it was more than just one prong at
7 Captain Hazelwood. However, we never developed
8 any leads to indicate that there was a problem
9 with him drinking, or whatever.

10 Q No, I understand that.

11 A So I can't really say that we did much in
12 regards to certain...

13 Q I think I asked the question -- I didn't ask
14 the question right. What I'm getting at is
15 whether or not you asked questions of other
16 witnesses about who was on the con at the time of
17 the grounding. For example, did you ask the
18 helmsman who was on the con?

19 A Well, Delozier did, and I was sitting there
20 when he did, because I heard him.

21 Q You indicated that if you had been doing the
22 alcohol investigation you would have done some
23 things differently. Could you tell us what those
24 things are?

25 A I don't have a chain of command to worry about

1 locally. If I want something done, it's just a
2 matter of me doing it. When I became aware of
3 alcohol sampling and urine -- or blood sampling
4 and urine sampling equipment on the boat, it
5 would have been a simple matter for me to call up
6 the police department and I would have said, "I
7 want somebody out here right now to draw blood."
8 If I had the authority to do it. And I would
9 have been able to do it a lot faster.

10 I wouldn't have worried about who it was, or
11 how they got there, or who was paying for it, or
12 any of that. And apparently the guy -- the Coast
13 Guard officer that was there was concerned about
14 the procedure that he had to go through to get
15 somebody there.

16 Now, what that was, I don't know, because I
17 wasn't really involved in that process. And when
18 I say things would have been done differently, as
19 I am convinced that I, given the same set of
20 authority that they had, could have accomplished
21 it a little faster, because I would have been
22 able to do it myself with one phone call.

23 Q Okay. Now, after getting aboard and getting
24 oriented, and becoming aware that this alcohol
25 issue needed to be investigated, you mentioned in

1 your direct testimony that you began to think of
2 witnesses who might be able to account for
3 Captain Hazelwood's condition earlier in the day?

4 A The whole crews' condition.

5 Q Right.

6 A Anybody who got off the boat.

7 Q Such as Pat Caples, the agent; the pilot,
8 Murphy; people of that type?

9 A That's correct.

10 Q And the reason you were interested in
11 interviewing them, or having other troopers
12 interview them, was, again, to see what they
13 could say about this alcohol issue, is that
14 right?

15 A Well, the accident. I mean, you know, what
16 caused it? How did it happen? You know, was
17 there some -- there had to be remarkable event,
18 you know. And certainly at that point we weren't
19 focusing on one single problem with alcohol, it
20 was, what the heck happened? Who -- were these
21 guys okay? Were they healthy? Were they -- is
22 there some kind of problem? You have to find
23 that out. And to say we were focusing on alcohol
24 just isn't true, because that wasn't the case at
25 all. We were trying to trace their movement to

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see what happened.

Q Okay. I thought you said in direct examination that you were interested in talking to Murphy and the agent, Pat Caples, because they could give an account of what Hazelwood's condition was earlier in the day?

A Yes, they could.

Q And the reason that was important is, barring some epileptic seizure or something of the kind, the reason you were interested in talking to those two people is, they could tell you whether he was drunk or not earlier in the day?

A They certainly should be able to.

Q Now, when you got out to the boat and had talked to the Coast Guard people, and had been made aware of alcohol as an issue, you then spoke with Captain Hazelwood at approximately 8:30, is that right?

A Right.

Q And at the time -- at that time you had already talked to Sergeant Lown [Lowden] about what you should look for in terms of gathering evidence of DWI?

A It's now Lown [Lowden].

Q Did I pronounce his name wrong. Lowden.

1 A I called him -- I called the dispatch office
2 in Anchorage, and he apparently was the only --
3 or the main person at the dispatch center, so,
4 yes, I asked him.

5 Q Okay. And so you had already talked to
6 Sergeant Lowden about what to look for in terms
7 of making an alcohol case?

8 A Sure.

9 Q Okay. And you already talked to the Coast
10 Guard people, and they told you that they
11 suspected alcohol used by the captain?

12 A Yes, that's right.

13 Q And then you talked to the captain at 8:30 and
14 noticed no sign of alcohol on his breath, is that
15 correct?

16 A (No audible response.)

17 Q And you were close enough to smell his breath,
18 and his breath was sour, but you didn't note any
19 sign of alcohol, is that right?

20 A When I talked to him he was drinking a soda,
21 or some sort of seltzer, whatever. And he was
22 smoking cigarettes. And he had just come out of
23 his room from, I suspect, sleeping. And he had
24 sour breath, with cigarette smoke and whatever.

25 Q Right. My point is that you were close enough

1 to smell his breath...

2 A Sure.

3 Q ...and that you didn't smell any sign of
4 alcohol?

5 A No.

6 Q All right. And at the same time at 8:30 you
7 saw no other signs of impairment by alcohol?

8 A No. He had bloodshot eyes, but it had been a
9 long night.

10 Q Okay. No other signs of impairment, such of
11 slurred speech, or...

12 A No.

13 (C-3501)

14 (000)

15 Q ...unsteadiness, anything of that kind.
16 Now, at 8:00 o'clock -- excuse me just one
17 minute. At 8:00 o'clock on the evening of the
18 24th, you passed on what you considered to be
19 investigative leads relating to alcohol to the
20 Coast Guard people, is that correct?

21 A To D. J. Toll (ph), I think is who I talked
22 to.

23 Q And who is he?

24 A He's a -- I think he's a warrant officer for
25 the Coast Guard, or a -- he's a lower echelon

1 Coast Guard officer.

2 Q And in essence you were saying, "Here are the
3 leads I think you should follow-up on to
4 determine whether the captain had been using
5 alcohol that day."

6 A Well, it was more like, "This is what I found
7 out so far today; what have you found out?"

8 Q Okay.

9 A And they didn't know anything. Or, they
10 didn't tell me.

11 Q At any rate, the leads that you passed on were
12 in reference to alcohol use? What you thought
13 you found or would...

14 A Actually, most of them were -- if I can
15 remember correctly, most of the things I passed
16 on to them was not so much alcohol as tracking
17 movements, and who would have seen these people,
18 and who would have been able to say who was off
19 the boat, where they went and what they did, who
20 they may have come in contact with, that sort of
21 thing. If anything other -- sort of foul play,
22 or any other problem was evident, perhaps some of
23 those people could help us in those areas of the
24 investigation.

25 Q Have you been briefed by Mr. Linton on what

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this hearing is about? That is, the inevitable discovery and independent source arguments?

A Yes.

Q Did you make a report close in time to the 24th, in which you noted that you passed on leads to the Coast Guard?

A Sure. I wrote a report.

Q I wonder if you could read to the judge what you wrote about passing on leads to the Coast Guard? If you would just read the yellow circle there.

A "At 8:00 p.m. I called the U. S. Coast Guard office and passed on several investigative leads to a Coast Guard investigative officer, T. J. Toll. The leads were in reference to tracking the captain's suspected use of alcohol. Toll advised that he was interested in the information; that he would check on it."

Q Thank you. Your purpose in passing on these leads was to assist the Coast Guard in investigating the alcohol issue, wasn't it?

A I wanted to help them; pass them on information, sure. And I wanted them to help me.

Q At the same time you were going to continue your investigation of that issue?

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A Sure.

Q Okay. Now, you told us that -- this was a holiday weekend, wasn't it?

A Easter.

Q Yeah. And you called some of your superiors to try to convince them of the seriousness of this incident, and how important it was to get other investigators to the scene?

A Right.

Q And I don't know if I can quote your exact words, but you said something to the effect that people were listening but you weren't sure they were hearing you, or they weren't.

Q It's difficult to pass on information in a factual manner that gets the correct result. And I didn't want to do it in an emotional fashion, I wanted to do it in a manner that would help them understand the situation.

And I knew that this process was going to be difficult, because no one had ever dealt with it before. Nobody knew what was going to happen. And it was easier for people like myself, and Lawn, and others, who sat there and watched this happening, to understand what was going to happen.

1 And we knew what was going to happen. And the
2 fellows on the ship knew what was going to
3 happen. The Exxon employees. And it was a
4 tremendous event. And it was difficult
5 convincing -- well, I shouldn't say "difficult",
6 but it was difficult for me to accurately
7 describe what I felt was going to happen to my
8 bosses.

9 Q And you were telling you bosses that the state
10 needed to do its own investigation...

11 A Right.

12 Q ...of this major event?

13 A Right.

14 Q When you talked to your bosses about it, did
15 you tell them that there were indications that
16 alcohol had been involved?

17 A Well, I told them everything that I knew.

18 Q And that was one of the things that you knew?

19 A Sure.

20 Q And did you tell them that you needed troopers
21 or other investigators to investigate that issue?

22 A I recommended it, yes.

23 (Pause)

24 MR. FRIEDMAN: Your Honor, I wonder if it
25 would be all right for me to move this chart over to

1 the easel to ask Trooper Fox a couple questions about
2 it?

3 THE COURT: Sure. Do you need a pointer?
4 There's one behind there, probably.

5 MR. FRIEDMAN: I don't think I'll need one.

6 Q (Trooper Fox by Mr. Friedman:) Trooper Fox,
7 the -- is it correct that approximately 7:05 a.m.
8 you arrived at the ship?

9 A I was on the deck about then.

10 Q Okay. And by "the deck", do you mean the con?

11 A I was actually on the boat.

12 Q And is it correct that shortly after arriving
13 on the boat you and/or Mr. -- you were present
14 when Mr. Delozier talked to the master about what
15 he had done the day before?

16 A Yes. Several hours, but that morning, yes.

17 Q Okay. So the morning of the 24th...

18 A It was after lunch.

19 Q Actually, around 1:00 o'clock.

20 A By 1:00 o'clock, yeah.

21 Q So around 1:00 o'clock you were asking the
22 captain what he had been doing the day before?

23 A Yes.

24 Q And at that point you're aware of the alcohol
25 issue?

1 A Sure.

2 Q Then on -- is it correct that on March you
3 questioned the pilot, Mr. Murphy, first, is that
4 correct?

5 A Yes.

6 Q And you asked him questions relating to
7 pilotage? That is, who was on the con at the
8 time of the grounding, and what licenses they
9 held?

10 A He didn't -- he wasn't there at the time of
11 the grounding.

12 Q Okay. I'm sorry. That's correct.
13 Did you ask him questions about pilotage?

14 A We asked him what's the story. What -- you
15 know, replay the events for us, and he did, from
16 the time that he was with Mr. Hazelwood in town
17 until he got off the ship at the Rocky Point
18 Pilot Station.

19 Q Was there anyone else present when you
20 interviewed him?

21 A Mr. Linton, and I think, also, Joe LeBeau of
22 the DEC. Someone else was in there, so it might
23 have been Joe LeBeau.

24 Q Did you ask Mr. Murphy any questions about
25 what endorsements were necessary to pilot a ship

1 in this area?

2 A I think -- I remember him talking about it --
3 he was interviewed twice, and I don't remember if
4 it was the first time or the second time we
5 talked about that.

6 Q Okay. At any rate, you questioned him about
7 the pilotage issue on one of those occasions?

8 A Yes.

9 Q You, also, on the 27th, questioned him about
10 alcohol?

11 A Yes.

12 Q Now, on March 27th you also met with Mr.
13 McGhee, is that correct?

14 A Sergeant trooper.

15 Q I'm sorry, Sergeant McGhee.

16 A He's a trooper, Sergeant McGhee.

17 Q Okay. And what was the purpose of that
18 meeting?

19 A He arrived in town to take over the
20 investigation. And pretty much from that point
21 on my role was sort of a local knowledge person.
22 I didn't really do a whole lot as far as creative
23 thought. They would say, "We want to do this."

24 And I would say, "Okay, these are the people
25 we need to talk to. We need to talk to these

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people; here's where we find them."

I was the guy who drove people around, set up meetings, said, yes, this person works there, that sort of thing. That's what my role became.

Q And on this meeting, on the 27th, you're, in essence, briefing him as to what you found so far and what needs to be done.

A Yes.

Q As far as your opinion, what needs to be done in the future.

A Well, yeah. I didn't have a whole lot of input on that from then on, but I certainly told them what I had done.

Q Now, back to the 24th. Is it correct that at 7:37 in the morning you were present when Mr. Delozier interviewed the helmsman, Mr. Kagan?

A For most of the interview.

Q That's right, you were gone for the first portion.

A Right.

Q And you were present at 8:43 when Mr. Delozier questioned the third mate, Mr. Cousins?

A Yes.

Q And both of those people were asked questions relating to who was on the con during the time of

1 the grounding?

2 A Yes.

3 Q Yes.

4 A On April 1st you were present at a search
5 warrant hearing, is that correct?

6 A Geez, I really can't remember.

7 Q Do you have a record of it there?

8 A I could look at my notebook.
9 (Side conversation)

10 At 1950 offered testimony in support of an
11 affidavit for a search warrant.

12 Q And at that hearing you reported parts of what
13 you had discovered so far in terms of your
14 investigation?

15 A I can't remember what I said there, but that
16 was the whole point for being there, yes.

17 Q Right. You made references to suspicions of
18 alcohol and...

19 A I assume so.

20 Q Okay. And did you participate in the search
21 that took place on April 2?

22 A I went through a garbage back.
23 Out on the vessel?

24 A Yes.

25 Q All right. And what were you looking for when

1 you went through the garbage bags?

2 A Garbage.

3 Q Alcohol bottles?

4 A We were supposed to look for anything that we
5 thought might indicate alcohol use on board, or
6 any destruction of documents or evidence that
7 might be useful to determine cause.

8 Q Okay. I guess nobody's asked you this
9 morning. You said that you weren't really in
10 control of the investigation on the 24th; that
11 the Coast Guard had the authority. Was that
12 explicitly discussed by you and the Coast Guard?
13 Did they say, "We're in charge and..."

14 A Oh, yes.

15 Q And you could tag along if you want?

16 A Oh, yes.

17 Q Okay.

18 A Well, mostly I told them -- I asked them, "Do
19 you have the authority to do this? Are you 100%
20 sure you can do this?"

21 Q Do it -- meaning what?

22 A Oh, interviews, search the rooms, take blood
23 alcohol samples. I said, "Are you sure you can
24 do this? Because if you can't do this, then
25 we'll try -- we'll get a search warrant, or

1 whatever it takes to get blood."

2 Because I wanted to be sure that as much was
3 gonna be done that could be. And they said,
4 "Yes, we're well within our..."

5 Q "We can do this without a search warrant. We
6 can..."

7 A Right. So I said, "Okay. Fine. As long as
8 you're here, go ahead and I'll help in any way
9 that I can."

10 Q Okay. Mr. Linton asked you a question this
11 morning about whether you had received
12 instructions not to share information with other
13 agencies, or not receive information from other
14 agencies. And as I recall, you weren't able to
15 tell us exactly when you got those instructions
16 from him?

17 A Well, very early in the investigation the
18 Coast Guard made it clear that they weren't going
19 to do anything as far as investigating it. Like,
20 after -- it might have been after the first day.
21 And they said that the NTSB was going to do
22 everything.

23 The NTSB is a public organization, not a --
24 it's a fact finding organization. And we didn't
25 want, or couldn't get involved in their public

1 review of the case to prejudice our case. So,
2 initially that was the reason that I understood
3 that we were to work completely independent from
4 any other agency or group.

5 Q What was your understanding as to why it would
6 prejudice your case to be involved in the NTSB?

7 A Well, it's just not a good idea when you're
8 doing an investigation to broadcast what you're
9 going to be doing.

10 Q I take it then at that point there wasn't any
11 discussion of immunity or problems with immunity
12 issues?

13 A I don't remember. I really can't.

14 Q But your recollection is, your concern or
15 understanding was that it had to do with
16 broadcasting your investigative steps?

17 A And you just have to be careful. There's a
18 lot of money involved; there's a lot of emotion
19 involved; and there's people with microphones
20 sticking in your face every time you turn around.
21 And it's just real important that when you're
22 going about your business that you keep your
23 business to yourself, and that you do it
24 properly. You don't just go offhand discussing
25 things with people, and you don't tell people

1 what you're doing.

2 There's a chain of authority that began with
3 Mr. Linton and the investigator, Mr. McGhee. And
4 you just stay within your own lane, so to speak.

5 Q Now, as a matter of fact, ultimately the Coast
6 Guard did turn over its transcripts of interviews
7 of the various witnesses to the state, didn't it?

8 A I couldn't say.

9 Q Okay. You're not aware of that?

10 A No.

11 Q You, at any rate, participated, at least by
12 your presence, in many of the early interviews by
13 the Coast Guard of the Exxon Valdez personnel?

14 A Well, I tape recorded the one. I asked the
15 Coast Guard guy if he was tape recording, and he
16 said, no. And I thought that was a mistake. So
17 I tape recorded -- at the point I found out he
18 wasn't, I tape recorded the last one, which was
19 Captain Hazelwood.

20 (695)

21 Q And you were present at the other ones?

22 A Yes.

23 Q Except for that portion of Mr. Kagan's?

24 A Right.

25 Q When can you recall first hearing that

1 immunity or inevitable discovery might be an
2 issue in this case?

3 A Well, I never wrote it down in my notes, and I
4 reviewed -- and I understood early in the
5 investigation, and I just wouldn't feel
6 comfortable telling you a date if I don't know a
7 date.

8 Q What is it that you understood early in the
9 investigation?

10 A Well, I knew that our investigation had to be
11 independent of the NTSB's. And I knew that --
12 farther along I knew that Trooper Stogsdill was
13 going to be assigned to another part. I was
14 summoned to Anchorage to appear in court, and
15 then I was sent home without testifying. And it
16 was...

17 Q To appear at grand jury?

18 A Grand jury, yes. And it was explained in
19 fairly good detail at that time.

20 Q Okay. Let's take that as a fixed point,
21 because we could tell when the grand jury was
22 held. Did anyone talk to you about the immunity
23 issue -- used the word "immunity" with you prior
24 to that grand -- your showing up for grand jury?

25 A It sure seems that I was aware of it, because

1 I knew when I came to the grand jury that that
2 was an issue.

3 Q Okay.

4 A However, I didn't know that it was an issue
5 that was going to prevent me from appearing at
6 the grand jury.

7 Q Let me ask you this: did anyone ever say to
8 you -- let's take before the grand jury date --
9 again, that's a fixed point. Before the date of
10 grand jury, did anyone say to you, "As you
11 continue your investigation, Trooper Fox, we
12 don't want you to utilize any information you
13 obtained that first day."

14 A I was -- as I said, when Sergeant McGhee came,
15 I fell into a role that was so minor that that
16 sort of a statement would have been unnecessary.

17 Q How about before Sergeant McGhee came?

18 A No.

19 Q Did anyone say that to you?

20 A No.

21 Q How long did you stay on the vessel on the
22 24th?

23 A I left around 3:00 o'clock. I was back in
24 town by about 3:00 o'clock. I flew in my
25 helicopter, so it didn't take long.

1 Q Now, after participating in the investigation
2 on the 24th, and after participating in the
3 follow-up investigations that you did, let's say
4 in the next week or two. Talking to Pilot
5 Murphy, talking to the other witnesses you
6 interviewed.

7 By the way, do you have some estimate of how
8 many witnesses you interviewed in the first
9 couple weeks?

10 A I didn't actually -- Pilot Murphy -- Mr.
11 Murphy, the pilot -- I think captain is probably
12 appropriate -- Captain Murphy.

13 Q Right. Captain Murphy.

14 A Was the only one that I was really in the
15 interview -- Mr. Linton was there, also. After
16 that we relied on investigators that were sent
17 down. And I was present for several of the
18 interviews. However, once again, it was, "This
19 is where we go. This is who we see. This is how
20 we do it." And the questioning and tape
21 recording, and what not, was actually either
22 conducted by Sergeant McGhee or Trooper Burke, or
23 whoever else it might have been.

24 Q I don't mean to put words in your mouth, but
25 it sounds like you were saying, you were

1 essentially a facilitator once the other
2 investigators arrived?

3 A Absolutely. Yes. Absolutely.

4 Q But, nevertheless, aware of what was going on?

5 A Absolutely.

6 Q Okay. Having been that intimately connected
7 with the first several weeks of the
8 investigation, as I understand it, then your
9 involvement dropped off significantly?

10 A Oh, yes.

11 Q And then you were called back up in roughly
12 early May some time, to do this inevitable
13 discovery investigation?

14 A Once again, I was the only guy in town, and I
15 was called up and asked to locate and interview
16 Lindenaugh (ph), the Hestons, and Mr. Brodigan.

17 Q Were you given any instructions along the
18 lines of when you interview these people you
19 should not make use of whatever you learned in
20 your earlier investigations?

21 A Well, I was asking them -- I wasn't giving
22 them information, they were giving me
23 information.

24 Q Right.

25 A And I just asked them what the story was. So,

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no, I guess now.

Q In other words, you weren't given any specific instructions, limit your questions to these areas, or don't utilize certain information in formulating your questions?

A They didn't give me negatives. They said, "Do this." Which is, go interview the people and find out questions in an inevitable line. "When would you have found this out? When, in fact, did you find it out? How would it have been different if you hadn't heard it on the news?", that sort of thing. Those were the instructions that I received.

Q How many witnesses did you interview?

A Mr. Brodigan, Mr. Lindenaugh, and Mr. Heston. And I talked to Mr. Brady, who is the Fish and Game biologist, and found out that he wasn't -- he didn't have a flight scheduled that day.

Q Did you do any further investigation, other than what you just described, on the inevitable discovery issue?

A Well, I sure can't remember any.

Q Okay. Thank you, Trooper Fox. I don't have any other questions.

MR. LINTON: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 (Witness excused)

3 MR. LINTON: I call Mark Delozier, Your Honor.

4 THE CLERK: Sir, you'll find a microphone on
5 the table there. If you'll go ahead and attach that to
6 your jacket? Would you raise your right hand please?

7 (1027)

8 (Oath administered)

9 A I do.

10 MARK JAMES DELOZIER

11 called as a witness in behalf of the plaintiff, being
12 first duly sworn upon oath, testified as follows:

13 THE CLERK: Would you please state your full
14 name, and then spell your last name?

15 A It's Mark James Delozier, D-e-l-o-z-i-e-r.

16 THE CLERK: Your current mailing address?

17 A P. O. Box 1934, Valdez, Alaska.

18 THE CLERK: Your current occupation?

19 A Vessel supervisor.

20 DIRECT EXAMINATION OF MR. DELOZIER

21 BY MR. LINTON:

22 Q Who do you work for now?

23 A North Employment Agency.

24 Q And what kind of work do you do?

25 A Escort laden tankers outside of Prince William

1 Sound.

2 Q Were you in the Coast Guard?

3 A Yes.

4 Q How long were you in the Coast Guard?

5 A Twenty-one years.

6 Q When did you get out of the Coast Guard?

7 A November 1st, this year.

8 Q Twenty-seven days ago.

9 A Yes.

10 Q As of March 23, 24, 1989, where were you

11 stationed, sir?

12 A At the Marine Safety Office in Valdez, Alaska.

13 Q How long were you stationed there all

14 together?

15 A Since June 15, 1987.

16 Q What were your duties at the Coast Guard

17 station?

18 A I was chief of Marine Safety Department.

19 Q What does the chief of the Marine Safety

20 Department do?

21 A Overall in charge of all the marine casualty

22 investigations, oil pollution investigations, and

23 structural inspections of vessels.

24 Q How many years had you been doing marine

25 investigation work?

1 A Since '83.

2 Q And in that space of time how many marine
3 casualties had you investigated?

4 A Around 200, ball park figure.

5 Q Did any of them involve large tankers?

6 A About half of those would be tankers, or large
7 vessels.

8 Q On March 24, 1989 did you get a call at home
9 about the Exxon Valdez?

10 A Yes, I did.

11 Q Would you tell the judge where you got the --
12 who the call came from, and what you learned in
13 the call?

14 A I was at home in bed and received a phone call
15 from our duty watch stander at the Coast Guard
16 base, and for...

17 Q Who was that?

18 A I don't recall who exactly it was.

19 Q Okay.

20 A I know it was the radio operator that was on
21 watch at the time, but I don't know who it was.

22 Q Go ahead.

23 A He informed me that the Exxon Valdez was hard
24 aground on Bligh Reef and that everyone was being
25 recalled to the station. I said, okay, and hung

1 up and got dressed and came in to the station.

2 Q What time did you get the call?

3 A Around -- I'd say about 20 minutes before one.

4 Q What time did you get to the station?

5 A About 10 minutes later.

6 Q Could you tell the judge what happened when

7 you got to the station?

8 A I walked upstairs and met in the hallway with

9 Commander McCall and Commander Falkenstein.

10 Q Who is Commander McCall?

11 A He's the commanding officer of the marine

12 safety office there; overall in charge.

13 Q And who was Lieutenant Commander Falkenstein?

14 A He's the executive officer, second in charge

15 at the station.

16 Q What did you talk about?

17 A Just discussed the fact that -- what was

18 learned at that time was that the vessel was

19 aground at Bligh Reef, and we were pooling our

20 thoughts for what -- what we should do.

21 Q What are the responsibilities of Commander

22 McCall in the overall operation of -- what are

23 his responsibilities at the marine station -- the

24 Valdez station?

25 A He's overall in charge of the whole operation.

1 Q And Commander Falkenstein is what?
2 A He's second in charge.
3 Q And who, if anyone, was in charge of casualty
4 investigation?
5 A I was.
6 Q Was a decision made that someone go to the
7 ship?
8 A Yes.
9 Q The Exxon Valdez?
10 A Yes.
11 Q How did that decision come about?
12 A Among the -- or during the initial discussion
13 with myself and Falkenstein and Commander McCall,
14 we discussed what we should do. And I suggested
15 that it was imperative that we try to make
16 immediate arrangements to visit the vessel.
17 Q At the time you suggested to them that it was
18 imperative that they make arrangements to get out
19 to the vessel, what was your understanding of
20 what the situation was of the vessel?
21 A The understanding was that she was hard
22 aground. And hard aground, for a vessel of that
23 size, or for any vessel, means there is more than
24 likely structural damage to the vessel.
25 Structural damage does mean that there is a

1 possibility for loss of life or property.

2 Q Did you know that there was a report of oozing
3 oil?

4 A On the telephone notification I was informed
5 that she was hard aground. I did not know that
6 there was oil in the water at that time. On
7 arrival at the station and after the discussions
8 with the CO and XO, we weren't certain whether
9 there was oil in the water. We had not received
10 any quantities that had been released. Although
11 I do believe at that moment they did realize that
12 there was oil in the water, but didn't know how
13 much or to what extent there was.

14 Q Would you have made the decision to go out --
15 was a decision made to go out as a result of the
16 discussion?

17 A Yes.

18 Q Would the decision to go out have been made
19 even if there had been no report of leaking oil?

20 A Yes.

21 Q Could you explain why?

22 A Well, the vessel was in stress. The vessel --
23 there was a problem with the vessel. It's in our
24 zone of responsibility. It's our responsibility
25 to check into these type of things. We had a

1 serious problem there, whether or not there was
2 oil in the water. The vessel being aground is a
3 serious problem.

4 Q Does the master of a vessel have an obligation
5 to report marine casualties?

6 A Yes, he does.

7 Q Does that include groundings?

8 A Yes, it does.

9 Q Does the Coast Guard station to which you were
10 designed -- and what's the proper lingo? Is it
11 Coast Guard Marine Safety Office?

12 A Marine Safety Office.

13 Q The Marine Safety Office have a responsibility
14 to investigate marine casualties?

15 A Yes.

16 Q Does it have a responsibility to collect
17 documentary evidence?

18 A Yes, as part of the investigation.

19 Q What time did you leave to go to the ship?

20 A I believe it was around quarter to two.

21 Q And what time did you arrive at the ship?

22 A I believe it was around 3:40 in the morning.

23 Q What did you do when you arrived there?

24 A Climbed the ladder on the starboard side and
25 come up to the main deck. Walked across the deck

1 up to the aft to the house. Boarded the elevator
2 and made my way up to the wheelhouse. I entered
3 the wheelhouse and walked up to the port side up
4 toward the windshield there and met with Captain
5 Hazelwood.

6 Q Did you detect an odor of alcohol on him?

7 A Yes.

8 Q Tell the judge what you observed about him,
9 and what you could detect?

10 A As I approached Captain Hazelwood, he was
11 standing at the forward part of the wheelhouse on
12 the port side. And Commander Falkenstein and Dan
13 Lawn were in our group, along with a crew member
14 that escorted us up to Captain Hazelwood. The
15 crew member introduced us to Captain Hazelwood
16 and Commander Falkenstein, I had a couple of
17 brief words with him. And we slowly started to
18 discuss the nature of what types of information
19 had been developed at that time as far as the
20 safety of the vessel, how she's sitting, if any
21 tanks are breached, et cetera. And during those
22 moments of about 10 to 15 minutes is when I
23 observed a strong odor of alcohol coming from
24 Captain Hazelwood.

25 (1456)

1 Q While you were on board did you and Commander
2 Falkenstein share responsibilities, or did you
3 have them divided somehow?

4 A Yes, we divided the responsibilities.

5 Q Explain what the division was.

6 A After we discovered the extent of the
7 casualty, and it would be more than just one
8 person could handle. And you could tell he is my
9 superior officer. We decided to break it up so
10 that he would be in charge of the marine salvage
11 and oil pollution aspect, and then I would take
12 over the investigation of the casualty.

13 Q Would you tell the judge what you went
14 through, then, while you were on board to
15 investigate the marine casualty?

16 A Well, at that particular point there, I was
17 concerned with fulfilling my job, but I was also
18 concerned with not interfering with the safety of
19 the vessel. And I knew that Captain Hazelwood,
20 the rest of his crew members and everyone else
21 needed to devote their time and energy to
22 insuring that the vessel remained in a safe
23 condition. So I didn't want to interfere with
24 them by drawing them over into a corner and
25 questioning them, and so forth. So I kinda just

1 wandered around, observed -- looked at documents
2 that were readily available in the wheelhouse,
3 the charts. And when I had an opportunity, then
4 I asked Captain Hazelwood for permission to start
5 interviewing people, or the crew members.

6 (Pause)

7 Q Mr. Delozier, let me show you what has been
8 marked as Plaintiff's Exhibit 1. This is a NOAA
9 chart 16708. Do you recognize the areas
10 (indiscernible - away from mike) on the chart?

11 A Do I recognize the chart? Yes, I do.

12 Q The chart and the geographic area...

13 A Yes, I do.

14 Q Is the location in which you found the Exxon
15 Valdez (indiscernible - away from mike)?

16 A Yes.

17 Q Could you point it out for the court? I'll
18 hand you a red pen. If you'll put an "x" at that
19 location and write your initials by it so we know
20 what the location is.

21 MR. LINTON: I move the admission of Exhibit
22 1, Your Honor.

23 THE COURT: Mr. Friedman, any objection to
24 Exhibit 1?

25 MR. FRIEDMAN: No, Your Honor.

1 THE COURT: Exhibit 1 is admitted.

2 EXHIBIT 1 ADMITTED

3 (Pause)

4 Q Mr. Delozier, I show you the next document
5 marked Exhibits 3, 4, 5, 6, 7, 8, and 9.

6 MR. LINTON: And so the record is clear, Your
7 Honor, these also bear grand jury exhibit numbers.
8 And, for the record, I'd say that Exhibit 3 is also
9 marked Grand Jury Exhibit 15. 4 is Grand Jury Exhibit
10 19. 5 is Grand Jury Exhibit 18. 6 is Grand Jury
11 Exhibit 22. 7 is Grand Jury Exhibit 20. 8 is Grand
12 Jury Exhibit 16. And 9 is Grand Jury Exhibit 21.

13 Q Do you recognize those as documents you got on
14 board from -- on board the Exxon the Valdez,
15 while you were on board conducting your
16 investigation?

17 A Yes, sir.

18 Q You told us that you looked around at some
19 point while you were on board, and would you
20 explain fully when and under what circumstances
21 you took the documents which you just referred to
22 from the Exxon Valdez?

23 A Well, it's customary during a casualty
24 investigation, for the Coast Guard's aspect,
25 first of all, to ascertain whether the vessel

1 comes under the Coast Guard jurisdiction. So
2 thereby you usually gather certain documents.
3 For instance, their certificate of inspection;
4 the name of the persons on board; the licenses
5 that the persons on board are operating under, et
6 cetera.

7 So during the course of this period, after
8 arrival, is when I started to look around and
9 make a mental list of which documents I would
10 need in order to proceed for a Coast Guard
11 casualty investigation.

12 The crew list is one. The licenses are
13 another. The log book entries. Things of this
14 nature.

15 Q Let me interrupt you for just a second. The
16 crew list is Grand Jury -- is Plaintiff's Exhibit
17 7. That was one of the documents needed and
18 found?

19 A Yes.

20 Q In the form in which it is before the jury,
21 there is a -- what was before the Grand Jury and
22 is before the court -- there is a stamp which is,
23 "I have seen the original and compared the copy
24 with it and found it to be a true copy. Mark J.
25 Delozier, CWO-3, USCG, Marine Investigator/

1 Inspector, Marine Safety Office, Valdez, Alaska,
2 USCG. Dated 26, Mar., 1989."

3 Q What is that stamp?

4 A It's a stamp that I put on anything that I
5 duplicate after I've seen the original. The
6 original in this case was off of a computer
7 printout, and it was -- and I copied this
8 extensively since this ordeal.

9 Q And that was one of the documents you found on
10 board the vessel?

11 A Yes.

12 Q Is it one of the documents which is required
13 by Coast Guard regulation to be maintained on
14 board a vessel?

15 A Yes, it is.

16 Q And, in fact, maintained for a period of at
17 least 30 days after a marine casualty?

18 A A list of the crew is required to be kept on
19 board, yes.

20 Q For a period of 30 days?

21 A I don't know.

22 Q But required to be kept on board?

23 A Yes.

24 Q How about the licenses. Those are Exhibits...

25 A Right. All the officers that are required to

1 be on board, as part of their certification of
2 inspection, are required to have these posted in
3 a conspicuous place on board the vessel on which
4 they are serving.

5 Q Is there a thing called a Prince William Sound
6 Endorsement on such certificates?

7 A Yes.

8 Q Does it appear on any of the certificates
9 (indiscernible - away from mike).

10 A Yes, it does.

11 Q Would you read the language on the certificate
12 and then point it out to the judge what language
13 it is that you are referring to?

14 A Captain Hazelwood has got a license here.
15 He's licensed to be a master of motor vessels and
16 steam vessels of any gross tonnage on the oceans,
17 et cetera. In addition to that he also has a
18 first class pilot of steam and motor vessels of
19 any gross tons upon waters of Prince William
20 Sound from Hinchinbrook Entrance to Rocky Point.
21 And it's in typed letters here.

22 Q What is the practice (indiscernible - away
23 from mike) with respect to the possession and
24 display of (indiscernible - away from mike).

25 A The display is that they are required to be

1 displayed.

2 Q And did you find those displayed on board the
3 Exxon Valdez?

4 A Yes, I did.

5 Q And it was from there that you got those
6 copies?

7 A I saw them displayed, and I do believe they
8 were under lock and key. And that's when I asked
9 Captain Hazelwood to provide them for me. And I
10 believe that he had his chief mate, or one of his
11 other officers get that for him.

12 Q You indicated that in order to determine Coast
13 Guard jurisdiction, you mean to define certain
14 documents that indicated a certificate of
15 inspection. Did you in fact find the certificate
16 of inspection?

17 A Oh, yes.

18 Q Are there others besides that which you are
19 required to -- which you had to find before you
20 could be sure that you had Coast Guard
21 Jurisdiction over the vessel?

22 A Well, it's not that they're required, the more
23 documents you have the easier it is to prove your
24 case. So, yes, I did pursue in finding whatever
25 documents I felt was necessary.

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THE COURT: What was the number of the first one? (Indiscernible - microphone malfunction).

MR. LINTON: I move the admission of 7.

MR. FRIEDMAN: No objection.

MR. LINTON: Exhibit 4, Your Honor -- I move the admission of Exhibit 4.

MR. FRIEDMAN: No objection.

THE COURT: (indiscernible - microphone malfunction).

EXHIBITS 4 AND 7 ADMITTED

Q (Mr. Delozier by Mr. Linton:) What is Exhibit 3, sir?

A This is a copy of the engine-room Bell Logger.

Q Could you explain to the judge what an engine-room Bell Logger is?

A On this particular vessel here it's a tape which is run in the engine-room control room, and for every order that the control room receives for the engine, it will display it on a running tape.

MR. LINTON: Move the admission of 3, Your Honor.

MR. FRIEDMAN: No objection.

THE COURT: Admitted.

EXHIBIT 3 ADMITTED

1 Q (Mr. Delozier by Mr. Linton:) This was,
2 again, one of the documents you found on board
3 the vessel?
4 A Yes, it is.
5 Q Now, Exhibit 5. Is Exhibit 5 one of the
6 documents you found on board the vessel?
7 A Yes, it is.
8 Q What is Exhibit 5?
9 A Exhibit 5 is a copy of the course recorder of
10 the wheel house.
11 Q Explain what a course recorder is?
12 A A course recorder is a tape, also, which is
13 run. It is time increments on it. It has
14 heading increments on it. And it prints out a --
15 on a graphic form the movements of the rudder of
16 the ship as the ship swings from side to side.
17 Q Is time recorded in some fashion?
18 A Yes, it is.
19 Q How is time recorded?
20 A On one side here it is incremented in time and
21 then it is calibrated prior to -- well, in this
22 case, prior to departure.
23 Q Explain what you mean by calibrated prior to
24 departure?
25 A Well, if you take a look at the chart and you

1 match it up with the time where the needle sits
2 versus the time on the graph here, and then look
3 at your watch or the ship's clock and insure that
4 both of them are the same.

5 MR. LINTON: Move the admission of Exhibit 5,
6 Your Honor.

7 MR. FRIEDMAN: No objection.

8 THE COURT: Are these (indiscernible -
9 microphone malfunction)?

10 EXHIBIT 5 ADMITTED

11 UNIDENTIFIED SPEAKER: I don't know.

12 MR. LINTON: I don't know if I moved the
13 admission of 3 or not. I do so at this time if I
14 didn't, if I neglected to do that.

15 THE COURT: Three has been offered.

16 Q Exhibit 6 -- Explain what Exhibit 6 is?

17 A Exhibit 6 is a copy of the Bell Book, which is
18 the handwritten log which is kept in the
19 wheelhouse of this particular vessel and is used
20 by the mate on watch to log geographic locations
21 and bell orders.

22 Q What do you mean by "bell orders"?

23 A Okay. Bell orders are commands that are given
24 to the engines.

25 Q Give me an example?

1 A Ahead, astern, ahead one-third, two-thirds, et
2 cetera. And then also it's got geographic
3 locations, where (indiscernible - microphone
4 malfunction) at specific times.

5 Q Does the law require that a vessel keep such a
6 record?

7 A I'm not certain on that.

8 Q Was it one of the records you found on board -
9 - while you were on board?

10 A Yes, it was.

11 MR. LINTON: Move the admission of 6, Your
12 Honor.

13 MR. FRIEDMAN: No objection.

14 THE COURT: Admitted.

15 EXHIBIT 6 ADMITTED

16 Q (Mr. Delozier by Mr. Linton:) On Exhibit 6,
17 how are the notations of the various speeds
18 recorded in such a book?

19 A They have a check mark -- I'm not absolutely
20 certain how -- or, how to decipher their
21 particular reading...

22 Q Recordings.

23 A Yes. But they generally -- most navigators or
24 officers do it the same way, from my
25 understanding.

1 Q Let's go to Exhibit 16.
2 THE COURT: 16?
3 MR. LINTON: Yes, sir. I'm sorry, that's the
4 grand jury exhibit number -- 8.
5 THE COURT: Exhibit 8.
6 Q (Mr. Delozier by Mr. Linton:) This is a copy
7 of the original chart which was used by the Exxon
8 Valdez while navigating Prince William Sound on
9 March 24.
10 A And was it one of the documents that you took
11 with you when you left the vessel?
12 A Yes, it was.
13 Q Was it identified in some manner to you as the
14 chart that had been used by some person?
15 A Will you repeat that?
16 Q Was the chart identified as one that had been
17 used that day by some person?
18 A Yes.
19 Q Who?
20 A It was identified by the Third Mate Cousins,
21 and also during the course of the -- from the
22 time I arrived until approximately 2:00 o'clock
23 the next afternoon -- at some point during that
24 period I had discussed it with Captain Hazelwood,
25 and he acknowledged that that was also the chart

1 that was used.

2 MR. LINTON: I move the admission of Exhibit
3 8, Your Honor.

4 MR. FRIEDMAN: No objection.

5 THE COURT: Admitted.

6 EXHIBIT 8 ADMITTED

7 Q (Mr. Delozier by Mr. Linton:) Referring to
8 Exhibit 8 there are on the exhibit figures
9 located near (indiscernible - microphone
10 malfunction) and Valdez Arm, and the figure 1 --
11 2339. And then there is a figure written just
12 west of Busby Island, 2355. They both have a
13 circle and a dot beside that. And that was 2339
14 and 2355. Was that handwriting on the chart at
15 the time you took it?

16 A Yes, it was.

17 (Pause)

18 Q Let's go to Exhibit 9. What is Exhibit 9?

19 A 9 is a copy of the deck log book from the
20 Exxon Valdez.

21 Q What's recorded in that log?

22 A Events that occur daily on board the vessel,
23 such as, who is on watch; lookouts; helmsmen;
24 mates; weather; sea conditions; end remarks.
25 Also, a test of the electronics or safety gear;

1 unusual events, or just events that they want to
2 have noted in the log book.

3 Q Was that one of the documents that you took
4 with you when you left the vessel?

5 A Yes, it was.

6 Q Each of the instances of these exhibits,
7 beginning with 3, 4, 5, 6, 7, 8 and 9. Are they
8 documents ordinarily kept on board in the
9 ordinary course of business (indiscernible -
10 microphone malfunction)?

11 A Yes, they are.

12 MR. LINTON: Could this be marked as the next
13 exhibit?

14 (Pause)

15 Q I show you what's been marked as Exhibit 14.
16 Do you recognize that as a subpoena you prepared
17 and left with the vessel when you took the
18 documents that you just referred to?

19 A This is copy of the subpoena that I issued to
20 Captain Hazelwood.

21 MR. LINTON: I move the admission of Exhibit
22 14.

23 MR. FRIEDMAN: Excuse me. Could I see that?

24 MR. LINTON: Sure.

25 MR. FRIEDMAN: Your Honor, I wonder if I could

1 do just a brief voir dire as to the date?

2 THE COURT: (indiscernible - microphone
3 malfunction).

4 VOIR DIRE EXAMINATION OF MR. DELOZIER

5 BY MR. FRIEDMAN:

6 Q Mr. Delozier, am I understand correctly that
7 you gave this to Captain Hazelwood on the 24th?

8 A I gave that to Captain Hazelwood between the
9 time I arrived and the time I departed. I
10 departed Sunday evening the 26. I do believe I
11 gave it to him sometime in the morning of the 26.
12 During that period of time we had been gathering
13 up a list of material that I had already
14 requested.

15 Q And you stayed on the ship from the 24 until
16 the 26?

17 A Yes.

18 Q All right. Thank you.

19 THE COURT: Any objection to 14?

20 MR. FRIEDMAN: No, Your Honor.

21 THE COURT: It's admitted.

22 EXHIBIT 14 ADMITTED

23 DIRECT EXAMINATION OF MR. DELOZIER, CONTINUED

24 BY MR. LINTON:

25 Q There's a line at the bottom. I hereby accept

1 service of the subpoena, Exxon Valdez, 3/26/89,
2 William J. Deppe.
3 A That's correct.
4 Q Who is he?
5 A Mr. Deppe was the relief -- the relief master
6 of the Exxon Valdez. I gave the subpoena to
7 Captain Hazelwood, and during the period just
8 prior to my departure, Captain Hazelwood was
9 getting very busy. There was a lot of Exxon
10 people coming on board. And I believe it was
11 handed over to Captain Deppe who, in turn,
12 acknowledged receipt of this subpoena.
13 Q When was it then that you physically took the
14 documents off the vessel?
15 A That evening, March 26, around 18, 1900.
16 (2815)
17 (Pause)
18 Q I show you now four exhibits, 10, 11, 12 and
19 13. Do you recognize those as statements in your
20 handwriting, what you took from various people on
21 board the Exxon Valdez on March 24, 1989?
22 A These are notes of the interviews which I
23 conducted with these individuals.
24 Q In your handwriting?
25 A .In my handwriting. (Pause) 10 and 11 were

1 filled out approximately 14, 1500 on the 24th.
2 And 12 and 13 -- 13 was filled out Saturday
3 evening the 25th. And 12 was filled out the 24th
4 -- late on the 24th.

5 Q You are stating those from your recollection?

6 A Yes.

7 Q Is there something on the documents which
8 tells you when you conducted the interviews which
9 are reflected by those documents?

10 A Yes.

11 Q As to Exhibit 10, how could you tell when it
12 was taken?

13 A It's got the date and the time, 24 0737 March
14 89. Twenty-four being the date. 0737 being the
15 time.

16 Q And Exhibit 10 is the notes of the interview
17 with that person?

18 A Right.

19 Q That was whom?

20 A That was with Kagan -- Robert Kagan.

21 MR. LINTON: Move the admission of 10, Your
22 Honor.

23 MR. FRIEDMAN: No objection.

24 THE COURT: Admitted.

25 EXHIBIT 10 ADMITTED

1 Q 0737 means 7:37 in the morning?
2 A Right, a.m.
3 Q A.m. With respect to Exhibit 11, what time
4 did that interview take place?
5 A 1000 in the morning -- 10:00 a.m.
6 Q 10:00 a.m. on the 24th. Of Gregory T.
7 Cousins?
8 A Yes.
9 MR. LINTON: Move the admission of 11, Your
10 Honor.
11 MR. FRIEDMAN: No objection.
12 THE COURT: Admitted.
13 EXHIBIT 11 ADMITTED
14 Q Exhibit 12. Does that reflect an interview at
15 1315, meaning 1:15 p.m. on March 24, 1989 of
16 Joseph J. Hazelwood?
17 A That's correct.
18 MR. LINTON: Move the admission of 12, Your
19 Honor.
20 MR. FRIEDMAN: No objection.
21 THE COURT: Admitted.
22 EXHIBIT 12 ADMITTED
23 Q And Exhibit 13, with respect to the date on
24 the 25th at 1600, an interview with Jerzy
25 Glowacki, G-l-o-w-a-c-k-i.

1 A That's correct.

2 MR. LINTON: I move the admission of 13, Your
3 Honor.

4 MR. FRIEDMAN: No objection.

5 THE COURT: Admitted.

6 EXHIBIT 13 ADMITTED

7 Q (Mr. Delozier by Mr. Linton:) Just show the
8 judge where the times are so he knows where to
9 look for those.

10 A The very top line right next to the date.

11 Q Mr. Delozier, at some point on March 24, once
12 you had gone on board the vessel, did you make a
13 determination that -- in your investigation that
14 it would be appropriate to determine the blood
15 alcohol of certain people on board the vessel?

16 A Yes.

17 Q And does the Coast Guard have the authority to
18 do that without a search warrant?

19 A To the best of my knowledge, we do.

20 Q What steps did you take to try to get blood
21 alcohol drawn?

22 A I notified my boss, Commander Falkenstein, who
23 was on board the vessel and informed him that we
24 needed to make such arrangement for someone to
25 come out to the vessel to conduct such a test.

1 And that when he next makes his phone call back
2 to the main office to Commander McCall, that he
3 should relay our desires to make arrangements for
4 someone to come out to the vessel.

5 Q Do you recall what time you communicated that
6 to Commander Falkenstein?

7 A It was in our first -- it was just prior to
8 the first phone call off the vessel, so it had to
9 be somewhere around 4:00 a.m. in the morning,
10 that I relayed it to Commander Falkenstein. And
11 the phone call was made somewhere around 4:10
12 a.m.

13 Q Did you specify who you wanted to come out
14 when you made the request of Commander
15 Falkenstein yourself?

16 A We specified that we needed either a medical
17 type person -- qualified person or a law
18 enforcement type person to come out to conduct
19 such a test.

20 Q After you made that communication were you
21 aware of what efforts were made on the Valdez end
22 of the line to get such a person?

23 A At that time?

24 Q At that time, yes.

25 A I was not aware of what methods they were

1 going through at that time, but I did find out
2 later during the course of the investigation?

3 Q That day?

4 A No, after I returned back to Valdez.

5 Q Later that day what did you find happened as a
6 result of your request for such help?

7 A Well, the message was relayed to Commander
8 McCall. Commander McCall was extremely busy
9 because of the nature of the casualty to begin
10 with. And he either relayed the request to a
11 subordinate of his back at the office, or he did
12 it himself. But he made contact with the local
13 state police looking for Trooper Alexander.

14 Trooper Alexander was apparently on leave or
15 not in town at the time. So the local office
16 referred us to Trooper Fox. Trooper Fox was
17 contacted by Commander McCall, and the request
18 was relayed to him. The arrangements were
19 transferred to him for him to head on down to the
20 Coast Guard dock to -- for transportation out to
21 the Valdez. And Trooper Fox arrived somewhere
22 about 7:00 a.m.

23 Q Sometime thereafter did you have to make some
24 arrangements again for someone to come out?

25 A Yes. Apparently -- apparently the word wasn't

1 totally relayed to Trooper Fox that we needed
2 someone to come out and actually take a blood
3 alcohol test or a Breathalyzer test. When he
4 arrived he was under the impression that he was
5 dispatched to come out here to take an unruly
6 intoxicated person off the vessel. He was
7 prepared with his handcuffs and his side arm to
8 do such.

9 Upon his arrival I indicated to him that there
10 was no need for anything of that nature, and that
11 what we did need was a qualified person to take a
12 breathalyzer test or a blood alcohol test. So
13 his arrival at that time was not helpful.

14 Q Did you try again?

15 A Yes. And as soon as I discovered that he was
16 going to be of no help, I got back together with
17 my boss, and once again we relayed the request
18 back to our office. They took steps to get ahold
19 of a Coast Guard medical technician that has been
20 in town, TAB. They rounded him up and put him on
21 a helicopter and flew him out to the vessel.

22 Q What time did -- you met him at some point
23 then?

24 A Yes. He arrived, I believe it was around 9:30
25 -- somewhere around 9:30.

1 Q And were you with him when he began to draw
2 samples from people on board the vessel?

3 A Yes. I was already in the process of -- from
4 the time Mr. Fox arrived, and I realized that he
5 was not going to be of any help, to the time that
6 the Coast Guard technician arrived, is when I
7 found out that Exxon company had sample kits on
8 board the vessel. Which consisted of a sample
9 for the taking of urine, and tubes for the taking
10 of blood; syringes, et cetera. These all came
11 prepackaged in a kit.

12 I talked to Captain Hazelwood. He informed me
13 that, yes, they did have these on board. And I
14 was getting a bit impatient at this time here.
15 So I asked him if we could proceed and draw urine
16 from the crew members that were on watch.

17 We proceeded and conducted the urine test,
18 with Captain Hazelwood being last. And just
19 before -- actually Captain Hazelwood could not
20 fill the urine bottle at that time. So I had
21 finished the other three or four crew members,
22 and that is when the Coast Guard technician
23 arrived. At that time that's when we started to
24 commence to take the blood samples. The same
25 persons had already taken the urine specimens.

1 Q And did you witness the corpsman taking the
2 blood samples from crew members?

3 A Yes, I did.

4 Q And who were blood samples taken from?

5 A Taken from Captain Hazelwood first, AB Kagan,
6 AB Maureen Jones, and Mr. Cousins.

7 Q What time were they taken?

8 A The urine tests were taken between 8:30 and
9 9:30 and the blood test commenced at 9:30, and I
10 believe they were finished at around 11:30. It
11 was quite an extensive ordeal. Not to draw the
12 blood, but to seal all the specimens. We sign
13 and initial them and so forth.

14 THE COURT: Did you say that Captain Hazelwood
15 did give a urine sample or did not?

16 A Captain Hazelwood -- I started in sequence
17 with the AB on watch and worked on through.
18 Captain Hazelwood was supposed to be last. I
19 asked him if he could give me a urine sample, and
20 he informed me that he was unable to go at that
21 time. So I waited around for a few moments. And
22 that's when the Coast Guard corpsman arrived.

23 So, when he arrived I talked to him and said
24 that we needed to take blood samples, and because
25 I was unable to take a urine sample from Captain

1 Hazelwood, that I would like to start taking a
2 blood sample from him first, which he did.

3 Moments before we took his blood sample was
4 when Captain Hazelwood walked up and said that he
5 could then give me a urine sample, which he did
6 provide a urine sample and a blood sample at the
7 same time, or back to back.

8 Q Now, did I understand you to say that you
9 would have gone to the Exxon Valdez even if it
10 had only been reported that the Exxon Valdez was
11 hard aground on Bligh Reef?

12 A Absolutely.

13 Q Is one of your reasons related to the nature
14 of the bottom in Prince William Sound?

15 A Well, yes.

16 Q Explain that, please.

17 A It's a rocky bottom.

18 Q What does that mean for why you would have
19 gone out?

20 A If you go aground on rocks it's going to be
21 detrimental to the hull, than it would be if you
22 went aground on soft mud, soup, in some cases.

23 Q Did you have a responsibility with respect to
24 determining whether there was a danger to life?

25 A Yes.

1 Q Was the grounding a major event in the work
2 you had done there in Valdez?
3 A Was the grounding a major event?
4 Q Yes. Alone?
5 A I don't understand.
6 Q Have you ever been, in the course of your
7 roughly, 100 casualty investigations -- had you
8 ever had one with a ship as large in such peril
9 before?
10 A Yes.
11 Q When was that?
12 A '84, the tanker Albinos (ph).
13 THE COURT: I'm sorry, I can't hear you. What
14 -- you said a day before?
15 A No. In 1984 -- I believe it was '84 or
16 somewhere thereabouts, in the Gulf of Mexico, the
17 tanker Albinos (ph) ran aground outside of
18 Cameron, Louisiana.
19 Q Did you go to the scene of that one?
20 A Yes.
21 MR. LINTON: Nothing further, Your Honor.
22 THE COURT: We'll take a break for 10 minutes.
23 THE CLERK: Please rise. Court stands in
24 recess subject to call.
25 (Off record - 2:57 p.m.)

1 (On record - 3:23 p.m.)

2 (3785)

3 THE COURT: Mr. Friedman?

4 CROSS EXAMINATION OF MR. DELOZIER

5 BY MR. FRIEDMAN:

6 Q Mr. Delozier, just a point of clarification.
7 Would it be fair to say that the urine test given
8 by Captain Hazelwood was approximately 50 minutes
9 before the blood test?

10 A 50? That would be fair to say.

11 Q Now, would it be accurate to say that you
12 were, for the Coast Guard, the chief investigator
13 of this incident?

14 A That would be fair to say.

15 Q And when you got the initial call regarding
16 this incident, you were told that not only was
17 the vessel aground, but that it was leaking oil,
18 is that correct?

19 A I don't recall.

20 THE COURT: Mr. Delozier, do you want to move
21 that microphone up a little higher. I've been told
22 that we could get a better recording if you do that.

23 Q Mr. Delozier, I'm showing you page 639 of your
24 NTSB testimony. And what I would like to ask you
25 is whether at the NTSB you testified, "It was

1 relayed to me both over the telephone on the
2 initial contact that the Exxon Valdez was hard
3 aground on Bligh Reef and she was leaking oil."

4 A What is your question?

5 Q Is that what you told the NTSB during your
6 testimony?

7 A If the court reporter wrote that down, then I
8 assume I said that.

9 Q Okay. And would your recollection of that
10 first telephone call have been clearer back when
11 you testified at the NTSB than it is today?

12 A More than likely it would have been, yes.

13 Q When you arrived at the Coast Guard station
14 you told Commander McCall that it would be
15 advisable to call in the strike force?

16 A I said I would make the arrangements to have
17 the National Strike Force called in -- not called
18 in, but placed on alert and notified.

19 Q What does it mean to place them on alert?

20 A So they could start rounding up their folks
21 and being as prepared as they can to make a quick
22 and fast flight to Valdez.

23 Q Is that because you anticipated a major oil
24 spill or oil leak?

25 A I anticipated a problem with the vessel. A

1 vessel of this size that is aground is a problem
2 in which -- it would more than likely need some
3 assistance from the strike force.

4 Q Okay. Now, when you arrived at the Coast
5 Guard station you discussed the problem with
6 Commander McCall and Lieutenant Falkenstein, is
7 that right?

8 A I listened into their conversations. I was
9 incorporated into them. But mostly I was a
10 listener trying to observe what they do to make
11 determinations as far as what I should do.

12 Q Did you listen in on any radio communication
13 between either Commander McCall or Lieutenant
14 Falkenstein and the Exxon Valdez?

15 A Yes, I did.

16 Q Did you listen in on the transmission with
17 Captain Hazelwood, in which he indicated that he
18 was going to try to get the vessel off the reef?

19 A I believe so.

20 (Pause)

21 Q In that transmission did you overhear Captain
22 Hazelwood report that major damage has been done?

23 A I don't recall.

24 Q In discussing this with Commander McCall at
25 this first meeting, did -- well, I'm sorry, let

1 me take that back. When you listened to this
2 conversation between Captain Hazelwood and
3 Commander McCall, did you hear Captain Hazelwood
4 say, "a little problem with the third mate."?

5 A Yes, I do recall that.

6 Q So at the time you went out to the vessel you
7 were aware that Captain Hazelwood thought there
8 had been a little trouble with the third mate,
9 and that he had tried, or was going to try to get
10 the vessel off the reef?

11 A I don't recall listening to the conversation
12 with Captain Hazelwood, saying he was going to
13 try to get the vessel off the reef. But I do
14 recall him saying that he had a problem with the
15 third mate.

16 (Tape: C-3502)

17 (000)

18 Q Let me show you -- Mr. Delozier, I'm showing
19 you this just to see if this jogs your memory
20 about what you heard of this transmission. And
21 if you would just read this section in yellow.

22 (Pause)

23 A What was your question?

24 Q Do you recall any transmission from Captain
25 Hazelwood indicating attempts to get the vessel

1 off the reef?

2 A I don't recall.

3 Q Okay. Do you recall any discussions with
4 Commander McCall about whether attempts should be
5 made to get the vessel off the reef, or keep it
6 on the reef, or things of that nature?

7 A Yes, I do.

8 Q Could you tell us just in general terms what
9 was discussed?

10 A Commander McCall was supposed to train to
11 maneuver the vessel off the reef if it meant
12 sustaining any additional damage.

13 MR. LINTON: Just so the record is clear,
14 could you have him state how he knows that, and did he
15 hear that tape afterwards, or was he on the vessel when
16 he heard it, or was he in the Coast Guard station when
17 he heard it, so we know what...

18 THE COURT: It would be helpful for me if --
19 when we have these discussions, if we could lay a
20 foundation for them as well.

21 MR. FRIEDMAN: That's fine.

22 Q (Mr. Delozier by Mr. Friedman:) Mr. Delozier,
23 I would like to focus still on you at the Coast
24 Guard station before you leave to go out to the
25 Exxon Valdez. Did you discuss with Commander

1 McCall the issue of whether the ship should be
2 removed from the reef or not?

3 A No, I did not.

4 Q Did you discuss that with Lieutenant
5 Falkenstein either -- well, first, before you
6 left the Coast Guard station?

7 A No, I did not.

8 Q Did you discuss it with him on the way out to
9 the vessel?

10 A No, I did not.

11 Q Did you discuss it with him while you were on
12 the vessel?

13 A I don't -- in so many words, I don't believe
14 we did, but I would like to elaborate a little
15 bit.

16 Q Okay. You said you would like to elaborate?

17 A Yes, I would. I believe it was both apparent
18 to myself and Commander Falkenstein that it would
19 not be a prudent thing to do, to try to drive the
20 vessel off the reef, upon our arrival.

21 Q Okay. Upon your arrival, did you see any
22 indication that Captain Hazelwood was trying to
23 do that. That is, drive it off the reef?

24 A Upon my arrival?

25 Q Right.

1 A You mean, in the wheelhouse of the vessel?

2 Q Right.

3 A Yes, I did see an indication that that had
4 been done.

5 Q My question was more specific. When you got
6 there, did it seem like he was trying to take it
7 off the reef at that time?

8 A No. When I arrived on the vessel Captain
9 Hazelwood was on the port side of the bridge and
10 nowhere near the controls for the vessel.

11 Q Now, as the Coast Guard's chief investigator,
12 did you consider it significant that Captain
13 Hazelwood had indicated there had been a problem
14 with the third mate?

15 A I thought it was significant to look into,
16 yes.

17 Q Okay. What did you do to look into that
18 issue?

19 A I didn't narrow myself to any particular lead
20 for the purpose of coming to a conclusion of this
21 particular casualty.

22 Q I'm not trying to put you on a spot in that
23 way. I'm just asking, what did you do to pursue
24 this lead?

25 A Nothing specifically as far as to pursue that

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lead.

Q Are you telling us that although you considered the lead significant, once you got on the boat you didn't pursue it?

A No, I'm not saying that at all.

Q What did you do to pursue that lead?

A I did exactly the same thing that I did with all other assumptions or leads, or things that may or may not have caused this casualty.

Q And what were things that you thought would be helpful in pursuing this lead that you actually did do?

A To question the principals, to gather evidence, to gather documents, and to find all the facts out that I could.

Q Likewise, did you think it was significant when you smelled alcohol on Captain Hazelwood's breath?

A Yes, likewise.

Q And after smelling it on his breath did you talk to Lieutenant Falkenstein about that?

A Yes, I did.

Q And did you try to get someone out to the ship who could do an alcohol test?

A Yes, I did.

1 Q Do you know who actually called Mr. Connor --
2 is it Connor or Connors?

3 A Connor.

4 Q Do you know who actually called Mr. Connor?

5 A No, I don't.

6 Q You -- also in response to smelling alcohol on
7 Captain Hazelwood's breath, you interviewed
8 people and asked him about his alcohol usage that
9 day or the day before?

10 A Yes, I did.

11 Q And did you look through Captain Hazelwood's
12 cabin to see if there was any evidence of
13 drinking?

14 A Yes, I did.

15 Q On April 3 did you meet with Investigators
16 Burke and Grimes from the Alaska State Troopers?

17 A I met with those individuals, but I don't
18 recall the dates.

19 THE COURT: Mr. Purden has indicated to me
20 that we're having a problem with this record. There's
21 a constant hum and there is no way of knowing if we're
22 making a good record unless we play it back. So I
23 think we're going to have to test this now before we go
24 any further. So let's do a test on it to make sure.
25 And if we have to go off the record to get another

1 machine, we'll do so.

2 THE CLERK: Off record.

3 (Off record - 3:37 p.m.)

4 (On record - 3:39 p.m.)

5 (301)

6 THE COURT: It looks like we're doing okay
7 with the record. Sorry for the interruption.

8 Q (Mr. Delozier by Mr. Friedman:) At any event,
9 when you met with Investigators Burke and Grimes
10 from the State Troopers, did you give them the
11 information you obtained about where the captain
12 had been the day before, meaning the 23?

13 A I don't recall.

14 THE COURT: Excuse me, Your Honor. Could I
15 take a minute.

16 (Pause)

17 Q At some point did you also arrange for your
18 wife to be interviewed by the State Troopers?

19 A Yes, I did.

20 Q And was that because she had information you
21 thought was relevant to the alcohol issue?

22 A That's correct.

23 Q Was there some reluctance on her part to grant
24 an interview to the Troopers?

25 A Yes, there was.

1 Q And what was the basis for that reluctance?

2 A She didn't want to get involved in it.

3 Q Anything else?

4 A That's it.

5 Q As the chief investigator for the Coast Guard,
6 did you give the state copies of the records you
7 seized from the vessel?

8 A Eventually, yes.

9 Q And did you give them access to the interviews
10 you conducted on the vessel on the 24th?

11 A I believe eventually I did, yes.

12 Q What did you do after, let's say, March 25th,
13 in terms of your investigation of this case?

14 A It was late on the 25th that I was informed
15 that the commandant of the Coast Guard had
16 delegated the investigative powers to the NTSB
17 for them to complete the casualty investigation.
18 That I was to continue to do a collateral
19 investigation along with them, but that I would
20 also be at their call in case they were to need
21 me for anything at all. I would be working for
22 them until I was properly relieved.

23 Q Well, let me ask you this: after you left the
24 vessel on the 26th, did you conduct any
25 independent interviews? That is, interviews --

1 just review -- where you asked the questions of
2 the witnesses?

3 A Yes.

4 Q Could you give me an idea of who you
5 interviewed?

6 A The cab driver, Ron French. Most of these
7 were conducted in the presence of the NTSB and on
8 occasion...

9 Q Sort of a joint venture?

10 A On occasion there were other investigators
11 present, also.

12 Q Would those interviews be reflected as NTSB
13 interviews or investigations, or would you have a
14 separate set of Coast Guard investigative
15 reports?

16 A No. They were NTSB interviews.

17 Q All right. Have you ever talked to Trooper
18 Stogsdill about this case?

19 A I don't recall the name.

20 Q You testified that a captain has an obligation
21 to report casualties such as groundings, is that
22 correct?

23 A That's correct.

24 Q Does the captain also have an obligation to
25 report an oil spill?

1 A If he's the polluter.

2 Q If he's in charge of a facility that is

3 spilling oil, he has an obligation to report it,

4 doesn't he?

5 A If he's the person in charge of it, yes.

6 Q And it's a crime not to do that, isn't it?

7 Not to report?

8 A I am not certain on that. I believe it is.

9 Q The grand jury exhibits that have now been

10 marked as exhibits in this hearing, were those

11 all seized by you on either the 24th, 25th or

12 26th?

13 A Seized?

14 Q Accumulated.

15 A Sorry?

16 Q Accumulated.

17 A Accumulated. I requested them from Captain

18 Hazelwood and he provided them for me, yes.

19 Q On one of those three days?

20 A All of those?

21 Q You can look at them again if you would like.

22 A Just let me see the subpoena. (Pause)

23 This was a list of items that I had officially

24 subpoenaed. Some of these items I obtained on

25 the 24th, the 25th and the 26th. And some of

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these items didn't come until a few days later.

Q I see. What would be the longest, in terms of days later, before you would have gotten all of these documents?

A The Report of Marine Casualty, I believe was the latest one, and that came approximately a week and a half to two weeks later.

Q Mr. Delozier, would it be accurate to say that at approximately 3:35 you were on the bridge with the captain and Investigator Falkenstein?

A I believe the record book indicated 3:40.

(670)

Q 3:40. Okay. And at the time -- I think you said within a few minutes or a few moments you smelled alcohol on his breath, is that correct?

A That's correct.

Q Also, at that time you felt that he was exhibiting guilty behaviors or behaviors indicating he was trying to cover up alcohol on his breath?

A That's correct.

Q Now, later on that day you questioned the master, Captain Hazelwood about what he had done the day before?

A That's correct.

1 Q And one of the things you were interested in
2 as you questioned him was to try to see where
3 there was anything to -- or, any more evidence
4 regarding alcohol consumption?

5 A That's one of the things, yes.

6 Q On the 24th, also at approximately 4:00
7 o'clock p.m. did you question Mr. Glowacki?

8 A No.

9 Q Did you not question Mr. Glowacki?

10 A Not on the 24th.

11 Q Okay. What date did you question him?

12 A I believe it's indicated on the interview
13 sheet there.

14 Q Okay. (Pause) The 25th?

15 A Twenty-fifth.

16 Q And at what time is that?

17 A 1600.

18 Q And that's the first time you questioned Mr.
19 Glowacki?

20 A I believe so.

21 (Pause)

22 MR. FRIEDMAN: Could I have just a minute,
23 Your Honor. I'm sorry. (Pause) Thank you, Your
24 Honor.

25 Q So this interview was on the 25th?

1 A Yes, sir.

2 Q Now, on the 24th did you question helmsman
3 Kagan?

4 A Yes.

5 Q And did you ask him questions about who was on
6 the con at the time of the grounding?

7 A Yes.

8 Q And was it some time after that that you took
9 possession of the various records we've been
10 talking about, the ones that have been made
11 exhibits here?

12 A I believe there is a few of those that I
13 obtained prior to Kagan's interview.

14 Q Okay. So some of them may have been obtained
15 up here, and some of them...

16 A Uh-huh (affirmative).

17 Q And at 8:43 on the 24th you questioned the
18 third mate, Mr. Cousins?

19 A That's correct.

20 Q You also asked him questions about who was on
21 the bridge and what the problem was?

22 A Yes.

23 Q Did you ask Mr. Cousins any questions about
24 whether he had an endorsement for operating the
25 vessel in Prince William Sound area?

1 A I don't believe I did.

2 Q Okay. Did you participate in either of the
3 searches of the vessel that were conducted in
4 April?

5 A By whom?

6 Q By the Troopers?

7 A No.

8 Q Mr. Delozier could you tell us your
9 understanding of the requirement that a captain
10 in charge of a vessel leaking oil report to the
11 Coast Guard. What is he required to report?

12 A It is my understanding that a person who
13 causes a sheen on waters that come under the
14 jurisdiction of the U. S., that person has the
15 responsibility to report that created pollution
16 to the U. S. Coast Guard.

17 Q Okay.

18 A Along with that reporting requirement, I do
19 believe that there are specific items in which
20 the Coast Guard is looking for, namely the type
21 of pollutant, quantity, location, time,
22 description, and so forth.

23 Q Some the surrounding circumstances as to the
24 pollution?

25 A That's correct.

1 Q Thank you. I don't have any more questions.
2 Oh, excuse me, just a second.

3 (Side conversation)

4 I do have a couple other questions, Mr.
5 Delozier. Relating to your comment about how it
6 appeared that Trooper Fox would not be much help
7 in getting the blood test issue taken care of, he
8 came out -- he didn't bring a blood test kit with
9 him and -- did you ask his assistance in locating
10 someone with the police department, or the
11 Troopers' office who might be able to do a test?

12 A Yes.

13 Q And what did he tell you?

14 A He said that the local police department did
15 not have a portable Breathalyzer to be used, and
16 he suggested that the best thing at this
17 particular time, being as though it was late
18 after the incident, would be a blood test.

19 Q And did he suggest that he could get somebody
20 from the hospital or some other place to perform
21 that test?

22 A No. He suggested the lab technicians at the
23 hospital.

24 Q did you make any effort to get those people to
25 the vessel?

1 A Yes.

2 Q Okay. Is that the corpsman?

3 A No. When I got back -- not me, but when
4 Commander Falk -- when I relayed the information
5 back to Commander Falkenstein, Commander
6 Falkenstein got back on the telephone and called
7 up the office and informed them at that time that
8 Trooper Fox was unable to fulfill our needs, and
9 that we needed to have a medical technician come
10 out capable of drawing blood samples. And we
11 suggested at that time to look at the local
12 hospital for either a lab technician, a local
13 doctor, or a paramedic of some sort. We did not
14 tell them to look for the Coast Guard medical
15 person.

16 Q So in essence Trooper Fox said that the police
17 couldn't be any help because they didn't have the
18 portable unit, and that you might try the
19 hospital. And that was the extent of his ability
20 to assist you in getting the blood test taken.
21 Is that a fair recap?

22 A He did say that many of the members of the
23 local police department or qualified EMTs, and
24 they were capable of drawing blood.

25 Q Okay. Thank you. I don't have any other

1 questions.

2 REDIRECT EXAMINATION OF MR. DELOZIER

3 BY MR. LINTON:

4 Q Mr. Delozier, did you take these documents
5 from the ship because of an interview, or was it
6 something you would have taken in any event
7 (indiscernible - away from mike)?

8 A Did I take those because of what?

9 Q Because of any interviews with any persons?
10 Because Glowacki said, "Yes, I got this
11 document." Or, because Cousins said, "Yes, I
12 went and got that document."

13 A Yes.

14 Q (Indiscernible - away from mike)?

15 A The engine-room bell logger, which is this one
16 right here. I actually was not aware that the
17 engine-room had a bell logger, and it was the
18 chief engineer who indicated to me that there was
19 one in existence, and then I asked him to provide
20 that, which he did.

21 Q Okay. How about the others? The deck log?

22 A Well, I knew about the deck log. I knew about
23 the charts. But I needed to get ahold of Third
24 Mate Cousins and Captain Hazelwood to pinpoint
25 exactly which chart was used. Incidentally,

1 there was another chart that went with that one.
2 And this is only a small portion of what I did
3 gather.

4 Q The documents you have here are just a small
5 portion of what you did get?

6 A Yes.

7 Q When Mr. Friedman asked you whether you had
8 any indication that the ship had been run after
9 it was aground. You said there was an indication
10 when you got on board the vessel. Was the engine
11 running at that point?

12 A No, the engine was not running at that point.

13 Q What was it that led you to -- you indicated
14 it was an indication that the vessel had been run
15 after it was aground?

16 A It's written in the log.

17 Q Which document are you referring to?

18 A That one that you have in your hand.

19 Q (Indiscernible - away from mike) Exhibit 6?

20 A Uh-huh (affirmative).

21 Q And what did you find there?

22 (Pause)

23 A "004 grounded refiling." It's got a written
24 position. Then you have -- up above it you have
25 035. You got an engine order, 038. Another

1 engine order, 047. Another engine order, 0139.
2 Another engine order.

3 Q Would you point those out to the judge so he
4 could see what it is that you're referring to
5 that indicated to you that the engine had been
6 run after...

7 A Next to the last page, in the middle of the
8 page you will say, "grounded, refiling, 004".
9 And then above that you have 035, 038, 047. And
10 these marks next to it reflect an engine order.
11 004 entry was made after a -- past tense, after
12 the actual time.

13 Q When you say 004 was past time, what do you
14 mean?

15 A It means that someone apparently failed to log
16 it at the moment that the vessel actually went
17 aground. And then some engine orders were
18 commanded, time elapsed, and then it was recalled
19 that, we need to make an entry in the log book
20 that the vessel actually went aground at such and
21 such a time. So at that point, then it was
22 entered.

23 Q So the time before that was 137, for example?

24 A 136.

25 Q 0035, that would have been after?

1 A Right.

2 Q 0038, would have been after?

3 A Right.

4 Q 0047 would have been after?

5 A Right.

6 Q 0139 would have been after?

7 A Correct.

8 Q And that indicated what to you?

9 A That indicated to me that someone attempted to
10 maneuver the vessel off after the grounding.

11 Q When did you figure that out? When did you
12 look at that document and figure that out?

13 A It was after the first phone call, so it would
14 have to have been about -- between 4:30 and 5:30.

15 Q Before you interviewed members of the crew?

16 A Yes.

17 Q Tell us about your wife situation. You were
18 on board the vessel until the 26th?

19 A That's correct.

20 Q And so the first time you got home, then, was
21 on the 26th?

22 A Late -- midnight on the 26th.

23 Q Had you talked to her since you had been out
24 on this vessel?

25 A I talked to her twice by telephone while I was

1 on board the vessel.

2 Q And what did you tell about what was going on
3 on the vessel?

4 A I just told her I would be home as quickly as
5 I could and to -- not to worry.

6 Q When you got home, how did you find out that
7 she might know something about the case?

8 A It wasn't until about a week or so later, and
9 Captain Hazelwood's picture appeared in the local
10 newspaper or Anchorage paper. And she -- one
11 evening when I did get to come home, she said, "I
12 saw that guy in the Pipeline Club." And then at
13 that time said, "I could tell you everything that
14 he did." I really didn't know what to do at that
15 time.

16 Q Had you told her about alcohol?

17 A I wasn't discussing too much about the case
18 with anyone. I don't believe I did.

19 Q It's just something she brought up having seen
20 the picture in the paper?

21 A Uh-huh (affirmative).

22 Q And she told you something about what she had
23 seen of his drinking that day?

24 A That's correct.

25 Q And then sometimes thereafter when troopers

1 came to talk to you you told them about what your
2 wife and told you, and suggested that they talk
3 to her -- or, they might want to talk to her?

4 A She was reluctant -- extremely reluctant to
5 get involved, being as though I was already
6 involved. Two persons in the same family, in a
7 case of this magnitude, would have been a little
8 bit more than stressful for both of us.

9 I knew that her knowledge would be useful for
10 the case, yet, again, I didn't know how to pursue
11 it, because it may, for some reason, become a
12 conflict between myself and her. So at that
13 point I told my Coast Guard -- they informed the
14 NTSB, and an interview was set up with the
15 troopers and my wife.

16 THE COURT: When was it that she mentioned to
17 you she had seen the defendant in the paper?

18 A When did she mention to me that she saw him,
19 or when did she see him?

20 THE COURT: No. When did she mention to you
21 that she saw him?

22 A To the best of my knowledge, it had to be
23 somewhere around Thursday or Friday, about a week
24 after the incident.

25 Q (Mr. Delozier by Mr. Linton:) You mentioned

1 that sometime after the 26th you conducted
2 interviews with some witnesses when you were
3 working, I take it, in that time, in conjunction
4 with the National Transportation Safety Board.
5 One of whom was Ron French, a cab driver.

6 A Uh-huh (affirmative).

7 Q Where did you get the name, Ron French?

8 A Well, we started the investigation with what
9 information and documents and evidence we could
10 gather off the vessel. And then from that we
11 found out that there had been some activity prior
12 to the -- prior to the vessel departing. So we
13 started with the Alyeska security documents,
14 check in and check out of the gate, which led us
15 to specific times that the crew members departed
16 the terminal, and specific times in which they
17 returned, and how they returned.

18 And from that we found out that Captain
19 Hazelwood and his other officers that were with
20 him returned by way of a yellow cab, which was
21 driven by Ron French.

22 Q Were you working in conjunction with the state
23 investigators at all at that time?

24 A No. Not at that particular time, no.

25 Q Had you gotten the name -- the cab company

1 name, or the Ron French name from them, as far as
2 you knew?

3 A Well, let me back that up. We were somewhat
4 working with the state from the moment that
5 Trooper Fox arrived on board. And he had gone
6 off by telephone to his people and had pursued
7 certain, you know, inquiries. And he informed me
8 a couple of times of which way he was going, and
9 I was doing it mutually. And the NTSB was there.
10 We all kinda worked together there also. So,
11 yes, we were somewhat working together, but
12 somewhat independent, too.

13 Q Do you know whether the lines of investigation
14 were separate or were crossed, to get the Ron
15 French name particularly?

16 A I believe they were...

17 Q Did you understand the question? Did you get
18 the Ron French name from a state investigator, or
19 did you give the Ron French name to the state
20 investigator?

21 A I believe I got the Ron French name from Chief
22 Peterson who works for me at the Coast Guard
23 office. While I was on board the vessel I asked
24 him to get ahold of the Alyeska security records
25 and to try to track down the names of the three

1 individuals from the ship, as to their
2 whereabouts on that day prior to their departure.
3 And I do believe that it was he that first gave
4 me Ron French's name.

5 Q Before this case came up did yo know that
6 people who left the vessels, or were re-entering
7 the Terminal to get back on vessels, went through
8 a security gate?

9 A Oh, yes.

10 Q And did you know that they were checked in --
11 checked by security people for alcohol or any
12 contraband?

13 A Yes, I did.

14 Q And did you know that that brought them into
15 some kind of close distance to the guards at the
16 gate in the course of that leaving or entering
17 the terminal?

18 A Yes, I did.

19 Q You knew all that before hand?

20 A Yes.

21 Q So the idea of calling the Alyeska people --
22 the Alyeska gate people to find out what time
23 somebody would come, or what time they had gone,
24 or how they got there, or what condition they
25 were in, wasn't something that you wouldn't

1 already think of as a reasonably intelligent
2 investigator?

3 A Correct.

4 Q I have no further questions.

5 (1862)

6 RECROSS EXAMINATION OF MR. DELOZIER

7 BY MR. FRIEDMAN:

8 Q Mr. DeLozier, you were talking to the chief
9 engineer and learned that there was a Bell Logger
10 on the vessel?

11 A Yes.

12 Q And you then asked him to get it for you?

13 A Well, I asked him during the interview if he
14 would provide it to me, and he said he would. He
15 did not immediately get up and go and get it.

16 Q Given that the vessel log indicated that after
17 the grounding, the engines were run ahead, why
18 did that indicate to you an attempt to get off
19 the reef?

20 A Well, if you are aground on a reef there is
21 only one motive for running the engines after
22 you're aground -- and it's a direct drive vessel
23 -- is to get off.

24 Q Okay. Were you looking for indications that
25 Captain Hazelwood had tried to get off the reef?

1 A No, I wasn't.

2 Q Were you looking for indications as to how he
3 had operated the vessel once the vessel became
4 aground?

5 A Not specifically, no.

6 Q You said something about your investigation of
7 the alcohol that I wanted to clarify. You didn't
8 find any documents on the vessel that led you to
9 people who maybe observed Captain Hazelwood at
10 restaurants or bars, did you?

11 A Any documents?

12 Q Right.

13 A No, I don't believe I have.

14 Q Primarily the investigation of his activities
15 during the 23rd was conducted by tracing the
16 people that he had had contact with on that date,
17 is that right?

18 A Yes. And himself, also.

19 Q Right. But not -- in other words, not --
20 through real people, not through documents, is
21 the point I'm making?

22 A Right.

23 Q And what you were trying to track down is
24 people who could have observed him at different
25 times during the day to see whether he was

1 drinking, or appeared under the influence, is
2 that correct?

3 A I was trying to determine anything that I
4 possibly could that would be helpful for the --
5 for this investigation.

6 Q One of the things you thought would be helpful
7 was to try to determine whether he had been
8 drinking that day, wasn't it?

9 A I think that would have been a good thing to
10 know.

11 Q Thank you. I don't have any other questions.

12 REDIRECT EXAMINATION OF MR. DELOZIER

13 BY MR. LINTON:

14 Q Is there a relationship between the documents,
15 Exhibit 3 -- what's the correct term for that?

16 A Engine Bell Logger.

17 Q Engine Bell Logger.

18 And Exhibit 6?

19 A Is there a relationship?

20 Q Yes.

21 A Yes, there is.

22 Q Explain what the relationship is, please?

23 A The -- Exhibit 6 is a written log completed by
24 the person in the wheelhouse. In most instances,
25 it's the mate on watch, or the person who has the

1 con. And he writes in his commands that he gives
2 to the engine.

3 Q Does he make the command?

4 A He issues the commands, or he is issued the
5 command by some higher authority.

6 Q How does he then communicate them to engine-
7 room?

8 A With the engine order telegraph.

9 Q What's the engine order telegraph?

10 A It's like a gas pedal.

11 Q Is there some -- can you describe it for us?

12 A It's a control on a bridge, and you put it
13 ahead one notch and it will propel the vessel
14 ahead in that specified rpms. It will be a
15 little quicker rpms, et cetera, to go astern or
16 in the aft of the mutual position there, then it
17 will be the same thing, going astern.

18 Q Is the signal that you've indicated by who
19 (indiscernible - away from mike) transmitted
20 someplace?

21 A Yes, it is.

22 Q Where?

23 A Down to the engine-room.

24 Q And what happens when the signal is received
25 in the engine-room?

1 A I am not certain on this particular vessel,
2 but I believe it was in bridge control, which
3 meant that the bridge had total control over the
4 engine. Any time the bridge gave a command the
5 engine would automatically respond. Once the
6 engine responded, or the command was received by
7 the engine, then it would be recorded on the Bell
8 Logger.

9 Q Is there another way for it to work besides
10 having a direct connection between the bridge and
11 the engine itself?

12 A Yes. You can be on engine control.

13 Q What's that?

14 A The same control up in the wheel house, but
15 you -- for every movement that you put the engine
16 into, it sends a signal down to the engine
17 control room, at which time the watch stander in
18 the engine room will then command the engine to
19 do the order, which he gave it.

20 Q So you would have somebody up on the bridge
21 signaling; the person down at the bottom would
22 read the signal?

23 A Right.

24 Q And then take some action to change the engine
25 (indiscernible - away from mike)?

1 A Right.

2 Q Other times it's hooked up directly to the
3 engine-room...

4 A Right.

5 Q What is Exhibit 3?

6 A That's the Engine Bell Logger.

7 Q Now, one of the documents -- I show you to
8 Coast Guard Regulation, Section 4.05-15, voyage
9 records, retention of. "The owner/agent/master
10 or person in charge of any vessel involved in a
11 marine casualty shall retain such voyage records
12 as are maintained by the vessel, such as both
13 rough and smooth deck and engine-room logs, Bell
14 Books, navigational charts, navigational
15 workbooks, compass deviation cards, gyro records,
16 stowage plans, records of draft, aides to
17 mariners, mate order books, radiograms,
18 (indiscernible - unclear), radio logs, crew and
19 passenger lists, articles of shipment, official
20 logs, and other material which might be
21 assistance in investigating and determining the
22 cause of the casualty."

23 What is an engine-room log, sir?

24 A An engine-room log is very similar to the deck
25 log that you have right here. The deck log is

1 maintained by the deck officers. An engine log
2 is very similar. It's kept in the engine-room
3 and it is maintained by the engine-room officers.

4 Q And did you find such a document and seize
5 such a document?

6 A Yes, I did.

7 Q Did it contain signals as to what had been
8 received as to engine orders down in the engine-
9 room?

10 A No.

11 Q What record was there in the engine-room as to
12 what signals had been received down in the
13 engine-room?

14 A Bell Logger.

15 Q That's Exhibit...

16 A Exhibit 3.

17 Q Exhibit 3. So the only record down in the
18 engine-room that you found as to what was being
19 signalled on the engine-room (indiscernible -
20 away from mike) was Exhibit 3?

21 A That's correct.

22 Q And you found that because Mr. Glowacki said
23 there was such a thing?

24 A That's correct.

25 Q You didn't know there was before?

1 A I am aware that these exist on some vessels,
2 but I was not aware that it existed on the Exxon
3 Valdez.

4 Q So in some investigations you worked, there
5 were such records and some there weren't?

6 A That's correct.

7 Q In the ordinary course of business, would you
8 get whatever form there was down in the engine-
9 room as to the signals received?

10 A Yes, I would.

11 Q Whether Mr. Glowacki had told you that it came
12 in the form of a log or in the form of a computer
13 printout like that?

14 A That's correct.

15 Q So it wasn't because Mr. Glowacki told you
16 that you have to get it -- you were going to get
17 whatever was there, he just told you it was in
18 that form?

19 A He informed me first. I would have found out
20 anyway.

21 THE COURT: When you look at Exhibit 6 and you
22 see those times, 0035, 0038, 47, and 1039; there's some
23 checks alongside of the them. The first one is a
24 check, what looks like a little "d" or something above
25 it. That's for 0035. Do you know what that means,

1 that check?

2 A The check is a command that is given to the
3 engine.

4 THE COURT: Okay. And what's the...

5 A I don't specifically know what that command
6 is.

7 THE COURT: And then on 0038 there's another
8 check. And that's another command?

9 A Right.

10 THE COURT: And then 0047 is a check with a
11 slash through the check. Does that have any
12 significance?

13 A Yes, it does.

14 THE COURT: What is that?

15 A I don't know what exactly it means. I believe
16 the check means ahead, and then a check with a
17 slash means ahead, either a third or a half, or
18 something of that nature, but I'm not certain.

19 THE COURT: And 0139 has a circle with an "x"
20 through it. Do you have any idea what that means?

21 A I believe that means all stop.

22 THE COURT: Now, is there any correlation that
23 those checks and those (indiscernible - unclear) might
24 have on Exhibit 6 to Exhibit 3, the Bell Logger; would
25 it tell you what those mean?

1 A Yes.

2 THE COURT: What do they mean? Why don't you
3 tie them up.

4 A There, again...

5 THE COURT: 0035, let's start with that one.

6 A Okay. Well, it's hard to locate the exact
7 point there on this exhibit. This is written in
8 Alaska Standard Time; this is written in
9 Greenwich Mean Time.

10 THE COURT: So there would have been about a
11 10 hour difference, then, on the time?

12 A There, again, I'm not certain, sir. It's on
13 here -- I have seen it. I cannot pinpoint it at
14 the moment. (Pause) I'm not certain, sir. I
15 know that it's on here, I've seen it before, but
16 I cannot pinpoint it for you.

17 THE COURT: You indicated earlier that this
18 was ahead. The engine's command was ahead, which, I
19 guess, means forward. Is there anything on Exhibit 6
20 that suggested it's ahead and not in reverse, for
21 example?

22 A I am not certain, sir. I don't know what
23 their code is for writing down their commands.

24 THE COURT: So when you said "ahead", you
25 didn't know if it was ahead or behind. It could have

1 been astern?

2 A It could have been astern, that's correct.

3 Me, personally. I do know they are commands, but
4 I don't know what commands they are.

5 THE COURT: And is that the sole basis for
6 your opinion, that the defendant was trying to get off
7 the reef. Is there anything else that forms the basis
8 of that opinion, other than that -- those entries in
9 Exhibit 6?

10 A That there were commands after the vessel was
11 aground indicates to me that there was an attempt
12 to either drive ahead or drive astern, or to
13 position the vessel on the reef. But at some
14 point in time, because there are commands here,
15 there was engine orders given to either move the
16 vessel in one way or the other.

17 THE COURT: That's all the questions I have.

18 Is there anything further because of those
19 questions?

20 MR. FRIEDMAN: No, Your Honor.

21 THE COURT: You may step down.

22 (Witness excused)

23 I think we've had enough for the day. Would it
24 be possible to get a copy of this exhibit for Mr.
25 Linton so he doesn't have to come over and sit so

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close?

MR. FRIEDMAN: Yes, I'll have one done tomorrow morning.

THE COURT: And if you could get one for me, I would appreciate it, too. We can only go until 1:30 tomorrow with breaks, but not for lunch and then I have full days available on Wednesday and Thursday, it turns out, so we can do what we did today on those dates. And, I have a full calendar on Friday for sentencings and other things so we won't be able to do anything on Friday.

MR. FRIEDMAN: Your Honor, I had a request. I wonder if it if would be possible for us to have that at 1:20 tomorrow. I've got another hearing starting in another case almost immediately after

THE COURT: Sure, we'll start at 1:20. Anything further?

MR. LINTON: Nothing further.

THE COURT: We'll stand in recess.

THE CLERK: Please rise...

THE COURT: Let's stay on the record for a minute. Can counsel approach the bench for minute? Why don't you come over here on this side?

(2583)

(Whispered bench conference as follows:)

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(Entire bench conference indiscernible)

(End of whispered bench conference)

(2610)

THE COURT: Okay, we're in recess now. Off
the record.

(Off record - 4:30 p.m.)

CONTINUED