

SPEC COLL  
GC  
1552  
.P75  
H39  
1990  
v.13

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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

TRIAL BY JURY, (EXCERPT)  
FEBRUARY 1, 1990  
PAGES 2020 THROUGH 2299

VOLUME 13

H & M Court Reporting  
510 "L" Street, Suite 350  
Anchorage, Alaska 99501  
(907) 274-5661

**ARLIS**  
Alaska Resources  
Library & Information Services  
Anchorage Alaska

BEFORE THE HONORABLE KARL JOHNSTONE  
Superior Court Judge

Anchorage, Alaska  
February 1, 1990

APPEARANCES:

For Plaintiff:

DISTRICT ATTORNEY'S OFFICE  
BRENT COLE, ESQ.  
MARY ANNE HENRY, ESQ.  
1031 West 4th Avenue, Suite 520  
Anchorage, AK 99501

For Defendant:

CHALOS ENGLISH & BROWN  
MICHAEL CHALOS, ESQ.  
300 East 42nd Street, Third Floor  
New York City, New York 10017

DICK L. MADSON, ESQ.  
712 8th Avenue  
Fairbanks, AK 99701

3 3755 000 23385 8

H & M Court Reporting  
510 "L" Street, Suite 350  
Anchorage, Alaska 99501  
(907) 274-5661

**ARLIS**  
Alaska Resources  
Library & Information Services  
Anchorage Alaska

1 PROCEEDINGS

2 FEBRUARY 1, 1990

3 (Tape: C-3588)

4 (0596)

5 THE COURT: You may be seated. We have two  
6 pending matters that we need to address before we  
7 resume jury selection. The first is the defense motion  
8 for a protective order. And related to that is a U.S.  
9 Coast Guard motion to quash subpoena duces tecum. Is a  
10 representative of the Coast Guard here?

11 MR. UNDERHILL: Yes, Your Honor, Mike  
12 Underhill, San Francisco Department of Justice,  
13 appearing specially on behalf of the United States and  
14 the Coast Guard Commander. R. Michael Underhill.

15 THE COURT: Thank you, Mr. Underhill. Welcome  
16 to Alaska.

17 MR. UNDERHILL: Thank you.

18 THE COURT: Let's take up the motion for  
19 protective order first of all.

20 MR. UNDERHILL: Yes, Your Honor, Mr. Russo is  
21 going to be arguing this motion.

22 MR. RUSSO: Your Honor, good morning. Your  
23 Honor, may I have a request, please? I think it would  
24 be more appropriate if we argued the motion to quash  
25 first, insofar as the protective order, at least one of

1 the basic, most important issues in the protective  
2 order deals with the refusal of the Coast Guard to give  
3 a certain material. How we argue that may be  
4 contingent upon the court's ruling on the motion to  
5 quash.

6 THE COURT: Well, it makes no difference in  
7 which order we take it. I'm going to take them both  
8 under advisement anyway. I'm not going to give you an  
9 answer today. The materials that have just recently  
10 been filed raise some issues I need to address, and I  
11 haven't had time to get into them, so it makes no  
12 difference to me. I just suggest we get going on the  
13 motions, flesh it all out now, and I'll come up with a  
14 decision probably by tomorrow or Monday. So why don't  
15 you go ahead, or you don't want to go first, and you  
16 want the Coast Guard to ...

17 MR. UNDERHILL: I would like to do the motion  
18 to quash first, Judge.

19 THE COURT: Okay, that's fine. Mr. Underhill,  
20 you're on.

21 MR. UNDERHILL: Thank you, Your Honor. Your  
22 Honor, I don't have terribly much to add. We filed  
23 extensive papers at random, and I think that sets forth  
24 the legal and factual issues fairly well. What I would  
25 like to add, however, is that listening to some of the

1 reports and press reports, it sounds like the  
2 government has simply thumbed its nose at Mr.  
3 Hazelwood's counsel and subpoena.

4 I'd like to clarify that. That is not at all  
5 true. We have in fact given the defense approximately  
6 somewhat over a thousand documents as of, I think,  
7 earlier this week. Mr. Nelson, on behalf of the Coast  
8 Guard, made arrangements to provide those documents.  
9 That consists of roughly half of the total documents  
10 that we think would be responsive to the subpoena.  
11 Furthermore, as to the issue of the tape recordings, we  
12 believe, and I was speaking with Mr. Russo just a  
13 minute ago, we think we've resolved that to the  
14 satisfaction of the parties.

15 The government's concern was that anything on  
16 the tape that would be subject to any applicable  
17 privilege not be disclosed, and we've reached an accord  
18 whereby the tapes will be transcribed by a court  
19 reporter that will be considered an agent of the United  
20 States for purposes of non-waiver of any privilege. We  
21 will read the transcript, we being the government. If  
22 we feel there is anything privileged, we will withhold  
23 that, provide to the defense anything not privileged,  
24 and then furthermore, I believe, subject to screening  
25 of any privileged materials, and I frankly don't think

1 there's going to be anything privileged on the portions  
2 of the tape they want, they want to have an expert  
3 listen to the tape, to the audio itself, and I think we  
4 can accommodate on that as well.

5 Further to clarify, Mr. Linton -- he may wish  
6 to argue this himself, but I think there is -- I don't  
7 want to misspeak. Mr. Linton has made a list of  
8 documents that were made available by the Coast Guard  
9 to the State of Alaska, and in turn, those documents  
10 were made available to the defense earlier on in this  
11 case, pursuant, I suppose, to criminal discovery rules  
12 of this court. I just had a chance to look at the  
13 list, but it goes on to -- well, it's well over a  
14 hundred documents, which frankly are just about  
15 everything, I think, that remains to be disputed that  
16 we haven't provided pursuant to the subpoena. In other  
17 words, the things they say were not given them, they  
18 got.

19 And I am also informed that the Coast Guard  
20 informally has provided various other documents to Mr.  
21 Chalos, one of the defendant's other counsel, a long  
22 time ago, without any subpoena, just in order to  
23 cooperate as much as possible, and provide the defense  
24 as much as we felt we could possibly give them, and  
25 still maintain the sanctity of our privileges.

1 THE COURT: Is it my understanding that you  
2 have released documentation to the State of Alaska  
3 already that you are now claiming a privilege for?

4 MR. UNDERHILL: Pursuant to the subpoena -- I  
5 think it has to be clarified. Pursuant to the  
6 subpoena, we've got concerns that go well beyond this  
7 case. We think as a policy matter we cannot be  
8 compelled to disclose the documents pursuant to a State  
9 court subpoena. As a matter of trying to accommodate  
10 this court and the parties, as we do in other cases, we  
11 will, subject to withholding for privileged materials,  
12 generally make them voluntarily available, and that's  
13 what we have done. I think the basic legal issue here  
14 is preserving our right to claim the sovereign unity  
15 privilege in this and other cases.

16 THE COURT: To some extent, you've voluntarily  
17 given up many of the documents that are the subject of  
18 subpoena at this time.

19 MR. UNDERHILL: That's correct. Both directly  
20 to the defense, before this case, directly to the  
21 defense pursuant to the subpoena, voluntarily, I add,  
22 and through the State, who then made it also available  
23 to the defense. Those include witness interviews  
24 conducted by the Coast Guard ...

25 THE COURT: What don't they include? Let's

1 get to the matters that you haven't given to the State.

2 MR. UNDERHILL: Mr. Russo has made a list, and  
3 it's whittled down to this. I haven't actually gone  
4 through the subpoena, I just got these. Mr. Russo  
5 believes that the only categories in dispute presently  
6 are items 1, 2, 3, 8, 15, 18, 19, and 24, and 24 is  
7 actually a tape, and I think that we have a resolution  
8 of that, so if that's in fact the case, we have one,  
9 two, three, six, seven disputed categories.

10 THE COURT: Now, when you're listing the  
11 numbers, what are you referring to, what document are  
12 you referring to?

13 (0900)

14 MR. UNDERHILL: I'm listing the categories in  
15 the subpoena themselves, in other words, there are, I  
16 think, twenty-six categories, and those numbers  
17 correspond to the subpoena. And I think, just taking a  
18 quick look through Mr. Linton's list -- I'd really have  
19 to compare this, Your Honor, but I think that most of  
20 the things in items 1 and 2 are probably -- already  
21 have been provided to the defense through the State,  
22 and I'd actually just have to go -- and it appears, I  
23 think, category 8, if I'm not mistaken, pertained to  
24 blood alcohol tests. Looking at Mr. Linton's lists,  
25 the things that we have also have already been provided



1 to the defense through the State.

2 THE COURT: Let's take this up in the order in  
3 which you've listed them. Number 1 says all notes,  
4 summaries, reports, memoranda, and tape recordings of  
5 witness interviews conducted by Coast Guard  
6 investigators relating to the grounding on March 24th,  
7 1989.

8 MR. UNDERHILL: According to ...

9 THE COURT: Are you stating that you have  
10 provided all of that information to the State?

11 MR. UNDERHILL: I can't say all of it, Your  
12 Honor. I honestly cannot say. Taking a quick look  
13 through the list, I believe that we have probably  
14 provided them just about everything. The list includes  
15 interviews -- by the list I'm talking about Mr.  
16 Linton's list that he said has been provided to the  
17 defense -- I can't count them all, but it looks like  
18 there are 25, possibly even 30 interviews and summaries  
19 that have been provided already. I'd honestly have to  
20 look through this list and compare them, Your Honor.  
21 But it appears most of them have been provided.

22 THE COURT: It's the "most of them" that gives  
23 me concern. How can we determine whether all or less  
24 than all have been provided to the State?

25 MR. UNDERHILL: We could go ...

1 THE COURT: Because if they have, then there's  
2 no reason to deal with number 1 any more. If they  
3 haven't, then we might have to address it.

4 MR. UNDERHILL: I understand, I think that  
5 somewhere we have to have some type of a list or a file  
6 that has the names of people interviewed, and it would  
7 be simply a matter of checking the names on this list  
8 against those lists, and we'd be able to see whether  
9 all have been provided or not.

10 THE COURT: Okay, well, Mr. Linton is not  
11 actually participating in the jury selection process.  
12 He might be available to compare your list with what he  
13 had. Would you be able to do that?

14 MR. UNDERHILL: I could stay as long as  
15 necessary, Your Honor.

16 THE COURT: Okay, if that becomes necessary to  
17 require production of them, but I'm just trying to  
18 determine if he has everything you have. If he does,  
19 and he says he's given everything to the defendant,  
20 then that ends the defendant's question on number 1, in  
21 my opinion. How about number 2? That says all notes,  
22 summaries, reports, memoranda, and tape recordings of  
23 witness interviews conducted by Coast Guard  
24 investigators relating to Captain Joseph Hazelwood.

25 MR. UNDERHILL: I would -- it's a guess, but

1 it's a very educated guess, Your Honor, that this  
2 actually is subsumed in category number 1. I think  
3 we're probably talking about the same thing. And if  
4 you take -- relating to Captain Hazelwood, I presume  
5 that includes not only interviews of Captain Hazelwood,  
6 but interviews of others pertaining to any of his  
7 potential liabilities, so I would construe that as  
8 basically being the same as 1, and again I would be  
9 more than happy to make the same comparison. I don't  
10 know if we have made available tape recordings, and in  
11 fact I'm not sure whether we have tape recordings, but  
12 I'd be glad to check on that as well.

13 THE COURT: Okay, number 3, the same thing?

14 MR. UNDERHILL: I think that would partially  
15 be subsumed in category 1 again, although insofar as it  
16 -- and looking at this, it asks for reports and  
17 memoranda concerning possible violation of Coast Guard  
18 regs or statutes by crew members in respect to the  
19 grounding -- to me, I suspect we did not give the State  
20 all of that, because that very clearly in my opinion  
21 calls for attorney-client privilege and also work  
22 product, and we're not going to give that to anyone,  
23 and I think the law is fairly clear on that. To the  
24 extent that it's subsumed in category 1, I believe it's  
25 been provided, I'll be glad again to check and see if

1 that is in fact the case.

2 THE COURT: Okay, now, I think we're going to  
3 get down to the essence of this now. Number 8, the  
4 results of all blood and urine tests taken of crew  
5 members of the Exxon Valdez and Coast Guard Department  
6 of Transportation and Personnel in connection with the  
7 grounding of the Valdez, including chain of custody  
8 cards for samples submitted.

9 MR. UNDERHILL: I'm looking at Mr. Linton's  
10 list, and under 16, it has chain of custody samples,  
11 urine samples for one, two, three, four, five, six  
12 individuals, Weidman (ph.), Kagan, who I know is a  
13 vessel crew member, Captain Hazelwood, Third Mate  
14 Cousins, Maureen Jones, and Mr. Blandford, according to  
15 the State, that has been made available to them, and it  
16 has in turn been provided to the defense already. And  
17 I note the next category -- or, pardon me, two  
18 categories down, there's a Federal Express address form  
19 concerning blood samples, and Category 18 is Compuchem,  
20 C-o-m-p-u-c-h-e-m, Laboratories, blood/urine test  
21 reports for the same six individuals, so again those  
22 have been provided to the defense through the State.

23 THE COURT: All right. And then ...

24 MR. UNDERHILL: I think -- what I'm saying,  
25 Your Honor, I think that takes care of category 8. I

1 think.

2 THE COURT: Do you have knowledge of whether  
3 there were samples taken of any other crew members?

4 MR. UNDERHILL: I don't know, Your Honor. But  
5 again, I'd be glad to check.

6 THE COURT: And number 15, transcripts of  
7 telephone conversations regarding blood/urine testing  
8 of crew members of the Valdez and Coast Guard  
9 Department of Transportation personnel.

10 MR. UNDERHILL: To the extent that that would  
11 contain attorney/client privilege or work product, we  
12 would not provide it. As a practical matter, I don't  
13 believe we have any such transcripts anyway. I don't  
14 believe at least that we do, Your Honor.

15 THE COURT: Did the Coast Guard take blood  
16 alcohol through urine or blood samples of Coast Guard  
17 personnel?

18 MR. UNDERHILL: Took it of everyone concerned,  
19 yes, Your Honor.

20 THE COURT: Coast Guard personnel in the radar  
21 area?

22 MR. UNDERHILL: Yes. Yes.

23 THE COURT: Okay, did you release that to the  
24 State?

25 MR. UNDERHILL: I recognize Mr. Blandford's

1 name as being one of the persons released, yes.

2 THE COURT: Besides Blandford?

3 MR. UNDERHILL: I don't know who else, I think  
4 possibly Mr. Taylor. In any event, I do not believe we  
5 have transcripts on those yet.

6 THE COURT: How about number 18?

7 (1180)

8 MR. UNDERHILL: To the extent that would  
9 include the BA tests provided already discussed in  
10 Categories 16 and 18, I think that's been provided. To  
11 the extent it would constitute attorney/client  
12 privilege or work product, we would not make that  
13 available, and I suspect we did not make available to  
14 the State, nor would we make it available to the  
15 defense.

16 THE COURT: Well, when you take a statement  
17 from Taylor or Blandford, is it your opinion that's a  
18 work product?

19 MR. UNDERHILL: Yes.

20 THE COURT: And do you take that same position  
21 if you take a blood alcohol of Taylor or Blandford?

22 MR. UNDERHILL: Essentially, yes.

23 THE COURT: That that's work product?

24 MR. UNDERHILL: Yes.

25 THE COURT: All right.

1 MR. UNDERHILL: Again, I'm not even sure that

2 ...

3 THE COURT: And how about the personal records  
4 of Gordon Taylor and Bruce Blandford, did you submit  
5 them to the State? That would be number 19.

6 MR. UNDERHILL: I'm not -- I'll ask Mr.  
7 Linton. Do you know if we have ...

8 MR. LINTON: No, we do not.

9 MR. UNDERHILL: And as a matter of statute we  
10 would not, to either side, and that's pursuant to Mr.  
11 Blandford and Taylor's own Privacy Act rights.

12 THE COURT: And then number 24 is the last one  
13 you think there's a dispute on.

14 MR. UNDERHILL: That's correct, Your Honor.  
15 Let's also clarify, I think on that one we were  
16 discussing, on ...

17 THE COURT: Was number 24 submitted to the  
18 State?

19 MR. UNDERHILL: No. To my knowledge, no.  
20 Twenty-four would -- I should clarify. As I understand  
21 it, there's a short portion of the tape that has been  
22 transcribed, and to the extent that that exists, we  
23 have agreed to make that available to the defense, and  
24 I think we have. To the extent there are any notes,  
25 handwritten notes summarizing that, we do claim work

1 product on that, to the extent the rest of the tape  
2 exists, it has not been transcribed, but we've made  
3 available, or we are making available a means to  
4 resolve that, and I suspect that would -- as far as if  
5 there is any dispute about the handwritten notes that  
6 have been withheld, once they get a hold of the  
7 transcript, then I think that's rendered moot, they can  
8 make their own notes if they want.

9 THE COURT: Commissioner Linton, as to the  
10 numbers we've gone through, do you have reason to  
11 believe that you have less than all of the -- I know  
12 you're operating somewhat in a vacuum, but do you have  
13 any reason to believe you have less than all the items  
14 in number 1 and number 2?

15 MR. LINTON: Yes, sir, I do.

16 THE COURT: What don't you think you have?

17 MR. LINTON: I think there was an  
18 investigation with respect to -- by the Coast Guard  
19 with respect to whether Mr. Hazelwood was drinking in  
20 Valdez, which was independent of the investigation that  
21 the Alaska State Troopers ran. I wouldn't be surprised  
22 if we didn't duplicate witnesses in the course of  
23 planning that, but I did not get reports of such  
24 interviews by Coast Guard investigators, looking around  
25 Valdez to see if there were any witnesses who could



1 give testimony about Captain Hazelwood's drinking, and  
2 I believe there was such an investigator.

3 THE COURT: Anything else in number 1 or 2  
4 that you have reason to believe might be missing?

5 MR. LINTON: No, sir, those are the only  
6 things that I know of, but once again, it's a vacuum.  
7 Those are things I've heard about, and I suspect  
8 they're out there, but I have no reason to suspect  
9 there's anything more than that. But it could just as  
10 well exist, and I wouldn't know it.

11 THE COURT: All right, the two of you will  
12 have to get together and compare notes to see the  
13 things missing, and I want to find out what there is  
14 missing, see what the relevance of that missing  
15 material might be, and then I'll have to make a ruling  
16 on the Coast Guard's motion.

17 MR. LINTON: Very well, sir.

18 THE COURT: And that would be with regard to  
19 number 3 also.

20 MR. LINTON: Very well, Your Honor.

21 THE COURT: All right, let's hear the legal  
22 argument of why you think that you don't have to  
23 produce this, Mr. Underhill.

24 MR. UNDERHILL: Certainly, Your Honor.

25 THE COURT: I'm assuming that there are some

1 things that are your work product, the statements of  
2 Blandford and Taylor, those are things that you're  
3 keeping, you say you have not turned over -- I'd like  
4 to hear ...

5 MR. UNDERHILL: Well, actually, I'm not sure,  
6 I think in fact we may have turned over -- let me  
7 check. No, we've made available an interview of  
8 Taylor. I don't see it here, but I thought that we'd  
9 made available also an interview of Blandford, and I'm  
10 again assuming that an interview occurred.

11 THE COURT: Mr. Russo, do you have an  
12 interview of Blandford?

13 MR. RUSSO: I don't believe so, Your Honor. A  
14 copy of the Coast Guard interview of Blandford,  
15 relative to his actions on that night, I don't believe  
16 we have anything like that.

17 (1500)

18 MR. UNDERHILL: In any event, Your Honor, in  
19 response to your question as to the legal arguments,  
20 they're really twofold. One is as a jurisdictional  
21 power, the matter of sovereign immunity, the government  
22 cannot be compelled to provide the documents pursuant  
23 to a State court subpoena. The cases, I think, are  
24 very clear on that, particularly in the Ninth Circuit.  
25 The Swett (ph.) v. Schenk (ph.) case, the Boron case in

1 the Fourth Circuit, the Sackett (ph.) case in the Ninth  
2 Circuit, and of course the Touhy v. Ragen case, R-A-G-  
3 E-N, the Supreme Court case, as well as another Supreme  
4 Court case ruled upon early in the century, I think,  
5 make it extremely clear that absent a waiver of  
6 sovereign immunity, and there is one here, the  
7 government cannot be compelled to produce documents  
8 pursuant to the subpoena.

9 The second level of that argument is the Coast  
10 Guard, actually the Department of Transportation, of  
11 which the Coast Guard is a part, has promulgated what  
12 are generically called the Touhy regulations, T-O-U-H-  
13 Y, based upon the Supreme Court case of the same name,  
14 which state very clearly that the discretion as to  
15 whether to release or not release documents pursuant to  
16 a subpoena in a case in which the government is not a  
17 party rests with the discretion of the chief counsel.  
18 Part 7 of 49CFR sets out various criteria by which the  
19 chief counsel is to decide whether to release  
20 documents.

21 Admiral Vorbock's (ph.) affidavit, I think, is  
22 very extensive, very reasoned, it provides the reasons  
23 why some documents were provided, and on the other hand  
24 provides very clearly reasons why other documents were  
25 not provided. As a practical matter, once that

1 discretion has been exercised, (a) because of the  
2 sovereign immunity, the only court that would have the  
3 power to attempt to define whether the discretion was  
4 properly exercised would be a Federal court, and I  
5 think there's even a footnote in the Ninth Circuit  
6 Swett (ph.) v. Schenk (ph.) case, which implies at  
7 least that it would probably be under the  
8 Administrative Procedures Act in Federal court. And  
9 furthermore, even if they were in the proper court,  
10 i.e. Federal court, the standard of review of the Coast  
11 Guard's actions, or actually the chief counsel's  
12 actions, would be not clearly erroneous, but it would  
13 be whether the agency had disregarded its own  
14 standards, which I think in this case clearly could not  
15 be shown to be the case.

16 So to sum up, for reasons of sovereign  
17 immunity, because of the Federal regulations  
18 promulgated by the Department of Transportation and  
19 Supreme Court and Ninth Circuit case law, we cannot be  
20 compelled to do it. But I again stress that we have  
21 attempted to cooperate as much as possible, in an even-  
22 handed manner to both parties, both to the State and  
23 the defense, in order to make as many documents  
24 available as we possibly think we can, yet retaining  
25 the privileges that we have to maintain, simply because

1 we know as a practical matter in this case, this is not  
2 the only lawsuit going on.

3           The United States has sustained damages, it  
4 has -- as far as the license revocation proceedings  
5 with respect to Mr. Hazelwood that the Coast Guard has  
6 filed, they have stayed those pending resolution of  
7 this action, so we have to look down the road. And as  
8 to those documents not provided, those are the reasons  
9 we haven't, because we are looking further to potential  
10 for further litigation. Definitely at least on the  
11 license revocation proceedings.

12           THE COURT: Was it the government's intent not  
13 to disclose the Blandford interview, but to give the  
14 Taylor interview?

15           MR. UNDERHILL: I have no idea ...

16           THE COURT: Was that intentional ...

17           MR. UNDERHILL: Not to my knowledge, Your  
18 Honor.

19           THE COURT: Or was that just an oversight?

20           MR. UNDERHILL: I have no idea one way or the  
21 other. I suspect it was not intentional. I would have  
22 to ask the people involved, Your Honor. I don't know  
23 if the request was made for Blandford by the State, I  
24 honestly don't know.

25           THE COURT: Was it made by the State, Mr.

1 Linton? For Blandford? I would think of all the  
2 people, that would be one that somebody would be fairly  
3 interested in. He was a watch stander, wasn't he, at  
4 the time?

5 MR. LINTON: He was. I know we were permitted  
6 to interview Mr. Taylor. It just escapes me right now  
7 whether we were permitted to interview Mr. Blandford.

8 THE COURT: Mr. Blandford took the stand in  
9 the ...

10 MR. LINTON: Mr. Blandford testified in these  
11 proceedings, yes.

12 THE COURT: ... omnibus hearing and testified  
13 very completely.

14 MR. LINTON: Yes. Plus at the National  
15 Transportation Safety Board hearings.

16 MR. UNDERHILL: May I -- one more thing, Your  
17 Honor. I don't want to assume the role of an advocate,  
18 as I think that properly belongs to the attorneys for  
19 the parties in the case, but it has been expressed to  
20 us, for example -- request for simulations of the Exxon  
21 Valdez's track. In conversations with defense counsel,  
22 the suggestion was made to them that that is our work  
23 product, and if they wanted a simulation, go out and  
24 hire one. It was responded that they'd already done  
25 that, they just wanted to compare notes.

1           A lot of these things, the same argument can  
2 be made. If somebody wants to talk to somebody, don't  
3 rely upon our witness interviews, go out and interview  
4 the witness. Or call him as a witness, and I presume,  
5 and I understand in fact, that they have subpoenas out,  
6 or are going to subpoena, various Coast Guard  
7 witnesses. Ask them the questions directly. That's  
8 why you do it, rather than rely upon another attorney's  
9 or party's work product. And that goes all the line  
10 down through this thing.

11           And I think at some point, too, it has to be  
12 recognized, and it was stated at least implicitly to  
13 us, if not explicitly, that part of the purpose for  
14 doing this was to gain a strategic advantage in this  
15 case, knowing full well that we are not about to  
16 disclose, for the most extreme example, attorney-client  
17 privilege documents. No party would. The defense  
18 certainly wouldn't, we wouldn't expect them to, I'm  
19 sure the State wouldn't. To take that argument,  
20 knowing we wouldn't disclose all documents, because we  
21 could not, that that would form the basis to dismiss.  
22 Again, that's not for us to resolve, but to be put in  
23 this position and having people say that we're not  
24 cooperating when we have bent over backwards, it  
25 troubles me somewhat.

1 THE COURT: One more inquiry for you, Mr.  
2 Underhill. Can the government waive their claim of  
3 sovereign immunity?

4 MR. UNDERHILL: Having made a lot of sovereign  
5 immunity arguments, the answer I think is yes, but  
6 qualified by stating that Congress has to do it. The  
7 best example I can give, there's case law, including  
8 Ninth Circuit Supreme Court on it, Your Honor. And the  
9 typical situation is where there's a statute of  
10 limitations.

11 The Suits in Admiralty Act, for example, is a  
12 two-year statute of limitation, and that's the kind of  
13 work I do. We've had situations arise where a  
14 government attorney has written the typical letter  
15 saying that you, plaintiff, have an extra 60 days  
16 beyond the statute to file suit, put in a letter.  
17 Later on it turns out that the government attorney did  
18 not have the authority as an agent of the government to  
19 waive the government's sovereign immunity. Although it  
20 seemed harsh, I'd say unfair, that was the result of  
21 the case law.

22 So the answer is we do not, that is, I do not,  
23 for that matter I do not believe the Coast Guard has  
24 the authority to waive sovereign immunity. Only  
25 Congress can do that in a law signed by the executive,



1 and that has not been done in this case.

2 THE COURT: When you release information to  
3 the State, voluntarily, isn't there an argument of  
4 waiver that can be made there?

5 MR. UNDERHILL: I think that to the extent  
6 that any documents have been disclosed, then I think  
7 yes, I think that to the extent those documents exist,  
8 I would direct the court's attention to -- it's a Ninth  
9 Circuit case cited in the government's brief ...

10 THE COURT: If that's the case, Mr. Underhill,  
11 then what's to prevent this court based on your  
12 statement "yes" to order you to produce all those  
13 documents to the defendant?

14 MR. UNDERHILL: Are you talking about the  
15 documents that have been produced to the State?

16 THE COURT: Uh-huh (affirmative).

17 MR. UNDERHILL: I don't think we have any  
18 problem with that. I mean, if the defense wants to  
19 duplicate them ...

20 THE COURT: Okay, I thought earlier you said  
21 you were here just because of the sovereign immunity  
22 issue, that they can get them from the State, but you  
23 needed to be here to protect the government's interest  
24 by asserting sovereign immunity to that, but it was a  
25 voluntary thing you did for the State.

1 MR. UNDERHILL: And for the defense. We have  
2 voluntarily done it for them too.

3 THE COURT: Okay.

4 MR. UNDERHILL: The case I was citing was the  
5 -- it's a Ninth Circuit case in here, to the extent  
6 that the issue in fact was where documents had been  
7 produced, to the extent of whether the privilege had  
8 been waived, and it said certainly as to those  
9 documents that were produced it has, but a blanket  
10 waiver of the privilege did not occur.

11 MR. LINTON: Thank you, Your Honor.

12 THE COURT: Now, Mr. Russo, this motion really  
13 pertains to -- I want to narrow it as much as I can.  
14 You have a motion for a protective order, and it  
15 relates to blood alcohol evidence, and I've been  
16 advised today that the State has received the chain of  
17 custody information and the laboratory reports on at  
18 least six persons. Is there additional information,  
19 anything exists regarding blood alcohol of Captain  
20 Hazelwood?

21 (1881)

22 MR. RUSSO: Your Honor, that's precisely the  
23 question. We don't know what if any additional  
24 information, if any, may exist that is in the  
25 possession of the Coast Guard. We have specifically

1 asked them for not only blood alcohol tests relating to  
2 other crew members, but we've also specifically asked  
3 them pursuant to the subpoena for all information  
4 relative to Captain Hazelwood's blood test.

5 Now I realize and I respect what Mr. Underhill  
6 has said relative to the fact that the Coast Guard has  
7 given certain documents to the State, and the State has  
8 given those documents to us. But what assurance do we  
9 have that there aren't additional documents, or  
10 additional information out there, relative to this  
11 test, which we don't have? The purpose of this  
12 subpoena was to ensure that if there is any additional  
13 documents or information, that we get it. Clearly, the  
14 cornerstone of the State's case against Captain  
15 Hazelwood rests on the blood alcohol test administered  
16 by the Coast Guard.

17 We want this court to enforce the subpoena so  
18 that Captain Hazelwood is assured that he has all of  
19 the relevant information that's in the possession of  
20 the Coast Guard relative to that test, so that he is in  
21 a position to competently and adequately cross-examine  
22 the various witnesses that we anticipate are going to  
23 be called, relative to how that test was conducted.

24 I know, for instance, just based upon what we  
25 have already, that there was more than one vial of

1 blood taken from Captain Hazelwood. I think the  
2 testimony of Mr. Conner was that he drew three vials of  
3 blood. I'd like to know where all those vials of blood  
4 are.

5 In addition to that, there were an equal  
6 number of vials drawn from the other crew members. I'd  
7 like to know where they are. I'd like to know how they  
8 were packaged. I'd like to know who had possession of  
9 them. I'd like to know where they were after they left  
10 Conner's possession. He testified that he put them in  
11 the mess hall refrigerator next to the lettuce,  
12 according to my recollection. These are all things  
13 that we feel may be in possession of the Coast Guard  
14 which we don't have.

15 Your Honor, I think, in starting this argument  
16 seized upon exactly what the purpose of this subpoena  
17 was: for us to make sure that we had everything that  
18 the Coast Guard has on these particular categories.  
19 Our feeling about it is, Judge, and I think that your  
20 position on this, at least as far as you seemed to  
21 indicate your position, is that when the Coast Guard  
22 produced these categories of material to the State,  
23 they waived any claim of privilege for those categories  
24 of material.

25 Now, you notice that I use the term

1 categories, as opposed to specific items. In other  
2 words, I don't think the Coast Guard can waive its  
3 privilege only insofar as turning over incriminatory  
4 material to the State and withholding exculpatory  
5 material. If they turn over witness interviews, if  
6 they turn over blood tests, they have to turn over  
7 everything that they have relative to that, so that we  
8 can see it. If they don't turn it over, we're at a  
9 disadvantage when it comes time to cross-examine the  
10 witnesses to evaluate the evidence.

11 We certainly don't want to get into a  
12 situation in this case, Your Honor, where somewhere in  
13 the future, pursuant to discovery, whether it be a  
14 Coast Guard license revocation proceeding or civil  
15 case, we uncover additional evidence that the Coast  
16 Guard has been withholding, which is exculpatory. Then  
17 perhaps we may have to come back and move for a new  
18 trial based on newly discovered evidence, because we  
19 couldn't discover that evidence through due diligence.  
20 The purpose of this is to get all of the evidence that  
21 we need now, so that all of these issues can be  
22 resolved at trial.

23 THE COURT: Do you dispute the sovereign  
24 immunity claim, or do you dispute the work product  
25 claim, or privilege claim, do you ...

1 MR. RUSSO: Well, I do, I dispute the  
2 sovereign immunity claim.

3 THE COURT: Do you have any case authority to  
4 support your dispute?

5 MR. RUSSO: Well, Your Honor, I'd like to  
6 first of all cite Mr. Underhill's statement that he  
7 concedes that the government has waived sovereign  
8 immunity, insofar as those items that they have turned  
9 over to the State. Our position is that the sovereign  
10 immunity has been waived for those categories of items,  
11 and the items in dispute are all categories of items  
12 that have been disclosed to the State.

13 So therefore our position is that if you  
14 disclose -- once you open the door, you have to open it  
15 all the way. You can't just say "I'll give you this  
16 and I'll give you that, and the rest I'm going to  
17 keep."

18 (2120)

19 THE COURT: Well, do you have any support for  
20 that statement, any legal authority besides your  
21 statement itself?

22 MR. RUSSO: Your Honor, I do have some cases  
23 dealing with waiver of privilege in FOIA-type  
24 situations. I have a case which I will cite for you.  
25 The case is North Dakota v. Andrus (ph.), and the cite

1 is 581 Fed 2nd, 177. And that's the Eighth Circuit.  
2 Basically, that case stands for the proposition that a  
3 voluntary disclosure of material to an adverse party by  
4 the Federal Government waives an argument that the  
5 material is exempt, or privileged, under FOIA. I  
6 submit that the same reasoning should apply to this  
7 case. Additionally, I have another case ...

8 THE COURT: What were the facts -- can you  
9 just give me an idea of what that -- was that an  
10 evidence question?

11 MR. RUSSO: It was material which the Federal  
12 Government disclosed to the Audubon Society and refused  
13 to disclose to the State of North Dakota. I do not  
14 know specifically what the material was, but the  
15 Federal Court, the Eighth Circuit made a decision  
16 saying that because the Federal Government had  
17 voluntarily disclosed this material, which would  
18 otherwise be privileged, to an adverse party in a  
19 pending state suit between North Dakota and the Audubon  
20 Society, North Dakota was entitled to the information  
21 as well.

22 In other words, you can't just give material  
23 to one party voluntarily and then assert privilege when  
24 it comes to giving it to the other party.

25 THE COURT: Did they address the general

1 category, or did they address specific information that  
2 had earlier been released to the Audubon Society?

3 MR. RUSSO: Specific information had earlier  
4 been released voluntarily by the United States to the  
5 Audubon Society.

6 THE COURT: And it was a privilege question  
7 they were dealing with?

8 MR. RUSSO: Yes.

9 THE COURT: Okay.

10 MR. RUSSO: Now, one other case I have that is  
11 analogous to this is Peck v. the United States, and  
12 that's at 514 Fed Sub 210, and that's a case out of the  
13 southern district of New York. Basically, that's a  
14 situation where the Federal Government released a  
15 summary of a report dealing with a civil rights  
16 violation by an informant to the FBI. Apparently this  
17 was an informant who penetrated the Ku Klux Klan and  
18 may have participated in a beating of some civil rights  
19 workers. The government only would supply a summary of  
20 that particular report, and this case holds that  
21 voluntary disclosure of a significant portion of a  
22 privileged communication waives the privilege.

23 Now, I believe that these cases are on point  
24 insofar as reinforcing the proposition that the Coast  
25 Guard cannot selectively give certain information to



1 the Coast Guard and then claim that all other  
2 information in that category is privileged. I think  
3 that in the interests of fairness and in the inherent  
4 powers of this court, which has jurisdiction over this  
5 trial, it's incumbent upon the court to see to it that  
6 all the relevant evidence that the defendant would  
7 normally be entitled to is made available to him.

8 MR. UNDERHILL: If I may, I'd just like to add  
9 a couple of other things just on point of clarification  
10 relative to the understanding regarding the tapes, Your  
11 Honor?

12 THE COURT: Sure.

13 MR. UNDERHILL: I think we have an  
14 understanding with the Coast Guard that will solve the  
15 problem. I'd just like to articulate it so that the  
16 court understands what it is and there's no  
17 misunderstanding between us. Basically, we have asked  
18 for access to whatever inbound or outbound tapes the  
19 Coast Guard may have dealing with the Exxon Valdez.  
20 Specifically, we want to have access to the original  
21 tapes dealing with Captain Hazelwood's conversations  
22 with the Coast Guard as recorded on the radio. This  
23 process that we're going through now is designed to  
24 clear the way for that.

25 My understanding from reading the response is

1 that the Coast Guard has no objection to the defense  
2 having access to Captain Hazelwood's conversations, but  
3 is transcribing the tape to see if there are any other  
4 conversations on there which may be privileged. Is  
5 that correct?

6 MR. LINTON: That's correct.

7 MR. UNDERHILL: All right. So assuming that  
8 that is done expeditiously, Your Honor, and we have an  
9 opportunity to have our expert listen to the tape, I  
10 don't think there'll be any problem with paragraph 24.

11 THE COURT: What's the timing on that, Mr.  
12 Underhill, do you have any idea how long that might  
13 take?

14 MR. UNDERHILL: I think that the tape was  
15 flown to Juneau. There are only a few machines that  
16 can play this tape. They don't want to use the one in  
17 Valdez because they need that for vessel traffic. It  
18 was flown, I believe, to Juneau yesterday, and I  
19 haven't been involved in the actual setting of this up,  
20 but I understand that arrangements for the court  
21 reporter have already been made, I believe.

22 THE COURT: So we're looking at early next  
23 week, at the latest?

24 MR. UNDERHILL: I presume, yes.

25 MR. RUSSO: It should be fine. Your Honor, I

1 would have an additional request. I noticed that Mr.  
2 Underhill had a list, which I assume was provided to  
3 him by the District Attorney, regarding items that were  
4 received by the District Attorney. I would request  
5 that we be given a copy of that. Is that possible?

6 MR. LINTON: I thought I had -- I put a few  
7 things on their desk this morning, and I thought this  
8 was one of them.

9 THE COURT: Now, is that -- Mr. Linton, are  
10 the items contained on that list all items that have  
11 been made available to the defendant?

12 MR. LINTON: Yes. Every item on that list has  
13 been made available to the defendant.

14 THE COURT: Let's mark this for  
15 identification, and let's -- Mr. Linton, why don't you  
16 come on up after we mark this and make sure it's the  
17 same document. We're going to make this part of the  
18 record.

19 MR. LINTON: Yes, and I actually have copies  
20 of each of the documents described, and would be happy  
21 to have that marked as an exhibit as well.

22 THE COURT: Okay. This will be a court  
23 exhibit, and why don't you mark it right now, and give  
24 it to Mr. Linton so he can look at it.

25 (2507)

1 MR. LINTON: Just so that people don't read  
2 into it more than there is there, the first 70 items,  
3 that are listed one through 70, are listed as items  
4 received from the Coast Guard. That means they are  
5 either things that are physically received from the  
6 Coast Guard, or are interviews of Coast Guard personnel  
7 by the State Troopers, that is, we were given  
8 permission to go interview Coast Guard personnel.

9 There is in there a list of items that are  
10 described as interviews, and the particular agency  
11 interviewing the person is designated thereafter. AST  
12 327 means it was an Alaska State Trooper interview on  
13 March 27th. Later there's one, FBI 4/6/89, meaning an  
14 interview by the FBI, 4/6/89, and USCG, United States  
15 Coast Guard, 3/24/89. Those -- the purpose -- they are  
16 listed there not with the idea that those came from the  
17 Coast Guard or they are of Coast Guard personnel. They  
18 are to illustrate how wide an investigation has been  
19 done by a combination of the Alaska State Troopers, the  
20 FBI, and to the extent we've been given Coast Guard  
21 materials, the Coast Guard, to lay a foundation for an  
22 argument that the defense has enough -- in the event  
23 that things can't be resolved between the defense and  
24 the Federal Government, that the State can show the  
25 court that the defense has enough to adequately prepare

1 itself through these interviews, and through this  
2 medium.

3           The last page is headed "Other Documents and  
4 Records," and they are in the same nature, that is,  
5 these are not things that came from the Coast Guard,  
6 but things which are -- of the nature of things in many  
7 instances that was asked of the Coast Guard, for  
8 example, medical records of crew members. Well,  
9 medical records of crew members maintained by Exxon, as  
10 to Mr. Kagan, Mr. Hazelwood, and Mr. Cousins, for  
11 example, was furnished. So if they don't have them  
12 from the Coast Guard, they have some from them.

13           THE COURT: One of the two of you identified  
14 this as being -- this is Court's Exhibit 1 -- and  
15 verified that as the document that has been given to  
16 Mr. Russo, and that's the document you're indicating  
17 contains materials that have been provided to the  
18 defendant.

19           MR. LINTON: Yes, sir, every one on it.

20           THE COURT: Okay. Any objection to admitting  
21 1 to this proceeding, Mr. Russo?

22           MR. RUSSO: Well, I have no objection to its  
23 admission, Judge, insofar as this is the document that  
24 was given to us. I have not, of course, had an  
25 opportunity to look at it to determine ...

1 THE COURT: I'm not saying that you have, I'm  
2 just admitting it as an exhibit, and based on Mr.  
3 Linton's statement as an officer of the court that this  
4 has all been revided to you, if you dispute that, you  
5 can bring that to my attention later on, but I'm  
6 assuming that it has been provided to you, because of  
7 representation, until I hear differently. Okay,  
8 anything else you want to add? We're dealing now with  
9 the motion to quash.

10 EXHIBIT 1 ADMITTED

11 MR. RUSSO: I realize that. Your Honor, I  
12 think I've covered the main points that I wanted to  
13 cover, and I'll rely on the court's discretion to  
14 decide the motion.

15 THE COURT: All right. If you discover any  
16 other cases that are, in your opinion, on point, that  
17 would deal with a voluntary disclosure to the State of  
18 certain information resulting in a waiver of the  
19 category, I'd appreciate knowing that. There is some  
20 disclosure here of information that the government  
21 might have been able to claim sovereign immunity,  
22 privilege, work product, and any other case you can  
23 find for me, I'd appreciate it.

24 MR. UNDERHILL: Your Honor, may I give you a  
25 cite? It'll take me 30 seconds to sum up. I haven't

1 read the -- or at least, I don't recall the North  
2 Dakota, the Eighth Circuit case, Andrus case, nor the  
3 Peck case, without reading them, my guess is that they  
4 are not sovereign immunity cases. They go to the scope  
5 of whether a privilege has been waived. That's really  
6 the second step in the analysis.

7           The first question Your Honor asked was as to  
8 sovereign immunity. I suspect these cases do not  
9 respond. As to the issue of waiver of privilege  
10 itself, there is a case on point. It is the Ninth  
11 Circuit, and it was last year. It's cited at page 12  
12 of our memorandum on a different issue. It's Mobil Oil  
13 Corporation v. the EPA, 879 Fed 2nd 698, Ninth Circuit,  
14 1989, and I believe that there were, if my memory  
15 serves me correctly, four documents that had been  
16 disclosed, whether inadvertently or purposefully, I  
17 don't recall, and the issue was whether the government  
18 -- it's a FOIA case, it was whether the government had  
19 waived the blanket privilege, whatever the claim of  
20 privilege was. The answer was as to those documents  
21 themselves, obviously yes, as to the broader category  
22 of documents, no. So I think that would be controlling  
23 in this circuit.

24           THE COURT: Mr. Linton, do you want to be  
25 heard on this particular issue at this time?

1 MR. LINTON: No, Your Honor, I would state  
2 that because our rules of discovery are a little  
3 different and more loose here in Alaska, when we have  
4 received things here from the Coast Guard, we have  
5 supplied them to the defense directly, so there have  
6 not been things that have been withheld by us.

7 THE COURT: Well, then, the thing that needs  
8 to be done is Mr. Underhill and yourself need to go  
9 over the categories that appear to be in dispute, and  
10 Mr. Russo, was that an accurate recitation of the  
11 categories, 1, 2, 3, 8, 15, 18, 19, and 24, that seem  
12 to be in dispute?

13 MR. RUSSO: Yes, Your Honor.

14 THE COURT: Okay. So Mr. Underhill and Mr.  
15 Linton can get together and verify what has not been  
16 supplied, and maybe you can at that point indicate the  
17 reason, if it's a privilege, work product, and it'll be  
18 under the general category of sovereign immunity. And  
19 then we can take that up later, and we'll come up with  
20 a time here in a moment of when we'll take that up.  
21 The next is ...

22 MR. UNDERHILL: Your Honor, I can wait in the  
23 back of the courtroom, or come back at a time, if Your  
24 Honor wishes, or whatever is ...

25 THE COURT: Oh, I thought we'd take it up



1     sometime next week, Monday afternoon, probably. We're  
2     going to be doing opening statements presumably Monday  
3     morning. We might have Monday afternoon or Tuesday  
4     afternoon available to do this, I don't expect opening  
5     statements will take all day, they'll probably take  
6     half a day or so.

7             MR. UNDERHILL: Just a personal problem, Your  
8     Honor, I'm scheduled to be back in Pennsylvania on a  
9     deposition that I've subpoenaed a witness next -- I fly  
10    out of San Francisco Tuesday. If need be, somebody  
11    else can come, I'm fungible.

12            THE COURT: Okay, if you're fungible, then  
13    somebody else can come in your place, that's not going  
14    to be a problem, but ...

15    (2839)

16            MR. UNDERHILL: What I was going to request,  
17    is there a time we could do it earlier, if possible?  
18    Since I argued this much, I'd prefer to finish it out,  
19    but if the court can't do it, I do understand.

20            THE COURT: Well, how long would it take you  
21    to figure out what you've given the State and what you  
22    haven't given the State?

23            MR. UNDERHILL: I've got nothing else to do  
24    today. It really depends on whether I can find  
25    somebody from the State, or tomorrow, for that matter,

1 I can do it.

2 THE COURT: Well, we could do it at four  
3 o'clock today or four o'clock tomorrow.

4 MR. UNDERHILL: It's -- I'm easy.

5 THE COURT: All right, let's do it at four  
6 o'clock tomorrow then.

7 MR. UNDERHILL: Okay. Thank you, Your Honor.

8 THE COURT: You're still on, Mr. Russo, now  
9 we're talking about another motion.

10 MR. RUSSO: Well, this is a motion for a  
11 protective order. In order to expedite this, I'd like  
12 to rely on a brief relative to points 1 and 4 on this  
13 motion, and I do have a few things I'd like to say  
14 orally about points 2 and 3.

15 THE COURT: Okay, 1 and 4 is the fatal  
16 variance and then the timeliness of it?

17 MR. RUSSO: One concerns the issue of whether  
18 blood alcohol can be introduced at the trial as  
19 evidence of recklessness.

20 THE COURT: Okay, I have a different order.

21 MR. RUSSO: I'm reading from the actual  
22 motion, Judge. Paragraph 1. Paragraph 4 deals with  
23 the chemical testing question was not administered  
24 within the time period required by statute.

25 THE COURT: Okay. Number 1 suggests that

1 since it wasn't presented to the grand jury, there was  
2 a fatal variance. Is that what you're suggesting?

3 MR. RUSSO: Yes.

4 THE COURT: Okay, that's what I said. And  
5 then the timing of it is number 4.

6 MR. RUSSO: Correct.

7 THE COURT: Okay, we'll submit that on the  
8 brief. Do you wish to have argument on those two? One  
9 and 4?

10 MR. RUSSO: No, but I would point out one  
11 thing with respect to point number 1 that I didn't  
12 include in my brief, Judge, and that is that evidence  
13 of alcohol on the breath of the captain was introduced  
14 at grand jury, so it wasn't like the matters before the  
15 grand jury were wholly silent on the alcohol point, but  
16 I have nothing else to add, so it isn't like alcohol is  
17 being introduced for the first -- was being introduced  
18 for the first time at a trial, not having been  
19 presented at all to the grand jury. It is true that  
20 the blood alcohol test results, and the evidence of the  
21 taking of the sample, was not introduced before the  
22 grand jury, but some evidence of drinking was.

23 THE COURT: All right.

24 MR. RUSSO: But otherwise I'd rest on points 1  
25 and 4 on the brief.

1 THE COURT: Okay, they're submitted on 1 and  
2 4. Your application is denied on 1 and 4. I am  
3 prepared to make that ruling at this time, and am so  
4 doing. Now we can go to the other two you  
5 (indiscernible) argument.

6 MR. RUSSO: Your Honor, these other two are  
7 somewhat related to the issue that we just discussed  
8 relative to the Coast Guard's compliance with our  
9 subpoena. This protective order relative to these  
10 issues is predicated upon the proposition that if the  
11 Coast Guard fails to comply with our subpoena, and does  
12 not in fact turn over what we consider to be vital  
13 evidence necessary to the defense of Captain Hazelwood,  
14 that the State should in fact be precluded from using  
15 that evidence at the trial.

16 The theory behind that, Judge, I think is a  
17 fundamental theory of fairness, in that I can't see how  
18 the State can benefit from evidence that is derived  
19 from the Coast Guard, for instance, the blood test, the  
20 cornerstone of their case, without the defendant having  
21 equal access to that source of information. The Coast  
22 Guard has, in its brief on the motion to quash, and  
23 also in oral argument, has raised the doctrine of  
24 sovereign immunity as being an absolute bar to their  
25 having to comply with the State subpoena. Our position

1 on that is that if in fact it is an absolute bar, and  
2 we are not entitled to access to what they have, then  
3 the State should not be entitled to access to what they  
4 have. And ...

5 THE COURT: Well, are you arguing equal  
6 access, or are you arguing unequal access?

7 MR. RUSSO: Well ...

8 THE COURT: The State said that they have  
9 given you everything that they've had, which would seem  
10 to say equal access.

11 MR. RUSSO: No, I'm saying that on the face of  
12 it, Judge, it may appear that it's equal, but we don't  
13 have any assurance that it's equal. We don't know what  
14 they haven't given the State. I'm not implying that  
15 the State has held back anything from us, I would hope  
16 and expect that they have given us everything they have  
17 relative to the Coast Guard tests.

18 But what I'm saying is that there may be a lot  
19 of other information out there relative to this test  
20 which the State doesn't have, and that we're entitled  
21 to before the State should be able to introduce the  
22 evidence which it does have from the Coast Guard. I  
23 suppose what I'm fearful of, Judge, is a situation  
24 where the government, the United States, has given only  
25 the incriminatory evidence to the State, and has

1 withheld other evidence which may be exculpatory to  
2 Captain Hazelwood.

3 We have no way of knowing that at this time,  
4 unless we get some certification of compliance by the  
5 State that they have in fact turned over everything.  
6 All Mr. Linton can say is that he's turned over what  
7 the State has given him.

8 (3174)

9 THE COURT: Just a minute, Mr. Russo. You've  
10 got a certification of Mr. Linton that he has turned  
11 over everything the State has. Now, that's good enough  
12 for this court, it may not be good enough for you, but  
13 that's good enough for this court. Now, there may be  
14 some things that he doesn't have that the Coast Guard  
15 is retaining.

16 That's what the issue here, I think, is. When  
17 he said he's given you everything that the Coast Guard  
18 gave him, and he's got that box right there in front of  
19 him, and he's got a document been exhibited -- made an  
20 exhibit, that's good enough. Now, what you're asking  
21 for is what he hasn't got, and you're saying that he  
22 should be precluded from presenting what he does have  
23 because we don't know if there's some exculpatory  
24 evidence has been retained by the Coast Guard. Now, am  
25 I summarizing that correctly?

1 MR. RUSSO: Well ...

2 THE COURT: Or are you suggesting maybe he's  
3 having the ...

4 MR. RUSSO: To a large extent you are  
5 summarizing it correctly, except for one thing, and  
6 that's the rationale behind my argument. And the  
7 rationale is that unless -- if Your Honor permits this,  
8 we're going to be in a position where he's going to be  
9 using evidence which was given to him by the Coast  
10 Guard, and we're not going to be able to cross-examine  
11 that evidence adequately, because we cannot get to the  
12 source of that evidence. It's sort of like a screen or  
13 filter, so to speak, whereby he's only been given  
14 certain information, and maybe not given other  
15 information, and he bases a prosecution on that, and is  
16 allowed to use that evidence.

17 All we want to do is go to the source, to make  
18 sure that we have everything relative to that  
19 information, so that we can cross-examine that foreman,  
20 that we can cross-examine whoever is going to be  
21 brought forth to establish a chain of custody, so that  
22 we can cross-examine the laboratory technician. It's a  
23 very simple type of thing. All we're saying is that if  
24 the government is not going to allow us access to that  
25 source, the State shouldn't be allowed to derive its

1 main evidence, its cornerstone of evidence, from the  
2 source that we're excluded from. That's all I have to  
3 say on it.

4 THE COURT: Okay, let's go to number 2, your  
5 argument number 2, the blood test information seized  
6 from the United States Coast Guard was not lawfully  
7 obtained, now I assume you mean the blood test  
8 information seized by the United States Coast Guard, is  
9 that what you're saying?

10 MR. RUSSO: No, no, I'm talking about the  
11 blood test that was seized by the government.

12 THE COURT: By the State?

13 MR. RUSSO: Meaning the State of Alaska.

14 THE COURT: Okay.

15 MR. RUSSO: If the Coast Guard's argument is  
16 correct, and you'll have to -- I apologize for this,  
17 obviously we were not totally familiar with what the  
18 Coast Guard's position was going to be until very  
19 recently, when they submitted their memorandum and now  
20 have argued their case. But on the hypothesis that the  
21 Coast Guard is saying that the State is not even  
22 entitled to that, the added fact that they had seized  
23 this blood test evidence and sought to introduce it  
24 into evidence, it would be unlawful, and certainly from  
25 their brief, they seem to be saying that any disclosure



1 of this blood test information was in fact precluded  
2 under the doctrine of sovereign immunity or under  
3 various CFR sections.

4 Our position on that is that if that's the  
5 case, then what is the State doing with it? They  
6 should be precluded from having it as well. And if  
7 they do have it, it means they got it unlawfully, and  
8 they shouldn't be able to produce that in evidence.

9 MR. LINTON: Judge, we have provided chain of  
10 custody cards. They've heard the testimony of Scott  
11 Conner, they've heard how he drew the samples, we've  
12 provided by way of discovery chain of custody cards  
13 that take it to California, we have supplied a copy of  
14 the transmittal, the Federal Express address form that  
15 was used to transmit it to the laboratory in  
16 California, and we have provided the lab reports of  
17 Michael A. Peat, Ph.D., the director of Compuchem  
18 laboratories, as to six individuals, that is as to four  
19 crew members, and then as to Mr. Blandford, and as to  
20 Mr. Weidman, a Coast Guard employee.

21 That's all anybody -- that's more than a lot  
22 of people get in a lot of cases. If there are  
23 questions about where the vials are, then they can call  
24 the labs and say, well, how many vials? They haven't  
25 said they wanted to test the vials, they haven't asked

1 where is their extra blood, can we test them, can we  
2 get an independent test? That's not their claim. I  
3 don't hear that claim at all being asked.

4 There's some statement about, well, what  
5 happened to each of the vials? Well, we don't have to,  
6 under Rule 16, create statements and bring them in  
7 here. We have identified the witnesses who have  
8 participated in drawing the blood, transmitting the  
9 blood, testing the blood, and if there are questions  
10 about individual steps that were taken, that's fully  
11 appropriate for them to address those people and say,  
12 "Hey, when, Doctor, you did this test, did you take  
13 notes when you calibrated whatever instrument that you  
14 used to test the blood on?" He may have, he may not  
15 have.

16 I don't happen to know, I haven't been  
17 supplied with them. But there's no claim at this point  
18 that that's a problem, that they have called the doctor  
19 asking about those things and been told that he is  
20 refusing to give them. I don't see any obligation for  
21 us to go find each of the things that may exist in that  
22 form. Are there other records of Federal Express  
23 somewhere which back up the fact that they were  
24 transmitted by the Coast Guard to the laboratory in  
25 California? There may well be, somewhere in the bowels

1 of Federal Express, such a record. They're free to go  
2 find it if they really want to contest that, and  
3 there's no indication that that's really what they  
4 want. We've complied with what the Rule 16 requires as  
5 to the blood test and the test results.

6 I'm not sure I understand the rest of the  
7 argument. It struck me as a little bit of sophistry.  
8 Somehow, if someone accidentally violated the Federal  
9 Government's sovereign immunity, and gave us the  
10 records of the blood test, and we gave it to the  
11 defense, then we can't use it because that employee of  
12 the Federal Government acted outside the scope of his  
13 authority and then therefore it's illegal and you can't  
14 use illegal stuff. That's not the way I've ever heard  
15 anything work. The question is, does the defendant  
16 have a fair chance to meet the State's evidence, and  
17 he's got what he needs to fairly meet the State's  
18 evidence on the blood alcohol point.

19 (3530)

20 THE COURT: Do you wish to say anything  
21 further?

22 MR. RUSSO: I'd just like to say, Judge, that  
23 we're certainly not asking the State to create any  
24 evidence. We're merely asking for access to evidence  
25 that may or may not exist, to find that out. And

1 certainly, I think if the State comes into possession  
2 of unlawful evidence, it's a well-known tenet of  
3 criminal law that they should not be able to use  
4 evidence obtained unlawfully. Suppose, for instance,  
5 that they seized evidence or got evidence pursuant to  
6 an unlawful search warrant, they wouldn't be able to  
7 use that. So if the evidence was derived unlawfully,  
8 they should be precluded from using it at this trial.  
9 I have nothing further, thank you.

10 THE COURT: I'll take this under advisement.  
11 I would like to know from Mr. Underhill if there's any  
12 blood alcohol information that has not been turned over  
13 to the State. If all of the information that was  
14 received by the Coast Guard was turned over to the  
15 State, then we don't have a problem. The defendant has  
16 it all. If there is some that the government still  
17 has, I'd like to know what the information is. You  
18 don't have to turn it over unless it's otherwise  
19 ordered, but I'd like to know what has not been given  
20 to the State. Same with the other categories, Mr.  
21 Underhill, and we'll do that -- we'll take the matter  
22 up on the record at four o'clock tomorrow afternoon.  
23 If by chance we get finished with jury selection  
24 earlier in the day, if I can get a hold of everybody,  
25 we might take it up earlier, so we finish earlier.

1 That takes care of these matters. We'll round up the  
2 jurors to be voir dired into Courtroom A, and we'll  
3 resume jury selection as soon as possible.

4 (3720)

5 (Off record - 9:04 a.m.)

6 (On record - 9:34 a.m.)

7 THE COURT: Before we go into the jury  
8 selection, in the case of Carlos Rodriguez v. the State  
9 of Alaska, 3AN 88-11166 and 3AN 79-74CR, defendant's  
10 motions are denied, for reasons set forth in the  
11 decision dated on January 31st, 1990. We'll now go to  
12 the Hazelwood matter. Are we ready with jury  
13 selection?

14 MR. COLE: Yes, Your Honor, I've just violated  
15 your motion for reconsideration, which of course  
16 doesn't have to be ruled on right now, but I wanted to  
17 alert the court that it was there, and perhaps later on  
18 you could examine it in more detail.

19 THE COURT: Yes, just hand it to Scott and  
20 he'll just let me look at it, I haven't had a chance.  
21 Do you have a copy of that?

22 MR. COLE: I've got a copy. I'm trying to  
23 have a response by this afternoon.

24 THE COURT: Who do you have next on your list?

25 MR. COLE: Joan Hartwick.

1 THE COURT: All right. And you both have the  
2 questionnaire for that now?  
3 MR. COLE: Yes.  
4 THE COURT: Thank you.  
5 Ms. Hartwick, have a seat in the front row,  
6 please. Would you please take the microphone off the  
7 stand and answer the first few questions? Before you  
8 do that, Ms. Hartwick, thank you for filling that  
9 questionnaire out. Did you fill one out down below?  
10 A Yes I did.  
11 THE COURT: Okay, we must have misplaced it.  
12 Our fault.  
13 A Okay.  
14 THE COURT: Go ahead.  
15 A My name is Joan L. Hartwick, and I belong to  
16 the Cook Inlet Region Association, and number 3,  
17 I formed a personal opinion on Hazelwood a long  
18 time ago, and I don't know any of the defendants  
19 or attorneys or witnesses.  
20 THE COURT: What was that opinion you formed?  
21 A Not a very nice one.  
22 THE COURT: Can you tell us what the basis of  
23 that opinion was?  
24 A Well, the way he -- ruined our beaches and  
25 killed all the wildlife, and just made a mess of

1 things.

2 THE COURT: Did you form that opinion based on  
3 what you'd read and heard about the incident?

4 A More or less, and people that I've talked to  
5 that's been down there.

6 THE COURT: Is this opinion of such strength  
7 that you think you would not be able to let it go?

8 A Uh-huh (affirmative).

9 THE COURT: Okay, I'm going to excuse you. It  
10 sounds to me like you've formed a strong enough  
11 opinion, and we need somebody here that's impartial,  
12 and I'm not saying anything bad about you. That I'm  
13 sure is shared by others, and that's what we're doing  
14 this for. You can go downstairs to your jury clerk for  
15 further instructions, and Mr. Purdon will give you your  
16 card.

17 A Okay.

18 THE COURT: Patricia Gillespie, is that who  
19 you folks have?

20 MR. COLE: Yes.

21 (4011)

22 THE COURT: Good morning.

23 A Good morning.

24 THE COURT: Have a seat in the front row,  
25 please, Ms. Gillespie, and take the microphone off of

1 the stand. It just snaps off, if you pull it. Ms.  
2 Gillespie, can you read those questions from your  
3 location?

4 A Yes.

5 THE COURT: Okay, would you please answer  
6 them?

7 A My name is Patricia Gillespie. I'm not a  
8 member of any organization. There are reasons  
9 that I probably couldn't serve on this jury, and  
10 that is if it lasts for about two months, it  
11 would be rather difficult with my job.

12 THE COURT: Number 4? You were given a list  
13 of witnesses -- I'm wondering if you know any of the  
14 people on that list of witnesses.

15 A No, I don't know any of them.

16 THE COURT: Okay, do you know the attorneys  
17 sitting at counsel table?

18 A I do believe I know this man here.

19 THE COURT: That's Mr. Brent Cole. Do you  
20 know why you might know him?

21 A Probably from a trial that was held here  
22 before, where I was a prosecuting witness.

23 THE COURT: You were a witness?

24 A Yes.

25 THE COURT: And what case was that?



1 A It was a Canadian felon that I apprehended in  
2 the course of my job.

3 THE COURT: And when did that take place?

4 A It would be two years ago now.

5 THE COURT: Did you form any opinions  
6 concerning Mr. Cole as a result of your experience with  
7 him?

8 A No, I did not.

9 THE COURT: Tell me about your job.

10 A I am an immigration officer, with the Justice  
11 Department.

12 THE COURT: Okay. And what problems would it  
13 create with your job, if you were to be able to serve  
14 on this jury?

15 A Well, we are -- we cover the whole state of  
16 Alaska, so we're traveling a great deal. There's  
17 only actually seven of us, and we also handle the  
18 International Airport.

19 THE COURT: I may be incorrect, but if I am,  
20 tell me. It's my understanding that you're not  
21 penalized by serving on a State Court jury.

22 A Oh, absolutely not, no.

23 THE COURT: And you would receive the same  
24 salary if you were on jury duty.

25 A Yes. It would not be a monetary consideration

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

at all.

THE COURT: Okay. I'm not going to release you from jury service because of your job, but I want to make sure that if I don't, you're not going to hold it against counsel because I'm requiring you to serve.

A No, sir.

THE COURT: Okay. I'm going to let Mr. Cole and then Mr. Madson and Mr. Chalos have some questions now. Mr. Cole? (Pause)

Mr. Cole, let's clear the air. I heard that whisper, to some extent. Maybe you can tell me what that was, so you can tell me if you are the attorney that she has had some exposure to.

MR. COLE: I did not do a case involving a Canadian felon. The only case that I've done that's dealt with an immigrations officer was a hunting case, an out-of-state hunter, a man by the name of Bruno Zedler (ph.), and I used one of the immigration officers. I'm sorry if I've been mistaken for someone else.

A Yes.

THE COURT: Okay, let's proceed.

(Tape: C-3589)

(0000)

\*

1 VOIR DIRE EXAMINATION OF MS. GILLESPIE

2 BY MR. COLE:

3 Q Ms. Gillespie, can you tell me -- have you  
4 followed the incidents that have occurred since  
5 the grounding of the Exxon Valdez back in March  
6 of last year?

7 A Yes, I have.

8 Q What sources of information have you relied  
9 upon in learning about those incidents?

10 A Mostly on the newspapers.

11 Q Do you get one particular newspaper?

12 A I do, yes, I get the Times, normally, when I  
13 go to work. I don't have it delivered.

14 Q And have you spoken with other people in your  
15 office or your coworkers about the facts that  
16 occurred, or the incident itself?

17 A I think when it first happened, yes. But not  
18 so much anymore.

19 Q Since it happened, since you've run across  
20 this information, have you formed any opinions  
21 about the respective roles of the parties that  
22 were involved, as far as their responsibility for  
23 the grounding? And when I say parties, I mean  
24 the crew members, Alyeska, Exxon, the Coast  
25 Guard, the Department of Environmental

1 Conservation. Have you formed any opinions about  
2 who was involved?

3 A Well, yes, I have. I believe that -- within  
4 my job I have to board vessels quite frequently,  
5 and I know that up until not too long ago, the  
6 pilots used to stay aboard the tankers past the  
7 Bligh Rock, and then they were taken off before  
8 then. And I have wondered why. Also why the  
9 Alyeska dock at Valdez failed to respond as  
10 quickly as they should have, and I understand it  
11 was a monetary consideration.

12 Q I guess based on what you've told me, then,  
13 you have not formed any opinion about any of the  
14 roles or responsibilities of any of the crew  
15 members.

16 A No, I have not.

17 Q One of the concerns that the court has, and  
18 Captain Hazelwood and the State, is that you will  
19 be instructed that it's important, your role in  
20 this matter will be to listen to the evidence  
21 that's presented here in court through the  
22 witnesses, and the evidence that is admitted, and  
23 base your verdict on that and your own common  
24 sense and good judgement. Would you be willing  
25 to follow an instruction like that?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes, I would.

Q And a necessary part of following that instruction will be that you be able to set aside any information that you have acquired outside of this courtroom, and just base your verdict, if you're called upon to make one, on the evidence here in court, and your own common sense and good judgement. Would you be willing to follow that?

A Yeah.

Q Do you foresee any problems with that? Does that seem fair to you?

A Yes.

Q Are you involved at all in trials? How often have you been called to be a witness?

A I have only been called once, but we are involved at various times.

Q Do you work with the Department of Justice or the U.S. Attorney's office? As far as they're -- in attorneys and trials and things like that?

A The one that I was involved with was with the U.S. Attorney.

Q And I assume that through your job you interview people quite a bit.

A Yes.

Q And are there standard procedures as far as

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

note taking, and whether they're taped or not,  
that you follow?

A Well, we normally have to keep a log of the  
incidents and the conversations.

Q Have you always worked -- for the past ten  
years, have you always worked in the Immigration  
Office?

A I work in the airport.

Q Oh, you work at the airport.

A Yeah.

Q Can you tell me a little bit about what your  
job is at the airport?

A We screen people, foreign nationals coming  
from foreign countries, for entry into the United  
States. We check their documents, their  
passports, etcetera.

Q Then -- I've been -- this is at the  
International Airport.

A Yes.

Q And this is where you walk up and you stand in  
line and you hand the person your passport and  
they -- you have to stand at the line there, and  
then you walk up and you hand it, and they punch  
-- do you punch in the material into the computer  
that's there?

1 A Yes.

2 Q I assume that you have to deal with law  
3 enforcement officials at the airport all the  
4 time.

5 A Exactly what do you mean?

6 Q Well, have you ever been called upon to ask  
7 for the assistance of the airport police?

8 A Sometimes, yes.

9 Q In this case, there will be law enforcement  
10 officials that testify, and the judge will  
11 instruct you that all witnesses that take the  
12 stand come into this courtroom on the same  
13 ground. Just because you're a law enforcement  
14 official or just because you wear a uniform, that  
15 your testimony is not entitled to any greater  
16 credibility just because of that. Would you have  
17 any problem following an instruction like that?

18 A No.

19 Q Where did you go to college?

20 A In London.

21 Q In London. And what were you majoring in, or  
22 was there any -- did you have a particular major?

23 A No, I had no particular major at the time.

24 Q Can you tell me a little bit about when you've  
25 boarded vessels in the past, do you still do that

1           today?

2       A           Yes, it's probably 80 percent of my job.

3       Q           And where is that at?

4       A           Every seaport in Alaska from Prudhoe Bay to  
5           the Aleutian Chain.

6       Q           Do you have any friends that are captains of  
7           any of these vessels?

8       A           I know quite -- quite a lot of them, yes.

9       Q           Have you ever talked with any of them about  
10          the incidents surrounding the grounding of the  
11          Exxon Valdez?

12      A           No.

13      Q           Do you have any strong opinions one way or the  
14          other about the profession of a captain of a  
15          vessel?

16      A           No.

17      Q           Are you familiar with maritime law, has that  
18          ever been a part of your education, to ...

19      A           To a small extent, we have to have some idea  
20          of maritime law, to enforce it ourselves when we  
21          board the vessel.

22      Q           What's your understanding of the captain's  
23          responsibilities and authority aboard the vessel  
24          he is captaining?

25      A           He's absolutely law on board the vessel.



1 Q If he asked you as an immigration officer, if  
2 you were on board and he asked you to leave the  
3 vessel, what would happen?

4 A Well, he would have to have a good reason for  
5 asking that to begin with.

6 Q Have you ever had to ask a captain to step  
7 down and have someone else take his place?

8 A No. I haven't.

9 Q Do you have the authority to do that?

10 A Yes.

11 Q I notice in your questionnaire that in talking  
12 about alcohol, you indicated that you drink  
13 seldom. Is that just a personal preference, not  
14 medical?

15 A It's personal.

16 Q Have you been around people that have had too  
17 much to drink?

18 A Frequently.

19 Q Does your job allow you to drink while you're  
20 at work?

21 A No.

22 Q Have you ever had alcoholic beverages when you  
23 went to lunch?

24 A No.

25 Q Do you have any strong opinions or feelings

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

towards people that do drink?

A No.

Q In your position I assume that you can understand the importance of this case, both to Captain Hazelwood and to the State of Alaska.

A Yes, I do.

Q And the importance of -- if you're called upon to deliberate, listening to the evidence that's submitted through the witnesses and that the court admits, and using your own common sense and good judgement to reach a fair and just verdict in this matter. Would you be willing to do that?

A Yes.

Q Do you feel comfortable with those notions?

A Yes.

Q Do you have any reservations about whether or not you would be willing to give both sides a fair trial in this case?

A No reservations.

Q Thank you, Mrs. Gillespie. I have no further questions, passed for cause.

(0461)

VOIR DIRE EXAMINATION OF MS. GILLESPIE

BY MR. MADSON:

Q Miss Gillespie, have you ever been called as a

1 juror this far, not actually served, but  
2 questioned before by anybody?

3 A No, I have been in the courtroom, called by a  
4 jury, but never on the questioning.

5 Q Never got that far, right?

6 A No.

7 Q Just in the past, okay. First thing, I  
8 noticed when you responded to one of Mr. Cole's  
9 questions about whether you ever had to ask a  
10 captain to step down, you hesitated for some  
11 time. Have you ever had to use your authority  
12 pursuant to your job with a situation involving a  
13 captain at all, or an officer, let's put it that  
14 way. Maritime industry.

15 A Well, a first officer, not a captain.

16 Q What was that situation?

17 A He was interfering with the inspection of the  
18 crew members.

19 Q When you say inspection, that's questioning  
20 crew members to see if they are citizens or have  
21 proper documentation?

22 A I have to interview each crew member on the  
23 vessel.

24 Q To ascertain whether they are legally in the  
25 country.

1 A Yes. That's correct.

2 Q And I take it he tried to keep you from  
3 questioning one or more of these crew members?

4 A Yes, he was interfering quite -- quite a bit  
5 during the inspection.

6 Q Was he employed by Exxon, by any chance?

7 A No.

8 Q Was it a tanker, or anything like that?

9 A No, it was a foreign flag vessel.

10 Q Would you consider yourself a law enforcement  
11 officer?

12 A We are considered to be that, yes.

13 Q Do you generally wear a uniform in your job?

14 A Yes, and a weapon.

15 Q And you get training in the use of the weapon?

16 A Yes.

17 Q I'm a little bit confused, you said you  
18 normally worked at the airport, and then do other  
19 shipboard duties in addition, or is that rotated,  
20 or how does that work?

21 A Well, our regular hours are 7:30 in the  
22 morning until four in the afternoon. The ship's  
23 agents call -- this is when we're taking care of  
24 the aircraft coming into the airport. The ship's  
25 agents call from various different areas, and we

1 keep a board of all the different vessels coming  
2 in, the times and the dates of their arrivals,  
3 and we just take care of them as they come in.

4 Q Is this just foreign vessels, foreign flag  
5 vessels?

6 A No, we also board U.S. vessels when they're  
7 coming from foreign.

8 Q Okay. But you would not be in the situation  
9 of boarding, let's say, Exxon or other oil trade  
10 traffic between ports in the United States and  
11 Valdez? U.S. flag vessels?

12 A No, we do board the tankers in Valdez, because  
13 some of them carry foreign crews.

14 Q How would you know, I mean, you just go in  
15 there to check once in a while, is that what you  
16 do?

17 A No, the agents are resident in these various  
18 different ports, and they call us, and they tell  
19 us that the Juneau is coming in, or the Eastern  
20 Lion, or the Western Lion, certain date, certain  
21 time, and we fly into Valdez and board the  
22 vessel.

23 Q Do you know any of the people in Valdez  
24 personally, the agents for any of the oil  
25 companies or oil shipping lines, like the Alaska

1 Maritime Company, I guess it is?  
2 A Yes, Alaska Maritime agents are the ones that  
3 call us and set these schedules up.  
4 Q Well, Pat Caples, does that name ring any  
5 bell?  
6 A Pat, yes.  
7 Q Bob Arts (ph.)?  
8 A Yes.  
9 Q How well do you know that man?  
10 A Not on a personal level, I just work with him.  
11 Q Let me ask you this, if they were to testify  
12 in this case, do you know them well enough that  
13 you think this would pose a problem for you in  
14 judging their testimony or credibility, because  
15 you know them?  
16 A No, not at all.  
17 Q You wouldn't give them any less weight or more  
18 weight than anybody else?  
19 A No.  
20 Q What about Coast Guard personnel in Valdez, do  
21 you know any of them?  
22 A I don't know any of the Coast Guard  
23 personally. Normally I'm already on board the  
24 vessel when they board, and we -- unless there's  
25 a problem, we really don't have much to do with

1 each other.

2 Q Would they board with you, at the same time  
3 you do?

4 A Sometimes they do, but usually they're -- they  
5 board afterwards.

6 Q Do you believe you might recognize some of the  
7 people, should they walk in here to be a witness,  
8 you might say, "Well, I remembered this guy from  
9 Valdez, I don't remember his name, but I  
10 certainly remember him now."

11 A It's possible, yes.

12 Q Do you think that you know any of these people  
13 well enough that this could pose a problem?

14 A Everybody in a uniform looks alike.

15 Q Well, at least from the ...

16 A Especially wearing parkas.

17 Q ... the neck down, anyway. But suppose you  
18 recognize, say, a person that you say, "Oh yeah,  
19 I remember him from the Coast Guard in Valdez,"  
20 and you had some kind of a situation, you felt  
21 that you either liked the person, disliked him,  
22 or something happened, do you think there's even  
23 this possibility?

24 A No, not at all.

25 Q Speaking of uniforms, Mr. Cole asked you this,

1 but as a law enforcement officer, can you  
2 absolutely unequivocally assure us that you can  
3 judge the testimony of other law enforcement  
4 officers, Coast Guard, State Troopers, whatever  
5 they happen to be, judge them just the same as  
6 anyone else that you have no affinity with?

7 A Yes.

8 Q You have no reservations at all?

9 A None.

10 Q You think law enforcement people generally are  
11 -- well, let me ask you this, do you think that  
12 law enforcement people can make mistakes just as  
13 well as anyone else?

14 A Absolutely.

15 Q You think they can perhaps shade the truth in  
16 their testimony, like other people may or may not  
17 do?

18 A I think prejudice could be there.

19 Q You indicated that when you were down there  
20 -- I'm getting to your opinions, now, that you  
21 stated about the Exxon Valdez situation -- were  
22 any opinions that you reached, were they as a  
23 result of any of the publicity you heard?

24 A No, mostly from talking with ship's pilots  
25 that I'm frequently around.



1 Q Do you know of any names of which pilot would  
2 you be talking ...

3 A Well, I would prefer not to name any, but I  
4 work with them frequently.

5 Q What about Mr. Murphy, do you know him?

6 A No.

7 Q Who ...

8 A It's the Southeast pilots and the Homer pilots  
9 that I'm more familiar with.

10 Q I guess I'm wondering why you were discussing  
11 this topic with them. Was there a personal  
12 interest on your part, or ...

13 A Well, when it first happened, of course it was  
14 quite a topic of conversation, especially around  
15 shipping, and my -- one of my questions had been  
16 why did the pilots leave the vessels before Bligh  
17 Rock, when it's such a dangerous area. And I was  
18 led to understand that at one time, the pilots  
19 remained on board for quite a distance.

20 Q And then later, there was a change?

21 A And later were taken off. And it was changed  
22 later on.

23 Q Is this information you found out from talking  
24 with the pilots?

25 A Yes.

1 Q Did they express opinions to you, as to  
2 whether or not this was a factor in the accident  
3 or not?

4 A Yes, they felt that the pilots should have  
5 been left aboard, until they were past that  
6 particular area.

7 Q Did they say why, just ...

8 A Just because it's a dangerous area. Dangerous  
9 water.

10 Q In other words, the pilots' station should be  
11 changed to a point further than where they got  
12 off?

13 A They should be where they used to go out to,  
14 before it was changed.

15 Q That opinion that they have, I take it then,  
16 caused you to kind of form perhaps the same  
17 opinion as to what had happened here.

18 A Well, I've wondered about it, yes. Why it was  
19 changed, whether it would be a monetary  
20 consideration, or a safety factor.

21 Q I think you mentioned that, because it was,  
22 you think, a money -- may have involved money, or  
23 extra cost, right?

24 A Yes.

25 Q In any of those conversations with the pilots,

1 was the subject of Captain Hazelwood ever  
2 discussed?

3 A No.

4 Q Not at all?

5 A No.

6 Q Not the responsibility of the captain and what  
7 he should or should not have done?

8 A Not that I recall.

9 Q What about the subject of alcohol, or use of  
10 alcohol, allegedly on the part of the captain,  
11 was that ever discussed?

12 A No.

13 Q Did you know about it?

14 A I read about it in the papers. The  
15 possibility was that Captain Hazelwood had been  
16 drinking.

17 Q Did that knowledge cause you to have any  
18 opinion, however slight, that he might be guilty  
19 because of the alcohol issue?

20 A No.

21 Q Now, have you talked to anyone else about the  
22 Exxon Valdez incident, with anyone besides the  
23 pilots that you mentioned?

24 A Other than general discussions in our office  
25 at the airport, which was a long time ago, no.

1 Q When was the last time you were in Valdez?  
2 A Last year.  
3 Q Pardon?  
4 A Last year.  
5 Q And are you scheduled to go down there again,  
6 or assuming you were not on this jury, would you  
7 be scheduled to go in the near future?  
8 A We normally go about two or three times a  
9 month.  
10 Q When you were down there, did you actually see  
11 the oil spill itself?  
12 A No, most times when we fly in it's pretty  
13 thick cloud cover, so it's very seldom you get a  
14 really clear day to go in.  
15 Q So at no time did you see any damage or  
16 anything you thought was attributable to the  
17 spill, black beaches or anything like that?  
18 A No.  
19 Q When you board a ship, do you do it right  
20 there, at the dock itself, or ...  
21 A Yes.  
22 Q So you don't actually go out into the Sound at  
23 all?  
24 A Not into the William Sound, but most of our  
25 vessels that we board, we board from the ocean.

1 Q Now, you've already stated, I think, that the  
2 opinion you have concerning Bligh Reef is that  
3 that's a dangerous area. Do you think that this  
4 knowledge or opinion you have could in any way  
5 affect your ability to fairly evaluate what  
6 Captain Hazelwood did or did not do with regard  
7 to the area around Bligh Reef?

8 A No.

9 Q Do you not feel from your knowledge of it that  
10 you can say that, "Well, I think he should have  
11 done something different, because I personally  
12 know how dangerous this is," anything like that?

13 A No, there -- we have many groundings of  
14 vessels in the Alaska waters. Dutch Harbor is  
15 one of the worst places in the world for vessels  
16 that get grounded.

17 Q So the fact that a vessel grounds is not  
18 something that you automatically -- a red flag  
19 goes off and says somebody ...

20 A No.

21 Q ... must be criminally responsible, right?

22 A No.

23 Q Getting back to -- oh, one other thing I  
24 wanted to ask you. Two things, actually. You  
25 have a child that's 32 years old?

1 A Yes.

2 Q Is that a son or a daughter?

3 A A son.

4 Q And what does he do for a living?

5 A He's in the Air Force.

6 Q And where is he stationed?

7 A Japan.

8 Q And you said that you had some maritime law  
9 knowledge -- where did you acquire this, and how  
10 did that come about?

11 A In our training at the Academy, in Glencoe,  
12 Georgia.

13 Q That's for immigration officers?

14 A Yes.

15 Q And part of your training would be -- when you  
16 say maritime law, could you just give us a kind  
17 of a general idea of what that would include?

18 A Most of it just includes what we are supposed  
19 to do on board a vessel, and our own immigration  
20 regulations governing the Jones Act, various  
21 different things, and about foreign crew members  
22 serving on board U.S. flag vessels. Frequently  
23 we have to go on board and take them off.

24 Q Are you involved at all with, let's say,  
25 someone in this state who's charged under state

1 law and convicted, and it turns out that they're  
2 from, say, some other country, do you get  
3 involved in the detainers and the action for  
4 deportation at all?

5 A Yes.

6 Q And in essence, that's -- when you learn about  
7 a person that perhaps has been convicted, then  
8 you go to the facility or something, and file  
9 some papers, and then do things -- I'm unfamiliar  
10 with that area of the law, so perhaps you could  
11 tell me what you do.

12 A Well, we take them to Cook Inlet, or wherever,  
13 and they're incarcerated for a period of time,  
14 and they go to court, or if it's just  
15 deportation, they go in front of an immigration  
16 judge, normally in Seattle. And we just see it  
17 from start to finish.

18 Q Thank you. Another thing you mentioned was  
19 that you said on board the vessel the captain is  
20 absolutely law. I mean, by that do you mean that  
21 he is responsible in any way criminally for  
22 actions of his crew members, or can you give us a  
23 little more elaboration on that?

24 A Well, the captain on a vessel would be the  
25 same as a captain on an aircraft. I would think.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

He is total master of the vessel. The total authority.

Q But what about if something happens, does that authority equal responsibility, maybe? Maybe I can put it that way. Because he's the boss, in other words, does it always fall back on him?

A Well, as far as carrying the buck, yes, I would think so.

Q If the evidence in this case and the instructions of the judge were such that that would not be the case, in other words ...

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

THE COURT: Excuse me, Mr. Madson, you don't have to know that. It's an improper inquiry. Regardless of what you think concerning the questions Mr. Madson has been asking you, would you follow the court's instructions regarding those subjects?

A Yes, sir.

THE COURT: Let's move along, Mr. Madson, you've had fifteen minutes, and you're going to have to close up here pretty shortly.

MR. MADSON: Well, I'll do it right now, Your Honor, but I ask before I pass for cause that I can bring up a topic, a subject, okay?

THE COURT: Okay.



1 MR. MADSON: That's all the questions I have  
2 of this potential juror at this time.

3 THE COURT: Okay. That means you can be  
4 excused until tomorrow morning. I'll need you back in  
5 the jury assembly room tomorrow morning at 8:30 a.m.  
6 Do you remember the room that you met in today?

7 A Yes.

8 THE COURT: Okay. Can you be there tomorrow  
9 at 8:30?

10 A Yes.

11 THE COURT: Okay. Thank you very much. Avoid  
12 the media information about this, and don't discuss  
13 this case with anybody.

14 Before you call another juror in, Mr. Madson,  
15 I want to take just a minute out. (Pause)

16 Yes, sir, Mr. Madson?

17 MR. MADSON: Your Honor, I would challenge  
18 this potential juror for cause, and I realize that she  
19 does not fit nicely into any category under Rule 24,  
20 but we have 90-some potential jurors. This potential  
21 juror is like some of the others. They've been there,  
22 they're actually almost a potential witness, she has  
23 seen things, she knows people, she knows some of the  
24 witnesses here, she has opinions, while she says she  
25 can set those aside, I think in a case like this, with

1 the high publicity factor that's involved here, and  
2 everybody knowing everything, and the large number of  
3 people that we have as potential jurors, I think more  
4 leeway should be allowed as far as cause is concerned,  
5 and I think that case law supports that.

6 So I don't think in this situation we need go  
7 right directly to Rule 24(c)(3) or something like that,  
8 I think just in general, looking at this juror and what  
9 she knows from personal experience, conversations with  
10 pilots that are doing this every day, and all the other  
11 information, that just in the interests of justice, she  
12 should be excused.

13 THE COURT: You wish to be heard, Mr. Cole?

14 MR. COLE: Well, Judge, I -- if Mr. Madson had  
15 used ten preempts up to this point, he might have a  
16 better argument, but I believe the witness was candid,  
17 she indicated that she could put things aside, and base  
18 her decision in a way as she's instructed, nothing that  
19 she said falls under Criminal Rule 24(c), and I don't  
20 see the grounds. I would object.

21 (1204)

22 THE COURT: All right, your request is denied,  
23 Mr. Madson. We'll go to -- is it Valerie Erichs? Is  
24 that who you have next? Okay.

25 (Indiscernible - side conversations)

1 THE COURT: That's correct. I think the State  
2 has their next challenge.

3 MR. COLE: Your Honor, the State would  
4 respectfully thank and excuse Mr. Nigh.

5 THE COURT: Okay, we'll notify Mr. Nigh.  
6 That's the State's third peremptory challenge. Now  
7 we'll get Valerie Erichs in. Counsel, before we do  
8 that, I'd like you to get as close to ten minutes per  
9 juror as you can, as I indicated earlier, we have  
10 extensive jury questionnaires, and I think you can get  
11 enough information in ten minutes. If it's somebody  
12 you know right away that after ten minutes you don't  
13 want that juror and you've searched for cause and you  
14 don't think you can get it, I'd prefer that you don't  
15 delve into their background so deeply just to take up  
16 time.

17 Good morning.

18 A Good morning.

19 THE COURT: Have a seat next to the microphone  
20 and take it off the stand, and would you please answer  
21 the first four questions on the blackboard?

22 A My name is Valerie J. Erichs, I'm not a member  
23 of any special organizations, I can't think of a  
24 reason why I shouldn't serve on this jury, and I  
25 don't know anybody.

1 THE COURT: Thank you. Mr. Cole?  
2 VOIR DIRE EXAMINATION OF MS. ERICHS  
3 BY MR. COLE:  
4 Q Thank you, Your Honor. Mrs. Erichs, have you  
5 followed the incidents that occurred back last  
6 March of last year, at all?  
7 A Some of them. I saw 'em on TV and the  
8 newspaper.  
9 Q Have you -- which newspaper do you read?  
10 A Daily News.  
11 Q And do you follow any particular news program?  
12 A Usually Channel 11.  
13 Q Have you talked to your friends or your  
14 husband about this case at all?  
15 A Not really.  
16 Q Coworkers?  
17 A No.  
18 Q Have you formed any opinions as to the  
19 respective roles or responsibilities of the  
20 various parties that are involved? And when I  
21 say parties, I mean the crew members, Alyeska,  
22 Exxon, the Department of Environmental  
23 Conservation, the Coast Guard.  
24 A Not really. I saw stuff in the paper and on  
25 TV, but I don't always believe everything I read,

1 and there's a lot of things, I imagine, that  
2 never came to light.

3 Q Would you be willing -- one of the concerns  
4 the judge, Captain Hazelwood, the State have is  
5 whether or not, if the judge instructed you that  
6 you were to only listen to the evidence of the  
7 witnesses, the evidence that's submitted in  
8 court, and your own common sense and good  
9 judgement in reaching a verdict in this case,  
10 would you be willing to follow an instruction  
11 like that?

12 A Yeah, I think I could.

13 Q And necessarily a part of that would mean that  
14 you would be asked not to consider anything you  
15 have previously heard outside of this courtroom  
16 in reaching a decision. Would you be able to  
17 follow an instruction like that?

18 A Yeah, I think so.

19 Q If in the course of this trial, and you're  
20 selected, you felt that that was -- that you  
21 could not do that ...

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

24 I'm anticipating what your question is, and I  
25 want to address it before it comes out.

1 (1430)  
2 (Whispered bench conference as follows:)  
3 THE COURT: Was your question that if she felt  
4 she couldn't at some time during the course of the  
5 trial, to notify me, is that what (indiscernible)? No,  
6 you're going to have to challenge this juror for cause  
7 based on the information you obtain from her, and  
8 you're not going to ask that question again, I'm not  
9 going to have jurors come up to me in the middle of  
10 trial and tell me that now they feel like they can't.  
11 So that question will no longer be permitted.  
12 (End of whispered bench conference)  
13 (1449)  
14 Q (Ms. Erichs by Mr. Cole:) Can you tell me a  
15 little bit about your work?  
16 A I'm an assistant store manager for Carr's. I  
17 manage -- I'm in charge of the store when the  
18 store manager is not there, and on his vacations,  
19 I'm directly in charge of approximately 70  
20 people.  
21 Q Which store is that?  
22 A The Northern Lights-Muldoon store.  
23 Q And how long have you been the assistant  
24 manager?  
25 A A year and a half.

1 Q Does your job require you to evaluate people?  
2 A Yes, it does.  
3 Q How about to -- have you ever had to give an  
4 unsatisfactory evaluation or fire people?  
5 A Yes, I do.  
6 Q Your questionnaire indicates that you served  
7 on a prior jury.  
8 A Uh-huh (affirmative).  
9 Q And has it only been one prior jury?  
10 A Yes.  
11 Q That was a DWI trial.  
12 A Yes.  
13 Q Anything about your jury experience in that  
14 case that would prevent you from being fair and  
15 impartial in this case?  
16 A No.  
17 Q How long has your husband worked for Penn Air?  
18 A It was a year in October.  
19 Q And you've been in Alaska for quite some time.  
20 A Yes I have.  
21 Q Have you always lived in Anchorage, or have  
22 you lived elsewhere?  
23 A No, I've lived in Anchorage most of the time,  
24 we spent -- I spent four years in Juneau and four  
25 years in Fairbanks.

1 Q Can you give me an idea of what you were doing  
2 the four years you were in Fairbanks?  
3 A I was going to the University of Alaska in  
4 Fairbanks.  
5 Q Did you graduate from there?  
6 A Went four years and had to move.  
7 Q I'd like to ask you about one other point on  
8 your questionnaire, which is where you indicated  
9 that you felt that you had been treated unfairly  
10 by a -- it appears to be a police officer. Is  
11 that correct?  
12 A Yes.  
13 Q Can you tell me a little bit about that?  
14 A It was a charge for unsafe backing. There was  
15 a van right next to me in the parking lot that  
16 wasn't diagonal, it was straight out. I was  
17 backing out extremely slow. A woman ran into me,  
18 and when you're driving through a parking lot,  
19 you know, lots of times you have to stop for  
20 somebody pullin' out, well, this woman had been  
21 in an accident the day before, she was on muscle  
22 relaxants, was told not even to be out and about,  
23 and was like totally out of it at the time, and  
24 yet I was the one that got the ticket.  
25 Q Would you agree that sometimes police officers



1           make mistakes?

2           A           Yes, I would.

3           Q           Anything about that situation that would  
4           prevent you from being fair and impartial if  
5           other law enforcement officers come up here and  
6           testify?

7           A           No.

8           Q           Can you tell me what you do in your free time?

9           A           I mostly just haul my kids from place to  
10          place, to swimming lessons and art lessons and  
11          stuff like that.

12          Q           Have you ever had the situation with your  
13          children that you came home, or they were up in  
14          their room, and some argument breaks out, and  
15          you're called up to -- and you hear a couple  
16          different versions of the story?

17          A           Uh-huh (affirmative).

18          Q           Would it be fair to say that in resolving that  
19          to your satisfaction, what happened? You  
20          interview them, you look at the evidence, and you  
21          use your common sense and good judgement to  
22          figure out what went on.

23          A           That's what I usually do.

24          Q           Would you be able to apply those kind of life  
25          experiences here, if you're called upon to judge

1 the credibility of witnesses here?

2 A Yeah.

3 Q You understand, of course, the importance of  
4 this case both to Captain Hazelwood and the State  
5 of Alaska.

6 A Yes, I do.

7 Q And would you be willing, if you were called  
8 upon to sit on this jury, to listen to the  
9 evidence from the witnesses and the evidence  
10 that's submitted by the court, follow the  
11 instructions, and use your common sense and good  
12 judgement in reaching a fair and just verdict for  
13 both parties?

14 A Yes.

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

17 A Most definitely.

18 Q Does that seem like a fair concept to you?

19 A It's very fair.

20 Q Thank you very much. I have no further  
21 questions. Passed for cause.

22 (1695)

23 VOIR DIRE EXAMINATION OF MS. ERICHS

24 BY MR. CHALOS:

25 Q Good morning, Mrs. Erichs.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Hi.

Q In response to Mr. Cole's question, you said that you had not really formed an opinion as to the spill. Have you formed any opinion, however slight?

A Things seemed to have pointed to Hazelwood, but I was involved in something that was covered extensively by the media a year ago January, and things were stretched out of proportion and reported wrong, and after going through that, I don't know how much I would, you know, trust what I've read or heard.

Q Do you presently hold an opinion that Captain Hazelwood was at fault?

A I don't really know, I don't feel, enough to form an opinion. I was out of the state on vacation when the incident happened, and I didn't even pay attention to the news then, it wasn't until I got back about two weeks later that I heard about it, even.

Q May I ask what incident you were involved with that received extensive coverage?

A The Brian Relton (ph.) shooting.

Q I'm not familiar with it.

A A gentleman walked into the store that I work

1 at and point-blank shot a produce manager in the  
2 face.

3 Q I see. Did you feel that the coverage that  
4 that incident received was distorted, unfair, not  
5 accurate?

6 A There was a lot of things that weren't right,  
7 and I'm sure that these people reporting didn't  
8 intentionally do it, but they were reporting a  
9 lot of hearsay, I felt. Being there, I knew what  
10 happened, and some of the things just weren't  
11 right.

12 Q Was that the Daily News?

13 A It was both papers.

14 Q I'd like to, for a second, turn to your  
15 description here of what you knew about the  
16 spill. And you say Hazelwood was drunk. Is that  
17 an opinion, or what you heard?

18 A That's just what I heard.

19 Q Then you move on to say they weren't even  
20 supposed to take the route they did. The boat  
21 was on autopilot. Do you have any opinion on  
22 that?

23 A I just had heard that they had gone a route  
24 that they weren't supposed to, and when the one  
25 person running the boat realized what was gonna

1           happen, he couldn't -- didn't realize it was on  
2           autopilot and couldn't turn the boat. I'm -- I  
3           don't know if it's right, or if it's wrong.

4           Q           Where did you hear those two facts, in the  
5           paper, or from friends?

6           A           I don't even remember now. It's been -- I  
7           probably heard it on the news, on TV. I'm not  
8           sure.

9           Q           Have you discussed the spill with any of your  
10          friends?

11          A           Not recently. Maybe right after it happened  
12          we talked about it, but -- not that I can  
13          remember.

14          Q           Do you remember anyone expressing any opinions  
15          as to who was at fault?

16          A           Oh, I heard opinions on both sides, from  
17          people.

18          Q           But have you yourself expressed an opinion as  
19          to what might have happened?

20          A           No. Not really, I just felt bad about what  
21          happened, I didn't necessarily know who was to  
22          blame or what had happened, but it happened.

23          Q           In what way did you feel bad?

24          A           Oh, for all the things that died, and the  
25          environment that was ruined.

1 Q Do you still feel the same way?

2 A Yeah. It was a tragedy.

3 Q Do you have strong feelings about the damage  
4 done to the environment?

5 A Fairly strong. I hate to see that happen to  
6 anything, and I -- accidents happen, but it was a  
7 real shame that it had to happen that way.

8 Q Do you hold any of the crew members on the  
9 Exxon Valdez responsible for the tragedy?

10 A Like I say, I'm not even sure what really  
11 happened, I'd have to find out more about it to  
12 form an opinion, I feel.

13 Q Can you, sitting here today, say without  
14 hesitation, without any equivocation at all, that  
15 your feelings about the damage to the environment  
16 won't affect your ability to be fair? Can you  
17 say that a hundred percent?

18 A Yeah, I think so. Like I say, accidents do  
19 happen. I don't know how this accident happened,  
20 who was at fault.

21 Q But do you consider what happened on the Exxon  
22 Valdez to be an accident?

23 A Right now I do.

24 Q Let me just ask you this. You go on to say  
25 here, as part of your description, that the

1 accident ruined the environment.

2 A Uh-huh (affirmative).

3 Q Is that the feelings that you have just  
4 described?

5 A Yes. Yes.

6 Q Also, in response to Mr. Cole's questions, you  
7 stated that you think -- you used the word think  
8 -- that you can follow the judge's instructions  
9 to set aside any previous opinions that you might  
10 have had about this case. I take it when you say  
11 you think, you meant that you can.

12 A Yes.

13 Q And you have no reservations about that.

14 A No, I'm -- from work, I'm used to dealing with  
15 two sides of stories, whether it's an employee  
16 and a customer, or two employees, or two  
17 customers, and just trying to figure out what the  
18 truth is here, and I do that on a day-to-day  
19 basis.

20 Q And will you be able to do that in this case?  
21 Do you feel that you'll do the same thing here?

22 A I feel so, yes.

23 Q You'll listen to the evidence ...

24 A Yes.

25 Q And judge the case based on the evidence?

1 A Uh-huh (affirmative).

2 Q I just want to ask you a few more questions  
3 about the previous trial that you served on.

4 A Uh-huh (affirmative).

5 Q You say that was a DWI case.

6 A Yes, it was.

7 Q Okay. Without telling me what the verdict  
8 was, can you tell me what the details of that  
9 case were?

10 A The gentleman was driving 90 miles an hour  
11 down the New Seward Highway. They had a  
12 videotape of him so drunk that he couldn't even  
13 stand up, let alone walk along the line. It was  
14 very cut and dried.

15 Q Was there any testimony given by experts in  
16 that case?

17 A Just the trooper that caught him, was the only  
18 person that testified, I believe.

19 Q There were no medical experts?

20 A No.

21 Q Do you disapprove of people drinking?

22 A No.

23 Q Do you have any strong feelings about people  
24 who might drink?

25 A I think people who drink in excess probably



1           need help, but I drink occasionally myself.

2           Q           I see, two times a week.

3           A           Well, roughly, I don't know. On my days off

4           I'll have a glass of wine or something, but ...

5           Q           What do you consider drinking in excess?

6           A           Getting to the point where you're drunk, when

7           you're not -- your actions are affected by

8           drinking.

9           Q           And what's your feelings about that?

10          A           I don't think it's necessary. I -- a drink

11          socially is okay, but drinking to the point where

12          you can't remember things, and everything like

13          that, is just -- I think those people probably

14          need to go through treatment.

15          Q           Is that your definition of people drinking in

16          excess, when you're at a point where you can't

17          remember what you've done, or you can't stand up,

18          or you pass out?

19          A           No, it comes before that, I think, when you're

20          not even thinking straight. I mean, there is a

21          point where you reach where you just don't think

22          straight.

23          Q           Have you ever reached that point?

24          A           Maybe once. Not often.

25          Q           Did you have a lot to drink when you reached

1 the point where you didn't know what you were  
2 doing?

3 A Yeah, I did. Cured me from ever wantin' to do  
4 it again.

5 Q Have you ever drank and driven?

6 A No, I don't drink and drive.

7 Q Just one last question, do your parents live  
8 here in Alaska?

9 A Yes, they do.

10 Q What do they do for a living?

11 A My father works for the National Weather  
12 Service, and my mother works for the Literacy  
13 Project.

14 Q Have you discussed this case with them at all?

15 A Recently? No.

16 Q In the past?

17 A I sp -- right after it happened, everybody  
18 talked about it right after it happened.

19 Q Have your parents expressed any opinions to  
20 you?

21 A No. Not -- how could I remember?

22 Q Okay. Do you remember, several days ago,  
23 Judge Johnstone gave you some instructions about  
24 the respective burden that the parties have,  
25 specifically that the State has to prove beyond a

1 reasonable doubt that Captain Hazelwood was  
2 guilty of a crime, and that Captain Hazelwood  
3 does not have to submit any evidence or present  
4 any evidence?

5 A Uh-huh (affirmative).

6 Q And that he does not have to take the stand if  
7 he chooses not to?

8 A Yes.

9 Q Will you be able to follow those instructions?

10 A Yes.

11 Q Do you have any problem with those  
12 instructions?

13 A No.

14 Q If Captain Hazelwood does not take the stand,  
15 would you hold that against him?

16 A I don't think so.

17 Q Can you say for sure that you would not?

18 A I'd like to hear his side of the story.

19 Q Well, suppose he chooses not to tell his side  
20 of the story. Would you feel that he was somehow  
21 hiding something?

22 A Possibly. I feel if he had nothing to hide,  
23 there's no reason to -- not to get up and say  
24 what happened.

25 Q Thank you. Your Honor, I would like to make

1 an application. Thank you very much for your  
2 candor.

3 THE COURT: All right, why don't you just step  
4 outside the door for a minute.

5 MS. ERICHS: Okay.

6 (2261)

7 MR. CHALOS: Judge, I think Ms. Erichs was  
8 very honest and very forthright in her answers, but I'm  
9 troubled by the last answer that she gave about Captain  
10 Hazelwood not taking the stand, because there is a  
11 substantial possibility that he might not take the  
12 stand, and it seems as though this witness cannot tell  
13 us without hesitation, without equivocation, that she  
14 wouldn't hold that against him, and I would like to  
15 move to excuse her for cause.

16 THE COURT: Do you wish to be heard?

17 MR. COLE: I think she should be asked if she  
18 could follow the instructions. She answered that yes.

19 THE COURT: Let's bring her back in and  
20 explore it a little further, and ask her in the context  
21 if she is instructed that she cannot infer adversely  
22 against Captain Hazelwood if he doesn't take the stand,  
23 let's explore that a little more fully, because she  
24 gave conflicting answers, I believe.

25 MR. CHALOS: Well, I'll try her ...

1 THE COURT: So I'm going to reserve judgement  
2 on this until we've fleshed out -- I'll let you do the  
3 inquiry. Bring her back in.

4 (2325)

5 Q (Ms. Erichs by Mr. Chalos:) Miss Erichs -- or  
6 Mrs. Erichs, I'm sorry -- you understand the  
7 importance of this case to Captain Hazelwood and  
8 also to the State of Alaska.

9 A Yes, I do.

10 Q Your last answer needs to be clarified a  
11 little bit. You said that if Captain Hazelwood  
12 does not take the stand, it might affect your  
13 judgement in the sense that you feel that if he  
14 had nothing to hide, he should just get up and  
15 tell his side of the story.

16 A Uh-huh (affirmative).

17 Q If the judge were to instruct you that you  
18 should disregard or set aside any feelings you  
19 might have in that regard if Captain Hazelwood  
20 does not take the stand, can you assure us a  
21 hundred percent, given what you just said, that  
22 you will be able to follow the judge's  
23 instructions and set aside your own personal  
24 feelings?

25 A And just take all the other evidence into

1 account.

2 Q Yes.

3 A Anything else? I'd do my very best. I think  
4 I could.

5 Q But you can't say for sure, though, a hundred  
6 percent that that won't enter -- the fact that he  
7 didn't take the stand won't enter into your own  
8 judgement.

9 A All I can tell you, I'd do my very very best,  
10 I think I can, I ...

11 Q See, in this ...

12 A I understand we all have rights not to talk, I  
13 understand that, and I think that I could do it,  
14 but I -- probably like 99 percent could do it.

15 Q But not a hundred percent?

16 A I think -- oh, gosh.

17 Q You need to be as honest with us as you can.

18 A I'm -- I'm trying.

19 Q I know you are.

20 A And I'm saying, most likely I think I can do  
21 it. It's just -- and if I was instructed to, I  
22 would really try to take everything else into  
23 account and not think about that.

24 Q But you can't say a hundred percent that it  
25 won't affect you.

1 MR. COLE: Judge, that's ...  
2 A No.  
3 MR. COLE: ... not what she said.  
4 THE COURT: Mrs. Erichs, the question that  
5 suggested how I would instruct you wasn't totally  
6 accurate, the -- and I don't know what the exact  
7 wording of the instructions are going to be, but  
8 suffice it to say that the defendant has a  
9 constitutional right ...

10 A Yeah, I understand that.

11 THE COURT: ... not to testify.

12 A Yeah.

13 THE COURT: Just like you would have, I would  
14 have, anybody else would have. And you'll be  
15 instructed at the close of the case if you're selected  
16 on the jury that you can't even discuss, or consider in  
17 any way, his decision not to testify, and it cannot  
18 enter into your deliberative process in any way, on the  
19 question of whether he is guilty or not guilty of the  
20 offense charged. You've been very candid, and I need  
21 to find out from you if you will, not if you can, but  
22 if you will follow the court's instructions.

23 A I would. I would follow the court's  
24 instructions if I was chosen.

25 THE COURT: Are you positive of that?

1 A Yes, I would follow the court's instructions  
2 on anything I was told.

3 THE COURT: All right. When you're answering  
4 Mr. Chalos' questions, though, it sounds to me like in  
5 the back of your mind, you might still feel that, well,  
6 if he didn't have anything to hide, he should get up  
7 there and tell his story. How do you square that with  
8 your ...

9 A Well, I understand the constitutional right,  
10 and if I was in that position and I didn't want  
11 to speak, I'd expect people to respect my rights.

12 THE COURT: And will you respect Captain  
13 Hazelwood's rights in that respect, if he elects not to  
14 testify?

15 A Yes.

16 THE COURT: Do you have any hesitation?

17 A No, if I was sittin' there, I'd want the same  
18 thing.

19 THE COURT: Any further inquiry?

20 Q (Ms. Erichs by Mr. Chalos:) Yes, just a few  
21 more questions, Your Honor. If you were sitting  
22 there, Mrs. Erichs, would you want a potential  
23 juror who, while they understand the instruction  
24 that you didn't have to testify, they would still  
25 have a feeling that if you didn't take the stand,



1           that then you're trying to hide something?

2           MR. COLE: Judge, I think that that question  
3 has been -- the court has talked about that.

4           THE COURT: I'll let him ask this question of  
5 this particular juror one time. Do you understand the  
6 question?

7           A           He's asking if I was sitting in Hazelwood's  
8 place, would I want somebody who wasn't a hundred  
9 percent sure on the jury.

10          Q           (Ms. Erichs by Mr. Chalos:) Right.

11          A           No, I'd want to be treated that if I chose to  
12 take my constitutional stand and say no, I'm not  
13 gonna speak, I would expect that right to be  
14 taken and considered and followed.

15          Q           I'm not talking now about the right, but I'm  
16 talking about the attitude that flows from that,  
17 that is, he exercises his right, but you still  
18 believe that if he really didn't have anything to  
19 hide, he would take the stand. Can you set that  
20 notion aside?

21          A           Yes. With the court's instructions I would.

22          Q           Can you say that a hundred percent?

23          A           Yes.

24          Q           Okay. Thank you. Your Honor, may we excuse  
25 the juror?

1 THE COURT: Yes. Come back tomorrow morning  
2 at 8:30 a.m. Do you know where to come, the jury  
3 assembly room?  
4 A Oh yeah.  
5 THE COURT: Okay, tomorrow at 8:30, and don't  
6 discuss this case with anybody, and avoid media sources  
7 concerning that case.  
8 A Okay.  
9 THE COURT: Okay.  
10 (Indiscernible - whispering)  
11 THE COURT: Eight-thirty is what I said. Is  
12 there something wrong with that?  
13 (Indiscernible - whispering)  
14 THE COURT: I think I said 8:30. Not yet.  
15 Yes, Mr. Chalos?  
16 MR. CHALOS: Yes, Your Honor, I know that Mrs.  
17 Erichs did her best to give us a straightforward  
18 answer, but I detected, and I'm sure the court  
19 detected, a slight hesitation on her part, not to  
20 follow the court's instruction, but in the area of  
21 being able to set aside her own personal feeling with  
22 respect to the defendant not taking the stand. I would  
23 renew my motion to have her excused for cause on that  
24 basis.  
25 THE COURT: Mr. Cole?

1 MR. COLE: Judge, I'm basically not going to  
2 take any position other than she answered the court's  
3 questions, she was forthright, I don't think that we  
4 can -- I think her answers were correct, she said she  
5 would do it, she would follow the court's instructions.

6 MR. CHALOS: Your Honor, if I may say one more  
7 thing before we close the argument. We have a large  
8 pool of jurors. I think when we're in close question  
9 like this, I would ask the court to give the benefit of  
10 the doubt to the defense, and excuse this particular  
11 juror.

12 THE COURT: I'm going to excuse the juror.  
13 Her statement that if somebody had nothing to hide,  
14 they would take the stand, I think I can't set that  
15 aside, that's just too strong of a statement. So I  
16 will excuse the juror, we'll notify her tomorrow or  
17 today sometime.

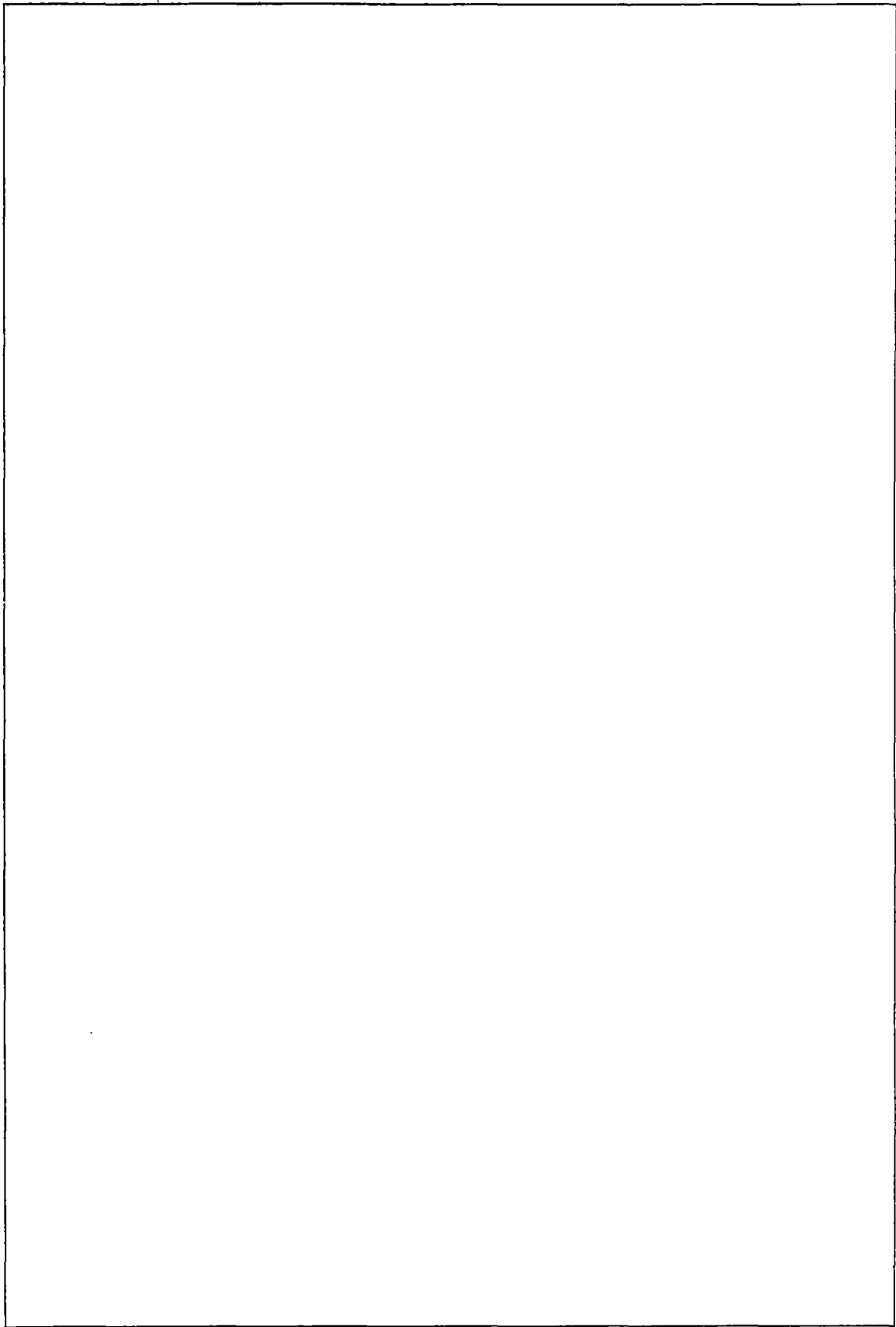
18 MR. CHALOS: Thank you, Your Honor.

19 THE COURT: All right, we'll call the next  
20 juror in. And once again, I don't want to get an  
21 hourglass up here that says ten minutes on it, or a  
22 time clock, but I'm going to ask you to start getting  
23 close to ten minutes. David Bates is who I have next.

24 Good morning, Mr. Bates.

25 MR. BATES: Good morning.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 THE COURT: Have a seat in the front row next  
2 to that microphone, take it off the stand, and please  
3 answer the first four questions on the blackboard, if  
4 you would. You can have a seat.

5 MR. BATES: My name is David H. Bates. I'm  
6 not sure, organization ...

7 THE COURT: Social, recreational,  
8 environmental ...

9 MR. BATES: No organizations. The only reason  
10 I can think of would be my feelings of the case, I  
11 don't think that I could have an impartial, you know,  
12 feeling about it, with what I've followed, you know, as  
13 far as the case goes and everything, and how I feel  
14 about Alaska, not -- I don't know any of the  
15 defendants, attorneys, plaintiffs, or witnesses.

16 THE COURT: What is your feeling now? First  
17 of all, let me just ask you, do you have a feeling that  
18 Captain Hazelwood is somewhat at fault in this case?

19 MR. BATES: Yes, I do. I'm a heavy equipment  
20 operator myself, and, you know, I don't think that the  
21 position that -- you know, that he led was kind of  
22 irresponsible in -- you know, in that matter, I think,  
23 as far as I'm concerned.

24 THE COURT: Okay. If you were chosen on this  
25 jury, you'd be instructed that you're to decide this

1 case based solely on the evidence that's introduced in  
2 this court, and in accordance with the court's  
3 instructions on how to view that evidence, and you  
4 would not be able to consider outside sources of  
5 information, such as newspaper articles you may have  
6 read, television newscasts you may have seen and heard.  
7 Are your opinions so strong that you would not be able  
8 to follow those instructions at this time?

9 MR. BATES: Well, I've had, you know, a few  
10 days sittin' over here to think about it, and my true  
11 feelings are that I think it would be real hard for me  
12 to set what, you know, what I've followed in the case  
13 and everything aside, that's my true feelings, I  
14 wouldn't want to put somebody in a position to have me  
15 make a decision, you know, of their fate or whatever,  
16 with my feelings of the case, you know.

17 THE COURT: Okay, I'm going to excuse you  
18 based on what you've said, and I appreciate your  
19 candor. You can take your jury selection card  
20 downstairs to the jury court for further instructions,  
21 with my thanks for your time.

22 MR. BATES: Okay.

23 MR. CHALOS: Your Honor, could we take just a  
24 short recess, maybe just five minutes?

25 THE COURT: We'll take about a ten-minute

1 break.

2 (2948)

3 (Off record - 10:44 a.m.)

4 (On record - 11:01 a.m.)

5 THE COURT: You may be seated, thank you. I  
6 think we're on number 31 now, Debra Crowley. (Pause)  
7 Debra Crowley?

8 A Yes.

9 THE COURT: Please have a seat in the front  
10 row next to the microphone that's on the ledge. Snap  
11 that microphone off of its holder and sit down, and I'd  
12 like you to answer those questions, please.

13 A My name is Debra Crowley, I'm not really a  
14 member of any organizations that I know of, I  
15 work for Providence Hospital, so I guess I'm a  
16 member of that. As far as any reasons I should  
17 not serve on this jury, none that I really know  
18 of, the only thing is, it might interfere with  
19 school a little bit, but that's later in the  
20 evening. No, I do not know the defendant,  
21 attorneys, plaintiff, or witnesses.

22 THE COURT: If you are permitted to serve on  
23 this jury, would you be able to give this case the  
24 proper attention it deserves and not be preoccupied  
25 with your evening school work during the trial time?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Oh yeah.

THE COURT: Okay. Mr. Cole?

(3045)

VOIR DIRE EXAMINATION OF MS. CROWLEY

BY MR. COLE:

Q Good morning, Miss Crowley, how are you today?

A Fine.

Q Have you followed the incident that occurred last March, 1989, when the Exxon Valdez went aground?

A Not really, I know a little of what I've heard, but not really followed it.

Q Do you take a newspaper, at all?

A We used to take the newspaper that came on the weekends only so we could get the TV guide.

Q Okay. So you haven't really read too much about it.

A No.

Q Have you talked about this incident with friends?

A No, not really, people asked what I'm doing at jury duty, and I said I'm waiting to be on a trial, and I can't talk about it, so that's about all.

Q When the incident happened back in March of



1 last year, March and April, did you have any  
2 discussions with any friends about this case?

3 A Nothing that really stands out in my mind.

4 Q Since that time, have you formed any opinions  
5 about the respective roles or responsibilities of  
6 the parties that were involved? And when I say  
7 parties, I mean the drew members, Alyeska, Exxon,  
8 the Department of Environmental Conservation, the  
9 Coast Guard, as to what their role was in the  
10 cause of this grounding.

11 A No, not at all, I have no idea.

12 Q Would you feel comfortable with an instruction  
13 from the judge that indicates that if you are  
14 called upon to serve in this case, that you are  
15 to view the evidence from the witnesses, the  
16 evidence that's submitted in court, and base a  
17 decision on that and your own common sense and  
18 good judgement? Would you feel comfortable  
19 following an instruction like that?

20 A Yes.

21 Q And an important part of following an  
22 instruction like that is that if you had heard or  
23 you do -- have read or talked about things  
24 outside about this case, outside this courtroom,  
25 that you set those aside, and not base your

1 decision on any of those things, but just on what  
2 you hear in court here.

3 A Yeah, I'd feel comfortable with that.

4 Q Where did you go to high school?

5 A Service High School.

6 Q Were you involved in any extracurricular  
7 activities at Service?

8 A Nothing really, I was a Guardian Angel, on the  
9 hockey team, but I worked after school, from  
10 eighth grade on.

11 Q Where have you worked?

12 A Oh, I've worked for a couple video stores, our  
13 neighbor's bakery, Gary King's, REI, babysitting.  
14 Now I work for Providence.

15 Q And at Providence, what do you do?

16 A I'm a teacher's assistant in the Center for  
17 Child Development with toddlers.

18 Q Can you give me an idea of what type of things  
19 you do during the day?

20 A Well, I assist the head teacher in helping  
21 manage the class and making sure that things flow  
22 with the children and the different transitions,  
23 like, for instance, cleanup time or somethin', I  
24 help the kids learn how to clean up and put their  
25 stuff away, and get ready for the next

1 transition, and just kind of be there.

2 Q Who's -- are these children that are  
3 hospitalized, or ...

4 A No, these are children -- their parents work  
5 at Providence, these are the employees' children.

6 Q And how long have you worked there?

7 A Since June 10th of 1988.

8 Q Can you tell me a little bit about your going  
9 to school at the UAA?

10 A Yeah, I -- my major is in hospital  
11 administration, but right now it's undeclared. I  
12 have to carry 12 continuing education units a  
13 year to work with the kids, so two of my classes  
14 are -- one's on child nutrition, one's on child  
15 psychology, and then I have a medical  
16 transcription class, and a drawing class, and  
17 basic liberal arts, basics.

18 Q Sure. What classes are you taking right now?

19 A Those.

20 Q Those are the ones that you are taking.

21 A Yeah.

22 Q Have you taken any courses related to the  
23 effects of alcohol on the system, the body?

24 A Not really, just a little bit of what they  
25 talk about in psychology, nothing major.

1 Q What do you like to do in your free time?  
2 A Oh, I've kind of been gettin' into a little  
3 bit of crafts, and being with my friends, I  
4 guess. Playing games.  
5 Q Do you read much, at all?  
6 A All my free time that I can dedicate to school  
7 is reading, I haven't had any chance to read any  
8 books or anything.  
9 Q No pleasure?  
10 A No.  
11 Q Is school -- preoccupying a large part of your  
12 time in the evenings?  
13 A Yeah, mostly.  
14 Q What are your future goals?  
15 A To work at Providence Hospital as an  
16 administrator.  
17 Q Do you understand the importance of this case  
18 both to Captain Hazelwood and to the State of  
19 Alaska?  
20 A Yeah.  
21 Q And with an understanding of that importance,  
22 do you feel comfortable with the notion that you  
23 will be asked, if you're chosen to sit on this  
24 jury, to evaluate the testimony of the witnesses,  
25 evaluate the evidence that's presented before the

1 court, and you will be asked to reach a fair and  
2 just verdict based upon that evidence and your  
3 own common sense and good judgement. Would you  
4 feel comfortable with that?

5 A Yeah, I think so.

6 Q And would you be willing to give both sides a  
7 fair trial in this case?

8 A Yes.

9 Q Does that seem fair to you?

10 A Yes, I would expect that if I was on trial.

11 Q Judge, I have no further questions for Miss  
12 Crowley. Thank you very much. Passed for cause.

13 VOIR DIRE EXAMINATION OF MS. CROWLEY

14 BY MR. MADSON:

15 Q Miss Crowley, what do your parents do, do they  
16 still live here in Alaska?

17 A Yeah.

18 Q What do they do for a living?

19 A I don't know what my father does, my parents  
20 have been divorced for quite a long time. My  
21 mother, she's a real estate agent for Fortune  
22 Properties.

23 Q And you haven't seen your father for a while?

24 A Just -- no, a couple hours every couple months  
25 or something.

1 Q You live at -- by yourself, or share with a  
2 roommate, or anything like that?  
3 A Yeah, I have a roommate.  
4 Q What are your normal hours when you work,  
5 then, for instance?  
6 A Six-thirty in the morning till 3:00 in the  
7 afternoon.  
8 Q And then you go to school from -- in the  
9 afternoon, normally?  
10 A Oh, I only have class three nights a week, and  
11 it's about 5:30 at night.  
12 Q Oh, so it's 5:30 to 7:30 or something like  
13 that.  
14 A Yeah.  
15 Q And what year would you consider yourself in  
16 there right now?  
17 A A junior.  
18 Q Your questionnaire, and also the questions you  
19 answered here today, would indicate that you  
20 didn't really pay much attention to the news  
21 broadcasts, or paper accounts of what happened  
22 down in Valdez.  
23 A No, I'm not big on the news or the newspaper  
24 really.  
25 Q What about talking with your friends, either

1 at school or at work, anything like that, were  
2 there any discussions about it?

3 A No, none.

4 Q None at all?

5 A Really, I mean, someone would mention, you  
6 know, a while, about an otter or something like  
7 that, but nothin' really -- nothin' about the  
8 people that were involved, I didn't really know.

9 Q What about jokes? Hear any jokes about what  
10 happened down there that are kind of going  
11 around?

12 A No, none that I can remember.

13 Q Considering this trial might last for a long  
14 time, and it's always an imposition on a  
15 potential juror, is this a particular jury that  
16 you would want to serve on as opposed to any  
17 other kind of a case?

18 A As opposed to any other?

19 Q Yeah, any other kind of case, a criminal,  
20 civil case, or whatever, does this one have any  
21 particular interest to you, that you would like  
22 to be on this jury?

23 A Not any real particular interest, I think it's  
24 fascinating, I've always thought that the justice  
25 system was fascinating, but ...

1 Q You don't drink alcohol at all, right?  
2 A No.  
3 Q You are 21 now, if I'm correct?  
4 A No, I'll be 21 in one month.  
5 Q Then I shouldn't have asked the question, I  
6 guess. When you are of legal age to drink, do  
7 you plan on drinking, or have you considered it  
8 at all, or what are your feelings about alcohol?  
9 A I never really planned on it, I mean, sure,  
10 I'd like to, you know, experience it maybe once,  
11 you know, I mean, I've had alcohol with my  
12 parents or something before, but I don't plan on  
13 going out and getting drunk every night when I  
14 turn 21.  
15 Q You're not waiting for your 21st birthday so  
16 you can go out and tie one on.  
17 A No. Not at all.  
18 Q But you don't have anything against alcohol,  
19 or its use by people, right?  
20 A Oh no, my parents drink alcohol.  
21 Q Have you been around people that you thought  
22 in your own mind and opinion were under the  
23 influence, drank too much, you know, that they  
24 were influenced by what they drank, by how they  
25 acted, talked, or whatever?



1 A Well, I've seen people that have been drunk  
2 and influenced, but I don't know anybody that's  
3 like chronic or anything like that.

4 Q That's the answer I was looking for. So --  
5 but you don't consider yourself any kind of  
6 expert at all on ...

7 A Oh, not at all.

8 Q Now, you looked over the witness list, I take  
9 it, that came through here, did you recognize any  
10 -- like, for instance, Dr. Post (ph.), is he  
11 associated at all with Providence Hospital?

12 A Well, Providence -- I work in a building  
13 that's totally detached from the main hospital,  
14 and I really don't know anybody over there.

15 Q So you don't know anyone that's in the  
16 hospital proper.

17 A No, I'm not around the doctors really.

18 Q Have you ever been down to Valdez at all?

19 A No.

20 Q Your questionnaire would indicate not, but ...

21 A No.

22 Q ... either before or after this happened?

23 A No, never.

24 Q Do you have any feelings about what occurred  
25 there as far as the damage to environment, or

1 animals, or anything like that that's so strong  
2 you feel that you might have trouble being  
3 totally fair and impartial?

4 A I didn't really see anything, and not -- I've  
5 never been down there, so I couldn't see anything  
6 firsthand that would make me feel strongly about  
7 it, I mean -- so no.

8 Q Now, you remember Tuesday morning when you  
9 were first in here and the judge gave you some  
10 -- what's called instructions, told you certain  
11 things about the case?

12 A Uh-huh (affirmative).

13 Q In other words, that the State has to prove  
14 the case beyond a reasonable doubt, presumption  
15 of innocence, things like this. Let me ask you,  
16 Miss Crowley, if -- one of those instructions is  
17 that the defendant does not have to prove  
18 anything, and does not have to testify, take the  
19 stand and convince you that he didn't do it or  
20 something like that. Would you hold that against  
21 him in the slightest, any degree whatsoever, if  
22 in this case Captain Hazelwood did not testify?

23 A No, because he has his right. It's up to the  
24 District Attorney to prove to us that -- whether  
25 the evidence is going to show that.

1 Q Have you ever had any courtroom experience at  
2 all, other than being here today?

3 A No.

4 Q What about school, did you ever attend, you  
5 know, a class court session or something as part  
6 of a school class or anything?

7 A No. We were supposed to once, but it got  
8 canceled, and I think that was in high school.

9 Q Otherwise, would you say that your knowledge  
10 of courtrooms is basically from either reading  
11 about it in books or else television, things like  
12 this?

13 A From being here today, and this last week, and  
14 maybe a little Perry Mason, and that's about all.

15 Q What about any classes in, you know,  
16 government or anything like that when you were,  
17 say, in high school? Was that ever covered --  
18 constitutional rights, things like this?

19 A Yeah, that ...

20 Q So that's where you got your background in  
21 that, right?

22 A Well, as you see, in high school we had U.S.  
23 government, but that was basically on laws and it  
24 was only a semester long.

25 Q So you don't have any problem with these basic

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

concepts at all?

A No.

Q Your Honor, I believe that's all the questions I have. No, let me ask one other one, I wrote this down, I didn't quite know what it meant. I heard you say something to Mr. Cole's question about, was it a Guardian Angel or something?

A Yeah.

Q Well, what is that?

A When we have hockey teams and -- like football teams in high school, we had a group of girls that would get together and make banners that would say good luck for the hockey team, or whatever, and we'd choose one particular, like the goalie, or one particular person off the hockey team, and we'd bake 'em cookies and get ready for their games. And that's what we were called. G.A.'s.

Q And that was in high school.

A Yeah.

Q Okay, thank you.

THE COURT: Thank you, Mr. Madson. That means you can go home, or go about your personal affairs, but I'll need you to come back tomorrow morning, Friday, tomorrow, at 8:30 a.m., to the jury assembly room that

1 you assembled in today and the day before yesterday.

2 A Okay.

3 THE COURT: And will there be any problem with  
4 that?

5 A No. Not at all.

6 THE COURT: Okay. Don't discuss this matter  
7 with anybody, and avoid media information about it, and  
8 we'll see you back then. You can just go out the front  
9 way, since you have all your personal belongings.

10 A Okay, thanks.

11 THE COURT: Thank you.

12 (4006)

13 MR. COLE: Judge, can we take ...

14 THE COURT: Just a minute, please.

15 MR. COLE: Can we take up one thing before the  
16 next juror comes in?

17 THE COURT: Let's let Miss Crowley leave  
18 first. (Pause)

19 Yes, sir, Mr. Cole?

20 MR. COLE: Judge, I just -- I'm sure that this  
21 is just an oversight by Mr. Madson and Mr. Chalos, but  
22 I think that in the last couple of people that they  
23 have questioned, they have not accurately stated what  
24 the law is on what the prosecution has to prove. We  
25 have to prove the elements of the case beyond a

1 reasonable doubt. The elements of the charges. That  
2 doesn't mean the case. And I just would like them to  
3 be a little more exact in their words. It's a common  
4 defense tactic to try and make the defense -- the  
5 prosecutor have to prove the color of the coat that he  
6 was wearing, or anything like that, I'm just asking  
7 that they be a little bit more specific and accurate in  
8 the language that they choose.

9 THE COURT: All right, I'll say the same thing  
10 to you, Mr. Cole, you've been telling the jurors what  
11 the court's instructions are going to be, and more or  
12 less summaries of what the court's instructions are  
13 going to be, and they haven't entirely been accurate  
14 for both sides, but -- I think the jurors are getting  
15 the intent behind it, and I don't think there's any  
16 intentional misconduct here. I'd ask that if you're  
17 going to suggest the court's instructions on the way to  
18 view witnesses' credibility, that you be a little more  
19 accurate also. Just to say that when you do exercise  
20 the next challenge, I think that (indiscernible) next.

21 MR. MADSON: That's correct, Your Honor, we  
22 would ask the court to thank and excuse Mr. Stewman.

23 THE COURT: I'm sorry, the last name? Michael  
24 Stewman, is that correct?

25 MR. MADSON: Stewman. Yes, Michael Stewman.

1 THE COURT: Okay, we'll notify him, thank you.  
2 And we'll get the next juror. My records show that's  
3 the defendant's fifth ...

4 MR. MADSON: That's my recollection too.

5 THE COURT: Okay. I have Joan or Joann Miller  
6 next.

7 (Pause)

8 THE COURT: Good morning, Ms. Miller. If  
9 you'd have a seat in the front row and take the  
10 microphone off of the stand, and please answer the  
11 first four questions.

12 A Okay, my name is Joann Miller. Organizations,  
13 I volunteer at the Crisis Pregnancy Center, and I  
14 guess that would be called an organization. I  
15 belong to a church. Other than that I don't know  
16 of any other organizations. There are just a  
17 couple concerns about serving on a jury. One is  
18 my job, and I work for a very small business, and  
19 I'm one of three employees, so I feel it would be  
20 a hardship if one of us left for that period of  
21 time, and another concern is I have a minor lower  
22 back problem, and right now it's not too bad, but  
23 I'm not sure if I were sitting for that period of  
24 time, if it would aggravate it, you know, that's  
25 one of my concerns.

1 THE COURT: Have you had problems by -- when  
2 you've sat for extended periods of time in chairs  
3 similar to what you're in there now?

4 A Well, it bothers me, but it has never been too  
5 bad, and I've never missed any work or anything  
6 of that sort, but I'm just wondering about, you  
7 know, six weeks of sitting, if that's gonna  
8 aggravate it, I don't know.

9 THE COURT: Let me give you an idea of what  
10 takes place. For the remainder of this week and the  
11 next two weeks, if you're on the jury, you'd probably  
12 start sometime next week ...

13 A Uh-huh (affirmative).

14 THE COURT: And you'd go from nine until noon  
15 and from 1:15 until four, and thereafter, at the  
16 completion of those three weeks, we'll start doing 8:30  
17 in the morning until 1:30 in the afternoon, with no  
18 lunch break. Throughout the course of the trial  
19 there'll be periodic breaks. I try to make a break  
20 about every hour and fifteen to hour and a half, and  
21 that lasts around ten or fifteen minutes. Often times  
22 we take more breaks than that, because of other  
23 reasons. And during those breaks, you'd go to a jury  
24 room, and you'd be sitting in another chair, but you  
25 could stand, also, there.



1 A Uh-huh (affirmative).

2 THE COURT: So there's going to be a change,  
3 we'll start going until 1:30 in about two weeks, which  
4 would allow you to go back to your job for the  
5 remainder of the work day.

6 A Uh-huh (affirmative).

7 THE COURT: Would that alleviate some of the  
8 concerns you have?

9 A I think that would alleviate some of the  
10 concerns.

11 THE COURT: And how about your back concerns?  
12 I don't want you to suffer, and if you think that's  
13 going to be a problem, I'll let you make the call on  
14 that.

15 A Uh-huh (affirmative). I really don't know at  
16 this time, if I started this, I'd like to finish  
17 it, you know.

18 THE COURT: So would we.

19 A So ...

20 THE COURT: I can tell you this, that if you  
21 were given an opportunity and you wanted to serve, if  
22 you did have some problems, we would accommodate them  
23 to some extent.

24 A Uh-huh (affirmative).

25 THE COURT: I wouldn't want to let you off the

1 jury because -- unless it was a medical necessity ...

2 A Uh-huh (affirmative).

3 THE COURT: I would rather accommodate them  
4 by letting you take more breaks, standing occasionally  
5 ...

6 A Uh-huh (affirmative).

7 THE COURT: But I'm going to let you make the  
8 call on that. I don't know if you're going to be able  
9 to serve on this jury or not, because we haven't  
10 inquired of you yet ...

11 A Uh-huh (affirmative).

12 THE COURT: But for that reason alone, I'll  
13 let you make that judgement call.

14 A Okay, well, I think I could try it, I don't  
15 think it's real severe right now.

16 THE COURT: Okay. Do you take medication for  
17 your back?

18 A No. Uh-uh (negative).

19 THE COURT: Knowing that you'd only have two  
20 other people covering for your absence, would you  
21 nevertheless still be able to devote the proper  
22 attention to the trial while you were sitting as juror?

23 A I think so.

24 THE COURT: Okay, would your attention be  
25 diverted in any measurable way or significant way

1 because of your concerns for the job when you're  
2 sitting in the jury box listening to testimony?

3 A I don't think so, to a major extent.

4 THE COURT: It's pretty important that when  
5 you're sitting in here you're paying attention to  
6 what's going on in here, and ...

7 A Uh-huh (affirmative).

8 THE COURT: ... I want to make sure that you  
9 think you can do that.

10 A Well, I think -- I do feel it would be a  
11 hardship for my employer.

12 THE COURT: I understand that, I'm concerned  
13 about your feelings and your ability to pay attention  
14 here.

15 A I think I could pay attention.

16 THE COURT: Okay. Okay, Mr. Cole?

17 (185)

18 VOIR DIRE EXAMINATION OF MS. MILLER

19 BY MR. COLE:

20 Q Thank you, judge. Morning, Mrs. Miller. Have  
21 you followed the incidents surrounding the  
22 grounding of the Exxon Valdez since it occurred  
23 last March?

24 A I have read newspaper articles, and I have  
25 watched TV -- not a lot, I didn't have a great

1 amount of interest in the incident. After a  
2 while it just seemed like there was so much  
3 publicity, I didn't follow it to a great extent.

4 Q Can you tell me, do you get a newspaper  
5 regularly?

6 A Yes.

7 Q Which one would that be?

8 A The Anchorage Times.

9 Q And do you watch any news programs regularly?

10 A Not real regularly.

11 Q Have you discussed this with your business  
12 associates, or your husband? The facts  
13 surrounding this case?

14 A It was a matter of conversation in our home  
15 and with friends at the time that it happened.

16 Q One of the concerns that both Captain  
17 Hazelwood, Judge Johnstone, and myself have is  
18 that you not base -- if called upon to sit on  
19 this jury, that you not base your decision on  
20 outside information, but rather on the evidence  
21 that's presented through the witnesses, the  
\*22 evidence that's submitted by the court, and your  
23 own common sense and good judgement. Do you feel  
24 you could follow such an instruction?

25 A I would try to with the best of my ability.

1 THE COURT: Why don't you explore that answer,  
2 Mr. Cole?

3 Q Do you foresee circumstances where you could  
4 not follow that instruction?

5 A I can't think of any right offhand. I guess  
6 over the course of months -- you know, I think  
7 everyone has made a -- has an opinion on this,  
8 and I think -- I understand the need to put that  
9 opinion aside and concentrate on the facts, and I  
10 would try to do that.

11 Q Can you tell us -- have you formed any  
12 opinions -- have any of them been directed toward  
13 Captain Hazelwood's performance on the tanker  
14 Exxon Valdez?

15 A Somewhat, I guess, nothing really specific. I  
16 think just in the general nature I wonder about  
17 certain things, and ...

18 Q Can you give us an idea of what those things  
19 would be?

20 A I just wonder about maybe the responsibility  
21 of one person, the responsibility of the oil  
22 company, the responsibility of our culture in  
23 general, that has the need for oil and has large  
24 oil tankers on the seas in this day and age, and  
25 -- you know, I wonder about all those things.

1 Q Maybe it would be a good idea if you would  
2 tell us what you know about -- or what you've  
3 read or what you remember happened that affects  
4 the grounding. Do you remember any of the facts  
5 that you read?

6 A I don't know about facts per se. I just read  
7 that the vessel was in a narrow part of these  
8 straits and went off course, I heard that Captain  
9 Hazelwood had been drinking, I guess that's  
10 pretty -- that was in the news a lot. You know,  
11 I heard that it was difficult to change the  
12 course of a huge tanker -- those are some of the  
13 things that I heard.

14 Q Are those some of the -- when you were asked  
15 whether you could follow that instruction, you  
16 indicated that you thought you could if you used  
17 your best efforts. Are some of the things that  
18 you just talked about things that might make it  
19 difficult for you to do that?

20 A I don't know if it would make it difficult. I  
21 don't think ...

22 Q Do you feel comfortable that if the court  
23 instructed you that things that you have learned  
24 up to this point are not to be considered if you  
25 are chosen as a juror in your deliberations?

1 A I think that sounds fair.

2 Q Would you be able to follow that instruction?

3 A Yes, I think I would.

4 Q Can I go on, judge?

5 THE COURT: Yes, sir.

6 Q Tell me what the Blind Alley is.

7 A It's a store that sells mini-blinds, window  
8 coverings, that sort of thing.

9 Q And you work as -- are you one of the owners,  
10 or do you just work with one of the owners?

11 A I work as an employee there, salesperson,  
12 office work, that sort of thing.

13 Q And can you tell me how long your husband has  
14 worked for the Post Office?

15 A About five years.

16 Q And what did he do before that?

17 A He was in the Air Force.

18 Q Would that have been here at Elmendorf, or up  
19 at Eielson?

20 A Uh-huh (affirmative). Elmendorf.

21 Q What did he do with the Air Force?

22 A He was a weapons controller. And that's like  
23 an air traffic controller.

24 Q Do you know if he was subject to any  
25 regulations about drinking prior to going on

1 duty?

2 A Not that I know of.

3 Q And your two children, do they still live up  
4 here?

5 A My daughter's in school in California and my  
6 son is living up here.

7 Q And she is in college, your daughter?

8 A Uh-huh (affirmative).

9 Q Where would that be at?

10 A It's at the Master's College, just north of  
11 Los Angeles.

12 Q I see that at some point you were a nurse.

13 A Uh-huh (affirmative).

14 Q When was that?

15 A That was about 20 years ago, before my  
16 children were born.

17 Q I know it was a long time ago, but did you  
18 receive any special training as a nurse in the  
19 effects of alcohol on the body?

20 A Not any special training, no.

21 Q You noted in your questionnaire that you drink  
22 very seldom.

23 A Uh-huh (affirmative).

24 Q Is that for personal or medical reasons?

25 A Just for personal convictions, my own personal



1 convictions.

2 Q Do you have strong feelings about people that  
3 do drink? That would affect your ability to be  
4 fair and impartial in this case?

5 A Well, I feel like -- drinking per se is not  
6 wrong, but I do feel like being drunk is wrong.

7 Q Have you been around people that have had too  
8 much to drink?

9 A Yes.

10 Q And you've never been out to Prince William  
11 Sound.

12 A We did take a cruise from Whittier to Valdez.  
13 We took that cruise at one time.

14 Q Can you tell me, what do you do in your spare  
15 time?

16 A Well, I do some volunteer work, I spend some  
17 time with friends, do my housework, grocery  
18 shopping, when I'm not working at my job per se,  
19 you know, those are the kind of things I do.

20 Q Do you read at all?

21 A I don't read a lot.

22 Q What type of -- do you read magazines, or  
23 books, if you do read?

24 A I read magazines, I like to read the Bible, I  
25 read a book occasionally.

1 Q Do you watch television at all?  
2 A I don't watch TV very much.  
3 Q Do you understand the importance of this case  
4 to both Captain Hazelwood and the State of  
5 Alaska?  
6 A I think I do. I imagine it would be very  
7 important to both. I don't know if I understand  
8 all the details or ramifications at this point.  
9 Q If called upon to serve on this jury, would  
10 you feel comfortable, if so instructed, that you  
11 would be asked to evaluate the testimony of the  
12 witnesses, look at the evidence that's submitted  
13 into court, follow the judge's instructions, and  
14 reach a fair and just verdict in this matter?  
15 Could you follow that instruction?  
16 A I think I could.  
17 Q Would you be willing to give both sides in  
18 this case a fair trial?  
19 A Uh-huh (affirmative). Yeah.  
20 Q And is that fair to you, does that sound fair  
21 to you?  
22 A It does. Uh-huh (affirmative).  
23 Q Thank you, Mrs. Miller. Judge, I have no  
24 further questions. Passed for cause.  
25 (0600)

H & M COURT REPORTING • 510 L Street • Suite 350 • Anchorage, Alaska 99501 • (907) 274-5661

1 VOIR DIRE EXAMINATION OF MS. MILLER

2 BY MR. CHALOS:

3 Q Good morning, Mrs. Miller. I'd like to ask  
4 you, what church do you belong to?

5 A I belong to the Baxter Road Bible Church.

6 Q How long have you been a member of that  
7 church?

8 A About 13 years.

9 Q Do you consider yourself a religious person?

10 A No.

11 Q Do you attend church every Sunday?

12 A Yeah.

13 Q Do you go to church through the week?

14 A Occasionally.

15 Q I notice that you read the Bible. Do you  
16 derive strength from reading the Bible?

17 A Yes. Uh-huh (affirmative).

18 Q I'd like to ask you about your back problem,  
19 and I don't mean to intrude into your private  
20 life. When your back flares up, do you become  
21 irritable?

22 A No, it hasn't really been a big problem for  
23 me. Over the years, every once in a while it  
24 just becomes sensitive, and sometimes sitting  
25 just bothers me, but I don't think it -- it

1           doesn't bother me a great deal, it just --  
2           there's just a little bit of an ache there, and  
3           it has never really become severe.

4           Q           You don't find yourself lashing out because of  
5           pain, or anything like that?

6           A           No.

7           Q           You indicated in response to Mr. Cole's  
8           questions that you have formed some opinion about  
9           the responsibility of one person -- in regards to  
10          the spill.

11          A           Uh-huh (affirmative).

12          Q           Can you tell me what that opinion is?

13          A           Well, it's -- I don't know that I have a  
14          definite -- I mainly wonder about certain things,  
15          I wonder about the guilt or innocence of one  
16          person in this matter ...

17          Q           Sorry to interrupt, are you saying that you  
18          think perhaps there is more guilt than just one  
19          person, there are other people responsible?

20          A           I think that's possible. I would feel that  
21          way, perhaps.

22          Q           I ...

23          A           I mean, I don't know for sure about any of  
24          these things, you know, because I don't know a  
25          lot of the facts, but these are things that I've

1 thought about and wonder about, you know, I  
2 really don't have -- I mean, some people say  
3 definitely one way or another about their  
4 feelings about the guilt or innocence of this  
5 person, and I guess I still wonder about these  
6 things, I don't know for sure.

7 Q Has anyone close to you, your husband,  
8 relatives, close friends, expressed any feelings  
9 one way or the other towards -- about one man's  
10 guilt?

11 A Not definitely.

12 Q They've expressed some opinions?

13 A I wouldn't say that there are any definite  
14 opinions. I think there's just been a lot of  
15 talk about various things that have gone on, I  
16 don't know that I remember any definite opinions.

17 Q Does your husband hold any opinion as to what  
18 might have happened?

19 A I think he feels kind of like I do, that we  
20 wonder really what did happen.

21 Q Do you feel that your mind is open enough to  
22 come in here and listen to the evidence, listen  
23 to all the evidence and then make a determination  
24 from there?

25 A Yes.

1 Q You do.

2 A Uh-huh (affirmative).

3 Q And you can say that without any hesitation?

4 A I've never done this before, so I will try and  
5 -- you know, I would hope that I would be able to  
6 do that. I would like to be able to do that.  
7 That's the best I can say at this time.

8 Q Do you have any reservations at all about  
9 being able to do that?

10 A I guess I do have some reservations because  
11 I've never been through this process before, and  
12 I really don't know after everything goes on how  
13 I'll be affected by it. I would like to think  
14 that I can look at the facts and make a decision.  
15 That would be fair.

16 Q You spoke about an opinion that you hold in  
17 respect to society's need for oil. Can you  
18 elaborate a little bit on that?

19 A Well, my thoughts are just -- you know, in  
20 wondering about this whole situation, I think of  
21 -- like, 50 years ago there weren't huge oil  
22 tankers on the seas, and so I wonder at this time  
23 -- I sometimes wonder, no matter who's in charge,  
24 if there aren't going to be some oil accidents  
25 once in a while because of just the fact that we

1 have huge oil tankers on the seas in this day and  
2 age, you know, that's the kind of thing I was  
3 thinking about.

4 Q Do you have any feelings, however slight,  
5 about the damage to the environment?

6 A Yes, I do.

7 Q Could you tell us what those feelings are?

8 A Well, I think it's a terrible thing. I think  
9 we all enjoy nature, and it's a terrible thing to  
10 see it destroyed.

11 Q Would those feelings in any way affect your  
12 judgement in rendering a fair, impartial verdict?  
13 In other words, do you feel so strong about the  
14 damage to the environment that it would affect  
15 your ability to be fair in this case?

16 A I don't think so.

17 Q Can you assure us 100 percent that your  
18 feelings won't affect your judgement in that  
19 regard?

20 A I don't feel like I know myself well enough to  
21 say that I could do anything 100 percent, I will  
22 try my best, you know, that's ...

23 Q Do you have any doubts at all about being fair  
24 because of your feelings with respect to the  
25 environment?

1 A No, I don't think that that would be a major  
2 factor.  
3 Q Now, you heard something about the possibility  
4 that Captain Hazelwood was drinking ...  
5 A Uh-huh (affirmative).  
6 Q ... prior to the grounding. What specifically  
7 have you heard?  
8 A I think I heard -- now, I don't remember  
9 definitely, because it was so long ago that I  
10 read these things ...  
11 Q As best as you can.  
12 A I think I heard that he was what you would  
13 call drunk according to the alcohol level in his  
14 blood, but then later on I heard that -- it was a  
15 little bit vague to me as to whether that was a  
16 fact or not. But there was that mention of that  
17 condition, I remember.  
18 Q Yes. Have you -- did you object, Mr. Cole?  
19 Have you formed any opinion in that regard, as to  
20 whether Captain Hazelwood was drinking or was  
21 drunk on the night of the grounding?  
22 A I can't say that I know definitely for sure  
23 about that.  
24 Q Have you formed any opinion, however slight?  
25 A Well, I feel like if he was drunk, it was



1 wrong to be that way, but I think I would have to  
2 hear the facts to know for sure if that was the  
3 condition or not.

4 Q If evidence were to be introduced that Captain  
5 Hazelwood had been drinking, would that affect  
6 your ability to render a fair and impartial  
7 verdict?

8 MR. COLE: Don't answer the question. I  
9 object to that question.

10 THE COURT: Sustained.

11 MR. COLE: Don't answer the question.

12 THE COURT: Let me rephrase it, maybe we can  
13 move this along. Would you follow the court's  
14 instructions on how to view any evidence presented in  
15 this case regarding drinking, if there is any evidence  
16 concerning it?

17 A I would follow the court's instructions, but I  
18 do have my own personal opinion about -- you  
19 know, like I said before, I feel it's okay to  
20 drink but wrong to be drunk. No, I would have to  
21 consider that.

22 THE COURT: If the court's instructions on how  
23 to view drinking differ from your personal opinion,  
24 would you be able to set aside your personal opinion  
25 and follow the law that I instruct you on?

1 A I guess if the law differed from what I said  
2 just now about drinking, I would have to disagree  
3 with the law in that.

4 THE COURT: All right. I'm going to excuse  
5 you because of your statements that you would not be  
6 able to follow the court's instructions. I don't hold  
7 it against you in any way, you have strong opinions,  
8 that's up to you, but I'm glad you've voiced that at  
9 this point.

10 A Uh-huh (affirmative).

11 THE COURT: You can take your jury service  
12 card downstairs to the jury clerk for further  
13 instructions. My thanks.

14 A Okay.

15 MR. CHALOS: Mrs. Miller, thank you.

16 THE COURT: You can just go out the front way  
17 here, you don't take those with you. Nathan Cummins.  
18 We'll take 10 minutes to decide on Nathan Cummins.  
19 I'll time you, counsel, so we can get out of here at 10  
20 after.

21 Good morning, Mr. Cummins. If you'll have a  
22 seat in the front row, next to the microphone. Go  
23 ahead and take the microphone off the stand, it snaps  
24 off. Would you please answer the first four questions  
25 on the board?

1 (1082)

2 A Nathan Scott Cummins, no organizations.  
3 There's no reasons why I should not serve. And  
4 no, I don't know the defendants, attorneys,  
5 plaintiffs, or no witnesses.

6 THE COURT: Mr. Cole?

7 VOIR DIRE EXAMINATION OF MR. CUMMINS

8 BY MR. COLE:

9 Q Thank you, judge. Good morning, Mr. Cummins.

10 A Morning.

11 Q Have you followed the incidents surrounding  
12 the grounding of the Exxon Valdez at all since it  
13 happened last March?

14 A No, sir.

15 Q You haven't read anything, or ...

16 A Not since the very first articles came out,  
17 mostly.

18 Q Have you talked about the incidents at all  
19 with your friends, or the people you work with?

20 A No, sir.

21 Q Have you formed any opinions about the  
22 respective roles or responsibilities of the  
23 parties involved? When I say the parties, I mean  
24 crew members, Alyeska, the Department of  
25 Environmental Conservation, the Coast Guard ...

1 A No, sir.

2 Q Do you feel comfortable that if asked to serve  
3 on this jury you could set aside anything you've  
4 heard of in the past, and just reach a decision  
5 based on the evidence in court, the evidence  
6 that's presented, and your own common sense and  
7 good judgement?

8 A Yes, sir.

9 Q Where did you come from? Where'd you grow up?

10 A Kansas City, Missouri.

11 Q And you joined the Army after high school?

12 A Air Force.

13 Q I'm sorry.

14 A Right. Not right after, but yes, I did.  
15 About five years now.

16 Q What do you do in the Air Force right now?

17 A Telephone specialist.

18 Q And have you received any special training in  
19 the Air Force?

20 A Not besides tech school.

21 Q How long are you going to be up in Alaska?

22 A Due to leave in October. October ...

23 Q This October.

24 A Right, sir.

25 Q Do you know where you're going to be

1 transferred to?

2 A No, sir.

3 Q Do you get to pick at some point?

4 A Yes, sir, you get eight choices. Whether you  
5 get those or not is -- but you get to pick, yes.

6 Q Were you involved in any athletics or  
7 extracurricular activities in high school?

8 A Yes, sir, football.

9 Q Football. What position did you play?

10 A Guard on offense and a defensive end, defense.

11 Q And I notice that in your questionnaire you  
12 indicated that you drink very seldom.

13 A Right, very seldom.

14 Q Is that a personal choice, or a medical ...

15 A Personal.

16 Q Do you have any strong opinions, either  
17 favorably or disfavorably, toward people that  
18 drink?

19 A No, sir.

20 Q Are you subject to random drug and alcohol  
21 tests in the Air Force?

22 A Yes, sir.

23 Q Do you have any strong feelings about that one  
24 way or the other?

25 A No.

1 Q Do you have any friends that are pilots?  
2 A No, sir.  
3 Q Have you ever been out in the ocean?  
4 A Yeah, I fished out of Seward before.  
5 Q And was that through a charter?  
6 A That's through the Air Force rec camp down  
7 there. Yes, it was a charter.  
8 Q Have you done anything else out in Prince  
9 William Sound, ever been to Valdez?  
10 A Never have.  
11 Q Can you tell me what your -- your folks, are  
12 they back in Kansas?  
13 A Kansas City, Missouri, right.  
14 Q Missouri?  
15 A Uh-huh (affirmative).  
16 Q What do they do?  
17 A My father works for a heavy equipment company,  
18 and my mother works at a sunglass shop at a local  
19 mall.  
20 Q Do you plan on -- how many years did you  
21 enlist for?  
22 A Six.  
23 Q Do you plan on remaining in the Air Force  
24 after that six, or have you made any future plans  
25 about it?

1 A If I had to do it right now, I'd reenlist.  
2 But I still have three years left.

3 Q Have you done any hunting at all, up here?  
4 A No, sir.

5 Q Just fishing.  
6 A Right.

7 Q Do you understand that this is an important  
8 case for both Captain Hazelwood and the State of  
9 Alaska?  
10 A Yes, sir.

11 Q Would you feel comfortable, if instructed, and  
12 asked to deliberate in this case, if you were  
13 instructed to view the evidence from the  
14 witnesses, look at the evidence that's submitted  
15 here in court, and reach a fair and just verdict  
16 based on that and your own common sense and good  
17 judgement? Would you feel comfortable with that  
18 instruction?  
19 A Yes, sir.

20 Q Would you be willing to give both sides a fair  
21 trial?  
22 A Definitely.

23 Q That seems fair to you?  
24 A Yes, sir.

25 Q Thank you, Mr. Cummins. No further questions,

1 passed for cause.  
2 (1328)  
3 VOIR DIRE EXAMINATION OF MR. CUMMINS  
4 BY MR. MADSON:  
5 Q Mr. Cummins, first of all, you said you're  
6 scheduled to leave this October, correct?  
7 A Yes, sir.  
8 Q You don't know where you're going yet?  
9 A No, sir, I do not.  
10 Q Could you ask to stay here in Alaska if you  
11 chose to do that?  
12 A Yes, sir.  
13 Q Do you know if you're going to do that or not?  
14 A Right now, no, I'd leave.  
15 Q Is there any particular reason for that,  
16 climate, or just anything in general, that ...  
17 A That I want to leave?  
18 Q Yeah.  
19 A Yeah, mainly climate.  
20 Q Do you feel that -- or let me ask you this.  
21 Do you have such feelings about this state,  
22 climate or otherwise, that you feel that you  
23 don't have sufficient interest in this case and  
24 what happened in Prince William Sound that you  
25 could be -- that it would render -- make it



1           difficult for you to render a fair and impartial  
2           verdict?

3           A           No, sir.

4           Q           Do you live on base itself?

5           A           Yes, sir, I do.

6           Q           Have you ever lived off base since you've been  
7           in Alaska?

8           A           No, sir, I have not.

9           Q           Is it fair to say that most of your social  
10           activities and everything are centered around  
11           Elmendorf?

12          A           No. I do most of my stuff downtown.

13          Q           You leave there as ...

14          A           Right.

15          Q           ... often as you can, more or less?

16          A           Right.

17          Q           What do you do in your spare time, then?

18          A           I play hockey, rough hockey for the young  
19           Anchorage kids, and I used to work at Ben Boeke,  
20           but I recently quit there, so ...

21          Q           At what?

22          A           At Ben Boeke Ice Arena. Used to work there,  
23           but I've quit.

24          Q           And you -- I may have missed it, but you're  
25           undecided about staying in the Air Force, or have

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

you made up your mind?

A No, if I had -- right now, if I had to reenlist, I would, right, but I still have three years, so we'll have to see how that goes, and ...

Q What exactly is it that you do? I mean, we've had your title, but what is it you really do for the Air Force?

A Well, it's just like in civilian it'd be ATU. We work a phone company on base, phone problems, people move into a new building, want a phone number, or a phone hooked up, we do that.

Q You install phones and then go on trouble calls, things like that?

A No, we -- I actually work with hookin' up numbers on the frames and stuff, and then if -- we call up our outside plant people to install the phones, actually in the places.

Q Have you ever had any experience on radar or anything like that?

A No, sir.

Q Do you feel that you have any other kind of technical expertise or training other than what you've just described to me?

A No, sir, just phones.

1 Q You said that you didn't have any strong  
2 opinions one way or the other about the Air Force  
3 Drug testing program.

4 A Correct, I don't.

5 Q Do you feel it's basically fair if something  
6 shows up in a person's system, do you know what  
7 happens to them, or what rights they may have and  
8 don't have?

9 A Yeah, they have their rights. If they -- it's  
10 just this random test, and they tell you what'll  
11 happen if you get positive and what'll happen if  
12 it's negative.

13 Q Have you had any association at all with any  
14 law enforcement on Elmendorf or any other Air  
15 Force base?

16 A No, sir.

17 Q No friends, or anybody that belongs to Air  
18 Force law enforcement?

19 A No, sir.

20 Q Do you feel that a law enforcement officer,  
21 because he is that, you know, an officer, whether  
22 he wears a uniform or whatever, do you feel that  
23 they generally are more credible than just  
24 anybody else? More believable, that is?

25 A Yeah, I would think that they would be --

1           yeah, what they have to go through to become an  
2           officer, yeah, I'd probably ...

3           Q           If a person such as that for the Coast Guard,  
4                        or a State Trooper or someone would testify in  
5                        this case, would you generally then give them  
6                        more credibility than another witness that is not  
7                        an officer?

8           A           No, I don't think so, no.

9           Q           Excuse me, but I think that what I'm hearing  
10                      is somewhat, just a little inconsistent, or maybe  
11                      I misunderstood. I thought in the one instance,  
12                      you said that yes, they may be more credible, but  
13                      then again you said they're not. Could you tell  
14                      us which way you feel about this?

15          A           Well, you know, they just can't be anyone to  
16                      become, you know, they have to have a good past,  
17                      so yeah, they gotta have a little credit to  
18                      become an officer, so -- but, you know, you'd  
19                      have to listen to what they say, and take it from  
20                      what they said, you just couldn't go off their  
21                      uniform, no.

22          Q           But the fact that they got the uniform, at  
23                      least in your mind, says that they had special  
24                      training or something that made them ...

25          A           No, I'd just say that they must have a past

1           that they've been in -- not in any trouble, I  
2           would not think.

3           Q           Oh, I see what you mean. But you would not  
4           give them any more credibility just because of  
5           this clean slate they've come in here with ...

6           A           No, sir, I would have to listen to what they  
7           said and deliberate on that.

8           Q           Have you ever been involved in any Article  
9           15's, or court martial proceedings at all?

10          A           No, sir. No.

11          Q           Do you know anything about the criminal  
12          justice system as we have it here in Alaska?

13          A           No, sir, none.

14          Q           Have you ever been called this far as a juror,  
15          or anything?

16          A           This is my first time as -- ever being a  
17          summons.

18          Q           Do you particularly want to serve on this jury  
19          as opposed to any other kind of jury service?

20          A           I just want -- you know, I would -- if they  
21          picked me, yes, I would serve and be fair, but  
22          ...

23          Q           From what you know about this case, is there  
24          anything so unique about this one that of all the  
25          cases you could be on if you had your choice, you

1 would pick this one as opposed to anything else?

2 A I didn't know -- I don't know what you're  
3 asking really.

4 Q Well, is there something about being on a case  
5 with this much publicity involved in it that  
6 gives you some feeling that you'd rather be on  
7 this jury, rather than just be called as a juror  
8 in anything else, any other kind of a case?

9 A It's just a job, I would think, to be on any  
10 of the juries.

11 Q With regard to -- a couple things here. On  
12 the information you put on your form here about  
13 what you knew about the incident involved ...

14 A Uh-huh (affirmative).

15 Q Tanker ran aground to shallow water, causing  
16 massive oil leak. Alcohol may have been  
17 involved. Does that pretty much sum up what  
18 you've heard about it?

19 A That's all I know.

20 Q And does the fact that alcohol was involved  
21 -- would that affect your ability to serve as a  
22 fair and impartial juror?

23 A No, it would not.

24 Q You drink yourself, that's according to your  
25 chart here.

1 A Yes, sir ...

2 Q Once a month?

3 A Occasionally, that's about -- roughly, yeah.

4 Q What would you say you drank, and what  
5 occasions, and how much?

6 A I drink beer normally. Is that what you mean?

7 Q Uh-huh (affirmative).

8 A And with the Air Force you have a weight  
9 standard, so I try to stay away from that and  
10 just drink diet sodas, so -- just, like,  
11 Superbowl, Superbowl, that kind of thing.

12 Q If you drink beer on these occasions, about  
13 how much would you drink -- one bottle, two  
14 bottles, three, can you ...

15 A Two. Maybe two bottles.

16 Q Ever had more than that?

17 A Yes.

18 Q Ever had so much that you felt that you had  
19 reached the point that you could say to yourself,  
20 "Maybe I'm drunk"?

21 A Right.

22 Q And I take it from your description and your  
23 form and what you're saying here today, though,  
24 that you don't do that at all anymore.

25 A No, sir, I don't. Not with the Air Force, no.

1 Q Lastly, sir, when you were here Tuesday  
2 morning as a part of the large group, did you  
3 remember hearing some instructions that the judge  
4 gave you about your duties as a juror?  
5 A Yes, sir.  
6 Q One of those involves the presumption of  
7 innocence and the fact that the defendant does  
8 not have to take the stand and testify in any  
9 way. That can't be held against him.  
10 A Correct.  
11 Q Can you assure us a hundred percent -- 100  
12 percent that if that were the case, and you were  
13 on the jury, if Captain Hazelwood did not testify  
14 here, that you would not hold that against him at  
15 all?  
16 A 100 percent, no, I would not.  
17 Q By 100 percent, you would not ...  
18 A No, sir, I would not hold that against him,  
19 no.  
20 Q Do you feel that that's a right that we all  
21 have?  
22 A Yes, sir, I do.  
23 Q In school, did you have any constitutional law  
24 classes, government, things like this?  
25 A No, just history. Basic history, sir.



1 Q I take it you are aware enough of some of  
2 these basic constitutional rights that we all  
3 have?

4 A Correct.

5 Q Do you have any difficulty weighing these  
6 concepts, at all?

7 A No, sir.

8 Q Thank you, sir. I'll pass for cause.

9 (1726)

10 THE COURT: You'll have to come back tomorrow  
11 morning at 8:30. You're still on the jury selection  
12 track. You may be on the final jury here, so don't  
13 discuss this case with anybody, and avoid media  
14 sources. Do you remember the room you met in today and  
15 a couple days ago?

16 A Yes, sir.

17 THE COURT: Okay. Can you be there at 8:30  
18 a.m. tomorrow morning?

19 A Yes, sir.

20 THE COURT: Okay. You can take your personal  
21 belongings out the double doors and we'll see you then  
22 tomorrow.

23 Defense has its next.

24 MR. MADSON: Your Honor, we'd ask the court to  
25 thank and excuse Mr. Grafton, Scott Grafton.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Shane Grafton?

MR. MADSON: Shane, excuse me.

THE COURT: Okay. We'll notify Mr. Grafton as well. That's the defendant's sixth. And let's take a lunch until 1:20.

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

(On record - 1:22 p.m.)

THE COURT: You may be seated. Ready, counsel?

MR. COLE: Yes, Your Honor.

THE COURT: William Montgomery, is that who you've both got next?

MR. COLE: Yes, sir.

THE COURT: Okay. Good afternoon, Mr. Montgomery, have a seat in the front row, take the microphone off of the stand.

A Take it off the stand?

THE COURT: Just snap it off. And would you please answer the first four questions?

A My name is William C. Montgomery, I am a member of the Association of the United States Army, the Field Artillery Association, and my alumni association. Reasons I should not serve on the jury. Other than personal and professional commitments, I don't have any

1 others; besides that. And I do not know the  
2 defendant, attorneys, plaintiffs, or witnesses.

3 THE COURT: What are your professional ...

4 A Well, I have military commitments, training  
5 and things that are scheduled that I'm involved  
6 in the planning and the execution of.

7 THE COURT: Will you be penalized in any way  
8 if you are admitted to serve on this jury?

9 A Not overtly.

10 THE COURT: Well, how about covertly? Who's  
11 going to penalize you?

12 A No one would penalize me.

13 THE COURT: Okay. If you are given the  
14 opportunity of serving on this jury, would you be able  
15 to give it the proper attention it deserves, and pay  
16 attention to the evidence as it's presented?

17 A Absolutely.

18 THE COURT: Okay, thanks. Mr. Cole?

19 VOIR DIRE EXAMINATION OF MR. MONTGOMERY

20 BY MR. COLE:

21 Q Thank you, Your Honor. Good afternoon, Mr.  
22 Montgomery. How long have you been -- is it up  
23 at Elmendorf, that you've been here?

24 A Fort Richardson.

25 Q Fort Richardson, how long have you been here?

1 A Little over two and a half years.

2 Q Have you kept track of the events that  
3 occurred back in March of 1989 when the Exxon  
4 Valdez went aground?

5 A I've been aware of them.

6 Q Can you give me an idea of what sources of  
7 information you've found out -- this information,  
8 was it from friends, through the newspaper,  
9 through watching TV ...

10 A Almost entirely media knowledge.

11 Q Do you get a paper?

12 A Yes.

13 Q Can you tell me which paper you get?

14 A The Times.

15 Q Since the grounding back in March 1989, have  
16 you formed any opinions about any of the  
17 respective roles of the parties that were  
18 involved as to their responsibility for the  
19 grounding? When I say parties, I mean it in a  
20 broad term, any of the crew members on board the  
21 Exxon Valdez, Alyeska, the Coast Guard, Exxon  
22 Shipping Company, the Department of Environmental  
23 Conservation.

24 A I don't know that I've formed any hard  
25 opinions. I don't know that we can read or be

1 exposed to things without forming some sort of  
2 opinions on things, but I -- as far as the  
3 responsibility goes, I would say that there were  
4 so many factors involved here that I would say  
5 there was probably responsibility to go around,  
6 sort of been my impression, you know.

7 Q Can you tell me any opinions you've formed as  
8 to Captain Hazelwood's guilt or innocence? Of  
9 criminal charges?

10 A I don't think I have formed any hard opinions.

11 Q Are your opinions of such a strong nature that  
12 if asked to by this court, you would be unable to  
13 set them aside if called upon to deliberate in  
14 this matter?

15 A No.

16 Q Do you feel comfortable that if instructed by  
17 the court, you would be able to base your verdict  
18 on the witnesses that testify, the physical  
19 evidence that's submitted, and your own common  
20 sense and good judgement?

21 A Yes.

22 Q Can you -- you've been in the Army now for  
23 eight and a half years. Where were you stationed  
24 before you came to Fort Richardson?

25 A I've been several places. Immediately before

1 I was at Fort Sill, Oklahoma.

2 Q Have you gone to officer training school?

3 A Yes..

4 Q Where did you go?

5 A Fort Bend (ph.) in Georgia.

6 Q And can you tell me the rank that you've

7 achieved?

8 A I'm a captain.

9 Q What area -- it sounds -- are you in the field

10 artillery area?

11 A Yes.

12 Q Is that right? When is your -- I'm sorry ...

13 A My tour here in Alaska?

14 Q Tour, yes.

15 A August of '91.

16 Q And do you have any plans in the future as to

17 what you would like to do? Are you going to

18 continue in the military?

19 A I plan to continue in the military.

20 Q Where did you go to college?

21 A Texas A & M University.

22 Q And can you tell me what you majored in at

23 Texas A & M?

24 A Business.

25 Q Have you received any special training in the

1 effects of alcohol on the body?

2 A I have had training in the military as far as  
3 dealing with alcohol and drug abuse.

4 Q Would that include alcohol detection?

5 A No more than layman's detection. I don't know  
6 how to run a Breathalyzer or anything like that.

7 Q Are you subject to random urinalysis?

8 A Yes, I am.

9 Q Do you have any strong opinions about whether  
10 that's proper or improper?

11 A I am comfortable with it enforced in my life,  
12 sir.

13 Q Are you comfortable with -- have you been told  
14 what would happen if you were to turn up  
15 positive?

16 A I know (indiscernible - unclear).

17 Q I noticed in your questionnaire that you  
18 indicated that you drink alcoholic beverages on  
19 certain occasions.

20 A Occasionally.

21 Q That is a personal, not a medical ...

22 A Personal.

23 Q And do you have any strong feelings about  
24 individuals that drink, that would affect your  
25 ability to be fair and impartial here in this

1 court?

2 A I have opinions about abuse of any substance,  
3 but I don't hold any special feelings toward  
4 somebody that -- just simply because they drink.

5 Q You indicated that you have been the victim of  
6 a burglary. Would that have ...

7 A The question asked if any crime ...

8 Q Sure.

9 A ... hunting cabin that was broken into.

10 Q Was that up here, or ...

11 A No.

12 Q ... someplace else?

13 A Someplace else.

14 Q Do you hunt much?

15 A I haven't hunted ...

16 Q Have you hunted up here at all?

17 A I haven't hunted up here. Fished.

18 Q What kind of fishing?

19 A Salmon, halibut.

20 Q Have you ever gone out on a charter? For  
21 halibut?

22 A Yes.

23 Q Have you been out in the ocean much?

24 A No.

25 Q Can you give me an idea of what type of jobs



1           you had in the oil industry back in 1975?

2           A           I worked as a common laborer on a pipeline  
3           during college.

4           Q           Were you staying at home or in camps when you  
5           were working on that?

6           A           I was staying at home.

7           Q           What do you do in your free time?

8           A           I enjoy sports, I golf when the weather is  
9           available, and I do some fishing, read.

10          Q           Can you give me an idea of what type -- do you  
11          read magazines, or fiction, or books, or ...

12          A           Yes, I read magazines, I read fiction, I read  
13          professional journals ...

14          Q           Do you subscribe to any journals at all, at  
15          your house?

16          A           I have -- professional military journals.

17          Q           Your children -- do they go to school at  
18          Bartlett, or actually, do they go to schools up  
19          here?

20          A           Yes.

21          Q           And have you ever had the situation where  
22          you've come home or to an argument over something  
23          that's happened and had to hear two different  
24          stories about what happened while you were gone?

25          A           At home?

1 Q Yeah.

2 A Yes.

3 Q Would it be fair to say that in resolving in  
4 your own mind what actually occurred in your  
5 absence, you looked at the stories that are told  
6 and watched the individuals, the children that  
7 tell you the stories, and base your decision on  
8 that and your own common sense and good  
9 judgement?

10 A Yes, I suppose so.

11 Q If we asked you to do that in here, would you  
12 be -- do you feel you'd be comfortable in making  
13 the same type of determination here?

14 A I would feel obligated.

15 Q Are there any other sports that you're  
16 involved in besides golf?

17 A I play softball.

18 Q And have you ever been involved in a court  
19 martial, or anything like that?

20 A I -- as far as me being charged with anything?

21 Q No, you know, just ...

22 A I have been involved in court martial  
23 proceedings as well as non-judicial punishment  
24 proceedings in the military.

25 Q And has that been as someone sitting listening

1 to the facts as they were presented, or where you  
2 were a witness?

3 A Both.

4 Q Both. Do you understand the importance of  
5 this case both to Captain Hazelwood and the State  
6 of Alaska?

7 A I think it would be hard not to, yes.

8 Q Would you feel comfortable, if you were asked  
9 to sit on this jury, following an instruction  
10 that instructed you to base your decision in this  
11 case on the evidence that's presented by the  
12 witnesses, the evidence that's submitted by the  
13 court, and your own common sense and good  
14 judgement in reaching a fair and just verdict in  
15 the matter?

16 A Yes.

17 Q Would you be willing to give both sides a fair  
18 trial?

19 A Yes.

20 Q Does that seem fair to you?

21 A Yes.

22 Q Thank you, Mr. Montgomery, I have nothing  
23 further, Your Honor. Passed for cause.

24 (2405)

25 \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VOIR DIRE EXAMINATION OF MR. MONTGOMERY

BY MR. CHALOS:

Q Good afternoon, Captain Montgomery. I'd like to ask you about your days at Texas A & M. Were you a member of the Corps down there?

A No, I was not.

Q Did you have any involvement with the Maritime College that they had?

A No. Other than I knew a few people that were attending.

Q What -- can you elaborate on what you know about the spill?

A As I said, almost all of my exposure to it has been basically through the media, both electronic and print media. I have not sought information about it. I know that it happened, and I didn't follow it any closer than I would say most other people, I read the articles in the paper, I watched the coverage on TV. As far as the details involved, I saw early on that it was fairly complicated and a lot of factors involved, and -- I don't know, I guess I just sort of decided that the pieces would fall where they may, and -- I'm not sure what else.

Q Is the information that you've gotten from the

1 newspapers mainly what you read in the Anchorage  
2 Times?

3 A That's -- I would say that's a safe  
4 assumption.

5 Q Do you also read the Daily News?

6 A Occasionally.

7 Q Have you read anything about this incident in  
8 the Daily News?

9 A I couldn't say. I don't subscribe to it, but  
10 occasionally I will read it if it's in the office  
11 or something, but I can't remember.

12 Q With respect to the information you got on the  
13 TV, was that on the local news, national news ...

14 A Both.

15 Q ... CNN?

16 A Yes.

17 Q CNN was Y?

18 A I did watch some CNN. I didn't -- there has  
19 been coverage on the local news also.

20 Q Do you subscribe to any magazines?

21 A No, not at this time. I recently -- I  
22 subscribed to U.S. News and World Report, but I  
23 didn't keep it current.

24 Q Have you formed any opinions with respect to  
25 the spill, hard or not -- I noticed you used the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

word hard opinions.

A Well, like I said, I don't know that we can be exposed to things without -- you form some sort of opinion, and most of my opinions have been passing, and the -- my opinion of the spill is that it was a tragic circumstance that -- I'm not sure that -- obviously looks like preventive measures didn't work, and the -- operation after the spill was -- seemed not real coordinated. Other than that, I guess that's about my only opinion.

Q Well, let's break that down. What preventive measures are you referring to?

A Well, I would say preventive measures from allowing, once the spill had occurred, to contain it, I'm not an expert on it, but it seems like there could have been something else done then, but I don't know.

Q How about the months afterwards, what opinion do you have on that? I think you used the word "operations" afterwards.

A Well, I would say that you're probably referring to the cleanup effort, or whatever, and -- I don't know, it seemed like -- it looked like there was big effort going on, or sizable effort

1 going on anyway, I'm not sure how effective it  
2 was, I have not seen the area, not really  
3 followed it.

4 Q In the course of listening to the television  
5 or reading the newspapers, did you hear any  
6 reports about the possibility that Captain  
7 Hazelwood may have been drinking?

8 A Yes.

9 Q Do you have any opinion on that?

10 A Well, I don't know enough of the facts, I  
11 would say, to have a real -- you know, an opinion  
12 one way or another, I'd try to reserve opinion  
13 till I know all the facts, I would say that it  
14 would be according to exactly when, how much,  
15 what the duties entailed, how he was affected, if  
16 he was impaired, what that circumstances would  
17 bring forth, what his duties entailed at the  
18 time, if he was drinking while he was on duty ...

19 Q Well, if evidence came in that he was drinking  
20 while on duty, what would -- how would that  
21 affect your opinion?

22 MR. COLE: Excuse me, don't answer the  
23 question, that's an improper question. Mr. Chalos,  
24 we've dealt with that several times.

25 Q Let me withdraw that, then, Your Honor, and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

attack it from a different point of view. You stated that you have strong feelings about alcohol abuse.

A Abuse, yes.

Q What are your feelings with respect to abuse?

A I believe I said substance abuse of any kind.

Q Would you consider alcohol a substance?

A Yes, I would say so. I just believe it is -- that when -- I'm not talking about use, I'm talking about abuse, and -- I believe that abuse of any substance is damaging, personally and to other people, and I don't think I have that much more stronger views than our current society.

Q How do you define abuse?

A I would -- you're speaking of alcohol abuse now, as a substance abuse?

Q Yes, as opposed to drug use.

A I would say that abuse, in my opinion, would be where the alcohol affects all parts of your life, and in a negative manner, and causes negative reactions personally, professionally, and that most of the time when there was alcohol abuse in somebody that I've known it's very obvious that there's an alcohol problem, before anything manifests itself.



1 Q Do you have any opinion as to whether alcohol  
2 abuse had any role in the grounding?

3 A I don't know. I don't know what -- I don't  
4 know whether or not -- all the facts enough to  
5 know that. I don't know the facts enough to know  
6 whether it did or not.

7 Q If you were to receive an instruction from the  
8 judge with respect to evidence regarding alcohol  
9 that differed from your personal feelings about  
10 alcohol abuse, would you be able to set aside  
11 your own feelings and follow the judge's  
12 instructions, without hesitation or without  
13 equivocation?

14 A I'm used to following orders like that. I  
15 would do what I'm told to do. That's what I do.

16 Q You would set whatever personal feelings that  
17 you had about the matter aside, and just listen  
18 to the instruction without hesitation?

19 A I believe I'm obliged to do that, yes.

20 Q Do you disapprove of people drinking?

21 A I think I said no, I don't disapprove of  
22 people drinking, I attend events all the time  
23 where people drink, and also drink socially  
24 occasionally.

25 Q Do you have friends and relatives who drink?

1 A Yes.

2 Q Have you ever seen them drink too much?

3 A Yes.

4 Q Have you had occasion to observe them when  
5 they've had too much to drink?

6 A Yes.

7 Q Have you yourself ever drank too much?

8 A Yes.

9 Q You've been drunk, I take it?

10 A Yes. Not recently.

11 Q I'd like to just turn for a moment to the  
12 random drug tests that you're familiar with, or  
13 testing that you're familiar with. You stated in  
14 response to Mr. Cole's questions that you know  
15 what the penalty is if you test positive.

16 A If I test positive, yes.

17 Q Yes. What is that penalty?

18 A If I test positive in the random tests that I  
19 incur for drug abuse, for marijuana and cocaine,  
20 okay, and if I tested positive for marijuana,  
21 cocaine, it'd be my professional death. Very  
22 simple.

23 Q In other words, you -- would you be court  
24 martialled?

25 A Probably.

1 Q Would you be asked to leave the Army?  
2 A Probably.  
3 Q Would you be given a hearing if you tested  
4 positive or would you be asked to leave without a  
5 hearing?  
6 A I would probably be given the opportunity to  
7 resign in lieu of court martial. That's probably  
8 what would happen.  
9 Q Do you have any feelings about the notion that  
10 one is guilty until he proves himself innocent?  
11 A I have had to sit in non-judicial punishment,  
12 and I believe that's the fiber of what we do.  
13 Q In other words, in the Army, you go on the  
14 proposition that someone is guilty until they  
15 prove themselves innocent.  
16 A No.  
17 Q The opposite?  
18 A The opposite.  
19 Q In the case of the random drug tests, is that  
20 notion reversed?  
21 A It's much more difficult to -- I will admit  
22 that somebody tests positive in the military to a  
23 random drug testing, it is tantamount to having  
24 to prove your innocence, yes.  
25 Q How do you feel about that?

1 A That's a tough one, I -- I'm not sure how  
2 you'd do it otherwise, but I believe it's a --  
3 that's an unfortunate necessity, I guess I'd say  
4 -- I believe that it's -- gosh, I don't know how  
5 I feel about that. I know that it is -- it makes  
6 me feel a little bit uncomfortable, the fact that  
7 it does end up putting the individual that tested  
8 positive on the defensive and have to basically  
9 prove that he did not use the drug.

10 Q Let me ask you this, do you believe that a  
11 police officer or a State investigator or someone  
12 in the armed forces can make a mistake in his job  
13 just like any other person?

14 A Sure.

15 Q Would you tend to give more weight or  
16 importance to the testimony of a police officer  
17 or Coast Guardsman merely because they're law  
18 enforcement officials?

19 A I believe that sometimes there are certain  
20 -- credibility that you have in certain  
21 positions, but I don't think that I would  
22 necessarily weigh sworn testimony from one person  
23 more than another.

24 Q Well, suppose a Coast Guard officer or a  
25 police officer came in in their uniform and sat

1 in that chair over there and testified to a  
2 certain event, and someone else, a lay person,  
3 came in and testified contrary to what the police  
4 officer or the Coast Guardsman testified, on the  
5 same facts. Who would you tend to believe?

6 MR. COLE: Judge, I object to that.

7 THE COURT: That's a proper objection,  
8 improper question. Mr. Chalos, you've been at this for  
9 13 minutes now, I don't know how much longer you're  
10 going to go, but ...

11 MR. CHALOS: Just a few more questions, Your  
12 Honor.

13 THE COURT: You're going to have to cut it  
14 down.

15 (3160)

16 Q In the circumstances that I've just outlined,  
17 would you give any special credibility to the  
18 police officer or the Coast Guardsman?

19 MR. COLE: I object again. I think it's the  
20 same question.

21 THE COURT: Maybe you can ask the prospective  
22 juror if he would follow the court's instructions on  
23 how to view the credibility of all witnesses along that  
24 line.

25 Q All right, let me drop that question and ask

1           you something else. When you were empaneled  
2           earlier this week, Judge Johnstone told you  
3           basically that the defendant, Captain Hazelwood,  
4           is entitled to a presumption of innocence, do you  
5           remember that? And he also told you that the  
6           District Attorney has to prove every element of  
7           the charges against Captain Hazelwood beyond a  
8           reasonable doubt. And he also told you that  
9           Captain Hazelwood does not have to put on any  
10          evidence or present any witnesses if he chose not  
11          to, do you remember that? And lastly he told you  
12          that if Captain Hazelwood chose not to take the  
13          stand, that was his constitutional right not to  
14          do so, do you remember that?

15        A           Yes.

16        Q           Do you have any problem at all with those  
17          instructions?

18        A           I don't know how to set your mind at ease on  
19          this, except that I believe that this system --  
20          the reason I'm here, and the reason I didn't put  
21          up a bigger fight to be excused was this is what  
22          I swore to protect and defend, his constitutional  
23          rights.

24        Q           If Captain Hazelwood chose not to take the  
25          stand, would you feel that he had something to

1           hide?

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

3           THE COURT: Would you follow the court's  
4 instructions when I said that he has a constitutional  
5 right not to take the stand, and you may not draw any  
6 unfavorable inference against him, and not discuss the  
7 matter in any way, would you follow that instruction?

8           A           Yes, sir.

9           THE COURT: Would you hold it against him in  
10 any way if he exercised his constitutional right?

11          A           No, sir.

12          MR. CHALOS: Your Honor, I don't have any  
13 further questions for this witness.

14          THE COURT: We'll need to have you -- not  
15 hearing any more, I assume you pass him for cause?

16          MR. CHALOS: Yes.

17          THE COURT: We'll need you back tomorrow  
18 morning at 8:30. You're still on the jury selection  
19 track, and you may be on the final jury, we'll know  
20 more tomorrow. Probably be able to tell you the answer  
21 tomorrow, in fact, if you are on the final jury or not.  
22 You'll have to come downstairs to the jury assembly  
23 room, where you assembled today and a couple of days  
24 ago, at 8:30 a.m. Is that going to be a problem for  
25 you?

1 A No, sir, not tomorrow.

2 THE COURT: Okay. I'll see you there

3 tomorrow, and don't discuss this case with anybody, and

4 avoid the media information concerning it.

5 A Yes, sir.

6 THE COURT: Thank you, sir. You can just go

7 out the front way, if you like, now. Mr. Cole, I think

8 it's yours now.

9 (3352)

10 MR. COLE: I guess it is, Your Honor. The

11 State would respectfully thank and excuse Ms. Steward.

12 THE COURT: Peggy Steward, all right. That's

13 the State's fourth challenge, and we'll bring the next

14 juror in.

15 MR. COLE: Do you have this as Mr. Dye, Your

16 Honor?

17 THE COURT: Yes, Daniel Dye is who I have ...

18 MR. COLE: Your Honor, does the court have the

19 original questionnaire up there handy? The copy I have

20 is pretty bad, and I'd just like to maybe take a look

21 at it first.

22 THE COURT: Good afternoon, Mr. Dye. Please

23 have a seat in the front row, and take the microphone

24 off the stand, if you would, please, and answer the

25 first four questions on the blackboard. You may have a



1 seat.

2 A My name is Daniel W. Dye. Organizations I'm a  
3 member of, I'm a -- the only organization I think  
4 I'm a member of right now is the Presbyterian  
5 Church, Trinity Presbyterian in South Anchorage.

6 Any reasons why I should not serve on this  
7 jury, two, I guess, economic and emotional  
8 hardship, right now my wife's eight months  
9 pregnant, so she'll be delivering here in a  
10 while. Economic, for that reason, we don't have  
11 any health insurance right now, so I'll be having  
12 to pay for that on my own. Also, I've been laid  
13 off not too long ago, I've got a job again now,  
14 but it was for an extended period of time, so  
15 most of our resources are used up then, and my  
16 employer at this time doesn't -- won't pay for my  
17 time loss because of jury duty. And I'm the only  
18 breadwinner at this point in our family.

19 Do I know any of the defendants, attorneys, or  
20 plaintiffs? No, I don't know any of 'em, I --  
21 just through what I've read in the paper about  
22 Mr. Hazelwood, and I suppose on that list that we  
23 saw earlier, Mr. Cousins, I've just read a little  
24 bit about him, but I don't know anybody.

25 THE COURT: All right, is your wife scheduled

1 to have her baby in one of the local hospitals?

2 A Yeah, Providence.

3 THE COURT: And you have no medical insurance  
4 to cover this?

5 A No, uh-uh (negative).

6 THE COURT: What are your hours of employment?

7 A From 8:00 in the morning till 4:30 in the  
8 afternoon.

9 THE COURT: Is your wife normally employed?

10 A She hasn't been, for a while.

11 THE COURT: Mr. Dye, I'm going to let you go  
12 because of the financial hardship, and also I would  
13 hope that the delivery would go fine, but you might be  
14 called upon during the delivery or after the delivery  
15 for some reason, and I can't take that chance of losing  
16 you, so I'm going to let you go, and thank you for your  
17 time and patience. You can just take your jury card  
18 downstairs. You can just go out the front way there.  
19 Thanks very much, Mr. Dye.

20 Good afternoon, Mr. Baker.

21 A Morning -- afternoon.

22 THE COURT: It's afternoon, that's right.  
23 Have a seat next to the microphone there.

24 A Okay.

25 THE COURT: And take the microphone off the

1 stand. It just snaps off. And would you answer the  
2 first four questions, please?

3 A Sure. My name is Kolaiah Baker. What  
4 organization ...

5 THE COURT: Fraternal, social, environmental,  
6 things of that nature.

7 A No. I'm not a member of any. And I don't see  
8 that I have a problem with serving on the jury,  
9 except for my nervousness, and I don't know  
10 anybody here.

11 THE COURT: Okay, did you go over that list of  
12 witnesses, and ...

13 A Yes, and I ...

14 THE COURT: ... did you recognize anybody on  
15 there?

16 A I've heard of Paul Burke, the one that's  
17 deceased, but that's all.

18 THE COURT: Okay. Let me tell you, your  
19 nervousness is shared by just about everybody in this  
20 courtroom who has come in here, so don't feel  
21 individual on that.

22 A Okay.

23 THE COURT: Mr. Cole?

24 VOIR DIRE EXAMINATION OF MR. BAKER

25 BY MR. COLE:

1 Q Good afternoon, Mr. Baker, how are you?  
2 A Nervous.  
3 Q Have you followed the incidents surrounding  
4 the grounding of the Exxon Valdez since last  
5 March, 1989?  
6 A Well, I think like everybody I knew it  
7 happened, kind of ashamed to admit, my wife keeps  
8 up with current events more than I do. I know of  
9 the tragedy, you know, the spill, but -- as far  
10 as the details and stuff, I -- it's like an  
11 airplane crash, some -- you don't want to hear  
12 about, but -- you know, I didn't pay too much  
13 particulars to the details.  
14 Q Can you give me an idea of what type of  
15 sources you are referring to that kept you  
16 abreast of what was going on, or that you looked  
17 into?  
18 A Basically just the news, and what I heard  
19 around my work area.  
20 Q And since the grounding, have you formed any  
21 opinions about the respective roles of any of the  
22 parties as to responsibility for the grounding of  
23 the Exxon Valdez? When I say the parties, what I  
24 mean is, any of the crew members, Alyeska, Exxon,  
25 shipping company, the Coast Guard, the Department

1 of Environmental Conservation, any of those  
2 people?

3 A I really -- I'm the kind of person that if I  
4 don't know all the facts, I'm hesitant to judge,  
5 and in this case, that would hold true, I don't  
6 feel any animosity towards anybody involved, I  
7 think it was an unfortunate incident, of course,  
8 but as far as blaming anybody, I don't see that I  
9 do, 'cause I don't know all the facts.

10 Q One of our concerns, the court, Captain  
11 Hazelwood, and myself, is that you'll be able to  
12 follow an instruction from this judge later on  
13 that says that you, if you're selected on this  
14 jury, will be required to base your verdict on  
15 the evidence that's presented to the witnesses,  
16 the evidence that's submitted in court, and your  
17 own common sense and good judgement. Do you feel  
18 comfortable that you could follow an instruction  
19 like that?

20 A Yes, I -- well, I would -- the only time I  
21 would feel reluctant about that is knowing that  
22 -- I would be hesitant to -- I know it affects  
23 this man's life, and in that regard I'd be  
24 hesitant to condemn, but I would -- I don't know  
25 until the time comes whether -- how I'd feel

1           about that, I'm not afraid to make a judgement if  
2           I feel that I know all the facts.

3           Q           Do you consider your role as a juror that you  
4           would be condemning him?

5           A           Well, again, it depends on the facts, if -- I  
6           don't know. You know, if the facts prove that  
7           -- I felt he is guilty, then I would make that  
8           determination. If I felt that he is innocent, I  
9           wouldn't be afraid to make that determination  
10          either, but again, I wouldn't make a judgement  
11          unless I felt that I knew, you know, all sides of  
12          the story.

13          Q           Would you feel comfortable with your role that  
14          Judge Johnstone will ask you to take, that being  
15          that as a juror, you'll be the one that decides  
16          the facts in this case, and then after deciding  
17          the facts of what occurred, you will be asked to  
18          follow the judge's instructions on what the law  
19          is. Would you feel comfortable with that role,  
20          as a juror?

21          A           Well, it's -- I believe what the judge said at  
22          the beginning, it's a privilege and a right of  
23          mine to serve, and I would do that to the best of  
24          my ability, and I think depending on -- I think I  
25          could glean those facts and make a judgement.

1 Q As a corollary, would you be able to set aside  
2 anything that you've learned outside the  
3 courtroom if asked to reach a verdict, and not  
4 base your verdict on anything you've heard  
5 outside the courtroom?

6 A I believe I could do that.

7 Q Can you tell me about your job?

8 A Yes, I work on Elmendorf, in logistics, and I  
9 run a warehouse, an automated warehouse. And I  
10 deal with customers on a day-to-day basis, the  
11 craftsmen that want to come in and get materials,  
12 and I issue those materials, and I also track our  
13 residue account.

14 Q Do you work in a supervisory capacity?

15 A I have -- I'm designated as supervisor over  
16 one individual that works for me, yes.

17 Q In the course of your job, are you required to  
18 fill out performance evaluations?

19 A I'm not actually the supervisor, I'm a WG-6,  
20 he's a WG-5. I take guidance from my supervisor,  
21 I give that guidance to him, and I report his  
22 performance to the supervisor on a day -- not a  
23 day-to-day basis, but I let him know how he's  
24 doing in his job.

25 Q And have you ever had to report that someone

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

below you was not working?

A We try to -- if there's a problem, I like -- try to notice that, before I get my supervisor involved, I usually sit down and say, you know, we may have a problem, and I have had a couple instances where we've had to have a talk, but I've never had to -- you know, we've always been able to work it out, I've never really had to go to my supervisor and say, you know, I think the man needs to be punished, or nothin' like that.

(Tape: 3591)

(0000)

Q Did you grow up in Homer?

A No, I was born in Homer, but just for the first few months, like three to four, six months, and then we moved to the interior.

Q And is that up in Fairbanks?

A Right. It was Fairbanks and then Anchorage.

Q How long did you live in Fairbanks?

A Probably until I think I was four or five, when I moved to Anch -- well, it must have been five, because I was here in '64, during the earthquake.

Q Have you spent much time in the ocean at all?

A We go -- my family and I go down there -- try



1 to make it at least once in the year to do some  
2 halibut fishing, but other than that, no.

3 Q And would that be through charters, or through  
4 friends?

5 A Right, it's -- we go on -- used to be the  
6 Northern Lights -- that's the name of the boat,  
7 but now it's Aurora Charters.

8 Q On your questionnaire ...

9 A Uh-huh (affirmative).

10 Q ... you talked about the time that you had  
11 been the victim of a burglary.

12 A Right.

13 Q Can you tell me a little bit about that?

14 A Well, for about two and a half years, our  
15 friends and I, well, we were kind of a small  
16 community, and things would just come up missing,  
17 like one time my friend left his wallet in his  
18 car when he was loggin', it was a logging  
19 community, and he had \$250.00 taken out of his  
20 wallet, and then chainsaws would come up missing,  
21 guns would come up missing, and then I'd borrowed  
22 a 30-30 Winchester from a friend to go out  
23 shootin' with a bunch of buddies, and that  
24 evening I'd went to a party and I'd come back  
25 fairly late, and I noticed it was gone, and I

1 told Mike about it, and -- you know, he reported  
2 it stolen, 'cause it was his gun, and then  
3 eventually, I think it was about six months  
4 later, I was downtown at another friend's house,  
5 and he said -- and I -- kind of acquaintance,  
6 really, I was down there with another personal  
7 friend, and he said, "Yeah, you oughta see this  
8 30-30 I just bought." And I said, "A 30-30," I  
9 said, "Sure."

10 You know, he pulls it out, I said, "I know  
11 that gun," I said, "Who'd you get it from?"  
12 Well, he told me the name of the individual, and  
13 it was one of the people -- we used to set up  
14 things, we used to put things out that are really  
15 easy to get stolen and then watch 'em, you know,  
16 try to catch this person, because by that time we  
17 kind of felt it was somebody in the neighborhood,  
18 but we didn't know who. And the man that used to  
19 sit here and plan with us how to catch him, that  
20 was the guy that was doin' it.

21 And so we turned him in, and Mike pressed  
22 charges, and -- anyway, how it went is we got to  
23 trial, and I was a witness, and I was probably as  
24 nervous, or more nervous than I am now, and they  
25 never did actually put a charge on the guy

1 because one time at a bar he was talkin' to  
2 another friend, and he had mentioned the fact  
3 about pullin' a robbery or somethin' at this  
4 store, and we just thought he was just BSing, but  
5 there was a robbery of the same description that  
6 he fit, so the lawyer said, I think -- he didn't  
7 talk to me, he talked to Mike, he said I think we  
8 should drop charges so they can extradite him to  
9 answer charges, and he did end up gettin'  
10 convicted for that.

11 Q Do you have any feelings about the criminal  
12 justice system, either -- very strong feelings  
13 about the criminal justice system based on that  
14 experience, that would affect your ability to be  
15 fair and impartial?

16 A Well, I think in this particular instance, I  
17 think he suffered enough just by the shunning he  
18 got by doin' his friends dirty like that, but as  
19 far as the overall justice system, I think he got  
20 what he deserved. And I'd like to -- that he did  
21 threaten this lady with a knife, and things like  
22 that, so ...

23 Q What does your brother do up in Fairbanks, he  
24 works with the Bureau of Land Management, he's a  
25 carpenter?

1 A Right. He -- basically what he's doing right  
2 now is, they'll say we need a cabin built, or a  
3 lodge, or a dormitory or somethin', and he'll fly  
4 out there, scope out, get a list of materials he  
5 needs, how many crew -- people on the crew he'll  
6 need to do the job. He'll fly back in, get  
7 everything set up, schedule the time to do it,  
8 fly out there, make sure they're goin' good, you  
9 know, like keepin' up the schedule or whatever,  
10 and then -- that's what he does, and then he'll  
11 fly off to another -- so he's sort of like a  
12 foreman.

13 Q Can you tell me what rank you reached in the  
14 Air Force?

15 A I was a sergeant.

16 Q What do you do in your free time?

17 A In my free time, if I'm not -- well, I like to  
18 take the family out, do picnics, go to the  
19 movies, I like to throw my canoe on top and go up  
20 north and -- I do a lot of lake fishin' for trout  
21 and such. I think that's my favorite -- probably  
22 Portage and into Lynx Lake.

23 Q Do you do any ice fishing?

24 A Oh yeah. This -- I've only been able to get  
25 out one time this year, and it was just this last

1 weekend, and although I didn't catch anything, we  
2 had a good time.

3 Q Do you feel comfortable that you understand  
4 the importance of this case both to Captain  
5 Hazelwood and the State of Alaska?

6 A I think that's why I'm as nervous as I am  
7 right now.

8 Q And if you were called upon to sit on this  
9 jury, and you were instructed that you were to  
10 listen to the evidence presented by the  
11 witnesses, and look at and examine the evidence  
12 that's admitted at this trial, and reach a fair  
13 and just verdict based on that and your own  
14 common sense and good judgement, would you feel  
15 comfortable that you could follow that  
16 instruction?

17 A Yes, I think I could.

18 Q Do you hesitate, I mean, when you say "I think  
19 I could," is there a concern that you wouldn't be  
20 able to do that?

21 A Well, I'm a person that has a conscience, and  
22 when you make a decision that's gonna affect an  
23 individual's life, it's not a decision easily  
24 arrived at. It's -- like I said, my main concern  
25 is like the judge said, it's difficult but it's

1 not impossible to come up with a judgement based  
2 on -- an impartial judgement based on the facts  
3 given. I think -- the reason I hesitate is just  
4 because of the awesomeness of -- I don't know the  
5 word I'm lookin' for, but -- it would be  
6 difficult, but I think I could arrive at that  
7 judgement, whatever it may be.

8 Q Do you understand that -- we talked about it a  
9 little bit before, but you're not actually making  
10 a judgement as to Mr. Hazelwood's fate, but  
11 you're actually making a judgement as to the  
12 facts that occurred on a given night, and  
13 whether, in light of the law that you're  
14 instructed, it meets the requirements of the law.

15 THE COURT: That's a speech, and just  
16 disregard that speech. If after hearing all the  
17 evidence in this case, sir, you're convinced that the  
18 State has proved its case by proof beyond a reasonable  
19 doubt, would you find the defendant guilty?

20 A Yes, I would.

21 THE COURT: And if, after hearing all the  
22 evidence in this case, you are not convinced the State  
23 has proved its case beyond a reasonable doubt, would  
24 you find the defendant not guilty?

25 A Yes, I would.

1 THE COURT: Thank you.

2 MR. COLE: I have nothing further, Your Honor.

3 Thank you, Mr. Baker.

4 A You're welcome.

5 (0340)

6 VOIR DIRE EXAMINATION OF MR. BAKER

7 BY MR. MADSON:

8 Q Mr. Baker, I'll do my best not to make you any  
9 more nervous. I just want to ask you a few  
10 questions here today.

11 A Okay. Thank you.

12 Q What did you do before you got this job with  
13 the Air Force?

14 A I was a logger.

15 Q And where was that?

16 A That was in Washington.

17 Q How long were you ...

18 A State.

19 Q Yeah. How long were you outside the State of  
20 Alaska then?

21 A Approximately 10 years, eight to 10 years.

22 Q From when to when?

23 A Probably 1970 through 1980, 1981. About 11  
24 years.

25 Q Did you work for a company, or were you kind

1 of like, you got paid per tree, or per something?

2 A Well, at first I worked with the logging  
3 company, just as -- I worked on the landing,  
4 that's prepping the logs prior to going to the  
5 factory, and then for a while I worked as a  
6 timber cruiser.

7 Q Actually going out and cutting them down, and  
8 such?

9 A Well, we would take contracts from companies  
10 and go out -- prior to their bids, we'd go out  
11 and -- they would hire us to go out and tell how  
12 much of what type of wood that they had on the  
13 land, and then they'd just use that to determine  
14 what they were gonna bid on that particular  
15 parcel of land, whether it be 450 acres or  
16 whatever. We did that for Copeland and Scott's  
17 paper mills.

18 Q What brought you back here?

19 A Well, when I was young, there was eight of us,  
20 and my stepfather was killed on Mount McKinley,  
21 and my mother had eight children, and she's a  
22 type that was just secluded from -- well, when he  
23 died, she didn't even know how to write a check,  
24 and eight children was just too much for her, so  
25 she gave five of 'em up for adoption, and one of



1 'em was my closest brother, my oldest brother,  
2 and I didn't have any job prospects to come back  
3 to Alaska, and so I joined the service thinking  
4 I'd put that on my dream sheet for Elmendorf, and  
5 I was lucky enough to get it, and I came up here  
6 and I spent a year looking for him, and that's  
7 basically why I came up, is to look for my  
8 brother.

9 Q Did you find him?

10 A Took 16 years total, but I did find him.

11 Q Here in Alaska?

12 A Yes, he's -- yeah.

13 Q I don't want to get into that too much, but  
14 -- did you meet your wife up here, then?

15 A Yes, I did. Through my brother.

16 Q And your father, was that an accident, how he  
17 died?

18 A Well, my real father was murdered three months  
19 before I was born, but my stepfather, he was  
20 bringin' the Cat back up on the ramp, and put it  
21 back on the truck to go back, and it flipped over  
22 and crushed him.

23 Q So your stepfather died an accidental death,  
24 and your real father did not?

25 A Right. My real father and my real mother --

1 well, when I said I was born in Homer, I was born  
2 in a little -- it was not really a religious  
3 cult, it was not really like Jonestown or nothin'  
4 like that, but anyway, there's these -- they  
5 practiced the knowledge of work, faith, and love,  
6 and it was -- they were considered, or called, I  
7 don't know if you're familiar with -- back in  
8 those days, in 1958, '59, but it was like an  
9 offset from the main one in California, the main  
10 religious community, I guess you would call 'em,  
11 and they were called the Barefoot Tribe.

12 Well, my mother -- they both had given  
13 theirselves to Christ, and they thought that the  
14 man that headed this was the reincarnation of  
15 Jesus Christ, and he -- I guess he was doin'  
16 things other than a man of the cloth should be  
17 doing, and two Koreans that had wives in this  
18 community, they found out that he was fornicating  
19 with their wives, and they told him either  
20 disband or we'll do something to disband you.

21 And at that time he got the congregation  
22 together, and he said, you know, I think there's  
23 gonna be a crisis, and my mother, who was  
24 pregnant with me at the time, she said, well, the  
25 way -- I think I'm goin' off too far here than I

1           should be ...

2           Q           ... forgot my question, but anyway, I think it

3           had to do with your father, and I guess it just

4           comes down to this ...

5           A           Well, that's -- he was murdered out of

6           prejudism.

7           Q           Out of what?

8           A           Out of prejudism. They went in, he was kind

9           of the right-hand man to who they called Master,

10          supposedly reincarnation of Jesus Christ ...

11          Q           It was a retaliation-type thing.

12          A           Right, he was there when they blew it up.

13          Q           The only reason I got on that at all is that,

14          from anything you've heard or were told or

15          anything, there's nothing about that, would you

16          agree, that would hold over and affect your

17          ability to be a juror in this case?

18          A           Oh no, I don't believe so.

19          Q           Your wife works for Nana (ph.) Development

20          Corporation, right?

21          A           Correct.

22          Q           Corporation?

23          A           Uh-huh (affirmative).

24          Q           Have you discussed this event at all with her?

25          A           No, just that I was on jury duty.

1 Q How about the Exxon Valdez thing, have you  
2 discussed it with her at all?  
3 A Not at all.  
4 Q Is it fair to say it's something you haven't  
5 made a point of following on a day-to-day basis,  
6 to look at the TV or listen to the radio, or read  
7 the paper to see what else might have happened in  
8 the Exxon Valdez saga?  
9 A Well, yeah, I haven't.  
10 Q If it was there, you'd maybe watch it, but you  
11 didn't make a special thing of it?  
12 A Exactly.  
13 Q Then, sir, you've already indicated that you  
14 would follow the judge's instructions, right?  
15 A Yes, sir, I would.  
16 Q And that includes, for instance, instruction  
17 that you cannot hold it against Captain Hazelwood  
18 if he does not take the stand and testify in his  
19 own behalf?  
20 A No, I would not.  
21 Q You don't have any problem with that one  
22 either?  
23 A No, sir.  
24 Q From listening to you, sir, it sounds like you  
25 take this responsibility very very seriously, is

1           that fair?

2       A           Oh, I do. I really do.

3       Q           So with that in mind, you can guarantee the  
4           court and parties here that you will -- if you  
5           serve on this jury, that you will do your best to  
6           render a fair and just verdict.

7       A           I would.

8       Q           Thank you, sir. I'll pass for cause.

9       A           Thank you.

10       (0595)

11                THE COURT: Okay, you can leave now, out the  
12           double doors, but we'll need you to come back tomorrow  
13           morning at 8:30 a.m., and do you remember the room that  
14           you assembled in this morning and a couple of days ago?

15       A           Yes.

16                THE COURT: Downstairs? That's where you'll  
17           have to come tomorrow morning and await further  
18           instructions. In the meantime, you're on the jury  
19           selection track, and you may be on the final jury, we  
20           don't know that yet, so don't talk to anybody about  
21           this case, and avoid the media information about it,  
22           okay?

23       A           Yes, I will, sir.

24                THE COURT: Thanks very much, and you can put  
25           the microphone back up there and take your personal

1 belongings out through these doors.

2 A Thank you, Your Honor.

3 THE COURT: You're welcome.

4 I think you're on your seventh now, Mr.  
5 Madson.

6 MR. MADSON: That's correct, Your Honor, we  
7 would ask the court to thank and excuse Patricia  
8 Gillespie.

9 THE COURT: All right, we'll notify her, and  
10 thank you. You may get the next juror.

11 Good afternoon, Mrs. Gillespie, please have a  
12 seat in the front row and take the microphone off of  
13 its stand, it just unsnaps from the stand.

14 A Byrd.

15 THE COURT: Byrd? I apologize. Thank you.  
16 If you would answer the first four questions, please.

17 A My name is Susan A. Byrd. I'm not any member  
18 of any organization. I'm not sure if there's any  
19 reasons I shouldn't be on this jury, and I don't  
20 know the defendant, attorneys, plaintiff, or  
21 witnesses. To the best of my knowledge.

22 THE COURT: Are you aware of any reasons  
23 presently why you should not serve on this jury? Do  
24 you know of any?

25 A No, sir.

1 THE COURT: Mr. Cole?

2 VOIR DIRE EXAMINATION OF MS. BYRD

3 BY MR. COLE:

4 Q Good afternoon, Mrs. Byrd. Have you followed  
5 the events that occurred in March of last year  
6 with the grounding of the Exxon Valdez?

7 A For the first couple months, yes, sir.

8 Q And would you tell me what your source of  
9 information was that you received?

10 A TV, and I work at the airport, and saw a lot  
11 of people coming and going.

12 Q Since that time, have you formed any opinions  
13 on the various roles of the parties that were  
14 involved and their responsibility for the  
15 grounding? When I say the parties, what I mean  
16 is, any of the crew members, Exxon Shipping  
17 Company, Alyeska, the Coast Guard, Department of  
18 Environmental Conservation.

19 A Initially, yes, anger against Exxon.

20 Q How about Captain Hazelwood? Did you form any  
21 opinions about -- concerning his responsibility?

22 A I've had dealings with the paper in the last  
23 couple years, and so I don't read the paper, and  
24 I believe half of what I read, so what I have  
25 would be anger against him also. If what I read

1 was true. I don't know how to best put that.

2 Q If you were asked -- do you hold those  
3 opinions today? Or are they opinions that you  
4 may have had a long time ago and since then, you  
5 know, they're not as strong?

6 A Of course, if -- I don't think they're as  
7 strong now, I have not read anything for quite a  
8 few months, and just until recently, it's been  
9 coming back, but it's -- the same old stories are  
10 coming back and rehashing them over again, so I  
11 don't -- haven't watched or heard anything about  
12 it.

13 Q If you were asked to sit on this jury, would  
14 you feel comfortable with the notion that you  
15 would not be allowed to refer to any material  
16 that you received outside or prior to this trial,  
17 but you would only be able to deliberate based on  
18 the evidence that's presented here in court?  
19 Would you be able to follow that instruction?

20 A I would find it very difficult.

21 Q Judge, I'm not -- it sounds to me like Ms.  
22 Byrd is going to have a hard time. If you want  
23 to take over the questioning, I'm just trying to  
24 save the court time.

25 THE COURT: Ms. Byrd, I just have a couple



1 questions, possibly, for you. You said you had an  
2 opinion at one time of anger regarding Captain  
3 Hazelwood, and it's based on what you've read from  
4 media sources or heard from media sources, is that  
5 correct?

6 A Yes, sir.

7 THE COURT: You'll be instructed, if you're  
8 selected on the jury, that you must decide this case  
9 based solely on the evidence that's presented in this  
10 court, and in accordance with the instructions that I  
11 give. And you're not to use any outside source of  
12 information to reach a verdict. Can you assure, or  
13 tell us that you will unequivocally be able to follow  
14 that instruction and set aside any opinions you might  
15 have about Captain Hazelwood?

16 A I can't say unequivocally, no.

17 THE COURT: I'm going to excuse you, and  
18 there's nothing wrong with you having those feelings,  
19 we just need to get people who can set them aside.  
20 It's perfectly okay if you can't. You can take your  
21 jury selection card back downstairs to the jury clerk  
22 for further instructions, and you can just exit the  
23 double doors here. Thank you for your patience. And I  
24 apologize for calling you Mrs. Gillespie, I was  
25 thinking of the last person ...

1 I think Carol Stockly is next, I'll see if I  
2 can keep that straight.

3 Good afternoon, are you Carol Stockly?

4 A Yes.

5 THE COURT: Please be seated in the front row,  
6 next to the microphone.

7 A This one?

8 THE COURT: Yes, any seat next to the  
9 microphone, and you can unsnap that microphone from its  
10 holder, and please answer the first four questions you  
11 see on the blackboard.

12 A My name is Carol Stockly, I'm really not a  
13 member of any organizations, probably, in  
14 Anchorage.

15 THE COURT: Anyplace else? Social  
16 organizations, recreational organizations,  
17 environmental organizations, things you pay dues to or  
18 attend meetings?

19 A No. I haven't really become involved in  
20 anything too much since we lived in Alaska. I do  
21 work, though, and that's probably what takes up  
22 about nine hours every day, I'm a travel agent,  
23 and I work in a small office, we only have like  
24 three full-time agents, and probably between the  
25 three of us we kind of split the work load kinda

1           equally, so it is kinda difficult if I'm not at  
2           work for a long period of time.

3           THE COURT: All right. And how about question  
4           -- I take it that's in response to question number 3?

5           A           Yeah, basically.

6           THE COURT: And number 4?

7           A           No, I don't know anybody really connected with  
8           the case, but I do read -- I did read all the  
9           newspapers and everything that happened last  
10          year.

11          THE COURT: Did you read that list of  
12          witnesses that you were provided?

13          A           Yes.

14          THE COURT: Did you identify with any of the  
15          names?

16          A           Mr. Murphy, from Homer, he's a client in our  
17          agency. He's a friend of -- not the man I work  
18          for, but his brother, so we're kind of familiar  
19          with the Murphys.

20          THE COURT: This trial will go from 9:00 until  
21          4:00 for the next two weeks and tomorrow, also, and  
22          after that, we're going to go from 8:30 until 1:30, and  
23          the jury will be free to go about their personal or  
24          business affairs after 1:30. I don't know how long  
25          this case is going to last, but would that alleviate

1 some of the problems you might have in your office, if  
2 you could leave at 1:30?

3 A Actually, though, I don't know whether -- I  
4 guess we could probably work that part out,  
5 though every day when I go to work there's always  
6 more than enough to take up eight hours every day  
7 and I still have to go to work every day. So it  
8 would be kind of really tight. One thing that is  
9 gonna happen in our family next week, or next  
10 month, that we've been planning on for about six  
11 months, is to take a major family vacation over  
12 the spring break, and we're planning to be gone  
13 for about 10 days.

14 THE COURT: And spring break is what, the week  
15 of the 11th of March?

16 A Yeah, we'd be gone from like the 9th to the  
17 19th.

18 THE COURT: Have you purchased -- is this out  
19 of state?

20 A It is, it's a -- it's not only my family, it's  
21 my sister's family and my dad, and we were all  
22 gonna take a cruise to Mexico. We've already  
23 committed to it.

24 THE COURT: Have you made your reservations  
25 for that already?

1 A We've paid the final payment and everything.  
2 That would be my major problem. Not only with  
3 -- I've already agreed to have time off work. My  
4 kids would probably die if we couldn't go on the  
5 cruise.

6 THE COURT: Well, that sounds like a good  
7 enough reason to let you go. For work I wasn't going  
8 to let you go, but there's some major inconvenience to  
9 others there.

10 A Actually, I -- we probably could have worked  
11 -- you know, I mean, I really have no problem  
12 with, you know, being on a jury, but ...

13 THE COURT: I believe that, and I'm going to  
14 let you go because of the hardship regarding your  
15 vacation.

16 A Okay.

17 THE COURT: You can take your jury service  
18 card downstairs to the jury clerk for further  
19 instructions.

20 A Thank you.

21 THE COURT: And thanks for your patience in  
22 waiting around.

23 A (Indiscernible - away from mike)

24 THE COURT: You can just go out the double  
25 doors here if you like.

1 Are you Mr. White?

2 A Yes.

3 (1143)

4 THE COURT: Please have a seat in the front  
5 row behind the microphone, and if you would take the  
6 microphone off the stand and answer those first four  
7 questions for me, please.

8 A My name is Francis A. White, organizations I'm  
9 a member of -- like what, sir?

10 THE COURT: Social, fraternal, recreational,  
11 environmental ...

12 A The only thing I'm associated with is Friends  
13 for Pets, and that's the only one. I do not know  
14 of any reason I should not serve. The defendant  
15 and attorneys -- you need to know, sir?

16 THE COURT: Do you know any of the parties  
17 sitting in the council chamber, or did you recognize  
18 any of the witnesses on that list that we gave you?

19 A No, sir.

20 THE COURT: Okay. You sound like you're a  
21 little nervous, are you?

22 A Well, I've got a cold too, sir.

23 THE COURT: Okay, well, we're going to have  
24 the attorneys ask you a few questions, and just ask you  
25 to try to relax.

1 A Okay.

2 THE COURT: Before you do that, are you just  
3 catching this cold, or are you just recovering from  
4 this cold?

5 A I'm just trying to recover from it, sir.

6 THE COURT: Are you under a doctor's care at  
7 all?

8 A No, I've been -- well, I went to see a doctor  
9 a week ago, and he give me some medicine.

10 THE COURT: Are you taking any medication now,  
11 sir?

12 A No, sir, I haven't taken any in the last week.

13 THE COURT: Thank you.

14 VOIR DIRE EXAMINATION OF MR. WHITE

15 BY MR. COLE:

16 Q Good afternoon, Mr. White. Have you followed  
17 the events that occurred on the night back in  
18 March of 1989 when the Exxon Valdez ...

19 A Well, I did the first few weeks, but then  
20 after that, why, I didn't keep up with it. I do  
21 own a boat, and I did see the oil in the Inlet,  
22 and also Prince William Sound, but whether it  
23 come from that area or not I could not tell.

24 Q Since you learned of the grounding of the  
25 Exxon Valdez, have you formed any opinion as to

1 the role of the various parties that were  
2 involved, as to who was responsible for that  
3 grounding?

4 A No, sir.

5 Q Do you feel comfortable that if so instructed  
6 by the court, you would be willing to set aside  
7 anything you've heard outside the courthouse, the  
8 courtroom, about the incident that went on, and  
9 base a verdict solely on the information that's  
10 presented here in court, and your own common  
11 sense and good judgement?

12 A Yes, sir.

13 Q You talked in your questionnaire about owning  
14 a boat. Have you fished long, up here in Alaska?

15 A I've fished up here, I've had a fishing boat  
16 or a boat up here for the last 20 years.

17 Q Do you feel comfortable out in the ocean?

18 A Yes, sir.

19 Q Do you take charts out with you?

20 A No, sir, I take friends and people, but  
21 strictly sports fishing.

22 Q When you go out, what do you use to navigate?

23 A I have a compass, is all I have, sir. I don't  
24 go 50 or 60 miles out.

25 Q You stay within ...



1 A I stay within 10 or 15 miles of the shoreline,  
2 sir.

3 Q I notice that your wife works at the Court  
4 System.

5 A Yes, sir. She works for District Court  
6 Calendaring.

7 Q Have you ever talked to her about her job?

8 A I very seldom talk to her about her job, or  
9 her about mine.

10 Q I notice that you also know Mr. Cummings. How  
11 do you know him?

12 A Dennis Cummings? He goes fishing with me, and  
13 he -- a city prosecutor, but we do not talk what  
14 his job is or what mine is.

15 Q Would there be anything about your  
16 relationship with Mr. Cummings that would affect  
17 your ability to be fair and impartial in this  
18 proceeding?

19 A No, sir.

20 Q And also Officer Richmond (ph.), you're  
21 friends with him?

22 A Yes, sir, Debbie Richmond (ph.) is my wife's  
23 supervisor, and that's how I know Dan.

24 Q Anything about that relationship that would  
25 affect your ability ...

1 A No, sir.

2 Q Are your children still here in Alaska, or  
3 have they moved?

4 A I have one here going to college, and the rest  
5 are in Las Vegas and California, and I have a  
6 daughter in Germany.

7 Q Would you be willing to be a fair and  
8 impartial juror in this case?

9 A Yes, sir.

10 Q And would you be willing to give both parties  
11 a fair trial?

12 A Yes, sir.

13 Q Thank you, Mr. White. Judge, I have no  
14 further questions, passed for cause.

15 (1399)

16 VOIR DIRE EXAMINATION OF MR. WHITE

17 BY MR. CHALOS:

18 Q Good afternoon, Mr. White.

19 A How are you, sir?

20 Q I'm all right. Can you tell me a little bit  
21 about the Friends for Pets, what kind of  
22 organization is that?

23 A That is a person that -- they go out and take  
24 the pets out of the pound and things like that,  
25 to find -- they did, for the beginning of the oil

1 spill, they went around and picked up rags and  
2 stuff to send to Valdez.

3 Q And did you do that also?

4 A I helped, sir, pick up some rags for -- with  
5 my wife, to donate.

6 Q I take it that you love animals very much.

7 A Yes, sir, I have five animals now.

8 Q And your wife also loves animals?

9 A Yes, sir.

10 Q Did you, in the early days, did you see  
11 pictures from Prince William Sound of dead otters  
12 and dead birds?

13 A I seen, one time on television they had the  
14 otters on there, some birds, that was at the  
15 beginning, right after the spill, I think about a  
16 week after or something, they had that.

17 Q How'd you feel about that?

18 A Well, nature has to take its course on  
19 something like that, you know. It's sad, and  
20 everybody believes that that's sad, but it's  
21 still something that God -- happened, and it  
22 happened.

23 Q Did you feel any anger about all these otters  
24 and birds dying as a result of being suffocated  
25 by oil?

1 A Well, not anger, no.

2 Q Did you have any feelings at all?

3 A Yes, sir, I felt like most people would, that  
4 that was a sad thing.

5 Q Do you feel that way today?

6 A Well, I feel that way about the moose that  
7 they kill every day on the railroad, but -- it's  
8 a sad thing that happens, but all we can do is  
9 try to better the world.

10 Q Knowing that this oil spill resulted in a lot  
11 of animals being killed, can you assure us  
12 without equivocation, 100 percent, that you would  
13 be able to put those feelings aside, whatever  
14 feelings you have in that regard, and render an  
15 impartial verdict?

16 A Yes, sir, I believe I could.

17 Q You can assure us 100 percent?

18 A Yes, sir.

19 Q Do you consider yourself a victim of this  
20 spill?

21 A Well, I don't think I was a victim. That's  
22 why I put on what I could on my thing about that  
23 I had a boat, and it had cost me some extra money  
24 to have it cleaned up. I don't feel I'm any more  
25 a victim than anybody else. I was honest and

1 truthful.

2 Q Yes, sir, and that's what we're trying to get  
3 at here. In response to one of the questions  
4 where you're asked if you suffered any personal  
5 or economic loss, you say yes, "Spending a lot of  
6 money last year to fish and getting -- " It says  
7 "noting," but I think it might be ...

8 A No, not really fish, but -- that can happen  
9 any time, yes, sir. I was honest when I put it  
10 on there.

11 Q Sure. Do you feel the fact that you didn't  
12 catch a lot of fish was as a result of the spill?

13 A No, sir, I can't blame it on all the spill,  
14 no, sir.

15 Q Partly?

16 A Could be, of the oil, yes, sir.

17 Q Would the fact that you didn't catch a lot of  
18 fish and you spent a lot of money in any way  
19 affect your ability to render a fair and  
20 impartial verdict? And I'm asking if it in any  
21 way would affect it, however slightly.

22 A No, sir.

23 Q In respect to your answer about friends and  
24 relatives being affected, you say yes, "Clean our  
25 boat every time we come out, want some fish."

1 A I had to clean the boat. I took my boat out  
2 of the water and cleaned it, yes, sir.

3 Q How do you feel about that?

4 A It was just another day of work, as far as  
5 fishing.

6 Q Did you get angry at anybody for having to do  
7 that?

8 A No, sir, I never did get angry at anybody.

9 Q Where did you get your information about the  
10 spill?

11 A From the news medias, all that I had. I went  
12 to Valdez in June, I did not see any tragic  
13 things up there, except there was a lot of people  
14 there, I had taken my cousin for a tour of  
15 Alaska, which we went to Valdez, Fairbanks, and  
16 stuff.

17 Q What newspapers do you normally read?

18 A I read the Daily Times, occasionally, but I  
19 don't get it at home and I very seldom read it at  
20 work, because I go to work at four in the  
21 morning, so ...

22 Q Is that the Daily News or the Anchorage Times?

23 A It's the Daily News.

24 Q Uh-huh (affirmative). Is the information you  
25 received about the spill from the Daily News? At

1           least what you read?

2           A           Part of it was, and part of it was on  
3           television, when it first happened.

4           Q           What specifically do you recall hearing about  
5           the spill? Or reading about the spill?

6           A           Well, the only thing that I can -- was that it  
7           went on Bligh Reef, and the boat was -- the  
8           tanker was there for five hours, I believe they  
9           said, or something like that, and that's about  
10          all, really. And then I seen the pictures of the  
11          otters, they had a picture a few days later of  
12          the otters, and some birds that were supposed to  
13          be in the Sound, and one other thing was the  
14          Cordova, I believe it was, or someplace where  
15          they had some fish that they didn't know whether  
16          they were gonna release or not. And that was at  
17          that period of time.

18          Q           That's the extent of what you heard about the  
19          spill?

20          A           Yes, sir, mostly.

21          Q           I notice here that you do not drink.

22          A           No, sir.

23          Q           Is that a matter of personal choice?

24          A           That's personal choice. I drank when I was  
25          younger, when I was in the service, and I had a

1           problem drinking, and I had children, and I run  
2           off the road one night, and I decided right then  
3           and there that it was not any time to be  
4           drinking, 'cause I could have hurt somebody or  
5           killed somebody or one of my kids.

6           Q           I hope you'll forgive me, when you say you had  
7           a problem, was that the problem that you're  
8           referring to, with drinking?

9           A           I was drinking quite a bit, and I passed out  
10          at the wheel, and I run off the road.

11          Q           I see.

12          A           I was a lot younger, and I got a lot smarter.

13          Q           Prior to that incident, had you ever drank and  
14          driven?

15          A           Yes, sir, that's why I stopped, was because of  
16          that incident.

17          Q           How long ago was that?

18          A           It's been 30 -- about 32 years ago, sir.

19          Q           Do you presently disapprove of other people  
20          drinking?

21          A           No, sir.

22          Q           Do you have any feelings on that?

23          A           No, sir. Just like anybody goes out on my  
24          boat, they can go out on my boat, there will be  
25          no alcohol on it until they come in, and they can



1 drink all they want at shore.

2 Q Is that a rule that you have?

3 A Yes, sir.

4 Q Why do you have that rule?

5 A I was raised in Florida around the water, and  
6 I have many friends that I've seen that has had  
7 accidents around water, and that's one of the  
8 things that I just did.

9 Q Do you have strong feelings about that?

10 A About drinking?

11 Q On a boat.

12 A On my boat, yes, sir.

13 Q Would those -- can you assure us 100 percent,  
14 without any reservation, that if evidence should  
15 come in about drinking on the boat, that you'll  
16 be able to set aside your own personal feelings  
17 and render an impartial verdict?

18 A Yes, sir.

19 Q Will you be able to do that 100 percent ...

20 A Yes, sir.

21 Q ... without hesitation?

22 A Yes, sir. No hesitation.

23 Q You did hear, I take it, or read something  
24 about Captain Hazelwood possibly having something  
25 to drink the night of the accident?

1 A Yes, sir, but that has to be proven.

2 Q I'm sorry?

3 A To me that would have to be -- that would be  
4 proven, that's not -- that's all hearsay, sir.

5 Q In other words, you don't -- what you read you  
6 don't believe until you're shown.

7 A No, I don't believe everything I read, no.

8 Q In your description of what you remember about  
9 the reports you read in the newspapers, you say,  
10 "All the damage it's done and the long term  
11 effect it's going to have on my fishing and the  
12 wildlife I saw. This first -- " I think it says  
13 "This first-hand as well fishing," and I can't  
14 read it -- may I approach the jury, Your Honor?

15 THE COURT: Why don't you just ask him what he  
16 said?

17 Q Yeah, do you recall what you said?

18 A Well, what I said to that, it was the long-  
19 term of the oil spill would result in -- could  
20 result in my bad fishing, more or less, is what I  
21 mean. You know, but if -- fish might not be  
22 there -- is what I mean.

23 Q But would that fact in any way cause you to  
24 not be able to render a fair verdict?

25 A No, sir. That's why I put it there. That was

1 my personal belief so you would understand.

2 Q I notice from your questionnaire that you have  
3 several friends who are police officers. Mr.  
4 Cummings and Miss Richmond, is it?

5 A Mr. Richmond.

6 Q Mr. Richmond, I'm sorry. I see. Let me ask  
7 you this, do you believe that a police officer or  
8 a State investigator could make a mistake in his  
9 job like any other person?

10 A We're all human, sir. I make mistakes in mine  
11 all the time.

12 Q And I see, in working for the Air Force I take  
13 it you come in contact with Air Force personnel,  
14 people in uniform.

15 A Yes, sir, I'm retired from the Air Force, and  
16 I've been working with them for the last 40  
17 years.

18 Q Right. Actually you were in the Air Force for  
19 20 years.

20 A Yes, sir, 21 years.

21 Q Would you tend to give more weight or  
22 importance to the testimony of a Coast Guardsman  
23 or police officer merely because they're law  
24 enforcement people?

25 A No, sir.

1 Q You would treat them as any other witness?  
2 A As every other witness.  
3 Q Do you recall Judge Johnstone's instructions  
4 earlier this week, or rather, his instructions to  
5 the panel of jurors? Where he told you that  
6 Captain Hazelwood is presumed innocent under the  
7 law?  
8 A Under the law? Until proven ...  
9 Q Do you have any problem with that?  
10 A No, sir, that's our judicial system.  
11 Q Do you recall Judge Johnstone telling you that  
12 the District Attorney has to prove every element  
13 of the charges against Captain Hazelwood beyond a  
14 reasonable doubt?  
15 A Beyond a reasonable doubt.  
16 Q Do you have any problems with that?  
17 A No, sir.  
18 Q Do you also recall Judge Johnstone telling you  
19 that Captain Hazelwood does not have to offer any  
20 evidence or any testimony in his defense?  
21 A Yes, sir.  
22 Q And do you also recall the judge's  
23 instructions that Captain Hazelwood, if he  
24 chooses, does not have to take the stand?  
25 A Yes, sir.

1 Q Do you have any problem with those  
2 instructions?

3 A No, sir. That's our law.

4 Q If Captain Hazelwood did not take the stand,  
5 would you hold that against him?

6 A No, sir. You still weigh the evidence.

7 Q Your Honor, I have no further questions for  
8 this witness. I pass for cause. Thank you very  
9 much, Mr. White.

10 THE COURT: Mr. White, you're free to go now,  
11 but I'll have to have you back tomorrow morning at 8:30  
12 a.m. in the jury assembly room. You're still on track  
13 for jury selection here, you may be on the jury, so  
14 don't discuss this case with anybody, and avoid media  
15 information, and do you remember where you assembled  
16 this morning, and a couple days ago?

17 A Yes, sir.

18 THE COURT: Can you be there at 8:30 tomorrow  
19 morning? Okay. We'll see you, and you go out this  
20 way.

21 I think you have your eighth coming up?

22 MR. MADSON: We would ask the court to thank  
23 and excuse Nathan Cummins, please.

24 THE COURT: All right, we'll do that, and  
25 we'll take a 10-minute break.

1 (Off record - 2:50 p.m.)

2 (On record - 3:10 p.m.)

3 (2062)

4 THE COURT: We'll go with the next juror,  
5 Joseph Hathaway, and we'll go until about 4:15 today,  
6 and with 10 minutes per juror, we'll probably get  
7 through about three more. Counsel approach the bench,  
8 please.

9 (Whispered bench conference as follows:)

10 THE COURT: You can put this on the bench, it  
11 might give you some assistance. Put that on your ...

12 (End of whispered bench conference)

13 THE COURT: Good afternoon, Mr. Hathaway.

14 A Hello, sir.

15 THE COURT: Go ahead and take the microphone  
16 off the stand and answer the first four questions,  
17 please.

18 A Okay, my name's Joseph Hathaway, I'm not in an  
19 organization of anything but the Air Force. I  
20 have two reasons why I feel I shouldn't be on the  
21 jury. I'll discuss those in a second. Number 4,  
22 I don't know anybody.

23 THE COURT: Okay, what are the reasons?

24 A Number 1, if this trial lasts any longer than  
25 past April, my wife and I are PCSing to Germany,

1 and we plan our trip to be our honeymoon.

2 THE COURT: It's not going to last past April.

3 A Okay. And the other reason is I feel biased  
4 towards Mr. Hazelwood. Being an aircraft  
5 commander, I feel that the final responsibility  
6 for safe conduct of a mission lies with the  
7 commander, and I just feel very biased against  
8 Mr. Hazelwood.

9 THE COURT: Without hearing any of the  
10 evidence against him at this time, you have a strong  
11 opinion about him?

12 A Yes, sir.

13 THE COURT: Okay, and is that opinion so  
14 strong that you would not be able to set it aside and  
15 decide this case based solely on the evidence?

16 A Well, sir, I'm judged on basic standards, and  
17 through my short tour in the military so far, a  
18 lot of my friends have been busted down from  
19 aircraft commander down to a copilot because  
20 they've been put in a situation that could have  
21 caused damage to the mission, and just for those  
22 reasons themselves, I'm judged by those standards  
23 also, so I'd also judge him by the very same  
24 standards, from what I've heard in the media.

25 THE COURT: Okay. Well, I appreciate what

1 you've said, and it seems to me you have such a strong  
2 opinion, you would not be able to view the evidence  
3 impartially, and there's nothing wrong with that. I  
4 appreciate your candor. I'm going to excuse you based  
5 on that. You can take your jury selection card back  
6 downstairs to the jury clerk for further instructions,  
7 with my thanks for your patience in waiting around  
8 here.

9 A Thank you, sir.

10 (Pause)

11 THE COURT: Hi, have a seat in the front row  
12 there, please, and take the microphone off of its  
13 stand, it's on the ledge there behind you. Would you  
14 please answer the first four questions on the  
15 blackboard?

16 A My name is Lori Wing.

17 THE COURT: I'm sorry, how do you pronounce  
18 that last name?

19 A Wing, W-i-n-g.

20 THE COURT: Thank you.

21 A I don't know that I'm a member of any  
22 organization, other than the church.

23 THE COURT: That would be social,  
24 recreational, environmental, anything you pay dues to  
25 or attend membership meetings.



1 A No, sir. I don't know of any reasons why I  
2 should not serve on the jury. I don't know, in  
3 reviewing the witness list, any of the witnesses,  
4 the defendant, the attorneys, or the plaintiffs.

5 THE COURT: Thank you very much. Mr. Cole?  
6 (2330)

7 VOIR DIRE EXAMINATION OF MS. WING

8 BY MR. COLE:

9 Q Thank you, Your Honor. Hi, Mrs. Wing, how are  
10 you?

11 A Just fine.

12 Q Have you followed the events that occurred  
13 when the Exxon Valdez grounded last year at all?

14 A Yes, I have.

15 Q Can you give me an idea of the source of  
16 information that you -- where you received this  
17 information?

18 A Oh, the media, of course, the papers, the TV  
19 news, radio.

20 Q Primarily was it through the newspapers, or  
21 primarily TV, or ...

22 A Probably a combination of both.

23 Q Do you get a newspaper?

24 A The Daily News.

25 Q Do you watch or listen to any particular TV or

1 radio stations?

2 A No.

3 Q How about discussing this with coworkers or  
4 friends?

5 A Quite a bit.

6 Q Would it be with both -- you discussed the  
7 -- I notice that you work for the accounting firm  
8 of Rollins, Burdick, and Hunter.

9 A Insurance.

10 Q Insurance. Sorry. Was most of your  
11 conversation with coworkers regarding the  
12 cleanup?

13 A With -- Rollins Burdick Hunter insures VECO.  
14 We did an enormous amount of work for VECO this  
15 summer, because VECO was the contractor for the  
16 cleanup.

17 Q Have you formed any opinions about the roles  
18 of the various parties and their responsibility  
19 for the Exxon Valdez grounding? When I say  
20 parties, what I mean is any of the crew members,  
21 Exxon Shipping Corporation, Alyeska, the Coast  
22 Guard, the Department of Environmental  
23 Conservation.

24 A No.

25 Q And would you feel comfortable following the

1 court's instructions, if you were asked to sit on  
2 this jury, that you were to consider only the  
3 evidence that's presented through the witness  
4 stand and the evidence that's submitted in court  
5 and your own common sense and good judgement?  
6 Could you follow an instruction like that?

7 A Yes.

8 Q Along that same line, that would require you  
9 to set aside any opinions or other knowledge that  
10 you've learned about this case in the past, and  
11 not base any of your deliberations or verdicts on  
12 that outside information. Would you feel  
13 comfortable with that instruction?

14 A Yes.

15 Q Can you tell me briefly what your job is at  
16 Rollins -- Burdock?

17 A Burdick.

18 Q Burdick and Hunter.

19 A I'm a vice-president with Rollins Burdick  
20 Hunter. I work commercial insurance only.

21 Q And do you get paid by commission, or by ...

22 A Salary.

23 Q A salary. Do you get bonuses at all?

24 A Yes we do.

25 Q Do you foresee -- have you made more money

1           this year because of the fact that the Exxon oil  
2           spill occurred?

3           A           Yes.

4           Q           You would agree with me that you would  
5           consider that -- for the lack of a better word,  
6           an economic benefit.

7           A           Yes, I would.

8           Q           Do you feel that there have been any  
9           detrimental effects to your life because of the  
10          Exxon oil spill?

11          A           Personally, no.

12          Q           Not personally?

13          A           I think what happened was a tragedy.

14          Q           Why do you say that?

15          A           I think that what happened with the Exxon  
16          Valdez was a tragedy, I think the earthquake in  
17          California was a tragedy, I think the hurricane  
18          was a tragedy. It's -- sometimes there's just  
19          damage that cannot be readily repaired.

20          Q           How do you think you will be affected, if  
21          called upon to serve on this jury -- the fact  
22          that you've made quite a bit of money off the oil  
23          spill? Will that affect your ability to be fair  
24          and impartial?

25          A           No, it wouldn't.

1 Q I notice that you have sailed and done some  
2 boating in the Great Lakes.

3 A Yes.

4 Q How long ago was that?

5 A (Indiscernible) Michigan, and all -- my  
6 parents live in Sheboygan, it's right on the  
7 Great Lakes. I grew up right on Mullet Lake, and  
8 have been involved with boats of different sizes  
9 my entire life.

10 Q Have you taken any maritime classes at all,  
11 that involve ...

12 A Just some basic Coast Guard instruction is  
13 all.

14 Q And do you do any insuring of commercial  
15 vessels, tankers?

16 A Not tankers, no. Fishing boats, the six-  
17 packs, yes.

18 Q Have you had to become informed about maritime  
19 law at all through that?

20 A Yes.

21 Q Is there anything about that that has caused  
22 you to form any opinions about this case, or  
23 would affect your ability to be fair and  
24 impartial in this case?

25 A No.

1 Q Can you tell me what you do in your free time?  
2 A I am taking some classes, and between my job,  
3 which takes up a great deal of time, I'm also a  
4 mother, and I have a husband, and free time is  
5 either studying or it's with my family.  
6 Q The responsibilities that are just associated  
7 with normal parenthood.  
8 A Yes.  
9 Q What kind of courses are you taking?  
10 A Insurance. Right now I'm working on what they  
11 call an Associate in Risk Management, and also a  
12 Property and Casualty Underwriting designation.  
13 Q You indicated you'd been the victim of a  
14 crime.  
15 A Yes.  
16 Q Can you tell me a little bit about that?  
17 A It was -- I was living back in Michigan at the  
18 time, it was before we moved up here, and I was  
19 still working in insurance. It was a small  
20 office, and it was a simple armed robbery where  
21 three individuals came in with guns. It was an  
22 on-the-floor type thing, take the money and run.  
23 Q And were you called upon to testify at all?  
24 A Yes, I was.  
25 Q Did you come away with any feelings, strong

1 feelings about the criminal justice system, as a  
2 result of that?

3 A At the time and probably still, I felt that  
4 -- the three men that were caught, and they were  
5 caught, in this crime, one turned State's  
6 evidence, one was a minor, and one went to jail  
7 for about six months. I didn't feel that what  
8 they -- the way they got off, and it seemed to me  
9 they all got off, that justice was served.

10 Q Do you think that would affect your ability to  
11 be fair and impartial in this case?

12 A No, I don't think it would have anything to do  
13 with it.

14 Q You also indicated that you drink every so  
15 often -- I can't really read your -- is it ...

16 A It's small writing.

17 Q "On ..."

18 A On occasion.

19 Q On occasion, I'm sorry. On weekends.

20 A Yes. At night, and ...

21 Q Is that for personal reasons, you've found a  
22 level that you're satisfied with?

23 A I don't even want to say it's -- it seems to  
24 be mostly weekends, but -- social drinking. I  
25 don't run home to have a drink, and I rarely

1           drink on my lunch hour, but if we're invited, if  
2           we go out for dinner, whatever, whatever day of  
3           the week, yeah, I'll have a drink or two.

4           Q           Do you have any strong feelings about people  
5           that use alcohol?

6           A           Yes, I do.

7           Q           Can you tell me what those are?

8           A           I just -- I support, I do not belong but I  
9           support the philosophy behind Mothers Against  
10          Drunk Driving.

11          Q           Have you ever had your life affected by a  
12          person that was under the influence of liquor in  
13          an accident? Do you know a friend that was a  
14          victim, or something like that?

15          A           No, I haven't.

16          Q           Have you had a close friend that has?

17          A           My brother's an alcoholic, and I don't know  
18          that he's ever been -- I know that he has never  
19          been where someone has been killed or such, but  
20          it's affected his life.

21          Q           Would you be willing to set aside any personal  
22          feelings that you have with regards to alcohol  
23          use in this case, if you were so instructed?

24          A           Yes.

25          Q           Do you understand the importance of this case



1 both to Captain Hazelwood and to the State of  
2 Alaska?

3 A Yes, I do.

4 Q And if chosen to sit on this jury, would you  
5 feel comfortable that you would be willing to  
6 listen to the evidence of the witnesses, examine  
7 the evidence that's admitted in court, and reach  
8 a fair and just verdict for both parties?

9 A Yes, I think I could.

10 Q And do you have any concerns about that? You  
11 say, "I think I could."

12 A It's hard to say what would come up during the  
13 trial that would cause something that would  
14 personally bring up something from the past or  
15 whatever that I would have to say -- set aside a  
16 prejudice. I can't think of anything as we're  
17 speaking that would cause me to be prejudiced one  
18 way or another.

19 Q Would you be willing to give us your best  
20 efforts?

21 A Yes, I would.

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

24 A Yes, I would.

25 Q And does that seem fair to you?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes, it does.

Q Thank you, Mrs. Wing, I have no further questions. Judge, I pass for cause.

(2940)

VOIR DIRE EXAMINATION OF MS. WING

BY MR. MADSON:

Q Hi, Miss King -- Wing, rather, excuse me.

A That's okay.

Q Been a long day. Could I ask you what church you attend? You mentioned a church.

A St. Benedict's. Catholic Church.

Q Catholic Church?

A Yes.

Q Are you active in the church at all, or just go to Mass on a regular basis?

A Just go to Mass.

Q And you indicated you knew no potential witnesses in the case, even though you may have some very remote connection with the people, some people ...

A No, I reviewed the witness list quite carefully, and there was nothing that jumped out at me as ...

Q From what you learned from the news sources, be it television, newspaper, magazine, or

1           whatever, and you described what happened in  
2           Valdez as a tragedy, did you feel so strong or  
3           form an opinion that somebody must be punished  
4           for this?

5           A           No.

6           Q           And you indicated that this information you  
7           have received, you feel you can safely set that  
8           aside and try the case only on what you hear in  
9           the court?

10          A           Yes.

11          Q           Now, when you insure -- I took it from your  
12          answers that the company you work for does insure  
13          fishing vessels.

14          A           Yes, we do.

15          Q           Do you personally go off to inspect the vessel  
16          at all before it's insured, to see if it has  
17          proper safety equipment, things like this?

18          A           No, I do not.

19          Q           But someone in your firm, I imagine, does?

20          A           Most of the time it's done by the company  
21          underwriting. On occasion, we have a department  
22          that will, but because most of the vessels we're  
23          involved with are not in Anchorage, it's usually  
24          done by a company. Loss control.

25          Q           And the maritime law that you said you learned

1 about, can you maybe tell me a little bit more  
2 about that, I mean, just basic, not go into great  
3 detail, but what and where you may have learned  
4 this.

5 A Because we insure VECO, and when VECO was  
6 awarded the contract from Exxon, there probably  
7 wasn't a person in our office that didn't work in  
8 placing insurance for VECO this summer, in one  
9 way or another. We also had some smaller  
10 contractors who were also required -- it was  
11 basically the difference between worker's  
12 compensation and how the employees that -- or the  
13 employees that were working down on the Prince  
14 William Sound could be covered, should it be  
15 worker's comp, is it maritime, USL & H, it just  
16 -- there was a variety of coverages to be looked  
17 at and examined. And because I had not done it  
18 before to that degree, I spent a lot of time  
19 listening.

20 Q I take it, though, none of this concerned the  
21 day-to-day responsibility or function of officers  
22 on a tanker, for instance?

23 A No, sir.

24 Q Okay. So you don't pretend to know anything  
25 about Coast Guard regulations, or ...

1 A This is strictly just work comp, is how we  
2 protected the employees.

3 Q I see. You're also in a unique position of  
4 having been a witness in a case before -- in a  
5 potential juror. How long ago was that, ma'am,  
6 if you remember?

7 A Six years, I believe it was in '84, possibly  
8 '83.

9 Q And you've been here five years?

10 A Yes.

11 Q So it was about a year before you moved to  
12 Alaska.

13 A Yes, just short of a year.

14 Q I would imagine that was a rather frightening  
15 experience.

16 A Yes, it was.

17 Q And I think you were candid with us when you  
18 said that the only bad aftereffect was that you  
19 felt that the punishment certainly wasn't enough.

20 A Yes.

21 Q Will the aspect of punishment at all, no  
22 matter how slight, enter into your thinking in  
23 this case, should you be chosen to be on the  
24 jury?

25 MR. COLE: Judge, I object to the question.

1 MR. MADSON: I think it's a proper question,  
2 Your Honor. Based on her experience.

3 THE COURT: Well, the court will instruct all  
4 jurors that the subsequent penalty or punishment is not  
5 to enter into deliberation in any way, that's a matter  
6 that lies solely with the court. Will you be able to  
7 follow that instruction?

8 A Yes, I will.

9 Q Lastly, or maybe not lastly, but getting close  
10 to lastly, you seem to feel that you had -- you  
11 know, had nothing wrong with drinking alcohol.  
12 You drink yourself, and I imagine you feel you do  
13 it in a responsible manner. At the same time you  
14 say you support the Mothers Against Drunk  
15 Driving, right?

16 A Correct.

17 Q Am I safe in assuming that you feel that  
18 responsible drinking is all right, but  
19 irresponsible, over-the-line drinking is  
20 something that you ...

21 A That pretty much hits the nail on the head.

22 Q I don't know if you can answer the question or  
23 not, but do you have any kind of a definite line  
24 where you say it's too much?

25 A No, I don't. My husband and I and my

1 coworkers and I are pretty good about a  
2 designated driver, or such, to -- nobody I know  
3 wants to have their name in the paper or have to  
4 do their three days or 72 hours with the  
5 Anchorage P.D. or whatever because of drunk  
6 driving.

7 Q So you and the people you associate with are  
8 careful about this.

9 A Conscientious.

10 Q And if somebody -- you feel that you may be  
11 over the line a little bit, you will make sure  
12 there's someone who can drive the vehicle that is  
13 sober?

14 A Yes.

15 Q Lastly, even though it's a couple days ago,  
16 remember Judge Johnstone's instructions to you as  
17 a body here Tuesday -- or I mean Wednesday  
18 morning?

19 A Uh-huh (affirmative).

20 Q And among those different duties a juror has  
21 is to believe and say that you will not be  
22 influenced in any way should the defendant in  
23 this case, or any other case, not testify to  
24 prove that he did not do something. Do you have  
25 any problem with that concept at all?

1 A No, I don't.

2 Q Was there anything else that Judge Johnstone  
3 said in those instructions that caused you the  
4 slightest concern or hesitation about being a  
5 fair juror?

6 A No.

7 Q And I take it, ma'am, you can promise us as  
8 well as you promised everyone else that you would  
9 do your best as a fair and impartial person to  
10 decide the case solely on the facts?

11 A Yes, I would.

12 Q Thank you, ma'am. I'll pass for cause.

13 (3325)

14 THE COURT: That means you can leave, but I'll  
15 have to have you back tomorrow morning at 8:30. You're  
16 still on the jury selection track, you may very well be  
17 selected as a final juror in this case. I'll give you  
18 more instructions tomorrow sometime. In the meantime,  
19 don't discuss this case, or don't be exposed to media  
20 information, screen it, don't read or hear any -- and  
21 do you know where you assembled this morning and two  
22 days ago, the jury assembly room?

23 A In the basement?

24 THE COURT: Right. That's where you'll have  
25 to return tomorrow morning at 8:30. Will you be able



1 to do that?

2 A Yes.

3 THE COURT: Good. Thank you very much. You  
4 can just go out the double doors in this room.

5 MR. COLE: Your Honor, the State would  
6 respectfully thank and excuse Mr. Baker.

7 THE COURT: I have that as your fifth.

8 MR. COLE: Do you have Mr. Walker as the next  
9 person, Your Honor?

10 THE COURT: Yes. No. Cunningham.

11 MR. COLE: Cunningham.

12 THE COURT: Good afternoon. Looks like you  
13 came prepared.

14 A Oh yeah.

15 THE COURT: Have a seat in the front row. And  
16 Mr. Cunningham, would you take the microphone off the  
17 bracket there and answer the first four questions,  
18 please?

19 A Okay. Name's Mark M. Cunningham. What  
20 organizations member of -- I'm not really a  
21 member of any organizations any more.

22 (Indiscernible) Flying, 'bout the closest. Any  
23 reason you should -- yeah, I can think of a few  
24 reasons not to serve on the jury.

25 THE COURT: Let's hear the ones that you can

1 think of offhand.

2 A Okay. I pretty much feel that he is guilty,  
3 and I do have a lot of stuff I need to be doin'  
4 at work. We're gonna be opening up a new store,  
5 and I'm the branch manager of that store, and  
6 just now getting it together, and I got a lotta  
7 -- get everything billed, get the stuff in the  
8 store to get it open on time.

9 THE COURT: You say you pretty much feel he's  
10 guilty, is that opinion so strong you would not be able  
11 to set it aside and base your conclusions on the  
12 evidence presented in this courtroom?

13 A Yeah, I think so.

14 THE COURT: Okay, I'm going to excuse you, you  
15 said the magic words, and my thanks for your patience  
16 and your time. Take the jury card back down to the  
17 jury clerk. Don't forget your personal belongings, and  
18 you can just exit out the double doors. Downstairs,  
19 where you assembled today. I don't know the number,  
20 but wherever you assembled today.

21 MR. COLE: Mr. Meier?

22 THE COURT: No, I have Walker next. (Pause)  
23 Good afternoon, Mr. Walker, if you'd have a seat in the  
24 front row, please. And take the microphone off of the  
25 stand over there, and -- please be seated. Would you

1 answer the first four questions on the board?

2 A (Indiscernible - away from mike)

3 THE COURT: You have to speak into the  
4 microphone. Thank you.

5 A Blondell Haley (ph.) Walker. I work at AAFES.

6 THE COURT: I'm sorry, I didn't hear you.

7 A I work for AAFES on Fort Rich.

8 THE COURT: Are you a member of any clubs or  
9 organizations, social clubs, recreational clubs,  
10 environmental clubs ...

11 A No, only my church.

12 THE COURT: Only your church, okay.

13 A I belong to the Mothers' Board ...

14 THE COURT: I'm sorry, I cannot hear you. Can  
15 we turn her up please? Go ahead.

16 A I belong to the Mothers' Board and the Pastor  
17 Aides Club in my church.

18 THE COURT: Okay. Are there any reasons you  
19 should not serve on this jury?

20 A No. No.

21 THE COURT: Okay, and do you know the  
22 defendants, attorneys, plaintiffs, or witnesses?

23 A No.

24 THE COURT: Okay.

25 (3636)

1 VOIR DIRE EXAMINATION OF MS. WALKER  
2 BY MR. COLE:  
3 Q Good afternoon, Mrs. Walker.  
4 A Good afternoon.  
5 Q Have you ever been called to serve on a jury  
6 before?  
7 A I was called, but not served.  
8 Q And have you read about or heard about the  
9 incidents that occurred last March when the Exxon  
10 Valdez went aground?  
11 A Yes.  
12 Q Can you give me an idea of where you heard  
13 about this from?  
14 A A lot through my job, people on the job and in  
15 my church.  
16 Q Did you read the newspapers about it at all?  
17 A A little, not very much.  
18 Q Did you watch TV at all about it?  
19 A No.  
20 Q Have you formed any opinions as to the various  
21 roles of the parties concerning their  
22 responsibility for the grounding of the Exxon  
23 Valdez? When I say parties, I mean any of the  
24 crew members on the Exxon Valdez, Alyeska, Exxon,  
25 the Coast Guard, the Department of Environmental

1 Conservation.

2 A No.

3 Q Have you formed any opinion as to the  
4 responsibility of Captain Hazelwood in this  
5 matter?

6 A No.

7 Q Would you feel comfortable, if the judge  
8 instructed you, that you would -- if called upon  
9 to deliberate, you would not be allowed to -- you  
10 would only be allowed to refer to the evidence  
11 that's presented to the witness stand, the  
12 evidence that's submitted here in court, and your  
13 own common sense and good judgement?

14 A Yes.

15 Q You indicated that you were up here in Alaska  
16 from 1969 to '74, was that here in Anchorage?

17 A Yes.

18 Q And where did your husband work then?

19 A But I went out one time, for about four years,  
20 maybe about eight years. He was stationed at  
21 Elmendorf, in the service.

22 Q Where did you go when you left Elmendorf the  
23 first time?

24 A We went back to Illinois.

25 Q What type of work did your husband do when he

1                   was with the Air Force?

2       A            He was a welder.

3       Q            And that's what he is now?

4       A            Yes.

5       Q            Do your children still live up in Alaska?

6       A            Yes.

7       Q            Can you tell me what they do?

8       A            Most of 'em are still in college, and some of

9                   'em are working.

10      Q            Are any of them attending college here in

11                   Anchorage?

12      A            Yes, I have four in college here.

13      Q            Can you tell me what you do in your free time?

14                   Do you have more of it now that a lot of your

15                   kids are gone?

16      A            In my free time I go to church.

17      Q            Okay. Would you consider yourself a religious

18                   person?

19      A            Yes, I would.

20      Q            Do you derive a lot of strength from going to

21                   church?

22      A            Yes.

23      Q            You indicated that you don't drink. Is that

24                   for personal or for medical reasons?

25      A            I never drink, in my whole life.

1 Q Do you have any strong feelings about people  
2 that do drink?  
3 A Well, no, not really.  
4 Q Does your husband drink at all?  
5 A No.  
6 Q Have you been around people that have had too  
7 much to drink?  
8 A Yes.  
9 Q Would you understand that this is an important  
10 case for both Captain Hazelwood and for the State  
11 of Alaska?  
12 A Yes.  
13 Q And knowing that, do you feel comfortable with  
14 the concept that as a juror, you will be asked to  
15 evaluate the evidence that's presented to the  
16 witnesses, the evidence that's submitted here in  
17 court, and your own common sense and good  
18 judgement to reach a fair and just verdict in  
19 this case?  
20 A Yes.  
21 Q Could you follow that instruction?  
22 A Yes.  
23 Q Would you be willing to give both sides a fair  
24 trial?  
25 A Yes.

1 Q Thank you very much, Mrs. Walker, I have no  
2 further questions, judge. Passed for cause.

3 A You're welcome.

4 THE COURT: We have some more questions from  
5 another person.

6 A All right.

7 (4100)

8 VOIR DIRE EXAMINATION OF MS. WALKER

9 BY MR. CHALOS:

10 Q Good afternoon, Mrs. Walker.

11 A Good afternoon.

12 Q In response to Mr. Cole's questions, you  
13 indicated that you heard about the spill at work.

14 A Uh-huh (affirmative).

15 Q Can you tell me what you recall hearing?

16 A I'm not sure, but they told me there was an  
17 oil spill that morning I went in to work, and at  
18 first they didn't know who had -- did it, and  
19 then I didn't give too much attention to it at  
20 first, you know. Then a couple of days later it  
21 came back up again.

22 Q At work?

23 A Yes.

24 Q And do you recall what was said at that time?

25 A No, I'm not too sure on it.



1 (Indiscernible - away from mike)

2 A That it was spilled, and they was lookin' for  
3 the man that had spilled it, and that was about  
4 it.

5 Q Did anybody at that time indicate that the  
6 captain had been drinking?

7 A No.

8 Q Did anyone indicate at that time whose fault  
9 the grounding was?

10 A No.

11 Q Did you read any accounts of the spill in the  
12 newspaper?

13 A I'm not sure. I don't think I did at the  
14 time.

15 Q Have you since read anything in the newspaper  
16 about it?

17 A Yes, I did.

18 Q What did you read that you remember? And I'm  
19 speaking generally now.

20 A That Captain Hazelwood had spilled the oil,  
21 and that he was found in New York, and that he  
22 was being brought back to Anchorage.

23 Q When you read the accounts about Captain  
24 Hazelwood being found, did you also read about  
25 the possibility that he may have drank something

1           just prior to the spill?

2           A           I think I did, I'm not sure on that part of

3           it.

4           (Tape: 3592)

5           (0003)

6           Q           You mentioned also that you heard about the

7           spill from your children, is that right?

8           A           On my job.

9           Q           Just on the job.

10          A           Yeah.

11          Q           But not from any of your children.

12          A           No, sir.

13          Q           Do you know a Francis White?

14          A           Francis White, no.

15          Q           The reason that I ask is he's also a cook for

16          the Air Force, but you don't know him?

17          A           No, he's not working in the same area I work.

18          Q           Now, in your questionnaire -- you remember

19          filling out this questionnaire?

20          A           Yes.

21          Q           Where it asks you to briefly relate the

22          information you remember hearing about the spill,

23          you say, "He was drunk. Gave wheel to another

24          person," I think it says, "with no experience."

25          Do you remember where you heard that?

H & M COURT REPORTING • 510 L Street • Suite 350 • Anchorage, Alaska 99501 • (907) 274-5661

1 A Yes. We was talking it in our church.  
2 Q Down at church?  
3 A Yeah, one of the other mothers was talking to  
4 us about it at church.  
5 Q She told you that the captain was drunk?  
6 A No, she said she doesn't think he was drunk,  
7 but she heard he was drinking.  
8 Q Do you have any opinion at all as to whether  
9 Captain Hazelwood was drunk?  
10 A No, I -- you know, I would rather to hear his  
11 side of the story and the other person's side  
12 before I come to any conclusion.  
13 Q Well, let me ask you something about that.  
14 You remember when you first came in this week,  
15 Judge Johnstone gave you some instructions?  
16 A Uh-huh (affirmative).  
17 Q And in one of the instructions, he told you  
18 that Captain Hazelwood has the right not to take  
19 the stand, the witness stand in his defense.  
20 A Right.  
21 Q Do you have any problem with that?  
22 A No.  
23 Q If Captain Hazelwood did not take the stand,  
24 and then give his side, as you say, would you  
25 hold that against him?

1 A No, I wouldn't.

2 Q Would you think that by not taking the stand,  
3 that he was trying to hide something?

4 A I'm not sure.

5 Q Can you tell me for sure, 100 percent sure,  
6 that if he didn't take the stand, that that won't  
7 influence your ultimate decision in this case?

8 A No, I don't think it would.

9 Q You don't think it would.

10 A No.

11 Q You'd be able to follow Judge Johnstone's  
12 instructions to disregard the fact that Captain  
13 Hazelwood did not take the stand because he has a  
14 right not to?

15 A Yeah.

16 Q And you can say that with no hesitation at  
17 all?

18 A No hesitation, and no doubt.

19 Q Now there's another comment here, and I'm not  
20 sure what this means, maybe you can explain it to  
21 me. You say you're "not sure the man was really  
22 at fault." Did you mean Captain Hazelwood?

23 A Right.

24 Q Are you saying by that that you're willing to  
25 listen to the evidence that's presented before

1           you come to any conclusions?

2           A           Yes.

3           Q           I'd like to ask you a little bit about your  
4           feelings with respect to alcohol. Do you  
5           disapprove of people drinking?

6           A           I don't approve and I don't disapprove, but I  
7           say if they drink, I think they should drink  
8           enough to understand what they're doin'.

9           Q           In other words, responsibly.

10          A           Right.

11          Q           Do any of your children drink?

12          A           Yes.

13          Q           Do you have any problem with that?

14          A           They don't drink in front of me, they don't  
15          drink in my house.

16          Q           Have any of your children ever come home  
17          having drank too much?

18          A           No. They went to their house, or their  
19          sister's house, but not to mine.

20          Q           Have you ever reprimanded any of your children  
21          for drinking?

22          A           No.

23          Q           In answering Mr. Cole, you described your  
24          feelings about people who drink as -- I think you  
25          said you don't really have strong feelings about

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

that.

A No, I don't.

Q Do you have any feelings about people who drink?

A Not really, it's like I feel if they're gonna drink, they should drink enough to know what they're doin', and if they can't do that, I think they shouldn't drink.

Q How do you feel about someone who might have drank more than what you described as "that point where you know what you're doing"? Do you understand my question, it was ...

A I've heard you, seeing if they drink too much.

Q Yes.

A Then I think they should have somebody with 'em.

Q You mean if they were to drive a car, they should let somebody else drive?

A Right.

Q Would your feelings about a person having too much to drink affect your ability here to render a fair decision?

A I'm not sure. Could you repeat the question?

Q Yes. Would your feelings about someone who might have had too much to drink affect your

1 ability to be fair in rendering a decision in  
2 this case?

3 MR. COLE: Judge, I object to that question on  
4 the basis ...

5 THE COURT: This is the same question that  
6 I've sustained objection to before, Mr. Chalos. If you  
7 want to phrase it in terms of the court's instructions  
8 with regard to that subject, if she can follow the  
9 court's instruction and the law, not ...

10 Q Let me try that, Your Honor. Mrs. Walker, if  
11 you were instructed by the judge to disregard any  
12 personal feelings you might have about drinking,  
13 and apply the law as he read it to you, would you  
14 be able to do that?

15 A Yes.

16 Q Can you say that without any hesitation or  
17 equivocation?

18 A Yes, I can.

19 Q Your Honor, I -- thank you very much, Mrs.  
20 Walker, I pass for cause.

21 THE COURT: Mrs. Walker, that means you can  
22 leave now, but you'll have to come back tomorrow  
23 morning at 8:30 a.m. to the same jury assembly room you  
24 assembled in this morning and two days ago. Do you  
25 remember where that room is?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A 52.

THE COURT: I think that's the number, I've heard that number before, but it's downstairs someplace. We'll need you there tomorrow at 8:30 a.m., and I'll give you further instructions at that time. In the meantime, you may be selected on this final jury panel, so don't talk about this case to anybody, and don't get exposed to the publicity, the newspaper and television and radio. Thank you very much, and you can put the microphone back on the stand, and we'll talk to you tomorrow.

Defense has its ninth.

(0307)

MR. MADSON: Your Honor, before we exercise our next peremptory challenge, we're -- I believe we exercised eight, we'd be on the ninth -- I would ask the court to consider the motion that was filed this morning, perhaps look at it overnight to concede a chance to respond to that, because I think it's important at this stage, we have been, I think, trying our best to empanel a very impartial jury in spite of the fact that everyone has heard about this case, and also it affects alcohol, which is another highly emotional issue.

But primarily, I think, we're down to the



1 point where we -- a little hesitant in acting on the  
2 next peremptory challenge without knowing whether or  
3 not the court will allow us to either reconsider the  
4 decision regarding the potential jurors who are  
5 potential witnesses, if you will -- allow us to have  
6 two extra peremptory challenges in lieu of a -- so I  
7 would ask if the court has no objection to rule that  
8 tomorrow, and allow us to more or less wait on our next  
9 challenge.

10 THE COURT: I'm going to consider the  
11 necessity of that challenge, if and when you use up all  
12 your peremptory challenges. The necessity for  
13 additional peremptory challenges, if and when you use  
14 up all your peremptory challenges, I don't know if  
15 you're going to or not, if you don't use them all up,  
16 of course you won't need them, so at this time you can  
17 exercise your ninth one, and if you exercise a tenth  
18 peremptory challenge, then I will consider that too.  
19 And I will tell you right now, considering granting  
20 additional challenges, I'll hear from Mr. Cole, but I'm  
21 aware of the Giro (ph.) case and the Locke (ph.) case,  
22 and I've been through this before, and I'm aware of the  
23 need for -- at the time for additional challenges, but  
24 I don't know if you're going to need them or not.

25 MR. MADSON: We believe we will, Your Honor,

1 that was going to be my next request ...

2 THE COURT: Now is the time for you to make  
3 your ninth one, then.

4 MR. MADSON: Well, one second, Your Honor.

5 MR. COLE: Judge, I just want to apologize, I  
6 told you I'd have something for you, our -- Sam just  
7 had a baby, Sam Adams, his wife just had a baby, so we  
8 weren't able to get that done this afternoon. I'll  
9 have something for you in the morning.

10 MR. MADSON: Your Honor, we would ask the  
11 court ...

12 THE COURT: If you don't have an opposition to  
13 it, you don't need to present anything to it.

14 MR. COLE: I just have a little -- I do have  
15 something that I think needs to be expressed.

16 THE COURT: All right.

17 MR. MADSON: We'd ask the court to thank and  
18 excuse Mr. White, Francis White.

19 THE COURT: Okay, we're going to bring one  
20 more juror in here, and see if we can get through the  
21 next juror.

22 Mr. Meer? Meier, my apologies. Please have a  
23 seat in the front row. And would you take the  
24 microphone off of the stand, you can just unsnap the  
25 microphone from the stand and answer the first four

1 questions please.

2 A My name is Randy Meier. The only organization  
3 that I belong to is Cook Inlet Fishermen's  
4 Association. I don't think there would be any  
5 reason why I couldn't serve, and I don't know  
6 anyone for number 4.

7 THE COURT: Thank you. Mr. Cole?

8 VOIR DIRE EXAMINATION OF MR. MEIER

9 BY MR. COLE:

10 Q Mr. Meier, is that correct?

11 A Yes.

12 Q Mr. Meier, you are a commercial fisherman in  
13 the summer and a teacher in the winter?

14 A I only commercial fish halibut and have a fish  
15 tendering business.

16 Q Did you follow the incidents, the coverage of  
17 the incidents that occurred last March when the  
18 Exxon Valdez was grounded in Prince William  
19 Sound?

20 A I basically followed it on the news as far as  
21 where the oil was going to see if it would affect  
22 Cook Inlet.

23 Q Did it affect your business?

24 A We lost one fish period because of the oil.

25 Q Have you instigated a lawsuit against Exxon or

1                    anyone else as a result of that?

2            A            No, I did not.

3            Q            Do you intend on doing that?

4            A            No, I do not.

5            Q            Since the grounding last March, have you ever

6                    reached any opinions as to the respective roles

7                    of the parties or -- as far as responsibility for

8                    the Exxon Valdez being grounded? When I say

9                    parties, I mean any of the crew members, Exxon

10                   Shipping Corporation, Alyeska, DEC, Coast Guard.

11           A            No, I have not really come to a definite

12                    opinion or anything to that.

13           Q            If called upon to serve on this jury, would

14                    you be able to set aside anything you've heard

15                    outside the courtroom and to base your decision

16                    on the evidence that's presented here in court,

17                    the evidence -- through the witnesses, through

18                    the physical evidence, and your own common sense

19                    and good judgement?

20           A            I think if I was selected I would be able to

21                    make a good judgement in the decisions that would

22                    be asked of a juror.

23           Q            How long have you been involved in the

24                    commercial fishing industry?

25           A            In the commercial fishing part, only two

1 years. In the tendering business, we've been in  
2 ten years.

3 Q And when you say "tendering business," is that  
4 the tendering for salmon from the Cook Inlet?

5 A Yes, it is. We tender from setnetters.

6 Q And that would be primarily on the east or  
7 west side?

8 A The east side.

9 Q I notice that you don't drink. Is that a  
10 personal -- is there personal reasons for that,  
11 or medical reasons?

12 A Personal. I never have.

13 Q Do you have any strong feelings about people  
14 that do? That would affect your ability to be  
15 fair and impartial in this case?

16 A I have an opinion for myself, I don't think  
17 that would affect my opinion.

18 Q If chosen on this jury, would you feel  
19 comfortable that you could fulfill your role as a  
20 juror in listening to the evidence here, looking  
21 at the evidence that's presented here in court,  
22 following the judge's instructions, using your  
23 own common sense and good judgement in reaching a  
24 fair and just verdict in this matter?

25 A I think I could, yes.

1 Q And do you feel confident that you could give  
2 both sides a fair trial in this case?

3 A I think that I could give both sides a fair  
4 trial.

5 Q Thank you, Mr. Meier. I have no further  
6 questions, judge, passed for cause.

7 (0652)

8 VOIR DIRE EXAMINATION OF MR. MEIER

9 BY MR. MADSON:

10 Q Mr. Meier, where do you teach, sir?

11 A I teach at Bayshore Elementary School.

12 Q What grade?

13 A K through six, PE.

14 Q And how long have you done that?

15 A I've taught at that school for -- I think this  
16 is my seventh year.

17 Q And before that, where did you teach?

18 A I taught at Abbott Loop Christian School for  
19 five years.

20 Q Is that -- pardon me, I don't know, is that  
21 here in Anchorage?

22 A Yeah. They're both in Anchorage.

23 Q You've indicated that you are not a plaintiff  
24 in any case against Exxon or any other related  
25 -- defendants for the oil spill, is that correct?

1 A Yes, that's correct.

2 Q Do you have any friends or relatives that you  
3 know of that are friends -- I mean, that are  
4 plaintiffs in any case?

5 A I could not speak for the fishermen that we  
6 buy fish from. I don't know if any of those  
7 have, so to answer your question, I'm not sure I  
8 could answer it correctly.

9 Q You just don't know, I take it.

10 A I do not know.

11 Q Do you know whether or not -- sometimes there  
12 are things called class actions, do you know if  
13 you happen to be a member of a class of persons,  
14 fishermen, that would be included in any lawsuit?

15 A No, I don't think that our business is.

16 Q Do you have any estimate of how much money you  
17 lost as a result of the oil spill?

18 A No, I do not. It probably is not a great  
19 amount.

20 Q I guess that's what concerns me. Can you give  
21 me any kind of an idea at all, or -- I don't know  
22 if we're talking hundreds of dollars or thousands  
23 of dollars or ...

24 A Maybe a thousand dollars, I -- something like  
25 that.

1 Q I'm not quite sure I understand what your  
2 business is. You just buy fish from fishermen,  
3 is that how you do it?

4 A Yeah, we buy fish from setnetters, weigh it,  
5 ice it, and process, and work with a cannery who  
6 does the freezing and the selling.

7 Q And have you ever sport-fished down in Prince  
8 William Sound at all?

9 A No, I have not.

10 Q In your questionnaire, you noted that the --  
11 with regard to the information you remember  
12 hearing about the case, "The Valdez ran aground  
13 on Bligh Reef, closed fishing for Prince William  
14 Sound, skipper was legally drunk, DEC was  
15 critical of cleanup, and closed fishing in Cook  
16 Inlet." When you say "skipper was legally  
17 drunk," do you recall where you learned that  
18 information?

19 A On the -- think I heard that on the TV.

20 Q And regardless of its source, sir, do you feel  
21 that that caused you to form any opinion no  
22 matter how slight as to the guilt of Captain  
23 Hazelwood?

24 A No, because I don't believe everything that is  
25 on the news. That was just an opinion, and just



1 something that I picked up, and did remember and  
2 wrote down on the questionnaire.

3 Q And getting into the last subject here, you  
4 said that you have never consumed alcohol, is  
5 that correct?

6 A That's correct.

7 Q Was that for religious reasons, upbringing, or  
8 anything like that?

9 A Well, mostly probably my upbringing and my  
10 religious belief, I just never have tried, and  
11 never will.

12 Q I'm only guessing, and correct me if I'm  
13 wrong, but was that something that was in your  
14 family as you were a child growing up, your  
15 parents shared that same belief?

16 A Yes, I believe so.

17 Q Have you been around people that have consumed  
18 alcohol?

19 A I have some friends, yes, that do drink.

20 Q And have you seen them -- and have you had  
21 enough experience where you feel you could tell  
22 if somebody is -- well, let's say drunk, first of  
23 all.

24 A I think that I could tell if someone had had  
25 too much to drink.

1 Q And I used the term drunk, can you also tell  
2 if somebody you see is under the influence, or  
3 their ability to speak clearly, or use good  
4 judgement, things like this have been affected?  
5 A Do you think that I could ...  
6 Q Yeah, could you do that, yourself?  
7 A Could I tell, is that what you're asking?  
8 Q Uh-huh (affirmative).  
9 A I think that I could, yes.  
10 Q And you said that you have some friends that  
11 drink, and you obviously don't hold that against  
12 them, because they do consume alcohol, right?  
13 A That's correct.  
14 Q Going back to another matter, with regard to  
15 what you heard about this case, is it fair to say  
16 that it was a subject of conversation among you  
17 and your friends afterwards, did you discuss it,  
18 you know, as a fisherman, in the fishing industry  
19 at least, did you discuss it with anyone?  
20 A I suppose I did, I don't recall the thing that  
21 you're bringing up, that I actually sat down with  
22 any of our fishermen and discussed it, we were  
23 basically concerned whether the oil would get  
24 into Cook Inlet to shut us down.  
25 Q What about just the topic of the spill or the

1 fault on the part of anybody for causing the  
2 spill, did you discuss that with anyone?

3 A Not probably to any great length, probably  
4 with my wife, and, you know, some people talk  
5 about it, but not as an ongoing or big  
6 conversation that I would remember.

7 Q Do you recall giving or expressing any opinion  
8 to her or anybody else about what you thought  
9 happened and why?

10 A No, I do not.

11 Q Do you have any opinions today as you sit here  
12 right now about what happened and why, or who may  
13 have been at fault?

14 A Well, I -- you know, I wonder, you know, what,  
15 you know, what happened and all that, as compared  
16 to what I've heard, and that would be about it.

17 Q In other words, you would be able to set aside  
18 anything that you've heard, and only decide the  
19 case on what you hear in the courtroom, is that  
20 fair to say?

21 A I think that I could, yes.

22 Q Lastly, do you recall the instructions the  
23 judge gave you a couple days ago when you were in  
24 here, about certain things that you should do as  
25 a juror?

1 A Yes, I think I do.

2 Q In other words, you know, he said things like  
3 there's a presumption of innocence, that the  
4 burden is always on the State to convince you  
5 beyond a reasonable doubt of each and every  
6 element of a case before you can render a verdict  
7 of guilty?

8 A Yes, I remember that.

9 Q You remember the one where you -- also the  
10 defendant in a criminal case never has to produce  
11 any evidence or testify on his own behalf should  
12 he choose not to?

13 A Yes, I remember.

14 Q Would you be able to follow that instruction  
15 should Captain Hazelwood not take the witness  
16 stand and more or less tell you his side of the  
17 story?

18 A Yes, I think I would be able to.

19 Q Well, when you -- I'm not here to argue with  
20 you, but can you tell us 100 percent sure that  
21 you would be able to do that?

22 A Yes, I would.

23 Q Thank you, sir. Passed for cause.

24 (0994)

25 THE COURT: Mr. Meier, you're free to go

1 today, but you'll need to come back tomorrow morning at  
2 8:30 a.m. to the jury assembly room. Do you remember  
3 which room that is? Okay, and will you be able to show  
4 up at 8:30 a.m. tomorrow? Okay. We'll see you then,  
5 and I'll give you further instructions sometime  
6 tomorrow morning, hopefully, or tomorrow afternoon. In  
7 the meantime, don't discuss this case with anybody, and  
8 don't get exposed to media coverage concerning it.  
9 I'll see you tomorrow sometime, and you can exit that  
10 door.

11 You have your tenth.

12 MR. MADSON: One second, Your Honor.

13 MR. CHALOS: Your Honor, may we have two  
14 seconds just to confer?

15 THE COURT: Sure.

16 (Indiscernible - whispering)

17 MR. MADSON: We would ask the court to thank  
18 and excuse Thomas Belleau, Your Honor.

19 THE COURT: That's juror number 1. All right,  
20 we'll call the rest of the jurors in, have them come in  
21 the back way.

22 (Indiscernible - whispering)

23 THE COURT: Marla Sanders, one of the jury, is  
24 yet to be called, but in this group -- as she's number  
25 55, has indicated she's got a problem with child care

1 tomorrow, she's a single parent, she has no regular  
2 child care, I have no objection to letting her go,  
3 she's number 55. Any problems with that, counsel?

4 MR. COLE: No.

5 MR. MADSON: No, Your Honor.

6 THE COURT: Also one more person, Sylvia  
7 Standberry has been excused because of a medical  
8 hardship. She's the last one -- she has to go to a  
9 prenatal doctor's appointment tomorrow morning.

10 Okay, I'm hopeful we have all of the jurors  
11 that were next door in court now. I want to thank you  
12 for your patience, ladies and gentlemen. Sorry we  
13 didn't get to you today, but we'll probably get to you  
14 tomorrow morning. I think we'll probably be completed  
15 with jury selection tomorrow, the way things are going.  
16 I can't guarantee it, but that's my best guess, and  
17 that guess is shared by counsel, so there's a chance  
18 we'll get finished tomorrow. You folks who didn't get  
19 called into court to answer questions today will be  
20 called in tomorrow, most likely, and then those who  
21 were on the last batch, the third batch, we will have  
22 them in tomorrow also if we need them.

23 In the meantime, you'll have to come back  
24 tomorrow morning at 8:30 a.m. and assemble in the jury  
25 assembly room, I heard it's room number 52, I'm not

1 sure if that's correct or not, but that's the room that  
2 you assembled in today, and don't talk about this case  
3 to anyone, and avoid media coverage concerning it.  
4 We'll see you back in the jury room tomorrow. There  
5 are two jurors who I am excusing at this time, Marla  
6 Sanders and Sylvia Standberry are excused. The rest of  
7 you I'll need back tomorrow morning at 8:30. Please be  
8 safe, and we'll see you there.

9 I think all the jurors have left, are there  
10 any other jurors in here? Looks like not. All right,  
11 the defendant has exercised all 10 of their challenges.  
12 Mr. Cole, are you going to be opposing the request for  
13 two additional peremptory challenges?

14 MR. COLE: I doubt if I'll be opposing it,  
15 I'll just be asking for an additional one myself, and  
16 I'm going to provide case support for that.

17 MR. MADSON: Your Honor, I didn't mean by that  
18 motion to imply that we were only asking for two. That  
19 motion dealt with the questions of what -- those two  
20 were potential witnesses, in other words, they had been  
21 so close to the situation that we felt they should be  
22 excused for cause, but if not, at least for those two  
23 we should have additional peremptory challenges, but in  
24 addition to that, we believe we need more than just  
25 two.

1 THE COURT: Okay, well, why don't you prepare  
2 your argument for any peremptory challenges tomorrow  
3 morning at 8:30, we'll meet and you can -- in fact,  
4 let's meet at 8:15 tomorrow morning. 8:15 we'll meet,  
5 and we'll discuss the defendant's request for  
6 additional peremptory challenges, the State's request  
7 for additional peremptory challenges, and we'll address  
8 the motion to compel, Mr. Madson, which has just been  
9 served on you.

10 MR. MADSON: Yeah, I'll be prepared for that,  
11 Your Honor.

12 THE COURT: We'll take care of that at 8:15  
13 a.m. tomorrow morning.

14 MR. COLE: The two people are -- it never was  
15 made clear to me who the two people that the defense  
16 wanted to perempt or reconsider perempting for cause.  
17 Are they the two pilots?

18 MR. MADSON: The two pilots, Girard and  
19 Belleau.

20 MR. COLE: Belleau that they just perempted  
21 just now.

22 MR. MADSON: That's right.

23 MR. COLE: Okay.

24 THE COURT: The question is going to be  
25 whether additional peremptory challenges will be



1 granted. There'll be no additional challenge to the  
2 cause at this stage. The remedy will be peremptory  
3 challenges, if there is a remedy. We'll see you all  
4 tomorrow at 8:15 -- am I still correct in assuming that  
5 we'll probably finish jury selection tomorrow?

6 MR. MADSON: Your Honor, I hate to make that  
7 promise right now, I think that's going to depend on  
8 what happens at 8:15 tomorrow.

9 THE COURT: Okay. We can just leave the clock  
10 in the courtroom, that little clock that's on the  
11 counter I gave you, and we'll stick with the 10-minute  
12 time frame. We'll see you tomorrow at 8:15.

13 (Off record - 4:18 p.m.)

14 \*\*\*CONTINUED\*\*\*