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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

FILED
JUN 1990
Appeals Division

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

TRIAL BY JURY
JANUARY 30, 1990
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VOLUME XI

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

Anchorage, Alaska
January 30, 1989
8:34 a.m.

APPEARANCES:

For Plaintiff:

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1 PROCEEDINGS

2 JANUARY 30, 1989

3 (Tape: C-3581)

4 (1170)

5 (Jury panel not present)

6 THE CLERK: ...Karl S. Johnstone presiding.

7 This court is now in session.

8 THE COURT: You may be seated. I thought
9 before we start jury selection I need to give counsel
10 some information on courtroom decorum, since you
11 haven't tried a case in Courtroom A or B, and
12 Mr. Chalos is new to the jurisdiction. I'll give you a
13 few administrative policies which generally are
14 followed by all of us.

15 In addressing anybody in court, when the jury
16 is present or the witnesses are present, I'd like
17 counsel to stand. If you need to approach a witness,
18 you may do so. Ask leave of the Court the first time
19 and then after that for that witness you may freely
20 approach the witness, if it's your witness. If it's an
21 opposing witness, ask leave of the Court and then you
22 can do so if you need to.

23 Please don't approach the jury without asking
24 leave of the Court. You can freely approach the bench
25 to get exhibits, you don't need to ask the Court to do

1 that. Once it becomes apparent that you're going to
2 need to do that, don't worry about it, just come on up.

3 In asking jurors questions, no leading
4 questions are permitted that suggest the answer.
5 Direct questions of jurors, if it has a little question
6 mark at the end of it, it starts out right. If it has
7 a period, it starts out wrong. Questions that suggest
8 what the evidence is going to be or that enlist a
9 speech or commitment from the jury are going to be
10 deemed improper from the beginning.

11 If you are going to ask for a commitment, the
12 only commitment that I'd be interested in hearing is
13 whether they can follow the Court's instructions and
14 render a verdict based on the evidence in accordance
15 with those instructions and can be fair and impartial.

16 Questions such as "Would you feel comfortable
17 if you were sitting here and a juror like yourself was
18 sitting in judgment?" are improper.

19 If you're going to exercise a challenge for
20 cause, some of them are very obvious, but some of them
21 are not. You can help me in ruling on a challenge for
22 cause if you be specific with the portion of the rule
23 that deals with the challenge.

24 When making objections to evidence, please
25 don't make an offer of proof unless you apply for it.

1 No stipulations offered in front of the jury, and
2 please state your objection in terms of the evidentiary
3 rule you're relying upon. Some are more important than
4 others. If it's a hearsay objection, I'd like to hear
5 why it isn't hearsay or the exception.

6 You have a list of the witnesses now, which we
7 put together, that did not include their titles. It's
8 going to be confusing, in my opinion. We'll bring the
9 jury in and I'll administer the oath and re-qualify
10 them, read them the charges.

11 I think I've indicated this already, but
12 during the jury selection process there can be no
13 camera coverage of that. We're going to have --
14 initially we're going to have approximately 100 jurors
15 in the courtroom. We'll seat them in the back of the
16 room and we'll seat them in the jury box. There will
17 be another 15 or so seats in the courtroom available
18 for interested spectators and media personnel, plus the
19 room in the back which will be open solely for media.
20 The jurors needs come first. We'll need all of them in
21 there initially for about a half an hour or so of
22 orientation and then we will pick 30 names, and those
23 people will go to Courtroom A, and I'll pick 30 more
24 names and those people will come to court tomorrow, and
25 the remainder will come on Thursday. I'll give the

1 jurors some more instructions about their
2 responsibilities.

3 The jurors have already answered these
4 questions, so you don't need to ask the same questions
5 again. If the responses require an inquiry, then you
6 can go into that, to some extent if it's necessary, but
7 don't ask questions they've already answered; that's
8 unnecessary. If you need to inquire about one of the
9 responses, you can do that.

10 MR. COLE: Judge, on that point, some of
11 the...

12 THE COURT: If you can't read it, you'll have
13 to ask. I understand some of them were not very clear.
14 You may have to ask those questions over again.

15 I think that's all I needed to do. Is there
16 anything I can do for counsel before we clear the
17 courtroom?

18 Would counsel approach the bench, please?
19 (1400)

20 (Whispered bench conference as follows:)

21 THE COURT: Mr. Chalos, I've given due regard
22 to your request, and given the number of people here
23 involved in this case and given that I've admitted a
24 non-resident counsel in to assist Mr. Madson, I don't
25 believe, unless it coincides with some other reasons,

1 that your request will be granted for a continuance of
2 the entire trial. I will allow you to leave, of
3 course, but -- and I don't know what the stage of the
4 trial will be in when you need to go, and I regret
5 that, but this is something you probably have known
6 about for some time and with two other counsel to
7 assist, I think that's adequate. So, I don't want you
8 to hope for that at this point. I don't think that's
9 going to occur, a continuance of the entire trial to
10 accommodate your needs to travel back to New York.

11 MR. CHALOS: Well, Your Honor, on Thursday my
12 wife is going for an examination. I'm hopeful she will
13 be ready to induce. If not, then I suppose
14 (indiscernible - away from mike), but I'll try and
15 schedule (indiscernible - away from mike).

16 THE COURT: Well, I just want to give you as
17 much notice as I can on that. Don't you have Mr. Russo
18 (indiscernible - away from mike), he's been admitted as
19 well.

20 Mr. Madson, I think with all the attorneys
21 involved, I'm not going to be able to continue this
22 trial because of one out of three being unable to
23 attend.

24 MR. MADSON: I think (indiscernible - away
25 from mike) planned, all this will be okay. If there's

1 an emergency, I'll (indiscernible - away from mike)
2 experts in this case.

3 THE COURT: You're going to be cross examining
4 the experts (indiscernible - away from mike) and it may
5 not be a problem.

6 MR. CHALOS: Okay.

7 (End of whispered bench conference.)

8 (1483)

9 THE COURT: Incidentally, counsel, my copies are
10 the originals of the juror questionnaires and they are
11 somewhat more legible, so you might be able to use mine
12 when the time comes. You'll know who is going to be
13 called because we're going to call them in the order
14 that I call them.

15 Okay. We'll stand in recess. Mr. Purden is
16 going to give a copy of the witness list to each of the
17 jurors when he takes the roll downstairs. Then he's
18 going to bring them all up and we'll get started
19 shortly. We'll stand in recess.

20 THE CLERK: Please rise. This court stands in
21 recess, subject to call.

22 (Off record - 8:42 a.m.)

23 (On record - 9:22 a.m.)

24 (Jury panel present)

25 THE CLERK: ...Judge Johnstone presiding, is

1 now in session.

2 THE COURT: Thank you. You may be seated.
3 We're about to start jury selection in State of Alaska
4 versus Joseph J. Hazelwood. The case numbers are
5 89-7217 and 7218. Before we do that, ladies and
6 gentlemen, I'm going to have the clerk administer the
7 first of what will prove to be two oaths to the
8 prospective jurors. (Pause) We don't have the oath
9 book in this, so all prospective jurors will please
10 stand and raise your right hand. Just prospective
11 jurors.

12 (Oath administered)

13 JURY PANEL: I do.

14 THE COURT: If not, say no. (Pause) Okay.
15 You can be seated. Thank you.

16 Ladies and gentlemen, the charge in this case
17 charged the defendant as follows:

18 That "On or about the 23rd or 24th day of
19 March, 1989, at or near Valdez in the third judicial
20 district, state of Alaska, Joseph J. Hazelwood, having
21 no right to do so or any reasonable ground to believe
22 he had such a right, recklessly created a risk of
23 damage to the property of others in an amount exceeding
24 \$100,000.00 by widely dangerous means, i.e., the
25 spilling of crude oil, by recklessly risking the

1 structural integrity of the oil tanker, Exxon Valdez,
2 through his actions taking him before, during and/or
3 after the Exxon Valdez struck Bligh Reef, knowing the
4 tanker was loaded with crude oil."

5 MR. COLE: Your Honor, can we approach the
6 bench?

7 (1662)

8 (Whispered bench conference as follows:)

9 THE COURT: (indiscernible - away from mike)
10 you didn't bring it to my court and you've got to bring
11 it to me when you file it downstairs. It doesn't get
12 to me (indiscernible - away from mike).

13 MR. COLE: I'm sorry, Your Honor. I apologize
14 for that. (indiscernible - away from mike).

15 (1675)

16 (End of whispered bench conference.)

17 THE COURT: There's been an amended charge,
18 which I'll read to you in place of the charge that was
19 just read.

20 It states that "On or about the 23rd or 24th
21 days of March, 1989, at or near Valdez in the third
22 judicial district, state of Alaska,
23 Joseph J. Hazelwood, having no right to do so or any
24 reasonable ground to believe he had such a right,
25 recklessly created a risk of damage to the property of

1 others in an amount exceeding \$100,000.00 by widely
2 dangerous means to wit, by the totality of his actions.
3 On March 23 and 24, 1989, he recklessly risked damage,
4 damaging the structural integrity of the oil tanker,
5 Exxon Valdez, causing the spillage of crude oil."

6 Essentially the same charges, ladies and
7 gentlemen.

8 "To that charge, the defendants pleaded not
9 guilty, which places the burden of proving the
10 defendant guilty by proof beyond a reasonable doubt on
11 the state of Alaska."

12 I'll read to you more about that shortly.

13 "In addition, the defendant has been charged
14 with operating a water craft while intoxicated,
15 reckless endangerment and negligent discharge of oil.
16 He has pled not guilty to those charges, which also
17 places upon the state the burden of proving the
18 defendant guilty by proof beyond a reasonable doubt to
19 each and every element of those charges."

20 I've read the charges to you so you know what
21 kind of case this is. This is going to be a lengthy
22 trial, ladies and gentlemen. Council have estimated
23 this trial to take anywhere from six to eight weeks.
24 That's an estimate. It could take less, it could take
25 longer, but I think that's a reasonable guess as to how

1 long it's going to take.

2 That's going to require a substantial
3 commitment on any juror who is fortunate enough to be
4 selected on this trial. It will understandably involve
5 some inconvenience, personal inconvenience, financial
6 inconvenience to jurors. It will involve a commitment
7 which we're going to ask you to make at sometime during
8 this procedure. The purpose of the jury selection is
9 to obtain a fair and impartial jury that can decide
10 this case based solely on the evidence that's presented
11 in this courtroom and in accordance with the Court's
12 instructions.

13 The case has been given extensive media
14 coverage up to the present date and I expect it will be
15 given extensive media coverage throughout the duration
16 of the trial. Some of the questions of the prospective
17 jurors will involve the extent of your exposure to this
18 media coverage and the impact on you of this media
19 coverage. We have given you questionnaires which you
20 have filled out, and so we know quite a bit about you
21 already. That's to give counsel specific information
22 concerning your abilities to be fair and impartial and
23 be able to decide this case solely on the evidence and
24 in accordance with the jury's instructions.

25 Our trial days for the first three weeks,

1 which will take us through this week and the next two
2 weeks, will be from nine o'clock until Noon, at which
3 time all of us, including the jury, will be given a
4 lunch break until approximately 1:15, at which time we
5 will return and go until approximately 4:00 p.m. each
6 day. At the conclusion of the first three weeks we may
7 have to adjust those trial hours somewhat. We may end
8 up going from 8:30 in the morning until 1:30 in the
9 afternoon with no lunch break, but with periodic
10 breaks, at which time the jury would be excused for the
11 trial day. But that remains to be seen. I'll have to
12 see what happens to my calendar during that time.

13 In every criminal proceeding, ladies and
14 gentlemen, the defendant is given the presumption of
15 innocence and the state is required to prove each of
16 the essential elements of the charge against the
17 defendant beyond a reasonable doubt. I'm going to read
18 an instruction to you, which will be read again at the
19 conclusion of the case, verbatim, and it's an
20 instruction that is in the same fashion or similar
21 fashion given in every court in these United States in
22 a criminal case.

23 The distinguishing features of a criminal
24 trial are what are known in the language of the law as
25 a presumption of innocence and the burden of proof

1 beyond a reasonable doubt. The law presumes a
2 defendant to be innocent of crime, thus a defendant,
3 although accused, begins a trial with a clean slate
4 with no evidence against him. The presumption of
5 innocence alone is sufficient to acquit a defendant
6 unless and until you are satisfied beyond a reasonable
7 doubt of the defendant's guilt after careful and
8 impartial consideration of all the evidence in the
9 case.

10 This last mentioned requirement, that you be
11 satisfied beyond a reasonable doubt of defendant's
12 guilt, is what is called the "burden of proof". It is
13 not required that the prosecution prove guilt beyond
14 all possible doubt, for it is rarely possible to prove
15 anything to an absolute certainty. Rather, the test is
16 one of reasonable doubt. A reasonable doubt is doubt
17 based upon reason and common sense. The kind of doubt
18 that would make a reasonable person hesitate to act in
19 his or her important affairs. Proof beyond a
20 reasonable doubt must, therefore, be proof of such a
21 convincing character that you would be willing to rely
22 and act upon it in your important affairs.

23 A defendant is never to be convicted on mere
24 suspicion or conjecture. The burden of proving the
25 defendant guilty beyond a reasonable doubt always rests

1 upon the prosecution. This burden never shifts
2 throughout the trial, for the law never imposes upon
3 the defendant in a criminal case the burden or duty of
4 calling any witnesses or producing any evidence.

5 The defendant has the absolute right not to
6 testify and you must not draw any inference against the
7 defendant if he does not testify. Thus, a reasonable
8 doubt may arise, not only from the evidence produced,
9 but also from a lack of evidence. Since the burden is
10 upon the prosecution to prove every essential element
11 of the crime charged beyond a reasonable doubt, the
12 defendant has the right to rely upon failure of the
13 prosecution to establish such proof.

14 A defendant may also rely upon evidence
15 brought out on cross examination of witnesses for the
16 prosecution. That instruction sets forth three
17 fundamental principles of our Alaska and United States
18 criminal justice system:

19 First is the presumption of innocence. The
20 defendant, Joseph Hazelwood, is presumed innocent at
21 this state of the proceeding, for there is no evidence
22 against him. He stands here like any of us might, with
23 no evidence against us, with the presumption of
24 innocence.

25 The second is that the state must prove the

1 defendant, by proof beyond a reasonable doubt, guilty
2 of all the charges against him. That burden never
3 shifts, the defendant is under no obligation to call
4 witnesses or produce evidence.

5 Third is the defendant's right to remain
6 silent. He cannot be compelled to incriminate himself,
7 he cannot be compelled to take the witness stand and
8 you must not in any way infer anything adverse against
9 the defendant. He has the constitutional right not to
10 testify.

11 Now, I read to you that the presumption of
12 innocence alone is sufficient to acquit a defendant
13 unless and until you are satisfied beyond a reasonable
14 doubt of the defendant's guilt after careful and
15 impartial consideration of all the evidence in the
16 case. The jury must decide this case based solely on
17 the evidence presented in this case. That evidence
18 consists of the sworn testimony of witnesses who take
19 the witness stand, consists of exhibits which are
20 admitted into the record, it consists sometimes of
21 agreed statements of facts by the attorneys, and in
22 some cases it consists of what facts this court
23 judicially notices. Those are generally facts that
24 nobody would dispute. It consists of no other
25 information. Any other sources of information may not

1 be considered by the jury in determining the issues in
2 this case.

3 One of the purposes of jury selection is to
4 determine whether or not jurors can unequivocally
5 demonstrate that they can decide the issues based
6 solely on the evidence, and in making this
7 determination, counsel and the Court might explore in
8 some detail the exposure that you have to the pre-trial
9 publicity of this case and the impact on that pre-trial
10 publicity. Counsel want to know, to some extent, what
11 you know about the case, based on what you're heard,
12 read or seen from any source, including media sources,
13 and then counsel may want to know if you've formed any
14 opinions concerning the guilt or innocence, however
15 slight, of the defendant in this case, or you've formed
16 any opinions concerning the state, adverse or
17 favorable, however slight.

18 Now, just because you have seen something
19 about this case, you've read something or somebody has
20 told you about the case does not disqualify you from
21 jury service in this case. And just because you have
22 formed an opinion concerning the facts in this case or
23 whether, however slight, you believe that the defendant
24 is guilty of some crime, or the state may be guilty of
25 something, you may have an unfavorable feeling about

1 the state or a favorable feeling about the state, just
2 because you may have formed those opinions does not
3 disqualify you from jury service. The questions will
4 be whether or not you can demonstrate unequivocally
5 your ability to set aside this information and set
6 aside any opinions or feelings you may have derived
7 from this information and base your conclusions in this
8 case solely on the evidence that's presented in this
9 case, the evidence I just described to you.

10 I recognize the inconvenience that jurors may
11 suffer if they are given the opportunity to serve on
12 this jury. However, in my opinion, and I say this to
13 every prospective jury panel, it is an honor and a
14 privilege to serve on a jury. Most judges will never
15 get an opportunity to serve on the jury. I don't know
16 what goes on in the deliberation room and I probably
17 never will. Most lawyers never get that opportunity.
18 As closely as we are associated to it, we don't really
19 know. You have an opportunity to do something that
20 I'll never get a chance to do, I'm sure. It's a
21 privilege and an honor. And in this case I think
22 you're going to find it to be a most interesting
23 experience. While it's going to require a commitment
24 of up to two months, possibly, I think you'll find it's
25 worth the commitment. It'll be an experience that

1 nobody who participates in it will ever forget.

2 Now, there may be reasons that you cannot
3 serve on this jury. There may be some extreme
4 financial hardship, some medical reasons. You'll be
5 asked question number two on the blackboard, if there
6 are any reasons you should not serve on this jury. I
7 expect you will be very candid with me. If you do not
8 want to serve on this jury, you'll be able to come up
9 with an answer that will excuse you, I'm sure of that.
10 Before you do that, think of the opportunity you'll be
11 giving up. On the other hand, if there are some bona
12 fide reasons that you think you should not serve on the
13 jury, reasons that go to your ability to set aside
14 information, reasons that go to your ability to be fair
15 and impartial, please be candid with us, because both
16 sides want and deserve a fair trial in this case.
17 There are certain prejudices we possibly all possess
18 and some of them are very petty prejudices, and it's a
19 sign of maturity that we can set aside most of these
20 prejudices and decide important issues on information
21 and not the basis of personal prejudices. But in any
22 event, if you have a prejudice here or bias that you
23 cannot set aside, it will influence your ability to
24 decide this case on the evidence, you cannot
25 demonstrate you can unequivocally set it aside, let us

1 know. We've got lots of you here and we can get more,
2 and we're going to get a fair and impartial jury
3 eventually. So, just be candid and we'll work our way
4 through it.

5 During the course of jury selection and during
6 the course of the trial, prospective jurors and those
7 who are selected as jurors will be excused from time to
8 time. When you are excused, whether it be overnight or
9 during a trial day, at this time I'm instructing you
10 not to talk about this case to anyone, including among
11 yourselves and not permit anyone to talk to you about
12 it. If anybody should approach you and commence to
13 talk to you about it in their presence, please avoid it
14 and report that exposure to me.

15 Please do not converse with the attorneys, do
16 not converse with the witnesses, the parties or any of
17 the staff of the attorneys at any place, hall or any
18 other location. Now, I'm sure your conversation will
19 be perfectly harmless, but it may give the appearance
20 of a bias for or against one of the parties. You don't
21 have to leave your common courtesy out, you can say
22 hello, but don't engage in any conversation so you can
23 be in the best possible position to render a fair and
24 impartial verdict if you are given the opportunity to.

25 I'm instructing you now that during the

1 selection of the jury process and during the course of
2 the trial, if you're selected, that you avoid exposure
3 to any media reports about this case, newspaper, radio,
4 television. It may be more difficult than you think.
5 You'll have to have your newspapers, you'll have to
6 have your television screened for you, but it's
7 important you do that.

8 If you are selected to the jury, you are not
9 to form or express an opinion concerning any issue in
10 the case, nor discuss the case among other jurors. If
11 you are excused from jury service for any reason, then
12 you'll be excused from these instructions.

13 The jury's role is to ultimately make a
14 decision of whether the defendant is guilty or not
15 guilty of the offenses charged. The jury is a
16 fact-finding body. The Court's role is to instruct the
17 jury on the law that they should apply in coming to
18 this result. Now, the jury must follow the Court's
19 instructions on the law, regardless of what they think
20 the law is or what it should be or what somebody may
21 have told them it is.

22 Is there anybody here that thinks that they
23 would not be able to follow that fundamental principle?
24 The Court instructs on the law, the jury follows the
25 Court's instructions on the law. Anybody here think

1 they can't make that commitment at this time? (Pause)

2 Thank you.

3 Is there anybody here that disagrees with the
4 fundamental principles I read earlier about the
5 defendant being presumed innocent, the state having the
6 burden of proving the defendant guilty by proof beyond
7 a reasonable doubt? Is there anybody here who
8 disagrees with that fundamental principle of U.S.
9 criminal jurisprudence? If so, raise your hand.

10 (Pause) Nobody raised their hand.

11 Are there any jurors who are not at least 18
12 years of age? If so, raise your hand.

13 Any jurors who are not citizens and residents;
14 citizens of the United States and residents of the
15 state of Alaska? If so, raise your hand.

16 Any jurors unable to read and speak the
17 English language and also understand the English
18 language when it's spoken? If so, raise your hand.

19 Any jurors suffering from any mental
20 disabilities which would render you not of sound mind?
21 Okay. Nobody raised their hand to those questions
22 either.

23 We're going to be doing individual jury
24 questions. Your name will be called and when your turn
25 comes, you'll sit in the jury box where these folks are

1 right now, by yourself. You'll answer the first four
2 questions on the blackboard. We know somewhat about
3 you already, but you'll be given that opportunity to
4 loosen up.

5 We record everything in this court, so you'll
6 be speaking into a microphone, and then the attorneys
7 will ask some follow-up questions. The purpose is to
8 obtain information concerning your qualification to be
9 fair and impartial. It's not to harass you, it's not
10 to embarrass you. Although some questions may prove to
11 be embarrassing, they're not intended to be. If we get
12 into an area that's extremely sensitive to you, let me
13 know and maybe I can limit it. I doubt that will
14 happen in this case, but if we do, I'll see what I can
15 do about it.

16 We're going to call approximately 30 names, I
17 think, initially, and when you hear your name called,
18 the first 30 are going to be asked to go next door to
19 Courtroom A, and that's where you'll be seated while we
20 try to select from you today. Then we'll call 30
21 additional names. The second set of 30 names may go
22 home and come back tomorrow morning to the jury
23 assembly room. That's where you assembled today. The
24 remainder of you, which will be approximately 35, 37,
25 may also go home. If you haven't heard your name, you

1 may also go home, and then you are to return on
2 Thursday to the jury assembly room. You are all still
3 prospective jurors, but there's no need for you to wait
4 around here while we plow through the first 30. I'm
5 doing that with the expectation that you will all
6 return, and we will call the role each day. When you
7 are down in the jury assembly room, the instructions
8 I've given you not to discuss the case still hold, and
9 they hold when you go home as well.

10 We've given you all a list, at least I believe
11 we have, of the potential witnesses to be called in
12 this case. Now, I remind you at this time that the
13 defendant is under no obligation to call a witness or
14 any obligation to produce any evidence in this case.
15 I've given you that list so you can intelligently
16 answer question number four, if you know, among others,
17 witnesses in the case. Now, maybe not all these people
18 are going to be called but we want to cover all the
19 bases to make sure. We wouldn't want you to turn up
20 being the brother to one of these people or sister or
21 have some special relationship with one of these
22 people. So that's why you are given that information
23 now, so you can intelligently answer that question.

24 Before we call off the names of the first 30
25 and then the second 30, I'm going to have counsel

1 introduce themselves to you and associate counsel who
2 may be assisting them, either at counsel table or
3 otherwise, so you'll know who they are and you'll know
4 to avoid them to some extent, too, if you happen to see
5 them in the hall.

6 We'll start with the state's counsel first.

7 MR. COLE: Thank you, Your Honor. Good
8 morning, ladies and gentlemen. My name is Brent Cole.
9 I'm an assistant district attorney in Anchorage,
10 Alaska. During the course of this trial I will be
11 assisted by Mr. Sam Adams, who is standing right here
12 with Mary Anne Henry. They are both assistants in our
13 office. Also there will be a state trooper
14 investigator that you may see occasionally. His name
15 is Sergeant Jim Stogsdill.

16 Thank you, Your Honor.

17 MR. MADSON: Ladies and gentlemen, my name is
18 Dick Madson. I'm the attorney that unfortunately lives
19 in Fairbanks most of the time, but for the time being,
20 I'll be here. Sitting next to me is
21 Mr. Michael Chalos. He is friend of the defendant,
22 Joseph Hazelwood. Mr. Chalos is an attorney from
23 New York. Also a member of his firm, who is present
24 and will be assisting also is Mr. Tom Russo, sitting in
25 the first row here.

1 Thank you.

2 THE COURT: At this time, ladies and
3 gentlemen, Mr. Purden, he's our technician who operates
4 all this electronic equipment here and keeps notes of
5 the proceeding, will call off the names of the first 30
6 individuals. Please don't stand yet. Wait until we've
7 called off all 30 names, and then those 30 can go into
8 Courtroom A. Now we have a bailiff who is standing in
9 the back of the room, with the purple coat on, she's
10 going to be with you in Courtroom A to make sure that
11 you're not exposed inadvertently to information and you
12 all stay together. If you need to use the restroom
13 while you're waiting in Courtroom A, she'll arrange for
14 that. We have restroom facilities.

15 And as we proceed through jury selection,
16 we'll call from your ranks in the order in which your
17 names were called to answer some questions. After
18 you've answered questions and counsel have either
19 passed or challenged for cause, then you can go home.
20 You don't need to go back to that jury room unless you
21 are specifically instructed to.

22 You'll hear the attorneys ask questions and at
23 some point in the questioning you'll hear an attorney
24 challenge for cause. That means the attorney is
25 exercising his rights under the Alaska Rules of

1 Criminal Procedure to disqualify a juror because he
2 feels that juror cannot be fair and impartial for
3 specified reasons. Don't be offended, I'll make a
4 ruling on that. If I reject that challenge for cause,
5 then you'll be passed for cause at that point, and if I
6 grant it, then you'll be excused from further jury
7 service.

8 At the completion of challenges for cause,
9 when we have 12 jurors seated, the attorneys are
10 entitled to exercise what we call peremptory
11 challenges. No reason need be specified. That is,
12 once again, rights that are afforded the attorneys
13 under Alaska Rules of Criminal Procedure. If you are
14 excused pursuant to peremptory challenge, please don't
15 be offended by it, then I will give you your card and
16 you will go downstairs to the jury clerk.

17 If you are excused for any reason, Mr. Purden
18 will have your little slip, your little jury card, take
19 that from Mr. Purden downstairs to the jury clerk for
20 further instructions, but you will be excused from this
21 jury service once that occurs. You may -- and if you
22 want or it looks like it would be appropriate, be given
23 the opportunity to serve on another jury if you're
24 excused.

25 So, at this time, Mr. Purden will call off the

1 first 30 names and he will -- counsel, do you need to
2 take up something?

3 MR. COLE: Can we approach the bench just
4 briefly?

5 THE COURT: Yes.

6 (2870)

7 (Whispered bench conference as follows:)

8 MR. COLE: Judge, maybe I missed it, but I
9 asked Mr. Madson, do you plan on asking people if
10 anybody who has a felony conviction has not had their
11 civil rights (indiscernible - away from mike).

12 THE COURT: You should have that. That should
13 have already have been on the jury qualifications. The
14 initial qualification form asked them that question.
15 They should not be up here if they have.

16 MR. COLE: I did not realize that.

17 THE COURT: That's not the question that we
18 have. There's two of them, normally. Counsel? Mr.
19 Madson? There are two forms. There is generally the
20 jury qualification one they fill out and then there's
21 the jury questionnaire they fill out as well.

22 MR. MADSON: I see. That's different
23 procedure than what I'm used to.

24 (2895)

25 (End of whispered bench conference.)

1 THE COURT: Thank you for bringing that to my
2 attention, however.

3 Okay. Mr. Purden will call your name out and
4 he will spell the last name. We'll be taking note of
5 that. And we have a box, it's kind of like a lottery,
6 except you don't win any money. He'll pull your name
7 out.

8 THE CLERK: Thomas R. Belleau, B-e-l-l-e-a-u.

9 THE COURT: Would you raise your hand when you
10 hear your name so I'll know -- you can just remain
11 seated until all 30 names are called and then you can
12 all go to Courtroom A next door, so we'll know we've
13 got you when you raise your hand.

14 THE CLERK: Robert Gerard, G-e-r-a-r-d.
15 Cheryl Perlo, P-e-r-l-o. Terrill Smith, S-m-i-t-h.
16 Elmer Brown, B-r-o-w-n. Russell Gill, G-i-l-l.
17 Sydney Sherwood, S-h-e-r-w-o-o-d. Helene Brust,
18 B-r-u-s-t. James Rousey, Sr., R-o-u-s-e-y.
19 Monte W. Fults, F-u-l-t-s. Wilhelm Schaueremann,
20 S-c-h-a-u-e-r-m-a-n-n.

21 THE COURT: Is Mr. Schaueremann present?
22 Thank you.

23 THE CLERK: John Gagnon, G-a-g-n-o-n.
24 Eric Johnson, J-o-h-n-s-o-n. Kathryn Rosselle,
25 R-o-s-s-e-l-l-e. Linda Stumpff, S-t-u-m-p-f-f.

1 Richard Nigh, N-i-g-h. Peggy Steward, S-t-e-w-a-r-d.
2 Kimberley Taylor, that's T-a-y-l-o-r. Bruce Gorham,
3 G-o-r-h-a-m.

4 THE COURT: I didn't see him. Is Mr. Gorham
5 here? Thank you.

6 THE CLERK: Jeffrey Sage, S-a-g-e.
7 Ronald Jordan, J-o-r-d-a-n. Beatrice Freeman,
8 F-r-e-e-m-a-n. Yvonne Payne, P-a-y-n-e. Earl Huff,
9 H-u-f-f. Shane Grafton, G-r-a-f-t-o-n.
10 Michael Stewman, S-t-e-w-m-a-n. Joan Hartwick,
11 H-a-r-t-w-i-c-k. Patricia Gillespie,
12 G-i-l-l-e-s-p-i-e. Valerie Ericks, E-r-i-c-k-s.
13 David H. Bates, B-a-t-e-s.

14 THE COURT: I believe that's the first 30.
15 Was Mr. Bates here?

16 THE CLERK: Yes, in the back.

17 THE COURT: Okay. For the first 30, if you
18 just heard your name called, would you please stand and
19 go with the bailiff in the back?

20 (Pause)

21 For the next 30, ladies and gentlemen, listen
22 carefully to your name. If you hear your name, once we
23 have called out 30, you may be excused for the day, but
24 you will have to come back tomorrow morning to the jury
25 assembly room at 8:30 a.m. We can't proceed until you

1 are all there. Okay.

2 THE CLERK: Deborah Crowley, C-r-o-w-l-e-y.

3 THE COURT: Just raise your hand if you're --
4 okay. Thank you.

5 THE CLERK: Joan Miller, M-i-l-l-e-r.

6 Nathan Cummins, C-u-m-m-i-n-s. William Montgomery,
7 M-o-n-t-g-o-m-e-r-y. Daniel Dye, D-y-e. Kolaiah
8 Baker, B-a-k-e-r. Susan Byrd, B-y-r-d. Carol Stockly,
9 S-t-o-c-k-l-y. Francis White, W-h-i-t-e.
10 Joseph Hathaway, H-a-t-h-a-w-a-y. Lori Wing, W-i-n-g.
11 Mark Cunningham, C-u-n-n-i-n-g-h-a-m. Blondell Walker,
12 W-a-l-k-e-r. Randy Meier, M-e-i-e-r.

13 THE COURT: Is Mr. Meier here? Oh. Thanks.

14 THE CLERK: Margaret Glenn, G-l-e-n-n.

15 George Gilchrist, G-i-l-c-h-r-i-s-t. John Massy,
16 M-a-s-s-y. Clyde Cantor, C-a-n-t-o-r.
17 Terrance Reimer, R-e-i-m-e-r. James Lynch, Jr.,
18 L-y-n-c-h. Alan Maki, M-a-k-i. John Simpson,
19 S-i-m-p-s-o-n. Carol Igtanloc, I-g-t-a-n-l-o-c.
20 Albert Oakes, O-a-k-e-s. Marla Sanders, S-a-n-d-e-r-s.
21 Joseph Anderson, A-n-d-e-r-s-o-n. Patricia Burkett,
22 B-u-r-k-e-t-t. Margaret Piper, P-i-p-e-r. Veda Bell,
23 B-e-l-l. Sylvia Stanberry-Core, C-o-r-e.

24 THE COURT: Okay. That's the next 30, ladies
25 and gentlemen. You'll have to report to the jury

1 assembly room tomorrow at 8:30 in the morning. You
2 might want to bring some reading material, not
3 newspapers, you know, something that might keep you
4 occupied. I have no idea when we'll get to you. I'm
5 trying to make sure we have more than enough so that we
6 don't run out of jurors, so we may overlap quite a bit,
7 but we'll see you tomorrow at the jury assembly room,
8 and then I'll probably bring you back up for further
9 instructions tomorrow. You will get further
10 instructions tomorrow, we'll just make it like that.

11 See you tomorrow. (Pause)

12 MR. MASSY: I have a very important business
13 meeting I have to attend tomorrow. There is no problem
14 with me being here Thursday. Is it possible to call
15 one more name and (indiscernible - away from mike)?

16 THE COURT: What is your name?

17 MR. MASSY: John Massy.

18 THE COURT: All right. You can come in on the
19 next day, Thursday. I'll let you out tomorrow. You
20 come in on Thursday though.

21 MR. MASSY: All right. Thank you.

22 THE COURT: Counsel, approach the bench.

23 (3810)

24 (Whispered bench conference as follows:)

25 THE COURT: Don't come up by yourself, bring

1 counsel with you. Okay, I'll tell you what I just did.
2 Mr. Massy was number 47. He said he had a very
3 important meeting tomorrow. I let him go, he'll come
4 back on Thursday. We'll just eliminate him. He's
5 number 47, Mr. Massy. And the rest of these people I'm
6 going to excuse and come back in on Thursday.

7 MR. COLE: Mr. Burnett is one of the people
8 that Sam Adams asked that there's no reason to serve on
9 this case and Mr. Madson (indiscernible - away from
10 mike)

11 THE COURT: Is he in the back of the room now?

12 MR. COLE: Yes.

13 THE COURT: Mr. Burnett?

14 MR. COLE: I'd just excuse him too.

15 (indiscernible - away from mike)

16 THE COURT: Any objection? Okay.

17 (3862)

18 (End of whispered bench conference.)

19 THE COURT: Mr. Massy, we'll see you on
20 Thursday.

21 MR. MASSY: Okay.

22 THE COURT: Is there a Mr. Burnett here?
23 Okay. You are a cousin to Mr. Adams. Is that correct?
24 (Pause) Is that right, sir?

25 MR. BURNETT: Right, he's my wife's cousin.

1 THE COURT: Okay. I'm going to excuse you,
2 sir. We'll get your jury service card downstairs to
3 the jury clerk, but report down to the jury clerk at
4 this time for further instructions. We'll put you on
5 some other jury.

6 All right. Now, there's over 30 remaining
7 prospective jurors in the courtroom. We're going to
8 call those names off so you'll know the order in which
9 you are going to be called when your turn comes and
10 you'll know the order in which your name will be
11 called. You will all have to come back on Thursday in
12 the morning at 8:30, unless otherwise instructed. I
13 doubt I'll instruct you otherwise, so plan on being
14 here Thursday at 8:30. When you hear your name, wait
15 till all names are called off, then you all can -- you
16 are free to go for the rest of the day and for
17 tomorrow.

18 THE CLERK: Steven Laris, L-a-r-i-s.
19 Bonnie Lewis, L-e-w-i-s. Michael Herrera,
20 H-e-r-r-e-r-a. David Roys, II, R-o-y-s. Donald Cox,
21 C-o-x. Dorine Kuta, K-u-t-a. R. Y. Kuranel,
22 K-u-r-a-n-e-l. Gregory Gillquist, G-i-l-l-q-u-i-s-t.
23 Timothy Smith, S-m-i-t-h. Randy Johnsrud,
24 J-o-h-n-s-r-u-d. Susitna Shine, S-h-i-n-e.
25 Hyung Yang, Y-a-n-g. Dorothy Staples, S-t-a-p-l-e-s.

1 Glen C. Hitchcock, H-i-t-c-h-c-o-c-k.

2 THE COURT: Is Mr. Hitchcock here? (Pause)
3 Mr. Hitchcock, if you're here, raise your hand. Okay,
4 he's not here apparently. We'll just keep that card
5 aside.

6 THE CLERK: Terry Turner, T-u-r-n-e-r.

7 THE COURT: That will be a new number 70 for
8 Terry Turner.

9 THE CLERK: Joyce Gause, G-a-u-s-e.
10 Annette Erickson, E-r-i-c-k-s-o-n. Robert A. Taylor,
11 T-a-y-l-o-r. Mike Ulestad, U-l-e-s-t-a-d.
12 Francis [sp] Gunnip, G-u-n-n-i-p. Robert Ridelin,
13 R-i-d-e-l-i-n. William Hearn, Jr., H-e-a-r-n.
14 James Johnson, J-o-h-n-s-o-n. James Johnson?

15 THE COURT: Pull that off. We'll have a new
16 82 come up.

17 THE CLERK: Virginia Powell, P-o-w-e-l-l.
18 Phyllis Janke, J-a-n-k-e.

19 (3862)

20 (Tape: C-3582)

21 (0006)

22 THE CLERK: Deborah Chaffin, C-h-a-f-f-i-n.

23 THE COURT: Is she not here?

24 THE CLERK: Yes, she is.

25 THE COURT: Oh, sorry. Thank you.

1 William Inscho, I-n-s-c-h-o. Mary Hodges, H-o-d-g-e-s.
2 Robert Burnett, B-u-r-n-e-t-t. Robert Burnett?

3 THE COURT: Make a new 87.

4 THE CLERK: Arthur Lovelace, L-o-v-e-l-a-c-e.
5 Elizabeth Katchatag, K-a-t-c-h-a-t-a-g. Gregory Ryder,
6 R-y-d-e-r. William Sidney, S-i-d-n-e-y.
7 Doris Timperley, T-i-m-p-e-r-l-e-y. Leslie Vandergaw,
8 V-a-n-d-e-r-g-a-w. Steven Lyons, L-y-o-n-s.
9 Inez Saafi, S-a-a-f-i. Those are the names for today.

10 THE COURT: Any prospective jurors here who
11 did not hear their name called? If so, raise your
12 hand. That worked out. I'm surprised.

13 All right. Those whose names were just
14 called, you folks are excused until Thursday morning at
15 8:30 a.m. You'll have to come down to the jury
16 selection room. We cannot proceed now, since we've
17 called your name in your absence, so all of you have to
18 attend. If you have some medical emergency that comes
19 up, please let us know. We'll need all of you.

20 My thanks, and we'll see you on Thursday
21 morning in the jury assembly room. You folks are
22 excused as well.

23 (Pause)

24 So, we'll take about a 10-minute break, and to
25 gear up, we'll start with Mr. Thomas Belleau when we

1 come back. Maybe we can have our security official go
2 next door to Courtroom A when we need a juror. Would
3 that be okay with you? Okay, we'll let you know. Are
4 you going to be staying here throughout the proceeding?

5 SECURITY OFFICIAL: As long as (indiscernible
6 - away from mike)

7 THE COURT: I think at least for the jury
8 selection, I'd like to have you there. And, once
9 again, there will be no camera coverage of jury
10 selection.

11 We'll stand in recess.

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

14 (Off record - 10:17 a.m.)

15 (On record - 10:32 a.m.)

16 THE COURT: Are you ready to proceed, counsel?

17 MR. COLE: Yes, we are, Your Honor.

18 THE COURT: Okay. We'll call on Mr. Belleau.
19 Please bring him in. (Pause)

20 Good morning. Come on in and have a seat in
21 front of that microphone over there, Mr. Belleau. The
22 microphone will come off the holder, it just unsnaps
23 from the holder. Just pull it off so you can talk into
24 it. Can you see those questions okay?

25 A Yes, I see the questions.

1 THE COURT: Okay. If you'd answer the first
2 four, then counsel will have some questions for you.

3 A My name is Thomas R. Belleau. As far as I
4 know, I'm not a member of any organization. I
5 don't know what kind of organization you want.

6 THE COURT: Oh, National Riflemen's
7 Association, Sierra Club, any organization that you pay
8 dues for or attend meetings.

9 A No, I don't belong to any of those
10 organizations. I don't know if I should serve on
11 this jury or not. That's up to someone else to
12 decide. I do not know any defendants, any
13 attorneys, plaintiff or witness.

14 THE COURT: Thank you. Mr. Cole.

15 MR. COLE: Thank you, Your Honor.

16 VOIR DIRE EXAMINATION OF THOMAS R. BELLEAU

17 BY MR. COLE:

18 Q Mr. Belleau, I notice from your questionnaire
19 that you're an aircraft pilot?

20 A That is correct.

21 Q How long have you been a pilot?

22 A (No audible response.)

23 Q How long?

24 A Since 1942.

25 Q Do you fly now?

1 A I'm capable of flying, yes, at this time.
2 Q Are you working right now?
3 A I'm employed.
4 Q Who do you work for?
5 A Department of Interior.
6 Q Have you been flying this month?
7 A Repeat the question.
8 Q Have you been flying this month? This month.
9 A Yes, I've flown this month.
10 Q Where are some of the flights you've taken
11 recently?
12 A Only as far as down to Kenai and back, that's
13 all the further. Correction, I've also been to
14 King Salmon.
15 Q Have you, during the course of your
16 employment, flown over the Prince William Sound?
17 A Yes, I have.
18 Q Has that been since the Exxon Valdez went
19 aground?
20 A Yes.
21 Q And have you been able to observe some of the
22 damage that's been done to Prince William Sound
23 and other areas?
24 A If you'd speak a little louder, I could hear
25 you.

1 Q Have you been able to see some of the damage
2 that's been done since the Exxon Valdez went
3 aground?
4 A Yes, I've observed the...
5 Q How has that affected you -- has that affected
6 you, would it affect your ability to be fair and
7 impartial?
8 A No, it doesn't affect me one way or another.
9 I've seen lots of oil spills and it doesn't
10 bother me any.
11 Q Your questionnaire indicates that you've
12 served on juries before.
13 A One.
14 Q Do you remember if it was a criminal or civil
15 matter?
16 A It was a fisheries violation.
17 Q Was that up here in Alaska?
18 A Yes, it was. It was at Cold Bay.
19 Q Cold Bay. Were you the foreman on that jury?
20 A No, I was not.
21 Q Anything that came about in the course of your
22 jury service that made you unhappy with the
23 criminal justice system or uncomfortable with the
24 system?
25 A Not really.

1 Q Did you find it a satisfying experience?
2 A I suppose so.
3 Q Well, do you have any bad feelings that came
4 out of it?
5 A About juries?
6 Q Yes.
7 A No, I don't have any bad feelings about juries
8 or court proceedings.
9 Q Are there any special regulations -- do you
10 have your commercial rating?
11 A I'm an airline transport pilot, yes.
12 Q Are there any special regulations concerning
13 when a person can drink and fly?
14 A Yes, there is.
15 Q What are those?
16 A It depends on which one you're after. If
17 you're after the FAA, it says eight hours before
18 or when under the influence. You cannot fly when
19 you're under the influence.
20 Q The eight hours before, why do they have that?
21 A Obviously to preclude any possibility of
22 operating when you are under the influence, I
23 suppose.
24 Q As a commercial pilot it appears that to be a
25 pilot you have to know quite a bit about

1 regulations. Would you agree that there is quite
2 a few regulations surrounding the aviation field?
3 A Considerable.
4 Q Do you have any opinion on whether that's good
5 or bad? Strong opinions on that.
6 A Obviously it's good.
7 Q You indicated in your questionnaire that
8 you've heard information about this case.
9 A As a resident of Anchorage, how can you miss?
10 Q Have you formed any opinions about the roles
11 and responsibilities of any people in this oil
12 spill?
13 A No.
14 Q And would you be willing to set aside anything
15 you might have learned prior to this and of the
16 Judge's instructions, base your decision on the
17 evidence that you hear from the witnesses, the
18 evidence that's presented and admitted in court
19 and your own common sense and good judgment; do
20 you have any problems following that
21 instruction?
22 A No, I don't have any problem with it.
23 Q Do you understand, I assume, the importance of
24 this case, both to Mr. Hazelwood and the state of
25 Alaska, would you be willing to listen to the

1 evidence and reach a fair and just verdict as was
2 promised by listening to the evidence, looking at
3 the exhibits and using your own common sense and
4 good judgment?

5 A When I told you I'm familiar with this case,
6 I'm only familiar with what I've read. I'm not
7 sure what he's charged with at this time. I can
8 assure you that if I serve on the jury, I will be
9 fair and impartial to the best of my ability, and
10 -- which is all I can say.

11 Q Would you be willing to give both sides a fair
12 trial in this case?

13 A That has been my creed for the last 65 years.
14 I suppose I can continue, yeah.

15 Q And be willing to reach a fair and just
16 verdict for both parties?

17 A That has been my objective throughout my life.
18 I don't intend to change.

19 MR. COLE: Thank you. I have nothing further,
20 Your Honor.

21 THE COURT: I assume when you don't say
22 anything, you're passing for cause.

23 MR. COLE: That's right.

24 THE COURT: Thank you.

25 VOIR DIRE EXAMINATION OF THOMAS R. BELLEAU

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BY MR. MADSON:

Q Good morning, Mr. Belleau. It is Belleau, isn't it?

A Yes, it is.

Q Sir, I noticed you asked Mr. Cole to speak up. Do you have a hearing problem at all or can you hear me okay?

A I hear you okay. I have a hearing problem, yes.

Q What kind of plane did you fly? Let me ask you that, what type of aircraft?

A I fly from single engine airplanes of 150 horsepower on up to four-engine turbo prop transports.

Q Well, you have a multi-engine rating then?

A Yes, I do.

Q When you are flying a four-engine plane, for instance, do you normally have a co-pilot with you or do you fly just alone?

A The airplane I fly has a co-pilot and a flight engineer on it, if I fly it.

Q So, it's a three-man crew actually?

A Yes, one-man, two-man or three-man crew.

Q During sometime of your flight -- in other words, you don't remain at the controls all the

1 time, I take it? The co-pilot flies some of the
2 time and you fly some of the time? Or maybe I'm
3 wrong. I mean I'm asking you this.

4 A That's true.

5 Q So, you're in charge but you turn over the
6 plane to your co-pilot occasionally. Is that how
7 it works?

8 A Yes, I don't -- for command? No. It's -- I'm
9 on-board at all times.

10 Q You obviously don't bail out, but I mean
11 sometimes do you let someone else fly and say
12 you'll take it for a while or something, right?

13 A That is a true story, yes.

14 Q I'm not trying -- I don't want to argue with
15 you or anything, I'm just trying to find out --
16 not having flown a four-engine plane, I'm just
17 trying to figure out how it works, you know. So
18 maybe you could take a nap or something, is that
19 fair?

20 A Not hardly.

21 Q Why is that? I mean -- I guess I'm asking
22 what circumstances would you say, Jones, take
23 over for a while, take off, land, do whatever.

24 A I don't always fly with the same people, and
25 some people are more, should we say, skillful

1 than others? Some are adept captains, rated
2 captains, in which case they fly the airplane and
3 I don't relinquish command. I still am the
4 piloting man of the airplane. They fly the
5 airplane. Others are relatively low-time pilots.
6 Each case merits a different set of
7 circumstances.

8 Q Sure.

9 A I attend to those as they arise.

10 Q In other words you feel much more confident
11 with certain people flying with you than with
12 others you just don't know, right?

13 A Obviously, yes.

14 Q You know, some of my questions are rather
15 obvious. But when you have someone there that
16 you've flown with for say some hours and you know
17 he's a very competent person, that gives you more
18 of a feeling of confidence yourself, that you can
19 kind of relax a little bit, you don't have to
20 watch everything he's doing and things like
21 this...

22 THE COURT: Excuse me. Counsel, approach the
23 bench, please.

24 (0660)

25 (Whispered bench conference as follows:)

1 THE COURT: (indiscernible - away from mike)
2 evidence in this. There's two different types of
3 things and one's airline and one's ship (indiscernible
4 - away from mike) suggesting (indiscernible - away from
5 mike)

6 MR. MADSON: I wish to register an objection,
7 Your Honor. It's highly relevant and extremely
8 important.

9 (0685)

10 (End of whispered bench conference.)

11 Q Do you work for BLM, sir?

12 A No, sir, I don't. I work for the Department
13 of Interior.

14 Q Okay. It's not Bureau of Land Management
15 though, is it?

16 A Bureau of Land Management is one of the
17 agencies within the Department of Interior.

18 Q I see. But you work for just the Department
19 of Interior itself?

20 A The organization I work for is -- reports
21 directly to the Office of the Secretary, known as
22 the Office of Aircraft Services.

23 Q Well, how many hours a week or a month do you
24 actually fly then, sir?

25 A At this time I don't engage in too much

1 activity. I have the role of flight training
2 manager with the organization at this time. I
3 suppose I fly somewhere in the vicinity of 35, 40
4 hours -- around 400 hours a year.

5 Q But that's mostly in the summer? Is that when
6 you normally do it, more hours in the summer than
7 the winter, sir?

8 A Yes.

9 Q As your job is flight training person, you're
10 actually training other pilots then for BLM?

11 A You refer to BLM...

12 Q Excuse me, the Department of Interior.

13 A BLM does not have any pilots in Alaska, so I
14 don't train them.

15 Q When you were a juror in the case in Cold Bay,
16 that's down in the Aleutians, right?

17 A It is near the Aleutians. Yes, it is down
18 near the Aleutians. It's still on the Alaska
19 Peninsula.

20 Q I guess I'm wondering if you lived -- were you
21 living there at the time?

22 A Yes, I was.

23 Q Were you still working for the Department of
24 Interior there?

25 A No, I was not. I was a pilot for Reeve

1 Aleutian Airways.

2 Q And what year was this, sir?

3 A I think it was 1962 or so.

4 Q Okay. So it was some years ago?

5 A Yes.

6 Q You indicated on your -- when you came in here
7 and asked for the -- answered the questions as to
8 why you should or should not serve, you said you
9 didn't know and you felt it would be better for
10 someone else to decide that. Do you have any
11 reservations about serving on the jury at all?

12 A Except for the time that I'd be forced to
13 commit myself, none.

14 Q Okay. I take it working for the Department of
15 Interior would not impose such a financial or
16 other kind of hardship on you that you felt you
17 couldn't sit here for two months, perhaps, and
18 listen to all the evidence and take whatever time
19 you need to deliberate and all that?

20 A I believe that the Department of Interior will
21 continue to pay my wages.

22 Q Now, with regard to what you read and heard
23 about this case, I think you answered it probably
24 better than anyone could when you say, how can
25 you live here and not know about it. From what

1 you did read and see or hear, did you ever
2 express an opinion to anyone, that you can
3 recall, about whose fault it was or anything like
4 that?

5 A Not that I can recall.

6 Q Did your ever express -- or not express. Did
7 you ever form any kind of opinion, just you know,
8 in the back of your mind thinking about it, well,
9 Hazelwood must be guilty or maybe he's guilty or
10 anything of that sort?

11 A Not directly to that -- in that direction; no,
12 not that I can recall.

13 Q Do you have any opinions now as you sit here
14 today about whether he's guilty or not guilty?

15 A I don't even know what he's charged with,
16 really.

17 Q So he's not guilty of anything, right?

18 A I don't know.

19 Q Well, did you hear the judge read the charges
20 this morning as to...

21 A No, I didn't. I'm sorry, I did not hear him.

22 Q Is that because you just didn't -- you were in
23 the back of the courtroom and...

24 A That's right.

25 Q ...didn't hear? Regardless of what he is

1 technically charged with, is it fair to say, as
2 you sit here today with no opinions as to his
3 guilt or innocence, you are neutral?

4 A At this time there is no opinion.

5 Q Is that the way you normally are? You
6 expressed that to Mr. Cole, you said that's been
7 your creed all your life. Can you explain that
8 at all? I mean is that just the way you look at
9 things, saying, I believe in not forming an
10 opinion until I'm sure; is that what it comes
11 down to?

12 A It depends entirely on the circumstances. I
13 don't know anything about his job. I don't even
14 know what took place.

15 Q Do you know anything at all about the
16 regulations on a ship?

17 A No, I don't. I'm not too familiar with them.
18 I just know they're supposed to avoid other
19 traffic and...

20 Q Now, you know, Mr. Cole asked you questions
21 about FAA regulations that have to do with
22 flying. I guess my concern would be maybe a
23 regulation for flying is different than a
24 regulation or a rule involving a ship. Could you
25 be sure to keep that separate and regardless if

1 there's a conflict in the two, you can just
2 listen to the evidence here and not think about
3 what the regulations might be in your profession,
4 as far as FAA is concerned? In other words, put
5 that out of your mind?

6 A I feel reasonably confident that I can do
7 that.

8 Q Obviously the regulations for a ship would be
9 considerably different than an airplane, right?
10 Whether it involves alcohol or...

11 A I don't know, but I would assume it is. Ocean
12 vessels travel at a slower speed, not under
13 control of various people, and obviously it's
14 different.

15 Q And you know, of course, as an airline pilot
16 that accidents happen with airplanes, too?

17 A Yes, but I haven't had any.

18 Q Well, I hope you're not due.

19 THE COURT: Let's go on, please.

20 Q Would you agree, sir, that sometimes accidents
21 happen, and it's due to something called pilot
22 error?

23 MR. COLE: Judge, my...

24 A Yes.

25 MR. COLE: ...understanding -- excuse me. My

1 understanding is that was one of the questions that was
2 excluded.

3 THE COURT: It was one of the questions
4 excluded. I thought you were aware of that when I went
5 over them.

6 MR. MADSON: Well, Your Honor,...

7 THE COURT: So, don't ask that question again.
8 I gave you an opportunity to bring that up if you
9 wanted to raise that issue this morning. It wasn't
10 raised, so I assume it was not an issue.

11 MR. MADSON: I would like to make an issue
12 now, if I could, sir.

13 THE COURT: Next question, please.

14 Q (Mr. Belleau by Mr. Madson) What about you
15 said, I think, you drink perhaps once a week. Is
16 that correct?

17 A That is true.

18 Q What would you drink; what kind of alcoholic
19 beverage? Beer or wine?

20 A Martini before dinner. Sometimes I do more
21 than that. Sometimes I over-indulge. That's an
22 average.

23 Q So you obviously then don't hold it against --
24 anything against people that drink alcohol, go
25 about their business and do things. You don't

1 have strong feelings about it. Would that be
2 fair to say?

3 A. Depends on the circumstances.

4 Q. When you were flying over Prince William
5 Sound, what was the purpose in doing this; why
6 were you there?

7 A. I flew quite a few trips over Prince William
8 Sound. Usually they were marine mammal or sea
9 bird damage observation patrols is what they
10 were, or other things that were -- in recent
11 years, in the last year or so, the observation
12 was -- all the flights were observation or
13 spill-related flights.

14 Q. Correct me if I'm wrong, but would you have
15 people on-board that would be monitoring or
16 observing things and taking notes or photographs
17 or something while your job was to fly the
18 aircraft or did you have to do something...

19 A. My job was always to fly the aircraft. Anyone
20 else can do the looking. I don't do the looking.

21 Q. You're just concerned about, you know, making
22 sure you're in the right place and safety and
23 things like this, right?

24 A. That is correct, sir.

25 Q. From what you saw there, did you feel -- just

1 from your observations now, nothing to do with
2 your job, just your personal observations, did
3 you feel that someone should be held accountable
4 or responsible for what you saw there? Do you
5 have any feelings like that at all?

6 A Not really. I was not surprised that this oil
7 spill -- I was slightly surprised of the
8 magnitude of it, that's all.

9 Q Have you ever fished down there, just sport
10 fished at all?

11 A No, I have not.

12 MR. MADSON: One second. That's all the
13 questions I have, Your Honor. Pass for cause.

14 THE COURT: Mr. Belleau, I'm going to excuse
15 you for the rest of the day, but you'll have to come
16 back to the jury assembly room downstairs tomorrow
17 morning at 8:30 for further instructions.

18 Mr. Belleau, before you leave, just a minute.
19 I don't see the need for you to come back tomorrow
20 morning at 8:30 because we're not going to get through
21 everybody by then. I think Friday.

22 Counsel, how does that sound to have the ones
23 we pass for cause come back Friday to the assembly
24 room?

25 MR. COLE: I don't have any problem with that

1 at all, Judge.

2 MR. MADSON: That sounds about right, yeah.

3 THE COURT: Okay, I'll give you off until

4 Friday, but Friday morning at 8:30 I need you at the

5 jury assembly room.

6 A All right.

7 THE COURT: Thank you, sir. We'll go to the

8 next juror, Mr. Gerard. Yes, you can go right through

9 the same way.

10 (Pause)

11 Good morning, Mr. Gerard.

12 A Good morning.

13 THE COURT: Have a seat in the front row there

14 behind the microphone that's on the ledge. That

15 microphone comes off, and if you would direct your

16 responses into the microphone, it comes off that. Can

17 you hear me okay?

18 A Yes, sir.

19 THE COURT: Can you see the words on the board

20 there okay?

21 A Yes, sir.

22 THE COURT: Okay. If you'd answer those first

23 four questions, counsel will ask you some too.

24 A My name is Robert L. Gerard, and I don't

25 belong to any particular organizations. Number

1 three is kind of tough for me, are there any
2 reasons you should not serve on this jury. I
3 think it should be known up front that I'm a
4 captain on a Convair 580 aircraft, and I have
5 done a lot of flying over the area during the oil
6 spill and after. I'm also related in the oil
7 industry, not only in contracts with the oil
8 companies, Alyeska Pipeline, and I have worked
9 for the oil company up on the North Slope. I
10 don't know any defendants in the case.

11 THE COURT: Do you know the attorneys, the
12 plaintiff attorneys or the witnesses?

13 A No, sir.

14 THE COURT: Okay. Mr. Cole?

15 (1150)

16 VOIR DIRE EXAMINATION OF ROBERT L. GERARD

17 BY MR. COLE:

18 Q Mr. Gerard -- I'm sorry -- Mr. Gerard, you
19 work for Era, correct?

20 A That's correct.

21 Q Do you know a pilot by the name of Jeff Sharp?

22 A Yes, I do.

23 Q And how long have you known him? Did you know
24 him when he worked for Era back in 1983?

25 A Yes, I did.

1 Q Were you flying twin otters then?
2 A Yes, I was.
3 Q He was a captain at that time.
4 A Yes, sir.
5 Q If you learned that he was my roommate, would
6 that have any effect on your ability to be fair
7 and impartial in this case?
8 A No, I didn't know he was your roommate so, no,
9 it wouldn't.
10 Q Okay. If he -- he lives down in Anchorage and
11 he also lives in Fairbanks, ...
12 A Well, he commutes from Fairbanks to fly with
13 us.
14 Q If I told you that he stays at my house when
15 he's down here, would that upset you?
16 A No, that has no effect on me at all.
17 Q I'd like to talk a little bit about your
18 employment. Do you have your commercial and
19 multi-engine rating?
20 A Yes, sir, in ATP.
21 Q And how long have you had that?
22 A My ATP license I've had for about 12 years.
23 Q The aviation industry, as I understand it, is
24 quite heavily regulated. Would you agree with me
25 on that?

1 A Yes, sir.

2 Q Do you have strong opinions or feelings about
3 the extent of the regulations that industry
4 dictates; strong feelings either favorably or
5 against them?

6 A Well, the one thing that comes to my mind are
7 duties and responsibilities of a pilot in
8 command, and that's something that's ingrained in
9 me pretty deeply.

10 Q You have some strong feelings about the fact
11 that a captain of an aircraft has the ultimate
12 responsibility?

13 A Yes, I do.

14 Q When you worked out of -- did you work out of
15 Prudhoe Bay when you worked for Era?

16 A Yes, sir.

17 Q What were the alcohol restrictions when you
18 worked up there; were there any in the camp that
19 you stayed at?

20 A There was none allowed in my company building.
21 That was a standing rule with Rowen Drilling, who
22 owns Era Aviation, and I don't -- I don't have
23 any first knowledge of anybody that's been
24 drinking in any of the camps that I was in.

25 Q Were you aware whether people were drinking at

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Rowen's building?

A No, sir.

Q And do you still fly the Convair -- what are the camps that are still up there right now?

A Are you talking about the oil camps we go to and service?

Q Yes.

A We service with Alyeska Pipeline crew changes, Galbraith, Prospect Creek, we also do some out of Big Delta, Gulkana, those areas.

Q Do you ever have to stay in any of the camps up there?

A I've been in all of the camps.

Q And actually stayed there, or it's just generally fly in and fly out?

A Yes, except when we have maintenance problems, then we have to stay for a while.

Q Now, you've indicated that you flew over the Prince William area after the oil spill.

A Yes, sir.

Q You've made quite a few flights. It's my understanding that Era instituted a commercial flight into Valdez and, for most of the summer, almost three times a day or twice a day?

A That's a service that we did add, due to the

1 oil spill this year, but it has been in the past.
2 It's been for tour groups. We've added the extra
3 flight for tour groups in the evenings and stuff.

4 Q Would it be fair to say that Era has profited
5 quite heavily by this oil spill?

6 A Yes, sir.

7 Q In fact you bought special Convairs just to
8 provide the extra services?

9 A We did purchase a Convair aircraft after the
10 oil spill.

11 Q Do you believe the fact that -- how do you
12 think the fact that your company has profited --
13 the company that you've worked for for a long
14 period of time, has profited by the oil spill;
15 would it affect your ability to be fair and
16 impartial?

17 A I'd like to think it wouldn't affect my
18 ability to be impartial.

19 Q If you are selected on this jury and during
20 the course of the trial you found that you could
21 not put that out of your mind, would you be
22 willing to bring that to the attention of the
23 Court and both to Mr. Madson and myself?

24 A Yes, sir.

25 Q You understand the importance that we have in

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relying upon your answers right now and if in the midstream you change your mind about whether you can be objective or not, that is something that needs to be brought to our attention.

A Yes, sir.

Q The publicity that you've heard about this case, have you formed any opinion at this point of the roles or responsibilities of any of the people that were involved or any of the businesses, like corporations or the Coast Guard or Alyeska, have you formed any opinions about the roles and responsibilities of the various parties?

A I don't believe I have formed any particular opinion.

Q Have you worked out of Fairbanks?

A Yes, sir.

Q Did you live in Fairbanks for a while?

A Yes, sir.

Q Have you ever had any legal work done when you were in Fairbanks?

A I had a will made up that I can remember. That's probably the extent of it that I can remember.

Q Mr. Madson works in Fairbanks as an attorney.

1 Have you ever had any experience with him when
2 you were up there?

3 A Not that I can recall, no.

4 Q And my father and uncle are both attorneys in
5 Fairbanks. Does Charlie Cole or Richard Cole
6 ring any bells?

7 A No, sir.

8 Q I'd like to ask you a question about one of
9 the answers you gave. You indicated that you
10 were almost run over by a DWI...

11 A My aunt was. That has been a long time ago
12 when I was -- I tried to answer it as truthfully
13 as I could,...

14 Q Sure.

15 A ...and from my recollection I was about eight
16 years old. My aunt was run over by a DWI and
17 broke one of her legs, I think, it was.

18 Q Anything about that incident that would affect
19 your ability to be fair and impartial here?

20 A No, sir.

21 Q And you also indicated that you had been a
22 victim of a crime, and you indicated robbery.
23 Can you tell me a little bit about that?

24 A Yeah, some tools were stolen. Now, here
25 again, I just -- to include everything, some

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tools were stolen out of the back of my vehicle,
and that's been about 14 years ago.

Q Do you have any feelings -- anything about
that incident that would affect your ability to
be fair and impartial?

A No, sir.

Q Can you tell me what you do in your spare
time, Mr. Gerard?

A I don't have a lot of spare time. I'm also
the chief pilot at Era in the 121 program, and
that takes up a lot of my time. In my spare time
I'm mostly with my family, what spare time I
have.

Q I'm not familiar with the 121 program.

A That's the Convair aircraft. It's a 121
program and the twin otters are in the 135
program.

Q Are you responsible for supervising other
employees?

A Yes, sir.

Q In the course of your supervision have you
been asked to write up evaluations about their
performance?

A Yes, sir.

Q Have you ever been required to reprimand or

1 fire an employee?

2 A Yes, sir.

3 (Pause)

4 MR. COLE: I'm just going over my notes here.

5 Q If chosen as a juror in this case, you'll be
6 asked to base your decision on the evidence that
7 you hear here in court, the evidence that is
8 admitted by the court and your own common sense
9 and good judgment. Would you feel comfortable in
10 making that -- in playing that role?

11 A Yes, sir.

12 Q Do you understand the importance of this case,
13 both to Mr. Hazelwood -- Captain Hazelwood and to
14 the state of Alaska; would you be willing to give
15 both sides a fair trial?

16 A Yes, sir.

17 Q Would you be willing to reach a fair and just
18 verdict based on the evidence you hear that is
19 presented and the evidence that is admitted and
20 your own common sense and good judgment?

21 A Yes, I will.

22 MR. COLE: Judge, I have no further questions.
23 Pass for cause.

24 VOIR DIRE EXAMINATION OF ROBERT L. GERARD

25 BY MR. CHALOS:

1 Q Mr. Gerard, when Mr. Cole asked you if you
2 would be willing to give both sides a fair trial,
3 you seemed to hesitate. Is there a reason for
4 that?

5 A I wanted to make sure I had a proper response
6 and that I could live with that response.

7 Q Do you feel that your response was proper?

8 A Yes, I do.

9 Q You mentioned that you are involved with
10 Alyeska and some of the other oil companies. Can
11 you tell me what that involvement is?

12 A We do weekly crew changes for Alyeska Pipeline
13 Service Company along the whole entire pipeline
14 route, from Deadhorse all the way down and
15 occasionally extra charter flights for Alyeska,
16 for whatever needs that they may have.

17 Q In the course of performing those duties have
18 you ever discussed the spill with anyone?

19 A Not that I can recall directly, no.

20 Q Has anyone expressed any opinions to you or in
21 your presence about the spill?

22 A On those particular flights, no, not that I
23 can recall. I'm pretty much in the front of the
24 airplane for the whole time and I don't really
25 interact with the passengers.

1 Q What type of plane do you fly?
2 A It's a Convair 580, 50-passenger aircraft.
3 Q Do you have a co-pilot?
4 A Yes, I do.
5 Q Do you sometimes turn the controls over to the
6 co-pilot?
7 A Yes, I do.
8 Q What criteria do you use in turning over the
9 controls to the co-pilot?
10 A We basically fly every other -- what we call
11 legs, every other trip. From point A to point B,
12 I might fly the trip, and then from point B back
13 to A, the first officer would fly.
14 Q Do you sometimes leave the cockpit when that
15 occurs?
16 A The only time that we can really leave the
17 cockpit is for physiological needs and then
18 basically go to the restroom and come back to the
19 flight deck.
20 Q I'd like to ask you about an answer you gave
21 here relating to the information you heard about
22 the oil spill. You mentioned here, "Captain
23 Hazelwood's drinking on duty." What was the
24 source of that information?
25 A I watch CNN news quite a bit and I think that

1 was a report that was on CNN news, just a --
2 almost after the oil spill happened.

3 Q What local newspapers do you read?

4 A Right now I subscribe to the -- I think it's
5 the morning paper, and I have subscribed in the
6 past to the evening paper.

7 Q By the morning paper, you mean the Daily News?

8 A Yes.

9 Q Have you read any accounts of the spill in the
10 Daily News?

11 A We just started the subscription on that last
12 week, so it's been since last week on that paper.

13 Q After March 24th have you read the Daily
14 News...

15 A I read it every day.

16 Q ...in respect to the oil spill?

17 A I read it every day.

18 Q Do you also read the editorial?

19 A I don't really read the editorial section that
20 much.

21 Q Have you read the Daily News in the last week?

22 A Yes, since the subscription started last week.

23 Q Have you read any editorials in the last week?

24 A No, sir, I haven't.

25 Q Now, have you formed any opinion with respect

1 to Captain Hazelwood's involvement with the spill
2 as a result of what you heard on television or
3 read in newspapers?

4 A No, sir, I don't believe I have.

5 Q Have you formed any opinion with respect to
6 Captain Hazelwood's drinking on duty?

7 A I don't have a personal opinion on it, only
8 what I've read and seen in the news.

9 Q Do you have any feelings at all about ships
10 officers drinking while on-board the vessel?

11 A In aviation, at least in the 121 program that
12 we're in, it's 12 hours prior to duty the flight
13 officers are not allowed to drink, and I
14 subscribe to that pretty heavily, and I request
15 that of all the people underneath me. And we
16 monitor that very closely. That's one of the
17 things we do watch for.

18 Q Have you ever drank and went on-board an
19 airplane flight?

20 A No, sir, I have never done that.

21 Q Do you have any opinion as to whether a ship's
22 officers should adhere to the same stringent
23 standards as you have in an airplane?

24 A I honestly don't know what ships captains or
25 any other officer aboard the ship are required to

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do. I don't know what the regulations are.

Q If there were a regulation that one could not drink within "X" number of hours before going on-board, would you have any feelings about that?

A If it was their regulation, yes, I would.

Q Now, the second part of your answer says, "Not being in direct command of the vessel." Was that something you heard in the news as well?

A Yes, it was.

Q Do you have any feelings as to whether a captain should be on the bridge of a ship the entire time of a voyage?

A That was just something I had heard and picked up on. I can't recall the source, but it was something that I did hear and I wanted to list it down there. I don't know what the regulations are and what they can or cannot do. I do not know.

Q Do you have an opinion as to what a ship master is ultimately responsible for, what happens on the ship?

A I have a feeling the regulations that I have to go by, where I am directly responsible for my actions and the actions of all the people, not only flight attendants or first officers aboard

1 the ship and for what happens on-board my
2 aircraft, has to directly correlate with what
3 Captain Hazelwood had to -- had to do.

4 Q If the regulations and the...

5 THE COURT: Excuse me. Counsel, approach the
6 bench, please.

7 (2008)

8 (Whispered bench conference as follows:)

9 THE COURT: I'm not going to permit you to
10 suggest what the evidence is going to be in this case,
11 either regulations or facts.

12 MR. CHALOS: I don't intend to...

13 THE COURT: Well, when you say the regulations
14 suggest something, you're suggesting what might be a
15 fact in this case.

16 MR. CHALOS: (indiscernible - away from mike)

17 (2029)

18 (End of whispered bench conference.)

19 Q Now, Mr. Gerard, if you were to serve on this
20 jury, would you be able to set aside whatever
21 notions you have about regulations and, of
22 course, conduct that you may have in the airline
23 industry if such regulations, the course of
24 conduct, doesn't apply to the shipping business
25 or the shipping industry?

1 A Yes, if they weren't under the same
2 regulations, absolutely.
3 Q I'm sorry. What was your answer?
4 A What I'm -- what I'm trying to say is if he is
5 not under the same things that I have to fly
6 under, he doesn't have the same requirements,
7 then, yes, I don't think that's a problem.
8 Q Have you ever been involved in an airplane
9 accident?
10 A Not an accident, no.
11 Q Have you been involved in any situation where
12 you were held accountable?
13 A Yes, I was.
14 Q Can you describe that for us?
15 A It was an incident that did some minor damage
16 to an aircraft, and I was the pilot at the time.
17 It's been about 18 years ago, it was a single
18 engine aircraft. There was some minor damage
19 done to the aircraft and I accepted
20 responsibility for that.
21 Q Were you cited by any governmental agency for
22 that?
23 A No, I was not.
24 Q When you say you accepted responsibility, you
25 mean to your employer?

1 A There was a \$1,000.00 deductible, I think, on
2 the aircraft, I think, and the damage was a
3 little bit more than that, so I had to end up
4 paying the \$1,000.00 deductible myself.

5 Q And you accepted the responsibility because
6 you were the captain of the aircraft?

7 A Yes, sir.

8 Q Now, when was the first time that you over
9 flew the Prince William Sound area after the
10 spill?

11 A I believe I'd have to look in my flight log,
12 but it would have to be about two days after. It
13 was either a day or two days after.

14 Q Had the oil started to spread at that time?

15 A It was really not that noticeable from the
16 air. They had good weather for the next couple
17 days, as I can recall. It was really not that
18 noticeable from the air, from the altitudes that
19 we were at.

20 Q When you over flew the area did you have any
21 passengers on-board?

22 A Yes, sir.

23 Q What was the purpose of your over flying the
24 area at that time?

25 A Well, the route of flight takes us directly

1 in. When we go in on our approach it takes us
2 just south of the face of Columbia Glacier and,
3 like I say, the weather was really good that --
4 at that time and we could see the tanker just
5 outside the narrows. There was no problem seeing
6 the tanker there.

7 Q At that time did you express any opinions as
8 to the incident at all to anyone?

9 A I think I made a comment to my first officer
10 that when I looked down, when I first saw it for
11 myself, that it looked like the tanker was
12 sideways for whether normally I've seen tankers
13 going through the narrows.

14 Q Do you have any opinion as to
15 Captain Hazelwood's role in this particular
16 incident?

17 A He was the, as I understand it, the captain of
18 the vessel at the time. That's about it.

19 Q Is it your opinion as a captain that he has
20 the ultimate responsibility for this grounding?

21 A Yes, sir.

22 Q Criminal or otherwise?

23 A I don't know about criminal. You're asking me
24 whether the captain is responsible for the vessel
25 or the aircraft. In my opinion, yes, he is.

1 Q Well,...

2 A He is responsible. That's all I can say.

3 Q Sir, are you a plaintiff in any other civil
4 suits that have been filed in this oil spill
5 litigation?

6 A No, I'm not.

7 Q Do you have any interests in any of the
8 lawsuits that are pending?

9 A No, I don't.

10 Q Does your company?

11 A I don't know all the things that my company is
12 doing. We're into helicopters and I'm not into
13 that side of the company at all, so I -- I don't
14 know. That end of it, I don't know.

15 Q Sir, what evidence or what would we have to do
16 as a defense to get you to change your mind about
17 Captain Hazelwood's ultimate responsibility in
18 this matter?

19 MR. COLE: I'm going to object to that.

20 Q Or better stated,...

21 MR. COLE: I think it goes into the area that
22 is going to be discussed in the jury instructions and
23 it's...

24 THE COURT: That's a very difficult question
25 and I think it's an unfair question to ask anybody,...

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MR. CHALOS: All right.

THE COURT: ...what they have to do to prove something to you. You can ask the...

MR. CHALOS: Judge,...

THE COURT: You can ask the juror if he will be able to follow the Court's instructions as pertains to criminal responsibility and draw any conclusions based on the evidence that's presented and set aside any feeling he may have, something along those lines, but I'm not going to permit that type of question to any juror.

Q (Mr. Gerard by Mr. Chalos) Mr. Gerard, do you believe that anything that you might hear during the course of the trial will ever change your opinion that the captain is ultimately responsible for his vessel, both criminally and otherwise?

MR. COLE: Judge, he didn't say that he was responsible criminally. Mr. Chalos is leading him into that area with that impression, and I object to that.

MR. CHALOS: Judge, I was very careful to ask him twice on that, and I believe Mr. Gerard said that he believes the captain is responsible for both criminally and otherwise.

THE COURT: Mr. Gerard -- I'm not sure what

1 his answer was on that. I didn't get it that way, but
2 just to make sure, Mr. Gerard, the Court's going to
3 instruct on the responsibilities in this case and how
4 the jury is supposed to view the law. Would you be
5 able to follow the Court's instructions as it pertains
6 to criminal responsibility here and draw any
7 conclusions based solely on the evidence and in
8 accordance with those instructions, regardless of what
9 you may feel as far as responsibility of a captain?

10 A Yes, sir.

11 THE COURT: Okay. Next line of questioning,
12 please.

13 MR. CHALOS: Judge, I don't have any further
14 questions for this witness, but I would like to
15 challenge him for cause.

16 THE COURT: All right. I think the witness
17 has demonstrated an ability to render a fair and
18 impartial verdict, follow the Court's instructions.
19 Your objection is noted and denied.

20 You can return on Friday morning, Mr. Gerard,
21 at 8:30 a.m., and don't discuss this case with anybody
22 in the meantime, and return down to the jury assembly
23 room at 8:30 a.m. You can go back through there. Do
24 you have any personal belongings, sir?

25 A No, I've got them all with me.

1 THE COURT: You can just go out the front way,
2 if you like.

3 A Okay. Thank you.

4 THE COURT: We'll call the next juror, which
5 is Cheryl Perlo.

6 MR. COLE: Is this...

7 THE COURT: I have Cheryl Perlo, P-e-r-l-o.

8 (Pause)

9 Good morning, Ms. Perlo. Just have a seat in
10 the front row, behind the microphone on the ledge, and
11 take the microphone off the stand, and can you read
12 those questions on the board from your location?

13 A Yes, I can.

14 THE COURT: Okay. If you'd just please answer
15 those questions, and counsel will have a few additional
16 questions for you.

17 A Okay. My name is Cheryl Perlo. What
18 organizations am I a member of? The only thing I
19 can think of is United States Army.

20 Are there any reasons why I should not serve
21 on the jury? I do not -- I cannot think of any,
22 however, I do have a letter here from my employer
23 that he wrote when I came.

24 Do I know any of the defendants, attorneys,
25 plaintiffs or witnesses? I do recognize some of

1 the witnesses names on the list.

2 THE COURT: Why don't you pass that letter on
3 to Mr. Purden and I'll take a look at it. Is this
4 something for me to read -- is that what you want,...

5 A Yes.

6 THE COURT: ...your employer wanted me to read
7 this; is that correct?

8 A Yes, that's correct.

9 (Pause)

10 THE COURT: According to this letter, your
11 employer is Russell Manuel, an MD?

12 A That's correct.

13 THE COURT: And are you a nurse?

14 A That's correct.

15 THE COURT: Are you a professional nurse?

16 A I am an LPN.

17 THE COURT: Are there any other nurses that he
18 has?

19 A No.

20 THE COURT: What happens when you are ill or
21 you take a vacation, what does he do in that event?

22 A Well, in the two years I've been there, I
23 really haven't.

24 THE COURT: You've never taken a vacation or
25 been ill?

1 A The only time I left there is for two weeks to
2 do my drill, and then he has -- usually that's in
3 the summertime when the person that's there
4 part-time now can be there on a full-time basis,
5 and then he limits his practice to patients that
6 he sees.

7 THE COURT: Will you suffer any financial
8 hardship if you are given the opportunity to serve on
9 this jury? In other words will he cut your pay in any
10 way or reduce your pay?

11 A I don't think he'll cut it. I think I won't
12 be getting one from him.

13 THE COURT: You won't get paid while you're
14 gone, is that what you are saying?

15 A Right.

16 THE COURT: Is that going to create a
17 financial hardship if you were given an opportunity to
18 serve for six to eight weeks?

19 A No, I don't think it would be a very -- you
20 know, a bad hardship, no.

21 THE COURT: What would you like to do? If
22 given the opportunity would you like to serve on this
23 jury -- regardless of what your employer says would you
24 like to serve on the jury, given the opportunity?

25 A I think it would be very interesting, yes,

1 'cause I've never done this before. My only
2 concern would be I might not have a job
3 afterwards.

4 THE COURT: Has your employer indicated to you
5 in any way that you might not have a job if you serve
6 on this jury?

7 A No, but the type of practice that he does, I
8 doubt very seriously if he would go that period
9 of time without hiring somebody else in there
10 full-time. I not only do the nursing in his
11 office, I also do the business side too.

12 THE COURT: Well, I want to give you an
13 opportunity to serve on this jury if you want to and at
14 the same time though I don't want to create a situation
15 where your employer fires you because you're serving on
16 jury duty. I don't think he would do that, frankly,
17 but he might have to get somebody to replace you
18 because of his needs.

19 A Right.

20 THE COURT: I'm going to let you make the call
21 on this. If you want to serve, then I'm going to let
22 you serve. You may not serve anyway, because we
23 haven't even started asking you questions.

24 A Right.

25 THE COURT: And there's probably a chance you

1 wouldn't serve anyway because of the way the procedure
2 is run. But I'd like to give you the opportunity to
3 try. What would you like to do?

4 A I would like to try.

5 THE COURT: Okay. So, you're employed at --
6 I've considered his excuse and that you gave the
7 information to me and that I've given you the
8 opportunity and I'm requiring you to stick around until
9 otherwise ordered. Okay?

10 A Okay.

11 THE COURT: So it will be my fault, not yours.

12 A Okay.

13 THE COURT: You answered all questions, did
14 you?

15 A Yes, I did.

16 THE COURT: Okay. The witnesses, do you
17 remember who they are?

18 A The one I remember right off-hand is
19 Ed Swickle (ph).

20 THE COURT: Okay. Do you have that list with
21 you? Did you notice anybody else there?

22 A I -- as far as knowing the personnels, I
23 recognize a few names. They might not be the
24 same, but they are correlated with people that I
25 know from the Valdez area that have come in as

1 patients with a virus.

2 THE COURT: Why don't you just list the ones,
3 go down the list and list the ones that you think you
4 recognize names from.

5 A Okay. The other name was David Decker. That
6 might be a different name. And Paul Meyers is
7 the only other one.

8 THE COURT: Okay. Thank you. Mr. Cole will
9 ask some questions now. Then Mr. Madson will probably
10 ask questions afterwards.

11 MR. COLE: Thank you.

12 VOIR DIRE EXAMINATION OF CHERYL PERLO

13 BY MR. COLE:

14 Q Good morning. The three people that you
15 talked about, Mr. Swickle (ph), Mr. Decker and
16 Mr. Meyer, are they just patients that have come
17 in?

18 A Pretty much, yes.

19 Q Is there anything about your relationship with
20 them as patients that would affect your ability
21 to evaluate their testimony if they were called
22 to testify...

23 A No.

24 Q Any other -- objectively?

25 A No.

1 Q I noticed in your questionnaire that you don't
2 drink. Is that for personal reasons or medical
3 reasons?

4 A Personal.

5 Q And would it have to do a little bit with
6 where you grew up, how you grew up? I noticed
7 that you said that.

8 A Yes, that didn't even stop me as a child or as
9 a teenager, but it's just something that I've
10 grown not to prefer.

11 Q Do you hold it against people that do drink?

12 A No. As far as this -- especially that
13 situation, no.

14 Q Have you been around people who have had too
15 much to drink?

16 A Yes.

17 Q Would you agree with me that at some point
18 everybody reaches a point where they've had too
19 much to drink?

20 A I would say if they reach a level, that
21 everybody reaches a level?

22 Q That they've had too much to drink. At some
23 point everybody can have too much to drink.

24 A There is -- right, I agree with that, if they
25 continually drink.

1 Q Your husband works with a field unit.
2 A Right.
3 Q And what does he do; can you tell me a little
4 bit more about that?
5 A Well, he's a platoon leader, so he has to --
6 he has a group of people the he takes out into
7 the field and they do maneuvers and things like
8 that.
9 Q You say he's going to be gone for half a year.
10 Is that to...
11 A Well,...
12 Q ...attach to the peace force that's leaving?
13 A No, that's -- that's total. I put that total
14 down.
15 Q Oh.
16 A So, he's right gone now and he'll be back for
17 about four days and then he's gone for another
18 month.
19 Q Where is he right now?
20 A Right now he's just in the field out at Fort
21 Rich, and then next month he's going to Japan.
22 Q You indicated that you were related to or good
23 friends with law enforcement officers or process
24 servers. Can you tell me who that would be?
25 A I actually do not know his last name. I've

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been going to karate with him for eight months now and his first name is Howard, and he is a police officer. He's the only one.

Q Anything about your knowing him that would affect your ability to be fair and impartial here?

A No, we don't talk about anything of that sort.

Q I noticed that you've indicated that you've read some of the information that's come out about this case.

A Yes.

Q Have you formed any opinions at this point about any responsibilities or roles of any of the people that were involved or the companies that were involved?

A I wouldn't say totally, no, because I haven't read -- I don't feel like I have enough information to form an opinion at this time.

Q Do you feel that you could be a fair and objective juror in this matter?

A Yes.

Q Your patients that are fishermen, have you talked to them about how the oil spill has affected them?

A Most of them just have said things like,

1 briefly like, you know, their summer or whatever
2 has changed, but they've never gotten into a
3 great deal, you know, about it because that's
4 really not why they're there.

5 Q And anything about your conversations with
6 them about that that would affect your ability to
7 be fair and impartial?

8 A Not really.

9 Q I notice that you have one child.

10 A Yes.

11 Q She or he is three?

12 A He.

13 Q He. Does he stay at a day care center?

14 A He stays at a private babysitter's.

15 Q Your brother that's in the Navy, what rank is
16 he?

17 A E-7.

18 Q Give me an idea of what you do in your free
19 time. I'm sure you don't have a whole lot,
20 working and having a three-year-old son, but do
21 you watch movies or do you watch TV?

22 A Well, on the weekends I watch TV or I'll go
23 for a walk. During the week-day usually I get
24 off work, I go to school at night and as a hobby
25 I take karate.

1 Q You go to school at night. Can you tell me a
2 little bit about that?
3 A I'm going for my bachelor's degree in nursing.
4 Q And is that at UAA?
5 A That is correct.
6 Q What classes are you taking right now?
7 A Right now I'm taking a psychology class and
8 I'm also taking an English class.
9 Q Which do you prefer more, the psychology or
10 the English?
11 A The psychology.
12 Q In this case the Judge will read you an
13 instruction that all witnesses are to be judged
14 according to how they present themselves and the
15 story that they tell, but not to be judged on the
16 fact of whether they wear a uniform or something
17 like that. You can take that into consideration
18 later on, but because a person wears a uniform,
19 he doesn't receive more weight -- his testimony
20 doesn't receive anymore weight than another
21 person. Would you have any problem following
22 that instruction?
23 A No.
24 Q As a nurse do you have any specialized
25 knowledge in the physiological or psychological

1 effects of alcohol in the body?

2 A Not really. I really have not been involved
3 in that field.

4 Q Does your job allow you to drink while you are
5 at work?

6 A Oh, no.

7 Q What about when you go to lunch?

8 A No.

9 Q Have you seen a movie recently -- any movies
10 recently that you enjoyed?

11 A I enjoyed? I'm not sure. I was with my
12 little boy this weekend.

13 Q Ms. Perlo, I believe that you understand the
14 importance of this case, both to
15 Captain Hazelwood and to the state of Alaska.

16 A Uh-huh (affirmative).

17 Q If you were selected on this jury would you be
18 willing to base your decision on the testimony
19 that's given here by the witnesses, the evidence
20 that's admitted in court and your own common
21 sense and good judgment?

22 A Yes.

23 Q Would you be willing to give both sides a fair
24 trial and reach a fair and just verdict in this
25 case?

1 A Yes.

2 MR. COLE: Thank you. Judge, I have no
3 further questions. Pass for cause.

4 THE COURT: Mr. Madson.

5 VOIR DIRE EXAMINATION OF CHERYL PERLO
6 BY MR. MADSON:

7 Q Ms. Perlo, good morning.

8 A Good morning.

9 Q Let me ask you, first of all, the names that
10 you listed as people that you may know, are you
11 really sure you know them or you think because
12 you recognize the names at this time?

13 A Well, two of them I recognize the name, the
14 other one, I do know.

15 Q Which are the two names you just recognize?

16 A The one I know is Ed Swickle (ph). The other
17 two, I just recognize the names as being patients
18 in our clinic, but, you know, that may be, like I
19 said, another person with the same name.

20 Q And if you saw that person or let's say all
21 three of them happen to take the witness stand
22 here and you say oh, yeah, that's the person, I
23 remember him now, it would just be from any
24 association in the clinic than anywhere else?

25 A That's correct.

1 Q Would it affect your decision at all as a
2 juror as to whether you might see this individual
3 or not after you hear what they -- let's just
4 suppose that they testify about certain facts,
5 okay, and you reach a decision as a juror, which
6 is totally contrary to what the witness testified
7 to, would that concern you at all and say, gee, I
8 might see that person again? You know, I wonder
9 if you might...

10 A No. No, I don't think so.

11 Q What exactly are your duties at the clinic;
12 what do you do there?

13 A Well, I manage the office itself. As far as
14 payroll taxes, time schedules, setting up classes
15 and conferences with Dr. Manuel, assisting hiring
16 people. I also do the nursing end of things, his
17 preventive medicine, I do counseling on health, I
18 do acupuncture and counsel on supplements.

19 Q Do you have a lot of frequent patient contact
20 then, direct contact with them or you are more of
21 a...

22 A No, the -- especially the one -- they're in
23 Valdez, they come up maybe once a year, once
24 every two years.

25 Q Seldom people from Valdez would be in the...

1 A That's right.

2 Q ...Anchorage clinic?

3 A That's right.

4 Q Now, with regard to your personal non-use of
5 alcohol, shall we say, you obviously have some
6 experiences in your life that cause you to
7 believe that alcohol could be destructive. Is
8 that fair to say?

9 A Yes.

10 Q And I don't want to delve into that. Let me
11 say right now, if there's anything I say or
12 anybody else says that causes you or causes you
13 to feel that you may be embarrassed or something,
14 please just let me know and I'm sure the Judge
15 will say we can take this up elsewhere so it
16 would not be public. So, I don't want to
17 unnecessarily pry into your, you know, personal
18 affairs.

19 A Okay.

20 Q But, you know, sometimes people have some
21 difficulty in putting aside experiences --
22 negative experiences they've had in their life
23 that deal with alcohol. You mentioned, for
24 instance, you were a student of psychology right
25 now. Would you agree that sometimes it's

1 difficult to do; we have certain feelings that
2 are just hard to set aside?

3 A Yes, I agree with that, but I think that, you
4 know, with my personal experiences, I've learned
5 that, you know, that's the past.

6 Q It's what?

7 A It's the past. And, you know, I've already
8 dealt with it.

9 Q And so you won't judge other people by what
10 may have happened in your life,...

11 A No, uh-uh (negative).

12 Q ...in other words? So, you can say to
13 yourself, you tell us very clearly right now that
14 you choose not to consume alcohol at all, but the
15 fact that Captain Hazelwood, the evidence may
16 show that he did or did not use alcohol, but
17 assuming he did, you're not going to say, well, I
18 think I'm going to put a couple points against
19 him just for that reason?

20 A No.

21 Q Does your husband drink at all?

22 A Yes.

23 Q Now, the patients that you mentioned that were
24 affected because of the oil spill, was this
25 because of direct communication you had with them

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concerning it?

A Yes.

Q They expressed some negative feelings, I imagine, to you about what happened and how it affected them?

A Right.

Q They lost money, right?

A Uh-huh (affirmative).

Q If you were to serve as a juror, would this cause you any concern about maybe having to deal with these people later and worry about how a decision you might make will affect your relationship with them?

A No.

Q Did any of these people ever express any opinion to you about Captain Hazelwood and his fault, involvement or liability or anything like that?

A Not really.

Q On this topic you indicated, for instance, what you read -- well, one of the things you said was you heard about this in newspapers. Do you remember what newspaper?

A Anchorage Daily News.

Q You subscribe to that one?

1 A Yes, I do.

2 Q Did you read it regularly on what they said
3 about the spill?

4 A Pretty much when I had time, 'cause the only
5 time I had to read it is in the morning time and
6 sometimes the paper boy doesn't get there when I
7 go to work.

8 Q Do you ever read the editorials?

9 A No.

10 Q Any reason why you didn't read the editorials
11 that had to do with the oil spill?

12 A If it's not on the front page, pretty much I
13 don't read it. I don't have the time.

14 Q That was it?

15 A Well,...

16 Q If it was continued on page five you didn't
17 get that far?

18 A Well, I continued to page five, but that's
19 about it.

20 Q And would you say the newspaper was your major
21 source of the information you got, or was it
22 maybe TV or anything else?

23 A I think I got -- I did a lot of -- of what I
24 heard was on CNN. I listen to that quite a bit.

25 Q From what you heard -- well, let me ask you

1 this. Would you ever in a social setting at all,
2 you know, at a party or just family or whatever,
3 also discuss the oil spill and any fault you felt
4 may have lied with Hazelwood or with the oil
5 companies?

6 A I talked about it, but I don't think I really
7 -- they didn't fault or anything.

8 Q Now, one thing, would you agree -- you agree
9 to follow the Judge's instructions?

10 A Uh-huh (affirmative).

11 Q We're talking here about a crime, so
12 oftentimes we're talking fault or liability or
13 these kind of legal words.

14 A Uh-huh (affirmative).

15 Q Would you keep in mind at all times throughout
16 our questions that what we're dealing here is
17 whether or not a crime was committed?

18 A All right.

19 Q And you've never served on a jury before?

20 A That's correct.

21 Q Have you ever been asked questions before like
22 this and not served on a jury?

23 A No.

24 Q Have you ever gone sport fishing down on
25 Prince William Sound in Valdez at all?

1 A No, I haven't.

2 Q Any boat trips at all down there, flown over
3 it or anything? Ever been...

4 A No. No.

5 Q In the questionnaire you filled out you
6 indicated in there that Captain Hazelwood, from
7 what you heard, was under the influence at the
8 time this happened.

9 A Right.

10 Q Now, that's an opinion you have right now, is
11 it?

12 A That's what I read and...

13 Q Well, okay. Do you hold that opinion?

14 A No.

15 Q That's just what you read?

16 A That's just what I read.

17 Q And you feel that everything you read in a
18 newspaper or hear and see on TV is necessarily
19 true?

20 A Not -- no.

21 Q And assuming it was true, to a certain extent,
22 do you still feel that you can -- in spite of the
23 massive publicity in this case, on a daily basis
24 almost, feel that you can say to yourself and say
25 to us in all honesty that you can put aside all

1 that and not have any carryover, not any effect
2 at all sitting here as a totally neutral person
3 in a trial and say I can just listen to the
4 evidence here and totally ignore everything I've
5 heard?

6 A I think I can.

7 Q You obviously want to serve on this jury,
8 don't you? Is that fair to say?

9 A Well,...

10 MR. COLE: Judge, I object to that question.

11 THE COURT: We've already asked that question.
12 She said she did and I don't know the purpose of asking
13 it again.

14 There's nothing wrong with wanting to serve on
15 the jury, Mr. Madson. So go on to the next question.

16 MR. MADSON: Your Honor, I'm not saying there
17 is anything wrong with it. I just want to confirm that
18 she wants to serve on the jury, and I'd like to find
19 out why.

20 Q Why, outside of general interest, would you
21 want to be on this particular jury as opposed to
22 any other one?

23 A Well, that's why I'm a registered voter.

24 Q Pardon me?

25 A That's why -- one of the reasons why I'm a

1 registered voter, to help serve the -- you know,
2 the town that I live in.

3 Q You feel that -- you have the same feelings
4 about serving on a jury in any case or is this
5 one that you'd rather be on if you had your
6 choice?

7 A No, I'd say the same thing about any case.
8 Something that, you know, I feel is important to
9 do.

10 Q But you don't have any special -- let's say if
11 you had your choice of all the juries you could
12 serve on, of all kind of different cases, there
13 is nothing about this one that you feel would
14 cause you to say I'd rather be on this jury than
15 some other one?

16 A No.

17 MR. MADSON: Thank you. I'll pass for cause,
18 Your Honor.

19 THE COURT: Thank you, Ms. Perlo. You can
20 pick up your personal belongings in the juror room next
21 door where you were staying, if you have any. If you
22 don't, you can just go out the front way. I'd like to
23 have you come back to the jury assembly room Friday at
24 8:30. That's where you met this morning?

25 A Yeah.

1 THE COURT: Downstairs, where you filled out
2 the questionnaires yesterday, the same location;
3 downstairs, Friday at 8:30.

4 A Okay.

5 THE COURT: Okay. We'll take a break until
6 about 1:15. We'll notify the prospective jurors next
7 door to be back at 1:15. You can do that, Dave. Just
8 notify them to come back to the jury room at 1:15.

9 Is there anything we need to take up before we
10 recess for lunch?

11 MR. COLE: Judge -- no, I don't have anything.

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

14 (Off record - 11:50 a.m.)

15 (On record - 1:21 p.m.)

16 THE COURT: ...be seated. Mr. Madson, did you
17 want to take up something before we resume?

18 MR. MADSON: Yes, I do, Your Honor. With all
19 due respect, I want to renew an objection that was made
20 earlier, as far as one potential juror is concerned at
21 least. And that is with the Court's precluding us from
22 going into the relationship of the witness with other
23 people. In other words, there are two -- two of these
24 gentlemen were airplane pilots and expressed their
25 feeling about, you know, if they were charged, it's

1 their responsibility, et cetera, et cetera, and I feel
2 in both instances that we've been unnecessarily and
3 unduly precluded from delving into that area a little
4 bit more to determine whether or not, in spite of what
5 they say about following the Court's instructions,
6 whether they truly can do that when they have strong
7 feelings about their personal responsibility and when
8 and how and what circumstances it can be delegated.
9 And that's the heart of this case, and without going
10 into that a little bit more, I think it's extremely
11 difficult to find out any real potential bias they may
12 have.

13 THE COURT: Okay. I understand your concern.
14 There may be other ways you can get to it. I've
15 precluded specific questions that you were asking.
16 That is, ones that suggested that if they could turn
17 over and delegate authority in an airplane, the
18 suggestion or the inference was maybe it's okay for
19 Captain Hazelwood to have done the same thing. That
20 was very suggestive of what the evidence may be.

21 I think you might be able to get to it by an
22 inquiry of if the rules and regulations, the Court's
23 instructions, differ in how a tanker captain's
24 responsibility go compared to theirs, would they be
25 able to set aside theirs and use the guidelines for

1 this type of case. Now, that's not how your question
2 was phrased. Your question, as phrased, was very
3 suggestive. That's what I want to avoid; suggesting
4 what the evidence is going to be. I'm satisfied that
5 they demonstrated an unequivocal ability to follow the
6 Court's instructions this time, but I'll let you get
7 into it if you can do it in a non-suggestive way.

8 MR. MADSON: Well, the way the Court
9 suggested, I feel, is insufficient, Your Honor. That's
10 what I want to say. You are coming from one approach
11 and we're coming from another and maybe there is some
12 middle ground and maybe we can reach that point, but
13 right now, I think, well, we'll just give it another
14 try, but I do think we are entitled to get in there a
15 little bit more.

16 THE COURT: Okay. I understand what you're
17 going to do. If it becomes necessary, I will gently
18 interrupt you. I don't think it's necessary to bring
19 you to the bench each time. I did it so it would avoid
20 potential embarrassment to you. But if you are going
21 to persist in it, and it looks like you are persisting,
22 I will gently and politely interrupt you from where you
23 stand.

24 So far the jury selection is going along quite
25 smoothly. I am always keeping in the back of my mind

1 the rule that allows me to impose reasonable time
2 restraints, but we're going along pretty smoothly now,
3 so considering that the jurors have answered
4 approximately 50 written questions and we're taking
5 about 15 minutes or about 10 minutes per side, that's
6 what it seems to be, about 10 minutes per side, that's
7 reasonable and I think we're moving right along.

8 So, if there's nothing else, we'll get the
9 next juror in here.

10 (4130)

11 (Tape: C-3583)

12 (0076)

13 MR. MADSON: I think Mr. Chalos wants to raise
14 something with regard to the juror he examined, Your
15 Honor.

16 MR. CHALOS: Yes, Your Honor, I would like to
17 articulate, for the record, the basis for my challenge
18 of Mr. Gerard. If you recall when I questioned him,
19 Mr. Gerard stated that he over flew the area of
20 approximately two to three days after the incident and
21 at that time he saw the spill -- he saw the center of
22 the spill as well as the attitude of the vessel,
23 meaning the rest in which the vessel was...

24 THE COURT: Sideways or something like that, I
25 think, is what he said.

1 MR. CHALOS: Right. Those are issues that are
2 going to loom large in this particular case, especially
3 the attitude of the vessel to the land, and it's my
4 feeling that Mr. Gerard was in a position that's akin
5 to a juror going to the scene of a crime while the
6 victim is still lying there. And I felt that he should
7 have been challenged for cause as a witness, if you
8 will, to the accident itself. I believe at that time
9 when I made the challenge, and I still do now, that
10 because of that he can have some undue influence on the
11 rest of the jurors. He can describe for them what they
12 should be listening to in terms of the evidence rather
13 than what a juror himself has seen, and that was the
14 basis of my challenge.

15 THE COURT: All right. Your objection is
16 noted for the record. Let's bring the next juror in.
17 It will be Terrill Smith.

18 MR. COLE: Judge, do you have a copy of the
19 information for the misdemeanors?

20 THE COURT: Yes, I do.

21 MR. COLE: I just wondered if there was a
22 reason why you hadn't read the charges.

23 THE COURT: I think most people know what
24 driving while intoxicated or under the influence means.
25 I didn't find it necessary to read them specifically.

1 I never did find the original of your amended
2 information. So, in the future, if you have documents
3 to file, the originals are generally going downstairs.
4 If you give me a courtesy copy right away, we won't
5 have to delay.

6 MR. COLE: I did. I'm sorry.

7 THE COURT: Good afternoon, Mr. Smith. Just
8 have a seat in the front row there, next to that
9 microphone. You can take it off of the stand and can
10 you read those questions all right from your location?

11 A Yes, sir.

12 THE COURT: Okay. If you just go ahead and
13 answer those first four questions then counsel will
14 make some inquiries afterwards.

15 A My name is Terrill Lee Smith. Interpretation;
16 organizations, I assume you mean where I work,
17 Your Honor?

18 THE COURT: Any organizations you may pay dues
19 to or you attend meetings, any type of organizations,
20 fraternal, non-fraternal, social.

21 A Yes, sir. I am currently a life member of the
22 Veterans of Foreign Wars of the United States,
23 and that is the only social organization at this
24 time that I'm in.

25 The only reason that I don't feel I would be

1 able to serve on the jury at the present time is
2 -- would be a financial hardship, due to the
3 proposed length of this trial and the fact that
4 my employer may or may not reimburse me for time
5 missed from work, and for that reason I would
6 request financial hardship.

7 To question four, the answer is no on all
8 counts.

9 THE COURT: Where are you employed, sir? I
10 don't have your questionnaire.

11 A Your Honor, I'm employed with Jones Hardware
12 and Tool Rental in Eagle River, Alaska.

13 THE COURT: All right. Is that owned by
14 Mr. Jones still or is that the...

15 A Yes, sir.

16 THE COURT: Okay. Have you talked to him
17 about your jury service?

18 A Yes, sir, I have.

19 THE COURT: And did he indicate to you he
20 would not pay you for jury service?

21 A To be honest, Your Honor, he came to me
22 yesterday and he said that he would try to see
23 that I got reimbursed for the time I missed. It
24 is a family owned company and due to the economic
25 situation in the state right now pertaining to

1 construction and everything that we're related
2 to, the business hasn't been too good. And they
3 aren't necessarily in great financial shape
4 themselves. In the past we had lost a lot of
5 benefits and whatever, due to the financial
6 crunch, but he did make an indication that he
7 would try to see that I got reimbursed. He would
8 have to discuss that with his wife, who is also
9 the company's controller or -- of the -- you know
10 for the funds for the company.

11 THE COURT: All right. If you did not have
12 your pay reduced because of this, if you were
13 reimbursed, then you would not be suffering
14 financially?

15 A No, sir, I would not.

16 THE COURT: So, we don't know the answer to
17 that just yet, do we?

18 A I've worked for Mr. Jones for about a year and
19 a half now, and in the past when he said he would
20 try to do something for me, he'd always follow
21 through on it and tried. So my inclination would
22 be, yes, he would come up with the funds to cover
23 it. But there was no guarantee.

24 THE COURT: Okay. I'm not going to excuse you
25 for a financial hardship at this time, and I may not in

1 any event. I'd like to have you talk to Mr. Jones.
2 Give him my regards. I happen to know him, and tell
3 him that I'm not excusing you for a financial hardship
4 at this time.

5 A I will, Your Honor.

6 THE COURT: And in the event that you are
7 given the opportunity to serve on the jury and your pay
8 is reduced, I would hope that you would not hold that
9 against any of the parties that are appearing before
10 you. Is that something that I can be assured of?

11 A Rest assured, Your Honor, I would not.

12 THE COURT: Okay. And I would also hope that
13 it wouldn't speed up any deliberative process that you
14 might be involved in just so you can get back to work.
15 Is that something else I can be assured of?

16 A Yes, sir, you may be assured of that too.

17 THE COURT: Okay. Thanks very much.

18 Mr. Cole.

19 MR. COLE: Thank you, Your Honor.

20 VOIR DIRE EXAMINATION OF TERRILL LEE SMITH

21 BY MR. COLE:

22 Q Good afternoon, Mr. Smith. Can you tell me
23 how long you've been married?

24 A Yes, sir. To my present wife, which is my
25 second marriage, I've been married for about a

1 year and a half. My first wife died of cancer in
2 1986.

3 Q I'm sorry to hear that. You have how many
4 kids now?

5 A I have two children of my own and three
6 step-children, all teenagers.

7 Q Are they all living at home with you?

8 A All except my oldest stepson, Bill, who is in
9 his first year at UAF now.

10 Q Up in Fairbanks?

11 A Yes, sir.

12 Q And is he living on campus there or off
13 campus?

14 A No, he's living on campus, sir.

15 Q Have you lived any place else in the state
16 besides Alaska?

17 A Anywhere else in...

18 Q In Anchorage?

19 A Oh, I'm sorry. I lived in Anchorage -- well,
20 Eagle River until I remarried last year and we
21 moved into Anchorage.

22 Q I notice that you have served in the military
23 back in '65 through '68?

24 A Yes, sir.

25 Q Were you drafted at that time?

1 A No, sir, I was a volunteer.

2 Q And can you tell me what rank you reached?

3 A My rank upon discharge, sir, was E-4.

4 Q And what particular area were you involved in?

5 A It was a classified job, but basically
6 communications.

7 Q Would it have involved say, for instance,
8 radar?

9 A No, sir.

10 Q You listed in your -- have you ever been
11 charged with a crime?

12 A No, sir, I have not.

13 Q At one point you listed in your questionnaire
14 that you've been a victim of a crime.

15 A Yes, sir, I have the -- many years ago,
16 approximately 19 years ago, my house had been
17 broken into and guns and household items of that
18 nature had been taken.

19 Q Were you at home when that happened?

20 A No, sir, I was not.

21 Q Did you -- anything about that, the
22 circumstances involved in that that would have
23 affected your ability to be fair and impartial in
24 this case?

25 A None whatsoever.

1 Q Would you give me an idea of what you do in
2 your spare time?

3 A Oh, my spare time is spent mainly taking care
4 of our children. Really, they -- teenagers are
5 very demanding.

6 Q Are they involved in athletics and
7 extra-curricular activities at school?

8 A My oldest stepson, sir, is attempting to get
9 in on the ski team up at UAF.

10 Q Cross country?

11 A Yes, sir.

12 Q Can you tell me a little bit about your job?

13 A I'm a hardware manager with -- as I stated
14 earlier, with Jones Tool Rental and Hardware in
15 Eagle River. Basically, I deal not only with the
16 public in retail sales, but I handle vendors,
17 purchasing, outside sales, merchandising and the
18 upkeep of the store in general. I also hire and
19 fire employees.

20 Q That was going to be my next question. Are
21 you responsible for some of the employees that
22 work there?

23 A Yes, sir, I am.

24 Q Do you know anything about the maritime
25 shipping industry?

1 A Very little, sir.

2 Q Do you have any close friends or relatives
3 that work in that area?

4 A None, sir.

5 Q And have you -- what job did you hold before
6 you went to work for Jones?

7 A Well, I was also in the same line of work when
8 I worked for United Building Supply, here in
9 Anchorage.

10 Q Can you -- on a scale of one to 10, one being
11 a light drinker and 10 being a heavy drinker,
12 where would you place yourself on that scale?

13 A Probably a maximum of two.

14 Q Do you have any strong feelings about people
15 that drink, favorably or unfavorably?

16 A I really never gave it that much thought, so
17 I'd have to say my feelings were fairly light on
18 the subject.

19 Q Do you have any special training about the
20 physiological or psychological effects of alcohol
21 on the body?

22 A Nothing special, sir.

23 Q Does your job allow you to drink when you are
24 at work?

25 A Absolutely not.

1 Q And what about at lunch; do you drink at lunch
2 at all?

3 A No, sir, I do not.

4 Q Do you get any journals or magazines for...

5 A I receive the National Geographic and Business
6 Weekly.

7 Q Do you have any -- do you watch TV at all?

8 A I do on occasion.

9 Q Anything that's a favorite show of yours that
10 you watch with regularity?

11 A Oh, I like -- I'm kind of partial to the Cosby
12 Show and I will watch any of the National
13 Geographic specials that come on PBS or any of
14 those, and a few other select shows, but I don't
15 usually have a lot of time for TV.

16 Q I was interested by your answer of why you
17 originally came to Alaska. You wrote down new
18 lifestyle. Were you unhappy with where you were
19 or you just wanted a change?

20 A None whatsoever, sir. I'm, quite honestly,
21 still in love with the country I came from. It's
22 always been a little spirit of adventure of mine
23 and I came up here -- I'd never been here before
24 I did come up -- to see what it was like. My
25 family homesteaded where I came from, and I'm

1 quite proud of that fact also. And I was
2 impressed by what I saw here and I liked it and
3 basically that's what it meant, was starting a
4 new life up here. I did not leave -- I left a
5 job I had there and everything to come up here.

6 Q Was that in Denver?

7 A Yes, sir.

8 Q Now, some of the -- have you read any accounts
9 or been exposed to any of the publicity that this
10 case had raised?

11 A Of course.

12 Q Have you formed any opinions about the roles
13 and responsibilities of any of the parties that
14 were involved? And when I say parties I mean any
15 of the crew members or the Coast Guard or the
16 Department of Environmental Conservation or Exxon
17 or Alyeska.

18 A In my basic opinion on that -- well, actually
19 the only opinion I have was, of course, that
20 after the accident itself, that it needed to be
21 cleaned up, of course, it couldn't be just left
22 there. And really, over and above -- beyond that
23 it would have been difficult for me to form an
24 opinion of who should or shouldn't. I would have
25 to assume that the company itself would have

1 taken charge of that initially.

2 Q Your biggest opinion was that it should be
3 cleaned up, and you haven't reached any opinions
4 on whether that was done properly or improperly
5 or anything?

6 A No, sir, I haven't, really.

7 Q And your role, as the Judge explained it
8 earlier, was going to be -- you're going to be
9 the finders of facts in this case. You're going
10 to listen to the evidence that's presented to the
11 witnesses and the exhibits that are admitted into
12 evidence and you are going to be the one to
13 determine what the facts are that occurred during
14 the evenings of March 23rd and March 24th. The
15 Judge will instruct you on the law. Do you have
16 any problems with that role?

17 A None whatsoever, sir.

18 Q Do you feel comfortable that you can follow
19 the Judge's instructions that he will give you?

20 A I do.

21 Q And one concern for both Captain Hazelwood and
22 the state of Alaska is that you feel comfortable
23 with your decision not to base your verdict, if
24 you're called upon to reach a verdict on any
25 outside information, but solely on the testimony,

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the evidence and your own common sense and good judgment.

A That's correct.

Q Does that seem like a fair way to handle things to you?

A In my personal belief, that's the only way you can do it. I quite strongly believe in that.

Q I assume then you understand the importance of this case, both to Captain Hazelwood and to the state of Alaska?

A Yes, sir, I do.

Q And will you be willing to, if called upon to reach a decision in this case, base it on the evidence that's admitted and that you hear and your own common sense and good judgment in reaching a fair and honest verdict?

A Yes, sir, I could.

MR. COLE: Judge, I have no further questions and would pass for cause. Thank you.

THE COURT: Mr. Chalos.

VOIR DIRE EXAMINATION OF TERRILL LEE SMITH

BY MR. CHALOS:

Q Mr. Smith.

A Good afternoon.

Q Have you discussed this case with Mr. Jones or

1 Mrs. Jones, your employer?

2 A This particular case, since I've received my
3 jury summons, no, I have not.

4 Q How about prior to receiving your jury
5 summons?

6 A I had, at the time of this unfortunate
7 accident, like many other folks had, discussed it
8 to a small extent, yes.

9 Q Did you bring it up or did they bring it up?

10 A Beg your pardon?

11 Q Who initiated the conversation?

12 A Since I received my jury instructions?

13 Q No, prior to that.

14 A Oh, it was the topic of general conversation,
15 basically. It would be hard to say if I brought
16 it up or somebody else had. I would say more
17 than likely I may have in some cases and other
18 folks may have in others.

19 Q Did you express an opinion at that time with
20 respect to the spill?

21 A Only as I stated, that hopefully somebody
22 would get it cleaned up, yes.

23 Q Did Mr. or Mrs. Jones, to the best of your
24 recollection, express an opinion?

25 A No, sir.

1 Q Did Mr. or Mrs. Jones ever tell you that they
2 knew Judge Johnstone?

3 A Yes, sir, he did. As a matter of fact,
4 Mr. Jones stated that he knew Mr. Johnstone
5 yesterday. To what capacity, I don't know.

6 THE COURT: For your information, Counsel, he
7 was on a jury that I presided over, some years ago, I
8 think, in addition to having known him as a resident of
9 Eagle River when I used to live there.

10 MR. CHALOS: Oh.

11 Q Did Mr. Jones express any opinion to you
12 regarding Captain Hazelwood's role in this spill?

13 A Well, I have not mentioned to Mr. Jones what
14 case I was on as per instructions, so he doesn't
15 know which jury I'm standing on.

16 Q Have you discussed the spill with any of your
17 co-workers since its occurrence?

18 A It had come up in discussion quite naturally
19 because of the line of work we were in and the
20 fact that Veco, I believe, was handling the
21 clean-up work or rather we might be able to make
22 some sales to them on equipment or supplies or
23 something of that nature. And as it turns out,
24 we virtually received nothing out of it.

25 Q Have you solicited people's business?

1 A I haven't personally, no. We have -- I -- my
2 job, basically, keeps me tied down at the store's
3 location. There was some talk of it with Mr.
4 Jones and some other gentlemen with Northern
5 Industrial Products. As to rather they actually
6 received any or not, I don't know.

7 Q Has Mr. Jones expressed any unhappiness to you
8 over the fact that Veco hasn't bought any
9 equipment from him?

10 A None whatsoever.

11 Q You mentioned that you know a little bit about
12 the maritime business. What do you know in
13 that...

14 A No, sir, I stated I knew very little about it.

15 Q Okay. What do you know that's even very
16 little about it, or are you saying that you don't
17 know anything?

18 A Well, I was born and raised 1,000 miles from
19 it, sir. Until I moved to Alaska, I hadn't
20 hardly even seen an ocean. To be honest, I have
21 been out on a small pleasure craft and that sort
22 of thing, but my knowledge of maritime commerce
23 is quite limited, sir.

24 Q Do you fish?

25 A No, sir, other than as a hobby, sporting.

1 Q Have you ever been out on Prince William
2 Sound?
3 A Yes, sir, I have.
4 Q How many times?
5 A Once.
6 Q How long ago was that?
7 A 1983, I believe.
8 Q Was that for fishing or just touring?
9 A Fishing and we had a four-day weekend out
10 there. We were doing some shrimping, camping on
11 one of the islands back there and just generally
12 spending -- as it turned out, I got pneumonia at
13 the time, so it was a terrible four-day weekend.
14 Q Well, I'm sure there are other people in this
15 room that feel the same way. Let me ask you
16 this. You mentioned that you read National
17 Geographic.
18 A Yes, sir, I do.
19 Q Did you see the November or October issue of
20 last year regarding the oil spill?
21 A Yes, sir, I did.
22 Q Did you read the copy that accompanied the
23 story?
24 A I'm sorry, the?
25 Q The copy, the written story that went with the

1 pictures.

2 A Yes, sir, I did, because -- and this is true
3 with all the stories in the magazine. I go
4 pretty much cover to cover on that magazine
5 because I enjoy it so much.

6 Q I agree with you. I do the same thing. When
7 you read the copy did you read the writer's
8 account of the events that transpired on the
9 night of the grounding?

10 A No, sir. That part, if I did, I do not --
11 well, I may have, but I do not remember it.

12 Q Now, with respect to the -- you saw the
13 pictures, I take it, in the...

14 A Yes, sir, of course.

15 Q Did you have a feeling or any opinions after
16 looking at the pictures?

17 A No, sir, I really didn't.

18 Q Did they affect you in any way?

19 A No, sir.

20 Q Do you believe on the basis of that article
21 that the spill is being cleaned up partially by
22 man and partially by nature?

23 A Yes, sir, I do.

24 Q Do you have any opinion as to Exxon's role in
25 the spill itself?

1 A Like I said, I stated through Veco, of course
2 I felt that being an initiator, be it
3 accidentally or whatever in the spill, that
4 indeed they did have a role, yes.

5 Q Do you have an opinion as to whether they
6 fulfilled any obligation that they may have with
7 respect to the spill?

8 A I think, for the most part, they've done a
9 relatively decent job, yes, sir.

10 Q Do you have an opinion or any feeling with
11 respect to Exxon's treatment of
12 Captain Hazelwood?

13 MR. COLE: You know, Judge, I'm going to
14 object.

15 THE COURT: Objection sustained. Next
16 question, please.

17 Q Now, besides National Geographic, I think you
18 said you read Business Week?

19 A Yes, sir.

20 Q Have you read anything in Business Week
21 relating to this spill and the subsequent
22 cleanup?

23 A Not in that particular magazine, sir.

24 Q Do you read any newspapers, local newspapers?

25 A Yes, sir, I do.

1 Q Which ones?

2 A The Anchorage Daily News. (Clears throat)

3 Excuse me. The Anchorage Daily News, usually.

4 Q Did you read the Daily News since the

5 beginning of this incident?

6 A No, sir. Since the spill?

7 Q Yes.

8 A Yes, sir, I have a couple times.

9 Q Just a couple times?

10 A Yes, sir. I don't have a whole lot of time in

11 the mornings to grab the paper, and what I'll do,

12 if I'll get to work a few minutes early, I'll

13 look it over before I open the store up, but it's

14 kind of a cursory fill-in on the news for the

15 day.

16 Q Do you read the editorials?

17 A On occasion.

18 Q Have you read the Daily News, let's say in the

19 last week?

20 A In the last week, no, sir, I have not.

21 Q Tell me, generally, what do you recall about

22 the report of the spill from your reading of the

23 Daily News?

24 A The original reports back at the time?

25 Q Yes.

1 A I can recall that they stated that there had
2 been a spill in Prince William Sound with an
3 Exxon Tanker, Exxon Valdez, of course, and gave
4 preliminary figures on gallonage and what they
5 thought the original -- preliminary reports said
6 happened, et cetera, et cetera.

7 I have to be really honest with you, the
8 newspaper reports, when they initially come out,
9 such as an example, the invasion of Panama, et
10 cetera, et cetera, are based solely on the
11 information they receive at that time, and that
12 can be sketchy.

13 Q Do you believe everything you read in the
14 newspaper; do you think newspapers report
15 everything accurately?

16 A No, sir. Based upon the assumption that, of
17 course, newspapers have a deadline to meet, they
18 have news to put out, and I'm not saying that
19 they do not report fairly or honestly, but I'm
20 saying they can only report what they have at
21 that time. So you -- I don't necessarily -- I'm
22 saying you can't necessarily believe what you
23 read in the paper, no.

24 Q Now, in the course of events since the spill
25 you've had an opportunity to read the Daily News

1 again about the spill and some of the facts that
2 emanated from the spill. Am I correct?

3 A That's correct, sir.

4 Q Do you recall reading anything about the
5 possibility that Captain Hazelwood had been
6 drinking prior to the accident?

7 A I was aware of that, yes, sir.

8 Q Have you formed any opinion in that respect?

9 A No, sir, I have not.

10 Q Did you also read that he might have left a
11 mate on watch that was not qualified?

12 A That's my understanding, sir.

13 Q Have you formed any opinion in that regard?

14 A Here again, no, I have not, sir.

15 Q Do you feel fairly confident that if the
16 evidence that's presented at trial is contrary to
17 what you've read previously that you'd be able to
18 set aside any preconceived notions and judge this
19 case fairly?

20 A Yes, sir, I could.

21 Q I see from your questionnaire that your
22 present wife is a nurse.

23 A That's correct, sir.

24 Q An orthopedic nurse?

25 A Yes, sir. Well, LPN for an orthopedic

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surgeon.

Q What does she do in that regard?

A Well, she handles the intake of the patients, the preliminary examinations, the charts for the patients, things of that nature, and it is in a private practice office.

Q Does she work with any patients suffering from drug or alcohol abuse?

A No, sir, not unless they're related to what Dr. Newman -- Michael Newman, her boss, specializes in, and that's virtually zero. It's spinal replacement, total joint replacements is solely what he does.

Q May I ask you what your first wife did for a living?

A Yes, sir. She was a Early Learning program teacher at Chugach Children's Services.

Q She worked with disabled children?

A No, no, pre-schoolers.

Q I see. In your questionnaire you mention that you drink rarely. What specifically do you mean?

A Well, sir, when I do drink, like I say, we have, my wife, my present wife and I, we have five teenagers between us and they're demanding of a lot of our time. We will get out

1 occasionally, I would say on the average of maybe
2 once a week maximum to the South Anchorage VFW
3 Post, and I may have one or two beers at that
4 time. If one of us is drinking, by the way, the
5 other does not and drives. That's our cardinal
6 rule between the two of us.

7 Q You always have a designated driver?

8 A Yes, sir, we do.

9 Q Have you ever been in the situation where
10 you've designated your wife as driver and you
11 either sat in the passenger seat or in the back?

12 A There's times -- well, this is usually agreed
13 upon if we go anywhere to start with. We will
14 discuss it and if she feels like having a drink
15 or two that night, then I will not drink and I
16 will do the driving, and vice versa.

17 Q If you'd just give me a minute, I'll go
18 through my notes and we can end this inquiry.

19 A Yes, sir.

20 Q Aside from the Daily News did you read any
21 other local newspapers with respect to the spill?

22 A There may have been -- well, no, I'm sorry,
23 I'll rephrase that. There has been one or two
24 articles in the local Eagle River/Chugiak Star on
25 that, and I've read those articles, yes. We sell

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that paper off our counter.

Q Was there anything in there that caused you to form an opinion as to the cause of the grounding and the spill?

A None whatsoever. Their articles really didn't verse that much on it. The articles, I can tell you, mainly stated the fact that -- what the spill might involve with the economy of the Eagle River/Chugiak area, but not really anything specifically on the spill itself as far as factual information.

Q Do you have opinions as to whether a captain of a ship should be held criminally responsible for the actions of his crew?

MR. COLE: Your Honor, I object to that.

MR. CHALOS: Your Honor, that's one of the questions that you permitted, as far as I understand. When you prohibited us from asking certain questions, that was not one of them.

THE COURT: Well, I'm going to let the question this time, but I'm going to follow-up. Do you have an opinion at this time?

A My opinion, sir, of anybody in responsibility, and I may be broad or vague slightly on this is as I am also responsible for employees of my

1 action, I would think Captain Hazelwood has a
2 responsibility. I'm not saying again that he's
3 guilty of anything, but he does have the
4 responsibility as the master of his ship.

5 THE COURT: Mr. Smith, regardless of what your
6 opinion is, if the Court's instructions differ from
7 your opinion concerning responsibility, would you be
8 able to set aside that opinion...

9 A Indeed I would, sir.

10 THE COURT: ...and follow the instructions?

11 A Yes, sir, I could.

12 THE COURT: Okay.

13 Q Do you disapprove of someone drinking?

14 A No, sir, I do not.

15 Q Just one question I forgot to ask you earlier.

16 Do you ever watch late night shows like the
17 Tonite Show, Arsenio Hall, Pat Sajak?

18 A No, sir, I do not.

19 Q Have you heard any of the jokes that have been
20 going around about the spill and
21 Captain Hazelwood?

22 A In the case of -- not heard any jokes but I've
23 seen some of the merchandise that's come out like
24 in the malls and things like that. It's a little
25 hard to avoid, yes.

1 Q What type of merchandise have you seen?
2 A There was a T-shirt, I believe, if I remember
3 correctly, in...
4 Q The tanker from hell T-shirt?
5 A No, sir, I think it had something to do with
6 -- something to do with a party in the captain's
7 cabin or something, but I didn't -- you know,
8 it's something I seen in passing.
9 Q I take it you don't own any of that sort of
10 souvenir memorabilia?
11 A No, sir, I do not.
12 Q How about any of your children?
13 A No, sir, they do not.
14 Q Have any of your children expressed an opinion
15 to you with respect to this spill?
16 A None whatsoever.
17 Q Do you have -- let me go back. As best as you
18 know, are you a plaintiff in any civil suit
19 arising out of this oil spill?
20 A Absolutely not.
21 Q When you were in the Army did you serve in
22 Vietnam?
23 A Yes, sir, I did.
24 Q Have you been in combat?
25 A Yes, sir, I have.

1 Q Do you have any friends who are in the Coast
2 Guard?
3 A No, sir, I do not.
4 Q Do you believe that a police officer or state
5 investigator can make a mistake in their job just
6 like any other person?
7 A Yes, sir, that's quite true.
8 Q Would you tend to give more weight if you were
9 a sitting juror or importance to the testimony of
10 a Coast Guard person or a police officer just
11 because they are law enforcement people?
12 A No, sir.
13 MR. CHALOS: Mr. Smith, I have no further
14 questions. Thanks for your time.
15 A Thank you, sir.
16 MR. CHALOS: Your Honor, we pass.
17 THE COURT: You are free to go, but you'll
18 have to come back on Friday morning to the jury
19 assembly room. That's where you met this morning. I
20 think yesterday also, if you were here yesterday. So
21 you've got to be there at 8:30 a.m. next Friday. Is
22 there going to be any problem with that?
23 A No, sir, it would not.
24 THE COURT: Okay.
25 A Oh, Your Honor, I might make one thing known.

1 I did have, prior to coming down here for jury
2 duty, I did have surgery scheduled on my foot for
3 Friday. I can possibly get a change. Would
4 there be a problem there?

5 THE COURT: What time is it Friday?

6 A I think at 1:00 o'clock in the afternoon. I
7 can reschedule the surgery, if need be. It's
8 nothing critical.

9 THE COURT: Could you reschedule for Thursday?

10 A Yeah, it's -- the VA's paying on that so I
11 have to go down there and get it cancelled and
12 re-authorized, sir, but I can get it rescheduled.

13 THE COURT: Why don't you try to do that. I
14 don't -- probably we're not going to start this on
15 Friday, just the way things are going, but I can't
16 guarantee that. And if we have a jury by then and
17 you're on the jury, I want to start promptly. So if
18 you can reschedule that, okay. If you can't, would you
19 let me know?

20 A Yes, sir, I will.

21 THE COURT: We'll work something out.

22 A Yes, sir.

23 THE COURT: Okay. Thanks a lot. You can
24 collect your personal belongings in the other room and
25 see you in the jury room on Friday morning at 8:30,

1 downstairs. Thank you, sir.

2 Would you pick the next juror?

3 That was about 25 minutes just on your side
4 alone. I'd like you to...

5 MR. CHALOS: Your Honor, I'll try to speed it
6 up.

7 THE COURT: Yeah, if you could, I'd appreciate
8 that.

9 The next juror I have down is Elmer Brown.
10 Why don't you go bring Elmer Brown in.

11 (Pause)

12 Are you Mr. Brown?

13 A Yes.

14 THE COURT: Have a seat in the front row,
15 please, and right behind that microphone would be a
16 good place because you're going to be using it.

17 Mr. Brown, can you read the questions on the
18 blackboard from your location?

19 A Uh-huh (affirmative).

20 THE COURT: Okay. If you'd take the
21 microphone off of the stand and address your responses
22 to those questions. Then when you're finished with
23 that, Mr. Cole and Mr. Madson will have some questions
24 for you.

25 A My name is Elmer David Brown. Let's see, I'm

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a member of the municipality, that's where I work, at public works. (Pause)

I guess I don't have any reasons I shouldn't serve on this jury, and I do not know any of the defendants or the attorneys or the plaintiffs or the witnesses.

THE COURT: You went through that list of witnesses we gave you and you didn't recognize any names?

A No.

THE COURT: Okay. Mr. Cole.

VOIR DIRE EXAMINATION OF ELMER DAVID BROWN

BY MR. COLE:

Q Mr. Brown, how long have you been married?

A Three years.

Q Can you tell me a little bit about your job?

A I'm a heavy equipment operator.

Q Graders?

A Uh-huh (affirmative).

Q 988s, everything?

A Uh-huh (affirmative).

Q Is there a union?

A Yes, it's the Operating Engineers.

Q Do you work out of the Operators local?

A Yes, I do.

1 Q Did you work on the pipeline at all as an
2 operator?
3 A Not on the pipeline itself. I worked -- see,
4 I'm 29, so I wasn't old enough at the time.
5 Q Right.
6 A So I've worked up north though.
7 Q Where have you worked up north?
8 A I've worked at Prudhoe Bay.
9 Q What was it like -- at which camp did you work
10 at?
11 A I worked out on Deetus Island (ph).
12 Q Is that a dry area or...
13 A It was dry.
14 Q Did you ever see people drinking out there?
15 A Yeah, there was.
16 Q Have you ever been charged with a crime?
17 A No.
18 Q You've never been charged with a crime?
19 A No.
20 Q And you've lived in Anchorage the whole time.
21 Where did you go to school?
22 A West High.
23 Q You mentioned that you know an officer,
24 Trudy Tush (ph)?
25 A Yes, she's my next door neighbor.

1 Q Are you good friends with her or neighborly
2 friends or...
3 A Pretty much neighborly friends.
4 Q Anything about your relationship with her that
5 would affect your ability to evaluate law
6 enforcement officials...
7 A No.
8 Q ...unfairly? I notice that you've indicated
9 you've read things about this case -- heard
10 things.
11 A Yeah, I've read quite a bit about it.
12 Q What kinds of sources have you used to inform
13 yourself about what happened?
14 A Mostly just the media, newspapers, the news,
15 what-have-you.
16 Q Which newspaper?
17 A The Daily News.
18 Q And I noticed that you wrote in here that --
19 and I have to apologize 'cause I'm having a hard
20 time, I have a tough copy. I'm just trying to
21 read it here, "Very poor response by the oil
22 industry and state officials, oil companies, in
23 an effect, bought off the people of Alaska by
24 paying enormous fees for an ineffective cleanup
25 effort"?

1 A Yes.

2 Q Is that the opinion that you formed in this
3 case?

4 A That's pretty much the opinion I've formed.

5 Q Okay. Have you formed any opinions about any
6 other people or parties, what their roles and
7 responsibilities were in this oil spill? When I
8 say other parties I mean like the other crew
9 members, Alyeska, the Coast Guard,...

10 A No, not them per se.

11 Q You appear to have some unhappy feelings
12 toward the oil companies.

13 A Well, I don't think they did a very good job
14 in this instance.

15 Q And then when you say a "good job" are you
16 referring to the cleanup or in monitoring the
17 tanker system...

18 A Well, they didn't do anything for quite a
19 while. They just let that oil sit.

20 Q So, you're primarily talking about the
21 cleanup.

22 A The cleanup, yes, primarily.

23 Q Do you understand it's not going to be a trial
24 where the civil liability of Exxon or any of the
25 oil companies are going to be at issue?

1 A Okay.

2 Q Does that concern you, does that make you
3 wonder?

4 A Well, like you said, it's not an issue here,
5 so there's really not nothing to -- there's
6 nothing for me to have anything to say about.

7 Q What do you do in your free time?

8 A I'm pretty sportsy. I play a lot of
9 basketball, jog sometimes,...

10 Q Did you play basketball at West?

11 A Yes, I did.

12 Q Did you play for their basketball team there?

13 A Uh-huh (affirmative).

14 Q Did you play any after high school?

15 A No, I played two years of college baseball in
16 Arizona.

17 Q At Arizona State or...

18 A It was junior college.

19 Q Which one?

20 A Mesa.

21 Q You played at Mesa?

22 A Uh-huh (affirmative).

23 Q You played for the Gold Panners or...

24 A No.

25 Q ...Palmer or for anything after that?

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1 A No, I worked during the summers.

2 Q And do you know a person by the name of

3 Kevin Fitzgerald?

4 A Not off-hand. I might know him if I saw him.

5 Q Do you get outdoors and fish at all?

6 A We go fishing a little bit during the summer.

7 I haven't hunted in quite a while.

8 Q Where do you go fishing?

9 A Mostly down on the Kenai.

10 Q And is it just for weekends, you just drive

11 down there and charter out or...

12 A Yeah, we just drive down and come back.

13 Q Does your job allow you to drink during

14 working?

15 A No. None whatsoever.

16 Q Do you ever have any drinks at lunchtime?

17 A No.

18 Q Have you ever worked in a place where there

19 was a mandatory drug or alcohol testing program?

20 A No, they're just starting to instigate that.

21 There are starting to be rumors, but not yet.

22 though.

23 Q Do you have any strong feelings either in

24 favor of that or against it?

25 A Well, I operate heavy equipment and you cannot

1 be drinking and running that stuff. I mean
2 there's just too many lives at stake with that.

3 Q Do you have any specialized knowledge -- have
4 you ever taken any classes, taken any seminars or
5 anything about the effects of alcohol on the
6 body?

7 A We had a group come -- I think it was Mothers
8 -- MADD, and they had a little speech they put on
9 for us.

10 Q Do you have any strong opinions about drinking
11 and driving that would affect your ability to be
12 fair and impartial here?

13 A Well, as I said, you can't operate this -- I
14 think you should be responsible for your actions
15 at all times or either you should not -- you
16 shouldn't be in it.

17 Q Have you ever seen a radar?

18 A What do you mean? A radar scope?

19 Q A radar screen?

20 A Just on a plane.

21 Q Do you get a sense of the importance of this
22 case both to Captain Hazelwood and the state of
23 Alaska?

24 A Yes, I -- there's quite a bit of importancy.

25 Q And do you understand our concern that if

1 you're chosen to deliberate in this case, that we
2 -- that you will be asked to base your decision
3 on the evidence that you hear through the
4 witnesses and the evidence that's admitted by the
5 judge and your own common sense and good
6 judgment, and not on other things that are
7 outside this courtroom.

8 A Yes, I understand that.

9 Q Do you understand the importance of that?

10 A Uh-huh (affirmative).

11 Q Would you be willing to follow that
12 instruction and reach a fair and honest verdict
13 in this case?

14 A This one would be tough.

15 Q Why do you say that?

16 A Because I'm a native born Alaskan, because
17 there's been a lot of damage and it would be, you
18 know, because of the media and everything, this
19 one would be a hard one for me. I...

20 Q I guess you can understand Mr. Hazelwood has a
21 real interest in this thing...

22 A Well, I'm certain he does.

23 Q I'm sure that he and I would like to know if
24 you don't feel that you could be fair. We should
25 probably know about it right now.

1 A Well, I -- this one would be a tough one for
2 me because of -- there's been a lot of damage
3 done.

4 Q And you've lived up here all your life?

5 A Uh-huh (affirmative).

6 THE COURT: When you say it would be a tough
7 one for you,...

8 A It would be...

9 THE COURT: ...would you be saying...

10 A ...hard enough for me to get emotionally
11 involved in this one -- in this case.

12 THE COURT: Well, then you know, as Captain
13 Hazelwood's stand has some disadvantage to begin with
14 here because of what you've read and what you know
15 about this case so far?

16 A I'd have to say yes.

17 THE COURT: So you've formed some opinion
18 concerning Captain Hazelwood at this time?

19 A Yes, I have.

20 THE COURT: And is it fair to say, based on
21 what you've said, that it will be something you might
22 not be able to set aside and assure us unequivocally
23 you can set aside?

24 A It would be difficult.

25 THE COURT: Any objection to excusing Mr.

1 Brown?

2 MR. MADSON: None, Your Honor.

3 MR. COLE: Given his background, we have none.

4 THE COURT: Okay. Mr. Brown, you are excused
5 from further service in this case. Take your jury
6 service card, Mr. Purden will give to you now, down to
7 the jury clerk for further instructions.

8 Do you have any more personal belongings in
9 the jury room next door? You can just exit out the
10 double doors here then after you pick up your jury
11 card.

12 And if you'd get the next juror, Mr. Gill.

13 (Pause)

14 I can recommend to counsel, if you'd get right
15 to the publicity and media attention these jurors have
16 been exposed to and find out the impact on them first,
17 we might be able to save some time.

18 MR. COLE: Yes, Your Honor.

19 THE COURT: Good afternoon, Mr. Gill. Have a
20 seat in the front row there next to that microphone.
21 Take it off the hook and if you can read the questions
22 on the board, would you please answer them?

23 A My name is Russell A. Gill. What
24 organizations, Elks Club. That's really about
25 it.

1 Do I have any reasons? I was asked yesterday,
2 after I went back to work, after I was released from
3 here, from my boss to ask if I would give this to you,
4 Your Honor.

5 THE COURT: Okay. You're not the first one.

6 A It's the -- something that just happened
7 yesterday. It's pretty controlling.

8 THE COURT: Let me take a look at that before
9 you go any further.

10 (Pause)

11 Okay. Your employer is Cameron Iron Works,
12 USA Incorporated. Is that correct?

13 A Yes, sir.

14 THE COURT: And Mr. Henderson is your
15 warehouse supervisor?

16 A Yes.

17 THE COURT: Okay. And you are a warehouseman?

18 A Repairman, warehouseman. We rebuild wellheads
19 for all the different oil companies. It's been
20 real critical of late.

21 THE COURT: If you are given the opportunity
22 to serve on this jury are you going to -- do you know
23 whether Cameron is going to penalize you by not paying
24 you?

25 A I have served on other juries. I have never

1 been paid for them.

2 THE COURT: With Cameron as your employer?

3 A No. I've never been paid by any of my
4 previous employers.

5 THE COURT: Do you know whether Cameron is
6 going to pay you?

7 A No, they won't, sir.

8 THE COURT: Is this a union job? Are you in a
9 union member?

10 A No, sir.

11 THE COURT: Well, I recognize that there's
12 going to be some degree of financial hardship, but
13 that's not what you -- this letter seems to say. It
14 seems to say that there's going to be some problem in
15 the warehouse that you won't able to accommodate a
16 \$400,000.00 backlog of material. Is that right?

17 A Yes, about a quarter of that has to be done by
18 this Friday. There's only two of us who can do
19 it.

20 THE COURT: And how long will that take?

21 A Usually it takes us about two weeks to rebuild
22 one.

23 THE COURT: So it has to be completed by
24 Friday?

25 A Yes. We just started yesterday. I have

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personal reasons.

THE COURT: Let's hear the personal reasons, because this is not adequate. So let's see what your personal reasons are.

A I do not -- he came to me.

THE COURT: Sure.

A When I first showed up for work he said, "Can you submit this?"

THE COURT: Okay. Why don't you give me your personal reasons?

A I've served on other jury panels, civil and criminal, as my questionnaire points out. I've always considered it a responsibility. For the last three and a half years I have not taken a day off from work, even when I switched jobs I went from one to the other. I cannot afford it. When this came up in November when I got notification, I told them about it. They said, well, go do it. I said good, because I consider it a duty to do this. But talking to my wife and stuff, five days is quite a strain. But if I get on this panel or on this jury for a month or two months, my land payments -- I've got a daughter that's headed for medical school and another one going to college this fall, 400 pounds worth of

1 twin boys at home. You know, my wife works, but
2 she just doesn't make much. We cannot survive.
3 It's really a strain.

4 I would like to serve on a shorter jury at a
5 different time, just about any...

6 THE COURT: How many other juries have you
7 served on in the last few years?

8 A Last time I was -- I was on a panel was
9 approximately in '83.

10 THE COURT: Last time was '83?

11 A Uh-huh (affirmative).

12 THE COURT: Would you be willing to serve on a
13 shorter jury panel?

14 A I certainly would.

15 THE COURT: Okay. I'm going to excuse you
16 because of the financial hardship that you've
17 indicated, and since you've said you'd be willing to
18 serve on a shorter panel, we'll call down and call you
19 back in sometime in the future.

20 A I go down to...

21 THE COURT: Just take...

22 A ...the jury clerk?

23 THE COURT: ...your jury service card from
24 Mr. Purden. Take it down to the jury clerk for further
25 instructions. Do you have any personal belongings in

1 the room next door?

2 A Just a jacket.

3 THE COURT: You can go back through that way
4 and then exit out the double doors and take it
5 downstairs.

6 Mr. Sherwood will be next, or Mrs. I'm not
7 sure if Sidney is a man or woman.

8 (Pause)

9 Good afternoon, Mr. Sherwood. Please have a
10 seat in the front row, next to the microphone. And
11 take the microphone off and you can answer those first
12 four questions.

13 A Is it working?

14 THE COURT: It's working.

15 A My name is Sid Sherwood. I'm having problems
16 reading the second question.

17 THE COURT: The second question is, "What
18 organizations are you a member of?"

19 A A few gun dog clubs and no other
20 organizations.

21 THE COURT: The next question, "Are there any
22 reasons you should not serve on this jury?"

23 A Yes, there is. My business and -- and dog
24 kennel operation, all is really suffering from me
25 not being there at all times.

1 THE COURT: Any other reasons other than that,
2 sir?

3 A None that I can really think of at the time.

4 THE COURT: Okay. We'll get to that in just a
5 second. Do you know any of the defendants, -- do you
6 know the defendant, the attorneys who are here today or
7 the witnesses?

8 A No.

9 THE COURT: Okay. You read through that list
10 of witnesses and you didn't recognize any names. Is
11 that correct?

12 A Yes, I read that list. I knew none of those
13 people.

14 THE COURT: Okay. What is your business,
15 Mr. Sherwood?

16 A I run a dog kennel and a dog training
17 operation for gun dogs, and I have 14, 15 dogs
18 there at my place all the time and the people are
19 paying me to train these dogs and, of course, if
20 I got into a lengthy situation now being on jury,
21 I'd have to see if I couldn't get all these
22 people to take those dogs home, which would be
23 kind of disastrous for my business.

24 THE COURT: If you were to be sick or take a
25 vacation, what do you do about your dogs?

1 A Actually, in the last six or seven years I
2 haven't had a vacation or been sick, so...

3 THE COURT: I was afraid you'd say that.

4 A ...I can't answer that question.

5 THE COURT: Later on in the trial, if you are
6 selected, we'll probably be going half days, probably
7 starting about week three or four, after the jury is
8 selected, probably about week three. We'll go from
9 8:30 till 1:30. Would you be able to accommodate your
10 training needs and your business needs if we were to
11 let you go at 1:30 during those days?

12 A Well, it would certainly be awfully
13 inconvenient and slow my work down a lot, but it
14 wouldn't be impossible.

15 THE COURT: If you are given the opportunity
16 to serve on this jury and I don't allow you to be
17 excused for this reason, would you agree not to hold it
18 against the attorneys or Captain Hazelwood, and if
19 you're upset about it would you direct that towards me?

20 A I'd direct it directly to you.

21 THE COURT: Okay. At this time I'm not going
22 to excuse you for the hardship you've indicated. We'll
23 give it a try.

24 VOIR DIRE EXAMINATION OF SIDNEY R. SHERWOOD
25 BY MR. COLE:

1 Q Mr. Sherwood, the dogs that you train, are
2 they mostly labs?

3 A The majority are labs, but I train a good
4 percentage of Goldens and Chesepeakes and the
5 other retriever breeds.

6 Q Do you know a gentleman by the name of
7 David Rickhausen (ph)?

8 A Yes, I do.

9 Q And if I told you that he was a close friend
10 of mine would that affect your ability to be fair
11 and impartial in this case?

12 A I don't believe it would.

13 THE COURT: Counsel, approach the bench,
14 please.

15 (2651)

16 (Whispered bench conference as follows:)

17 THE COURT: You've done this on several
18 occasions, Mr. Cole. You asked if he knows somebody
19 who...

20 MR. COLE: The only reason I asked is because
21 they're close friends of ours (indiscernible - away
22 from mike).

23 THE COURT: Calm down, Mr. Cole, calm down. I
24 told them not to discuss this case with anyone
25 (indiscernible - away from mike) and I'm sure you don't

1 intend (indiscernible - away from mike). I don't want
2 you to ask of any people that you happen to know that
3 they may be friends with.

4 MR. COLE: (indiscernible - away from mike)

5 THE COURT: I heard that (indiscernible - away
6 from mike) Mr. Chalos will agree (indiscernible - away
7 from mike) from the jurors.

8 (2707)

9 (End whispered bench conference.)

10 Q (Mr. Sherwood by Mr. Cole) Now, Mr. Sherwood,
11 when you got this questionnaire, you didn't fill
12 anything out, it looks like.

13 A Well, I felt like my name, address and
14 occupation is all that you need to know. All the
15 questions about the Prince William Sound that --
16 and what I've done in the sound and all that, I
17 didn't feel like I was on trial, and if you want
18 to do a further investigation on me, you can
19 probably find out what I've done in the sound.

20 THE COURT: Well, Mr. Sherwood, we're going to
21 do that investigation by asking you questions now, so
22 you're going to have to answer those questions today.
23 It's very important that we know something about your
24 background if you have anything in it that might make
25 it difficult for you to be fair and impartial. For

1 example, if you worked in Prince William Sound or were
2 employed by an agency of the state, I think the
3 defendant would have a right to know that, and I think
4 you can understand that.

5 Go ahead, Mr. Cole.

6 Q Have you worked out there in Prince William
7 Sound?

8 A No, sir.

9 Q Have you done any duck hunting out in Prince
10 William Sound?

11 A I've duck hunted and fished both in Prince
12 William Sound.

13 Q You've lived in Alaska for 26 years. What
14 brought you up here -- working?

15 A Oil field.

16 Q Where did you work?

17 A I worked for Rowen Drilling Company. The
18 majority of the time I worked in the oil field.

19 Q At Prudhoe Bay?

20 A Worked in Cook Inlet area and Prudhoe Bay.

21 Q And when was the last time you were working up
22 in Prudhoe Bay?

23 A 1985.

24 Q Did you work on the pipeline?

25 A Nope.

1 Q Which camp did you work at? Did you work at a
2 number of camps up in Prudhoe Bay?
3 A The camp I lived in, the majority of the time
4 was a mobile camp, moving from location to
5 location with the drilling rig.
6 Q Were the camps that you worked at dry or wet;
7 could you have alcohol or not?
8 A Dry.
9 Q Did you see people drinking at those camps?
10 A I've discharged people for drinking at those
11 camps myself.
12 Q Have you lived anywhere else besides Anchorage
13 while you've lived in Alaska?
14 A Yes, I've lived both in Kenai and Seward and
15 Palmer.
16 Q Have you read about the oil spill?
17 A Yes.
18 Q Have you formed any opinions about the
19 responsibilities of the various parties that were
20 involved? And when I say parties, I mean the
21 tanker crew members, Alyeska, Exxon, Department
22 of Environmental Conservation, Coast Guard.
23 A Yes, I have my opinions.
24 Q Can you tell me what those are?
25 A I don't think anybody wants to hear them other

1 than possibly you, and I will tell you. I think
2 it's carried way too far.

3 Q When you say it's carried way too far...

4 A The thing that has happened other than being
5 multiplied over and over several times is the
6 same thing that had happened to me. A lot of
7 times on my job, and I just done what the book
8 said and somebody cleaned up the mess and we
9 never even made the papers then. Didn't waste a
10 damn dime of the state's money.

11 Q Would it be fair to say that you don't feel
12 comfortable here in the courtroom then, given
13 what you know about what the charges are?

14 A That's fair...

15 THE COURT: Excuse me. Mr. Cole, whether a
16 juror feels comfortable or not is not relevant. You
17 can rephrase your question to something that's
18 relevant.

19 Q Well, do you have an opinion on whether or not
20 Captain Hazelwood should be charged with a crime
21 here; have you formed an opinion on that?

22 A Yes, I have.

23 Q And what is that opinion?

24 A He -- if he had committed a crime he should be
25 charged, but I don't see the crime he's

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committed.

Q And you've done that based on what you've read and heard about this case?

A That's fair.

Q Well, what did you use to form that opinion? What information have you retrieved to form that opinion?

A I really probably can't repeat it all, due to the fact that it was in the papers constantly for days and days, but the thing that puts me in doubt that there should have been any criminal charges brought against him is he reported the oil spill, or at least somebody on the tanker crew reported the oil spill. That's what the law requires. I know that because I've been involved in oil spills. Unless the law has changed here midstream, that part had been done. He was -- supposedly had a high alcohol count. That was proven that he did have a high alcohol count several hours after the spill. Myself, I spilled 10,000 barrels of oil one time, which is nothing like 11 million, I know that. I'll guarantee you, 10 hours later you could smell part of that son-of-a-gun on my breath, and I was relieved that I was away from it and it was over.

1 Q Well, given your -- do you consider the
2 feelings you have strong feelings about this
3 case?

4 A Oh, yeah, it would take right now a lot of
5 convincing to make me feel any different.

6 Q Well, is that possible, to convince you
7 otherwise?

8 A I've never seen anything yet like a mind that
9 couldn't be changed on, but I am pretty
10 hard-headed.

11 Q Can you try this case impartially or not?

12 A I'm not going to be impartial to anyone if
13 facts are facts. You know, if I can see where --
14 what I have heard and been told wasn't so, I'd
15 have to look at it from a complete different
16 viewpoint.

17 Q Would you be willing to do that?

18 A If I had no choice, I'd do it. Like I said
19 earlier, I'm not wanting to be on this trial, but
20 if I'm here, I'm going to do it to the best of my
21 ability.

22 (Pause)

23 Q When you train your dogs, do you drink
24 beforehand?

25 A No. If I decided to have a drink, I believe I

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could.

Q Have you in the past?

A I have trained a dog after having a drink.

MR. COLE: Thank you. I have nothing further.
Your Honor, I'm going to challenge Mr. Sherwood for
cause.

THE COURT: Mr. Sherwood, you've indicated you
have some opinions concerning the responsibility for
this case, and if you've read some things on it.
You've been personally involved in something similar on
a much smaller scale. I need to know if you can
unequivocally set aside those opinions and base your
decisions, if you are called upon to make any in this
case, based solely on the evidence that you hear and
see in this court and in accordance with the Court's
instructions, my instructions on the law.

Can you assure us that you will do that?

A I would have -- I'd have a very difficult time
doing that. If I -- I'd like to be able to tell
you, yes, sir, I could do it, but I'm really
loading myself up when I say that.

THE COURT: Okay. I appreciate your candor.
I'm going to excuse the juror under 24(C)3.

You can pick up your jury service card, sir,
and take it back downstairs to the jury clerk for

1 further instructions. Do you have any personal
2 belongings next door?

3 A Yes, I do.

4 THE COURT: Okay. You can swing on through
5 that room and go out the double doors in that room.
6 Mr. Purden has your card here, Mr. Sherwood. Thank
7 you, sir.

8 MR. MADSON: Your Honor, I want to register an
9 objection to (indiscernible - away from mike).

10 THE COURT: I beg your pardon?

11 MR. MADSON: I want to register an objection
12 to the Court excusing Mr. Sherwood for cause. I wasn't
13 asked. The Court asked the question but immediately
14 just...

15 THE COURT: Well, he demonstrated to me a
16 state of mind which would have prevented him from
17 rendering a just verdict. He had very strong opinions
18 on what the outcome should be and he couldn't assure me
19 unequivocally he could set it aside. We have much case
20 law on that. Your objection is noted, but it's
21 frivolous.

22 MR. MADSON: Well, it probably won't be...

23 THE COURT: Call in the next juror.

24 MR. MADSON: ...the last one that will be,
25 Your Honor, but I still want to...

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THE COURT: I beg your pardon?

MR. MADSON: I still want to object, Your Honor.

THE COURT: Helene Brust is next.

(Pause)

THE COURT: Is it Helene Brust?

A It's H-e-l-e-n-e.

THE COURT: Helene, thank you. If you'd have a seat in the front row, please, and take the microphone off the stand and please answer those four questions on the blackboard.

A My name is Helene Brust. What organizations are you a member of? I don't think I'm a member of any organization.

Are there any reasons -- well, I don't know if you want to entertain my job situation, Your Honor. I'm working for a doctor and we share -- another nurse and myself share the week, you know, and I work half the week and she works the other half, and neither one of us are able to work full-time. So I don't know what this is going to do to the doctor.

The other thing that I should bring up is that I have an elderly mother and she's 85, and if --I kind of always keep my suitcase packed. She's in

1 good health at the moment, but if I should ever
2 get a call, I would have to go right away, you
3 know? But I don't expect that to happen.

4 So, I'm -- do you know the defendants,
5 attorneys, plaintiffs, witnesses? Do I know --
6 you mean this...

7 THE COURT: Yes, the list we gave you of
8 witnesses.

9 A No, sir. No, Your Honor.

10 THE COURT: And any of the people seated at
11 counsel table?

12 A No, Your Honor.

13 THE COURT: Okay. Thank you. Mr. Cole.

14 VOIR DIRE EXAMINATION OF HELENE BRUST

15 BY MR. COLE:

16 Q Good afternoon, Ms. Brust.

17 A Good afternoon, sir.

18 Q Can you tell me a little bit about your job?

19 A I work for a cardiologist over in the
20 Providence Professional Building. I've worked
21 for him for six -- seven months now, and I was
22 working full-time, and then we had to -- I didn't
23 want to work full-time, so we were able to get
24 another nurse to share the job. And so I work
25 two days one week and three days the next. And

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she does the same.

Q Briefly describe what your responsibilities are.

A At work, well, I'm responsible for preparing for the day's patients that come in. You know, as you would go into the doctor's office, I prepare the charts when I go in in the morning, with dates and updating them and having all the lab reports ready, and then the doctor has procedures in the morning and he usually sees patients in the afternoon. It's my responsibility to greet the patients, weigh them and talk with them briefly and put them into the rooms and then assist doctor in the various things that he would be doing with them as he examines them and so forth. And just the whole thing about taking care of the patients from eight to five in the evening.

Q Have you read about this case?

A Yeah, I have.

Q Have you seen things on television and on the radio?

A Yes.

Q Have you formed any opinions about the responsibilities or the roles of the various

1 parties that led up to the grounding of the Exxon
2 Valdez? When I say parties I mean crew members,
3 oil companies, Alyeska, the Coast Guard,
4 Department of Environmental Conservation.

5 A I'm not very good at this, but I -- I think my
6 sympathies lie mainly with feeling sorry that it
7 all happened. I'm not at all political and so I
8 don't really think I've got sympathies, but I may
9 not be understanding you too well, but I'm just
10 sorry that it all happened, you know, and I don't
11 place blame anywhere.

12 Q You've lived in Alaska for 27 years. Have you
13 always lived in Alaska?

14 A We -- no. I lived in Fairbanks and when I
15 came over to the United States I lived in
16 Fairbanks, and then after I was married I went to
17 live down at Clear where my husband was a
18 civilian employee with RCA and lived down in
19 Clear. And then we came back to Fairbanks, and
20 in 1969 we moved to Anchorage.

21 Q So how long did you live in Fairbanks?

22 A I arrived in Fairbanks in 1962, in the summer
23 of '62, and we were married at the end of '62 and
24 then moved out to Clear, and we were there until
25 the end of 1965. We moved back to Anchorage --

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to Fairbanks at the end of '65, December, and moved to Anchorage in '69. So that was a four-year stretch and then a little bit in '62.

Q You indicate on your questionnaire that you have two children.

A Yes, sir.

Q Are they living in Alaska?

A Yes.

Q Where do they live?

A They live with me, with us, at the moment. They are in and out, in college and so on.

Q Can you tell me what you do in your spare time?

A Oh, I don't have any free time, but you know, I make a little bit of time to sew and get caught up with my pictures. I do walk a little bit. I try to walk every day. I'm a bit on the spiritual side. I like to read my spiritual books and magazines that I gather whenever I can to keep up with that. I belong to a prayer group, which I go to on Monday night..

Q Would most of the material that you read then, would that relate to this spiritual side?

A Uh-huh (affirmative). That and nutrition. I'm very interested in nutrition. I do a lot of

1 reading on that.

2 Q Have you ever received any special training in
3 the effects of alcohol on the body?

4 A I haven't.

5 Q And I notice that you own a boat.

6 A Uh-huh (affirmative).

7 Q What kind of a boat do you own?

8 A Well, I wish you hadn't asked me that.

9 Q Well, is it an ocean-going boat or is it a
10 lake boat?

11 A No, it's one that you put on the Kenai River,
12 but I...

13 Q Like a river boat?

14 A A river boat.

15 Q And your husband goes down and fishes down
16 there?

17 A Yes.

18 Q Do you go down with him at all?

19 A Yes.

20 Q And have you been anyplace else besides the
21 Kenai River?

22 A With the boat? We were down in Anchor Point a
23 few times and then Skilak Lake and that area, but
24 mostly now in the last few years, just the Kenai
25 River.

1 Q I was noting on your questionnaire, have you
2 ever served on a jury before?

3 A No, I haven't. I was -- you know, called,
4 like here today, but I never got this far before.
5 I was always -- I never got to the questioning
6 point.

7 Q When your kids were growing up did you ever
8 have the situation where you came home and there
9 was something broken or there was an argument
10 going on and you had to decide what had happened
11 in your absence based on the maybe conflicting
12 stories?

13 A A lot of that.

14 Q Would it be fair to say that you reached a
15 conclusion as to what went on in their absence
16 based on the stories that you were told and your
17 observations of the people that were telling you
18 things and your own common sense and good
19 judgment?

20 A I would.

21 Q And if you are called upon to do that in this
22 case, would you be able to apply that same common
23 sense and good judgment in evaluating the
24 witnesses that take the stand here?

25 A Yes, I would.

1 Q Do you understand the importance of this case,
2 both to Captain Hazelwood and the state of
3 Alaska?

4 A I believe I do, sir.

5 Q And would you be willing to follow the Judge's
6 instructions that you are -- if you are called
7 upon to reach a decision in this case then you
8 are to listen to the evidence that's presented
9 through the witnesses and the physical evidence
10 and base your verdict on that and your own common
11 sense and good judgment?

12 A I hope I would be able to do that. I have
13 never had to do anything like that in my life
14 before.

15 Q Does that seem like a fair system?

16 A Yes, sir, it does.

17 Q And would you be willing to give both parties
18 a fair trial in this case?

19 A I would do my very best.

20 Q Would you be willing to reach a fair and just
21 verdict for both parties?

22 A Yes, I would.

23 MR. COLE: Thank you very much, Ms. Brust. I
24 have no further questions, and pass for cause.

25 MR. MADSON: Well, ma'am, now it's my turn to

1 ask you some questions, too.

2 VOIR DIRE EXAMINATION OF HELENE BRUST

3 BY MR. MADSON:

4 Q First of all, you expressed some concern about
5 what happened to your employer should you be here
6 for the next month or two months. As I
7 understand it, there are two of you that work
8 half-time each?

9 A Yes, that's correct.

10 Q I take it though that this wouldn't impose any
11 great financial hardship on you if you were to be
12 here for that length of time?

13 A I can't say it would be a hardship, sir. I
14 enjoy the extra money I make and I'm redoing my
15 kitchen with it at the moment. I couldn't say it
16 would be a hardship financially.

17 Q In other words, you could live without the...

18 A Yes, my husband is...

19 Q ...extra money; you're not going to be forced
20 out of your home?

21 A No, sir, no.

22 Q You obviously have some concern about your
23 employer.

24 A It's my...

25 Q Have you discussed this with him at all?

1 A I haven't. I haven't had an opportunity to
2 because I -- when I called in on Sunday night,
3 you know, like you do, then I found out that I
4 was to come, and then I called up and told the
5 office manager what was happening. And so I
6 haven't had an opportunity. I have spoken to the
7 other nurse, however, and she's covering for me
8 today and yesterday.

9 Q But as far as you know, he could be able to
10 get some temporary part-time help or something?

11 A The both would try to manage without me.

12 Q That's fine. My concern is, you know, that if
13 you were on this jury you wouldn't be worried
14 about your job, your boss or doctor, you know,
15 without having somebody there, that your concerns
16 would be more directed to that rather than
17 listening to the evidence and the testimony.

18 A Well, you know, he's had to cope with this
19 before, I'm sure.

20 Q Yes, we all agree jury service can be a
21 hardship, but we live with it.

22 (4022)

23 Tape: (C-3584)

24 (0003)

25 Q You came to Alaska 27 years ago?

1 A 1962, yes, that would be 27 years ago I've
2 been here.

3 Q And you've lived here ever since, you haven't
4 gone anywhere for extended periods of time and
5 lived elsewhere?

6 A I go to Ireland, you know, in the summer or
7 whenever.

8 Q To visit...

9 A My mother, yes.

10 Q Your family is still living there?

11 A Yeah.

12 Q What part do they live?

13 A Kork (ph).

14 Q Were they ever involved in fishing or anything
15 over there in Cork, your family?

16 A I think my father used to poach salmon.

17 Q Didn't they all?

18 A I remember hearing poaching, and I didn't
19 understand it when I was a child. Of course I do
20 now.

21 Q Now you know it doesn't mean cooking on the
22 stove. You also indicated that you, as everyone
23 in the state, unless you're obviously living on a
24 mountaintop somewhere, have heard about this
25 case.

1 A Yes.

2 Q You expressed some concern about what
3 happened, but at the same time said that from
4 what you've heard, you have not attempted to
5 assess any blame or fault on anybody.

6 A Well, I -- you know, I wouldn't say I didn't
7 assess any blame or anything. You know, when you
8 read the -- when it happened and you heard the
9 story and, you know, all that was written about
10 how it happened and everything, I think it's only
11 normal for you to feel, oh, my God, you know,
12 what was the man thinking about.

13 Q When you say "man" and what you heard, you are
14 referring to Captain Hazelwood?

15 A Yes, sir.

16 Q Okay.

17 A And, you know, little chit-chat like that is
18 normal, why wasn't the captain on the bridge and
19 all this kind of thing, you know. I did all
20 that, I went through all that.

21 Q When you went through it, you mean you
22 discussed it with people...

23 A Yeah.

24 Q In your own mind you thought...

25 A No, no, I -- you know, it was talk on

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everyone's lips for months, you know.

Q And as a result of that did you come to any conclusions or reach any opinions as to whether you thought he was at fault?

A No, I didn't. And I think the reason why is that I'm not the sort of person that puts blame on somebody, and I would just as soon, you know, scoop it all up and put it under the mat. And as far as cleaning up the environment, I always thought, well, nature would take care of that, and I've wondered by everybody was getting to head-up about it. I know it was a lot of oil, but as far as blaming -- blaming Captain Hazelwood for doing what the paper said and all that, I don't know. I really couldn't put that burden on myself to say that he -- what he did was wrong, if indeed he did do that.

Q Okay. Let me take you one step further.

A I don't know if I'm making any sense to you.

Q You are, ma'am, and I think we all appreciate your candor and your sincerity. I think it's very obvious. Right now you're saying you are neutral. You went through a period of wondering and thinking about it but you reached a conclusion you can't or won't -- would not assess

1 any fault. And is that still true today?

2 A It is.

3 Q In other words, you read a lot about it and
4 you heard a lot about it, you've agonized about
5 it but you can say, well, at this point, I am
6 still neutral, I can still give him the
7 presumption of innocence in spite of everything
8 you've heard?

9 A Yes. Because...

10 Q Now,...

11 A I wanted to say that I see how the American
12 system works and that man or woman here in this
13 country is innocent until he's proven guilty, and
14 I think that's beautiful, you know. Not too many
15 countries enjoy that type of justice.

16 Q So you think that's very important and you
17 would abide by that?

18 A I would.

19 Q At the same time, ma'am, we go to the next
20 step, and even though you can express to us that
21 in your mind Captain Hazelwood is presumed
22 innocent, the state is saying he was to blame,
23 and they have criminal charges against him. Can
24 you sit here now and listen to the evidence and
25 still find a -- reach a conclusion one way or the

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other in your frame of mind?

A But I thought that the judge told us that we were to assume that Captain Hazelwood was innocent until he was proven guilty.

Q I didn't make myself very clear, and I apologize. The state has charged him, he goes with that presumption which carries throughout the trial, he's always presumed innocent unless and until overcome by evidence to the contrary that would convince the jury unanimously that he was guilty beyond a reasonable doubt.

So, the question is, can you do that, considering your present frame of mind? If the evidence in the trial supports that instruction the Judge will give you and you find that beyond a reasonable doubt, yes; he did these things, then could you reach a verdict of guilty?

(Pause)

THE COURT: Do you understand the question?

A I think -- I think it's getting all muddy.

THE COURT: I think it is too. Mr. Madson,...

MR. MADSON: Well, it's afternoon and we do tend to get a little muddy, too.

THE COURT: ...let's clear up the water a little bit.

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MR. MADSON: What's that?

THE COURT: Let's clear up the water a little bit, this is all muddy.

Q (Ms. Brust by Mr. Madson) Let's start with this. You've indicated you've come in here with a clean slate. I mean, Captain Hazelwood does. He's not guilty in your mind, he's presumed innocent. Do you agree with that?

A Well, I thought that I was to assume that the man was innocent.

Q Right.

A I was told that by His Honor here, and according to the American justice system, that's how he is to be treated. He is innocent at the moment.

Q That's right. Okay, we've got that straight.

A Yeah.

Q He's innocent as he sits here right now.

A Right.

Q But you've never sat through an entire trial before, right? So maybe this is where it gets a little bit confusing. The trial then will have people come in here that the state says will sit at the witness stand and they will testify and they will try to convince you that their

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testimony will show you beyond a reasonable doubt that he is guilty of these charges.

Do you follow me so far?

A So far I'm with you.

Q The Judge will also instruct you and says you can find him guilty or not guilty, based on the evidence you've heard, and if you find him guilty, the proof must be beyond this reasonable doubt. And my question to you is do you feel, in your frame of mind, that you could, in fact, find him guilty after you've heard all the evidence from witnesses in the case if it convinces you in accordance with what the Judge tells you, the law?

A I'm not sure that I'm understanding you, but I would have to wait until the evidence was...

Q Right.

A ...was presented to me.

Q I'm not saying what you should do right now.

A And then I hope that I would be able to make that decision.

Q My question...

THE COURT: Mr. Madson, excuse me. You have to go on. I think that...

MR. MADSON: I think one more question is

1 going to do this, Your Honor.

2 Q Really, ma'am, in other words, your mind is
3 made up but you're not sitting here telling us
4 now that under no circumstances could you not
5 find him guilty or not guilty?

6 A Oh, I wouldn't say that at all, no.

7 Q It all depends...

8 A It would depend, wouldn't it, yes. I'm sorry
9 I'm...

10 Q No, I'm sorry I didn't make myself clear
11 enough. The other question I wanted to touch on,
12 somewhat briefly is, you indicated that you
13 consider yourself a spiritual person and belong
14 to a prayer movement, something of this nature,
15 and I don't mean to pry and I certainly don't
16 mean to infringe on your personal feelings, but
17 do you feel that in any respect your strong
18 religious beliefs could interfere in the
19 slightest in your ability to serve as a juror?

20 A I think it would help me considerably.

21 Q How would that be?

22 A Because I believe in fairness and in love and
23 in forgiveness and in justice.

24 Q And you feel that this could somehow make you
25 a better juror?

1 A I think it has made me already a better
2 person, my belief and faith in God.

3 MR. MADSON: Thank you, ma'am. I'll pass for
4 cause.

5 THE COURT: Thank you, Ms. Brust. We won't
6 need your presence back here until Friday; Friday at
7 8:30 a.m. in the jury assembly room. Do you remember
8 the room you came to today initially?

9 A Yes.

10 THE COURT: Okay. Would you be there at 8:30
11 on Friday morning?

12 A Yes.

13 THE COURT: Do you have any personal
14 belongings next door?

15 A No, sir.

16 THE COURT: Okay. Then you are free to go out
17 the double doors and we'll see you in the jury assembly
18 room Friday morning at 8:30.

19 A Thank you, Your Honor.

20 THE COURT: Thank you. I think we'll take
21 about a 10-minute break and come back and go for about
22 another hour.

23 THE CLERK: Please rise. This court stands in
24 recess, subject to call.

25 (Off record - 2:56 p.m.)

1 (On record - 3:19 p.m.)

2 THE COURT: You may be seated. Ready for the
3 next juror? Your co-counsel is not here. Do you need
4 him? Are you going to be...

5 MR. CHALOS: He should be here any minute,
6 Your Honor. We can proceed.

7 THE COURT: I'd like to get two more under our
8 belt and then we'll recess for the day.

9 Good afternoon, Mr. Rousey. Have a seat in
10 the front row, if you would, please. And can you reach
11 that microphone? Just pull it out of the bracket and
12 address your responses into the mike and start with the
13 first four, please.

14 A Yes. My name is James Edward Rousey, Senior.
15 I am a member of the United States Post Office.
16 I am a letter carrier. I see no reasons why I
17 should not serve on the jury and I know none of
18 the mentioned.

19 THE COURT: Did you go over that witness list
20 and verify that?

21 A I did.

22 THE COURT: Thank you, sir. Mr. Cole.

23 MR. COLE: Thank you, Your Honor.

24 VOIR DIRE EXAMINATION OF JAMES EDWARD ROUSEY, SR.

25 BY MR. COLE:

1 Q Good afternoon, Mr. -- is it Rossy (ph)?
2 A Rousey.
3 Q Rousey, excuse me.
4 A That's all right.
5 Q I noticed from your questionnaire that you are
6 a member of the Prospectors Club?
7 A Yes, I wasn't quite sure whether that was one
8 of the ecological membership clubs or not. It's
9 a group of senior citizens and so forth that go
10 on trips, hiking, fishing trips and so forth.
11 Q How long have you been a member of that club?
12 A Approximately three years.
13 Q And is it mostly outdoor activities that you
14 become involved in?
15 A Not necessarily. Well, basically, yes. I
16 would have to say yes to that because it is. I
17 like to hike.
18 Q And do you hike around -- is it always around
19 the Anchorage area or do you go elsewhere?
20 A Don't go too far. It's been -- been in this
21 general area, yes.
22 Q Where did you live before you came to Alaska?
23 A My home is Bullneck (ph), Illinois. I lived
24 there approximately four years before I came to
25 Alaska.

1 Q And you came up here as a transfer with the
2 Coast Guard?
3 A Yes, I did.
4 Q How long have you worked for the post office
5 in total?
6 A I just started my eighth year.
7 Q It looks like you put in about 16 years in the
8 military?
9 A Twenty-six, sir.
10 Q Twenty-six, I'm sorry. Wow! What rank did
11 you attain in the military?
12 A I retained a master sergeant, E-8.
13 Q And were you involved in any particular area?
14 A I was in a number of areas, but generally my
15 -- the mainstay of my career was in
16 administration.
17 Q Were you involved in writing evaluations?
18 A Yes, a number.
19 Q Of people's works and...
20 A Yes, as a supervisor, we're all responsible
21 for that.
22 Q So you were a supervisor during that period?
23 A Yes. Not the whole period, just the senior
24 NCO positions.
25 Q You listed that you have heard about this case

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on the radio and in the newspapers and television. Is that correct?

A Yes, that is.

Q Have you formed any opinions about the respective roles of the parties with regards to the cause of the Exxon Valdez going aground. When I say parties, I mean it broadly; the crew members, the Department of Environmental Conservation, the Coast Guard, Alyeska, Exxon.

A Not really, because to be able to do that I would have to know what really took place.

Q Do you feel comfortable in the fact that you will be asked in this case to set aside anything that you've heard outside the courtroom? And if asked to deliberate, you'll be asked to base your decision on the witness' testimony and the evidence that's admitted and your own common sense and good judgment.

A Yes, I think -- I'm sure I can do that.

Q Does that seem like a fair system to you?

A It is, because, for simply, an individual is innocent until proven guilty.

Q I noticed that you indicated that you don't drink. Is that for medical reasons or personal reasons?

1 A That's basically personal reasons. I had a
2 brother that was an alcoholic and I learned from
3 his mistakes.

4 Q Your job now, are you permitted at all to
5 drink while you're on duty?

6 A Not alcoholic beverages, no.

7 Q And have you ever had alcohol at lunch?

8 A No. Well, I cannot say never, but none that I
9 can remember.

10 Q Can you tell me what you do -- is there
11 anything else that you do in your free time, like
12 read or watch television or go to movies?

13 A Well, I do go to movies. My son likes to go
14 to a movie every once in a while. I watch
15 television, I go cross country skiing, a little
16 bit of downhill skiing, take walks.

17 Q Are there any particular television programs
18 that you watch?

19 A I love to watch game shows.

20 Q You've never served on a jury. Is that
21 correct?

22 A I never have, no.

23 Q And you go to movies. Can you tell me the
24 last good movie you've been to?

25 A There aren't many good movies anymore that I

1 can really classify as good. I go to them
2 basically because my son likes to and I like
3 companionship with him.

4 Q When you were raising your kids did you ever
5 come home and find a situation where you had one
6 of two -- several of your kids were arguing or
7 something had happened and you had to come back
8 and reconstruct what had gone on while you were
9 away? Like something was broken or there had
10 been a fight while you were away, things like
11 that.

12 A Not that I can really recall.

13 Q Okay. When you were supervising people in the
14 military did you ever come across the situation
15 where you had to judge the credibility of a
16 couple people that were telling you different
17 stories about the same incident?

18 A Yes, I have. On numerous occasions.

19 Q And would it be fair to say that you, in
20 evaluating and coming to a determination of which
21 story was more credible, you evaluated the story
22 and watched the mannerisms of the people that
23 were telling you that and relied on your own
24 common sense and good judgment?

25 A Yes. A little bit of history of my military

1 is that I was in the Inspector General's Office,
2 and as a senior NCO I evaluated a lot of soldier
3 complaints. And I officiated for both sides of
4 the comment that they had; the soldier is wrong,
5 the soldier is wrong and I showed him where he is
6 wrong. If the NCO was wrong, I did likewise.

7 Q Would you be willing to use those same skills
8 that you used while you were in the military,
9 sitting in a jury and evaluating the witnesses
10 that are presented before you?

11 A Yes, I would.

12 Q Have you ever had a close friend or relative
13 that was charged with a crime or...

14 A Well, I'm sure -- I've had brothers that have
15 been in trouble with the authorities. Nothing
16 exciting.

17 Q Anything that would affect your ability to be
18 fair and impartial here today?

19 A No.

20 Q Have you ever looked through a radar screen?

21 A I have looked in one, but I'd never know how
22 to read it.

23 Q You understand, of course, the importance of
24 this case, both to Captain Hazelwood and the
25 state of Alaska?

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A I do.

Q If you are chosen as a juror, would you be willing to give both sides a fair trial in this case?

A Most definitely.

Q And would you be willing to reach a fair and just verdict based upon the evidence that you hear, presented by the witnesses, the evidence that's admitted and your own common sense and good judgment?

A I would.

Q Does that seem like a fair system to you?

A Very fair.

MR. COLE: Your Honor, I have no further questions and would pass for cause. Thank you.

VOIR DIRE EXAMINATION OF JAMES EDWARD ROUSEY, SR.

BY MR. CHALOS:

Q Good afternoon, Mr. Rousey.

A Good afternoon.

Q I'd like to get into the area of what you heard and saw in respect to the spill, from the moment it occurred, up to today. What newspapers do you read normally?

A We take the Times, Anchorage Times.

Q Do you read the Daily News?

1 A Periodically, not too often.

2 Q Do you read any magazines?

3 A Very few.

4 Q Have you followed the spill and the events
5 surrounding the spill on television?

6 A Only when it should cross the screen while I'm
7 at it, doing it. If it wasn't interesting to me,
8 I'd turn it off and look at something else.

9 Q With respect to the information gotten from
10 the newspapers in respect to the spill, had that
11 come from the Anchorage Times?

12 A No, it came from all three medias, the radio,
13 the television and the Anchorage Times.

14 Q What stations do you listen to on the radio?

15 A Basically I listen to KASH, 105.

16 Q Have you formed any opinions with respect to
17 fault or respective -- let me start again. Have
18 you formed any opinions with respect to the spill
19 on the basis of what you read and heard?

20 A I formed a -- somewhat of an opinion, but not
21 an opinion that I can hold with because it hasn't
22 been proven to me.

23 Q All right. And then we hear the opinion that
24 you have on the basis of what you read and heard.

25 A Well, the only -- only thing I can say is that

1 what I read and heard is the ship went aground,
2 an attempt was made to bring it off the reef and
3 that the oil spilled. I don't know if the cause
4 of the ship coming off the reef or trying to be
5 taken off the reef caused the oil to spill or
6 what.

7 Q Have you formed any opinions as to
8 Captain Hazelwood's role with respect to the
9 spill?

10 A No, not really.

11 Q Have you read accounts with respect to the
12 possibility that Captain Hazelwood was drinking
13 prior to the spill?

14 A I haven't read, but I have heard on TV,...

15 Q Have you formed...

16 A ...the possibility.

17 Q I'm sorry.

18 A ...the possibility that he was drinking.

19 Q Have you formed any opinions with respect to
20 that?

21 A The only thing I had really heard was that he
22 was off-duty at the time and had been drinking,
23 that they believe that he had been drinking, and
24 based on that, if he's off-duty and that there,
25 then what a man does -- of course being the

1 leader of the ship and that there, he has more
2 hats to wear than just the one. But I believe he
3 has the right to do certain things while
4 off-duty.

5 Q You mentioned that you don't drink for
6 personal reasons, the fact that you have a
7 brother who was an alcoholic?

8 A Yes. Well, from the time I was a child he was
9 an alcoholic and I seen how it affected him, and
10 I had drank a couple times and I seen how it
11 started affecting me. So I said this is not for
12 me, and I did not -- I cut it off there.

13 Q Do you disapprove of people drinking?

14 A No, I do not.

15 Q Do you have any strong feelings with respect
16 to alcoholism?

17 A I have a strong feeling that it is a disease
18 that needs to be cured. Other than that, it's
19 like other diseases.

20 Q Do you harbor any animosity to someone who
21 might be afflicted with alcoholism?

22 A No, not personally.

23 Q Do you do any fishing at all in Prince William
24 Sound?

25 A Not in the Sound. Normally in the streams.

1 Q Have you ever been to Prince William Sound?

2 A I have been across from Valdez to Seward and

3 to Homer on the ferry.

4 Q Have you expressed any opinion with respect to

5 the spill to anyone?

6 A Oh, I probably have to my wife. My wife and I

7 have probably talked about it.

8 Q And I take it your wife has expressed her

9 opinion to you?

10 A Well, yes. It would be mutual in the family.

11 Q Well, what type of opinion have you expressed

12 to your wife?

13 A Well, that the -- it happened, there was a lot

14 of damage and it could have happened through

15 natural causes, it could have happened through

16 neglect.

17 Q Have you expressed an opinion that this spill

18 might have been an accident?

19 A I cannot honestly say that I have actually

20 said -- expressed that, no.

21 Q Do you or any of your relatives or close

22 friends own any interests in commercial fishing

23 licenses?

24 A No, we do not.

25 Q I take it that you are not a plaintiff in any

1 civil lawsuit arising out of the spill?

2 A No, I'm not.

3 Q Do you know anybody that's a plaintiff in the
4 civil lawsuits arising out of the spill?

5 A None that have mentioned anything to me about
6 it.

7 Q Do you have any friends or relatives in the
8 Coast Guard?

9 A No, I do not.

10 Q Do you believe that a police officer or state
11 investigator could make a mistake in his job like
12 any other person?

13 A I do feel this is a human trait.

14 Q Would you tend to give more weight or
15 importance to the testimony of let's say a Coast
16 Guard personnel or police officer merely because
17 they are law enforcement people?

18 A Not necessarily. It would have to -- if they
19 were technically advised in that area that they
20 were advising them, yes. But if not, not
21 necessarily.

22 Q Let me just ask you a few more questions with
23 respect to your stint in the Inspector General's
24 Office.

25 A Yes.

1 Q Did you act as a judge in those...

2 A No.

3 Q ...instances? Mediator?

4 A Well, basically a mediator. What I did, I

5 heard the complaint, I evaluated the complaint, I

6 got both sides together and mediated, as you

7 would say. I made recommendations to the

8 Inspector General.

9 Q I see. These are disputes between the

10 commissioned officers and non-commissioned

11 officer?

12 A No. These are normally -- well, it could be.

13 But it's normally from the lowest individual to

14 the highest and their dependents.

15 Q In those instances were you in the position to

16 hear testimony from people or their side of the

17 story, if you will?

18 A Well, yes, in most of those instances...

19 Q Did they submit evidence to you, written

20 evidence or other types of evidence?

21 A They wrote down a complaint, I'll read the

22 complaint and I'll look into the complaint.

23 Q How many such disputes did you mediate, would

24 you say?

25 A Well, I'd say in the hundreds, over the eight

1 years I was doing it. It could be in the
2 thousands. I never -- never really knew how many
3 that I had listened to or talked to.

4 Q Did you ever determine how many times you
5 ruled for the officers as opposed to how many
6 times you ruled for the individuals, the lower...

7 A As I sit...

8 Q ...echelon people?

9 A As I think I said before, I ruled -- I did not
10 rule for anybody; I mediated between them. And I
11 would make the recommendations and then my
12 superior officers would make the ruling.

13 Q Do you consider yourself a fair person?

14 A I do.

15 Q When you were in the Army did any of your
16 evaluations indicate that you were a fair person
17 who listened to -- at least in the Inspector
18 General's role or job that you had, that you
19 listened to the evidence and rendered fair
20 decisions or fair analyses of what was presented?

21 A Yes. On a number of occasions the individuals
22 I had disagreed with actually complimented me on
23 the way I handled their part of the case. The
24 Inspector General himself has complimented me on
25 the way I handled the situations. I think I did

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fine.

Q One last question. You mentioned that you had some brothers in trouble with authorities. Did it have anything to do with alcohol?

A No.

Q In those...

A Well, let me backup. The one brother that was an alcoholic, yes, he had some traffic problems, violations and that. That had to do with the drunkenness.

Q I don't mean to pry, but I have to ask these questions.

A I understand.

Q What was the nature of the trouble that your other brothers got into?

A Oh, I think a couple of them broke windows. One of them, I think, was for vandalism. And that's basically it.

Q All right. Did you feel that your brothers were treated fairly by the authorities?

A Yes, I think so.

MR. CHALOS: I have no further questions, Your Honor. And I pass for cause.

THE COURT: Thank you. Mr. Rausey, I think we're going to let you go home now, but I'll need you

1 back in the jury assembly room this Friday at 8:30 a.m.
2 Do you know where the jury assembly room -- do you
3 remember where the jury assembly room is?

4 A Down there?

5 THE COURT: Okay, that's where you filled out
6 the questionnaire?

7 A Right.

8 THE COURT: Okay. Can you be back there
9 Friday at 8:30?

10 A Yes, I can.

11 THE COURT: Okay. It's important that you be
12 there at 8:30, and I'll see you then.

13 A Fine.

14 THE COURT: Thank you.

15 A Thank you.

16 THE COURT: And we'll get to the next juror.
17 We'll wind up the day with this juror.

18 (Pause)

19 Mr. Fults?

20 A Yes, sir.

21 THE COURT: Come on in and have a seat in the
22 front row. You'll see a microphone on the ledge there.
23 Take it off the clip and have a seat. You are the last
24 one for the day, so if you'd answer those first four
25 questions, we'll get a start on it.

1 A Okay. My name is Monty Fults. Organizations?

2 THE COURT: Elks Club, a travel organization,
3 social organizations,...

4 A None.

5 THE COURT: ...NRA, things of that nature.

6 A Oh, NRA.

7 THE COURT: Anything else like that, the
8 Sierra Club, things of that nature?

9 A No. No, sir. The only reason I have that, I
10 -- that I shouldn't serve on the jury is I've had
11 real bad financial problems. I don't get pay or
12 -- whatsoever and I'm afraid if this lasted very
13 long, I'd be in pretty bad shape.

14 THE COURT: You are working for
15 Lester Phillips Incorporated?

16 A On Elmendorf. It's a private contractor out
17 of South Carolina.

18 THE COURT: Are you presently working for them
19 at this time?

20 A Yes, sir. We've got a five-year contract out
21 there.

22 THE COURT: How long have you been working for
23 them?

24 A Three years and -- three years and three
25 months.

1 THE COURT: Are you working under a union
2 contract?

3 A No, sir.

4 THE COURT: Have you ever served on a jury
5 since you've worked for them?

6 A No.

7 THE COURT: Have you determined from your
8 supervisor whether you would or would not get
9 compensation while you are on jury duty?

10 A I asked. The first time -- I believe this is
11 the third time I come down for jury duty, and the
12 first time that I was supposed to come down, I
13 asked them and he said that the company wouldn't
14 make up any pay at all for it. So...

15 THE COURT: What are your days at work, Monday
16 through Friday or...

17 Q Saturday. I work six days a week.

18 THE COURT: Okay. What are your hours?

19 A I average probably 35 hours a week. We start
20 at 7:00 in the morning and get off anytime from
21 12:00 to 2:00.

22 THE COURT: Are you buying a home?

23 A No, sir, we're renting.

24 THE COURT: Maybe you can describe the
25 financial hardship you would suffer if you were to

1 serve on the jury. First of all, would you lose your
2 job -- is there any chance you'd lose your job?
3 A Well, I -- I don't quite understand why, but
4 he had mentioned that if I was gone for anywhere,
5 four to five weeks, that he'd have to replace me.
6 THE COURT: So, ...
7 A Well, it's just a small operation, and there's
8 only six of us there. And he's got three trucks,
9 three crews, and without a driver, he's only got
10 two crews running. So we have to have a spare
11 truck in case one breaks down.
12 THE COURT: How about if we could get you on a
13 shorter jury, say a one to five-day jury, would you be
14 able to do that then?
15 A Well, it would be possible, I guess. I've
16 already been two days. I lose about \$100.00 a
17 day, you know, if I don't work.
18 THE COURT: I understand that. But everybody
19 has some degree of inconvenience, some greater than
20 others.
21 A I understand that.
22 THE COURT: I'm going to let you go because of
23 the hardship you've related to. I am going to have you
24 called back and see if we can get you on a short-term
25 jury. I'd like to see you get an opportunity to serve

1 on a jury. And you can tell the next judge your
2 financial hardship. I think you'd suffer a financial
3 hardship in an extended jury trial. It just might be.
4 But it doesn't sound like you'd suffer too badly for a
5 short-term trial.

6 A All right.

7 THE COURT: I'll excuse you for this one.
8 Take your jury card from the clerk, take it downstairs
9 to the jury service clerk and give her the information.
10 And bring all the jurors in.

11 A Thank you.

12 THE COURT: You're welcome.

13 (Pause)

14 (All jury panel present)

15 THE COURT: Thank you, ladies and gentlemen.
16 That concludes the day's selection process. I'll need
17 all of you back tomorrow in the jury assembly room. We
18 are not going as quickly as I expected, but for good
19 reason. We'll need all of you to come back tomorrow at
20 8:30 to the jury selection room.

21 The second group of 30 people, I have notified
22 40 to 60 that they need not come in tomorrow, but
23 they'll come in on Thursday. But for those of you who
24 were waiting next door, I'll need you in tomorrow.
25 We'll get to you tomorrow, I'm pretty sure.

1 You might bring a book or something like that
2 to keep you occupied next door. I apologize for
3 keeping you cooped up in there. We'll take a lunch
4 tomorrow like we did today, and if you need to take
5 breaks, you can use the restroom.

6 I was advised by one of the jurors,
7 prospective jurors, that somebody approached her in the
8 hallway with a leaflet, and I have no idea what was in
9 that leaflet because I understand that she rebuffed
10 that person and didn't read it herself. I have no idea
11 what it was, but I appreciate you telling Kelly, the
12 Clerk, and also the two security officials about that.
13 I understand you didn't read it. When your turn comes
14 up to answer some questions, we'll inquire further on
15 that.

16 In the meantime, continue that same thing. If
17 somebody approaches you to discuss this case with you
18 or tries to hand you something about anything
19 concerning this case, reject it and report it to the
20 security official, Kelly or myself. In the meantime,
21 don't discuss this matter. Avoid the media attention
22 given to it. If you're exposed to it, just disregard
23 it.

24 We'll call you back in tomorrow for further
25 jury selection process. But report to the jury

1 assembly room tomorrow morning at 8:30. That's where
2 you met today and where you met yesterday to fill out
3 the questionnaire. Mr. Purden will come down and bring
4 you up as a body together with the first 10 of that
5 second group we called out.

6 I'll see you tomorrow, and be safe.

7 Are there any other prospective jurors in the
8 courtroom? All right. Nobody has raised their hand.

9 It looks to me like we're not going to get
10 through with the next 30, so I've given the clerk to
11 try to notify them by telephone not to come in. If
12 they do come in tomorrow, they'll be excused and
13 required to come in on Thursday, unless they hear
14 differently from us. It looks to me like we're not
15 going to get to the third group on Thursday, and I
16 might have to do the same thing tomorrow, but things
17 may speed up. And I want to make sure we have jurors
18 available.

19 Counsel can be in court tomorrow at 8:30. In
20 the event you have anything you need to take up, then
21 we'll have time to do it. We'll get started on the
22 jury selection at 9:00.

23 I have no idea what that matter was. The
24 juror who reported to our security official was
25 Peggy Steward. She's number 17, and when she comes up,

1 we'll inquire whether -- I was told by security
2 officials that she said that she didn't receive
3 anything or read anything and told the person not to
4 bother her. I don't know what it was.

5 I'm going to call counsel's attention to
6 DR7-107. That pertains to any public dissemination of
7 information concerning this trial. I saw one of the
8 attorneys in an interview on TV. And I would caution
9 any attorney about interview and what they say.
10 DR7-107 explains what the rules are.

11 Is there anything else I can do for counsel
12 before we resume -- recess, I mean?

13 MR. MADSON: Your Honor, if we don't have any
14 matters to take up before 9:00 o'clock, does that mean
15 we start at 9:00? If we want to be on the safe side we
16 should be here at 8:30?

17 THE COURT: Well, I don't want to tell you --
18 it seems like at 4:30 we don't have matters to take up,
19 but all of a sudden at 8:30 we discover some matters,
20 and I've found that if we want to move it along, we
21 better be here somewhere around 8:30.

22 Thursday is another matter. Thursday morning
23 we're going to start at 8:00 and we're going to take up
24 the motion for protective order and at that time I
25 think we're going to have the Coast Guard

1 representative here to take up the -- his motion to
2 quash subpoena, and we'll hear argument at that time
3 before we go into jury selection.

4 Anything further?

5 MR. COLE: No, Your Honor.

6 MR. MADSON: No, Your Honor.

7 THE COURT: Okay. Thank you. We stand in
8 recess.

9 THE CLERK: Please rise. This court stands in
10 recess.

11 (1826)

12 (Off record - 3:53 p.m.)

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