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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

16-11-11
AUG 20 1990
Appeals Divisi
Anch

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

TRIAL BY JURY
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H & M Court Reporting
510 "L" Street, Suite 350
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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 5, 1990
8:57 a.m.

APPEARANCES:

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1 PROCEEDINGS

2 FEBRUARY 5, 1990

3 (Tape: C-3596)

4 (1580)

5 (Jury not present.)

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

8 THE COURT: Thank you. Ladies and gentlemen,
9 you may be seated. We have all 15 jurors in the jury
10 room. They've been oriented to the security system
11 here. We are ready to bring them in and swear them in.
12 Before we do so, I understand there is a matter that
13 needs to be addressed?

14 MR. MADSON: Your Honor, very briefly. First
15 of all, we've been just served a number of motions for
16 protective orders. Has the Court seen those?

17 THE COURT: I just got courtesy copies myself.

18 MR. MADSON: Yes, I presume the Court will
19 allow us some time to respond to those before...

20 THE COURT: Absolutely.

21 MR. MADSON: ...it looks like they'll come up
22 later on. Other than that, Your Honor, the other day,
23 before the jury selection proceedings began, Mr. Linton
24 indicated that it would be the state's position that
25 the alcohol -- blood alcohol reading on

1 Captain Hazelwood of .06, which was under the limit for
2 the state law but exceeded the Coast Guard limit of
3 .04, was going to be introduced in evidence and argued
4 -- at least argued to the jury that this was evidence
5 of recklessness, and I would ask for a protective order
6 just as far as opening statements are concerned, that
7 no mention be made of that or no argument be made on
8 that particular point until we've had a chance to
9 address it and have the Court rule.

10 THE COURT: Mr. Cole.

11 MR. COLE: Well, I believe that our position
12 is that that evidence should come before the jury in
13 front of opening.

14 THE COURT: Given the Court's ruling and so
15 forth, Mr. Madson, I'm going to let the state address
16 that in their opening statement on the assumption that
17 it's likely it will come into evidence, given the
18 Court's rulings and the Court's familiarity with this
19 case. However, not everything that is said in opening
20 statement comes in evidence, and there is always the
21 possibility this will not come in. I'll let you
22 address it before the actual evidence comes in. But in
23 opening statement, I will let comment be made of that.

24 Is there anything else we need to do before
25 bringing the jury in?

1 MR. COLE: Well, I need to -- are we going to
2 start opening?

3 THE COURT: I'm going to swear the jury in,
4 I'm going to orient them to where they seat -- where
5 they sit, I'm going to give them some preliminary
6 boiler plate instructions, then excuse them before
7 opening statements are made to let you get set up.

8 Is it the intention of the defendant to make
9 an opening statement following the state's?

10 MR. MADSON: It is.

11 THE COURT: Okay. Let's bring the jury in.

12 UNIDENTIFIED SPEAKER: Yes, sir.

13 THE COURT: And, counsel, did you go over the
14 seating arrangement of the jurors, and are those names
15 on the seating arrangements, do they coincide with
16 those who have been selected?

17 MR. COLE: Yes.

18 MR. MADSON: We believe so, yes.

19 THE COURT: Okay. Thank you. Bring them in.

20 (Pause)

21 (Jury present)

22 THE COURT: Don't have a seat yet. Just kind
23 of stand around this area. I've got to tell everybody
24 where they're going to be seated.

25 Is Margaret Glenn or Beatrice Freeman

1 available real quick?

2 MS. GLENN: Margaret.

3 THE COURT: Why don't you have seat number
4 one, Ms. Glenn, on the front row in the corner.
5 Beatrice Freeman, number two. Is Beatrice Freeman
6 here? Second seat in. Lori Wing, third seat;
7 Terrill Smith, fourth seat; Albert Oakes, the fifth
8 seat, second row, all the way in; James Rousey, number
9 six; Terrance Reimer, number seven; Kathryn Rosselle,
10 number eight; Deborah Crowley, number nine. That will
11 be back in the corner, Ms. Crowley. Blondell Walker,
12 number 10; Yvonne Payne, 11; Jeffrey Sage, 12. The
13 first alternate, Bobby Lewis, A-1, that would be the
14 next seat next to Mr. Sage; Terry Turner, alternate
15 two, would be in the corner in back; Joyce Gause will
16 be the third alternate. That's where you'll be seated
17 from now on when you come back from breaks or when you
18 come back from recess.

19 For the alternate jurors, you were drawn in
20 the same manner, you have the same qualifications, you
21 will be subject to the same examination and challenges.
22 You have to take the same oath and have the same
23 functions, powers and facilities and privileges as
24 regular jurors. An alternate juror who does not
25 replace a regular juror shall be discharged after the

1 jury retires to consider its verdict. For the
2 alternates, I would say the likelihood of an alternate
3 being placed on the regular jury in this case is quite
4 high. Don't feel that because you are an alternate
5 your responsibilities are any less, or any less
6 attention should be given to this matter. In trials of
7 much shorter duration, I figure about one-third of the
8 time alternates serve. I've had alternates serve as
9 jurors for persons, so keep in mind your
10 responsibilities are equal to any other juror on the
11 panel.

12 Ladies and gentlemen, before we go any
13 further, I'm going to have Mr. Purden, who is our
14 in-court deputy, he's the one who runs all the
15 electronic equipment in the courtroom, I'm going to
16 have him administer the trial juror's oath. You've
17 already taken one oath, where you promised to
18 truthfully answer the questions put to you. Now you
19 are going to take an oath where you promise under oath
20 to follow the Court's instructions. If all of the
21 jurors, including the alternates, would stand, please?
22 Raise you right hand.

23 (Oath administered)

24 THE JURY: I do.

25 THE COURT: Now that you've taken your oath,

1 you are ready to serve as jurors. To assist you in
2 your task, I'm going to summarize for you the way in
3 which this case will probably proceed. After you've
4 heard the evidence, I'll instruct you on the law and
5 we'll then commence deliberations.

6 The trial will proceed essentially in the
7 following way:

8 First the prosecutor will make an opening
9 statement, outlining what the prosecution expects to
10 prove in this case. Next, the defendant's attorney may
11 make an opening statement or he may reserve it. After
12 that, the state will present its evidence. When the
13 state has concluded its evidence, the defendant may
14 present evidence but is under no obligation to do so.
15 If the defendant elects to present evidence, the state
16 may present rebuttal evidence.

17 After the evidence is presented, the parties
18 will have an opportunity to argue the case to you. The
19 state, because it has the burden of proof, argues
20 first. Then the defendant is given an opportunity to
21 argue the case. If the defendant does so, then the
22 state is given the opportunity to rebut the defendant's
23 arguments.

24 At the completion of the argument, I will
25 instruct you in the law and you will commence your

1 deliberations. After the argument, you will hear
2 evidence in the case. After you do, your job will be
3 to decide how to evaluate that evidence in light of the
4 law I give you at the end of the case. I will rely on
5 the jury to determine the facts. This must be done
6 relying solely upon the evidence received in this
7 trial. You must not be governed by your sentiment,
8 conjecture, sympathy, passion, prejudice, public
9 opinion or public feeling, but must base your
10 conclusions only upon a fair consideration of the
11 evidence. That evidence will include the sworn
12 testimony of witnesses, exhibits submitted into the
13 record, facts agreed upon by the attorneys and facts
14 judicially noted by this court. The evidence should be
15 considered and viewed by you in light of your own
16 observation and experiences in everyday life, but you
17 may not consider any other sources of information not
18 presented to you in this court.

19 It will be my duty to decide what law must be
20 applied. In so doing, I will look to a number of
21 sources, including the statutes of the state of Alaska,
22 the decisions of the Alaska Supreme Court and other
23 learned courts and the advice of the attorneys who have
24 appeared before you. You must apply the laws I give to
25 you; you may not apply the law you think it is or

1 should be or as another may have told you it is. The
2 instructions I will give you are the only law that you
3 may apply.

4 Every person who testifies under oath is a
5 witness. You, as jurors, are the sole judges of the
6 credibility of the witnesses and the weight their
7 testimony deserves. In deciding whether to believe a
8 witness or how much weight to give a witness's
9 testimony, you should consider anything that reasonably
10 helps you to judge that testimony. Among the things
11 you should consider are the following:

12 The witness's attitude, behavior and
13 appearance on the stand and the way the witness
14 testifies; the witness's intelligence; the witness's
15 opportunity and ability to see or hear the things about
16 which he or she testifies; the accuracy of the
17 witness's memory; any motive of the witness not to tell
18 the truth; any interests that the witness has in the
19 outcome of the case; any bias of the witness; any
20 opinion or reputation, evidence about the witness's
21 truthfulness; the consistency of the witness's
22 testimony and whether it is supported or contradicted
23 by other evidence. If you believe that a witness
24 testifies falsely, as to part of his or her testimony,
25 you may choose to distrust other parts also, but you

1 are not required to do so. You should bear in mind
2 that inconsistencies and contradictions in a witness's
3 testimony, or between his or her testimony and that of
4 others, do not necessarily mean that you should
5 disbelieve the witness. It is not unusual for a
6 witness to forget or to be mistaken about what they
7 remember, and this may explain some inconsistencies and
8 contradictions, and it is not uncommon for two honest
9 people to witness the same event and see or hear things
10 differently. It may be helpful, when you evaluate
11 inconsistencies and contradictions, to consider whether
12 they relate to important or unimportant facts. You may
13 believe all, part, or none of the testimony of any
14 witness. You may not believe a witness even though his
15 or her testimony is uncontradicted, but you should act
16 reasonably in deciding whether or not you believe a
17 witness and how much weight to give to his or her
18 testimony.

19 A witness who has special knowledge, skill,
20 experience, training or education in a particular
21 science, profession or occupation may give his or her
22 opinion as an expert on any matter in which he or she
23 is skilled. In determining the weight to be given such
24 opinion, you should consider the qualifications and
25 credibility of the experts and the reasons given for

1 his or her opinion. You should also consider those
2 factors used when judging the testimony of all other
3 witnesses on which you have already been instructed.
4 You are not bound to accept any witness's -- expert
5 witness's opinion. Give it the weight, if any, to
6 which you deem it entitled.

7 Both direct and circumstantial evidence will
8 probably be presented in this case. Direct evidence is
9 given when a witness testifies of his own actual and
10 personal knowledge as to facts to be proven.

11 Accordingly, circumstantial evidence may be defined as
12 evidence of certain facts and circumstances from which
13 one usually may deduce or infer other facts in keeping
14 with reason and common sense. Both types of evidence
15 must be carefully considered. Both types of evidence
16 are confident forms of evidence. It is for you to
17 determine the weight of the circumstantial evidence as
18 well as the direct evidence, neither enlarging or
19 belittling the force of either.

20 It is the duty of the attorney on each side of
21 the case to object when the other side offers testimony
22 or other evidence which the attorney believes is not
23 properly admissible. By allowing testimony or other
24 evidence to be introduced over the objection of an
25 attorney, the Court does not intend to indicate any

1 opinion on the weight or effect of such evidence. As
2 stated before, you are the exclusive judges of the
3 credibility of all witnesses and the weight and effect
4 of all evidence.

5 When the Court sustains an objection to a
6 question addressed to a witness, you must disregard the
7 question entirely and may not draw any inference from
8 the wording of it or speculate on what the witness
9 would have said if permitted to answer the question.
10 Do not consider as evidence any statements, including
11 opening statements of counsel, arguments, questions or
12 remarks of counsel made during the trial. While not
13 evidence, these generally are meant to help you
14 understand the evidence and apply the law. Consider
15 them in that light. Disregard any argument, statement,
16 question or remark of counsel which has no basis in the
17 evidence produced in open court. Questions by counsel
18 may only be considered as they supply meaning to the
19 answers. Never speculate to be true any insinuations
20 suggested by questions of counsel.

21 In a few moments, ladies and gentlemen, you
22 will hear opening statements of counsel. Before we do
23 that, I'm going to recess, for a short time, to allow
24 counsel to set up for their opening statements.

25 The jury room, where you were taken earlier,

1 is a room that you will report to during every break
2 and when you return the next day. Mr. Purden, if he
3 hasn't already, will acquaint you with our entry system
4 to the back of the floor. There is a buzzer there and
5 you will have to buzz each day, and my secretary will
6 see your face on a screen, and she won't let you in
7 unless you give your name first and she can identify
8 you and check you off.

9 You will be given an instruction, which you
10 will get plenty tired of hearing, and that is not to
11 discuss this case among yourselves or with any other
12 person and not to form or express any opinion. I'll
13 try to give that instruction to you every time you take
14 a break or recess for the day. In addition, you are
15 instructed to avoid media information about this case.
16 And most of you have friends and family who can screen
17 that information for you. They should get the
18 newspaper and should screen out, cut out, they should
19 make sure you avoid watching the newscasts on
20 television and stay off the radio newscasts. That's
21 very important. It's important that you decide this
22 case based solely on what you see and hear in this
23 courtroom and not be influenced in any way, however
24 slight, by media or any other information outside the
25 court. If you are inadvertently exposed, well, there's

1 not much we can do about that. Disregard it and report
2 it to me in writing or in a note or in open court to
3 Mr. Purden or myself. An inadvertent exposure by
4 itself is not going to disqualify you, and if you are
5 inadvertently exposed, you may inquire about the
6 exposure and the effect on you to that exposure. To
7 avoid that, don't get exposed. It may be difficult
8 because as you see, there's some interest in this case,
9 and there's going to be media coverage of this case.
10 I've instructed the media not to cover the jury. There
11 will be no pictures of the jury, no mention of the
12 jurors names in any publications or any newscasts.
13 That's strict instruction which I will enforce. So,
14 don't be worried about your privacy being invaded.
15 Nobody should contact you. If they do contact you, you
16 let me know. If somebody tries to give you information
17 at any time, you let me know, and particularly if you
18 know their names or who they are. We'll take care of
19 that matter.

20 Right now we're going to take a recess. It
21 will be about 10 or 15 minutes, and when we come back,
22 you will hear opening statements by counsel.

23 We stand in recess.

24 THE CLERK: Please rise. This court stands in
25 recess, subject to call.

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(Off record - 9:15 a.m.)

(On record - 9:31 a.m.)

(2380)

THE COURT: Thank you. You may be seated. At this time the state will make its opening statement.

MR. COLE: Thank you, Your honor.

OPENING STATEMENT OF PLAINTIFF

BY MR. COLE:

Mr. Madson, Mr. Chalos, Judge Johnstone, ladies and gentlemen, on March 24th, 1989, 11 million barrels of Alaskan crude oil spilled into Prince William Sound. This spill was a result of the oil tanker, Exxon Valdez, going aground in Bligh Reef. This catastrophe represents the largest US oil spill.

Once spilled, the crude oil was carried to points beyond Kodiak Island and left in its wake a path of destruction and death. The oil spill took a part of Prince William Sound that will never be replaced. Joseph Hazelwood, the captain of the Exxon Valdez, was in charge and responsible for that tanker's safety. He was in charge and responsible for that safety of his crew members. He was in charge and responsible for the safety of the cargo that evening. Through his experience and skill, he had achieved this position that required him to take steps to minimize and to

1 avoid exactly what happened in this case. And because
2 of the conditions surrounding the circumstances
3 surrounding his failure to perform his responsibilities
4 on that evening, he has been charged with four crimes.

5 Count one, he has been charged with criminal
6 mischief in the second degree. That charged that he,
7 without any right nor any reason to believe he had such
8 a right, recklessly created a risk of damage to
9 property of another, an amount greater than \$100,000.00
10 by widely dangerous means.

11 The second count charges him with driving a
12 watercraft while intoxicated. That count charges him
13 that on or about the 24th day of March, 1989, he
14 unlawfully operated a watercraft while under the
15 influence of intoxicating beverages.

16 Count three charges him with reckless
17 endangerment, and that is recklessly creating a risk of
18 serious physical injury to the crew members on those
19 same days, March 24th, 1989.

20 And finally, count four charges him with
21 negligent discharge of oil. That is that he
22 negligently discharged oil in the Prince William Sound
23 area.

24 Where does this story begin? This story
25 begins with a tanker that we have and that the state of

1 Alaska relies upon. It begins with the pipeline that
2 comes down and carries oil from Prudhoe Bay, Alaska,
3 down to the Port of Valdez, where the terminals there
4 are run by Alyeska and where the oil is transferred
5 from land to tankers that await it. And from that
6 point it is shipped down and out through Prince William
7 Sound, out through the Hinchinbrook entrance to be
8 shipped to ports along the West Coast, Washington,
9 San Francisco, Long Beach, and as far down as Panama.

10 These tankers generally come into this area,
11 they're required by regs to report about three hours
12 out of Hinchinbrook, they are required by regs to
13 report an hour outside of Hinchinbrook entrance and
14 they provide information to the Coast Guard in their
15 VTC station. We'll learn that that is a Vessel Traffic
16 Center or Vessel Traffic System. It's a system that's
17 designed by the Coast Guard to help regulate the
18 traffic in and out of Prince William Sound. They want
19 regulations to become more and more strict the further
20 you get toward this part, which is called the narrows.

21 The tankers generally come in and you will see
22 that there is what are called traffic lanes that go all
23 the way up. And during the course of this trial you
24 will learn that the one on the right is called the
25 northbound traffic lane, and that's where the tankers

1 going into Valdez are followed. This color in the
2 middle is called the separation zone; it's to keep them
3 apart. And then finally on the left is the southbound
4 lane, where the tankers depart.

5 You will find out that one of the areas that
6 will be talked about is this area right off Bligh Reef,
7 and Bligh Reef is located right here. This is called
8 the Bligh Reef buoy. You can see the light, it's
9 marked there, and then the other one is Busby Island,
10 which is right there.

11 At about 2:38, 2:40 on March 22nd, the Exxon
12 Valdez was headed toward Hinchinbrook. They were
13 outside and they called in and they gave an estimate.
14 That is the beginning of this trip. They called the
15 VTC station and reported that they would be -- they
16 would have an ETA of Cape Hinchinbrook about 5:30. At
17 that time they indicated that they had pilotage.

18 Now, pilotage is a special term of art, and
19 you will learn about that during the course of this
20 trial. But what that means is that they had a person
21 on-board, a mate or the captain, and in this case, it
22 was Captain Joseph Hazelwood who had a special federal
23 pilotage endorsement that permitted him to travel and
24 navigate the ship from Cape Hinchinbrook to Rocky
25 Point. At that point a state pilot picks him up.

1 Otherwise without the pilotage requirement, the tankers
2 were, in the beginning, required to stay until a pilot
3 arrived to take them in, a special pilot with this
4 federal pilotage endorsement, or later on they were
5 allowed to travel into Valdez up to Bligh Reef under
6 certain visibility conditions and daylight hours. But
7 in this case, Captain Hazelwood had the special
8 pilotage endorsement, and that permitted him to
9 navigate a tanker of this size into Prince William
10 Sound.

11 And you will learn about what it takes to get
12 a pilotage endorsement of this type. It takes a
13 certain number of trips, where you are an observer,
14 through the Prince William Sound. You have to pass a
15 physical, you have to have so many trips under your
16 belt. Besides that, you have to have a certain
17 license, a mates license. But the most important thing
18 is that they sit there in your test and they give you a
19 chart like this, and it's blank, and you are required,
20 in order to pass, to get this pilotage endorsement, to
21 fill in all the known navigational hazards, all the
22 buoys and lights, and in addition to that you are
23 required to put in sounding marks. It's that specific.
24 They require you to go around and plot sounding marks
25 throughout the area. So, in order to get a pilotage,

1 federal pilotage endorsement, which Captain Hazelwood
2 had, you would have to have some special training and
3 you have to have some special knowledge of the Prince
4 William Sound area and its dangers.

5 The Exxon Valdez arrived off Cape Hinchinbrook
6 at about 5:15 that evening. It arrived at Naked Island
7 at about 8:30 and it picked up the pilot, which in this
8 case was Mr. Ed Murphy, at Rocky Point, right there, at
9 about 9:19.

10 This is another one of the maps that you will
11 be seeing here in the course of this trial. And this
12 is a map of the area right off Rocky Point, which is
13 right in here, up into the Valdez Arm, the Port of
14 Valdez, and you will get an essential picture of the
15 Valdez Terminal, which is located right here.

16 Mr. Murphy came on-board the Exxon Valdez at
17 about this point right in here, and you will hear the
18 tapes of the inbound traffic and the conversations that
19 were -- occurred at this time, including
20 Captain Hazelwood's voice. The tanker arrived that
21 evening and docked at berth five, which I'm not sure
22 that you can see it, but it's this berth out here, off
23 Saw Island. And at that point what occurs is the
24 tankers have come up from -- in this case it was from
25 San Francisco, but they have no one -- they have --

1 they carry water in some of their tanks, but basically
2 it's a very light ship. But that water, it's called
3 dirty ballast, the water that mixes in with -- in the
4 oil tanks to keep the tanker stabilized, has to be
5 pumped out. The ship has to be examined to make sure
6 it's fit before the transfer of oil can come from the
7 Alyeska Terminal.

8 That process is primarily done by the chief
9 mate. In this case you will learn that his name is
10 James Kunkel. He began at about midnight, getting the
11 tanker prepared for the loading of oil. You will learn
12 about that and you will see that it's a highly
13 mechanized system where most of the operation is done
14 inside a room called the cargo control room and done by
15 pushing valves at an instrument panel that basically
16 regulates all the valves on the tanker. You can see
17 kind of the schematics of the tanker and then you see
18 pictures of the Exxon Valdez yourself. You'll see how
19 these schematics are consistent with what's on top of
20 the tanker. Through this instrument panel, he can
21 control the discharge of ballast and control the
22 loading up of crude oil.

23 After the ballast is -- the dirty ballast is
24 unloaded, then comes a process of loading up the oil,
25 and that started occurring later that morning on the

1 23rd. It's mostly a mechanized system. There is
2 really not a whole lot of manual work. Sometimes some
3 of the people have to go out and watch the valves, but
4 you will learn during the course of the trial, that
5 this is pretty much automatic and it's pretty much a
6 one-man job. The other people stand watch at their
7 normal times, and we'll talk about that in a little
8 bit. But they just come along and help as they are
9 needed. The day in Valdez is very slow for most
10 people, and it affords the opportunity for a number of
11 people on-board, when they're not on duty, to go
12 ashore.

13 On this particular day, three people off the
14 Exxon Valdez did go ashore. Captain Hazelwood, Jerzy
15 Glowacki, the chief engineer, they invited along Joel
16 Roberson. He was the radioman, and he had only been on
17 the tanker for about 30 to 40 days. The three of them
18 went to a place called the Alaska Maritime Agency.
19 Now, the Alaska Maritime Agency has an office in
20 Valdez, and what it does is that it is an agent for
21 Exxon Shipping Company, and it is a company that
22 basically helps them run errands. They are responsible
23 for the cargo manifest handling; they are responsible
24 for entry and exit papers, if sailing to a foreign
25 port; they arrange for the delivery of parts; they help

1 crew changes, they make medical supplies, they keep the
2 Exxon Company advised of details of the ship's stay in
3 port, they let the company know when to expect the ship
4 at its next destination.

5 Now, the three men, Captain Hazelwood, Jerzy
6 Glowacki and Joel Roberson went to that office building
7 that day and they made a number of phone calls. One of
8 the phone calls that Captain Hazelwood made at the inn
9 was to his old friend, Ed Murphy, who had piloted in
10 that night into the Port of Valdez and the Alyeska
11 Terminal. He invited Mr. Murphy out to lunch. And so
12 the four of them, Ed Murphy, Captain Hazelwood, Jerzy
13 Glowacki and Joel Roberson, went to lunch at a place
14 called the Pizza Palace. That was around noon, 12:30,
15 or so. At that time Captain Hazelwood had tea, ice
16 tea. Mr. Delozier -- or Mr. Glowacki and Mr. Roberson
17 drank beer. After lunch that day, the pilot,
18 Mr. Murphy drove them to a square, like a small mall,
19 in Valdez, and he dropped them off.

20 The three Exxon employees at that time decided
21 to split up, but they reached an agreement to
22 rendezvous, for lack of a better word, at the Pipeline
23 Club between 4:00 and 4:30. And then at that point,
24 the three separated and didn't meet up again until the
25 Pipeline Club.

1 Janice Delozier was working that day, and she
2 worked for a dentist at the time, and she got off a
3 little bit after one o'clock. She was going to go eat
4 at the Pipeline Club and stopped by and realized that
5 they weren't having lunch that day -- serving lunch.
6 So, she went in and sat at the bar. You'll see a
7 diagram of the bar and you'll see where she sat in the
8 corner. She was drinking coffee, talking to a friend,
9 when she noticed a person who came up, and he had a
10 beard, he was wearing a dark overcoat and he had a
11 distinctive hat. And he walked up within two to three
12 feet of her and he ordered a drink. He ordered a
13 special type of vodka. And the bartender didn't place
14 the order right. Somehow there was some confusion and
15 that person ended up saying, "Don't worry about it,
16 this is fine," and went off and sat in the corner.
17 Janice Delozier will identify that person as
18 Captain Hazelwood. That was at about 1:35, 1:40,
19 shortly after he had been dropped off at the parking
20 lot.

21 Another man came into the bar that -- shortly
22 thereafter. He saw Captain Hazelwood, acknowledged him
23 and went to the bar. He ordered a drink and went back
24 over to where Captain Hazelwood was sitting, and the
25 two of them sat. Janice Delozier will tell you that

1 Captain Hazelwood had at least two drinks of vodka that
2 afternoon while she was there. She left to return to
3 her office at about 2:45 that day.

4 Meanwhile, Jerzy Glowacki, Joel Roberson, were
5 doing their errands. Jerzy Glowacki showed back up at
6 about four o'clock at the Pipeline Club and ordered
7 himself a drink. About 15 minutes later,
8 Captain Hazelwood came in the door and joined them. He
9 also ordered a drink. And about 10 to 15 minutes
10 later, Joel Roberson stayed and ordered a drink. These
11 men stayed at the Pipeline Club drinking until about
12 7:15 that evening. They were supposed to board and
13 leave the -- on the Exxon Valdez at nine o'clock that
14 night. They were supposed to be on-board at eight
15 o'clock. They stayed there until 7:30.

16 Now, a secretary for the Alaska Maritime
17 Agency came over and stopped shortly and talked to
18 Captain Hazelwood when they were at the bar at about
19 4:30. After leaving the Pipeline Club, they walked
20 over -- and their plan was to pick up a couple pizzas
21 at the Pizza Palace, where they'd eaten earlier, and
22 take them back for the crew. When they got there,
23 Jerzy Glowacki walked in and ordered the pizza.
24 Captain Hazelwood and Mr. Roberson decided to go next
25 door and have another drink, at what's called the Club

1 Valdez. There was refreshments at the Pizza Palace,
2 there were drinks that were served there, but they went
3 to the bar next door. Jerzy Glowacki joined them there
4 and there they waited until their pizza were ready.
5 Then they called a cab.

6 The cab that picked them up picked up another
7 employee from Arco and transported them to the guard
8 shack. (Pause) The Pizza Palace is right about there.
9 They got in a cab and then rode to the terminal out
10 here. So you have to drive all the way out to there
11 and then come back. You drive all the way out to there
12 and then you drive along there, and the guard shack is
13 right there, and you will see it when you get a chance
14 to take a look at it.

15 They checked in at 8:24 that evening at the
16 guard shack. From there, they were taken out to berth
17 five and the ship was sitting very similar to the ship
18 that's in here, right here at gate five.

19 While they had been in town drinking, the rest
20 of the crew was preparing to go to sea that evening.
21 James Kunkel was completing the loading of crude oil.
22 That evening he loaded approximately 1,285,000 barrels
23 of oil on the Exxon Valdez.

24 To give you an idea of what a million barrels
25 of oil does to a tanker, this is a picture of a tanker,

1 the Exxon Valdez, after it was first made, and you will
2 see how high it rides in the water. When it's loaded
3 with oil, it will go clear up to the dark blue.

4 Mr. Kunkel ended up, the chief mate, finishing
5 off the loading system with a little help from
6 Greg Cousins. Greg Cousins then, being the third mate,
7 prepared the tanker for voyage. And his job was to do
8 the gear tests. There's a lot of tests that have to be
9 done, but essentially he goes through the bridge and he
10 checks to make sure things like the course recorder,
11 which is an instrument that is used to record the
12 direction that the ship is headed toward, is working.
13 He checks it with a clinometer, which is a very
14 accurate clock aboard the Exxon Valdez. He checks the
15 steering mechanism of the Exxon Valdez to make sure
16 that it is working properly and that the wheel is
17 turning, that the alarms aren't going off, that the
18 rudder is responding to the wheel. He checks the
19 gyros, which are designed to coordinate the guidance
20 system in the Exxon Valdez, and he checks the radars
21 and the anti-collision devices, communications systems
22 were squawking, and he looked at those.

23 At about 8:22 that evening, while he was up on
24 the bridge, Ed Murphy came aboard. Ed Murphy, being
25 the pilot who would take the Exxon Valdez out of the

1 Port of Valdez, through the Valdez narrows and out to
2 Rocky Point, which is right there. When Mr. Murphy
3 came aboard he had his own checklist. You will find
4 out that he's a specialist. What pilots do is they
5 provide a very special service to people. They allow
6 -- they provide information and knowledge and
7 familiarity with the conditions. This is a part of the
8 maritime industry that has grown up through custom,
9 where the pilot supplies his knowledge in the area.
10 That could be in tides, that could be the docking, that
11 could be the weather, any uncharted hazards, things
12 like that. He provides that special knowledge and
13 navigates the tanker out around this particular area.
14 He had his own checklist that night.

15 He checked things like the radar and the gyros
16 to make sure that things were working appropriately.
17 And he also got himself accustomed to the ship, because
18 these tankers are not all the same. Some of them are
19 smaller, some of them are bigger, some of them -- most
20 of them now are diesel. They used to be all steam.
21 There is a lot of different types, and these pilots
22 have to accustom themselves to each one. So, he spent
23 a little time on that.

24 But when Mr. Murphy got there around 8:20, the
25 Captain was not around. He stayed up there with the

1 third mate and was joined after that by a woman by the
2 name of Patricia Caples. She was an employee of Alaska
3 Maritime Agency, and she had come to get the
4 information on the ullages. And you'll learn that the
5 ullages is the measuring of the tanks. These tankers
6 are so big and it's so important to have an accurate
7 measurement of the amount of oil that is actually
8 contained in the tanker, that what the oil companies do
9 is Exxon and Alyeska hire an independent third party,
10 which is Caleb Brett, and you'll see that they came in
11 and took the ullages. And that impartial third party
12 does the measurement and tells -- does some
13 conversions, based on the shrinkage of oil due to the
14 decreasing temperature as it's being travelled, but
15 essentially it comes out with what a net amount is.
16 She wanted to get that confirmed and she had come to
17 see the Captain.

18 All three, Mr. Cousins, Ms. Caples and
19 Mr. Murphy, were waiting on the bridge for
20 Captain Hazelwood that evening. He arrived somewhere
21 around 8:30 that evening. At that time Patricia Caples
22 spoke with him and she walked down to his cabin, which
23 is the first deck below the bridge.

24 And looking at it from this, the bridge is
25 located right here. You can see that this is actually

1 the starboard wing, but on the same level as the bridge
2 where those windows are. One deck below is what's
3 called the captain's quarters, and his quarter's are
4 right on the corner there.

5 Patricia Caples will testify that she noticed
6 signs of intoxication when Captain Hazelwood spoke with
7 her that night. Captain Hazelwood returned to the
8 bridge after completing that with her.

9 Ed Murphy will testify that he noticed signs
10 of alcohol on Captain Hazelwood's breath that evening
11 when he came to the bridge.

12 Mr. Murphy and Captain Hazelwood then got
13 things into order for departing the terminal.
14 Greg Cousins, the third mate, went down below, he went
15 aft to help with the lines. James Kunkel came up to
16 the bridge. He, the Captain and Mr. Murphy were the
17 ones that were on the bridge at the time of the
18 undocking.

19 That's the process you will learn about; they
20 use tugs, and every situation is a little bit
21 different. Essentially they pull the tanker off the
22 dock and from there, Mr. Murphy heads out at about a
23 300 degree angle out in the middle of Port Valdez until
24 somewhere in this area, and then he starts to go right
25 through here. You will see that there is what's called

1 Middle Rock there and it sticks out. It's one of the
2 hazards that they have to watch.

3 (Tape: C-3597)

4 (0003)

5 During the whole time that the tanker is going
6 through this area, it's tracked by the Coast Guard at
7 the VTC center, which is located right here in Valdez.
8 It's tracked by radar, it's monitored. And once,
9 you'll see, during the course of this, you'll see that
10 there's an area that's marked off by a blue line and
11 it's put up in the corner here. In that area there is
12 only allowed one-way traffic. In other words, once one
13 tanker is in here, no one else comes in. It can only
14 go one way. And that's because this is a hazardous
15 area. The area from here to here narrows down to as
16 much as a half a mile. In addition to having the
17 requirements of one-way traffic, they have speed
18 requirements, and that is that you cannot go more than
19 six knots while you are in this area.

20 Mr. Murphy piloted that ship through this area
21 and it was fairly uneventful. The weather was a little
22 bit closed in, there will be some testimony that it was
23 snowing a little bit, but the voyage itself was
24 uneventful out through the narrows, except for one
25 small detail, and that was Captain Hazelwood left the

1 bridge.

2 Now, you will learn that the pilot navigates
3 the tanker, but he is merely an agent for the master.
4 And you will learn that a pilot -- a master has the
5 authority, if he feels that his tanker is being
6 navigated improperly, to remove the pilot. He can have
7 him locked up. The ultimate responsibility for this
8 tanker, no matter whether it's being piloted by the
9 pilot or by the captain himself, is with the captain.
10 And during this period, probably the witnesses will
11 say, the most dangerous part of this whole journey down
12 to Long Beach, this place where it's a half a mile,
13 Captain Hazelwood absented himself from the bridge and
14 left it with Mr. Cousins, his third mate and the pilot.

15 The helmsman at that time was Paul Radtke.
16 And after they had cleared Potato Point, which is right
17 about here, sometime after that at about 10:50, there
18 was a change, 10:40 that evening, there was a change in
19 the ship. And how the ships work are like this: They
20 work in four-hour blocks on a tanker ship. The first
21 mate -- or the third mate generally works from what we
22 would consider eight to 12 in the morning and eight to
23 12 at night, and he has with him up to two ABs, which
24 are able bodied seamen. The able bodied seamen provide
25 two services -- well, they provide a lot of services,

1 but the major duty that they have when they're on duty
2 is one of them is a lookout and one of them runs the
3 helm. When I say the helm, that is what we would think
4 of as the steering wheel.

5 Here's a picture of what that looks like.
6 This is the helm. This is a computer steering console
7 that can be run in helm position, which is where you
8 just turn it and it's hydraulic, it's very easy to
9 turn, and that turns the tanker. It also has the
10 capability to be run in the automatic pilot, which is
11 in seamen's terms called "gyro" or "Iron Mike". But
12 essentially you just can head up on a course, punch a
13 button and the tanker will just take that track and
14 stay on it. You don't have to turn the wheel. In
15 fact, if you turn the wheel, nothing happens. It can
16 also be programmed to turn to a different course. It's
17 a very advanced piece of equipment. It's one of the
18 most advanced in the industry.

19 But the helmsman stands there and looks at
20 both the screen and some instruments that are in front
21 of him, and they tell him what direction the tanker is
22 heading, what the rudder angle is and what his rate of
23 turn, if any, is.

24 These are pictures of what the bridge looks
25 like. This is called the chart room. These curtains

1 are closed at night because in order to see the charts
2 you have to have some light. But if you have light in
3 the chart room, it might cause problems for the people
4 that are up, trying to read the instruments. So they
5 close these curtains at night in order to keep it dark.
6 And by doing that, it allows them to keep lights on in
7 the chart room. And that's what it looks like inside
8 the chart room. You see the tables, this is the course
9 recorder, the chronometer is right there, the tables
10 where they lay out their charts, the loran, the
11 knapsack [ph], the navigational satellite is left. But
12 this right here, that right there is the steering
13 console.

14 Mr. Radtke was replaced that evening by
15 Harry Claar. Mr. Radtke went to the bow of the tanker.
16 And the lookout stands -- stood -- he stood right up on
17 the front. That's where he was for the rest of his
18 hour, from about 10:50 to 11:50. At about 11:15, as
19 the tanker was approaching being abeam of Rocky Point,
20 the pilot, Mr. Murphy, asked the third mate,
21 Mr. Cousins, to have Mr. Hazelwood to come to the
22 bridge, just as he was getting ready to unload, they
23 were getting ready.

24 And so Mr. Cousins did that, he called down to
25 the Captain, and a short time later the Captain came

1 aboard -- came up to the bridge. Now, it's standard in
2 these times, what they call turning over the con,
3 that's when someone else assumes responsibility for the
4 navigation of the tanker. In the course of turning
5 over the con, there are certain information that you
6 give to the person that's taking that responsibility.
7 It would be things like the ship's heading, the speed
8 of the tanker, any problems up ahead. In this case
9 Captain Murphy did the same thing. He advised
10 Captain Hazelwood of the standard things, and he
11 mentioned to him to be careful of the ice. There had
12 been reports of ice. And although Mr. Murphy hadn't
13 seen any, he felt that they were up there. And the ice
14 comes out of the Columbia Glacier and it flows out here
15 and oftentimes will flow right across the traffic zone.
16 And it will get forced out with the outgoing tide,
17 sometimes gets brought in. But essentially it can
18 cause problems right in this area right there.

19 Now, there's a special warning on these
20 charts, and it says: "Caution. During the calving
21 season, Columbia Glacier deposits ice which may drift
22 into the northern port of Prince William Sound." Right
23 here. "Mariners are advised to exercise extreme
24 caution and to report all ice sightings to Valdez
25 traveler." You'll find that same caution on the other

1 charts.

2 The Exxon Valdez was proceeding under Mr.
3 Murphy at a heading of about 219 after it -- sometime
4 after it left Potato Point. He unloaded, he got off -
5 - oh, during the course of Mr. Murphy's conversation
6 with Captain Hazelwood, telling him that this is the
7 information I need to provide to you, Mr. Murphy will
8 testify that he again smelled alcohol on Captain
9 Hazelwood's breath. Now, this was three, nearly four
10 hours after Captain Hazelwood had left the bar, the
11 last bar he had been to.

12 Mr. Murphy then left and went down to the deck
13 and unloaded with the help of Greg Cousins and the
14 third mate, who at that time was Mr. Radtke -- or the
15 AB who was Mr. Radtke. That occurred at 11:24, and the
16 tanker was right in this area here. Greg Cousins
17 returned to the deck about 11:36, 11:35, and about that
18 time he took a plot. While he was gone
19 Captain Hazelwood called up the Coast Guard and told
20 them that he was going to be taking a heading of --
21 from 219 to 200 degrees. And you'll hear his voice on
22 the tape when he talked to Mr. Taylor, who was the VTT
23 watchman that evening. He said, "If I leave the -- I'm
24 taking a heading of 200, as I have some radar -- some
25 ice on my radar, and if I leave the traffic system,

1 I'll give you a call." A short time later he told them
2 that he was going to be reducing his speed to 12 knots
3 and that he was going to be dodging the ice, is how he
4 described it. He then proceeded on this course of down
5 to Rocky -- out of Prince William Sound until around
6 11:50, 11:40.

7 Now, this is the diagram that you will learn
8 is what is called the course recorder, and it's a
9 little bit different than you might imagine, but these
10 are the times and they are Greenwich Mean Time. 12:00
11 o'clock -- or 9:00 a.m. in this part right here is
12 really 12:00 midnight. 8:00 is 11 o'clock midnight on
13 the 23rd.

14 And so at about 11:24, right here, the pilot
15 was away. This is when they were transiting the
16 narrows, this is when the pilot went away, and right at
17 about 11:29 the Captain ordered the tanker to change
18 course to 200 degrees, and that's what this thing is.

19 And you can tell because this -- at this time
20 right here we are in what's called the 180 to 270
21 quadrant. And when you look at the 180 to 270
22 quadrant, you can just run your finger down. In other
23 words, to find out what the course was right here, you
24 come over to here, find out what the quadrant you're
25 in, it's 180 and then you go up to here.

1 And that's where they were heading out, right
2 to here at about 219 with Mr. Murphy. Right here they
3 changed course to about 200, 198 and you can see that
4 right there. And then, at about 11:40, the tanker
5 changed course to 180 degrees. Now, that course
6 heading put it directly on line for Bligh Reef. And
7 you can see that that occurred right about there while
8 they were in the separation zone.

9 You will learn that Greg Cousins and Captain
10 Hazelwood were looking at the radar and examining and
11 trying to figure out where the ice was in front of
12 them.

13 A lot of things happened in the next 30
14 minutes, a lot of things. And in what order they come
15 will not be clear to you during the course of this
16 trial. But the best that you will learn, what
17 happened after that, was after steadying up on a course
18 of 180 degrees at some point, and after seeing the ice
19 that was in front of them, which was described as
20 coming all the way down to within a mile of Bligh Reef,
21 Captain Hazelwood instructed that the auto-pilot of
22 this tanker be placed on. You will learn that that is
23 not the thing that anybody does in Prince William
24 Sound. Not when they're within a confined area like
25 this. There may be times when the automatic pilot is

1 used in Prince William Sound, but it's well away from
2 this area and it's never used in an area where
3 maneuverability is critical.

4 In addition, Captain Hazelwood had placed the
5 tanker on full ahead after dropping off the pilot at
6 11:24. That meant that the tanker, building RPM, and
7 at -- actually at 11:24 it was full ahead, he -- at
8 11:52 the notes will indicate that the ship was called
9 -- it was called loaded up, and when you go from full
10 ahead to sea speed on one of these tankers, you can't
11 just push an accelerator and have it go there; it takes
12 a while for it to build up, and they actually have a
13 computer program that fills into the tanker that is --
14 slows progressively the RPMs in order to build up the
15 speed.

16 So they were going from about 11 knots to
17 what's called sea speed, which is about 16 knots at the
18 time that this happened. The load up program was done
19 at 11:52. At that time Greg Cousins will tell you that
20 they were approaching Busby island, which was to the
21 tanker's left. To the tanker's right was a sheet of
22 ice that ran all the way back to the Columbia Glacier,
23 and straight ahead of them was Bligh Reef.

24 This was -- at that time or shortly
25 thereafter, probably right before that, there was a

1 crew change, and a person by the name of Bob Kagan took
2 over the helm. You are going to learn about Bob Kagan,
3 you're going to see his personnel file, you're going to
4 hear people talk about his capability as a helmsman.

5 You're going to see him testify. He took over.

6 Maureen Jones was the other able bodied seaman on duty
7 that evening. She didn't go out to the bow.

8 Captain Hazelwood ordered her to report up to the
9 bridge.

10 You will learn that normally when you approach
11 ice or when you have something like ice up in front of
12 you, the best possible situation is to have a lookout
13 as far out as possible. In this occasion

14 Captain Hazelwood did not follow that. He brought
15 Maureen Jones up to the bridge.

16 The testimony will be that the weather was
17 good enough that night. Sometimes there is a reason
18 for bringing the AB, the lookout up on the wing,
19 because the weather is real bad, and to get out into
20 this area. But the testimony will be that the weather
21 was not like that on this evening.

22 So, Maureen Jones was on the bridge wing, and
23 to give you an idea of where that is, she stands out --
24 and this is a picture that's taken of just inside the
25 window. She stands out on the end out there. Her job

1 is to watch for hazards, for light, for other traffic,
2 things like that, and to report them.

3 Now, prior to the changing, Captain Hazelwood
4 and Greg Cousins discussed what would be done.
5 Captain Hazelwood was looking through the radar and
6 they were both looking through the radar. And he said,
7 "Now, I want you to go down and go by -- around this
8 heading and go around -- when you get abeam of
9 Busby Island, which is right here, start bringing her
10 back over to the right. Do you understand that, Greg?
11 Are you comfortable with that?" And Mr. Cousins
12 acknowledged that he was. Captain Hazelwood told him
13 that he had to go down and do some paperwork below, and
14 he asked him again at some point. Mr. Cousins agreed
15 that would be okay. But his understanding was that
16 Captain Hazelwood would only be gone for a couple
17 minutes, that he wouldn't leave from 11:52 or 11:53
18 until after 12:10, fifteen minutes later when he
19 returned to the bridge, after the Exxon Valdez had gone
20 aground.

21 Captain Hazelwood left with his tanker, ice on
22 his starboard side, to the point that he did not want
23 to go through it, land, Busby Island to his left,
24 knowing that he would be coming within close to a mile
25 of Busby Island and headed straight for Bligh Reef. He

1 left the tanker, going full speed ahead, he left the
2 tanker on auto-pilot, and he left the bridge with
3 Robert Kagan at the helm, and he left the bridge with
4 Greg Cousins, who had no pilotage endorsement to
5 navigate this tanker out through Prince William Sound.

6 The only person upon that tanker who had the
7 pilotage endorsement to navigate, to have -- and was
8 required to have direction and control of the Exxon
9 Valdez, was Captain Hazelwood, and he went below.

10 Greg Cousins then, after Captain Hazelwood
11 went below, when they had to switch between the
12 helmsman, Mr. Claar, and Mr. Kagan, Greg Cousins heard
13 at that time that the tanker was on Iron Mike or gyro
14 or automatic pilot. You will hear those names
15 interchanged. And the minute the captain went below,
16 he changed that. He put it back on helm. He also then
17 went out and took a fix, and he had written down in a
18 map that you'll see a copy of, a fix at 2355.

19 Now, to take a fix you have to do two things:
20 You've got to plot your distance from where you are, to
21 a certain object. And that's done through the range
22 finder of a radar. And then you have to plot where you
23 are in relationship to the point. And what they
24 actually end up doing is when they are abeam, they just
25 draw a line across there and they figure out how far

1 from the radar they were, and they just kind of draw a
2 circle and then they're abeam, and they draw a line
3 through it so you can get your position.

4 At 2355, this tanker was headed in the same
5 situation, going essentially up to sea speed.
6 Greg Cousins had to walk out to the port wing to do
7 this. He had to look at the radar, he had to walk back
8 in to the bridge, go back to the chart room, that I
9 showed you, and he was plotting this. And 2355, or
10 11:55 is the time that's arrived at when he's out on
11 the end looking and taking his bearing on Busby Island.

12 So all this was happening after 2355, in the
13 course, at some point. But at some point, Maureen
14 Jones, who was out on the starboard wing, sees a
15 flashing red light. Now, there is a very simple little
16 adage that you will learn that helps seamen remember
17 where light should be. And it's red -- right on red
18 returning, or red on right returning, something like
19 that. But anyway, the essence is that when you are
20 coming -- when you are returning, red lights should be
21 on your starboard side. And Maureen Jones saw a red
22 light on -- broad on the starboard side when she was
23 going out. She estimated that it was flashing. They
24 flash at different points, and from the number of
25 seconds of each flash you can determine which light it

1 is. She determined that it was flashing one every five
2 seconds, and so she reported that. And when she walked
3 in, she only saw Mr. Kagan at the bridge -- in the
4 bridge at the helm. She didn't see anyone else, so she
5 stepped into the chart room and she saw Mr. Cousins,
6 and he appeared to bending over, plotting, and at that
7 time she said, "Mr. Cousins," the mate, Greg, "I see a
8 red light, broad on the starboard side, flashing one
9 every five seconds -- one every five seconds." She
10 then walked out.

11 At that time, Mr. Cousins went out to the
12 bridge area by the helm and again looked in the radar.
13 At some point he gave an instruction to take a
14 10-degree right turn. And at that time he was looking
15 at the radar. He called down to Captain Hazelwood and
16 he said, "Captain, I've just started making a right
17 turn. It doesn't appear that we are going to be able
18 to clear the ice on this course." And there was some
19 discussion. Captain Hazelwood said, "Has the second
20 mate come up there?" Because Mr. Cousins had not been
21 relieved at that time like he was supposed to be at 10
22 to 12. Actually, Lloyd LeCain, the second mate, was
23 supposed to come on duty at 10 to 12 and relieve him,
24 just like Mr. Kagan relieved Mr. Claar and Ms. Jones
25 had relieved Mr. Radtke. And there was some

1 discussion.

2 And during that time, Mr. Cousins did not
3 watch Mr. Kagan to make sure that the ship was
4 maintaining a right turn. The turn actually did not
5 start until, according to the course recorder, just
6 shortly before -- after 12 midnight.

7 And you turn these tankers, they're so big --
8 they are a 1,000 feet long. Even though you give the
9 rudder angle some angle, the ship doesn't turn like
10 your car would. You have to remember that this tanker
11 is three -- over three football fields long. It's two
12 and a half football fields in front of the bridge. At
13 12 knots it travels almost a mile every two minutes.

14 Although the course change started right about
15 12:01, the ship had to have been turned shortly before
16 that. Because like I said, after you turn the rudders,
17 it takes a little while for the course heading to
18 change.

19 They proceeded down along this course.
20 Maureen Jones said that she came in a second time,
21 after going out on the starboard wing and looking at
22 the light again and realized at that time that it was
23 not flashing once every five seconds, but once every
24 four seconds. And if you look at the Bligh Reef chart
25 that you have here, you'll see that it says four

1 seconds. And that's what it should have been flashing,
2 once every four seconds. And that was on the starboard
3 side. She said when she went back out on the wing a
4 little bit later she started feeling the tanker start
5 to turn.

6 Ladies and gentlemen, at about 12:04 the Exxon
7 Valdez struck the first rock that it hit. That rock
8 that it ran over, it probably demolished, went and hit
9 the tanker just on the port side of the bow, right in
10 the center, and it ran the length of the ship in a
11 curved way. And at the end of the tanker aft were
12 nothing but scratch marks. And you'll see those
13 pictures. But the first rock that hit was going so
14 fast and it had so much momentum and it was not deep
15 enough, it went right over. But that did an extensive
16 amount of damage to the center cargo holds.

17 You'll learn that this tanker is divided up
18 into different cargo sections, fore peak, and then they
19 are numbered, one, two, three. I think there are five,
20 as I remember. And then there is a kind of general
21 dump hole, sump is what they call it. And in some of
22 these they contain all oil, and in some of them they
23 contain part oil and part ballast for floating. The
24 major floating is the ballast at the fore peak and then
25 the aft, and then two ballast containers on both the

1 starboard side and on the port side. The tanker ripped
2 out all the way along the bottom keel, right down the
3 center of the tanker. At the end there are just
4 scratch marks where it went over.

5 You'll hear testimony from the crew that there
6 were a number of rumblings, but at this speed it would
7 have taken probably two minutes for this all to happen.
8 The tanker came to rest right about there. When it hit
9 the second rock on the starboard side, and that rock
10 was considerably higher up, closer to the surface of
11 the water, it did a tremendous amount of destruction to
12 the tanker, all the way to about at least a third down
13 from the ship in this area.

14 And you can imagine a lot of things happened
15 in a hurry after that. Greg Cousins called the Captain
16 again. Well, before that happened he had instructed
17 Mr. Kagan, after the 10-degree turn, to make a
18 20-degree turn and then make a hard right. Somewhere
19 in the course of this it hit. It was turning right
20 when it hit the first rock when it grounded and came to
21 a stop, right around -- sometime around 12:05, 12:07,
22 which is right around in this area. The tanker hits --
23 grounded, started swinging to the left -- or to the
24 right.

25 And that's where you will see right here the

1 line flatten out, because over time the heading of the
2 ship is changing very fast. And what it looks like is
3 this ship stopped and turned left right here, but
4 that's not right. It went from the 180, 270 quadrant
5 right there, to the 270, 360 quadrant.

6 So, really, this ship started at 180 right
7 there at about 12:01, and within 10 minutes went to
8 nearly 280 -- 290, every fast.

9 Greg Cousins will tell you that he grabbed the
10 wheel at one point and turned it hard to the left, and
11 that was because the tanker was swinging this way fast,
12 and he was very concerned that if the tanker -- if the
13 engine room area, which is located in the aft section
14 of the tanker, was punctured, people would die. I
15 mean, he didn't want the tanker to swing into the reef,
16 so he turned it very hard to the left to bring it back.

17 And you will see that about 290 degrees at
18 12:11, the tanker finally stabilized and started
19 swinging back to the left right there.

20 Greg Cousins called Captain Hazelwood sometime
21 during this and told him. He was still in his cabin.
22 After -- this is after the initial grounding that,
23 "Captain, I think we're in trouble, we're grounded."
24 Captain Hazelwood came up to the bridge, Greg Cousins
25 had gone out on the port wing, turned on the lights,

1 and the tanker is stuck and he's looking out. And it's
2 not any question. This isn't like the Mississippi
3 River, it's not any question that the bottom of Prince
4 William Sound is filled with rocks. It's not silt.

5 So they knew that there was going to be
6 problems, and their first concern was, well, where is
7 it -- are we leaking oil? They couldn't see the oil,
8 but the fumes started becoming very heavy shortly
9 thereafter.

10 The Captain came to the bridge and the engine
11 ran at full ahead until 12:19. James Kunkel had gone
12 to sleep that evening, being the third mate or the
13 chief mate, he takes his position and his
14 responsibility very seriously, and he awoke. He was
15 very tired, he'd been up most of the night, but he
16 awoke. He knew something was wrong immediately. He
17 grabbed his stuff, ran up to the bridge, and when he
18 got there, Mr. Cousins was in the chart room plotting.
19 And at that time, Greg Cousins told him the old man
20 knows, and so Jim Kunkel went -- James Kunkel went back
21 down, he grabbed his mustang suit, he didn't know if
22 he'd ever get back.

23 A mustang suit is like a survival suit. It's
24 designed to protect you in case you get thrown in the
25 water, because the water in Prince William Sound is

1 very cold and you die soon thereafter.

2 He said -- he will testify that the fumes were
3 so overwhelming, the petroleum fumes, that he was
4 concerned, to the extent of grabbing an air mask. He
5 thought about a lot of things, one of them was his own
6 safety. He woke up Lloyd LeCain, the second mate, and
7 the two of them went down to the cargo control center.
8 At the cargo control center they started looking at
9 (pause) -- I don't have it right now, it's the picture
10 that I showed you earlier of the board, and it has
11 gauges that you can tell. And at the time he came
12 down, he estimated it was 12:20, 12:25, somewhere in
13 there, but he couldn't believe how much oil in transfer
14 had occurred and lost at that time.

15 He has a computer program that he uses. The
16 name of the program is called Ocean Motion, and what it
17 is designed to do is, it is designed to tell him what
18 the structural integrity of the ship is, and it's used
19 primarily in the loading process, because it's very
20 important that there be an even loading of the tanker.
21 The tanker can become unstable during the loading
22 because it has nothing in it. You can't just put all
23 crude oil in one side and then fill up the other side;
24 it's got to be an even type thing.

25 So, he brought up that program, and in that

1 program it has certain stress and stability factors.
2 Based on what he saw, he believed the tanker to be in a
3 marginal stability at that time, and he took the
4 printout and went up to see Captain Hazelwood. He
5 showed him that, asked him what he should do.
6 Captain Hazelwood says, "No, don't stay up here, go
7 down below and work out some options for me." And
8 that's exactly what he did.

9 He went back down to the cargo control room.
10 The computer ended up getting -- the program ended up
11 getting crossed and he had to reboot it. And that took
12 some time, and in addition to that, he was trying to
13 figure out whether or not the computer program actually
14 had a program for if you are grounded and what you do
15 and whether or not there -- if there is certain damage
16 to certain parts of the ship, and he was trying to
17 figure out whether this ship was still stable, whether
18 the stress levels were under -- that were acceptable.

19 At approximately 12:36, Captain Hazelwood
20 started up the tanker again. He put it on slow ahead.
21 At 12:40, dead slow ahead, at 12:40 he put it on slow
22 ahead. At 12:48 he put it on half ahead, and on 12:56
23 he put it on full ahead. And now, this is 12:30, this
24 is 12:40. From 12:50 until 1:41, Captain Hazelwood
25 made this turn, this turn, this turn, this turn, this

1 turn, this turn, this turn, this turn, this turn, this
2 turn, this turn, this turn and this turn, in attempts
3 to get this tanker off the reef. He did it without
4 knowing how the tanker was situated or whether or not
5 the tanker could even come off it. At some point
6 during the course of that he received information from
7 Mr. Kunkel, his third mate, who had rerun the program,
8 and was told that the ship was not stable, that they
9 should stay around. All these maneuvers were designed
10 to take that ship off the rocks.

11 Testimony will be, ladies and gentlemen, that
12 if it had come off the rocks, it would have capsized
13 and nobody would have recovered any oil. There was a
14 million barrels that were lightered off. If that ship
15 had capsized, none of it would have been recovered.

16 At this time the Coast Guard in Valdez were
17 reacting. Investigating, Mark Delozier,
18 Lt. Commander Falkenstein, both met at the Coast Guard
19 headquarters. They were joined by a gentleman by the
20 name of Dan Lawn, with the Department of Environmental
21 Conservation. The three of them got in a boat and
22 headed out to the Exxon Valdez out at Bligh Reef. When
23 they arrived there, there was already some other tugs
24 or seining boats there.

25 When they arrived, it was about 2:30 -- 3:20

1 to 3:30. They could see the oil bubbling out of the
2 tanker and it was coming out and it was like -- some of
3 the descriptions will be 12 to 16 inches thick, 'cause
4 it was coming out of the starboard side.

5 They changed vessels because they wanted --
6 they were, at that time concerned, they didn't want to
7 get the vessel they had oily, and they had some
8 problems initially figuring out which side they were
9 going to enter on, but they ended up going through the
10 oil and getting up on the starboard side. And at that
11 time these two individuals, investigating officer
12 Delozier and Lt. Commander Falkenstein, will tell you
13 about the oil and the fumes and the dangers that they
14 foresaw when they came upon that scene.

15 When they entered the ship, when they came
16 aboard the ship, their first concern was the safety of
17 the tanker and the safety of the crew members. They
18 were taken up to the bridge where they asked where the
19 Captain was and were pointed to Captain Hazelwood, who
20 was off in the corner. When they walked up to talk to
21 him, both Mr. Delozier and Mr. Falkenstein walked up to
22 within two to four feet. During the course of their
23 conversation with trying to learn what the position of
24 the tanker was, whether it was stable or not, it became
25 apparent to both of them that Captain Hazelwood had

1 been drinking. They both observed it at that time.

2 And that was at about 3:45.

3 They, after getting an initial briefing, met
4 outside on the wing, and both of them asked the other
5 one, "Did you smell what I smelled?" They said "Yes,"
6 and they knew that they had to do something. So they
7 called on the radio to the officer in Valdez and said,
8 "Have the commanding officer stand by." That will be
9 -- you will hear that that was Commander McCall.

10 They then went down to the Mari-Sat phone. At
11 that time they -- a Mari-Sat phone is just like a
12 telephone, it's on the tanker. At that time they
13 called to Commander McCall. They explained the
14 situation of the ship and they also said that -- told
15 him what they believed and what they had learned, what
16 observations they had made of Captain Hazelwood and
17 their belief that he had been drinking and that alcohol
18 was involved in this accident. And they said, "We need
19 some equipment to test this." Initially they asked for
20 some type of portable breath tester to be brought out.

21 The State Trooper Fox, who lives in Valdez and
22 worked out of Valdez, is actually a Fish & Wildlife
23 officer, but he was called up and asked to go out to
24 the Exxon Valdez. He was not told that they needed
25 breath tests. He was told that they had -- I believe

1 it will be that they had a wild man on-board that
2 needed to be controlled. So he left for the Exxon
3 Valdez. When he got there he talked to investigating
4 officer Delozier, and when he learned of this he said,
5 "Look, I can't help you, 'cause I didn't bring anything
6 with me." That was around 6:00 or 7:00 o'clock.

7 The investigation continued with Mr. Delozier
8 trying to get equipment, and there were a number of
9 phone calls. At some point, at about 9:30,
10 investigating officer, Delozier, was informed that
11 there was a toxicology kit on-board the Exxon Valdez,
12 right there. And so he asked Captain Hazelwood, "Where
13 is this toxicology kit." And he was shown it, and he
14 said, "Okay, now I want to get urine samples from the
15 people that were on the bridge at the time of the
16 grounding." And so Captain Hazelwood ordered Mr. Kagan
17 and Maureen Jones, Ms. Jones and Mr. Cousins to give
18 urine samples, and that was accomplished. When it came
19 time for him to give his, he told the investigating
20 officer that he couldn't do it, he couldn't give it.
21 And this was somewhere around 10:00 o'clock.

22 The officer, Mr. Delozier, didn't know what to
23 do, so he went back to make his fifth phone call and
24 tell us, "Look, I've got these, but he won't give me a
25 sample." And so about that time Scott Conner walked

1 on-board. Scott Conner had been a medical technician
2 who had been doing some consulting work in Valdez for
3 the Coast Guard the past two days. He was scheduled to
4 leave on a flight that morning at 9:30 for Anchorage,
5 and before he was able to go they tracked him down and
6 brought him to the Coast Guard headquarters and said,
7 "We need you to go out and take these blood samples,
8 we've got a problem."

9 He went to the local hospital, gathered up
10 some equipment, and was flown out by helicopter to the
11 Exxon Valdez. When he arrived there, he walked up and
12 met Mr. Delozier and at that time he was shown the
13 toxicology kit and he chose to use that because it was
14 better if you were able to -- the equipment was better,
15 it was stored better and you were better able to keep
16 track of the chain of custody of where these samples
17 were.

18 He then went into the room and because of the
19 situation with Captain Hazelwood and their suspicions
20 and their knowledge that the alcohol was wearing off,
21 they told the captain, "You will be the first one that
22 we test." At that time Captain Hazelwood volunteered
23 to give a urine test and he also gave blood. He gave
24 three vials. Two were used to test alcohol, one for
25 drugs.

1 At 10:50 in the morning, that morning, 11
2 hours after the grounding of the Exxon Valdez, he
3 registered a .06. A .06 under the Coast Guard
4 regulations, a person that comes aboard a commercial
5 vessel like this is legally intoxicated at a .04. The
6 urine sample was a .09, and you'll hear testimony,
7 expert testimony, as to why those -- there's a
8 distinction between them. Greg Cousins, no alcohol;
9 Robert Kagan, no alcohol; Maureen Jones, no alcohol;
10 only Captain Hazelwood at 10:50 that morning.

11 Shortly after that, after all these tests were
12 done, Captain Hazelwood was interviewed in his
13 quarters. And this is after he had received the blood
14 tests and everything. It was at about 1:15.
15 Trooper Fox sat down and that interview was recorded.
16 In the course of that interview Captain Hazelwood said
17 that he had gone ashore that day and had lunch with --
18 at the Pizza Palace with the captain, pilot Mr. Murphy,
19 and he had drank ice tea. He made it a point to say
20 that he had drank ice tea. He said that he went by the
21 Pipeline Club to see if anybody off the ship was there.
22 He was specifically asked, "Did you have anything to
23 drink there?" And he said "No." He said he was there
24 at about 3:30 or so for a few minutes. He said that
25 about an hour or so later he had a beer at the Harbor

1 Club.

2 You are not allowed to drink within four hours
3 of taking command of a tanker ship under the U.S Coast
4 Guard regulations. At 4:30, or an hour or so after the
5 3:30 time that he had given, he would have been within
6 the four-hour time limit.

7 After about an hour or so later he picked up a
8 beer at the harbor while they were waiting to pick up a
9 pizza that they picked up. They were picked up by a
10 cab that picked up another person from Arco and
11 proceeded to the Arco terminal. He said they arrived
12 at the terminal about eightish. He said that
13 Captain Murphy was already on-board and that he
14 disembarked. He told the officers that when he came
15 aboard the ship he had to do some paperwork. Before it
16 sailed, he had one or two Moussys.

17 A Moussy is a non-alcoholic beverage that has
18 about .5% alcohol by volume. The best way to compare
19 it is beer. You've heard of 3.2 beer is a light beer.
20 Beer is normally about four to five percent alcohol.

21 In this case, the trooper and the
22 investigating officer, Mark Delozier, did see two empty
23 Moussy bottles in his quarters. But they looked and
24 found no other evidence of drinking. Captain Hazelwood
25 described what had happened as far as Captain Murphy

1 being on-board, that he had disembarked around 11:30,
2 that he had run into some ice conditions and changed
3 course, that he had heard a shudder and got a call from
4 the third mate telling him the ship was aground and
5 that he tried the rudder and engines for a few minutes
6 to see if he could extract it from the situation, but
7 then got his faculties about him. That he thought
8 about it and driving her off might not be the best way
9 to go because it might exacerbate the damage. So he
10 stopped the engines. That would have been -- that
11 pinpoint right there, 11:41.

12 Also that morning Captain Hazelwood received a
13 phone call from an Exxon official by the name of
14 Paul Myers. Paul Myers was a management official on
15 shore, and he called and asked to speak with
16 Captain Hazelwood at 11:51, 10 minutes after the
17 captain had shut off the engines. At that time
18 Captain Hazelwood went down and spoke with him for
19 about 20 minutes. In the course of that conversation
20 Captain Hazelwood admitted or stated that he was at
21 fault, 'cause he had not been up on the bridge with the
22 third mate. He also told Mr. Myers that he knew the
23 Coast Guard was on the way. This was between 1:50 and
24 2:10 in the morning and the Coast Guard got there at
25 about -- were in the area at about 3:15.

1 Captain Hazelwood was not relieved of his
2 command until 10:00 o'clock that evening on the 24th --
3 yes, the 24th. That was done by Captain Deppe. At
4 that time -- it's not until a captain is relieved or
5 his ship docks that he is no longer in command or
6 responsible for that tanker.

7 Captain Deppe will talk about what occurred,
8 what his evaluation of the ship was and how uncertain
9 at that point the stability of the ship was.

10 Based on his actions over the course of two
11 days, March 23rd and March 24th, Captain Hazelwood has
12 been charged, as I said earlier, with four crimes.
13 Criminal mischief, in the second degree, charges him
14 with recklessly creating a risk of damage to the
15 property to another in an amount exceeding \$100,000.00
16 by widely dangerous means. The elements that will have
17 to be proved during the course of this will be that
18 this occurred on or about the 23rd and 24th of March
19 last year; that having no right to do so or any
20 reasonable grounds to believe he had such a right,
21 Joseph Hazelwood -- Captain Hazelwood, acted
22 recklessly; that his actions created a risk of damage
23 to the property of others, not damage but created a
24 risk of damage to the property of others in an amount
25 exceeding \$100,000.00, and by widely dangerous means.

1 A person acts recklessly when they are aware of and
2 consciously disregard a substantial and unjustifiable
3 risk that the result will occur. And you will be
4 instructed on that.

5 In determining the actions of recklessness,
6 you will hear witness's that talk about the following
7 things: Drinking before the tanker left the dock and
8 drinking regulations, both by the Coast Guard and by
9 Exxon itself; failing to be on the bridge during the
10 narrows; placing the tanker on auto-pilot; loading up
11 to sea speed in an area requiring maneuverability;
12 leaving the bridge in the hands of unqualified persons;
13 leaving the bridge while maneuvering through a confined
14 area; failing to return to the bridge; attempting to
15 get the tanker off the Bligh Reef.

16 Those are the facts that will be talked about
17 during the course of this trial. In addition, the
18 damages that you will learn are, as you can imagine,
19 accumulating over time, but the state costs just spent
20 by the Department of Environmental Conservation or
21 cleanup are over \$24 million. The loss of income to
22 fishermen due to the fisheries closing has been over 12
23 million. The damages to the hatcheries, the risk is
24 well over 7 million, and no one will know until the
25 returning salmon come.

1 Wildly dangerous means will be defined as
2 meaning any difficulty to confine substance, force or
3 other means capable of causing widespread damage,
4 including fire and explosion, collapse of a building or
5 a flood. An oil spill comes within this definition.

6 The second count is operating a watercraft
7 while intoxicated. And that charges, as I explained
8 before, that he unlawfully operated a watercraft while
9 under the influence of intoxicating liquor. The
10 important parts of that are that a person operates a
11 watercraft means to navigate or use the vessel or use a
12 vessel used or capable of being used as a means of
13 transportation. And a person is under the influence of
14 intoxicating liquor when, as a result of the use
15 thereof, his physical or mental abilities are impaired
16 so that he no longer has the ability to operate or
17 drive the vehicle under the same or similar
18 circumstances with the caution, characteristic of a
19 person with ordinary prudence who is not under the
20 influence.

21 And you will hear from tanker captains in the
22 course of this trial, experts that will evaluate
23 Captain Hazelwood's actions in this case. But they
24 will all be focusing on how alcohol affected his system
25 and how he, during the course of this transit from the

1 Port of Valdez out to where the tanker finally came to
2 rest on Bligh Reef, a man at best with both physical
3 and mental impairments, those poor judgments.

4 Reckless endangerment, the state will be
5 required to prove -- we will prove that
6 Joseph Hazelwood did recklessly engage in conduct that
7 resulted in the Exxon Valdez being run aground and
8 created a substantial risk of serious physical injuries
9 to other people at risk, being the deaths if that
10 tanker had come off or had not grounded and stayed
11 there, and the negligent discharge of crude oil that
12 Joseph Hazelwood unlawfully and negligently discharged
13 petroleum into the water.

14 It is these charges that will be submitted to
15 you for your deliberation at the conclusion of this
16 trial and it is on these charges that the state will
17 ask you to return a fair and just verdict.

18 Thank you.

19 THE COURT: Can we break before we...

20 MR. MADSON: I would, Your Honor, sir. I just
21 was wondering if the Court would go straight through
22 the normal lunch hour. I don't want to start within --
23 you know, and have to break and come back.

24 THE COURT: I appreciate that, and I wouldn't
25 want to either. How long do you expect your opening

1 statement will take?

2 MR. MADSON: Well, it certainly it will be
3 more than an hour, I expect, Your Honor. I can't
4 really time it, but I really say it's safe to estimate
5 it...

6 THE COURT: An hour and 17 minutes or so?

7 MR. MADSON: Right. Yeah, I would say it's
8 something like that.

9 THE COURT: Why don't we take a brief recess,
10 come back and have your opening statement, and if it
11 takes us into the ordinary lunch hour, it will do that
12 and we'll just take a little later lunch.

13 MR. MADSON: Thank you.

14 THE COURT: Ladies and gentlemen, before we
15 recess, remember my instructions not to discuss this
16 matter among yourselves or with any other person.
17 Please don't form or express any opinions concerning
18 the facts.

19 THE CLERK: Please rise. This court stand in
20 recess, subject to call.

21 (Off record - 11:03 a.m.)

22 (On record - 11:19 a.m.)

23 THE COURT: You may be seated. We'll hear the
24 defendant's opening statement at this time.

25 For those of you folks in the back of the

1 room, once you get seated, I'd appreciate it if you
2 would stay seated during the opening statements.
3 Getting up and leaving, then coming back in, is
4 relatively disruptive. I'd appreciate your
5 cooperation. Mr. Madson.

6 MR. MADSON: Thank you, Your Honor.

7 OPENING STATEMENT OF DEFENDANT

8 BY MR. MADSON:

9 Mr. Cole, Ms. Henry, ladies and gentlemen, you
10 heard the state's opening argument here, opening
11 statement as it's called, and there are -- first of
12 all, let me say, and I'm sure some of you already know
13 this, that what Mr. Cole said and what I'm about to say
14 is not evidence. We have the advantage of knowing some
15 of the facts that you do not know, and the purpose in
16 doing this is to try to acquaint you with those facts
17 and how we believe they're going to be presented to you
18 and certain things to look for.

19 There are different ways that lawyers do this.
20 Oftentimes they say, well, it's kind of like a road
21 map, we're just going to try to guide you to the
22 destination. I like to think of it in a little
23 different terms, especially in this case, I think, it's
24 quite appropriate. You are about to read a book,
25 let's say. You know a lot about the book, everybody's

1 been talking about it, and you are going to read it.
2 You go by the book stand and you pick it up and you'd
3 like to know a little bit more, and you open it up, the
4 cover, and you look inside. There is kind of a summary
5 of what the book is about. That's what we're doing
6 here. Mr. Cole gave you a summary. I'm going to give
7 you a summary of what you're about to pre-read, or in
8 this case here, and you, at the end of that time, will
9 decide not necessarily whether my summary is correct or
10 Mr. Cole's is correct; you are going to decide the
11 contents. That's what is important. You make the
12 decision as to the contents of either that book or in
13 this case, this case.

14 A lot of what Mr. Cole said, I'm not going to
15 repeat, because a lot of it will be consistent. That
16 is, we believe the evidence will show certain things.
17 Mr. Cole believes the evidence will show certain
18 things.

19 We believe the evidence will show that this
20 was a maritime accident, that Captain Hazelwood was not
21 responsible for that accident, and the evidence, we
22 submit to you, ladies and gentlemen, will clearly show
23 in detail how it happened and, hopefully, to some
24 extent, why it happened.

25 With regard to the evidence, that is not

1 terribly much in dispute. We have the fact that
2 Captain Hazelwood is a captain of the Exxon Valdez,
3 that he arrived there to take on a cargo of crude oil
4 and that he was in Valdez, and on the 24th of March of
5 this year, he did go to town. The evidence will show
6 there's nothing wrong with going to town. He went
7 there and he checked in with the maritime agent, he did
8 talk to Mr. Murphy, who is an old friend, who has known
9 him for a long time, and Captain Hazelwood has a lot of
10 confidence and trust in Mr. Murphy, Captain Murphy's
11 ability as a pilot. They had lunch, no alcohol was
12 consumed.

13 Now, we run into the first possible dispute.
14 Mr. Cole said you will hear evidence from Jamie
15 Delozier. And please note the similarity in names
16 between Jamie Delozier and the Coast Guard officer who
17 investigated this case by the name of Delozier. The
18 evidence will show that they are husband and wife.
19 Ms. Delozier, according to the state, will say that
20 Captain Hazelwood was in this bar drinking at around
21 1:30, or something of this nature, early in the
22 afternoon, two o'clock, after leaving lunch, leaving
23 Mr. Murphy and the other members of the crew. However,
24 the evidence will show that about 2:15 on that
25 afternoon, a woman in the flower shop can recall

1 Captain Hazelwood coming in there sober, no signs of
2 intoxication whatsoever, no smell on his breath or
3 anything else, and that while he was in there he
4 ordered flowers to be sent to his wife back in
5 New York. And so he was not drinking at that hour.

6 Later on, the evidence will show, around four
7 o'clock, somewhere around this area, he did meet with
8 the other crew members and consumed alcohol. He had a
9 couple drinks. Now, it's important to also note that
10 the ship in question, the Exxon Valdez, has a board
11 there on it where they kind of expect what time the
12 vessel is due to be loaded and due to leave. It's an
13 estimate. The original estimate was about 10 o'clock
14 -- or at nine o'clock, excuse me, at what time they
15 were supposed to depart. As it turns out, things went
16 faster than that and it was going to be earlier. But
17 Captain Hazelwood did not know that. When he left he
18 thought it would be a certain time and yet more time,
19 that is, as it turns out, than he actually had. But in
20 any event, after drinking alcohol and having a few
21 drinks with his friends, ordering a pizza, getting into
22 a cab, they proceed to the ship, and they do that in a
23 cab that takes them to what's called the Alyeska
24 checkpoint. That is very important. This checkpoint
25 has a very strong, important responsibility. One of

1 the main things they look for is people who are
2 intoxicated, going on the vessels. They have a video
3 camera set up there, they have officers that are
4 trained in looking for signs of intoxication, and when
5 they see that, they turn on the video cameras and they
6 also check for alcohol, things like this. But we will
7 expect, and we expect the evidence will show, that the
8 Alyeska personnel who observed Captain Hazelwood will
9 testify that he saw absolutely no signs of impairment
10 whatsoever. None in town, none here.

11 On-board the vessel, Pat Caples, the agent for
12 Alaska Maritime, comes on-board and we expect to show
13 -- evidence to show that she may have detected alcohol
14 on the Captain's breath, which she will also testify
15 there were no signs of impairment. Captain Murphy will
16 do the same. He comes on-board and he will say, "I
17 smelled alcohol, I saw no signs of impairment." No
18 crew member, no person other than the crew will testify
19 that the time the ship went -- began its leaving, the
20 dock loaded with crude oil, that Captain Hazelwood was
21 influenced by alcohol at all.

22 Once they start, the state says in its
23 argument, that going through the narrows, as Mr. Cole
24 described to you, a rather treacherous part of the
25 initial voyage, initial journey out of Valdez, that

1 that's a very critical area, and Captain Hazelwood was
2 not on the bridge that night, he was down below. The
3 evidence will show that in violation -- no violation
4 whatsoever of any regulation, law, statute or anything
5 else. In other words, the captain has complete
6 discretion to leave the bridge if he so desires. The
7 pilot, his crew, is just an agent to the captain. He
8 at no time takes over total command. But in this
9 situation, the evidence will show that
10 Captain Hazelwood knew Captain Murphy, who is an
11 experienced, trusted pilot, who has been in that area
12 many, many times and had every reason to believe that
13 he was extremely competent in doing what he was doing.
14 He violated no rule, no regulation by leaving him there
15 to do it, rather than simply standing there and watch,
16 something he's done many, many times.

17 Now, after leaving the narrows, things get
18 perhaps more interesting. Still, we will show -- the
19 evidence will show there's no violation of a
20 regulation, no violation of a law. The state would
21 have you believe that there is this big sheet of ice
22 there, this treacherous sheet of ice that this vessel
23 has to go around somehow and it is extremely dangerous
24 and treacherous. The evidence will show that ice has
25 been a problem, to some extent, in Valdez for some

1 time. That port has never closed because of ice. It
2 is just one of those things to watch for.

3 The Coast Guard has a number of regulations.
4 They have regulated this entire industry, and they
5 certainly have regulated the traffic there. It's what
6 is called the VTS system, the Vessel Traffic System.
7 You already saw that on the chart; that's the area
8 where they say this is where the ship is coming in,
9 should be in this area where ships come out should be
10 in, and we will tell you what to do, when, where and
11 how. It's extremely regulated.

12 But there's a lot of things that are not
13 regulated, and that's when we get into this area after
14 leaving it in the narrows and before we get to Bligh
15 Reef. The pilot, Murphy, got off at Rocky Point. That
16 is the customary pilot station.

17 The evidence will show in this case that
18 there's been a lot of changes made about pilots and the
19 pilots' stations. For example, earlier on, back in the
20 days when tankers first were coming in and out of
21 Prince William Sound, the pilots went all the way out
22 to Hinchinbrook, all the way out. It turned out that
23 that wasn't a very good idea. There was a couple of
24 accidents, a boat was lost and the pilots and the Coast
25 Guard, everybody agreed to pull the pilot station way

1 back.

2 The state then makes a big argument because
3 Captain Hazelwood had this endorsement that third mate
4 Cousins did not have, that the pilot should have stayed
5 on to Bligh Reef. This, ladies and gentlemen, gets us
6 into an area that I would ask you, when you are reading
7 this book, to examine the pages very carefully. 'Cause
8 what we're talking about here and what the evidence is
9 going to be directed to are two different things.
10 We're talking about qualified personnel versus
11 authorized personnel. The state's position in this
12 case is that Captain Hazelwood was reckless because he
13 turned over the command of the con, if you will, to
14 third mate, Gregory Cousins, who was not qualified or
15 authorized to command this vessel. The evidence, on
16 the other hand, will show that Gregory Cousins not only
17 has a third mate's license, he is in fact a second
18 mate. It often happens on these voyages that to get a
19 trip, in other words to work, you sometimes work at a
20 lower level at a third mate rather than a second mate,
21 or a captain in fact may work as a first mate. It's
22 just the nature of the business. So, Gregory Cousins
23 was qualified by the Coast Guard, qualified and found
24 competent to not command but to stand watch by himself
25 of a vessel of unlimited tonnage, bigger than the Exxon

1 Valdez, duly examined and found competent and
2 qualified.

3 The argument here will center around
4 authorization. He did not have the pilotage
5 endorsement, but the evidence will show that Mr.
6 Cousins certainly knew the area, he knew where Bligh
7 Reef was, and that's the purpose of this endorsement is
8 to simply allow and satisfy the Coast Guard that this
9 person has been through here enough times that he's
10 aware of certain navigational hazards. Without that
11 piece of paper, Gregory Cousins still knew the
12 navigational hazards that were involved in Prince
13 William Sound, and particularly Bligh Reef.

14 Now, at this point you have the captain in
15 command and he is behaving normally, calm, speech isn't
16 slurred, he's not staggering, he's not doing anything
17 out of the ordinary, and he changes the course to go
18 around the islands. He notifies the Coast Guard.
19 Contrary to the state's position here, that you get the
20 impression that somehow this is the Titanic going full
21 speed through dangerous ice-filled waters, that is
22 simply not the case. There is ice, which is a concern
23 and can certainly pose a danger to the Exxon Valdez, in
24 particular, maybe more than other ships, because one
25 reason, it's a thinner hull plating. So, there are two

1 things a captain can do; he can slow down and maneuver
2 through ice, which is not in the sheet form, it's
3 icebergs, chunks, if you will, or he can maneuver the
4 vessel around the ice. That's his option.

5 Captain Hazelwood took a routine, fully accepted
6 maneuver to go around the ice, to skirt the southern
7 edge of the ice in the interests of caution and safety
8 of the vessel and of the contents. The Coast Guard,
9 because of their system and control, knew of this and
10 had no objection because captain after captain would
11 say that this is commonly and routinely done. So, this
12 heading of 180 degrees towards Bligh Reef is not out of
13 the ordinary whatsoever.

14 In Prince William Sound you cannot take a
15 heading in any direction, the evidence will show,
16 without being in danger of hitting a rock or shore or
17 island of some kind. Bligh Reef was just a
18 coincidence, a terrible coincidence that made this case
19 possible.

20 In any event, Captain Hazelwood then discussed
21 with Gregory Cousins, who was on the bridge at that
22 time, what he was going to do. And he said, basically,
23 "Greg, here's what we have to do here, what we should
24 do, we'll go around the southern part of the ice," he
25 said, "The thing to do on this heading, 180 degrees,

1 which is due south, when you come abeam of Busby Island
2 light, then make your turn to get back into the lanes."
3 The evidence will show, ladies and gentlemen, that this
4 was not a critical maneuver. This is a simple
5 maneuver. All it takes is for someone to take a citing
6 of 90 degrees. Any qualified seaman would be perfectly
7 capable of doing that. And at 90 degrees, you turn to
8 the person on the wheel and you say, "Turn to the
9 right."

10 There was a person on the wheel by the name of
11 Kagan. The officer does not actually stand there and
12 steer the ship. True, it's tradition of the sea, one
13 of the few carryovers that we still have, perhaps. The
14 evidence will show that the officer gives commands and
15 are carried out by the enlisted personnel, if you want
16 to call them that. So, when he became aware of the
17 island light, the captain, by the way, we will show,
18 that it's not that far away. There is constant
19 communication by telephone between the Captain's
20 quarters on the bridge, which is simply down a flight
21 of stairs, one flight of stairs, some 13 steps, and a
22 short distance then down to his quarters, which is also
23 an office, because the captain is more than just a
24 navigator. He is the person that happens -- he is an
25 administrator also. He has many duties in -- other

1 than just going from point A to point B. But it's very
2 clear that within seconds -- just within the seconds,
3 the captain can be on the bridge. And that's why his
4 quarters are there. It simply makes sense. So he can
5 leave but have ready access to come back.

6 And Gregory Cousins calls out, he says,
7 "Captain, I'm starting the maneuver." And
8 Captain Hazelwood said, "What rudder are you giving
9 him?" And he says, "10 degrees." Captain Hazelwood
10 says, "That's fine, that will be fine, plenty of time,
11 plenty of room to maneuver it clear of Bligh Reef or
12 any other obstacle."

13 This is where the case gets probably
14 interesting; it's the most critical, because everyone
15 needs to know and wants to know what happened. We hope
16 the evidence will show what happened. That will be for
17 you to determine, but it's best, we think the evidence
18 will come in. It will show that Gregory Cousins was --
19 gave the command, but he may not have noticed whether
20 the helmsman actually turned the vessel or not. He may
21 not have noticed until too late that he either didn't
22 turn or else he didn't turn enough.

23 And you will see a course recorder here and,
24 by the way, on this subject you've already seen the
25 chart there. Just let me explain it briefly, that

1 somewhat like airplanes, like the magical little black
2 box that records pilots conversation and controls of
3 the planes, it's not that sophisticated, it's not quite
4 as elaborate, but there are certain things that are
5 automatically done on-board ships. One of them is the
6 course recorder. That tells the course of the ship
7 took at all times. There is a engine log recorder.
8 Engine commands are all automatically put down. In
9 addition, the officers put down in their own writing
10 what they are doing as far as commands are concerned.
11 But some things are recorded. The time is necessarily
12 on there, and can be subject to some dispute. We'll
13 get into that in a minute or two. But in any event,
14 the course recorder is on at all times.

15 The man at the wheel either did not turn till
16 too late, but more than likely what the course recorder
17 will show is that he had a rudder on there, a rudder
18 command, but it wasn't enough. It wasn't enough under
19 the circumstances to clear Bligh Reef.

20 I suppose I may be jumping ahead a little bit,
21 but this is a case that's going to involve a literal
22 parade of experts. There will be experts in every
23 field imaginable in maritime commerce. Ship experts,
24 lots of them. These and experts, and one of them we
25 expect is going to talk about a computer simulation.

1 The simulation was done by taking the data from the
2 course recorder and other things and factoring in
3 certain rudder angle speeds and things like this. We
4 expect that the evidence will show from uncontroverted
5 evidence from the course recorder and things like this,
6 that had Captain Hazelwood's order or command been
7 carried out at the time it was given, the time that he
8 understood the ship was turning at 10 degrees right
9 rudder, that it would have missed -- the ship would
10 have missed Bligh Reef by nearly two miles, almost two
11 miles.

12 In fact, ladies and gentlemen, there will be a
13 set of scenarios there which will show that even if the
14 turn had been started at 12:01 and a half, at 10-degree
15 right rudder it would have cleared Bligh Reef by .6 of
16 a mile. There will be a lot of different times and
17 places put in this and different weather commands. You
18 will hear all about this, but the point is, and please
19 watch for this very carefully, is that number one, the
20 command, if carried out when it was expected to, and
21 Captain Hazelwood thought it was being done, almost two
22 miles of safety, and secondly, even if it was later
23 than that or not as much rudder, as little as three
24 degrees, it would have still safely cleared the reef.
25 This, of course, goes to Captain Hazelwood's knowledge,

1 what he knew and what he did to determine, as the state
2 is claiming that he acted recklessly.

3 In addition, I want to talk just briefly about
4 the evidence concerning the Coast Guard VTS system. We
5 spoke about that earlier, you heard a lot about that.
6 But what they have is radar, which watches the ships.
7 That's the purpose. There's a man there, sitting there
8 in Valdez, watching a radar screen to see if vessels
9 are where they are supposed to be. Their sole function
10 and purpose in doing this is to insure the safety of
11 the system, that ships don't collide with each other or
12 rocks or reefs.

13 (4134)

14 (Tape: C-3598)

15 (0050)

16 The evidence will show that initially when the
17 system was done, it was a better system; it had a range
18 and capabilities. But for one reason or another, which
19 is not important and not really relevant, the system
20 changed. It became not nearly as good. It didn't have
21 the coverage. This is important because only the Coast
22 Guard knew this. These ship captains were never told
23 that, hey, you guys ought to know something, we can't
24 see you all the time now. But no, what they were led
25 to believe is they could rely upon Coast Guard, the

1 watch-stander, as they're called, to observe them when
2 they're transiting Prince William Sound, and if there's
3 a problem, they had every right to expect somebody
4 would tell them.

5 The evidence in this case will show that there
6 were two watch-standers; a man by the name of Taylor
7 and a one by the name of Blandford. Oddly enough,
8 right around midnight is when they change their watches
9 and Taylor left and Blandford came on. Taylor
10 basically says that the Exxon Valdez is going out, it's
11 on the screen now at the lower range, can't really see
12 it. Blandford then acknowledges this and does not
13 watch the Exxon Valdez. Doesn't watch it at all, but
14 later, after the ship was aground, he switches to
15 longer range on the radar, and low and behold, he does
16 find it, probably displayed on Bligh Reef. They were
17 not watching.

18 So, with that, we are on the reef. The
19 evidence will also show that contrary to what the state
20 has said, that there was some type of a grounding
21 initially about 12:04. We think the clear evidence in
22 this case will show that the actual grounding was at
23 12:09. Now, that may not sound important to you right
24 now, but please keep this in mind because later on it
25 will become very, very important.

1 In any event, one other thing I'd like to
2 mention, because the state, I would submit, thinks the
3 evidence will show some people to the contrary, rather
4 than what Mr. Cole said, the ship was not running at
5 full speed at the time this happened. It was
6 programmed up to full sea speed. But as Mr. Cole
7 acknowledged, this isn't just shoving a lever forward,
8 it's not stepping on the gas like you do in a car,
9 zingo, you're up there. Not hardly. It takes a long
10 time.

11 You'll be told a lot about this ship, a lot
12 about the type of engine it had, a very, very large low
13 speed engine, big diesel engine. Full speed is around
14 55 RPMs, very, very slow. It takes a long time to get
15 that mass of a ship from one speed up to another. So,
16 while it's put into a program to increase its speed,
17 the evidence will show that at the time the vessel
18 actually hit the reef, it was only operating at 11.75
19 knots. And that is not full speed.

20 The evidence will show that Mr. Cousins, the
21 third mate in this case, called Captain Hazelwood as
22 soon as he realized he was in trouble. There was some
23 talk about a Maureen Jones and whether she should have
24 been on the bow or whether she should have been on the
25 bridge. Again, ladies and gentlemen, do not be misled

1 by things like this. There is no rule and no
2 regulation that says Captain Hazelwood violated Coast
3 Guard regulation, rule or anything else, by deciding to
4 have her come back to the bridge wing rather than the
5 bow. These things are all very important. Again, the
6 ship's captain has a lot of discretion in what he's
7 doing at the time he'd doing it. He's the one that
8 knows best, in other words.

9 On the subject of something else that is
10 extremely important. That's, I think, and would submit
11 to you, ladies and gentlemen, and watch for it very
12 carefully because it's another red herring. The
13 evidence will show that the auto-pilot had absolutely
14 nothing to do with this case. As you heard, the
15 auto-pilot is a way, a means of keeping the vessel on
16 track without somebody having to actually stand there
17 and steer it. They are very handy to have. All ships
18 have them. And a person would have to be blind not to
19 know when it was on auto-pilot and when it wasn't.
20 There's a red light that comes on the screen that says,
21 "Gyro on," or words to that effect. Seamen are
22 perfectly aware of this.

23 The evidence will also show that there is no
24 regulation, there is no law, there's no requirement
25 that in the particular waters they were transversing at

1 that time, that the auto-pilot should not be on. It's
2 a general type of thing, again, subject to the
3 discretion of the captain to call, to say, I think it's
4 unsafe to do it here or it's safe to do it here or
5 whatever, and that you can get into an area where you
6 can have probably 100 captains come in and say I would
7 or I wouldn't. But it's meaningless in the context of
8 this case because it had nothing to do with it.

9 The facts are, the evidence will show that it
10 was off for 15 minutes. It had nothing to do with this
11 accident. Whether the captain put it on or not, the
12 facts are that Gregory Cousins or Mr. Kunkel turned it
13 off when they were maneuvering in Valdez, which Cousins
14 had every right to do. When he had the con he was in
15 command, he could keep it on, he could keep it off at
16 his discretion, and what he did was say, okay, I want
17 it off. You push a button, it's off. It's now on helm
18 steering. No violation, nothing to do with this.

19 Again, with Maureen Jones being on what's
20 called the bridge wing rather than the bow, again, is
21 another minor red herring. As Mr. Cole told you, these
22 ships are big. They're very, very long. In foggy
23 conditions and with slow maneuvering conditions, I
24 think the evidence will show that probably the most
25 logical thing to do and the safest and best thing to do

1 was post a lookout on the bow, because it's a long ways
2 away. They have a hand-held radio, they can radio back
3 if they see something. On the other hand, if it's
4 clear, and the evidence will show this night it was
5 clear, then in that situation it may be better, in
6 fact, to have someone on the bridge wing because you're
7 elevated at a much higher elevation and can actually
8 see farther.

9 Before we go on to what happens after the
10 vessel is on the reef and Captain Hazelwood is on the
11 bridge, immediately as soon as Cousins says, "Captain,
12 I think we're in trouble," there is a crunch. He's
13 upstairs, he's there and he takes command.

14 Going back, again, one other step, the state's
15 main argument in this case is going to be this
16 endorsement or lack of endorsement. In this area, I
17 neglected to mention earlier, you're going to hear
18 other evidence about what was required and when on this
19 so-called pilotage endorsement. You will hear evidence
20 that there's been a lot of changes made and a lot of
21 controversy as to what pilots are required and when in
22 Prince William Sound for various reasons. The
23 Congress, through the Coast Guard, has basically said
24 make regulations in Prince William Sound. They were
25 never done, but it went down to what's called the

1 Captain of the Port. The Captain of the Port is the
2 commander, if you will, of the Coast Guard in charge,
3 and in this case, in Valdez. He was then given the
4 authority to make appropriate changes in the pilotage
5 of Prince William Sound. You will hear evidence that
6 over the years this was changed, and in fact in this
7 particular case in 1986 a change was made, a very, very
8 substantial change. Because up to this point, if it
9 was daylight and the visibility was two miles or more,
10 there could be what's called a waiver of this pilotage
11 under certain conditions. In 1986 the commander said,
12 he looked at this and he said, "That's not the issue
13 with whether it's day or night, the issue is
14 visibility." Consequently, on changing that and seeing
15 if there's two miles or more of visibility, you don't
16 have to have this pilot endorsement. And it also goes
17 on to say, and it talks about when the pilot with the
18 endorsement should be not on the bridge, but it says
19 on-board. Again, this is not a rule or regulation,
20 this is a Captain of the Port order, if you will. But
21 he talks about when this particular person should keep
22 on-board. You will hear evidence probably, more than
23 likely, that one captain might say, well, I interpret
24 that to mean I think it would be prudent to be on the
25 bridge. Others will say it doesn't matter.

1 We expect there will be captains, fully
2 qualified, competent captains testifying in this case,
3 with no ax to grind, who will say that many times I've
4 been the mate on the ship when the captain has left the
5 bridge and I did not have this pilot endorsement, never
6 did, it was not unusual, not uncommon.

7 In fact, ladies and gentlemen, under this
8 waiver, if you will, if you want to call it that, of
9 this endorsement requirement, a foreign vessel could
10 enter Prince William Sound as long as somebody on board
11 could speak English, and then certain other
12 requirements were met. The ship had certain safety
13 equipment and reported its position every so often.
14 But one English speaking person with no pilotage
15 whatsoever could do this.

16 So, we have a situation with Captain Hazelwood
17 with the endorsement seconds away from the bridge,
18 turning the command over to someone who is absolutely
19 qualified, and the argument will center not on that but
20 on whether or not he was authorized. If he had a
21 driver's license, if you will.

22 Getting back to the initial contact with the
23 reef, some evidence will show that certain persons
24 never even woke up, that it wasn't a sudden crash, to
25 the extent that people were panicking and jumping

1 overboard or anything like this. Some individuals
2 never even knew what happened. They just thought
3 something is strange, there's a rumbling going on and
4 suddenly the ship is stopped, and they realized they
5 aren't going anywhere. The only individual, and
6 Mr. Cole has mentioned him, Mr. Kunkel, that indicated
7 there was some kind of a problem and he was afraid, if
8 you will. He was afraid, and what the evidence is
9 going to show was that yes, he didn't know what
10 happened, he didn't know what to do, and he came up and
11 found out what was going on from Cousins, "the old man
12 knew what happened," and he finds the captain, and he
13 says to him, to the effect, "Captain, we should be
14 sounding the general alarm. Should we have everybody
15 don their suits, their survival suits?" And he's going
16 to say that Captain Hazelwood was absolutely calm and
17 calmed the whole situation and said, "No, let's not
18 alarm anybody, that's going to cause undue panic.
19 Let's find out what our situation is here before we do
20 anything else. Notify everybody, but go to the rooms
21 and tell them we're aground and go to the duty stations
22 and issue commands immediately on what to do, sending
23 people here." He told him -- he told Kunkel to get
24 back down to the engine room and report on what's
25 happening down there in the engine room, the tankage

1 room, the controls, to find out what they were losing,
2 how much they were losing of their cargo. He wanted to
3 see if the ship was stable or unstable, run a computer
4 program. You will hear command after command that he
5 gave, and everyone will say that he was calm, cool and
6 collected and in command, as a captain should be.

7 The engine commands that were given were
8 recorded, as I said. The course recorder recorded the
9 vessel movements, even after it was on the reef. The
10 state says Captain Hazelwood was reckless because he
11 tried to get this thing off the reef without knowing
12 what's going to happen, and in all likelihood, it was
13 going to collapse or capsize.

14 Ladies and gentlemen, you will hear from
15 experts in this case who have had years of experience,
16 who will analyze all the data, and they will say that
17 what occurred was an excellent job of seamanship, not
18 in trying to get it off the reef, but in stabilizing
19 this vessel on the reef, just the opposite. In spite
20 of what may have been said, that's what the evidence
21 will show. And one of the most important and obvious
22 things is that the engine recorder that records full
23 ahead, half-ahead, quarter -- full speed, whatever, the
24 one recording it does not have on there is anything
25 astern. This vessel never, never was put into reverse

1 gear, if you will. And the most logical thing from any
2 mariner who will testify in this case, if they were to
3 say here is how I would get off the reef, I would try
4 to go on forward, I would try to go off in reverse.
5 That's the most common, usual thing, and this wasn't
6 done. And why it wasn't done is because it shows that
7 he was not intending to get off, but stay on it until
8 he ascertained what was going on.

9 Commander McCall, the Coast Guard commander,
10 we expect, will testify that even though he was having
11 the conversation with Captain Hazelwood about on or off
12 the reef or getting off here or something, he
13 understood what was being said. He understood that he
14 wasn't trying to get off the reef, but by the commands
15 he was giving while he was ascertaining his position
16 and his stability.

17 It is extremely important, ladies and
18 gentlemen, because no matter what people want to think,
19 the evidence speaks louder than what he desired. And
20 the evidence in this case is going to show
21 overwhelmingly that this vessel never, never tried to
22 get off the reef. He was attempting at all times to
23 stay on the reef.

24 The Coast Guard arrives about three o'clock,
25 3:30. Captain Hazelwood, by the way, reported this to

1 the Coast Guard. He said in certain words, he said,
2 "We are aground and we're leaking oil." He made that
3 report, required by law that he make this report, and
4 he did. The Coast Guard asked some questions and of
5 course they came out to investigate it. It took a
6 little time to get out there, but they did.

7 Mr. Delozier and Mr. Falkenstein, or
8 Falkenstine (ph) will tell you that they arrived
9 somewhere between 3:00 and 3:30 to investigate. That's
10 their job. They arrived on-board, and of course it's
11 dark. Oil is coming out at a rapid rate. There are
12 fumes, naturally. They were concerned about the safety
13 of the vessel, very concerned. Concerned about its
14 stability, the danger to personnel on the ship. That's
15 their job. Yes, they will say, yeah, we smelled
16 alcohol on his breath, but they will also say we saw no
17 signs of intoxication. They will also say that later
18 on when Trooper Fox comes on board and finds the Moussy
19 beer, this low alcohol beer, he flashes a little on his
20 hand and goes up to him and says, "Hey, could this be
21 what you smell?" They both will say, "Yeah, it
22 certainly could be it. It could be that Moussy beer."
23 They smelled what they thought was alcohol, but they're
24 going to say he did not stagger, he did not slur his
25 speech, he didn't -- he seemed fully in command, he was

1 calm, cool, collected. And the clincher, ladies and
2 gentlemen, is the Coast Guard personnel had a
3 conversation. They wanted to get a blood alcohol test
4 from him and members of the crew, and they discussed
5 how they were going to do this. One way they discussed
6 doing this was taking Captain Hazelwood off the ship,
7 back to Valdez, where maybe a breathalyzer test of some
8 sort could be run or whatever. And they concluded, no,
9 no, we don't want to do that. We want to leave him
10 here in command because he knows the situation better
11 than anyone else, he knows the vessel better than
12 anybody else, we want him to take charge and stay in
13 charge.

14 I think the evidence, ladies and gentlemen,
15 will show that if they suspected at all that
16 Captain Hazelwood was under the influence and his
17 judgment was impaired, that's the last thing in the
18 world the Coast Guard would do. They did it because
19 they saw that obviously alcohol was not a factor in
20 what was happening at that time.

21 Trooper Fox arrives and some -- this may or
22 may not get a little interesting at this point because
23 Trooper Fox gets on-board because he gets a radio call,
24 and he comes in and he thinks that there's a wild man
25 on-board. That's kind of the report he got. He's got

1 a wild drunk he has to help subdue. So he's totally
2 surprised. He sees Captain Hazelwood and he will
3 testify when he came on, he saw nothing. The Captain
4 was quiet, he was not intoxicated, he didn't smell
5 anything. And he thought, what's going on here? You
6 know, what am I supposed to do. The Coast Guard people
7 who talked to him, they said, well, we want you to
8 assist us in a blood test. Can you take a blood test?
9 And Fox said no, I can't, I'm not qualified to do that.
10 I can get people that can do it for you. For whatever
11 reason, the Coast Guard were not interested in this
12 offer, and further delay occurred.

13 Captain Hazelwood, in the meantime, was going
14 about his business. The ship wasn't going anywhere but
15 he's still in command and he's still doing various
16 things. He's in his quarters, he's back and forth,
17 he's not standing there at all times with the Coast
18 Guard or Trooper Fox.

19 Then getting back to Fox and Delozier
20 caucusing again, they have this conversation again, but
21 for whatever reason, the Coast Guard decide to do it
22 their way, and we expect the evidence will show that
23 they considered this to be a Coast Guard matter and not
24 any more state business, and they requested and got
25 some help, and they finally learned, by coincidence,

1 that a corpsman from Anchorage happened to be there and
2 was on the way, leaving to the airport. They managed
3 to stop Mr. Conner and get him back on-board. But, as
4 has already been said now, and is readily apparent, it
5 is some 10 hours after the grounding. A lot of time
6 has gone by. Conner is on-board and, yes, he takes
7 blood samples, and on this point Captain Hazelwood did
8 not order anyone to take urine samples or blood tests.
9 That is a Coast Guard matter and they can do that, and
10 they do it on their own, without captain's orders. The
11 fact that a urine test was not given immediately by
12 Captain Hazelwood, also the Coast Guard will say that
13 you have a right to refuse, if you want. That's part
14 of their regulation. In any event, blood samples are
15 finally drawn, very, very late, well over when it
16 counts, 11 hours after the fact they are taken.

17 Then we get into the battle of more experts.
18 What does it mean? Well, the state says if its own
19 blood alcohol content is more than .04, there's a Coast
20 Guard regulation -- not a state law, but a Coast Guard
21 regulation that says he's under the influence. Well,
22 ladies and gentlemen, let me just remind you here that
23 Captain Hazelwood here is not on trial for a violation
24 of any Coast Guard regulation whatsoever. He is on
25 trial here and the only pertinent statute involved on

1 this one would be the statute itself, is what we call a
2 DWI, driving while intoxicated. That, ladies and
3 gentlemen, requires, under state law, that this figure
4 not be .04. It's immaterial, it's irrelevant, what the
5 Coast Guard thinks is appropriate. It must be under
6 state law, .10 or greater. And in fact the judge, we
7 expect, will instruct you that under our implied
8 consent law what these numbers mean is a number between
9 .05% up to .10, but not greater than .10 is essentially
10 no inference of anything. It does not infer the person
11 was under the influence nor does it infer that he was
12 not. It can be taken along with any other evidence to
13 show whether or not the person was or was not impaired
14 or under the influence of alcohol. So, that's very
15 important. Do not, please, be misled by Coast Guard
16 matters of things like that. You are here to try a
17 state case in state court.

18 But, getting back to the experts again, the
19 alcohol and what it means. There will, in all
20 likelihood, be a number of experts who talk about
21 alcohol, and it isn't really appropriate to do that now
22 because -- just be aware of that because this number by
23 itself is going to be essentially meaningless, but you
24 will hear, in all probability, a great deal of
25 testimony on alcohol, how it affects a person, what it

1 does, what these numbers mean and can you go backwards
2 in time and come up with a different figure or whether
3 that means anything or not. The whole matter, however,
4 on this issue is -- we submit the evidence will show
5 that the numbers mean nothing because there will not be
6 one person in this case that will testify that from
7 their personal observations, their expertise, their
8 knowledge of alcohol and how it affects people, that
9 any command that was given was impaired, the judgment
10 behind that command was impaired by the use of alcohol,
11 that Captain Hazelwood was not in control of his
12 functions, his motor abilities, his thought process or
13 anything else that would in fact show that he was under
14 the influence. This also goes to the issue then of
15 recklessness.

16 Before I get into that though, because that's
17 kind of summing up, and things are going faster than
18 expected here, I want to comment just briefly about one
19 of the last things Mr. Cole mentioned. That was the
20 phone conversation after the grounding that occurred
21 between Captain Hazelwood and Mr. Meyers, one of the
22 officials of Exxon Shipping Company. And naturally
23 there was phone communication of what happened and why.

24 Mr. Cole told you that Captain Hazelwood said,
25 "I'm the one at fault. I should have been on the

1 bridge." Ladies and gentlemen, the evidence is going
2 to show that at no time does Captain Hazelwood say or
3 said at anytime that "I'm not at all to blame here.
4 I'm certainly partly to blame in the blame sense."
5 That is fault. And I want you to keep that in mind,
6 very carefully. What he actually told Mr. Meyers was,
7 "The third mate was on the wheel, on the helm, on the
8 con when it happened. I wasn't there. It shouldn't be
9 just his fault. It's also my fault. And hindsight is
10 retrospect, I should have been there."

11 On that point, ladies and gentlemen, please
12 keep in mind, you are here to judge a person as to
13 whether or not he committed a crime, a number of
14 crimes. And on that point, the only one that involves
15 the spilling of oil is negligent discharge of oil. If
16 not for that one, Captain Hazelwood would not be on
17 trial here for spilling oil. The others have nothing
18 to do with spilling oil.

19 So, keep in mind, please, there's certain
20 things called fault, blame, if you will. It's my
21 fault, it's his fault. I wish it hadn't happened.
22 That gets back to what causes accidents, ladies and
23 gentlemen. Keep in mind from the evidence in this case
24 that we're here to determine whether the proof, beyond
25 a reasonable doubt, is such that you are totally

1 convinced, convinced to this extent that a crime was
2 committed.

3 It is not your function to point the finger
4 and say there is blame. There is plenty of others that
5 can do that, and there may be plenty of blame to go
6 around. It isn't a question of that.

7 Oddly enough, you will also hear testimony
8 from some witnesses in this case who said we've been
9 granted immunity. That is, they've been promised by
10 the state of Alaska they won't be prosecuted for this
11 case. The only person then you are to determine
12 whether they committed a crime or not, and I'm sure the
13 judge will instruct you on this, look to others to say
14 whether they're guilty or not guilty; your sole purpose
15 and function is to judge the facts in this case and the
16 law given to you and decide whether or not
17 Captain Hazelwood alone -- alone bears the brunt of
18 this by being branded, charged, convicted as a
19 criminal.

20 The exact statutes involved here are somewhat
21 important, and I want to conclude by touching on these,
22 however, briefly. The main one, of course, is what is
23 called the criminal mischief statute. That is the
24 reckless conduct, recklessly creating a risk of damage
25 to property in excess of \$100,000.00 by widely

1 dangerous means. There is a number of different
2 elements here that each and every one of those has to
3 be proven by proof beyond a reasonable doubt. I would
4 submit, ladies and gentlemen, that the most important
5 here, the one you will find from the evidence, does not
6 exist, and that is the term "recklessness." That will
7 be defined. You've already heard it from Mr. Cole, but
8 essentially it means a conscious disregard; you are
9 aware of and consciously disregard a substantial risk
10 that a result will occur. Now, that's legalese, but
11 that's pretty much what it means, if you stop and think
12 about it. You are aware of, you know about it and you
13 consciously disregard it. You are taking a real known
14 risk, a substantial risk. Now, that's somewhat
15 different from the instruction you're going to hear
16 about what's called criminal negligence.

17 But as far as the one charge of criminal
18 mischief is concerned, it requires we call a culpable
19 mental state, that is the mental state, that is the
20 mental state of the person in charge has to have this
21 reckless disregard, conscious disregard for a known and
22 substantial risk.

23 That same requirement is also true for the
24 other charge, which is called reckless endangerment.
25 It still requires recklessness. But the difference is

1 that you recklessly create a risk of injury or death to
2 a person. The evidence in this case will show quite a
3 variety of things that happened. Only one person
4 became very concerned, Mr. Kunkel. Everyone else, no
5 concern. Concern, yes; worry, fear, no. They were
6 professionals doing their job, and the evidence will
7 show that going aground is not an uncommon experience.
8 It happens. It's called a maritime accident.

9 On the charge of DWI, the Judge will also
10 instruct you under not what's Coast Guard law or
11 regulation, he will charge you under what the state law
12 requires, and on that one there's going to be probably
13 two theories under which the state is going to claim
14 that Captain Joseph Hazelwood was guilty. One is
15 called the so-called ".10" theory, that at the time
16 this occurred his blood alcohol was .10% or greater.
17 The other one is called the "under the influence"
18 theory. That means regardless of what a person's blood
19 alcohol is, no matter how high or how low, that his
20 actions, what he did, what people perceive, were
21 noticeably affected by alcohol. And if you stop and
22 think about it, that's kind of obvious, too. That
23 means simply, I watched him, I saw him, he couldn't
24 operate the motor vehicle, he was weaving over the
25 line, things of this nature. He couldn't walk

1 properly, he couldn't, you know, do various physical
2 tests properly. That's probably what you are going to
3 hear in this regard. So, keep in mind, if you will,
4 that no witness in this case is going to say
5 Captain Hazelwood was noticeably affected by alcohol.

6 Alcohol, again, had nothing to do with this
7 case, nothing to do with what happened. It's a great
8 issue to go before a jury on, but the facts are, and
9 the evidence will show, that it just isn't there. What
10 is there -- let me get back to one thing.

11 I neglected to mention the negligent discharge
12 charge, the last one, count four. That's a little
13 different because it requires a different mental state
14 from recklessness. That's called criminal negligence.
15 If we think about fault, think first in terms of what
16 we call civil blame or civil fault. That's where a
17 reasonable person did or did not do something, or a
18 person did not do something that a reasonable person
19 would or would not have done under the same or similar
20 circumstances. Again, nice legalese definition, but it
21 means when you go through the intersection in your car,
22 when you reach down to put a cassette tape in, maybe
23 there's an accident. You say, oh, my gosh, I wish I
24 hadn't done that, that wasn't very good thinking.
25 That's not what a reasonable person would have done in

1 that situation. You take that up another step, and
2 that's a big step because it requires negligence that
3 is so great that it requires punishment. That's why
4 they call it criminal negligence. And you will -- that
5 will be defined for you also. But it is more than
6 just, I made a mistake. A reasonable person would not
7 have done that. It is so bad that the law says you
8 must be punished because you were so negligent. That's
9 the standard there, and yet this is lower than
10 recklessness.

11 So, ladies and gentlemen, I may or not have
12 covered everything that you were thinking about or were
13 concerned about after Mr. Cole spoke. I don't believe
14 that's terribly important. You will start hearing the
15 evidence here very soon, and what we say here, of
16 course, is not evidence, nor will it be long remembered
17 because it's humanly impossible. But I hope that we
18 have both given you things to look for. I think the
19 lines have been pretty well drawn here from what the
20 state is claiming and what the defense is saying.

21 So, with this kind of an opening guide, if you
22 will, that kind of tells you, here's what the book is
23 about, I've got my summary, he's got his. Perhaps
24 there's some pages I covered that he didn't, but you're
25 soon about to undertake listening to the evidence and,

1 by way of a poor analogy, I suppose, reading that book.
2 When you do that, always, always, when you're in the
3 middle of it and things look a little confusing,
4 perhaps it is only a guide, it's only an idea, think
5 back again to the table of contents, if you will, which
6 is, what is he charged with? Are we talking blame here
7 or are we talking a crime? Go back to that at all
8 times. Keep in mind then how the pages are going to
9 unfold, what you're going to hear, what you're going to
10 see, and at the end, then it becomes somewhat clearer
11 that, yes, there were things that went wrong. Maybe
12 things could have been done differently, and in
13 hindsight, everyone would do something different.

14 But, finally, I would only say, ladies and
15 gentlemen, that in the final analysis, when you examine
16 the evidence as you have all sworn to do, and the law,
17 as the Judge is going to give it to you, that you will
18 find that the facts are the greatest ally of the
19 defendant in this case, and they will convince you that
20 he is not guilty of any charge.

21 Thank you.

22 THE COURT: I'm going to recess for lunch, but
23 I'd like to address counsel as soon as we recess the
24 jury for lunch.

25 Ladies and gentlemen, we'll come back -- why

1 don't you plan to be back in the jury room at 1:30.
2 That will give you an adequate lunch. In the meantime,
3 don't discuss this case among yourselves, do not form
4 or express an opinion concerning the case, avoid media
5 sources about it. Many of the media representatives
6 are wearing press badges. I'll make sure they all wear
7 them. If you inadvertently come in contact with them
8 and you can't get out of the way, like in the elevator,
9 they will not discuss the case and you should not
10 discuss it either with anybody.

11 We'll see you back at 1:30. Have a nice
12 lunch. And Scott will give you a key here to get into
13 your jury room.

14 (Pause)

15 (Jury not present.)

16 THE COURT: One of the jurors asked if note
17 taking would be permitted. Would there be any
18 objection to allowing them to take notes? Mr. Cole?

19 MR. COLE: No.

20 THE COURT: Mr. Madson?

21 MR. MADSON: No, Your Honor. I assume each
22 juror is presented with a note pad and pencil and can
23 or cannot take notes. They are picked up afterwards?

24 THE COURT: Right. We'll give them a pad and
25 some writing apparatus and they will be instructed that

1 they are to leave them on the chairs when they take
2 their recesses, and when they leave for the evening,
3 leave them on their chairs. And Mr. Purden will gather
4 them up and make sure that they're back again the next
5 morning.

6 MR. MADSON: Yeah, I have no objection to it.

7 THE COURT: All right. Since there are so
8 many representatives of the media present, there exists
9 a possibility of inadvertent contact between media
10 representatives and jurors and witnesses. To minimize
11 this risk, please wear your press badges at any time
12 and during your presence in the court building, any
13 location in the court building, if you're here in part
14 to cover this case. If you've misplaced your badges,
15 just ask the clerk for additional badges and he'll give
16 them to you.

17 Is there anything else we need to take up
18 before we take our recess?

19 MR. COLE: No.

20 MR. MADSON: No, Your Honor.

21 MR. COLE: Not at this time.

22 THE COURT: We'll stand in recess.

23 THE CLERK: Please rise. This court stands in
24 recess, subject to call.

25 (Off record - 12:19 p.m.)

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(On record - 1:33 p.m.)

(Jury present)

THE COURT: You may be seated. Thank you.
Ladies and gentlemen, you've probably noticed the pads.
You may take notes during the trial. Before you take a
recess or before you go home for the day, just put the
pad on your chair. And that's where you'll find them
tomorrow morning, and that's where you'll find them
each time. You may not take them into the jury room
and you may not take them outside the courtroom. So,
just leave them on the chair when you're finished each
time and we'll have them there for you.

I understand your chair is not too
comfortable. We'll fix that.

All right. At this time the state may call
it's first witness.

MR. COLE: Your Honor, at this time the state
would call Lieutenant Stock of the US Coast Guard.

THE COURT: And at this time, counsel, I'm
going to invoke the provisions of the rule excluding
witnesses.

(Pause)
(1629)

THE CLERK: Sir, you'll find the microphone
there. If you'll please attach that to your shirt or

1 tie and remain standing and raise your right hand.

2 (Oath administered)

3 A I do.

4 THE CLERK: Be seated.

5 GARY JOHN STOCK

6 called as a witness in behalf of plaintiff, being first
7 duly sworn upon oath, testified as follows:

8 THE CLERK: Sir, would you please state your
9 full name and spell your last name?

10 A I'm Lieutenant Commander Gary John Stock.

11 Last name, S-t-o-c-k.

12 THE CLERK: And your current mailing address?

13 A My -- the office address?

14 THE CLERK: That's fine.

15 A 222 West Seventh, Box 17, Anchorage, 99513.

16 THE CLERK: And your current occupation, sir?

17 A US Coast Guard Senior Investigating Officer,
18 assigned to Marine Safety Office, Anchorage.

19 THE CLERK: Thank you.

20 A Uh-huh (affirmative).

21 MR. COLE: Thank you, Your Honor.

22 DIRECT EXAMINATION OF MR. STOCK

23 BY MR. COLE:

24 Q Lieutenant Stock, would you give the jury an
25 idea of what your duties are in your position?

1 A My duties as senior investigating officer at
2 the Marine Safety Office in Anchorage primarily
3 entail coordinating all marine casualty
4 investigations that occur in our zone within
5 Western Alaska, which is for all intents and
6 purposes all of Alaska, with the exception of
7 Southeast and Prince William Sound.

8 Q Did you respond to a subpoena from the
9 District Attorney's Office to produce certain
10 documents?

11 A Yes, sir, I did.

12 Q And where were these documents being kept?

13 A These documents were kept and are presently
14 kept at our office, the Marine Safety Office in
15 the Federal Building here in Anchorage.

16 Q Were these documents seized by members of the
17 Coast Guard pursuant to an investigation by the
18 Coast Guard into the grounding of the Exxon
19 Valdez?

20 A The documents were obtained by the Coast
21 Guard. Some were seized, some were voluntarily
22 given to us by various crew members and/or Exxon
23 officials.

24 Q But it was done pursuant to the investigation?

25 A That's correct.

1 Q And is the Coast Guard authorized under law to
2 conduct such investigations as such, sir?

3 A Yes, we are. In fact we're required by law to
4 conduct an investigation.

5 Q And the subpoena requested that you provide
6 copies. Is that what you provided here today?

7 A That's correct.

8 Q And have you had a chance to look over those
9 documents?

10 A Yes, I did. In fact I prepared them, I
11 believe, last Friday, and had an opportunity to
12 go over the ones that I was told would be here
13 today.

14 (Pause)

15 Q I'm showing you what's been marked for
16 identification, this Plaintiff's Exhibit 1. Do
17 you recognize that document?

18 A Yes, I do.

19 Q And is this a copy of the original that you
20 kept by the Coast Guard?

21 A Actually, it is a copy of a copy of the
22 original that we have in the office. Down in the
23 lower left-hand corner is my signature as
24 certifying it to be a copy. And to the right of
25 that is a similar endorsement by the

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investigating officer, Mr. Delozier, who certified it to be an original. So, one could assume through this chain that it is a copy of the original.

Q And the document, I also sent some more documents there, the one on the bottom.

A Okay.

Q Would you identify what that is?

THE COURT: May we have the exhibit number, please?

Q This is what has been marked for identification as Exhibit 2. Is that correct?

A Correct. Yes, this would be a copy of the course recorder on a certain date and a certain time, and there again, I certified it to be a copy of a certified copy that was obtained by the Coast Guard. I personally did not see the original, but there again, the original was seen by Mr. Delozier on 26 March, and a copy of that is in our file. I made a copy of that, if that can be followed. But that's how that is.

MR. COLE: If I could approach the witness, Your Honor? I'd like to get out another exhibit from behind.

THE COURT: All right.

1 Q And I'm showing you what has been marked for
2 identification as Plaintiff's Exhibit 16. Does
3 that appear to be, except for the specific
4 wording that's been placed on it, is that a fair
5 and accurate copy of the exhibit that you were
6 asked to bring here?

7 A Yeah, it's a different section of this, but it
8 appears that the section on here represents a
9 part of this course recorder. It actually picks
10 it up at about 0630 -- it's actually 0610 where
11 this one picks it up at about 0300, but yes, from
12 thereon, it appears to be the same.

13 Q And would you pick up the next one from the
14 bottom and identify that for the record, the
15 identification number on the back?

16 A That's Plaintiff's Exhibit 3. And this is a
17 actual true copy. We have the original in our
18 office of the -- appear to be the bell log from
19 the -- from the engine room, I assume. That's
20 what it appears, to me, to be.

21 Q And that is a true copy of the original?

22 A Yes, sir, that's correct. We have the
23 original of that. I do recall this exhibit.
24 It's a rolled up, like a cash register receipt
25 type of document.

1 Q And the next Exhibit 4 that is sitting next to
2 you, would you identify that for the record?

3 A Yes. That's the tally book from the Exxon
4 Valdez, and there again, that's certified to be a
5 true copy. We have the original in our office,
6 and I do recall this document.

7 Q Just set these aside.

8 A Yeah.

9 Q If you would begin with what's been identified
10 as Plaintiff's Exhibit 5. Do you recognize that
11 document?

12 A Plaintiff's Exhibit 5 is a certified true copy
13 of the official log book of the Exxon Valdez for
14 a certain voyage, normally, is what they are for,
15 and there, again, we have the original of this in
16 our office, and I did personally see the original
17 of this. Even though "original" is up there in
18 the middle section, that actually just came
19 through in the photocopying process. It is a
20 certified true copy.

21 Q I believe the next exhibit is what has been
22 identified as Plaintiff's Exhibit 6, there on the
23 bottom, deck log book?

24 A Okay.

25 Q Do you recognize that document?

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A Yes, I do. There again, this is a certified, true copy of an original that we have at our office at the Federal Building, from the Exxon Valdez.

Q What is the original book?

A It's the original deck log book.

Q Now, going to what has been identified as Plaintiff's Exhibit 7, a maneuvering chart. It's on the bottom.

A Okay.

Q Would you identify that for the record?

A Yes, this is a copy of a certified copy, again, of the maneuvering characteristics of the Exxon Valdez. There again, we do not have the original within our custody, but we have the certified copy of the original, and I just certified this to be a copy of that.

Q If you would turn to what has been identified as Plaintiff's Exhibit 8, the phone calls at the end. Would you identify that for the record?

A Okay. Plaintiff Exhibit 8 is a copy of a copy of the traffic analysis via Com-Sat. It is, essentially, the Mari-Sat phone conversations from a vessel from a certain time, I believe, normally, yes. It looks to be 23 March through

1 -- I believe that's 26. It didn't come through
2 very good on the copy. I believe it's the 25
3 or -- 25, I can't quite read it. But through a
4 few dates, the phone numbers called, duration,
5 date, that kind of thing.

6 Q Is that a true and accurate copy of the copy
7 that you made?

8 A Yes, it is. It's a true copy of the copy that
9 we have. There again, we don't have the
10 original; we have a copy.

11 Q Would you turn to what has been identified as
12 Plaintiff's Exhibit 9; the night order book
13 parcel. Would you identify that for the record?

14 (Pause)

15 A Exhibit 9 is a night order book and is a
16 couple of excerpts actually from the night order
17 book, which includes the standing orders and a
18 couple of entries from the -- from the book, and
19 that's a copy of a certified copy. There again,
20 we don't hold the original of this, but we have a
21 certified, true copy of this document at our
22 office.

23 Q Would you turn to what has been identified as
24 Plaintiff's Exhibit 10, at the bottom, the night
25 order book.

1 A Okay, the night order book, yes, okay. I
2 stamped that on the back because it was so dark
3 on the front. Here again, this is Exhibit 10,
4 this is a certified, true copy. We have the
5 original at our office of the book itself, and
6 it's a night order book of the Exxon Valdez.

7 Q Would you turn then to what's been identified
8 as Plaintiff's Exhibit 11, and identify that for
9 the record?

10 A Okay. Plaintiff's Exhibit 11 is a chart which
11 basically outlines RPM versus speed. A certain
12 RPM will give you a certain speed, and this is a
13 copy of a certified copy again. There again, we
14 don't hold the original, but we have a certified
15 copy.

16 Q Would you then turn to what has been
17 identified as Plaintiff's Exhibit 12?

18 A Plaintiff's Exhibit 12 is a cargo readout of
19 the Exxon Valdez, and it is a copy of a copy.
20 And the copy that we had was not actually a
21 certified copy, so I just certified it to be a
22 copy and that was it. I did not see the
23 original. And I think this was actually provided
24 to us later on, I believe, as I recall.

25 Q Number 13, would you identify that for the

1 course recorder exhibit; Exhibit 3, the bell log;
2 Exhibit 4, the bell log; Exhibit 5, the official log
3 book; Exhibit 6, the deck log book; Exhibit 7, the
4 maneuvering chart; Exhibit 8, the Mari-Sat phone call
5 list; Exhibit 9, the night order book; and Exhibit 10,
6 the night order book; Exhibit 11, the RPM table;
7 Exhibit 12, -- no, excuse me, not Exhibit 12 -- Exhibit
8 13, the ship's policy on alcohol use; Exhibit 14, the
9 bridge manual; and Exhibit 15, the bridge chart 16708.

10 MR. MADSON: Your Honor, I have no objection
11 with admissability under the rules, however, I would
12 not agree that they are necessarily admissable on the
13 grounds of relevancy. So, some of them, I would argue
14 are not admissable because they are irrelevant, but
15 they all come within the rule as far as this witness is
16 concerned and his testimony regarding their
17 authenticity.

18 THE COURT: Mr. Madson, you have no hearsay
19 objection. Is that correct?

20 MR. MADSON: No hearsay objection, that's
21 correct.

22 THE COURT: But you have a relevancy
23 objection. On which ones do you have a relevancy
24 objection on?

25 MR. MADSON: Well, I think it's going to take

1 some time to do that, Your Honor. It would probably be
2 best out of the presence of the jury, if you want to
3 get into relevance. It's going to take a little while.

4 THE COURT: Which ones don't you have one on?
5 Maybe we can resolve it that way.

6 MR. MADSON: 1; 2 -- with a couple questions,
7 perhaps, 2, I wouldn't have any objection to; and the
8 same goes for 5 and 6, 7, 8, 9, 10, 11, 12, 13, I would
9 object, and 14 I would object. And 15, inasmuch as I
10 think the original is necessary in this case, we have
11 reason to believe there is certain markings made on
12 copies, and it may be on that copy. We haven't had a
13 chance to really examine it closely, but the original
14 does not, and I think that would be very important.

15 THE COURT: Okay. Maybe I misunderstood.
16 Let's go the other way then. Which ones do you object
17 to? I may have misunderstood.

18 MR. MADSON: 13,...

19 THE COURT: Okay. 13; 14 you object to?

20 MR. MADSON: And 14, that's correct.

21 THE COURT: Okay. Any others that you object
22 to?

23 MR. MADSON: Pardon me?

24 THE COURT: Anything else you have objection
25 to?

1 MR. MADSON: Perhaps 11, Your Honor. I
2 haven't had time to really look at that closely. And
3 like I said, with the perhaps limited objection to 15.
4 If, in fact, the original is available and we can use
5 it, I think we'll put it that way.

6 THE COURT: All right. 1, 2, 3 -- was 16
7 offered?

8 MR. COLE: Yes, it should be offered, Your
9 Honor.

10 THE COURT: The chart?

11 MR. COLE: Yes.

12 THE COURT: Any objection to the chart?

13 MR. MADSON: Yes, Your Honor, I do.

14 THE COURT: Okay. We'll just hold off on that
15 one. 4, 5, 6, 7, 8, 9, 10 are admitted. 12 is
16 admitted. Do you intend to use this witness to do any
17 other than identify?

18 EXHIBIT 4, 5, 6, 7, 8, 9, 10 and 13

19 ADMITTED

20 MR. COLE: No.

21 THE COURT: Okay. This is the only
22 foundational testimony you need from this witness?

23 MR. COLE: Yes.

24 THE COURT: Okay. There's no hearsay
25 objection to the rest of them, so we'll reserve ruling

1 on 13, 14 and perhaps 15 and 16 and perhaps 11. Is
2 that the way I understand it?

3 MR. MADSON: That's correct.

4 THE COURT: All right.

5 MR. COLE: No problem. I have no further
6 questions.

7 CROSS EXAMINATION OF MR. STOCK

8 BY MR. MADSON:

9 Q Lt. Stock, just a couple questions regarding
10 the exhibits that you just testified concerning.
11 I call your attention to Exhibits 5 and 6. That
12 is the official log book, something called the
13 deck log book?

14 A Uh-huh (affirmative).

15 Q Could you tell me, please, what is the
16 difference between those two?

17 A Well, and this is based on my knowledge,
18 generally speaking the deck log book is a rough
19 kept by the vessel, and normally maintained by
20 the captain of the vessel and will have
21 extraneous information in there. Then the
22 official log book is an actual federal
23 requirement to maintain certain things, and
24 certain things are entered in there. And in
25 general, the deck log book contains more

1 information than the official log book. There
2 are certain entries that are required in the
3 official log book; i.e, fire boat, fire drill,
4 boat drill, testing the navigational equipment
5 before they come into a port, those types of
6 regulatory requirements are put in the official
7 log book.

8 Q So, if I understand correctly, the official
9 log book is one that's required to be kept under
10 federal law?

11 A That's correct.

12 Q Is that because the Exxon Valdez is sailing
13 under federal register?

14 A That would -- that would be correct; they are
15 under the federal purview.

16 Q Now -- excuse me, I didn't mean to interrupt
17 you. You also compared Exhibit 2, the copy of
18 the course recorder to the chart here, which I
19 believe is Exhibit 16?

20 A Okay, uh-huh (affirmative).

21 Q And you said that it is close but not quite
22 the same.

23 A Well, I was a little bit, I guess, confused
24 initially because I looked at the top of that and
25 the bottom of that and it didn't coincide with

1 the top, but as I looked at it more closely, I
2 see that that is only a portion of what's on this
3 exhibit.

4 Q And when you say "this exhibit" you are
5 talking about Exhibit 2?

6 A Yes, correct.

7 Q In addition, sir, is it not correct that there
8 are no notations on Exhibit 2 that refer to such
9 things as transit narrows, pilot away, grounding;
10 things like that?

11 A That's -- that's correct. There are none on
12 the exhibit.

13 Q So...

14 A That's correct.

15 Q ...Exhibit 16 has additional items on there?

16 A That's -- that's correct, right. This is --
17 this is strictly a copy of the course recorder
18 from the ship. There are -- there are no notes
19 on there, no editorializing or anything like
20 that, just strictly a copy of the graph paper and
21 then with the actual recording, of course.

22 MR. MADSON: I believe that's all I have, sir.
23 Thank you very much.

24 MR. COLE: Nothing further, Your Honor.

25 THE COURT: You are excused. You may step

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down.

A Thank you.

THE COURT: Don't forget to take your microphone off.

MR. COLE: Your Honor, at this time the state would call Captain Ed Murphy.

THE COURT: Ms. Henry, are you going to need the exhibits on the witness desk? If not, remove them and put them...

MS. HENRY: No, Your Honor.

THE COURT: ...at the counter.

MS. HENRY: Thank you.

THE COURT: Thanks.

(Pause)

THE CLERK: Sir, you'll find a microphone there. Please attach that to your lapel or to your tie, and remain standing and raise your right hand.

(Oath administered)

A I do.

THE CLERK: Please be seated.

WILLIAM EDWARD MURPHY

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

THE CLERK: Sir, would you please state your full name and spell your last name?

1 A William Edward Murphy. M-u-r-p-h-y.
2 THE CLERK: Your mailing address, sir?
3 A Box 597, Homer, Alaska.
4 THE CLERK: And your occupation?
5 A Excuse me?
6 THE CLERK: Your current occupation, sir?
7 A Marine pilot.
8 MR. COLE: Judge, I'd just like to move a
9 couple of these charts.
10 DIRECT EXAMINATION OF MR. MURPHY
11 BY MR. COLE:
12 Q Good afternoon, Mr. Murphy.
13 A Mr. Cole.
14 Q Would you tell the jury what you do now?
15 A I'm a marine pilot.
16 Q And how long have you worked in this position?
17 A About 16 years.
18 Q When did you become involved in the maritime
19 industry?
20 A I was a -- on summer vacations in high school,
21 I worked on fishing vessels.
22 Q And have you held the various jobs, escalating
23 up the ladder?
24 A Yes, I have. I -- my college education was
25 the Merchant Marine Academy and so forth.

1 Q And have you gotten your -- at some point you
2 held an AB license, third mate?

3 A That's correct, yes.

4 Q Can you tell me how you are different than a
5 master of a vessel? Of a tanker, for instance,
6 your job.

7 A Well, a master is a -- hired by the --
8 presumably, the ship owner. He's in charge of
9 the operation of the vessel and he's the -- he's
10 the commanding officer. When a vessel approaches
11 a port, customarily it takes a local pilot. A
12 local pilot is also an experienced mariner who
13 usually has a master's license, but this person
14 has specialized local knowledge of the port of
15 waterway the ship is coming to or leaving from
16 and, in most cases, a ship handling expert.

17 Q Can you tell me a little bit about the
18 Southwest Alaska Pilots Association; what type of
19 association is this?

20 A Oh, it's -- it's a state pilots association,
21 much in the same manner as any state pilot group
22 under the 23 coastal states. The members of the
23 association are self-employed, independent
24 contractor pilots who formed together in an
25 association to provide a pilotage service to

1 industry, pool their income, speak with a common
2 voice and conduct a piloting business.

3 Q Are you a member of that?

4 A Yes, sir, I am.

5 Q Did you have any involvement in founding that
6 organization?

7 A Yes, I'm a founding member.

8 Q When was that founded?

9 A In 1975, I believe.

10 Q And can you give the jury an idea of why it
11 was founded?

12 A Well, at that time there was in Southwest
13 Alaska, there existed a small pilot group which I
14 was a member of, called Alaska Marine Pilots. It
15 was privately held by an individual and, for a
16 variety of reasons, the pilots employed by the
17 individual weren't satisfied, and so they formed
18 their own group in the same fashion as other
19 state pilotage groups.

20 Q Did it coincide at all with the building of
21 the pipeline?

22 A No, it didn't. It was previous to the --
23 while the pipeline was being constructed at that
24 time, but the -- it was before it came on-stream.

25 Q And would you give the jury an idea of the

1 area that this pilot association covers?

2 A Yes. We -- we pilot vessels from Cape Spencer
3 to demarkation point on the Alaska/Canada border,
4 which includes Yakutat, Icy Bay, Prince William
5 Sound, Resurrection Bay, Cook Inlet, Kodiak
6 Island group, Alaska Peninsula, Aleutian Islands
7 and the Bering and Beaufort Sea coasts.

8 Q Would you explain what your role has been in
9 the transportation part of crude oil as pilots?
10 How did you become involved with that?

11 A Well, before the transAlaska pipeline came
12 on-stream, we -- we'd been piloting tankers in
13 Cook Inlet for many years. There's a lot of Cook
14 Inlet crude that's been transported by tanker out
15 of the state. So we were involved in that and
16 then when the transAlaska pipeline went
17 on-stream, I believe, the first ship was in
18 August of 1977. We, of course, were there and
19 we've piloted all those vessels.

20 Q Would you tell the jury what licenses you hold
21 presently?

22 A Yeah. I have a Coast Guard master's license
23 and I have pilotage endorsement for Yakutat, Icy
24 Bay, Prince William Sound and Western Alaska, any
25 gross tons. And I have a state pilot's license

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for the same area, any gross tons.

Q When you say the Prince William Sound, does that mean from Cape Hinchinbrook, all the way into the Alyeska Terminal?

A Yes, Prince William Sound would be a line across the outer islands which enclose Prince William Sound. Anything inside of that line is considered Prince William Sound, from the ocean entrances of Prince William Sound toward the shore.

Q What type of training did you have to go through to get these licenses?

A Well, the normal progression is to -- I graduated from the California Maritime Academy with a third mate's license; I sailed for a while on a variety of merchant ships, advanced my license; spent five years in the US Navy, advanced my license; on my vacation from when I got out of the service I returned to sea; on my vacations from sea I rode with the local pilots here in Alaska and obtained the required observer trips over the -- over the routes in Cook Inlet, and this took place over a period of about a year and 18 months. At that time I started the independent piloting on smaller vessels, and over

1 the years worked my way up to the larger vessels.
2 And during that time I continued to acquire
3 pilotage endorsements until I -- I was able to
4 get all pilotage for Southwest Alaska, from Cape
5 Spencer to demarkation point.

6 Q Would you give the jury an idea of what type
7 of testing goes on in order to get say a pilotage
8 endorsement in Prince William Sound area?

9 A Yes. There are -- well, there are two kinds
10 of piloting endorsements. The first is -- is the
11 Coast Guard pilotage endorsement, and that is an
12 endorsement to one's merchant mariner's license,
13 and depending upon the Coast Guard district,
14 there are peculiarities in each one, I think, but
15 generally speaking, the mariner makes a required
16 number of observer trips over the route in
17 question. Those trips are documented. At that
18 -- he presents that documentation to the Coast
19 Guard examining office, they check out its
20 accuracy, and at that time he can, or she can
21 take the examination. If that examination is
22 successfully passed, the endorsement for the
23 particular area is placed on the license.

24 Q Tell the jury what kind of examination that
25 you're required to take for that? What would you

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-- for instance, what would you be required to know?

A Well, I can't be totally accurate now. It's been many, many years since I finished taking those examinations. Although I think the requirements are essentially the same. Generally a chart sketch of the area in question is required.

Q When you say chart sketch what do you mean?

A Well, the Coast Guard examining officer provides the testee with an outline of -- of the land masses.

Q Like a blank chart?

A Yeah, essentially a blank chart. There are -- there's no data on it at all, just an outline of land masses and so forth. You have to draw in the soundings, dangers, usually the 10-fathom curve, name the major points. Normally they require the applicant to draw in the course line that would normally be used by ships transiting that particular area and so forth. And then -- at least it was the case the last exam I took -- you turn the chart sketch over and on the back you write from memory the full details of all the aids to navigation which appear on that chart.

1 Q When you say aids to navigation, some people
2 might not be familiar with that. Would you
3 explain what you mean by that?

4 A Aids to navigation would be a lighthouse
5 structure, a day marker, a buoy.

6 Q And then you are graded on how accurate you...

7 A Well, the way it used to be done -- yeah, I
8 think it really depends upon the examiner of the
9 accuracy of the chart sketch that's required.
10 The accuracy of the aids to navigation used to
11 have to be 100%, and then there's a local
12 knowledge examination, generally taken out of
13 sources like the Coast Pilot, the tide and
14 current tables and so forth.

15 Q Does a person have to be a pilot of your
16 association to get this type of pilotage
17 endorsement?

18 A No, sir. It's a federal endorsement. Anyone
19 who fulfills the requirements can take the
20 examination.

21 Q And that could be a tanker captain or a first
22 mate or second?

23 A Yes, it could.

24 Q Now, in addition to the licenses you just
25 talked about, are there any internal training

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requirements that are required by the Southwest Alaska Pilots Association?

A Well, I -- there is an additional state license...

Q Oh, okay. Would you tell us...

A ...beyond the federal license, yes. The prerequisite to the state license is the -- is the federal license. If one has a federal license and wants a state license, he has to have a certain grade of marine license, has to -- to document a certain number of dockings and undockings in a particular area for which he or she is applying. At that time there's another examination, a written examination on the -- on the particular area and on the marine pilot board rules and regulations, master pilot relationships, ship handling, rules of the road. There's also a physical examination and an oral interview. That's the initial state license. Once a person has jumped those hurdles to add additional pilotage is just a matter of taking the examination for the particular area he wants.

Q And you have the state license for the Prince William Sound area also?

A Yes, sir, I do.

1 Q And I think when we left off we were talking
2 about are there any additional internal training
3 requirements that you have that the Southwest...

4 A Yes. Yes, there are. And this is common in
5 state pilot groups such as ours. We -- we think
6 our requirements are quite stringent. We require
7 all of our people to attend -- well, the best
8 ship handling simulators in the world right now
9 are -- is in Grenoble, France and South Hampton,
10 England. We -- we have a system of hands-on
11 training; junior pilots, apprentice pilots ride
12 with more senior pilots extensively. As they
13 progress, they are given more and more
14 responsibility until they arrive at a point where
15 they -- they are pretty much independently
16 running the vessel to and from its destination
17 under the -- under the care of the senior pilot
18 once the applicant reaches that point, which
19 depending on his experience and progress, can
20 vary from one year to three years. Once he
21 reaches that point we have a system of three
22 check rides. We call them check rides. The
23 applicant -- or the trainee, excuse me, has to --
24 has to satisfy three senior pilots independently
25 on three independent different jobs that he's

1 capable of doing the work. There's a written
2 evaluation. There's -- throughout this process
3 there are written evaluations. There are
4 different written evaluations for these check
5 rides. If they're satisfactory, we then turn
6 loose the new fellow on vessels for which the
7 group of senior pilots feels he is qualified, and
8 he then progresses according to his experience
9 and progress.

10 Q It sounds like it's quite a rigorous program?

11 A Yes, sir, I think it is.

12 Q And it's designed to have very qualified
13 people?

14 A That's correct.

15 Q Do you have to stay current after you get
16 these licenses?

17 A Well, there's a -- both the Coast Guard and
18 the state have certain currency requirements. I
19 -- I can't tell you exactly what they are now,
20 except that at renewal time you have to document
21 a certain amount of experience to satisfy this.
22 The state has a regulation which requires if a
23 person has been -- has been off duty for, I
24 believe, 60 days for a medical reason, he has to
25 -- he has to have a physical examination and be

1 cleared by a medical doctor to return to piloting
2 duty. On a more practical level, I think a pilot
3 who hasn't been in a place for quite a while
4 would -- would take pains to transit it a few
5 times with other pilots or even hire a fishing
6 boat or something to run back and forth, check
7 the soundings and the aids to navigation and so
8 forth. That, however, would not be required.

9 Q Do you hold any positions in any -- do you
10 hold any positions within the Southwest Alaska
11 Pilots Association?

12 A Yes, sir, I'm the president of the
13 association.

14 Q Are you associated with any other pilotage
15 boards or commissions?

16 A Not now. I...

17 Q Have you been in the past?

18 A Last July I completed a term on the Alaska
19 Board of Marine Pilots where I was the chairman.

20 Q I'd like to shift gears here for a minute.
21 You said before that you had the pilotage
22 endorsement for Prince William Sound.

23 A That's correct.

24 Q And that would be both federal and state?

25 A Yes.

1 Q And the federal comes under Coast Guard
2 regulations?

3 A Correct.

4 Q What do these entitle you to do?

5 A Entitles me to -- which, the state or the
6 federal?

7 Q Both.

8 A Both. Well, they entitle -- the federal
9 entitles me to serve as pilot on vessels
10 transiting Prince William Sound on vessels of any
11 gross tons. That would be US enrolled vessels.
12 The state license entitles me to do the same
13 thing on foreign or US flag registered vessels.

14 Q People might not be familiar with the term
15 "enrolled" or "registered". Could you explain
16 what you mean by enrolled?

17 A Yes. An enrolled vessel is a US flag vessel
18 which is engaged in a coastwise voyage from one
19 US port to another US port.

20 Q Would an example be some -- a tanker that was
21 coming from say San Francisco to Valdez?

22 A That would be an example, yes. A registered
23 vessel is a US flagged vessel which is an
24 international voyage. In other words, it's
25 arriving at a US port from a foreign port or it's

1 departing from a US port bound for a foreign
2 port.

3 Q Would an example of that be a tanker that goes
4 from Valdez to Panama?

5 A Yes, it would.

6 Q Now, are there different types of pilotage
7 endorsements that a person can have, depending on
8 the area that he's in, in Prince William Sound?

9 A Yes. Now, again, it's been a long time since
10 I've taken the examination. Newer fellows in the
11 association have recently taken it so I'm fairly
12 conversant with it. Yes, there -- if, for
13 example, a person hasn't documented the required
14 observer trips in all of Prince William Sound, he
15 can only take the examination for that portion of
16 the sound in which he has documented trips. And
17 if he passes that examination, his endorsement
18 would be restricted to that part of Prince
19 William Sound for which he has been examined.

20 Q An example -- would an example be from
21 Hinchinbrook to Rocky Point?

22 A Yes, that would be an example.

23 Q Let's talk for a little bit about the -- your
24 station in Valdez. How do you work out of
25 Valdez; do you live there or how do you work out

1 of there?

2 A Well, our main office is in Homer, to which is
3 the pilot station for Cook Inlet. We keep four
4 pilots stationed all of 12 months a year in
5 Valdez on a rotating basis. Pilots go over there
6 and put in a two-week rotation and then they are
7 rotated out, but there are always a minimum of
8 four pilots on station. We have a rented house
9 in town, which is our combination living quarters
10 and office. And we have four automobiles to
11 drive from town to the TransAlaska Pipeline
12 Terminal.

13 We have a pilot station in the area of Rocky
14 Point, which is -- it's now -- it'll be moved
15 shortly, which is 16 miles out of town. There's
16 a mooring there where we keep our pilot boats.

17 Q Maybe if I just hold you for a second. Let me
18 set that up on the chart block there and pinpoint
19 it.

20 A All right.

21 (Pause)

22 (3300)

23 (Tape: C-3599)

24 (0010)

25 Q Before you ask any questions, I'm showing you

1 what has been identified as Plaintiff's Exhibit
2 21. Do you recognize what this is a chart of?

3 A Yes, I do.

4 Q Could you tell the jury what that is?

5 A That's Valdez -- Port Valdez and Valdez Arm,
6 chart 16707.

7 Q And is that a chart that is used in the
8 maritime industry?

9 A Yes, it is.

10 MR. COLE: Judge, I would move for the
11 admission of what has been identified as Plaintiff's
12 Exhibit 21.

13 MR. MADSON: No objection, Your Honor.

14 THE COURT: Admitted.

15 EXHIBIT 21 ADMITTED

16 Q Could you take the pointer that I handed you,
17 and we were talking about the pilot station at
18 Rocky Point, maybe you could give the jury an
19 idea where that would be?

20 A Well, Rocky Point is just here at the end of
21 the pointer. There's a cove behind Rocky Point
22 where we have a mooring and we tie our pilot
23 boats up to that mooring. It's about 16 miles
24 from Rocky Point to the TransAlaska Pipeline
25 Terminal.

1 Q And this is generally the place where the
2 exchange -- you get on and where you get off?

3 A Well, no. No, the -- we're talking about
4 pre-accident?

5 Q Yes.

6 A The pilot station was 2.3 miles north of Busby
7 Island light. Generally -- which is -- this is
8 pretty much Rocky Point. This is considered the
9 boarding -- and was considered the boarding and
10 disembarking area. We board vessels and
11 disembark them in this general area, but the
12 pilot boats return -- between pilot runs, they
13 return to their mooring here inside of Rocky
14 Point.

15 Q Can you give the jury an idea of where the
16 tankers on that chart are loaded up with oil,
17 where are their berths?

18 A Right here at the TransAlaska Pipeline
19 Terminal in Port Valdez.

20 Q Okay. And the -- kind of the blow-up in the
21 right-hand corner, is that another diagram of
22 that terminal?

23 A That's a larger scale chart of the terminal
24 area.

25 Q Would you identify what the particular berths

1 are? Can you tell them were berth number five
2 is, for example?

3 A It's going from left to right, berth five,
4 berth four, berth three and berth one. There is
5 no berth two.

6 Q And the oil is contained in the tankers, the
7 tank field that they have up behind the terminal?

8 A Yeah, up on the hill are the storage tanks.

9 Q I notice that on this chart there is a line.
10 Were you asked to draw that line in this
11 particular...

12 A Yes, I drew that in for you this morning.
13 That's a typical track that I try to stay on,
14 keep ships on, navigating from the TransAlaska
15 Pipeline Terminal out to the Rocky Point pilot
16 station.

17 Q Can we -- why don't we talk a little bit about
18 when you come to a tanker, what you end up doing
19 when you arrive. Let's talk about the outbound.

20 A What would you like to know?

21 Q When do you normally get to the tanker?

22 A Oh, I normally leave my quarters in Valdez not
23 later than one hour before the ship's scheduled
24 sailing time, which puts me on the ship about 30
25 minutes prior to scheduled sailing. I -- it's

1 protocol. I normally stop at the master's cabin
2 and let him know that I'm aboard, perhaps visit
3 with him. I go to the wheelhouse and look at
4 what they call the tugs, make pre-departure
5 checks and get ready to go.

6 Q Can you give this jury an idea of -- are all
7 real tankers the same?

8 A No, they're not all...

9 Q As far as size and maneuvering characteristics
10 and bridge instrumentation, things like that.

11 A Well, they're not all the same. There are an
12 awful lot of similarities, of course, but they
13 vary in size, in terms of length and beam,
14 tonnage,...

15 Q When you say beam...

16 A ...draft.

17 Q ...what do you mean?

18 A That's the width of the vessel.

19 Q And draft?

20 A That's how much -- how much of the ship is
21 below the -- the sea surface.

22 Q How do you get acquainted; is there any kind
23 of procedure you use to become acquainted once
24 you step onto a ship, maybe, that you haven't
25 been on before?

1 A Well, normally I -- I have been on all these
2 ships. The ship that calls at the TransAlaska
3 Pipeline Terminal, almost all of them have been
4 there many times, and I'm pretty familiar with
5 them. On a ship I'm not familiar with, if
6 there's anything that -- that is unusual or that
7 isn't common to other ships, I ask about it.
8 Normally I ask the master when I go aboard a ship
9 if everything is working all right, if there are
10 any problems. When I go aboard a ship at the
11 TransAlaska Pipeline Terminal and sail, I make
12 certain checks myself to assure myself that
13 things are as they should be.

14 Q Do you have any kind of a checklist that you
15 go through before you head out?

16 A Not something on paper. I have my own
17 personal checklist that I follow.

18 Q Can you give the jury an idea of what that is?

19 A Well, normally I check the weather before
20 leaving my quarters or I check it on the ship; I
21 check the gyro -- the heading of the gyro compass
22 against a known heading of the dock; and I check
23 the...

24 Q Some people might not be familiar with some of
25 these, so I may have to interject at certain

1 give the jury an example.

2 A Well, I know what the heading -- true heading
3 at the dock is and so I look at the steering --
4 at the gyro repeater on the steering stand to
5 make sure -- to see how much that might vary from
6 the known dock heading, and that gives me an idea
7 of what the gyro compass error may be. Now,
8 that's -- that doesn't always indicate the error
9 because the speed and latitude correctors,
10 various settings on the gyro compass may not have
11 been adjusted properly, but -- but anyway,
12 leaving the dock, I'll -- I'll have an idea if
13 there is any gyro error. I check the same thing
14 on the other repeaters and the radar.

15 Q Is there anything else that you check before
16 you leave?

17 A Yes, I ask the mate on watch or the master for
18 the vessel's drafts; I ask him if everything is
19 working all right, are there any problems; I
20 check the VHF radios to make sure they're tuned
21 to the frequencies I want, appropriate
22 frequencies, and pretty much check things over.
23 I normally call the tugs after I've chatted with
24 the master to see if -- or the mate, to see if
25 the departure is going to be on time. I call the

1 tugs and tell them when we want them and tell
2 them how I propose to take them up to the ship.

3 Q A docking is something that people might not
4 be familiar with. Can you give the jury an idea
5 of how you use the tugs to help you undock a
6 tanker like this and what potential problems you
7 have to avoid?

8 A Well, you can use tugs in a variety of ways,
9 and that would depend purely on the -- on the
10 vessel in question; where it was berthed, the
11 weather -- wind and weather conditions and so
12 forth. But having said that, normally you -- you
13 put the tugs on the inside of the ship and push
14 it off or you -- or you tie the tugs to the
15 outside of the ship and pull it off, or a
16 combination of those two means, and your -- you
17 are interested in getting the ship cleanly away
18 from the dock without striking the dock or doing
19 any damage.

20 Q And would you mind now taking the pointer and
21 giving the jury an idea of what type of route you
22 attempt to take out of the Port of Valdez?

23 A This is my normal route. I -- leaving the --
24 now, this -- of course if there's traffic,
25 things can and probably will be different, but no

1 traffic, normally steer a course of 300 true and
2 gyro, parallel indexing with the -- with the
3 radar, and I change course to 270 to pass...

4 Q I have to stop you there for a minute. What
5 do you mean by parallel...

6 A Excuse me.

7 Q ...indexing with the radar?

8 A My next course is this one, it's going to be
9 270, and on that course I want to pass one mile
10 off of this point, so I flip a cursor, either the
11 mechanical cursor or the electronic cursor on the
12 radar to point to 270 at one mile off of this
13 point. I'm projecting my next course. And when
14 I arrive at a point on this course, where I
15 should turn in order to make good this -- this
16 distance off of the next course, that's what I
17 do, that's parallel indexing. I change course to
18 270 to pass about a mile off of this point.

19 During this time, usually accelerating the ship
20 to -- again, this is good visibility, no traffic
21 -- to a speed of about 12 knots. Somewhere in
22 here I start slowing the ship because there's a
23 speed limit in the narrows here for loaded
24 vessels of six knots; start slowing the ship and
25 change course here to make good a course of 225

1 through the narrows to pass approximately .4 of a
2 mile off of Entrance Island light and about .26
3 miles off of Middle Rock. The leading mark here
4 is -- is Potato Point and buoy 11, change course
5 approaching Entrance Point to make good 208. The
6 following mark is Middle Rock and it's light, and
7 change course at Potato Point, passing Potato
8 Point about .4 of a mile off, pick up a new
9 course, make that a course of 219 out here to the
10 -- to the old pilot station near Rocky Point, and
11 then enter vessel traffic lanes here.

12 Q Okay. You can sit down. I'm just going to
13 ask you some questions about each general area.
14 You said that you try and generally speed up to
15 12 knots in the Port of Valdez except if there's
16 bad weather or traffic. What type of speeds do
17 you use if there's traffic?

18 A That's a general question that can't be
19 answered precisely. It purely depends on
20 circumstances. If there's a lot of traffic and
21 -- and you can't communicate with them, for
22 example, and/or if the visibility is not good,
23 it's probably good to go at a slower speed.

24 Q Now, do you use -- the tankers that you pilot,
25 they have automatic pilot?

1 A Yes, they do.

2 Q And in the maritime industry, that's often
3 referred to as gyro or Iron Mike. Is that
4 correct?

5 A Correct.

6 Q Do you use that in the Port of Valdez area?

7 A No.

8 Q Why not?

9 A I wouldn't consider -- I don't consider
10 prudent seamanship in an area that's where the
11 beach is relatively near to be on the Iron Mike
12 in this particular area.

13 Q Now, you talked a little bit, and what I'd
14 like you to do is focus on the blow-up in the
15 left corner there and the dotted lines that go
16 across the narrows.

17 A These?

18 Q Yes. Can you explain -- is there any
19 significance to those dotted lines?

20 A Yes, that's -- that describes the limits of
21 the Valdez narrow's one-way traffic area. It's
22 our...

23 Q What does that mean?

24 A It means that if there are more than -- if
25 there's more than one vessel in the -- in the

1 vessel traffic system, and I'm speaking of
2 vessels which are required to use the vessel
3 traffic system, small vessels aren't,...

4 Q We're talking tankers mainly.

5 A Okay. If two tankers -- if one wants to go
6 out and one wants to come in, in other words pass
7 each other, that's not permitted between -- in
8 the Valdez narrows between these two lines. It's
9 a one-way traffic area only, so one of the ships
10 would have to wait for the other to clear the
11 area.

12 Q What if there were two going out at the same
13 time?

14 A Well, one would follow the other and will have
15 to keep a prescribed distance astern.

16 Q Are there any speed -- I think you briefly
17 mentioned, but are there any speed requirements
18 in this area?

19 A Yes, for -- for light vessels. In other
20 words, we're talking tankers now, for tankers and
21 ballast without cargo, the speed limit...

22 Q In ballast?

23 A In ballast, yes. That's a ship that does not
24 have petroleum cargo aboard. And talking about
25 tankers, their speed limit in the narrows is 12

1 knots. Actually it's between Tongue Point and
2 Entrance Island. Outbound for laden tankers the
3 speed is between Middle Rock and Potato Point and
4 that limit is six knots.

5 Q Can you give the jury an idea of how wide an
6 area it is at its narrowest point there?

7 A It's about half a mile wide, quarter of a mile
8 on either side of you.

9 Q And at one point you come within .26 miles; is
10 that what you were saying at Middle Rock?

11 A Well, the -- on the chart line, you come --
12 pass abeam Middle Rock about .26 miles off, and
13 on this little dimple of shoreline about .25, a
14 quarter of a mile off.

15 Q Do you use automatic pilot in this area?

16 A No.

17 Q Is your progress through -- from the time you
18 leave the dock, monitored at all?

19 A Yes, it is.

20 Q Can you give the jury an idea of what that...

21 A Well, the...

22 Q ...how that occurs?

23 A The Coast Guard Vessel Traffic System has a --
24 has a radar monitoring system. One of the radars
25 is over here on -- near town, right by the

1 breakwater to the small boat harbor. Another one
2 is right here on Potato Point, and the -- that's
3 where the scanners are located. The console
4 units are -- are located in the Vessel Traffic
5 System traffic room in downtown Valdez.

6 Q Okay. Now, just finally in this last area,
7 would you explain to the jury what the lane that
8 we see at the bottom of that diagram are? Chart,
9 I guess I should say.

10 A Well, this -- this is the vessel traffic
11 separation scheme. This one, I'm pointing to, is
12 for noting if they're inbound vessels, and the
13 one opposite it is for southwest outbound
14 vessels, and the purple area in between them is
15 called the separation zone, which vessels are
16 supposed to stay out of when they -- when they're
17 in the system.

18 Q Can you tell the jury, have you -- you were
19 the pilot on the inbound and outbound journeys of
20 the Exxon Valdez on the 22nd and 23rd of March?

21 A That's correct.

22 Q Would you describe for the jury how you would
23 characterize these -- this vessel as far as
24 maneuverability?

25 A For a vessel of its class, it's a very fine

1 ship. It's -- it has ordinary maneuvering
2 characteristics. It's a good handling vessel.

3 Q How about the state of the art of the
4 navigation equipment that was contained in that
5 vessel?

6 A First class.

7 Q Do you remember the number of radars that it
8 had?

9 A I believe two, yes; two navigation radars and
10 one anti-collision system, which at least
11 typically it's slaved off one of those radars.

12 Q I'd like to talk to you now about the inbound
13 route that you took on March 22nd. Do you
14 remember when you got on-board the Exxon Valdez
15 that evening?

16 A Well, I'll have to refer to my notes.

17 Q Sure.

18 A Yes, I boarded at 2014 hours.

19 Q And where did you board at?

20 A In the boarding area down here, somewhere
21 between Busby Island and Rocky Point, out here in
22 the traffic lanes.

23 Q Is there a reason that you went to that
24 particular point versus out further at Bligh
25 Reef?

1 A No, Bligh Reef is down here, off of -- it's
2 not on this chart.

3 Q Okay. For the Exxon Valdez did the master
4 have a pilotage endorsement to Rocky Point?

5 A I presume he did. I didn't look at his
6 license.

7 MR. CHALOS: I move to strike that.

8 THE COURT: I'll grant that. The presumption
9 has been struck. Disregard the last answer.

10 Q Did you notice any problems with the Exxon
11 Valdez that evening?

12 A No, I didn't.

13 Q Do you remember when you arrived at Alyeska
14 Terminal that evening?

15 A Yes, we -- according to my record, we had
16 first line port side to Alyeska berth five at
17 2245 hours.

18 Q When did you leave that evening; do you
19 remember?

20 A Again, according to my record, I disembarked
21 the vessel at 2340 hours.

22 Q Did you board the Exxon Valdez again the next
23 evening? It would have been March 23rd.

24 A Yes, I did.

25 Q Do you remember about what time you got there

1 that evening?

2 A Well, according to my log, I boarded at 2020
3 hours on March 23rd.

4 Q Now, the jury -- for the jury, can you tell
5 them what time that is?

6 A That's 8:20 p.m.

7 Q In the evening?

8 A Yes.

9 Q Where did you go that evening first, upon
10 boarding the tanker?

11 A I stopped at the master's cabin and knocked on
12 the door.

13 Q What happened when you knocked on the door?

14 A He -- Captain Hazelwood either wasn't there or
15 he was asleep in his bedroom, I don't know which.
16 I didn't know which, and I then proceeded to the
17 wheelhouse.

18 Q Who was up at the bridge in the wheelhouse
19 when you got there?

20 A One of the mates. I wasn't acquainted with
21 him. I've since found out it was -- it was the
22 third mate that was in the wheelhouse.

23 Q What did you do when you got up to the
24 wheelhouse?

25 A Well, I -- I probably greeted the third mate

1 and I made the -- the departure -- pre-departure
2 checks that I customarily make, and I think I
3 listened to the weather and had a cup of coffee.
4 I believe I called the tugs also, while I'm not
5 sure about that, but I think I did.

6 Q During your pre-departure check did you find
7 any problems?

8 A No.

9 Q Were you told of any problems?

10 A No.

11 Q And you mentioned that you did a weather
12 report. Can you give an idea to the jury of what
13 the weather was like that evening?

14 A I -- I sure can't remember what the weather
15 report said. I've listened to hundreds of them
16 since then, but as I recall, the visibility was
17 somewhat limited in Port Valdez. I believe the
18 weather was calm.

19 Q Had you heard of any ice reports?

20 A Yes. Yes, I had.

21 Q Would you explain to the jury what you had
22 heard?

23 A Well, prior to leaving my quarters to come to
24 the Exxon Valdez, we monitor the VHS radio
25 channel, which is used by the Vessel Traffic

1 System and the ship to communicate with one
2 another, and I overheard the -- the Arco Juneau
3 telling the Vessel Traffic System that he
4 encountered ice across -- across -- I believe he
5 said -- I'm not precise about what he said. He
6 encountered ice and he was going to deviate from
7 -- from the outbound traffic lane to avoid the
8 ice.

9 Q Have you encountered ice conditions before in
10 piloting vessels in...

11 A Yes.

12 Q ...in Prince William Sound? Would you tell
13 the jury where does the ice come from?

14 A Well, the ice calves from Columbia Glacier.

15 Q And generally is there a way that it flows out
16 of that area?

17 A No, it depends upon the...

18 Q Would it help if you have the other map; could
19 you -- I've got another chart there.

20 A Yeah, I think it probably would.

21 Q Okay.

22 MR. COLE: Judge, if I could just step behind
23 you?

24 THE COURT: All right.

25 MR. COLE: Can I get a sticker from you?

1 Q I'm showing you what's been identified as
2 Plaintiff's Exhibit 25. Do you recognize that,
3 sir?

4 A Yes, that's the chart of Prince William Sound,
5 16700.

6 Q And is that chart used in the navigation you
7 have out there?

8 A Well, I believe this particular one is a year
9 out of date, but, yes.

10 Q It's fairly accurate though?

11 A Yes.

12 MR. COLE: We would move for admission on
13 what's been identified as Plaintiff's Exhibit 25.

14 MR. CHALOS: No objection, Your Honor.

15 THE COURT: Admitted.

16 EXHIBIT 25 ADMITTED

17 Q Should you use the pointer again to give the
18 jury an idea where the ice comes from and where
19 it goes after it comes out of the glacier?

20 A Well, typically the ice calves off Columbia
21 Glacier here, up in Columbia Bay, and depending
22 on a number of factors, none of which can be
23 precisely measured, the ice -- as the ice calves
24 off it, it sometimes drifts out of Columbia Bay
25 into and occasionally across the lanes of the

1 Vessel Traffic System. Normally -- but typically
2 the flow is something like this. Once in a while
3 it will flow up toward Busby Island.

4 Occasionally you'll see it as far north as Rocky
5 Point.

6 Q Are there times when it's worse than others?

7 A There are, yes.

8 Q Can you give the jury an idea of -- is there
9 certain seasons at all, or...

10 A Well, this is a random thing, which can't be
11 forecast, but generally speaking the worst ice
12 time is probably spring through the autumn.

13 Q Have you ever had to delay a trip either going
14 in or coming out because of ice?

15 A Have I? No.

16 Q Have you heard of that happening?

17 A I've heard of -- yes, there have been masters
18 who, from time-to-time, have not felt comfortable
19 with the ice information they had and they chose
20 to stay in port until daylight.

21 Q Can you give the jury an idea of how many
22 times you've brought tankers through Prince
23 William Sound in icy conditions?

24 A No, I can't. Probably -- I suppose more than
25 a hundred times until the -- until recently the

1 pilot station was at Rocky Point, and typically
2 the ships would already have gone through the ice
3 by the time they arrived at the pilot station,
4 and outbound the pilot would have gotten off at
5 Rocky Point and the ice normally would have been
6 encountered after that. However, I've taken
7 quite a few ships through there, a non-pilotaged
8 ship.

9 Q Have you ever been asked by a pilot or by a
10 master to go out further to Bligh Reef to help
11 him through icy conditions, even though he...

12 A That's...

13 Q ... will let you off...

14 A That's happened on occasion.

15 Q Do you have any general rules that you follow
16 in going -- navigating through an area with ice?

17 A Through this area?

18 Q Yes.

19 A No, not really. It depends upon -- upon the
20 ice and upon the circumstances, the vessel I'm on
21 and so forth.

22 Q Would it depend on the amount of ice, say for
23 instance or...

24 A Sure. It would depend on the amount of ice,
25 if it was across both lanes, if it looked like

1 there was a clear pass through the ice, it would
2 depend on whether it was night or day, what the
3 visibility conditions were and so forth.

4 Q What are the risks associated with a tanker
5 going through ice?

6 A I can only give my opinion, I think, and it
7 will vary between some masters and pilots. The
8 -- I think if there are heavy ice with big
9 growlers and burgey bits, and if a tanker hit one
10 of those at relatively high speed, it could do
11 some damage. If the ice is either avoided or
12 navigated through cautiously, it's no particular
13 problem.

14 Q When you say navigated through cautiously,
15 what steps can you take to decrease the risk of
16 hitting this ice?

17 A Well, you change course to go around it. You
18 try to never hit a big piece of ice. In fact you
19 just don't do that, hit a big piece of ice. So
20 you change course, you slow the vessel down.

21 Q How about watches; is there any particular
22 place where a watch...

23 A Yeah, you can ask the lookout to be stationed
24 forward. The lookouts -- the utility of that is
25 it's kind of up for grabs. Sometimes lookouts

1 can be a big help and there would be a pretty
2 brash pilot who depended upon a lookout.

3 Q What type of instruments on the bridge are
4 available to help you see ice?

5 A Well, other than binoculars, if it's clear
6 enough, the radar.

7 Q Can you see the ice on the radar?

8 A Yes. The -- sometimes you can. Sometimes --
9 in fact, usually ice makes a pretty good radar
10 return under certain conditions. If it's
11 relatively calm, for example, and the radar is
12 tuned up. If the ice is -- that is if the ice is
13 hard-edged and quite large, in some cases the ice
14 seems to be rounded and humpbacked, if you will,
15 and it doesn't make a very good radar target. If
16 there's a high sea state, a lot of sea return,
17 sea clutter in the radar, it's -- one doesn't
18 want to depend a great deal on seeing ice in the
19 radar.

20 Q If you had a large amount of ice in front of a
21 tanker, would that be, in your opinion, a
22 hazardous condition that would require
23 extraordinary steps,...

24 A I don't...

25 Q ...safety procedures? Maybe I should say

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that.

A I don't think I would put it in those terms.
We're talking about this area?

Q Yes.

A No, I would -- I would do as I said, possibly post a lookout up on the bow. If one wasn't posted, probably slow the ship down and/or change course. It just depends on the circumstances. If I can change course and get around the ice, I'd probably do that.

Q How about the use of automatic pilot in a situation like that; would that be the type of place that you would use the automatic pilot?

A No, it wouldn't.

Q Why is that?

A Well, if you were navigating in the area of ice there are -- normally as you approach a piece of ice, you are giving the conning -- the conning officer, the pilot in this case, is giving the quartermaster orders, rudder orders. For example, I'll say left 20, which means left 20 degrees rudder, and the quartermaster then responds by turning the helm and giving a left 20 degrees rudder, and that's -- the automatic pilot is used to keep a particular course, in most

1 cases. So use of the automatic pilot wouldn't be
2 appropriate in that circumstance.

3 Q The times that you have maneuvered through
4 ice, have you found it helpful to have the
5 captain on-board at those times?

6 A Well, the captain is always on-board.

7 Q Well, up on the bridge.

8 A Yeah, sure, an extra set of eyes, absolutely.

9 Q Who was the captain of the Exxon Valdez on the
10 evening that you went out and picked it up and
11 came back?

12 A Captain Joe Hazelwood.

13 Q Have you known him for a long time?

14 A I've known him for a number of years.

15 Q Would you consider him a friend of yours?

16 A I would.

17 Q Do you remember when he arrived on the bridge
18 that evening on the 23rd?

19 A Yes.

20 Q Can you tell the jury when that was?

21 A I sure can't relate it to a time. I had been
22 in the wheelhouse perhaps 10 minutes, and I'm
23 unsure of that, and he arrived in the wheelhouse.

24 MR. COLE: This is a good place to stop, if
25 you'd like,...

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THE COURT: All right.

MR. COLE: ...Judge, for a break.

THE COURT: Sure. We'll take a break for about 10 or 15 minutes, ladies and gentlemen. Remember my instructions not to discuss this case among yourselves with any other person and not to form or express any opinions. If you can identify your pad by putting a number and your name on the back of it, when you get a chance. A number is fine, that's all we need.

We'll see you back at 1:00.

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

(Off record - 2:52 p.m.)

(On record - 3:13 p.m.)

THE COURT: You may be seated. You may resume, Mr. Cole.

Q (Captain Murphy by Mr. Cole:) Captain Murphy, I think when we left we were discussing Captain Hazelwood and you've known him for a long time. And I asked you, do you know when he arrived on-board that evening, the night of the 23rd. Do you remember that?

A I can't give you a precise time. I think I'd been in the wheelhouse perhaps 10 or 15 minutes,

1 somewhere in that range, when he came up.

2 Q Had you seen Captain Hazelwood that morning?

3 A Yes. Or earlier that afternoon anyway.

4 Q How did that occur?

5 A (Sneezes) Excuse me. When I -- before I

6 disembarked the vessel the evening before,

7 Captain Hazelwood and I had arranged to have

8 lunch together the following day. He said he was

9 going ashore. I believe he said he needed to

10 make some telephone calls from the office of his

11 agent and that he would telephone me from there

12 and perhaps we could get together for lunch. And

13 -- and that's what's happened. That is what

14 happened. He telephoned me and said he was at

15 his agent's and would I pick him up. I drove to

16 his agent's and Captain Hazelwood and two other

17 men were standing in front of the agent's office

18 and they got in the car and we drove to a local

19 restaurant.

20 Q Where did you go eat that day?

21 A An establishment called the Pizza Palace in

22 Valdez.

23 MR. COLE: Judge, I'd like to bring out

24 another exhibit.

25 (Pause)

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Q I'm showing you what has been marked for identification as Plaintiff's Exhibit 23. I notice it's kind of crowding you there. Do you recognize that photograph?

A Yeah, it looks like the eastern portion of Port Valdez.

Q Okay. And you've lived in Valdez for a number of years. Is that a fairly accurate representation of how Valdez looks?

A No, I only pilot out of there. I live in Homer, but I spend a lot of time in Valdez -- yes, it is, uh-huh (affirmative).

MR. COLE: I would move for admission of that exhibit, Your Honor.

MR. CHALOS: No objection, Your Honor.

THE COURT: Admitted.

EXHIBIT 23 ADMITTED

Q And while we're at it, can you point on that to where the terminal is in berth five?

A Yes, this is the terminal complex here. Berth five would be this westernmost berth.

Q And can you point on the map to where the Pizza Palace is?

A Oh, it's about here, just across the street from the small boat harbor.

1 Q And -- okay. How do you get from the Pizza
2 Palace out to the Alyeska Terminal; can you just
3 follow the...

4 A Well, you'd drive up one of these streets to
5 the -- the main road here and follow the main
6 road down here to where it intersects the road to
7 the pipeline terminal and follow that right down
8 and go through the main gate here.

9 MR. CHALOS: Your Honor, excuse me. Do we
10 have a scale on that or can we get some sort of an idea
11 of what distances are that we're talking about?

12 THE COURT: You may proceed, Mr. Cole. I
13 don't know what your request is. This is Mr. Cole's
14 exhibit, it's in evidence, and at this time there is no
15 scale on it.

16 Q Do you remember about what time
17 Captain Hazelwood gave you a call that day?

18 A It was sometime during the noon hour, around
19 12:00 a.m., thereabouts.

20 Q A.m.? The four of you went to the Pizza
21 Palace?

22 A Correct.

23 Q What did you do there?

24 A Had lunch.

25 Q And did you just have -- did you know the

1 other two individuals that were with
2 Captain Hazelwood?

3 A I recognized the chief engineer. I'd seen him
4 previously on other Exxon vessels, I believe, and
5 the other gentleman was introduced to me as the
6 radio electronics officer. I had not met him
7 previously.

8 Q What did you have to drink at lunchtime that
9 day?

10 A I believe I had ice tea and water.

11 Q And the other individuals who you were sitting
12 with, do you remember what they had to drink?

13 A Yeah, the chief and the radio officer each had
14 two beers. I believe Captain Hazelwood also had
15 a -- had ice tea or perhaps only water. He
16 didn't have any beer.

17 Q Can you give the jury an idea of how long you
18 stayed there?

19 A I would say within the range of an hour; about
20 an hour. We had lunch and chatted, and it was, I
21 suppose, about an hour.

22 Q Did you see anyone else you knew in the
23 restaurant before you left?

24 A Yes. Yes, I did.

25 Q Would you tell the jury who that was?

1 A I believe it was Mr. Bob Arts, who is the
2 Valdez manager for Alaska Maritime Agency.
3 Q And that was the agency where you had gone and
4 picked them up?
5 A Well, actually I hadn't gone to their office.
6 Captain Hazelwood and his party were waiting
7 outside the office at the front steps.
8 Q Where did you go after lunch?
9 A I dropped Captain Hazelwood and his party off
10 at the -- I can't remember the name of the shop.
11 Q Could you point up there on the map...
12 A Yeah, it was somewhere...
13 Q ...and give the jury an idea?
14 A ...somewhere on the Valdez market complex.
15 It's right here in this area, a short distance of
16 a couple of blocks from the Pizza Palace. I
17 dropped them off some -- right in the parking lot
18 of the Valdez market, and there are several shops
19 along here.
20 Q And is that across from where it's been marked
21 as the Pipeline Club?
22 A Yes, the Pipeline Club is across the street.
23 Q What did you do after you dropped them off?
24 A I went back to my quarters.
25 Q And when did you see Captain Hazelwood next?

1 A I saw him when he appeared on the bridge of
2 the Exxon Valdez, prior to sailing.

3 Q Did you have anything to drink that evening,
4 as far as alcohol?

5 A Absolutely not.

6 Q Why is that?

7 A I -- I -- because I had to go to work.

8 MR. CHALOS: Your Honor, that's...

9 THE COURT: I don't see how -- why he didn't
10 -- it doesn't have anything to do with this case.

11 Objection sustained.

12 Q When the Captain came on-board the Exxon
13 Valdez that night did he talk with a
14 representative from the Alaska Maritime?

15 A Yes. Pat Caples was in the wheelhouse. I
16 think she and I were conversing, and
17 Captain Hazelwood came on the bridge, under the
18 wheelhouse, and he and Ms. Caples exchanged
19 greetings and shortly thereafter they -- they
20 went below, I presume, to the Captain's cabin
21 where they conducted business.

22 Q Do you know what her general purpose of coming
23 on-board is?

24 A Yes. The -- the ships in Valdez who are
25 represented by a local agent have the local

1 agents come on-board just prior to departure.
2 The agents obtain certain information from the
3 chief mate and the master for the ship owners,
4 presumably. It's a routine thing that's
5 customarily done prior to sailing.

6 Q And how long was Captain Hazelwood gone during
7 that time?

8 A I -- I can't be precise. I would -- somewhere
9 in the range of five to 15 minutes, I think.
10 That would just be ballpark. Not very long.

11 Q Can you give the jury an idea, as best you can
12 recollect, what happened that evening as far as
13 the undocking process?

14 A There was nothing notable about it. It was a
15 routine undocking. Captain Hazelwood and I
16 discussed the undocking, how I proposed to use
17 the tugs. You know, I asked him if it was okay
18 to take in the gangway, I believe, and he said,
19 "Sure. We're ready to go." And he asked me
20 about ice conditions. He asked me to check with
21 the Vessel Traffic System about ice conditions,
22 and I told him that I had heard on the radio the
23 last ice report, and I told him what it was. He
24 seemed satisfied. We had some sort of a
25 discussion about the undocking evolution and we

1 walked out on the bridge wing and he relayed
2 orders to his officers, fore and aft, to begin
3 letting the lines go, and they did that, and we
4 undocked routinely.

5 Q Who was on the bridge when you undocked?

6 A I'm unsure precisely who it was; one of the
7 officers. I believe it was the chief officer,
8 I'm not sure. The third mate, I believe, had
9 gone below to untie the forward or aft.

10 Q And where was Captain Hazelwood during the
11 undocking process?

12 A He was out on the bridge wing with me.

13 Q During the time that you saw him on the
14 bridge, did you determine whether you believed he
15 had been drinking that evening?

16 MR. CHALOS: Objection, Your Honor.

17 THE COURT: Grounds?

18 MR. CHALOS: The question implies that this
19 witness could tell whether the Captain had been
20 drinking. I think a more proper question is if he
21 noticed anything or possibly smelled anything.

22 THE COURT: Objection overruled.

23 Q Did you notice any signs that the Captain had
24 been drinking that evening?

25 A Well, I -- I -- no, except I -- I smelled

1 something that I associated was a smell of
2 alcohol on his breath.

3 Q Okay. Does that mean that you did notice
4 signs that he had been drinking or not?

5 A Yes. Well, I -- I don't know, I'm not trained
6 in such things, but what I smelled on his breath
7 was the smell that I generally associate with a
8 smell of alcohol on a person's breath.

9 Q And when would that have been?

10 A When Captain Hazelwood came in the wheelhouse
11 and greeted the agent, Pat Caples and myself, I
12 noticed it.

13 Q Now, can you describe the -- I'd like to talk
14 about the trip out to the narrows. Do you
15 recall, was it anything other than ordinary out
16 to the narrows that evening, that you recall?

17 A The only thing out of the ordinary that I can
18 recall, and this isn't extraordinary at all, is
19 my recollection is that the visibility was pretty
20 poor, we had some fog, and I -- I believe that I
21 asked -- I either asked that a lookout be posted
22 forward or I asked that the lookout forward be
23 instructed to look for -- for Entrance Island
24 light and Rocky Point light. There was that kind
25 of a conversation.

1 MR. COLE: Judge, can I step up and take
2 those...

3 THE COURT: You can approach this witness
4 without requesting.

5 (Pause)

6 Q Is the track that you've drawn up there, to
7 the best of your recollection, a fairly accurate
8 track of the way the Exxon Valdez went out that
9 evening?

10 A I'm -- since it's my customary track, unless
11 there are some unusual traffic conditions, I'm
12 quite sure it's -- it's very close to the track
13 the vessel was on.

14 Q Would you tell the jury, to the best of your
15 recollection, speeds you travelled when you were
16 in the area of the Port of Valdez?

17 A I -- I really -- I just don't remember. I've
18 been on a lot of ships since then.

19 Q During this time did you become aware that
20 Captain Hazelwood left the bridge?

21 A Yes, he left the bridge sometime -- we left --
22 departed the dock.

23 Q Do you remember what time he left?

24 A I don't remember what time of day it was. I
25 believe probably between 15 and 30 minutes after

1 leaving the dock, I believe, the Captain left the
2 bridge, somewhere in that range.

3 Q Did he tell you where he was going?

4 A Not that I recall.

5 Q How long was he gone?

6 A I think he was gone probably between an hour
7 or an hour and a half. We were approaching the
8 pilot station and I -- I told the third mate to
9 call the Captain and tell him that -- that I
10 would be getting off in about 15 minutes. He did
11 that, and the Captain came to the bridge shortly
12 thereafter.

13 Q I'm not sure I got this, but do your notes
14 indicate when you undocked that evening?

15 A Yes.

16 Q Could you tell the jury when that was?

17 A Sure. (Pause) We rang standby engines at
18 2054. That normally coincides with the time we
19 start releasing the lines with the dock, and at
20 2112, according to my record, was the last line.
21 That means that the ship was no longer connected
22 to the shore. So 2112 would be the last line.

23 Q And for people that are not used to the
24 24-hour clock, what would 2112 be?

25 A 9:12 p.m.

1 Q All right. Who was on the radio that evening;
2 were you or the Captain?
3 A I believe it was probably me.
4 Q Would you have made the 30-minute pre-call?
5 A Yes, sir.
6 Q Captain Murphy, I'd like to talk for a minute
7 -- you touched it a little bit earlier, but I'd
8 like you to talk for a minute about the
9 relationships that exist between the master and
10 the pilot. Specifically why are you employed?
11 A Well, the master is -- excuse me, the pilot is
12 employed to -- I don't know anywhere where the
13 master/pilot relationship is codified or put in a
14 law book. It's come down through the hundreds,
15 perhaps thousands of years by custom and
16 tradition. The way it works normally is the --
17 the pilot that goes aboard, he's a professional,
18 as is the master, and over this segment of the
19 navigational area he's hired to be pilot, he
20 normally conducts a vessel, takes the con,
21 exercises navigation control that always under
22 the authority of the master, the master is in
23 ultimate command and it's a relationship -- a
24 professional relationship. If the pilot does
25 something that the master is not comfortable with

1 or acts inappropriately, according to the
2 master's judgment, the master can, of course,
3 take over again immediately or tell the pilot to
4 go stand in a corner, but that happens rarely.
5 The pilot conducts the vessel to its destination
6 in the port of waterway, and it's a professional
7 relationship during the transit between --
8 between him and the master.

9 Q So, even though a pilot may have some
10 specialized knowledge, the way I understand it,
11 the captain always has the ultimate command and
12 responsibility of the ship?

13 A That's -- to my knowledge, the only place that
14 wouldn't be true is in the Panama Canal where the
15 US Government holds -- is liable for any damages,
16 and the pilot in the Panama Canal is in charge.
17 That's the only place; that's not through
18 anywhere else, that I know of.

19 Q When Captain Hazelwood left for this period of
20 time, was that unusual to you?

21 A It's not unusual for masters to leave the
22 bridge periodically. It wasn't typical,
23 probably, to be gone that long.

24 Q I didn't hear that.

25 A It wasn't typical to be gone from the bridge

1 that long through the narrows.

2 Q Through the narrows?

3 A Yes.

4 Q Would you have rather have had him there?

5 A Yes.

6 Q Now, the trip through the narrow required
7 several turns. Did you have any problem with the
8 maneuverability or control of the tanker through
9 that area?

10 A No, it was a very routine transit.

11 Q And what speed would you have traveled through
12 the one-lane, one-way zone?

13 A Six knots or less.

14 Q Once you cleared the narrows what heading did
15 you take at that time?

16 A Well, I can't tell you precisely what heading
17 we took initially. We were steering to make good
18 a course of 219.

19 Q And what speed would you have been traveling
20 out toward Rocky Point?

21 A About, on the Exxon Valdez, I -- I can't
22 recall what full ahead is. It's somewhere in the
23 range of 12 to 13 knots -- between 11 and 13
24 knots, somewhere in there. But remember, it's
25 not like an automobile. When you pull ahead, you

1 don't get the speed for quite some time. There's
2 a lot of momentum -- a lot of mass to overcome
3 there.

4 Q You did load up the -- as they call it, load
5 up to go to sea speed at that time?

6 A No.

7 Q Were you using the radars that evening?

8 A Yes.

9 Q And can you give the jury an idea, did you
10 foresee any potential ice problems while you were
11 using the radar that evening?

12 A No, I didn't observe any ice either visually
13 or by radar. I knew it was there, however, from
14 previous reports.

15 Q And did you place the tanker on automatic
16 pilot that evening at all?

17 A No, sir.

18 Q While you were going out to Rocky Point did a
19 ship change occur?

20 A A watch change?

21 Q No -- yeah, a watch change. I'm sorry.

22 A I don't believe so. Well, not a watch change.
23 The -- the mates on the bridge changed.

24 Q Okay. That's what I meant. Did one go out to
25 the bow and one come to the one who was in the

1 bow?

2 A Well, you know, I can't recall precisely which
3 mate was up there during that -- I believe it was
4 the chief mate, but I'm not sure. During the
5 undocking evolution, sometime after undocking, I
6 believe it was Jim Kunkel, the chief mate was
7 relieved by the third mate who came up.

8 Q Can you give the jury an idea of how the
9 weather changed or differed from the area, the
10 Port of Valdez, once you got to the area past the
11 narrows?

12 A Well, the -- the fog -- I believe it was fog,
13 limited visibility we had in the port lifted in
14 the vicinity of Entrance Island in the narrows.
15 I can recall once we were past Middle Rock at
16 about Entrance Point, I could see the light on
17 Busby Island, which is eight miles away, so we
18 had -- at that time, at least eight miles'
19 visibility.

20 Q Is Busby Island on that...

21 A Yes, it's -- it's right here.

22 Q So, can you give the jury an idea of where you
23 could see the Busby Island light?

24 A Well, somewhere here in the narrows, right
25 around in the area of Entrance Point, I believe,

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I could see Busby Island light.

Q Now, I'd like to talk -- you indicated that at some point as you were approaching Rocky Point you had the third mate call out and had the Captain come...

A Yes, sir.

Q ...up to the bridge? I'd like to talk a little bit about how you disembark from the tanker. Would you give the jury an idea of how that occurred?

A Well, the same way as I get aboard, only in reverse. There's a rope ladder with steps fastened to it that's -- that's lashed to the ship's railing or fittings on deck. It's put over the side and the pilot boat comes alongside and the pilot climbs down that ladder onto his pilot boat and the pilot boat leaves the side of the vessel.

Q Are there certain precautions that a master can take if the weather is rough in this area to help you?

A Well, yes. When the -- during winter months there is typically in Valdez narrows a strong easterly wind that sometimes blows for weeks on a -- at a time between 30 and 60 knots or more, and

1 it's quite rough. So, customarily in-bound the
2 vessels -- the vessels turn to in-bound to
3 starboard. They have a starboard pilot ladder
4 that -- that creates a lee or an area of relative
5 calm on the downward side of the vessel.

6 Q So that would be on the starboard side?

7 A Uh-huh (affirmative). And conversely,
8 out-bound the vessel would also have a starboard
9 ladder. It could turn to port to provide a lee
10 or calm area on the starboard side of the ship so
11 the pilot boat could come along side and the
12 pilot could safely disembark.

13 Q Now, the starboard is the right side and the
14 port...

15 A Yes, sir, that's right.

16 Q ...would be the left side? When the Captain
17 came to the bridge that evening did you have a
18 conversation with him to turn over the con?

19 A Yes, the normal protocol when one officer
20 turns over the con to another.

21 Q Turn over the con, it's a...

22 A Turn over navigational control of the vessel.

23 Q Would you describe the conversation that you
24 had with Captain Hazelwood that evening?

25 A I told him, I think, what course we were

1 steering, what engine order -- what the engine
2 order was. In this case I believe it was slow
3 ahead. We would have discussed traffic if there
4 was any. As I recall, there wasn't, and there
5 was another conversation about the ice. I -- I
6 reminded him that there had been ice reported
7 ahead, or words to that effect, and I can't
8 recall precisely if there was in-bound traffic in
9 the Vessel Traffic System. I would have passed
10 that on to him. I don't recall whether or not
11 there was.

12 Q Had you seen any ice up to that point?

13 A Had I? No, I had not.

14 Q On the radar or visually?

15 A No.

16 Q Did you observe any indication that the
17 Captain had been drinking at that time?

18 A Oh, the same smell as previously.

19 Q And that would have been at approximately what
20 time?

21 A (Pause) Well, according to my notes, I
22 disembarked at 2320, so it would have been, I
23 guess, 2305, 2310, 2315, somewhere in there.

24 (Pause)

25 Q Captain Murphy, I'm showing you what's been

1 identified as Exhibit 31. Do you recognize that
2 letter?

3 A Yes, I do.

4 Q What is that a letter of?

5 A It's a letter...

6 Q I'm sorry, what is the letter in regards to?

7 A It's a letter of immunity, addressed from the
8 District Attorney to my attorney, James Gilmore.

9 Q And did that letter accurately set out the
10 agreement that was reached between my office, the
11 District Attorney's Office and your attorney?

12 A Yes, as far as I know, it does.

13 Q And this agreement was reached at the request
14 of your attorney?

15 A Correct.

16 Q And you entered into this agreement with his
17 consent?

18 A I entered into this agreement at his
19 insistence.

20 Q And did he explain the ramifications of that
21 letter?

22 A Yes, I think so.

23 MR. COLE: Judge, I would move for the
24 admission of what has been identified as Plaintiff's
25 Exhibit 31.

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MR. CHALOS: No objection, Your Honor.

THE COURT: 31 is admitted.

EXHIBIT 31 ADMITTED

MR. COLE: Judge, could I have just a second?

(Pause)

Q Did you say anything to Captain Hazelwood at that time, that you noticed alcohol on his breath?

A Did I say anything to him at what time and about what?

Q Did you say anything about -- to him, at that time, just prior to leaving, about the fact that you had smelled alcohol...

A No, I didn't.

Q Are you aware of the Coast Guard bottle, the throttle regulations?

A I am.

Q What is that regulation?

A They...

Q What does it say?

A It says that a mariner is not allowed to consume alcohol within four hours -- I forget the precise time, but within four hours of being on duty -- going on duty.

Q Who helped you disembark that evening?

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A The mate on watch escorted me down to the pilot ladder and, I believe, there was one or two seamen at the pilot ladder when we arrived there.

Q And you might have told me this, but did -- can you tell me again what time you actually disembarked?

A According to my record, I disembarked at 2320; 11:20 p.m.

Q What did you do once you got down to the pilot boat?

A Well, I -- I went in the cabin and the pilot boat -- (yawns) excuse me, pulled away from the side of the ship and returned to its mooring inside Rocky Point.

Q Were there any problems with the steering mechanism or the throttle control on your journey out from Port of Valdez to Rocky Point?

A On the Exxon Valdez?

Q Yes.

A None that I could detect.

Q Any navigational problems or any of the instruments that you worked with that evening that did not operate properly?

A Not that I can recall. Everything worked well.

1 Q The ship responded to your commands as you
2 gave them?
3 A Yes, sir.
4 Q Have you gotten past the Bligh Reef area in
5 the past?
6 A Yes.
7 Q And are there warning buoys out in that area?
8 A There is a buoy on Bligh Reef, yes.
9 Q Are you familiar with how often it flashes?
10 A Yes, it's flashing red four seconds.
11 (Pause)
12 MR. COLE: If I could just have one flat
13 second. I think I'm done. (Pause) Judge, I have no
14 further questions for Captain Murphy. Thanks.
15 THE COURT: I have a question. What is
16 flashing red four seconds mean?
17 A It means, Judge, the navigation light affixed
18 to the buoy flashes once every four seconds and
19 the color of the light is red.
20 THE COURT: Okay. Thank you. Mr. Chalos.
21 MR. CHALOS: Your Honor, I have about two
22 hours of cross on this witness. Due to the lateness of
23 the day, I wonder if we could start tomorrow morning.
24 THE COURT: Well, I'd like to proceed. We
25 still have some time left before we'd normally recess.

1 So we can get at least a 15 minutes start on it, unless
2 there's some real good reason other than you have two
3 hours.

4 MR. CHALOS: No. I just didn't want my
5 examination to be so bifurcated, I mean too late.

6 THE COURT: I think that's going to happen
7 throughout this trial; examination is going to have to
8 be bifurcated.

9 CROSS EXAMINATION OF MR. MURPHY

10 BY MR. CHALOS:

11 Q Captain Murphy, good afternoon.

12 A Good afternoon, Mr. Chalos.

13 Q Sir, can you tell us how many times you met
14 with the district attorney before testifying?

15 A I met with Ms. Henry just prior to the grand
16 jury and during the grand jury, the same day, and
17 I saw Ms. Henry, Mr. Cole and two other gentlemen
18 yesterday.

19 Q Yesterday?

20 A Yes, sir.

21 Q Were you interviewed at those times?

22 A Yes.

23 Q Prior to your going to the grand jury did
24 Ms. Henry interview you?

25 A No, she -- not that I recall. She told me

1 about the grand jury protocol I'd likely expect,
2 but she didn't -- she didn't interview me, that I
3 can recall. She did interview me in front of the
4 grand jury.

5 Q And you did in fact testify before the grand
6 jury?

7 A Yes, sir.

8 Q How many times have you been interviewed by
9 the state investigators?

10 A I've not counted. I -- I suppose probably
11 about six times, thereabouts, a combination of
12 attorneys and investigators.

13 Q Were your interviews being taped?

14 A Yes, I believe they were.

15 Q Were notes being made of your interviews?

16 A I don't -- I don't believe -- excuse me, the
17 interview yesterday, I don't believe was being
18 taped. Notes were taken, however.

19 Q Have you ever been interviewed by anyone of
20 Captain Hazelwood's defense team?

21 A No, sir.

22 MR. COLE: Objection. Relevance.

23 THE COURT: The answer is in, but the
24 objection would be sustained.

25 MR. COLE: I move to strike that.

1 THE COURT: Disregard the last answer, ladies
2 and gentlemen.

3 Q Captain Murphy, I just want to clear up some
4 of the testimony you made in respect to your
5 licenses that you hold.

6 A Yes.

7 Q The state pilot's license that you hold for
8 Prince William Sound, does that cover the area
9 between Rocky Point and the Port of Valdez?

10 A Yes, sir.

11 Q And the federal license that you hold covers
12 from Hinchinbrook up to Rocky Point, is that
13 correct?

14 A Both licenses are all inclusive, all of Prince
15 William Sound and the areas you described are in
16 Prince William Sound.

17 Q Now, with respect to the federal test, the
18 federal pilotage test that you took,...

19 A Yes.

20 Q ...that you described, the only test that you
21 are given is a written test. Am I correct?

22 A That's correct.

23 Q In other words, no one takes you on the
24 vessel, the Coast Guard doesn't take you out on
25 the vessel to test your ability to navigate or to

1 handle or to maneuver a vessel, it just tests
2 your ability to read and write, I take it?
3 A What you say is correct.
4 Q So anyone that's made the requisite number of
5 trips and sits down, that is as an observer
6 without having handled the vessel, ...
7 A That's correct.
8 Q ...can sit down and take the exam?
9 A Yes, sir.
10 Q And it's not a test or certification as to
11 their ability to handle the vessel, is it?
12 A No, sir, it's not.
13 Q Now, when you spoke about this test requiring
14 that you plot depths or fathoms, as a fathom
15 reading, ...
16 A Yes.
17 Q ...you weren't talking about each and every
18 fathom reading in Prince William Sound, were you?
19 A No, I was talking about -- now, this is based
20 on my examination, which was a number of years
21 ago. Quite a number of years ago. At that time
22 -- and I presume this is still the case, the
23 requirement was to plot the depths along the main
24 ship channels, along the track lines that vessels
25 ordinarily navigate.

1 Q Okay. I'd like to ask you now about the
2 enrollment as opposed to a register that you
3 spoke about.

4 A Yes.

5 Q You stated that vessels that travel coastwise
6 are usually on enrollment, and vessels that
7 travel from a US port to a foreign port are
8 on-register. Am I correct?

9 A That's my understanding, yes.

10 Q Are you also familiar with the change in the
11 law that permits dual documentation?

12 A I am familiar with that.

13 Q Could you explain what you understand dual
14 documentation to be?

15 A Well, my -- my understanding is not a precise
16 one, but I'll tell you what it is, as best I can.
17 When a vessel wanted to change its document from
18 registry to enrollment or from enrollment to
19 registry, previously the US shipping commissioner
20 and perhaps even the US Customs had to -- they
21 either came aboard or the document was delivered
22 to their offices and there was some kind of a
23 paper shuffle made there, and I think in the
24 interests of streamlining this whole process,
25 this dual documentation concept was created by

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the Coast Guard where the paperwork could be done -- the paperwork, if any, could be done by the master on-board, depending on what kind of voyage he was embarked upon. That's my understanding.

Q Now, is it also your understanding that it was the master's choice of being either on the register or on enrollment under this dual documentation?

A As I understand it, that's true.

Q And is it also your understanding that a vessel sailing coastwise, if the master so declares, could be on-register as opposed to the enrollment under the dual documentation?

A I think that is the case. I'm not sure about that.

Q And is it also your understanding that a vessel sailing on-register in Prince William Sound is not required to have a pilot on-board up to Rocky Point?

A Would you ask me that one more time?

Q Yes. Is it your understanding that a vessel sailing on-register in Prince William Sound is not required to have a federal pilot on-board until -- well, at any time?

A No, that's -- that's not really my

1 understanding. I -- if you want my answer, it's
2 pretty long-winded. There's a whole background
3 to this issue. Shall I go ahead with it?

4 Q Go ahead.

5 A As the pipeline was being constructed, I
6 think, probably one of the political trade-offs
7 to enable the project to be completed was that
8 the oil companies and the Coast Guard agreed that
9 all the tankers, or most all the tankers entering
10 Prince William Sound, would have their masters or
11 an officer on board would have federal pilotage
12 for that portion of the Prince William Sound,
13 from the ocean entrance to the pilot station at
14 Rocky Point.

15 And, as we talked about previously, in order
16 to get those -- to get that endorsement on one's
17 license, one has to have made observer trips
18 along the route. So, I believe it was in April
19 of 1977, Arco provided the Arco Fairbanks and the
20 oil companies and the shipping companies sent 40
21 some odd of their masters to Valdez, where they
22 embarked on the Arco Fairbanks, and I and other
23 pilots from our organization made training trips.

24 We ran the Arco Fairbanks up and down Prince
25 William Sound with these masters as observers so

1 they could get their required observer trips. In
2 order for them to write the pilotage, they did
3 that, and eventually the pipeline came on-stream
4 and ships started to arrive.

5 Most of the ships had a master or an officer
6 aboard who did have that pilotage and he would
7 conduct the vessel up to Rocky Point, where one
8 of us state pilots would get aboard. For a
9 variety of reasons, probably sickness, vacation,
10 an unplanned arrival, some few of those ships
11 would show up without a deck officer that had the
12 pilotage endorsement, and in those cases we
13 pilots would go out to Hinchinbrook entrance, 65
14 miles from Valdez, the ocean entrance to Prince
15 William Sound, and we would board those vessels.
16 We didn't like it, it's the northern Gulf of
17 Alaska where the autumn flies, it's rough out
18 there and, we think, dangerous, and eventually
19 this went on probably fewer than 10 percent of
20 the vessels.

21 Eventually we lost a pilot boat out there, it
22 hit the side of the ship so hard in rough
23 weather, we had to put it on the beach before it
24 sank. It opened the seams and it was a total
25 loss. A pilot was injured out there. And we

1 pilots complained quite vigorously to the Coast
2 Guard, said this was ridiculous and so forth, and
3 the Coast Guard agreed and they permitted these
4 non-pilotage vessels to come in as far as the
5 Bligh Reef area and embark their pilot there,
6 some eight miles seaward from the normal pilot
7 station.

8 These vessels had to meet certain criteria.
9 The visibility had to be -- I believe either two
10 or three miles, they had to report their position
11 to the Coast Guard periodically, there had to be
12 an additional officer on the -- on watch and so
13 forth. So, that was the system we have been
14 operating in all of these years.

15 Most of the vessels come to Rocky Point.
16 There's an officer on board who has the pilotage.
17 Occasionally a ship shows up whose officer
18 doesn't have the pilotage. We went out to Bligh
19 Reef and picked them up. And that was true for
20 both the registered vessels, enrolled vessels and
21 the few foreign vessels that call.

22 Q You are aware that in recent years the
23 pilotage regulations have been relaxed, if you
24 will, by Captain of the Port orders?

25 A Yes.

1 Q Are you aware of any instances where a ship
2 without the pilotage endorsement picked up a
3 pilot north of Bligh Reef, in the area of Rocky
4 Point?

5 A I can't -- I can't say for sure. I can say
6 I'm quite sure it's happened on rare occasions
7 when the winter weather is just so bad in the
8 Bligh Reef area that -- that the boats -- the
9 pilot boat is icing down so much we think it's
10 dangerous for the crew and the pilots, when it's
11 so rough that when the pilot risks life and limb
12 to get aboard, on those rare occasions, we may
13 have gotten a waiver from the Coast Guard to
14 bring the ship up to the normal pilot station at
15 Rocky Point.

16 Q Are you aware of any situations where a pilot
17 disembarks a vessel without pilotage in the area
18 of Rocky Point as opposed to Bligh Reef?

19 A No, unless it would be under the circumstances
20 I just described, and that would be where -- on a
21 case-by-case basis. I can't precisely say which
22 ships or how many, but I can say it's probably
23 happened occasionally.

24 MR. CHALOS: Your Honor, is this a good point
25 before I move into the next area?

1 THE COURT: This ends the trial day. We'll
2 see you all back tomorrow morning at 8:30. We will try
3 to get started promptly at 9:00. We may even get a
4 little earlier start. If you are back at 8:30, I know
5 we can get started at 9:00. And in the meantime, don't
6 discuss this case among yourselves or with any other
7 persons. Don't form or express any opinions. Remember
8 my instructions regarding media sources. We'll see you
9 back tomorrow at 8:30, and be safe.

10 We stand in recess.

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

13 (3770)

14 (Off record - 3:59 p.m.)

15 ***CONTINUED***
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