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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.

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

TRIAL BY JURY
FEBRUARY 8, 1990
PAGES 3140 THROUGH 3341

VOLUME 18 (A)

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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 8, 1990
8:35 a.m.

APPEARANCES:

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1 PROCEEDINGS

2 FEBRUARY 8, 1990

3 (Tape: 3605)

4 (222)

5 THE CLERK: ...presiding is now in session.

6 THE COURT: You may be seated.

7 MR. MADSON: Sorry, Your Honor. I request
8 that this matter be brought up at this time. It's
9 nothing really out of the ordinary. I just want to
10 alert the court to a couple things. One, when we left
11 here yesterday, at the end of the day, I wanted to
12 bring the matter up again to make sure that there's no
13 confusion on this point. With regard to the court's
14 order of suppressing only the statement about spilling
15 oil, that was my understanding of the court's order.

16 Now, apparently, Mr. Linton may have had some
17 concerns because of this 12:45 cut off, but when I read
18 the order again last night, it appeared clear to me
19 that the court was suppressing only that statement and
20 all other evidence could come in subject to other
21 objections. So, with regard to the tape, the objection
22 I made yesterday, I want it to be really clear that I'm
23 not waiving any argument on immunity. The only
24 objection I was raising was pursuant to the court's
25 order that this was a new one just on the hearsay.

1 THE COURT: I don't consider that you've
2 waived the immunity issue. I think that was preserved
3 pretrial and I don't consider by making that part of
4 your opening statement that you have waived it either.

5 MR. MADSON: Okay, thank you, Your Honor. We
6 were just a little concerned about that. The other
7 thing I wanted to bring up is last night about 7:00 or
8 so, I received a copy of the State's motion for
9 Protective Order Number 4. That deals with the two
10 coast guard personnel from Valdez, VTC operators. It's
11 my understanding they were going to testify here today
12 and...

13 THE COURT: I don't think I've even seen the
14 protective order yet.

15 MR. ADAMS: Your Honor, I had my secretary
16 hand deliver a copy to I believe it was your law clerk
17 about 4:00.

18 THE COURT: 4:00 yesterday afternoon?

19 MR. ADAMS: Yesterday afternoon and...

20 THE COURT: Well, that's one of the reasons I
21 haven't seen it because that's about closing time and
22 it's only 8:40 now.

23 MR. ADAMS: That was the soonest he could find
24 a word processor.

25 MR. MADSON: Well, it appears to be a serious

1 motion, Your Honor, so I think we have to give it some
2 consideration. And, that consideration, I think,
3 certainly requires that we be given some time to
4 respond to it and that's my only concern now -- is if
5 they're here and we can't cross examine them today
6 until that matter is heard. I don't know where that
7 puts us terms of scheduling or witnesses or anything
8 else, but certainly we feel we need some time to
9 respond to that.

10 THE COURT: I have no idea what the motion
11 says. I don't know who the witnesses are going to be.
12 I have no idea what's going on here. These last minute
13 motion for protective orders, if they do delay, I'll be
14 very concerned with, but perhaps they don't need to
15 delay the proceedings. Who's your first witness and
16 does the protective order deal with the first witness,
17 Mr. Cole?

18 MR. COLE: No. The first two witnesses -- the
19 first one is Patricia Caples. The second one is Mr.
20 Radtke. The third and fourth witnesses are the Coast
21 Guard people. There are protective orders already
22 outstanding for the Coast Guard and there's two
23 protective orders before those two anyway and we filed
24 a third one based on the opening statement of the
25 defense counsel.

1 We don't know what the defense is going to be
2 arguing. We've got our first taste of it on Monday and
3 we've filed the protective orders in response to his
4 opening statement.

5 THE COURT: Okay, well, see if you can get all
6 the rest of your protective orders and as soon as
7 possible so it won't create a delay. I'll go look at
8 the one. I assume it's in my chambers, Mr. Adams,
9 someplace?

10 MR. ADAMS: Yes, Your Honor. It was
11 (indiscernible - away from mike).

12 THE COURT: And, we can get started with the
13 jury at 9:00 on the two witnesses that don't deal with
14 it.

15 MR. MADSON: We can, Your Honor. I just
16 wanted to make sure that the court knows that this may
17 pose a problem because in fairness, I think we do need
18 a chance to respond. It may not take that long, but,
19 you know,...

20 THE COURT: Sure. Well, you've got three
21 attorneys for one defendant. The State has three for
22 the State's case. You can get Mr. Russo or somebody on
23 this paperwork and maybe we can be prepared when the
24 time comes to argue then. If you need more time, I'll
25 consider the request at that time.

1 So I can gear up, what protective orders need
2 to be addressed before the witnesses today so I can
3 start looking at them?

4 MR. COLE: We have Gordon Taylor and Skip
5 Blandford testifying today from the Coast Guard. As to
6 Gordon Taylor, there is a protective order that's been
7 requested as to a positive finding for marijuana and
8 our position is set out in the protective order. As to
9 Skip Blandford, there was two. One for the drinking
10 after the incident and one for the positive finding of
11 I think it's opiates two to three days after the
12 grounding of the Exxon Valdez. Our positions our set
13 out and protective orders there.

14 THE COURT: So, as for the blood-alcohol or
15 the blood/drug screening tests for Blandford and
16 Taylor?

17 MR. COLE: Yes.

18 THE COURT: Okay.

19 MR. COLE: Then, there's one other one I think
20 we filed and I can't remember...

21 MS. HENRY: ...the Coast Guard...

22 MR. COLE: Oh, the changes by the Coast Guard
23 and the Coast Guard negligence. The Coast Guard
24 negligence was filed today and Blandford's negligence,
25 that protective order was filed today asking for...

1 THE COURT: Today?

2 MR. COLE: Yesterday. I'm sorry. Yesterday
3 at 4:00.

4 THE COURT: Okay, so that's the one that was
5 filed last night at 4:00?

6 MR. COLE: Right.

7 THE COURT: Okay, so we have the changes to
8 the VTS service. We have the Coast Guard negligence
9 theory that you filed last night at 4:00. Then, we
10 have the urine and blood samples of Blandford and
11 Taylor and those are the outstanding protective orders.
12 Which of those have to be dealt with today before...

13 MR. COLE: All of them.

14 THE COURT: The VTS, who is going to be...

15 MR. COLE: Those two people could potentially
16 be witnesses for the defense on, you know -- be subject
17 to cross examination on those issues by the defense.

18 THE COURT: How long do you expect your first
19 two witnesses that don't deal with these motions we'll
20 take?

21 MR. COLE: I expect that they'll be done
22 around 11:00.

23 THE COURT: I have 15 minutes now. Let's talk
24 about the motion for the protective order on Blandford
25 and Taylor's blood and urine.

1 MR. MADSON: Well, if there's a motion, Your
2 Honor, I guess we won't argue.

3 THE COURT: Do you have a written response?
4 Did you make a written response to that?

5 MR. MADSON: Yes, we did, Your Honor. It was
6 filed on February 6th.

7 THE COURT: So, that would have been filed the
8 day before yesterday?

9 MR. MADSON: Correct.

10 THE COURT: Did you bring a copy up to
11 chambers? Because if it was filed, it most likely
12 would not have gone up to chambers by this time, just a
13 day later.

14 MR. MADSON: It was our understanding that we
15 did, Your Honor. We were trying to do that, having
16 separate copies, but it must not have happened.

17 THE COURT: I don't remember seeing a copy of
18 it. I just see my law clerk going out the door. He
19 can go check for it. If you would, if you don't have
20 time to go back to my office, just drop it off in that
21 little slot there by the double doors if it's after
22 hours. We check that periodically and any kind of
23 responses, I should get a courtesy copy because it
24 takes too long to get them upstairs.

25 MR. MADSON: We were trying to do that.

1 THE COURT: Did you?

2 MR. MADSON: We were trying to. I can't
3 honestly say. The person who delivered it isn't here
4 and I can't ask him.

5 THE COURT: I have the response on the motion
6 for protective order on the Vessel Traffic Service
7 changes. I have that one, so why don't we hear that
8 one first? Mr. Cole?

9 MR. COLE: I didn't bring those motions with
10 me, Your Honor. Mr. Adams has a copy.

11 THE COURT: Are you prepared to argue, Mr.
12 Cole?

13 MR. COLE: Well, I don't have it in front of
14 me. I think our position basically is that the defense
15 has attempted to show or would like to show or at least
16 through their opening the changes that have occurred to
17 the VTC system in Valdez since the grounding. Our
18 first basis was that as a general rule under Evidence
19 Rule 407. "Evidence of..."

20 THE COURT: I have that in front of me. I
21 just want to know if you want to add anything to your
22 written -- I have Evidence Rule 407. You don't need to
23 read it to me. It's quoted in your brief.

24 MR. COLE: The only thing I have to add, Your
25 Honor, is that this is not a civil negligence case and

1 what we have here is the defense by the defendants
2 attempting to make this into a civil case into a
3 comparative negligence type situation by trying to
4 spread out the blame and there's a very big distinction
5 between probable cause is handled in civil cases, the
6 way probable cause is handled in criminal cases.

7 The Court has been confronted with this
8 because you decided this decision in Kusmider (ph) and
9 you were upheld in that case and that was a significant
10 case on point where you did not allow evidence to go to
11 the jury of an outside third party's negligence and
12 that was the claim by the defendant. That the
13 paramedic had been negligent in not saving the victim
14 and you specifically -- and that was upheld and there's
15 some very strong language in the Kusmider decision that
16 we've cited in our protective order that we filed
17 yesterday as to the watch stander's negligence.

18 We feel the same thing applies to attempts to
19 show that the Coast Guard was negligent and i.e.
20 they're negligent because look what they've done since
21 the grounding. Look at all the changes. And, that's
22 the whole purpose of this line of argument and Mr.
23 Madson's opening was designed to show that. In
24 criminal law, that is not the standard. It's not
25 comparative negligence.

1 So, in addition to what's been cited in our
2 protective order, we would refer the Court to it's the
3 decision in Kusmider, specifically the language that
4 says "It can never be a superseding, intervening cause
5 to fail to act." That a failure to act can never be a
6 superseding cause in criminal law. And, is very --
7 it's strong language. That's all I have.

8 THE COURT: Your response is covered in a
9 couple of the motions, it sounds like, not just the
10 change in the Vessel Transit Service. Let's address
11 the Vessel Transit Service application first.

12 (677)

13 MR. MADSON: Well, with that, Your Honor,
14 there's not much more I want to add in our opposition.
15 However, I think the State is simply off on the wrong
16 track. We're not talking about intervening cause
17 negligence here. What we're talking about is a
18 standard of mental culpability, recklessness. What did
19 the captain know, what could he rely on, what was he
20 required to do?

21 The VTS system is required to be kept on the
22 bridge of every ship. The captain is required to
23 follow those rules and regulations. If the rules and
24 regulations change, isn't the captain entitled to rely
25 on the changes of those and if the system is

1 defectively designed, if it isn't operating properly,
2 isn't that something that comes into play as far as the
3 captain's negligence is concerned or is it
4 recklessness? It goes to a state of mind. It's just
5 basically that simple.

6 THE COURT: Aren't these changes to the system
7 changes that were made after the grounding?

8 MR. MADSON: My understanding whether changes
9 made before the grounding and there are some changes
10 made -- some not terribly big changes, but some changes
11 were made after the grounding. That's correct.

12 THE COURT: But, the motion for protective
13 order is to prevent admissible evidence of changes
14 after the grounding. It addresses only that and not
15 changes before.

16 MR. MADSON: Quite frankly, Your Honor, we're
17 not terribly concerned about changes after. If the
18 State feels that that's so important, I'm willing to
19 even waive that argument. I don't think it amounts to
20 anything.

21 THE COURT: The motion for protective order is
22 therefore granted. The one filed 5 February 1990
23 entitled "Motion for Protective Order" and it addresses
24 changes to the Prince William Sound Vessel Traffic
25 Service in response to the Exxon Valdez grounding.

1 Unless I am interpreting that wrong, I assume what you
2 were intending to prevent is evidence coming in of
3 changes made after the grounding. Is that right, Mr.
4 Cole?

5 MR. COLE: That's correct.

6 THE COURT: Motion is granted. David, was
7 there a response to the motion for protective order
8 regarding the blood, urine results?

9 UNIDENTIFIED SPEAKER: There's a response to
10 one of those motions. There's one motion that's called
11 "Motion Number 4" in response to...

12 THE COURT: Yeah, there's no response to that
13 yet. That's the one filed yesterday.

14 UNIDENTIFIED SPEAKER: I thought I put it up
15 there.

16 THE COURT: Why don't you come on up here.
17 Maybe you can...

18 (Pause)

19 (Side conversation)

20 THE COURT: Okay, you had Mr. Friedman and Mr.
21 Rubin prepare the response to the blood-alcohol and
22 that's why you're unaware how it got to me. Well, we
23 have the original of the proposed order by the
24 defendant and now a copy of the blood alcohol. I'll
25 have to read this opposition. I'll have to read it

1 before I'm prepared to hear argument on it.

2 And, so we have this one and then we have
3 Motion for Protective Order Number 4. I propose we go
4 ahead with the witness that we can that don't need
5 resolution of these first and then take time to resolve
6 these.

7 MR. MADSON: That's fine. No problem.

8 THE COURT: Okay. We'll stand in recess.

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

11 (835)

12 (Off record - 8:51 a.m.)

13 (On record - 9:05 a.m.)

14 (Jury present)

15 THE CLERK: ...the Honorable Karl S. Johnstone
16 presiding is now in session.

17 THE COURT: Thank you. You may be seated.
18 Ready to call your next witness, Mr. Cole?

19 MR. COLE: Yes, Your Honor.

20 THE COURT: You may do so.

21 MR. COLE: Your Honor, at this time, the State
22 will call Ms. Patricia Caples.

23 THE CLERK: Ma'am, you'll find a microphone
24 there. If you will attach that your dress, please?
25 Remain standing and raise your right hand.

1 (Oath administered)
2 A I do.
3 PATRICIA CAPLES
4 called as a witness in behalf of the State, being first
5 duly sworn upon oath, testified as follows:
6 THE CLERK: Ma'am, would you please state your
7 full name and then spell your last name?
8 A My name is Patricia Caples, C-a-p-l-e-s.
9 THE CLERK: And, your current mailing address?
10 A Post Office Box 1846, Valdez, Alaska.
11 THE CLERK: And, your current occupation?
12 A I'm a shipping agent for Alaska Maritime
13 Agencies.
14 DIRECT EXAMINATION OF MS. CAPLES
15 BY MR. COLE:
16 Q Ms. Caples, how long have you lived in Valdez?
17 A 34 years.
18 Q And, how long have you worked as a shipping
19 agent?
20 A 13 years.
21 Q Has all that time been with the Alaska
22 Maritime Agencies?
23 A Yes.
24 Q Would you tell the jury a little bit about
25 what a shipping agent does?

1 A Okay, my job as a shipping agent is to work on
2 behalf of the owners of the vessel, handle
3 matters and requirements that are given to us by
4 the owners or the operators of the ships and to
5 follow through on requirements that are given to
6 us by the captain or the owners of the vessel.

7 Q In the course of carrying out your
8 responsibilities, do you meet tanker captains
9 coming in and out of Valdez?

10 A Yes, I do.

11 Q Do you know Captain Hazelwood?

12 A Yes, I do.

13 Q How long have you known him for?

14 A Approximately eight to ten years.

15 Q And, would you consider him a friend?

16 A Yes, I would.

17 Q When was the last time you saw him as a tanker
18 captain?

19 A When the Exxon Valdez sailed from the Port of
20 Valdez at Berth 5 the evening of the 23rd of
21 March.

22 Q Did you see him the night before that evening?

23 A Yes, I did.

24 Q Would you tell the jury about that, the
25 circumstances surrounding that?

1 A Okay, as an agent, we are required to board
2 the ship when the ship docks at the berth. As
3 soon as they get a gangway, we're required to
4 board the vessel and get times from their port
5 log as to what time they arrived at the berth, et
6 cetera. We need to touch bases with the captain
7 and find out what requirements he might have
8 while the ship is in port and basically that's
9 what we do when we board on arrival.

10 Q Did you do that that evening?

11 A Yes, I did.

12 Q Do you remember coming in contact with Captain
13 Hazelwood?

14 A Yes.

15 Q Where would that have been?

16 A It would have been either on the bridge or in
17 his ship's office. I don't recall exactly where
18 I first saw him.

19 Q And how long did you talk with him that
20 evening?

21 A I would say approximately 20 minutes,
22 something like that.

23 Q Did you notice anything out of the ordinary in
24 his demeanor that night, the 22nd?

25 A No, I didn't.

1 Q Tell the jury what type of a person he was to
2 deal with for business.

3 A Captain Hazelwood is very businesslike, very
4 professional in his job, easy to talk to and
5 that's basically how I feel.

6 Q What time did you leave the tanker that night?

7 A I don't recall what time it was.

8 Q When was the next time that you saw Captain
9 Hazelwood?

10 A Prior to the ship's sailing on the night of
11 the 23rd.

12 Q When did you come aboard the ship that
13 evening?

14 A At approximately 8:00 p.m.

15 Q And, where was it located?

16 A At the Alyeska terminal, Berth 5.

17 Q Why did you go aboard that time?

18 A As an agent, we're also required to board the
19 vessel prior to sailing to collect more data, get
20 the times that they deballasted and loaded, any
21 delays that they would have and get information
22 for the owners to report to the owners, any
23 outstanding requirements that need to be
24 completed. We pick up mail, touch bases with the
25 captain on anything that he has for us before the

1 ship sails.

2 Q Now, I'm showing you what's been previously

3 admitted as Plaintiff's Exhibit 12 and do you

4 recognize the second and third pages of that

5 exhibit?

6 A Yes, I do.

7 Q Can you tell the jury what that is?

8 A This is called a vessel ullage report and it

9 is filled out by the gauger of the vessel who

10 works for a company called Caleb Brett.

11 Q Now, before you go too far, people might not

12 be familiar with what a gauger is. Would you

13 explain what a gauger is?

14 A Okay, as a gauger, they are required to go and

15 measure how much water or oil is in each tank on

16 the vessel and do a report on exactly how much is

17 on board.

18 Q And, explain this; who does this gauging?

19 A The gauger who was on duty for..

20 Q Who does he work for?

21 A A company called Caleb Brett in this case.

22 Q Why doesn't, say, for instance, the oil

23 company have someone that does it themselves?

24 A I don't know.

25 Q And, is that one of the things that you would

1 have picked up that evening?

2 A Yes, I take a copy.

3 Q And, is it used in the ordinary course of
4 business and then sent back to Exxon?

5 A Right, we pick it up prior to sailing when
6 they've completed the report.

7 Q Now, when you went on board that evening,
8 where did you go first?

9 A To the cargo control room.

10 Q And, why did you go there?

11 A To get my sailing information, to talk to the
12 chief mate.

13 Q Is that who you ended up speaking with that
14 evening, the chief mate?

15 A That's who I began speaking with.

16 Q And, after speaking with him, where did you
17 go?

18 A Up to the captain's office, I believe, and
19 then up to the bridge of the vessel.

20 Q Why did you go to the captain's office?

21 A To see the captain.

22 Q Did you end up seeing him there?

23 A No.

24 Q Where did you go from there, again?

25 A Up to the bridge.

1 Q Who was up on the bridge when you got there?
2 A The pilot, Mr. Murphy, Greg Cousins, and I
3 believe maybe one other person, but I don't
4 recall for positive.
5 Q About what time would that have been?
6 A Approximately, 8:20 to 8:30 p.m.
7 Q Was the captain on the bridge?
8 A Not at that time, no.
9 Q What did you do while you were waiting for the
10 captain?
11 A I spoke with the pilot.
12 Q Just conversation, small talk?
13 A Right.
14 Q How long did you have to wait there on the
15 bridge before the captain arrived?
16 (1228)
17 A Just a couple of minutes before he came in.
18 Q What happened when he arrived?
19 A I spoke with Captain Hazelwood briefly about
20 what we needed to finish up before I departed the
21 ship.
22 Q And, what was that?
23 A Well, all he had outstanding and all I had
24 left to talk -- actually I showed him my port log
25 as I recall and pointed out, I think, one small

1 delay that the vessel had while they were in port
2 so that he was aware I had noted that. Then, ask
3 him what he had for me before the ship sailed and
4 all he had to give me was some mail.

5 Q And, where did you have to go for him to give
6 you that mail?

7 A I went down one deck to his office, the
8 captain's office.

9 Q And, during this time, how far away were you
10 from Captain Hazelwood?

11 A I would say three, four inches, six inches.

12 Q Did you notice any signs that Captain
13 Hazelwood had been drinking?

14 A No.

15 Q Did you notice anything different about the
16 way Captain Hazelwood was acting that evening?

17 A I noticed he was in a jolly frame of mind, a
18 good mood, more at ease than maybe at some other
19 times when I would visit with him.

20 MR. COLE: If I could just have a minute, Your
21 Honor.

22 (Pause)

23 Q Do you remember testifying before the grand
24 jury in this matter?

25 A Yes, I do.

1 Q Would you tell the jury what kind of
2 circumstance that was? Were you brought into a
3 room there with a number of people similar to
4 this?
5 A Yes.
6 Q And, you were asked questions about your
7 observations of Captain Hazelwood?
8 A Yes.
9 Q And, do you remember being asked whether or
10 not you observed any kind of an odor of alcohol
11 about his person?
12 A Yes, I recall.
13 Q And, you indicated that you hadn't?
14 A That's correct.
15 Q Did you remember when you said -- well, let me
16 ask you this before I ask this, did you notice
17 anything unusual about Captain Hazelwood's eyes
18 or his speech?
19 A Nothing at all about the speech. As best I
20 can recall, I noticed the eyes were watering
21 somewhat.
22 Q And, did you notice Captain Hazelwood stumble
23 or fall or anything like that?
24 MR. MADSON: I object to that
25 characterization, Your Honor. He's trying to refer to

1 grand jury testimony. There's no such reference in
2 there.

3 THE COURT: I'm not sure I understand "Did you
4 notice a stumble or a fall?" I'm not sure I understand
5 the...

6 MR. COLE: Your Honor, I'll rephrase the
7 question, Your Honor.

8 THE COURT: Try again.

9 Q Did you make any observations about the way he
10 went to down to the cabin that you felt were
11 unusual?

12 A When he turned to reach the door to go down
13 one deck, there was a very slight sway, as I best
14 recall. I wasn't paying real close attention.

15 Q And, based upon what you observed, what about
16 his personality that evening? Would you describe
17 had it changed at all from the night before?

18 A No, no, no, I don't think so. Just that he...

19 Q Based upon what he observed, would your
20 opinion have been that he might have been
21 drinking that evening?

22 A He may have been, yes.

23 Q Why do you say that?

24 A Mostly because of his mood is the reason I
25 thought he was more relaxed and I felt he may

1 have had something to drink.

2 Q Was his mood different than the night before?

3 A It was just more at ease and in a good sense

4 of humor. Yeah, it was. The night before he was

5 very serious and...

6 Q Now, do you receive any communications from

7 the tankers when they leave their berths?

8 A Yes, I do.

9 THE COURT: Excuse me just a minute. Mr.

10 Madson, I can hear you just as clear as a bell when

11 you're whispering that loud and...

12 MR. MADSON: Either my voice is loud, Your

13 Honor, or your ears are exceptionally good and I'll

14 attribute it to my voice.

15 THE COURT: I assure you, I'm getting hard of

16 hearing in my old age and it's not my ears.

17 MR. MADSON: Maybe that's my problem, too.

18 THE COURT: Okay, let's proceed.

19 MR. COLE: If I could just have a minute here,

20 Judge?

21 Q Now, we were talking about the communication

22 that's made. Are you called on the radio after

23 the ship departs?

24 A Yes.

25 Q Tell the jury what type of information you

1 receive at that time?

2 A Okay, after the ship departs the berth, and
3 the tugs are released, either we call the vessel
4 or the vessel will call us, either the chief
5 mate, sometimes the captain, and give us final
6 information such as the time they pulled the
7 gangway because I'm not there at that time, so
8 final information that we need for our report.

9 Q About what time did you leave the tanker that
10 evening?

11 A Approximately 9:00 p.m.

12 Q And, what time did you receive this radio
13 communication from the Exxon Valdez?

14 A Yes, I don't recall if I made the initial call
15 to them or they called me directly, but yes, I
16 did talk to them.

17 Q What time would that have been?

18 A Approximately between 9:30 and 10:00 p.m.

19 Q And, do you remember who called you, who you
20 talked with?

21 A Yes.

22 Q Who was that?

23 A Captain Hazelwood.

24 Q Did you have any more conversations with
25 Captain Hazelwood that evening?

1 A No.
2 MR. COLE: Your Honor, I have nothing further.
3 (1562)

4 CROSS EXAMINATION OF MS. CAPLES

5 BY MR. MADSON:

6 Q Ms. Caples, I just have a few questions for
7 you. First of all, when you referred to the
8 incident of the first time you saw Captain
9 Hazelwood, when the ship arrived into Valdez,
10 correct?

11 A Right.

12 Q Do you know how long they had been at sea?

13 A Approximately six days.

14 Q Do you know what kind of weather that ship may
15 have encountered or other more or less stressful
16 situations it may have encountered?

17 A I note the weather was not good. I recall the
18 captain sending a Telex saying...

19 Q You saw the captain soon after the ship
20 arrived then, I take it?

21 A That's correct.

22 Q He could very well have been tired, somewhat
23 stressed from that long trip and more serious at
24 that time?

25 A That's correct.

1 MR. COLE: Objection, lack of knowledge.
2 THE COURT: Objection overruled.
3 Q I believe you said "yes", correct?
4 A Yes, that could be.
5 Q From the times you talked to Captain
6 Hazelwood, would you agree that his voice often
7 is rather soft?
8 A Yes.
9 Q Somewhat deliberate?
10 A Yes.
11 Q Now, when you saw him the night of the 23rd
12 when you on board the vessel, let's back up just
13 a bit, you were on there before he arrived,
14 correct? Before Captain Hazelwood arrived, you
15 were on the ship first?
16 A I believe. I did not actually see him come
17 on. He could have been on board somewhere.
18 Q Oh, I'm sorry. You didn't see him go up the
19 gangway or anything like that?
20 A Coming on board? No.
21 Q Coming on board?
22 A No.
23 Q Would you describe to the jury how one gets on
24 board the Exxon Valdez or how you did that
25 particular night?

1 A To get to the vessel, you need to walk down
2 Berth 5. It's approximately, I think, a half a
3 mile and then you climb a gangway that's very
4 steep. I would say maybe 60 stairs, something
5 like that, to go up and back down to get on deck.
6 Once you're on deck, you go into the house and up
7 several other stairs or an elevator.

8 Q Could you estimate how many stairs you have to
9 negotiate from, say, the dock level where you
10 first start getting on the ship to the time you
11 finally arrive, say, on the bridge?

12 A Yeah, I can. Approximately over 100, maybe
13 100 thereabouts.

14 Q Is it fair to say a lot of climbing?

15 A Yes.

16 Q Do you recall what the weather was that
17 particular night?

18 A Yes, I vaguely recall. I remember it being
19 cold. I don't know what exactly the temperature
20 was. Maybe around 30° and I believe that there
21 was real light snow showers like it was just
22 beginning to do a real light snow around that
23 time.

24 Q So, when you saw the captain come on board,
25 you were already on the -- were you on the bridge

1 talking with the pilot at that time?
2 A I did not see him actually come on board.
3 Q Okay, I understand that. But, then he came in
4 a door or something, is that right?
5 A Yes, there was.
6 Q So, he arrived just from outside apparently
7 from walking onto the vessel?
8 A Right, because he had his coat on.
9 Q The same way you did?
10 A Right.
11 (1720)
12 Q Is it fair to say, ma'am, that his eyes could
13 have been watery from just coming in from outside
14 where it was relatively cold and blustery?
15 A Yes.
16 Q And, where did you go when you said you went
17 to his cabin? Where from the bridge to his
18 cabin? Could you describe how you get there?
19 A Okay, from the bridge, you open a door, go
20 down one deck lower. It's 13 steps, 12 to 13
21 steps down and then you open another door and go
22 around a hallway area into where his office is
23 located.
24 Q Except for the vertical distance between the
25 bridge and one deck lower, it's still relatively

1 close, is it not?
2 A Uh-huh (affirmative).
3 Q Basically under the bridge?
4 A Right.
5 Q And, was the hallway that you negotiated in
6 the stairway, was it fairly well lit or was it
7 dark? What were the lighting conditions at that
8 time?
9 A I would say not well lit.
10 Q The slight sway that you attributed to Captain
11 Hazelwood as he was opening the door, in your
12 opinion, you don't attribute that sway to the use
13 of alcohol, is that correct?
14 A Could you repeat the question?
15 Q The sway you said when he -- just a slight
16 sway when he opened the door to go outside?
17 A Right.
18 Q You don't attribute that to impairment because
19 of alcohol use, correct?
20 A Correct.
21 Q You said that he was a little more relaxed --
22 he appeared to be more relaxed and in a good
23 mood, right?
24 A Right.
25 Q He had been in town; you knew that, right?

1 A Yes.

2 Q And, that could also account for a change in
3 mood, just having a chance to go ashore and relax
4 a bit?

5 A Yes.

6 Q When you went down to his office, was he
7 professional and businesslike?

8 A Yes, we didn't have a lot to accomplish, but
9 yes, he got the mail gathered and ready for me.

10 Q Lastly, ma'am, in your opinion, you saw no
11 signs of use of alcohol that, in your opinion,
12 would lead you to believe that he was at all
13 impaired?

14 A No.

15 MR. MADSON: Thank you. I don't have anything
16 else.

17 REDIRECT EXAMINATION OF MS. CAPLES

18 BY MR. COLE:

19 Q Ms. Caples, how many times have you been
20 interviewed by police officers about this case?

21 A By police officers or total interviews? By
22 police officers?

23 Q By police officers.

24 A Maybe four.

25 Q In each one of those, you've been asked

1 whether or not you thought the captain might have
2 been drinking?

3 A That's correct.

4 Q And, you said that you believe that he had?

5 A Right.

6 Q And, why is that?

7 A Why did I feel it?

8 Q Yeah.

9 A I thought he may have had something to drink.
10 Like I say, it was his mood. He was relaxed, at
11 ease. Just because I've known him for several
12 years and I felt with him having a different
13 mood, a jolly mood, that possibly he had had
14 something to drink.

15 Q And, when you say he was very professional,
16 would you say that in your dealings with him, he
17 was a very precise type of person?

18 A Yes, very precise.

19 Q Was that something that stuck out in your mind
20 was how precise he was?

21 A Do you mean that night?

22 Q No, in the past.

23 A Yes.

24 Q Now, do you know how Captain Hazelwood came
25 from the deck up to the bridge?

1 A No, I do not.

2 Q And, could he have come from all the steps on
3 the internal steps up to the bridge?

4 A Yes.

5 Q Do you know how he came onto the bridge,
6 itself? Did he come from the stairway where you
7 go to his chambers or did he come from the
8 outside?

9 A I don't know.

10 MR. COLE: I have nothing further, Judge.
11 Thank you.

12 (1939)

13 RECROSS EXAMINATION OF MS. CAPLES

14 BY MR. MADSON:

15 Q In all the interviews that you had on previous
16 occasions by state police, you've never indicated
17 that Captain Hazelwood was under the influence,
18 isn't that correct, or impaired?

19 A Right, I never said he was impaired.

20 Q It was never your opinion?

21 A Right.

22 Q And, your opinion is still the same today?

23 A That's correct.

24 MR. MADSON: Thank you. Nothing else.

25 THE COURT: Anything further?

1 REDIRECT EXAMINATION OF MS. CAPLES

2 BY MR. COLE:

3 Q What's your definition of impaired, Ms.
4 Caples? Would you tell the jury what you mean by
5 impaired?

6 A I felt he was impaired and I would feel that
7 he would not be able to function routinely.

8 Q What type of things would you expect to see?

9 A If he was impaired?

10 Q Yeah.

11 A I would expect to maybe have not a normal
12 speaking voice, be much slower than normal.

13 Q How about make mistakes in his speech? Would
14 that be something you would think about?

15 MR. MADSON: I'm going to object to the
16 speculation and too vague.

17 THE COURT: Objection overruled.

18 Q How about making mistakes in his speech?
19 Would that be something that you would take
20 notice of if you thought he...

21 A Possibly, yes.

22 Q How about movements? Do you think that a
23 person is impaired only if he is stumbling?

24 A No.

25 MR. COLE: I have nothing further, Judge.

1 MR. MADSON: Can I ask one follow up question,
2 Your Honor?

3 THE COURT: Okay, that's the last question.
4 One last question. We're not going to go back and
5 forth like this more than twice.

6 MR. MADSON: Is that a "yes" or "no".

7 THE COURT: Yes, one last question.

8 MR. MADSON: Okay, thank you.

9 (2017)

10 RE-CROSS EXAMINATION OF MS. CAPLES

11 BY MR. MADSON:

12 Q Ms. Caples, you've never heard Captain
13 Hazelwood speak to you under a very stressful
14 situation or condition, is that correct, such as
15 right after a grounding?

16 A Never before, no.

17 THE COURT: You're excused.

18 A Am I excused, so can I go to the audience to
19 listen?

20 MR. COLE: I have nothing further for her,
21 Judge.

22 THE COURT: Do you have further need for this
23 witness?

24 MR. MADSON: We don't expect to call her
25 again, Your Honor, no.

1 THE COURT: Okay, you can sit in the audience
2 or you are free to go. Call your next witness.

3 MR. COLE: The State at this time would call
4 Mr. Radtke to the stand.

5 THE CLERK: Sir, will you raise your right
6 hand, please?

7 (2074)

8 (Oath administered)

9 A I swear.

10 PAUL R. RADTKE
11 called as a witness in behalf of the State, being first
12 duly sworn upon oath, testified as follows:

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

15 A Paul Raymond Radtke, R-a-d-t-k-e.

16 THE CLERK: And, your current mailing address?

17 A 1832 East 4th Street, Superior, Wisconsin,
18 54880.

19 THE CLERK: And, your current occupation, sir?

20 A I'm between jobs right now.

21 THE CLERK: Okay, thank you.

22 DIRECT EXAMINATION OF MR. RADTKE

23 BY MR. COLE:

24 Q Can you tell the jury what your position was
25 on March 23rd, 1989?

1 A I was sailing as an AB on the Exxon Valdez.

2 Q Let's start with a little bit of background.

3 How long have you been in the maritime industry?

4 A Well, I grew up working on family owned boats.

5 I started working as a charter captain in 1978 on

6 small vessels on the Great Lakes. In 1980, I

7 started working as a mate, an engineer designate

8 aboard a research vessel on the Great Lakes.

9 That was for about two years.

10 From there I went to Texas Maritime College,

11 part of Texas A & M University. I was there for

12 three years where I picked up my third mate's

13 endorsement and following graduation, I worked

14 for MEBA District 1 for a short period of time as

15 a third mate and then I came to work with Exxon

16 in September of 1987 and I was employed with them

17 until July of this year.

18 Q What type of licenses do you hold?

19 A I hold a third mate's ocean license and also a

20 Captain's license for vessels up to 100 tons for

21 inland waters an coastal waters.

22 Q And, is there a card that you hold for an AB?

23 A Yes, I hold a "Z" Card that has AB's

24 endorsements on it and also endorsements for

25 working as a wiper in the engine department.

1 Q What's a wiper in the engine department?
2 A Essentially low on the totem pole in the
3 engine room.
4 Q Again, when did you get your third mate's
5 license?
6 A August of '87.
7 Q Now, what position did you have, again, when
8 you were on the Exxon Valdez?
9 A Able-bodied seaman.
10 Q You had a third mate's -- is there a reason
11 why you weren't working as a third mate or is
12 that unusual?
13 A No, it wasn't. I was hired as an AB by Exxon.
14 Q Is it not unusual for able-bodied seamans to
15 have higher licenses?
16 A No.
17 Q When were you assigned to the Exxon Valdez?
18 A I joined the ship on February the 5th of last
19 year.
20 Q That would have been 1989?
21 A Correct.
22 Q How many trips had you made up to Valdez at
23 that point on the Exxon Valdez? Or, how many
24 trips did you make on the Exxon Valdez up to
25 Valdez?

1 A Four, I believe.

2 Q Had you made trips up to Valdez prior to being
3 on the Exxon Valdez?

4 A Yes.

5 Q Can you give the jury an idea of how many...

6 A Just two, on the Exxon Boston.

7 Q And, were you on the bridge at all during the
8 times that any of those ships went through Prince
9 William Sound in or out?

10 A Yes.

11 Q Did you ever use the automatic pilot on any of
12 those trips in and out of Prince William Sound?

13 (2348)

14 MR. CHALOS: Objection, Your Honor, relevancy.

15 THE COURT: Why don't you approach the bench
16 for a minute?

17 (2353)

18 (Whispered bench conference as follows:)

19 THE COURT: Is this person being offered as an
20 expert?

21 MR. COLE: No, but I think that I'm entitled
22 to show what the custom is within the community --
23 within the maritime industry, itself. This person has
24 made several trips in terms of his observations and
25 whether or not automatic pilot has been used, whether

1 or not -- he's not being asked for an opinion. He's
2 just being asked to stand back and whether or not he
3 saw it being used and that's one of the elements of
4 this case. Whether or not he was prudent, the captain;
5 I don't think that that is justifiable under this...

6 MR. CHALOS: Judge, he's going to have lay
7 foundations to the circumstances in those voyages.

8 THE COURT: An able-bodied seaman is not the
9 person to lay this type of information, give this kind
10 of evidence the way it is now. I'm not saying I will
11 preclude you from introducing custom or usage or even
12 opinions with other people who are qualified, but an AB
13 is not the person you get this kind of testimony from.

14 (End of whispered bench conference)

15 (2410)

16 THE COURT: Objection sustained.

17 Q (Mr. Radtke by Mr. Cole:) Would you tell the
18 jury generally what your responsibilities are as
19 an able-bodied seaman?

20 A Well, mainly we work deck maintenance. We are
21 watch standers, although Exxon had some ABs that
22 were designated as strictly day workers and only
23 stood watches on arrivals and departures. While
24 we're standing watch, we may be standing a
25 lookout watch or a wheel watch.

1 Q Would you give the jury an idea of what kind
2 of work schedule you had while on the Exxon
3 Valdez?

4 A I stood the 8:00 to 12:00 watch.

5 Q The jury might not be familiar with how that
6 watch system is. Would you explain that?

7 A I would be designated watch stander from 8:00
8 in the morning until noon and also from 8:00 in
9 the evening until midnight, but we also worked
10 overtime aside from those hours and of course, we
11 were always available to be called out at any
12 other time.

13 Q How many ABs were there on the ship?

14 A Six.

15 Q And, how are the watches broken up over the
16 day?

17 A Well, an AB stands four on, eight off watch
18 rotation and as I've said before, though, you may
19 decide voluntarily to work overtime during those
20 off hours or you may be called out at any time
21 for arrivals or departures or prearrivals or
22 whatever may come up.

23 Q Did you have a partner on the 4:00 to 8:00
24 shift with you?

25 A Yes.

1 Q And, who would that have been?
2 A Harry Claar.
3 Q Who was the captain of the Exxon Valdez when
4 you joined? Was it Captain Hazelwood?
5 A No. I've just forgotten his name just at the
6 moment. Captain Stalzer, I'm sorry.
7 Q And, at some point, did Captain Hazelwood get
8 assigned to the ship?
9 A Yes.
10 Q How many trips do you remember sailing with
11 Captain Hazelwood?
12 A Prior to his joining?
13 Q No, after he joined.
14 A I believe two.
15 Q Do you remember coming into port on the
16 evening of the 22nd?
17 A Yes.
18 Q What were your responsibilities that evening?
19 A Late in the afternoon, I think around 4:00, we
20 were called out to switch some mooring wires from
21 one side of the ship to the other. I don't
22 recall -- I think it was from starboard to port.
23 Earlier in the day we had done some prearrival
24 work and some orders were changed, so we were
25 called out again late that afternoon to switch

1 some wires.

2 Q When you say "mooring wires", people might not
3 be familiar with that.

4 A Mooring lines and in the case of this ship, we
5 used wire instead of, like, synthetic rope.

6 Q What is mooring...

7 A To tie the vessel up alongside the dock.

8 Q And, did you work your 8:00 to 12:00 shift
9 that evening?

10 A Yes, and then following that prearrival
11 assignment, I then came on watch on about 10
12 minutes to 8:00 and assumed the bow lookout.

13 Q And, would you have changed, switched, or did
14 you stay there all the way into port?

15 A I was lookout all the way into the dock.

16 Q And, was there anything eventful about that or
17 uneventful?

18 A No, it seemed to be a fairly normal arrival.

19 Q Do you remember approximately what time you
20 got in that evening?

21 A We must have made the dock at about 11:00
22 because we had finished docking, that is, tying
23 the ship up, right at the end of my watch.

24 Q And, it takes about an hour to finish tying it
25 up?

1 A That night, I guess, it did.

2 Q What did you do after you got off your ship
3 that evening?

4 A I probably called home. There's a phone at
5 the dock. Then, I went to bed.

6 Q The next day, did you work your 8:00 to 12:00
7 shift during the day?

8 A Yes, I did.

9 Q Would you tell the jury what you would have
10 been doing during that time?

11 A We were standing a cargo watch that morning.
12 We had snow, so we had some shoveling to do on
13 deck. We topped off tanks towards the end of
14 that watch, so we were somewhat busy at that
15 point, but as I said, the last hour or so of the
16 watch.

17 Q What do you mean by "top off tanks"?

18 A Well, bringing the cargo up to the top of the
19 tanks. In other words, finishing a tank off.

20 Q And, how do you do that? Do you help the
21 first mate?

22 A This ship was a pretty automated ship. That
23 operation is watched from the cargo control room.
24 The ABs on deck essentially just make certain
25 that the valves were in their proper positions,

1 properly closed as ordered by a mate.

2 Q After your shift at noon, did you go into town

3 at all?

4 A No.

5 Q Any reason?

6 A Well, it was snowing. Earlier that day, I had

7 wanted to get into town. I had never been into

8 Valdez, but because the weather was not so good,

9 we decided not to go in.

10 Q Were you called out to be a part of the

11 undocking process that evening?

12 A I was called out at about 7:30.

13 Q And, what were your responsibilities that

14 evening?

15 (2791)

16 A We were securing the deck for sea at that

17 point.

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

19 would entail?

20 A Well, there's a lot of equipment that's out on

21 the deck that might be used for cargo operations

22 that has to be put in a secure place. Such

23 things as fire equipment should be put away.

24 Anything that could possibly break loose while we

25 are underway at sea and, you know, cause damage

1 to the ship.

2 Q You mentioned fire equipment. Is there
3 smoking allowed on the tanker?

4 A Not out on deck.

5 Q What did you actually do -- what were your
6 responsibilities when the ship was undocking from
7 Berth 5?

8 A I assumed a station on the stern of the vessel
9 as we were casting off those lines.

10 Q And, did at some point you leave that and go
11 up to the bridge?

12 A When we would finish casting off the stern
13 lines, yes. I assume my wheel watch.

14 Q When you say "wheel watch", what is that?

15 A Well, steering the ship. The ship is still in
16 the process of undocking even when all the
17 steering lines are off. At that point, the
18 person that's assigned to steer the ship goes up
19 to assume his position at the wheel as the rest
20 of the lines on the ship are being cast off.

21 Q And, when you got up there, who was up there
22 that evening in the bridge?

23 A The first mate, the pilot and the captain.

24 Q Who steers the vessel until you get there?

25 A Oh, it isn't necessary to steer the vessel at

1 that point because we're still alongside the dock
2 with at least the spring lines out, possibly some
3 forward lines.

4 Q Now, you came to the bridge; where did your
5 partner go?

6 A He's still involved in undocking the ship and
7 possibly also securing the deck.

8 Q And, after you got underway, where did he go?

9 A I can't be sure. A lot of times, in that
10 process of undocking the ship, the lookout
11 doesn't necessarily go to the bow immediately.
12 Generally there is a mate up there who might be
13 acting as lookout. In the meantime, the AB
14 assigned to that job might be securing the
15 mooring wires or other gear on deck, so I don't
16 know.

17 Q At some point, did he go to the bow, then?

18 A Yes.

19 Q Now, on your way away from the dock and when
20 the ship was being steered, who gave the orders
21 that evening for steering?

22 A I was receiving steering orders from the
23 captain relayed to the chief mate who is standing
24 at the engine-order telegraph in the wheelhouse.

25 Q Would you tell the jury how that occurs?

1 A As the ship is being cast off, the pilot and
2 captain have to be out on the wings just to make
3 sure everything is going all right from that
4 vantage point and on a ship especially of this
5 size, it's a long distance between the bridge
6 wing and the pilot house. They're relaying
7 steering orders and engine orders to the mate or
8 the person that's at the wheel. In order to do
9 that, they need a radio and the master relays
10 that order to the mate who, in turn, is making
11 sure that the helmsman what that order was.

12 Q So that like when you were in that position,
13 Mr. Kunkel, was he in there with you?

14 A That's correct.

15 Q And, he was making sure that you were making
16 the turning instructions that he was giving you?

17 A Correct.

18 Q Now, at some point, was there a change? Did
19 Mr. Kunkel leave the bridge?

20 A Yes, the third mate came up and relieved him.

21 Q And, would you tell the jury what time we're
22 talking about? Where is the vessel at about this
23 time?

24 A You mean when the first mate is relieved?

25 Q Uh-huh (affirmative).

1 A We are away from the dock. It could be a time
2 frame of 15 minutes or more because the third
3 mate has been down on the deck again, securing
4 the deck. When they're finished with that, he,
5 then, comes up to the bridge and takes the place
6 of the chief mate at the engine-order telegraph.

7 Q Now, on this evening, the pilot that took you
8 out, do you remember did you recognize him at
9 all?

10 A No, I didn't.

11 Q What happened on the way out to Middle Rock?
12 Anything eventful? What happened on the way out
13 to Middle Rock?

14 A I'm sorry. I don't know where Middle Rock is.

15 Q Okay, how about Entrance Island?

16 A I'm not...

17 Q Are you familiar with the chart at all?

18 A Well, I would say somewhat.

19 Q Why aren't you familiar with the chart?

20 A I've never been in a position to sail as a
21 mate in and out Prince William Sound. It's not
22 something that I've studied because of that.

23 Q Okay. Is it your responsibility to know where
24 you are on a chart, for instance?

25 A No, not as an AB.

1 Q What if you were at the helm and you received
2 an order from a captain that you thought was
3 incorrect?

4 MR. CHALOS: Objection, Your Honor. No
5 foundation.

6 THE COURT: Maybe you can establish a little
7 better foundation on this type of a question;
8 experience under the circumstances. I'm going to
9 sustain the objection, Mr. Cole.

10 Q I would like to talk about the relationship
11 between yourself and the other members. Who
12 supervises you on the deck?

13 A I guess you'll have to be a little more
14 specific.

15 Q Yeah, I -- who supervises you when you are at
16 the helm?

17 A The conning officer of the vessel.

18 Q And, do you take orders from him and execute
19 the orders that he gives you?

20 A You may have several officers at one time on
21 the bridge. You may have a pilot and the captain
22 and a mate. Any steering orders related from any
23 of those three people, I would respond to. You
24 know, you have the freedom to question an order.

25 In other words, if you don't understand an

1 order, you can certainly ask for clarification of
2 something, if you don't understand it. If all of
3 a sudden, some steering order comes from some
4 person on the bridge that you may not have been
5 used to getting orders from, you can question
6 those orders.

7 Q What about the type of order, itself; can you
8 question that?

9 A I guess I don't understand that.

10 Q Okay, I'll just go on. When you were going
11 out of the Narrows that evening, where was the
12 pilot?

13 A The pilot was on the bridge at that time.

14 Q And, do you remember where on the bridge he
15 was?

16 A I was not on the wheelhouse at that point. I
17 would have been either on my way to the bow as
18 lookout or at the bow.

19 Q Let's talk about the time when you were at the
20 helm. Where was the pilot?

21 A The pilot was either on the bridge wing as we
22 were departing or in the wheelhouse.

23 Q Did he ever leave?

24 A No.

25 Q What about the captain? Where was the captain

1 while you were at the helm?

2 A The captain was with the pilot again out on
3 the wing also with the pilot in the wheelhouse.

4 Q Did he ever leave?

5 A I became aware that he was gone, yes.

6 Q Who gave you steering orders while the captain
7 was gone?

8 A The pilot.

9 Q I'm showing you what's been marked for
10 identification as Plaintiff's Exhibit 40. Do you
11 recognize that photograph?

12 A Yes.

13 Q What's that a photograph of?

14 A That's the steering console on the Exxon
15 Valdez.

16 Q And, is that a fair and accurate
17 representation of how that looks?

18 A Yes.

19 MR. COLE: I would move for the admission of
20 what has been previously been identified as Plaintiff's
21 Exhibit 40.

22 MR. CHALOS: No objection, Your Honor.

23 THE COURT: 40 is admitted.

24 EXHIBIT 40 ADMITTED

25 Q Now, Number 52, is that essentially the same

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picture that you see in Exhibit 40?

A Yes.

Q And, is that also a fair and accurate representation of the steering console?

A Yes, it is.

MR. COLE: I would move for the admission of what's been identified as Plaintiff's Exhibit 52.

MR. CHALOS: No objection.

THE COURT: Admitted.

EXHIBIT 52 ADMITTED

(3393)

Q I'm showing you what's been marked for identification as Plaintiff's Exhibit 53. Do you recognize that photograph?

A That's the bridge of the Exxon Valdez.

Q Is it a fair and accurate representation of what the bridge looks like?

A Yes.

MR. COLE: I would move for the admission of what been previously identified as Plaintiff's Exhibit 53.

MR. CHALOS: No objection.

THE COURT: Admitted.

EXHIBIT 53 ADMITTED

Q Now, looking at Plaintiff's Exhibit 53 and if

1 I just hold it up, can you give the jury an idea
2 of where the steering console is?
3 A It's located here which is in the middle,
4 amidships of the wheelhouse.
5 Q I'm showing you what's been marked for
6 identification as Plaintiff's Exhibit 22. Do you
7 recognize that?
8 A That's the wheelhouse and chartroom of the
9 Exxon Valdez.
10 Q Does that appear to be a fair and accurate
11 representation of what that looks like?
12 A Yes, it does.
13 MR. COLE: I would move for the admission of
14 what's been previously identified as Plaintiff's
15 Exhibit 22.
16 MR. CHALOS: No objection, Your Honor.
17 THE COURT: Admitted.
18 EXHIBIT 22 ADMITTED
19 Q Now, Mr. Radtke, if you would, would you kind
20 of use this stick right here and indicate to the
21 jury where you would stand if you were at the
22 helm?
23 A From the helm, you would stand right here in
24 front of the wheel or actually, I guess, it's
25 abaft the wheel, right here.

1 Q And, what do you see out in front of you?

2 A Well, there is a space here between the
3 consoles and the forward windows of the
4 wheelhouse. This space would be about four to
5 six feet across and of course it's all glass
6 windows on the forward side of it.

7 Q So, you can see out through the windows and
8 out in the front of the vessel?

9 A Yes.

10 Q Now, I would like to talk a little bit about
11 the steering console. How difficult is it to
12 turn the wheel on the steering console?

13 A Oh, it's not difficult at all. It's as easy
14 to turn this wheel as the wheel of any car with
15 power steering. Maybe even a little easier.

16 Q And, what happens when you turn that wheel?

17 A Well, that in turn engages motors which drive
18 the rudder of the ship.

19 Q And, is there a screen in front of you that's
20 lit up?

21 A There is.

22 Q Would you give the jury an idea of what, if
23 you can remember, is on that screen in front of
24 you?

25 A The screen is a computer-type screen with

1 printouts on it. A compass heading is indicated.
2 The rate of turn of the vessel is indicated. The
3 rudder angle is also indicated on that console
4 and also, I believe, there are certain modes that
5 are listed as to what the current steering mode
6 of the ship is.

7 Q And, when you say that, you mean whether it's
8 in gyro or automatic pilot or whether it's at the
9 helm?

10 A Yes, that's two of the modes that might be
11 listed.

12 Q Now, the rudder indicator that you see in
13 front, would you explain what that looks like?
14 Is there a line or...

15 A Well, probably the easiest way to describe
16 that particular rudder indicator is to think of
17 looking at a ruler on a screen. Let's say --
18 and, I'm not sure if I'm exact on this, but...

19 Q Would you be more comfortable drawing it? Yes
20 or no?

21 A Yes.

22 Q Okay.

23 (Side conversation)

24 A This is not drawn to any sort of scale here,
25 so I'll just -- the actual box that you're

1 looking at, as I recall, is about nine inches
2 square. One of the -- 0 would be the rudder is
3 amidships.

4 Q "Amidships" means it's going straight ahead?

5 A Correct. Now, there would be two types of
6 indicators here. One is the ordered rudder
7 angle. In other words, when you put the wheel
8 over, there's always a delay period as the rudder
9 swings into that position. So, let's say this is
10 left 10°, this is 10° increments here. 10°, 20°,
11 and I believe it went all the way up to 35° hard
12 right or hard left being about 35° and there were
13 also hatch marks to indicate 5° and then also
14 hatch marks to indicate every 1° between that.

15 Now, one indicator, and I don't remember if
16 it's above or below, is a hatch mark that
17 indicates the ordered angle and the other
18 indicator is the actual position of the rudder.
19 So, that one would be moving as you move the
20 wheel or as the rudder was moving, excuse me.

21 Q And, the bottom one would be moving as you
22 move the wheel?

23 A If you move the wheel -- if 20° left rudder
24 was the given order, you would move the wheel
25 until one hatch mark hit left 20°. The other

1 hatch mark indicates the actual angle of the
2 rudder as it was following it up, so in other
3 words, you had basically two hatch marks to
4 indicate what your rudder was at.

5 Q But, it might take a little bit of time for
6 the one on top to catch up with the one on
7 bottom?

8 A That's correct. There's some delay. I might
9 also add that there's other rudder angle
10 indicators on the bridge. There's one over the
11 steering station on the forward bulkhead and I
12 believe there was also one right at the base of
13 the wheel.

14 Q Well, let me get out another exhibit and take
15 a look at that. I'm showing you what's been
16 identified as Plaintiff's Exhibit 27. Do you
17 recognize that?

18 A You know, I can't say I recognize that from
19 the Valdez. There is so many wheel houses that
20 have that equipment on them.

21 Q Do you remember that there are other rudder
22 indicators besides the one that on the console?

23 A Yes.

24 Q Now, there's also a rate of turn of indicator
25 on this?

1 A That's correct.

2 Q And, the last one I think you already talked
3 about was the heading indicator.

4 A Compass heading, correct.

5 Q Now, how can you tell whether or not this ship
6 is -- is this ship automatic as far as can you
7 put it in automatic pilot? Could you put the
8 Exxon Valdez into automatic pilot?

9 A I could. I would not, however, do that on my
10 own. That would be something that would be
11 ordered.

12 Q How can a helmsman determine that the tanker
13 is in automatic pilot?

14 A Again, on the console in front of the
15 helmsman, the gyro mode is indicated. That would
16 indicate that she's in autopilot.

17 Q What do you mean the gyro mode is indicated?

18 A Well, it says "gyro" on the screen in front of
19 you.

20 Q Lit up right in front of you?

21 A It's not that obvious. The letter size that's
22 printed on the screen is, I don't know, an eighth
23 of an inch or so, a standard for what you might
24 see on any computer screen.

25 Q Are there any other places where it's

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indicated?

A Yes, there are lights. There are indicators on the console to the left of the steering wheel that would be...

Q Maybe you could hold up that photograph and show the jury -- give them a little bit of an idea of where that would be.

A There are lights that would indicate the steering mode here to the left of the wheel and they are just little diodes, maybe again, an eighth of an inch lights that are either illuminated or not.

MR. CHALOS: Your Honor, may we ask the witness to get closer to the jury so he could point it out? I think he's too far away for them to appreciate what he's saying.

THE COURT: Counsel, approach the bench, please. You can be seated.

(4158)

(Whispered bench conference as follows:)

THE COURT: Mr. Chalos, this is Mr. Cole's witness and if you need to have him bring him closer during your cross examination, you can apply that, but don't apply it with Mr. Cole's presentation. I think that's improper.

1 (End of whispered bench conference)
2 (4178)
3 Q (Mr. Radtke by Mr. Cole:) Would you tell the
4 jury who orders the tanker to go on automatic
5 pilot if you're at the helm?
6 A That would be the conning officer.
7 Q And who orders taking it off?
8 A Again, the conning officer.
9 (Tape: C-3606)
10 (000)
11 Q And, does an able-bodied seaman have any input
12 as to whether or not the tanker should be put on
13 or off automatic pilot?
14 A No.
15 Q And, who orders the steering commands?
16 A Once again, the conning officer.
17 Q Is the helmsman asked his opinion on what
18 direction to take?
19 A No.
20 Q Have you ever been instructed to take the
21 tanker -- place it on automatic pilot or take it
22 off automatic pilot?
23 A Yes.
24 MR. CHALOS: Objection, Your Honor. (Pause)
25 I withdraw my objection.

1 THE COURT: Okay, the answer is in.

2 Q And, how do you do that; do you remember?

3 A The exact sequence of engaging from hand
4 steering to autopilot, I am not certain at this
5 point. It's been almost a year since I've done
6 it on this ship.

7 Q Now, on the way out that evening, while you
8 were at the helm, do you remember what time you
9 got off the helm?

10 A I was relieved at the wheel at about 10 to
11 11:00.

12 Q So, you would have been at the helm, would it
13 be fair to say, from about 9:30 to 10 to 11:00?

14 A Yes.

15 Q Did you place or were you ordered to place the
16 tanker in automatic pilot during that time?

17 A No.

18 Q Can you give the jury an idea -- could you
19 tell what the weather was like while you were at
20 the helm that evening?

21 A Yes. When we departed the dock, it was
22 snowing quite heavily and also when we were
23 underway from the dock inside Valdez Arm, I
24 believe it was still snowing heavily to
25 moderately heavily.

1 Q The visibility was not -- was it good or...
2 A I would say it was poor because I recall
3 having to steer by a compass heading instead of
4 being able to look at my heading outside for, you
5 know, land formations or navigational lanes.
6 Q And, was the captain on the bridge during this
7 time?
8 A Yes.
9 Q And, when was this?
10 A When was he on the bridge?
11 Q Yeah.
12 A Well, I don't recall any specific times. He
13 was on the bridge when we departed the dock. I
14 recall him being on the bridge through some radio
15 traffic. We made a fairly substantial course
16 change. I recall him being with the pilot at
17 that point. The time frame is difficult for me
18 to pinpoint.
19 Q Who were you replaced by that evening at the
20 helm?
21 A My watch partner, Harry Claar.
22 Q And, when you or your partner replaced one or
23 the other at the helm, is there a certain type of
24 exchange of information that goes on?
25 A Yes.

1 Q Would you tell the jury about that?

2 A You indicate the course that you're steering.

3 It could also be that you're in the process of

4 steadying up on a course. You would also want to

5 indicate that to him. Also, how the ship is

6 steering. You never know, given the loading

7 condition or the winds or the currents, the ship

8 always steers differently. So, you might fill

9 them in on how she felt.

10 Q Did you do that that evening?

11 A Yes.

12 Q Did you have any problems steering the vessel

13 that evening?

14 A Nothing unusual.

15 Q Was it responding to the commands that you

16 were giving it?

17 A Yes.

18 Q Where did you go after being relieved at the

19 helm?

20 A I went to my cabin to put some cold weather

21 gear on and then from there, proceeded to my

22 lookout station on the bow.

23 Q How did you know to go out to the bow?

24 A That is where the lookout was supposed to be

25 at that time.

1 Q Now, how long does it take to get out to the
2 end of the bow?
3 A I would say up to five minutes.
4 Q I'm showing you what's been marked for
5 identification as Plaintiff's Exhibit 37. Do you
6 recognize that photograph?
7 A Yes, that's the deck of the Exxon Valdez as
8 seen from the focsle head.
9 Q Is that an accurate representation of what
10 that looks like?
11 A Yes.
12 MR. COLE: I would move for the admission of
13 what has been previously been identified for
14 identification as Plaintiff's Exhibit 37.
15 MR. CHALOS: No objection.
16 THE COURT: Admitted.
17 EXHIBIT 37 ADMITTED
18 Q Now, would you point out to the jury from this
19 photograph where the bridge is?
20 A The bridge is located at the top of the house.
21 You can see it just forward of the stack.
22 Q And, it's got all those windows there across
23 the way?
24 A That's correct.
25 Q And, I'm showing what, I believe, has

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previously been admitted as Plaintiff's Exhibit 19. Can you take a look at that and point out for the jury where you would sit or where you would stand if you were on lookout on the bow?

A Well, right at the very front of the ship.

Q Couple things in the way there?

A There are some things in the way behind that lookout station. There is a ladder weighed down into the focsle and there is mooring wenches and also some ventilator cowls that are located there.

Q But, essentially, you sit out on the end?

A Stand at the very front of the ship, yes, that's correct.

Q Now, when you're out there, do you take any equipment with you?

A Generally, a hand-held radio and that is about it.

Q Why do you take the radio?

A To communicate with the wheelhouse.

Q What are your responsibilities at the lookout position?

A The lookout is there to watch and listen for any hazards to navigation for any other vessels, for aids to navigation such as buoys and your job

1 is to report those sightings to the wheelhouse.

2 Q Now, back in March, do you remember whether or

3 not you were wearing glasses that evening?

4 A Yes, I was.

5 Q Tell the jury what the weather was like while

6 you were out on the bow that evening.

7 A When I arrived at the bow, I think the snow

8 had pretty much stopped. It was calm, no wind

9 and I don't recall if the temperature was real,

10 real cold or not.

11 Q Do you remember seeing any aids to navigation

12 that evening; lights?

13 A Yes.

14 Q And, would they have been on the port or

15 starboard side, do you remember?

16 A Well, I recall the Valdez Narrows. Outside of

17 that, I don't recall anything specifically.

18 Q When did you reach the bow that evening, do

19 you remember?

20 A I would estimate anywhere from five minutes to

21 11:00 until 11:00.

22 Q Now, were you asked to do anything after that

23 time to help?

24 A Yes, I was called at to disembark the pilot.

25 Q Explain to the jury how that occurs; what you

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did.

A The bow lookout is called at as the pilot leaves the ship and that requires the bow lookout to go back down the deck about halfway between the bow and the house of the ship. The pilot disembarks the ship over the rail and climbs down a pilot ladder and the AB on lookout is there to assist him and is also there for safety.

Q And, did you do that on this evening?

A Yes.

Q Did anybody else help you?

A Yes, the third mate escorted the pilot from the wheelhouse down to the pilot ladder.

Q What did you do after that?

A The third mate and I stowed the pilot ladder.

Q Where did you go from there?

A From there, I proceeded back to the bow.

Q Now, that evening while you were on the bow, did you see any ice?

A No, I didn't.

Q And, what time did you get relieved that evening?

A I was called off the bow, again I'm estimating, what must have been quarter to 12:00.

Q And, how does that happen? Do you receive

1 notice? Explain to the jury how that happens.

2 A Do you mean specifically that night or

3 generally?

4 Q Yeah, that night.

5 A Okay, that night, Captain Hazelwood called me

6 via the radio. He first asked me what I thought

7 of the visibility and I just responded that it

8 was very dark. I wasn't sure how far ahead of

9 the vessel I might be able to see, but it was a

10 very dark night and I think I mentioned seeing --

11 I could see the snow on the mountain sides, but

12 again, I wasn't sure how far ahead of the vessel

13 I could see. And, then also at that point he

14 said we would putting my relief for the next

15 watch on lookout on the bridge wing.

16 Q You could see the mountains, though, in front

17 of you or on the sides?

18 A Yes, on the side of the vessel, yes.

19 Q Did you leave the bow then?

20 A Yes.

21 Q Where was your replacement at that time?

22 A I don't know.

23 Q Where did you go from there?

24 A From there I proceeded back to the house. I

25 entered the house on the main deck, was going up

1 the ladder where I met my relief who I assumed
2 was on her way either to the bow or to the bridge
3 wing and at that point, I told her that she would
4 be on the wing, which I think she already knew.

5 Q What did you do then after that?

6 A I took my cold weather gear off and then I
7 went down to the mess deck and had some dessert
8 and from there I went to my cabin.

9 Q What do you remember happening after that,
10 then?

11 A Well, I was getting ready for bed and there
12 was a loud grinding noise, I guess I would
13 characterize it. The sound seemed to come from
14 the bow of the ship and what seemed to me the
15 entire length of the ship. There was some
16 associated vibration. Not a lot of vibration and
17 that whole sequence seemed to last maybe six,
18 seven seconds.

19 Q What did you think had happened?

20 A I thought that we had struck ice.

21 Q What did you do after that?

22 A I went to the porthole of my cabin and was
23 looking out on deck. There was a spotlight being
24 shown from the bridge wing down onto the ship and
25 I think I watched that for just a few moments --

1 a few minutes. And, then I went and opened up my
2 cabin door to see if there was anybody else out
3 in the passageway and there wasn't. So, I closed
4 my door and figured I would be hearing from
5 somebody about what had happened.

6 Q Do you have any recollection as to time?

7 A At what point?

8 Q At this point right here.

9 A No, I don't.

10 Q What happened then?

11 A Well, as I said, I assumed that I would be
12 hearing from somebody as to -- or somebody would
13 be outside or something, so I thought the best
14 place for me to stay is right in my cabin until I
15 heard from anybody and so I laid down and it
16 didn't seem like it was too much longer after
17 that that the third mate knocked at my door and
18 told me that we were hard aground.

19 Q Did he tell you anything else?

20 A I asked him if we were losing cargo and he
21 said yes, we were.

22 Q What else did he tell you?

23 A I believe that was it.

24 Q Did you hear any more communication from
25 anybody that evening from the bridge?

1 A No.

2 Q What did you do after that?

3 A Well, from the manner of the third mate, I
4 knew things were fairly serious, so I thought I
5 had best try to get some sleep. I didn't know if
6 I would be called out at any moment or not and
7 that I had best try to get some sleep. So, I
8 tried to go to sleep.

9 Q And, were you able to do that?

10 A No, not much at all.

11 Q What time did you go back on duty then the
12 next day or I guess it was that morning?

13 A I must have gotten up around 6:30. I went to
14 the cargo control room and the chief mate was
15 fairly busy working in there. So, I was ready to
16 report between 7:00 and 7:30, but I actually did
17 not go to work, probably until -- to start my
18 watch at 10 to 8:00.

19 Q Did you go to sleep that morning?

20 A After the grounding?

21 Q Right.

22 A I may have fallen asleep for short periods of
23 time, yeah.

24 Q Did you become aware over the next day or two
25 of any concerns about the ship and the low tides

1 and the high tides?

2 A The tide was definitely an issue.

3 Q Why is that?

4 A Well, it was fairly -- the word was passed
5 that everybody would just as soon keep the ship
6 on the rocks then have her come off. So, at high
7 tide, we were careful to watch what was going on
8 as to how much the ship was working for example.
9 There was quite a bit of sounds as the ship
10 worked.

11 Q When you say "the ship worked", what do you
12 mean?

13 A Well, the ship is not necessarily just sitting
14 there solidly. If damage has been sustained,
15 then the tide is coming up or coming down, that
16 means there is stresses being exerted on it and
17 she moves and could also move because of any
18 winds or currents that we might have.

19 Q What was your concern, like, at high tide?

20 A The word was passed that, as I said, that we
21 did not want the ship to come off the rocks, that
22 she could be unstable enough to capsize and then
23 possibly sink.

24 THE COURT: Mr. Cole, why don't we take a
25 break now? We've been at it for an hour and a half.

1 MR. COLE: Sure.

2 THE COURT: We'll take our 15 minute break
3 ladies and gentlemen. Don't discuss this matter among
4 yourselves or with any other person. Do not form or
5 express any opinions.

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

8 (788)

9 (Off record - 10:30 a.m.)

10 (On record - 10:48 a.m.)

11 THE COURT: Okay, Mr. Cole.

12 Q Following the grounding that morning, did you
13 work your shift from 8:00 to 12:00 that morning?

14 A Yes, that's correct.

15 Q What were you doing during that time?

16 A We were getting ready for the lightering
17 operation that we had been told was going to take
18 place that morning.

19 Q Who was the captain of the vessel at that
20 time?

21 A Captain Hazelwood.

22 Q And, how long did he remain the captain?

23 A I'm not sure.

24 Q Was it through that day?

25 A I'm not sure.

1 Q Now, when did you get to Anchorage for this
2 trial?
3 A Last evening.
4 Q This morning were you asked to listen to a
5 tape?
6 A Yes, I was.
7 Q And, I'm showing you what's been marked for
8 identification as Plaintiff's Exhibit 77. Do you
9 recognize that tape?
10 A Yes, I initialed this tape after I listened to
11 it.
12 Q This morning?
13 A Yes.
14 Q And, is that your initial that you put on
15 there?
16 A Yes, it is.
17 Q And, that would be TRR?
18 A Correct.
19 Q Did you recognize any of the voices on that
20 tape?
21 A Yes.
22 Q Who did you recognize on that tape?
23 A I recognized the third mate's voice, Greg
24 Cousins, and also Captain Hazelwood's voice.
25 Q Does Captain Hazelwood have a distinctive

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voice on the tape?

MR. CHALOS: Your Honor, I'm going to object to this line of questioning. He's being asked about a document or a tape that's not in evidence. Unless Mr. Cole intends to place that in evidence, I would object to any further questions about the tape.

THE COURT: He's indicated he's recognized Captain Hazelwood's voice. Was that the purpose of the next question, "anything distinctive about the voice"?

MR. COLE: It's to -- can we approach the bench, Your Honor?

THE COURT: All right.

(889)

(Whispered bench conference as follows:)

MR. COLE: My next witness is going to give the tape. He is being used to show the relevance of it. The relevance appears to be that it's Captain Hazelwood's and which one is Captain Hazelwood. That's all I'm establishing through this witness so that in the next witnesses, they authenticated it, the actual transmission (indiscernible - paper rustling)

THE COURT: So, he's identified the two voices as the third mate and Captain Hazelwood?

MR. COLE: Right.

THE COURT: You're not playing the tape

1 through this witness?

2 MR. COLE: No.

3 THE COURT: What's the problem?

4 MR. CHALOS: I have no problems unless he does
5 play the tape through this witness. (Indiscernible -
6 mumbling).

7 THE COURT: All right.

8 (End of whispered bench conference)

9 (920)

10 Q Does Captain Hazelwood have a distinctive
11 voice on that tape?

12 A Yes.

13 Q Would you just describe to the jury what that
14 is?

15 MR. CHALOS: Your Honor, I'm going to object
16 again. He asking the witness about a document or a
17 tape that's not in evidence at this time.

18 THE COURT: I don't know the purpose of your
19 inquiry here. It's just to identify the voice. That's
20 the only limited purpose that it has come in for, but
21 if you're getting into quality of voice, I will not let
22 that in through this witness at this time unless you
23 lay a better foundation.

24 Q When did you hear Mr. Cousins voice on this
25 tape?

1 A At various times.

2 Q Was it in the middle, at the end, or the

3 beginning?

4 A Well, when I listened to the tape, it was fast

5 forwarded to various locations and...

6 Q But, you heard it then?

7 A Yeah, so I don't know at what point on the

8 tape I heard his voice.

9 Q And, did you hear Captain Hazelwood's voice on

10 that?

11 A Yes.

12 Q Was there a person or persons that you didn't

13 recognize on that tape?

14 A Yes.

15 Q I have one other area. What is Exxon Shipping

16 Company's policy as far as alcohol possession on

17 board a vessel?

18 A As I understood it, it was a fireable offense.

19 Q How about alcohol use?

20 A On board the vessels?

21 Q Uh-huh (affirmative).

22 A As I understood it, it was also a fireable

23 offense.

24 Q How were you made aware of these policies?

25 A When I was hired by the company, I believe

1 that was outlined, and also at various times ship
2 meetings would be held. It may come up at a ship
3 meeting and I believe the policy was also posted
4 on bulletin boards on the vessels.

5 Q Did you have any alcohol on board the Exxon
6 Valdez on March 23rd, 1989?

7 A No, I didn't.

8 Q Were you aware of any alcohol on board the
9 Exxon Valdez on March 23rd?

10 A No.

11 MR. COLE: I have nothing further.

12 (1040)

13 CROSS EXAMINATION OF MR. RADTKE

14 BY MR. CHALOS:

15 Q Good morning, Mr. Radtke. I just want to get
16 one question out of the way. You said this
17 morning when you listened to this tape the tape
18 was fast forwarded for you to certain portions?

19 A Yes, that's correct.

20 Q Who did that?

21 A The district attorney.

22 Q And, did he say "I'm going to fast forward to
23 Greg Cousins' voice right here"?

24 A I'm sorry. It was the lady.

25 Q Sorry. Did Ms. Henry say to you "I'm going to

1 fast forward Greg Cousin's voice right here"?

2 A No, she did not.

3 Q She just fast forwarded to certain portions of

4 the tape for you?

5 A Correct.

6 Q You've testified that you were on the bridge

7 coming into Valdez the night before, am I

8 correct?

9 A No, I was not in the bridge coming into

10 Valdez. I was on the bow lookout at that time.

11 Q I see. Were you on the bridge at any time

12 coming into Valdez on the 22nd?

13 A No, I wasn't.

14 Q When you arrived in Valdez, did you assist in

15 the docking operation?

16 A Yes, I did.

17 Q At that time were you receiving orders from

18 Captain Hazelwood?

19 A I don't recall.

20 Q Do you recall seeing Captain Hazelwood on the

21 22nd at all?

22 A Yes.

23 Q Did you speak with him on the 22nd?

24 A I don't believe so.

25 Q Now, you spoke a little bit about the job of

1 loading cargo. Do you recall that?
2 A Yes.
3 Q That's the chief mate's function on the Exxon
4 Valdez, is it not?
5 A That's correct.
6 Q With respect to smoking, smoking is permitted,
7 is it not, in the living quarters and on the
8 bridge of the ship?
9 (1140)
10 A That's correct.
11 Q I would like to turn to the undocking of the
12 Exxon Valdez on the 23rd. You said you were on
13 the bridge with the chief mate standing by and
14 the captain and the pilot were out on the wings,
15 is that correct?
16 A That's correct.
17 Q It's a fact, isn't it, that the chief mate's
18 job in that instance is to convey the orders to
19 you and to work the engine telegraph when the
20 ship is maneuvered?
21 A That's correct.
22 Q You were also asked about your knowledge of
23 the Prince William Sound charts. Do you recall
24 that?
25 A Yes.

1 Q And, you said that you didn't feel, since you
2 were an AB that you need to study those charts.
3 A Correct.
4 Q If you were working as a mate on this ship,
5 would you have studied the charts?
6 A Absolutely.
7 Q Would you have become familiar with those
8 charts?
9 A Absolutely.
10 Q The hazards to navigation and the aids to
11 navigation?
12 A Yes.
13 Q Is that a common practice of mates?
14 A Yes.
15 Q Now, during the undocking procedure, could you
16 hear the captain giving orders?
17 A Yes.
18 Q Captain Hazelwood speaks in a slow, low,
19 deliberate voice, am I correct?
20 A Yes.
21 Q Was he delivering his orders at this time in
22 that slow, low, deliberate style that he has?
23 A Yes.
24 Q Did he sound any different during the
25 undocking procedure about 9:00 on the 23rd than

1 you had known him to sound before?

2 A No, he didn't.

3 Q Were the orders that he was giving clear?

4 A Yes.

5 Q Were they given with the authority that a
6 captain has on ship?

7 A Yes.

8 Q Now, during that time, you also had the
9 opportunity to observe Captain Hazelwood, did you
10 not?

11 A I saw him, yes.

12 Q You saw him on the bridge?

13 A Yes.

14 Q Did he walk by you?

15 A Yes.

16 Q And, did he stand in front of you or in your
17 line of vision at any time?

18 A Yes.

19 Q Did you see any signs of alcohol impairment?

20 A No.

21 Q Were you close enough to smell the captain's
22 breath?

23 A I don't believe so.

24 Q Did the captain in any way appear intoxicated
25 to you?

1 A No, he didn't.

2 Q Now, after you undocked, the vessel sailed
3 through the Port of Valdez and then down through
4 the Narrows, am I correct?

5 A That's correct.

6 Q And, for the majority of that time, you were
7 on the bridge, were you not?

8 A Yes, I was.

9 Q It's customary, is it not, that in that
10 circumstance, that as sailing through the Port of
11 Valdez and through the Narrows, that any helm
12 orders you would receive would come from the
13 pilot?

14 A That's correct.

15 Q I would like to, for a second, turn to your
16 description of the rudder indicator. You
17 mentioned that when you turned the wheel either
18 right or left, the cursor moves over to the
19 desired course change. For instance, if you were
20 going to 10°, you would turn the wheel and the
21 cursor would go over to 10°. Then, subsequently
22 the actual rudder indicator would move to 10° in
23 a catch-up mode.

24 A Correct.

25 Q You said there was a slight delay. How slight

1 is that delay?

2 A From 0° to 10°, it may take a second to a
3 second and a half.

4 Q After you left the bridge that particular
5 evening, you were relieved by Mr. Claar. You
6 said you went to the bow, am I correct?

7 A That's correct.

8 Q At some point, you received a radio call from
9 Captain Hazelwood, did you not?

10 A Yes, I did.

11 Q And, that's when he told you to go aft and
12 help the mate disembark the pilot?

13 A Correct.

14 Q In that radio conversation that you had with
15 Captain Hazelwood, did he sound any different
16 than he had sounded in the past?

17 A No, he didn't.

18 Q Did he sound in any way impaired?

19 A No, he didn't.

20 Q Subsequent to your returning to the bow after
21 you disembarked the pilot, you got another radio
22 call from Captain Hazelwood, did you not?

23 A Correct.

24 Q What time was that?

25 A I can only estimate. I didn't have a watch

1 with me. I would say it must have been minutes
2 prior to the end of my watch.

3 Q What time did you walk off the bow that
4 evening?

5 A I would estimate quarter to 12:00.

6 Q In that conversation, what did the captain
7 tell you?

8 MR. COLE: Object -- well, I withdraw that.

9 A I believe the initial part of the conversation
10 was just a brief question, "How does it look up
11 there?" I don't remember the choice of words
12 exactly, but I took that to mean "How is the
13 visibility?"

14 Q And, you told him that it was dark and it was
15 hard to see from up there?

16 A Yes.

17 Q Would you agree that on this particular night
18 in the conditions that you were seeing, that a
19 lookout on the wing, the bridge wing, would have
20 better visibility, could see further?

21 (1417)

22 MR. COLE: Objection; argumentative. Lack of
23 foundation.

24 THE COURT: Objection overruled.

25 A Could you ask the question again, please?

1 Q Yes. Given the conditions that you were
2 looking at on that particular evening at the time
3 you spoke with Captain Hazelwood, would you agree
4 that a lookout on the bridge wing would have a
5 further distance of visibility than you had?
6 A I don't believe that it would have been
7 advantageous or that he would have been able to
8 see that far ahead of the vessel from the bridge
9 wing, that it would have made much difference.
10 Q Either way wouldn't make much difference?
11 A I don't believe it would have.
12 Q Now, when you spoke to Captain Hazelwood, did
13 he sound any different than he had sounded 15, 20
14 minutes before?
15 A No, he didn't.
16 Q Did he sound impaired?
17 A No, he didn't.
18 Q Was he speaking to you in that same slow
19 deliberate style of his?
20 A Yes.
21 Q Now, you say that you left your watch at about
22 11:45. It took you about five minutes to walk
23 back to the house?
24 A That's what I would estimate.
25 Q A couple minutes to talk to your relief and

1 tell her what she had to do?

2 A I don't even think it was a couple minutes.

3 Possibly a minute and as I said, I believe she

4 already knew that she was going to the wing.

5 Q Then you went to the galley, had something to

6 eat and ultimately went back to your room?

7 A Correct.

8 Q Now, you stated that the noise that you heard

9 was a sort of grinding noise that started at the

10 bow of the vessel and worked it's way back, is

11 that correct?

12 A That's correct.

13 Q And, that lasted five to seven seconds and

14 also you heard some vibrations?

15 A Correct.

16 Q And, the whole sequence lasted five to seven

17 seconds?

18 A That's what I would estimate, yes.

19 Q Prior to hearing that noise, had you heard any

20 other noise or felt any other vibrations at any

21 time?

22 A No.

23 Q Subsequent to hearing that noise and feeling

24 the vibrations, did you hear any noise or feel

25 any vibrations?

1 A No.

2 Q Now, I would like to ask you...

3 MR. CHALOS: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes.

6 Q I would like to show you Exhibit 40, which is
7 a picture of the steering console. Would you
8 mind holding that picture up, if you would, and
9 show the jury exactly where the indicators are on
10 that console to show you when the helm is in the
11 gyro mode or automatic mode?

12 A Okay.

13 Q Before you answer,...

14 MR. CHALOS: Your Honor, may I ask for the
15 witness to approach the jury so they can see it closer?

16 THE COURT: All right. You won't need it for
17 another exhibit, just as an exhibit right now?

18 MR. CHALOS: Just that exhibit.

19 THE COURT: You can just go on up, grab the
20 base of that wire. There's a little amplifier. Do you
21 see the amplifier there? Yeah, just carry that as far
22 as it will go before you run out of cord. You can hook
23 that on your belt or your pocket. That's is as close
24 as you're going to be able to get with what we have
25 available.

1 A Okay, you want me to point out the indicators
2 for hand steering and gyro steering, is that
3 correct?
4 Q Right. First of all, how many such indicators
5 are there?
6 A Let's start with hand steering. When it's
7 engaged in the hand steering mode, there is a
8 spring loaded button to the right of the wheel.
9 When the bridge is dark, that light is lit up and
10 that button is approximately an inch in diameter.
11 I believe there is also a dial light to the left
12 of the wheel here. That light is, I would say,
13 an eighth of an inch in diameter that is lit up.
14 And, then here on the steering, the CRT, the
15 screen, there are indicators written either gyro
16 mode or hand mode as I recall.
17 Q Dependant on which one you're on?
18 A Yes. And, to my recollection, I believe that
19 is it.
20 Q While you're standing there, if you were asked
21 to put a 10° right rudder on this vessel, how
22 many turns of the steering wheel would you have
23 to make to accomplish that? And, I want you to
24 assume that the ship is laden 57 feet traveling
25 at about 11.7 knots.

1 A I would say no more than one complete turn of
2 the wheel. Possibly closer to a half turn of the
3 wheel.

4 Q As a helmsman, would you consider a 10° right
5 rudder command to be a simple command?

6 A Yes.

7 Q Would you consider the task of carrying out
8 that command to be a simple one?

9 A Yes.

10 Q You may return to your...
11 (Pause)

12 Q Mr. Radtke, you sailed through the Port of
13 Valdez, I think you said, at least six times, am
14 I correct?

15 A That's correct.

16 Q You were interviewed by several law
17 enforcement agencies.

18 A That's correct.

19 Q And, do you recall in those interviews that
20 you told the investigative officers that in your
21 experience, it is not unusual for a master to
22 leave the bridge while the vessel is traversing
23 the waters of Prince William Sound?

24 THE COURT: Don't answer the question yet.

25 MR. COLE: I object on the same basis that Mr.

1 Chalos objected when I attempted to ask a question in
2 that respect. This person isn't qualified to testify
3 to that.

4 MR. CHALOS: Your Honor, I'm asking for his
5 personal knowledge and what he's seen.

6 THE COURT: You're asking for what he said to
7 somebody else is what you're asking him. In an
8 interview is what you're asking.

9 MR. CHALOS: Well, I'll ask him without that
10 preface, then.

11 MR. COLE: Then, I object on the same grounds
12 Mr. Chalos objected when I asked about the autopilot.

13 THE COURT: Counsel, approach the bench,
14 please.

15 (1824)

16 (Whispered bench conference as follows:)

17 THE COURT: He can give his opinion based on
18 his experience coming in and out of Valdez. He's not
19 giving his opinion as an expert in that area, however
20 when you ask him did he make statements to other people
21 concerning that, that's hearsay. I'm not going to give
22 you any more (indiscernible - coughing), Mr. Cole.

23 MR. CHALOS: I'll withdraw the preface.
24 (Indiscernible - mumbling).

25 THE COURT: Okay, well, the objection as to

1 foundation is overruled based on his experience
2 (indiscernible - mumbled).

3 MR. COLE: Can I ask him whether or not he
4 (indiscernible - whispering) going in and out of Prince
5 William Sound? That's the question I asked, but one
6 that was sustained.

7 THE COURT: Well, I'm going to overrule your
8 objection now and that (indiscernible - whispering) Mr.
9 Cole, your objection is overruled.

10 (End of whispered bench conference)

11 Q (Mr. Radtke by Mr. Chalos:) Mr. Radtke, on
12 the basis of your experience in Prince William
13 Sound and the Port of Valdez on these tanker, are
14 you familiar with the practice of masters leaving
15 the bridge while the vessel is in Prince William
16 Sound?

17 A Yes.

18 MR. CHALOS: Your Honor, I have no further
19 questions at this time.

20 THE COURT: Mr. Cole?

21 REDIRECT EXAMINATION OF MR. RADTKE

22 BY MR. COLE:

23 Q On the basis of your experience of traveling
24 in and out of Prince William Sound, are you
25 familiar with masters placing the tanker on

1 autopilot in Prince William Sound?

2 A No, I'm not.

3 Q Does that mean that they do or do not?

4 A I have not seen it done.

5 Q Now, when you talked about the masters leaving

6 the bridge, how long a period are we talking

7 about? Did you observe masters leave the bridge.

8 MR. CHALOS: Object. Your Honor, that is a

9 compound question.

10 THE COURT: Maybe you could rephrase it to

11 make it a single question.

12 Q Mr. Chalos asked you about when masters left

13 the bridge. Would you tell the jury did you ever

14 see a master leave the bridge for an hour?

15 (1928)

16 A No.

17 Q What type of times did you see the masters

18 leave the bridge?

19 A 15 minutes.

20 Q How about have you ever encountered ice coming

21 into Prince William Sound?

22 A I had been on watch when we have had ice

23 conditions, yes.

24 Q Ever been at the helm?

25 A I don't remember.

1 Q Were you ever at the helm in the area of the
2 Port of Valdez?
3 A Yes.
4 Q Did captains ever leave the bridge in that
5 area?
6 A I don't remember that taking place, no.
7 Q And, besides your trip through the Narrows, do
8 you ever remember a captain leaving the bridge
9 while traveling in through the Narrows?
10 A I don't believe so.
11 Q Now, I want to ask you a question just to
12 clarify and give you a chance to take a look at
13 this other diagram. I think you indicated that
14 the light that indicates that the tanker is in
15 automatic pilot is on the left side. Would you
16 take a look at this picture and see if that
17 clarifies where that diode is?
18 A Okay, this is the spring loaded button for
19 being in hand steering.
20 Q Let me, ...
21 A Okay. This is the spring loaded button to
22 engage hand steering.
23 Q And, that says "helm", right?
24 A Correct.
25 Q And, that means hand steering?

1 A Correct.

2 Q And, where does the diode light up that tells
3 you that it's in helm or automatic pilot? Is it
4 on the left side or the right side?

5 A I believe it's on the left side.

6 Q That's fine. If that's where you think it is,
7 that's fine. What's written up here on the top
8 right corner?

9 A On the top right corner, I see "Control
10 Power", "Pump On", "Autopilot", "Helm",
11 "Emergency Remote" and "Able Remote On".

12 Q Do you see any indications on the left side of
13 "Helm" or "Automatic Pilot"?

14 A No, I don't.

15 (2110)

16 Q And, when it's written on the -- what do you
17 call this, the CDR?

18 A It's CRT.

19 Q CRT?

20 A Yeah.

21 Q Does it say "Hand Mode" or does it say "Helm",
22 or do you remember?

23 A I'm afraid I don't remember that.

24 Q That's fine. Have you ever taken any special
25 training in alcohol detection at all?

1 A No, I...

2 Q Any special training in that area?

3 A No, I haven't.

4 Q And, would you take the pointer, and if you
5 could, would you tell the jury where Captain
6 Hazelwood generally stood when you were at the
7 helm and he was at the bridge? Was there
8 anyplace he would generally stand?

9 A No, not generally.

10 Q Would he walk around the whole place?

11 A Usually he would stay -- he did not pace.
12 Some conning officers pace. Captain Hazelwood
13 did not. Usually he would be in one spot and
14 would stay in that spot for awhile.

15 Q Would it be forward or aft?

16 A Generally forward.

17 Q Up by the windows on one end or the other?

18 A Yes.

19 Q Is that where the radios are in that area?

20 A Yes.

21 Q Now, when you saw Captain Hazelwood that
22 evening, were the lights on or were the lights
23 off on the bridge?

24 A They were off.

25 Q Why is that?

1 A Well, it's nighttime and the conning officers
2 and the helmsman cannot see out. You want your
3 eyes to be adjusted to the dark so that's why you
4 have a darkened bridge.

5 Q How can you see the instruments with a
6 darkened bridge?

7 A They're lit up.

8 Q How do you have lit up instruments and still
9 retain your night vision?

10 A Oh, I would say they are illuminated at a
11 level that's...

12 Q Are they a color?

13 A Yes.

14 Q What color are they?

15 A Various.

16 Q Now, Mr. Chalos asked you how long it would
17 take for a ship to respond after you gave it a
18 turn of 10°. Remember him asking you that?

19 (2228)

20 MR. CHALOS: Objection, Your Honor, that's not
21 what I asked.

22 THE COURT: I think that what you asked is
23 capable of the interpretation of respond, but we were
24 talking about how fast it took the rudder to actually
25 move, I think, so...

1 Q The rudder to move; remember him asking you
2 that?

3 A Yes.

4 Q Does it make a difference depending on the
5 size of the load that the tanker has how fast it
6 responds?

7 A I don't think I'm really qualified to know
8 that.

9 Q When you were speaking with Captain Hazelwood
10 and out on the bow, how were you speaking with
11 him?

12 A Via hand-held radio.

13 Q And, could you tell where he was at the time?

14 A I assumed he was on the wheelhouse.

15 Q You didn't have any chance to observe him
16 there, though?

17 A No.

18 Q Would you say in your experience with dealing
19 with Captain Hazelwood, would you characterize
20 him as a very precise and professional person?

21 A Yes.

22 MR. CHALOS: Objection, Your Honor. The
23 question is vague and ambiguous.

24 THE COURT: I think it's the kind of opinion
25 he can give. Objection overruled.

1 Q And, would that include the way he talks and
2 his tone of voice? Would you characterize his
3 language as precise or sloppy?

4 MR. CHALOS: Your Honor, I object again.

5 THE COURT: Objection overruled. Answer the
6 question.

7 A I don't recall ever having a command from him
8 that I didn't understand.

9 Q Now, when Ms. Henry asked to listen to the
10 tape today, what did she ask you to do? How did
11 she ask you to identify the tapes?

12 A Prior to playing the tape, she said "You'll be
13 hearing some voices. If you can identify them,
14 identify them."

15 MR. CHALOS: Thank you. I have nothing
16 further.

17 RE CROSS EXAMINATION OF MR. RADTKE

18 BY MR. CHALOS:

19 Q Just a few questions, Mr. Radtke. When
20 Captain Hazelwood called you at about 11:15 or
21 11:20 to tell you to come back to help with the
22 pilot, did you have any reason to doubt that he
23 was on the bridge at that time?

24 A None.

25 Q When he called you at about 11:45 to 11:50

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that evening to ask you about the visibility conditions, did you have any reason to believe that he was somewhere other than the bridge?

A No.

Q Now, in response to Mr. Cole's question, you indicated that at the times that you were on the helm coming into Prince William Sound, you didn't put the vessel on gyro, am I correct?

A That's correct.

Q You can't say whether other ABs might have had the helm on gyro, is that right?

MR. COLE: Objection, lack of foundation; lack of knowledge.

MR. CHALOS: That's precisely my question, Your Honor.

MR. COLE: Argumentative.

THE COURT: Objection overruled.

Q Did you understand my question?

A Ask it again, please.

Q You don't know whether the vessels that you were on were put in the gyro mode with some other helmsman at the wheel, do you?

A That's correct.

Q Now, are you aware of any rules or regulations that required a captain to be up on the bridge in

1 Prince William Sound?

2 A No, I'm not.

3 Q Mr. Radtke, have you had the occasion in the
4 past to observe people who were intoxicated?

5 A I guess I don't know what you mean by
6 "observe".

7 Q Well, to see someone who drank to a point
8 where he was drunk.

9 A Yes.

10 Q And, I take it that you're familiar with the
11 signs that they exhibit when someone is drunk,
12 are you not?

13 A Yes.

14 Q Did you see any such signs on Captain
15 Hazelwood the night of the 23rd?

16 A No, I didn't.

17 Q Have you had occasion in the past to observe
18 someone who has been impaired by alcohol?

19 A Yes.

20 Q Are you familiar with the signs of people who
21 are impaired?

22 A Yes.

23 Q Did you see any such signs on Captain
24 Hazelwood on the night of the 23rd?

25 A No, I didn't.

1 MR. CHALOS: No further questions. Thank you.

2 REDIRECT EXAMINATION OF MR. RADTKE

3 BY MR. COLE:

4 Q Mr. Radtke, when was the last time that you
5 confronted a captain and told him that you felt
6 that he was impaired?

7 MR. CHALOS: Objection, Your Honor. The
8 question is leading. No foundation; it implies an
9 answer that the witness hasn't testified to.

10 THE COURT: Objection sustained, Mr. Cole.

11 Q Have you ever done that?

12 A No, I haven't.

13 MR. COLE: Thank you.

14 THE COURT: Okay, you may step down. You're
15 excused. May the witness be excused from further
16 participation?

17 MR. COLE: Yes.

18 MR. CHALOS: Yes, no further questions.

19 MR. COLE: Judge, can we approach the bench?

20 THE COURT: Uh-huh (affirmative).

21 (2520)

22 (Whispered bench conference as follows:)

23 MR. COLE: We're getting to the Coast Guard
24 people.

25 THE COURT: I understand that, but we can put

1 them on the direct and we'll take care of some of that
2 between direct and cross.

3 MR. CHALOS: Is this the...

4 MR. COLE: The Coast Guard.

5 MR. CHALOS: I'll have a written response by
6 1:15 once we start again.

7 THE COURT: That's fine. We could start and
8 break at noon.

9 (End of whispered bench conference)

10 (2540)

11 MR. COLE: At this time, the State would call
12 Gordon Taylor to the stand.

13 (Pause)

14 THE CLERK: Sir, you'll see a microphone right
15 there on the countertop. Attach that to your shirt and
16 remain standing and raise your right hand.

17 (2616)

18 (Oath administered)

19 A I do.

20 GORDON P. TAYLOR

21 called as a witness in behalf of the State, being first
22 duly sworn upon oath, testified as follows:

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

25 A Gordon Paul Taylor, T-a-y-l-o-r.

1 THE CLERK: And, your current mailing address?

2 A P.O. Box 1841, Valdez, Alaska.

3 THE CLERK: And, your current occupation, sir?

4 A I work for the Ship Escort Response Vessel
5 System in Valdez.

6 THE COURT: You've got to speak up, sir.
7 We've got the microphone up about as high as it will
8 go.

9 Mr. Cole?

10 MR. COLE: Thank you, Your Honor.

11 DIRECT EXAMINATION OF MR. TAYLOR

12 BY MR. COLE:

13 Q Mr. Taylor, where do you live right now?

14 A Valdez, Alaska.

15 Q How long have you lived there?

16 A Since 1979.

17 Q What brought you to Valdez?

18 A I was stationed there in the Coast Guard.

19 Q And, were you transferred?

20 A Yes.

21 Q Where did you come from?

22 A From Portsmouth, Virginia.

23 Q When you arrived in Valdez, what did your
24 duties entail; what was your position?

25 A I was stationed at the Marine Safety Office

1 and I was a vessel traffic controller and also
2 during the time I was stationed there, I was also
3 a pollution investigator and marine inspector.

4 Q Were you an enlisted person at that time?
5 A Yes, I was.

6 Q And, how long did you work for the Coast
7 Guard? How long were you in the Coast Guard?
8 A 10 years.

9 Q When did you get out?
10 A 2 April '84.

11 Q What did you do after you got out of the Coast
12 Guard?
13 A I took a couple months off and I worked at a
14 gas station for a couple months and I went to
15 work as a gauger for a third party called Caleb
16 Brett. I worked across the bay gauging tank
17 vessels.

18 Q At some point, did you go back to working for
19 the Coast Guard?
20 A Yes, I did. I believe it was in August of
21 1986. Went back working as a civilian watch
22 stander in Valdez.

23 Q Where were you actually working at that time?
24 Where in town?
25 A At the Coast Guard station.

1 Q I'm showing you what's previously been
2 admitted as Plaintiff's Exhibit 25. Would you
3 point to the jury where that center is that you
4 were working at?

5 A Yes, it was right near the Vessel Traffic
6 Center.

7 Q Now, what were your responsibilities there at
8 that job?

9 A As a vessel traffic watch stander, is that
10 what you want to know?

11 Q Yes.

12 A I monitored the transmitting of tank vessels,
13 ferries, tugs, through Prince William Sound.
14 Monitored their positions via VHF and when they
15 were close enough on the radar.

16 Q Would you describe for the jury what equipment
17 you had available back in March of 1989 to do
18 this?

19 A VHF radio located at various sites throughout
20 Prince William Sound and I had a radar system.
21 One of the radar sites was in Valdez called the
22 spit site.

23 Q Can you see it on that map?

24 A Yes, I can. The spit site is right here and
25 you have to go all the way around a small boat

1 harbor to get to it, but that's a spit site right
2 there and that site there took care of the entire
3 -- of just the Port of Valdez and then another
4 site was located at Potato Point and that's what
5 we used to monitor the tank vessels through the
6 Narrows and farther down until they...

7 Q Okay. I'm going to get another diagram out
8 for you to show the -- do you recognize that
9 chart?

10 A Yes, I do.

11 Q Can you show the jury where the other radar
12 was?

13 A Right here at Potato Point is the other radar
14 site and this is the first radar site that was
15 referred to earlier -- is right here. The second
16 one is right there.

17 Q Let's talk a little bit about the
18 communication system that you had available to
19 you at that time. You mentioned VHF?

20 A Uh-huh (affirmative).

21 Q Where were the stations that you had?

22 A Well, we had a station at Valdez at the Vessel
23 Traffic Center. Had one there, had one at Potato
24 Point, one at Naked Island, one at Cape
25 Hinchinbrook, a couple other sites; Cape

1 Yakataga. They were used by the other side, but
2 my main sites were Hinchinbrook, Naked Island,
3 Potato Point and Valdez.

4 Q And, would you explain to the jury how you
5 used the radar then to track tankers? Let's
6 start with coming into the Port of Valdez.

7 (2958)

8 A Well, we picked them up on radar wherever we
9 could, wherever the radar would pick them up
10 usually between Busby Island...

11 Q It would be helpful if you pointed to them.

12 A This is about the scope of the radar, Point
13 Freemantle over to Busby Island, sometimes a
14 little farther down, sometimes not so far.
15 That's where we started monitoring the tank
16 vessel, whenever we could see them and as they
17 came up farther, up to here, we started plotting
18 them about, I don't know, a mile before we got to
19 Potato Point and we plotted them through the
20 Narrows.

21 Q When you say "plot" them, would you tell the
22 jury what you mean by that?

23 A Well, take a range in bearing from Potato
24 Point to the vessel.

25 Q And, would that be done through the use of

1 your radar?

2 A Yes, it would.

3 Q And, when you say a "range", what do you mean

4 by that?

5 A A range, the distance from Potato Point to the

6 vessel.

7 Q And, a "bearing", what do you mean by that?

8 A A bearing would be a bearing from Potato Point

9 to the vessel.

10 Q What angle they were?

11 A Yeah, what angle they were from Potato Point.

12 Q Degrees.

13 A In degrees.

14 Q And, in the top corner of that chart, would

15 you tell the jury what the significance of that

16 portion that's in between the lines was?

17 A This area here?

18 Q Yes.

19 A This is the Valdez Narrows, is what it's

20 called. As you can see, it gets smaller, comes

21 through there, so we track them six minutes until

22 they get to the Narrows and then from the

23 Narrows, up through the Narrows, we track the

24 vessels every three minutes.

25 Q Do you do that physically or is that done

1 automatically?

2 A It's done automatically, but you can also do
3 it physically.

4 Q And, at that time, did you do it automatically
5 and physically?

6 A Automatically. It was done automatically. He
7 just wants them to go through there and make sure
8 your gear was working to plot them through there.
9 We didn't do a physical...

10 Q Was it a certain line that they take?

11 A They have an optimum track line which
12 basically goes pretty much right up through the
13 center of the Narrows and we keep an eye on them.
14 If they go anywhere, say, they vary 50 yards
15 right or left of the track line, that at that
16 time, you might call them up and say "My radar
17 holds you 50 yards right of the optimum track
18 line" or 50 yards left and they'll verify it and
19 maybe take corrective action if need be.

20 Q Is there a speed limit in there?

21 (3099)

22 A Yes, there is. Coming in, when they're not
23 loaded with oil, the speed limit is 12 knots.
24 Going out when they're loaded is 6 knots through
25 the Valdez one-way zone. The Valdez Narrows, we

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call it the "one-way zone".

Q Can you explain to the jury what you mean by that?

A By "one-way zone"? What it means is only one tanker at a time can be in there, in the Valdez narrows, from this line to this line. One tanker at a time can go through there. That's why they call it the one-way zone.

Q And, is there any different procedure for going in other than, I guess, the speed for coming out for a tanker leaving the Port of Valdez through the Narrows?

A Well, if they were leaving through the Narrows, they would have a two tug escort until they get to Potato Point and then they would be restricted to six knots also.

Q Now, would you tell the jury what the reporting requirements are for a tanker that is traveling to Valdez?

A Okay, the reporting requirements are they would call you three hours prior to arrival, prior to arrival at Cape Hinchinbrook. At that time, they give you various information about their vessel, the name of the vessel, the draft of the vessel, what their position is, when

1 call it the "one-way zone".

2 Q Can you explain to the jury what you mean by
3 that?

4 A By "one-way zone"? What it means is only one
5 tanker at a time can be in there, in the Valdez
6 narrows, from this line to this line. One tanker
7 at a time can go through there. That's why they
8 call it the one-way zone.

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10 going in other than, I guess, the speed for
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14 Narrows, they would have a two tug escort until
15 they get to Potato Point and then they would be
16 restricted to six knots also.

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18 reporting requirements are for a tanker that is
19 traveling to Valdez?

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21 would call you three hours prior to arrival,
22 prior to arrival at Cape Hinchinbrook. At that
23 time, they give you various information about
24 their vessel, the name of the vessel, the draft
25 of the vessel, what their position is, when

1 they're going to arrive at Cape Hinchinbrook,
2 where they're going.

3 Q "Where they're going" meaning?

4 A Where they're going, like, to Valdez. You
5 know, pretty much any tank vessel that comes in
6 there is going to Valdez, so that's pretty much
7 said. There's no place else to go forward in
8 Prince William Sound.

9 Q So, then they give other particulars about the
10 vessel?

11 A That everything they have is, you know, in
12 operating order. Do they have pilotage for
13 Prince William Sound?

14 Q What does that mean?

15 A Pilotage for Prince William Sound?

16 Q Yes.

17 A Have a licensed deck officer with pilotage for
18 Prince William Sound which means that he's taken
19 a test. He knows the area. He's supposedly the
20 expert on the vessel of the area.

21 Q Do you learn where the tanker has come from?

22 A Yes, they tell their next port and their last
23 port. Also, on that three hour pre-call and then
24 they give you a call one hour from Cape
25 Hinchinbrook and they give you pretty much the

1 same stuff again. They give you their speed,
2 where they're at, when they're going to make Cape
3 Hinchinbrook, if the times have changed and
4 that's about it for the one hour pre-call.

5 Then they call you again at Cape Hinchinbrook
6 and tell you that they've made Cape Hinchinbrook.
7 Everything is going fine. They give you an ETA
8 at Naked Island which is the next reporting point
9 and at that time, you would tell them any
10 particulars, if there is outbound traffic. You
11 usually tell them if there is any other opposing
12 traffic or any traffic in the system at the three
13 hour pre-call, but if you tell them any
14 particulars, it would help them out when they're
15 at Cape Hinchinbrook.

16 And, again, they call you again at Naked
17 Island also and tell you they are at Naked
18 Island. They give you an ETA to the pilot
19 station, be at Bligh Reef for a non-pilotage
20 vessel or Rocky Point for a pilotage vessel at
21 that time. You get the weather from them, too,
22 at Cape Hinchinbrook at Naked Island. Those are
23 two weather reporting stations.

24 And, then they call you again when they're at
25 the pilot station usually when the pilot's

1 aboard, give you an ETA to Entrance Island, which
2 is another reporting station, and at that time...

3 (3340)

4 Q Where is Entrance Island?

5 A Entrance Island is right here, so they call
6 you, like, say, here's Rocky Point right here or
7 they pick the pilot up either down here or up
8 here. And, at that time, we've usually got them
9 acquired on the radar by then. We can see them.
10 And, then they give us a call at Entrance Island.
11 "Roger that". Then they give us a call when
12 they're all fast for the dock and that's the
13 report and procedures coming in.

14 Q Now, during this process, does the watchman
15 write down the information that he receives?

16 A Yes, he does.

17 Q And, is that done at the time that he receives
18 it from the Exxon Valdez?

19 A Yes. Usually as he receives it, he writes it
20 down.

21 Q And, is that done in the regular course of
22 your duties as a watch?

23 A Yes, it is.

24 Q Now, weren't you on duty on March 22nd, 1989?

25 A Yes, I was.

1 Q What time did you come on duty that day?

2 A My watch schedule for that day was 4:00 to
3 12:00, so you come on watch approximately a
4 quarter to 4:00. That's easier. Relieved at a
5 quarter of.

6 Q And, when you came on duty that day, were you
7 advised that the Exxon Valdez was heading into
8 port?

9 A Yes, I was.

10 Q And, who were you advised by at that time?

11 A I was advised by the officer on watch that I
12 was relieving.

13 Q And, did you see a vessel data sheet that day
14 for the Exxon Valdez?

15 A Yes, I did.

16 Q And, is that the sheet that you just spoke of
17 where the information is recorded from the
18 vessel?

19 A Yes, it is, uh-huh (affirmative).

20 Q And, that's done in the regular course of
21 business pursuant to your requirements as a
22 watchman?

23 A Right.

24 Q I'm showing you what's been marked for
25 identification as Plaintiff's Exhibit 76. Do you

1 recognize that document?

2 A Yes, I do.

3 Q What is that? Why do you recognize that?

4 A It's a vessel data sheet on all vessels that
5 come in. We fill out a vessel data sheet on
6 them.

7 Q And, what is the name of the vessel that
8 corresponds to that vessel data sheet?

9 A What do you mean? On this one here?

10 Q Yeah.

11 A This is the data sheet on the Exxon Valdez.

12 Q And, what's the date?

13 A The date is 22 March, 1989.

14 Q And, is that a fair and accurate copy of the
15 actual vessel data sheet that you filled out?

16 A Yes, it is.

17 MR. COLE: I would move for the admission of
18 what has previously been identified as Plaintiff's
19 Exhibit 76.

20 MR. CHALOS: No objection.

21 THE COURT: Admitted.

22 EXHIBIT 76 ADMITTED

23 Q What does it say under "pilotage" for that
24 vessel?

25 A Well, there's a "Y" here, "Y" meaning "yes".

1 Usually you don't write down "yes" and "no"
2 because they're talking and you're writing this
3 down as they go along. So, you're trying to stay
4 with them, so we put down a "Y" for "yes" and for
5 "no". There is a "Y" there for "yes".

6 Q Now, that would mean that the pilot boat would
7 be dispatched to Rocky Point?

8 A Yes.

9 Q What time did the Exxon Valdez call in on its
10 three hour call?

11 A It says here 14:38.

12 Q Which would be?

13 A The 22nd.

14 Q 12 hour time, what's that?

15 A Oh, 2:38.

16 Q In the afternoon?

17 A In the afternoon.

18 Q What time was the next reporting?

19 A It was at 16:30, 4:30. That was just one hour
20 pre-call.

21 Q And, that would have been when you were on
22 duty.

23 A Right.

24 Q And, when was the next one?

25 A The next on was at Cape Hinchinbrook at 5:17,

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17:17.

Q Is there another name for the place off Cape Hinchinbrook that that point is called?

A They could say Cape Hinchinbrook; they could say Seal Rocks. Usually it's Cape Hinchinbrook. Okay, another place could be Schooner Rocks, but that's really not abeam Cape Hinchinbrook.

Q Where's Seal Rock; can you point that out on there?

A Seal Rocks is right here.

Q Where's Schooner?

A Schooner Rocks is up here. Let's see, it should be right there, Schooner Rock.

Q And, Cape Hinchinbrook is...

A Is right here. This is Cape Hinchinbrook. So, they call when they are abeam Cape Hinchinbrook.

Q Then after being abeam at Cape Hinchinbrook, did you receive another call from the Exxon Valdez?

A Our next call should have been abeam of Naked Island, which was at 18:30, 6:30.

Q Where is Naked Island for the jury?

A Naked Island is right here. It's about half way through their journey.

1 Q And, where would have been the next call?
2 A The next call would have been when the pilot's
3 aboard at Rocky Point, which would be up here.
4 That's Rocky Point.
5 Q And, what time was that?
6 A They say they were at Rocky Point at 20:19,
7 which would be 8:19 in the evening.
8 Q And, what time did the ship dock that evening?
9 A They say they were all fast. Actually, it
10 doesn't say they -- let's see, Entrance Island at
11 21:08. Yeah, it doesn't have -- they arrived at
12 22:48, which is 10:48.
13 Q Now, were you working on March 23rd, 1989?
14 A Yes, I was.
15 Q Would you tell the jury what shift you were
16 working that day?
17 A I was also working the 4:00 to midnight shift.
18 Q So, you would have been on duty at about 4:00?
19 A Yes.
20 Q Did you speak with someone from the Exxon
21 Valdez that evening?
22 A Yes, I did.
23 Q Was there a 30 minute pre-call made?
24 A Right, 30 minute pre-call was made at 8:57,
25 20:57.

1 Q What type of information did you receive at
2 that time?

3 A Well, they usually call up and tell the name
4 of their vessel, give me their drafts, their
5 destination, when they're going to arrive at
6 their destination and they'll tell me they have
7 no impairments and everything is in order,
8 meaning everything is the same as it was when
9 they came in. Everything's -- they're ready to
10 sail.

11 Q What about pilotage or non-pilotage?

12 A If they came in and they had pilotage, and
13 they were going to go out and they didn't have
14 pilotage, they would let us know. They would say
15 "Well, we are no longer a pilotage vessel or a
16 non-pilotage vessel." And, I would right that
17 down as such.

18 Q And, what type of circumstances does that --
19 how would that occur?

20 A If the captain who had pilotage left and
21 another captain came on who didn't have pilotage,
22 then they would become a non-pilotage vessel.

23 Q What did you write down on the vessel data
24 sheet for their outbound leg, whether or not they
25 were pilotage or not?

1 A I wrote down another "Y" for "yes"; they did
2 have pilotage.

3 Q And, when you talked to the personnel on the
4 outbound ship, the 30 minute call, who do you
5 generally talk to?

6 A Generally, I would say the pilot gives me this
7 information.

8 Q Now, would you tell the jury, is there a
9 mechanism by which your conversations with the
10 tankers are recorded?

11 (3888)

12 A Yes, there is. We have a recording system.
13 It's a reel-to-reel recording system and it
14 records everything we say on 13 and 16; channel
15 13 and channel 16, VHS.

16 Q And, is that synchronized at all as far as
17 time?

18 A Yes, it is. It has a time chronometer. At
19 the top of it, it feeds that time onto the tape,
20 so that you can go back to a specific time and
21 get what you're looking for.

22 Q And, are these recordings done in the normal
23 course of business for the Coast Guard?

24 A Yes, they are.

25 Q What time did the Exxon Valdez leave according

1 to the vessel traffic sheet?

2 A Okay, we're underway at 21:26, 9:26 that

3 evening of the 23rd.

4 Q And, when was their next reported?

5 A Okay, they got underway at 21:26. Their next

6 reporting time would be at Entrance Island. They

7 gave me a 22:15 that they would be there. They

8 gave me at ETA. And, I have put down here that

9 they arrived at 22:17; at 10:17 they arrived at

10 Entrance Island.

11 Q Now, that evening did you pass along any ice

12 reports to the Exxon Valdez?

13 A Yes, I did.

14 Q Would you tell the jury what you told them?

15 A I told them -- I recall I told them there were

16 numerous pieces of ice off of Point Freemantle.

17 Want me to show you were that's at?

18 Q Yeah, that would be helpful.

19 A Point Freemantle here.

20 Q Where is that in relationship to Bligh Reef?

21 A Okay, it's almost straight across from this.

22 Bligh Reef would be a little farther southeast of

23 Point Freemantle, but the ice would come out of

24 Columbia Glacier, Columbia Bay and head down that

25 way there. So, I told them that there were

1 numerous pieces reported from the other outbound
2 tanker which had went through there approximately
3 four hours before that. That was the Arco
4 Juneau, I believe.

5 (4055)

6 Q And, what time do your reports indicate that
7 the pilot was let go that evening?

8 A I have down here "Rocky Point at 23:26",
9 11:26. Usually that's -- I didn't write "pilot
10 away", but Rocky Point and thereof. Pilotage
11 vessels -- oh, that's the time, I would say, that
12 the pilot was away.

13 Q Do you remember having a conversation with a
14 representative of the Exxon Valdez at that time
15 as to their heading and their speed?

16 A Right at that time, yes, I do. From what I
17 recall, a person came on the radio and said that
18 they were going to come up to sea speed and they
19 might call me a little later depending on how the
20 ice got or was down at Point Freemantle.

21 Q Did you get another call from that same
22 individual?

23 A Yes, sir, I did. I believe it was about 10
24 minutes later I received a call from the same --
25 it was the same voice I heard saying that judging



1 by his radar, he saw a lot of ice in the
2 southbound lane and it was possible they would
3 have deviate over into the northbound, the
4 incoming lane to go around it and I guess that's
5 all I really remember for that. I think shortly
6 thereafter he called back and said that he was
7 going to deviate from the southbound or the
8 northbound and he was changing course to 200 at
9 12 knots.

10 Q Now, was a course change from 219 which is
11 presumably the track that they take out of the
12 area, is that correct? About 219?

13 (Tape: C-3607)

14 (000)

15 A Somewhere in there, yes.

16 Q To 200; did that cause you any concern at all?

17 A Not at all. When he told me he was going to
18 200, I went over to this large chart we have at
19 the Vessel Traffic Center and it's probably seven
20 feet by eight feet and we have little cards for
21 the tankers and I moved it down to the Rocky
22 Point area and then I looked over at the compass
23 rose which -- this is a compass rose here. It
24 gives you degrees from 0° to 360° and I just
25 looked at it, saw 200 of where they where they

1 were at and it would have put them well inside of
2 Bligh Reef buoy at 200. So, I wasn't too
3 concerned.

4 Q Are there any requirements in the Vessel
5 Traffic System as far as reporting leaving the
6 traffic zones?

7 A Yes, there is. It's supposed to give a 10
8 minute call prior to leaving or crossing the
9 lanes, 10 minute call to the traffic center.

10 Q How about as far as to leave the zone all
11 together?

12 A There's a traffic manual that, I believe, says
13 that all they have to do is just call and let us
14 know their intentions.

15 Q Did you ever learn of the Exxon Valdez's
16 intentions to turn to 180 that evening?

17 A No, I did not.

18 Q Did you ever learn of the Exxon Valdez's
19 intentions to leave the vessel traffic system
20 completely?

21 A Would you say that over again?

22 Q Did you ever learn after the two conversations
23 you testified to of the Exxon Valdez's intentions
24 to leave the vessel traffic zones completely?

25 A No. He said something -- oh, I'm sorry.

1 THE COURT: I'm sorry, did you have something
2 else to add to that?

3 A Oh, he had said something earlier when I was
4 talking to him that he would -- he might have to
5 and he would get back to me.

6 THE COURT: Mr. Cole, we will take our lunch
7 break now. We'll come back at 1:15, ladies and
8 gentlemen. Don't discuss this matter among yourselves
9 or with any other person. Don't form or express any
10 opinions. I understand one of the jurors may have a
11 bad back. If you need to bring a pillow in or
12 something like that, feel free to do so. Make yourself
13 comfortable when you're in the jury box. We'll stand
14 in recess.

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

17 (107)

18 (Off record - 11:57 a.m.)

19 (On record - 1:22 p.m.)

20 (Jury not present)

21 THE COURT: All right. It was my intention to
22 finish direct examination of this witness of Mr. Cole.
23 What reasons can you give me why we need to resolve
24 this issue before cross?

25 MR. COLE: Because if you rule against me,

1 Judge, I want to ask it and if you rule for me, then I
2 don't have to do that.

3 THE COURT: Normally, this is a matter that is
4 brought up by the defendant. It's 404(b) type
5 material, "Prior wrongs, acts", that is applied by the
6 defendant for admissibility in a hearing outside the
7 presence of the jury. Normally it's not resolved by a
8 motion for protective order to give the State an
9 advantage to be able to take the sting out of cross
10 examination.

11 I don't mind doing it. I would like to get it
12 resolved, but I understand that the written opposition
13 is not ready and so, it's my intention to proceed with
14 the direct examination until we get the written
15 opposition and that way, the defendant can have an
16 opportunity to present his arguments in writing. You
17 just filed the application at 4:00 yesterday afternoon
18 on some of it. It seems to me that it would be proper
19 to wait until this defendant had an opportunity to
20 respond in writing and I see no reason to delay the
21 direct examination based on your reasoning given.

22 MR. COLE: Well, how about the marijuana? We
23 have resolved that? They have already responded in
24 writing on that.

25 THE COURT: All right. We might as well get

1 this out of the way, the marijuana issue out of the
2 way.

3 (180)

4 MR. MADSON: Sure. Your Honor, in spite of
5 what the State's argument is, we've responded in
6 writing as to the reason it should be offered and in
7 addition to that, we think we can go into it to show
8 possible biased or motive and accredit it to establish
9 lack of credibility of a witness for the simple reason
10 that the Alaska court seemed to hold a very broad view
11 of bias or the establishment of bias or possible
12 prejudice and the fact that there's any possible, and I
13 want to stress the word "possible", crimes, wrongs or
14 whatever that are still pending or may be pending
15 against a person, it's certainly allowable to ask the
16 witness if in fact he's concerned about that.

17 THE COURT: Okay, why don't we take this
18 matter up. Mr. Taylor, would you mind leaving the
19 courtroom? We'll take this up outside your presence.

20 MR. MADSON: In addition, there's one other
21 argument I think that we need, but that kind of goes
22 with the Protective Order Number 4, but even though we
23 are not talking about that, the fact that drug usage
24 may be a part of this, I think if we can establish by
25 offer of proof that if this witness were allowed to

1 answer questions, that if he were under the influence,
2 it comes to two things. First of all, his ability to
3 remember what happened, his ability to recollect. His
4 ability to do what his job entails. All these things
5 are subject to proper cross examination.

6 And, but more importantly, if it rises to the
7 level and nobody knows this until you're allowed to
8 question a witness -- in other words, we're precluded
9 from even getting into it and all we can do is make an
10 offer of proof and say "Well, if we can't do it", but
11 if it rises to the level of gross negligence or
12 recklessness, then even under the Kusmire [sic] or
13 whatever that decision is...

14 THE COURT: Kusmider.

15 MR. MADSON: Kusmider. It still is allowable
16 if it can rise to that level, but we have to establish
17 somehow that it can. We don't know until we're able to
18 cross examine the witness. We don't know what he's
19 going to say.

20 THE COURT: Let's establish what you think is
21 happening here. As I understand it, Gordon Taylor, the
22 VTS watch stander, up until the time he was relieved by
23 Mr. Blandford, had a test, a urine test, on March 26th,
24 1989, more than 48 hours after grounding, is that
25 correct?

1 MR. MADSON: I don't have the date in front of
2 me, Your Honor, but I thought it was -- let's see if we
3 can get that -- I don't have the date right in front of
4 me.

5 THE COURT: Okay, also understand that, well,
6 maybe we ought to start on the premise that you are
7 applying to get into evidence something that would
8 normally be prohibited. That is, his drug ingestion.
9 That is normally something that is covered by 404 and
10 403 and it doesn't come in unless it's shown to be for
11 our purposes permitted under 404(b), generally
12 speaking.

13 And, so, you have a threshold burden here to
14 establish that its probative value outweighed his undue
15 prejudicial effect, number 1. Number 2, you've got to
16 show that it is not offered to show that a person acted
17 in conformity with it. So, with that in mind, I think
18 with all the discovery you've had, you should have
19 knowledge about when this test was taken. You should
20 have knowledge about the results and so you should be
21 able to make a little better presentation to me on
22 this.

23 MR. MADSON: I think it was the 26th, Your
24 Honor. It was a Sunday. Now, marijuana we can show,
25 later on if necessary, it does not disappear from the

1 body very rapidly. In other words, it can stay for
2 some period of time and as a consequence, it's more
3 than likely that he had consumed or used marijuana
4 prior to that time.

5 THE COURT: But, we'll have to get to that.
6 I'm not going to accept your offer at this time.
7 That's a foundational piece of information that would
8 have to come in at some time prior to the admissibility
9 of any of this type of material. But, as I understand
10 it, the test that was taken discovered that he had an
11 amount of THC, marijuana, which was less than one tenth
12 the United States Department of Health and Human
13 Services guidelines for drug testing in the work place.
14 Now, is that correct?

15 MR. MADSON: I don't know. I don't have that
16 in front of me, but I have no reason to dispute what
17 the Court is reading.

18 THE COURT: Well, let's assume that it was a
19 very small amount, close to what's been represented in
20 the briefing here. What are you trying to show with
21 this test? What probative value does this test result
22 have? What are you trying to show? That Taylor did
23 what he shouldn't have done? How can you link up that
24 this would affect his credibility or his job
25 performance? How are you prepared to do that as

1 foundational material?

2 MR. MADSON: Well, I think we have to ask him,
3 Your Honor. That's the whole concept here. I don't
4 know what he would say. "If you used marijuana, was it
5 affecting your ability or not?" I think he's the only
6 person that could determine that. I can't stand here
7 and say it did or it did not. We have some reason to
8 believe that the Coast Guard watch standers weren't
9 watching. I mean, that's pretty obvious, at least not
10 so much in the case of Mr. Taylor, but the time he left
11 his watch, the Exxon Valdez was more or less
12 disappearing from their radar screen at least on their
13 particular range.

14 But, I think it's still fair to say in asking
15 whether or not his recollection, his ability to
16 remember things or what he did that night was in fact a
17 result of any marijuana usage prior to the time the
18 test was taken or prior to this getting off his watch,
19 put it that way.

20 THE COURT: Is there anything else you wish to
21 add your argument?

22 MR. MADSON: Not with regard to Mr. Taylor,
23 no.

24 THE COURT: Okay, is there anything you wish
25 to add, Mr. Cole?

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MR. COLE: No.

THE COURT: Okay, you're motion for protective order is granted as to Mr. Taylor. You haven't given me enough information to do anything other than to preclude its admissibility. I have had this presented to me before in the other cases where there's been some expert testimony to demonstrate what long abuse of cocaine, for example, does to a person's memory. Our appellate courts deal with this. Our appellate courts, for the most part, have rejected the admissibility of this type of evidence to show reliability.

But, you haven't given me any information to go by. You haven't given me any -- you haven't indicated anything that Mr. Taylor might say that you dispute and you can prove that the use of marijuana in small amounts would tend to affect his credibility. I don't know what information is going to be provided that's in dispute here. So, I'm going to deny your application at this time on Mr. Taylor to admit it if that's what you're going to be making and I'm going to grant the motion for protective order.

MR. MADSON: There is another topic with regard to Mr. Taylor, Your Honor, that I became aware of this morning and I honestly don't know the answer to it, but it very well might be that he is no longer

1 working as a civilian Coast Guard watch stander because
2 of the marijuana incident. This leads to a wholly
3 different kind of inquiry and that is possible biased
4 motive. And, I'm not saying I know the answer to that,
5 but he indicated that he's no longer working there, and
6 I know the results of that test and I know the policy
7 and I think we should be allowed to open the door to
8 see whether or not he has a biased motive or interest
9 in this case, which I think he certainly may have if,
10 in fact, he has any pending charges, or if he has any
11 resentment towards Captain Hazelwood as a result, which
12 caused him to get fired. You know, there's all kinds
13 of possible inquiries.

14 THE COURT: Well, I think you're entitled to
15 inquire as to motive and bias, but that cannot include
16 at this time, without a prior application, a ruling by
17 the court of material that would be covered by 404,
18 which would be his ingestion of marijuana.

19 MR. MADSON: Okay, I imagine I could go into
20 biased but not specifically marijuana usage, is that
21 correct?

22 THE COURT: If you have any hesitation, I
23 would get a copy of the rules and I would look at 404
24 and it would tell you what you cannot go into. I find
25 that the inquiry about this marijuana has nil probative

1 value. I can go that far. Now, to the extent it has
2 some probative value, I can't see it. It's far
3 outweighed by it's unnecessary invasion into Mr.
4 Taylor's privacy. It's an unnecessary consumption of
5 time and it introduces a collateral issue. It's a red
6 herring, in other words, on the short end. So, I'm not
7 going to let you go into the marijuana in any way with
8 Mr. Taylor.

9 MR. MADSON: I wasn't planning on using the
10 term "marijuana", Your Honor. I realize I should stay
11 away from that.

12 THE COURT: "THC", "drugs", anything like that
13 at all.

14 MR. MADSON: Oh, of course. Of course.

15 THE COURT: Do we have an understanding here?
16 I mean, I don't want you to think that I'm limiting you
17 to just certain words. I don't want anything covered
18 by 404(b) involved without prior application to the
19 court.

20 MR. MADSON: No, I would intend to ask him
21 only in general terms whether or not there is some
22 reason, you know, why -- if there was any connection,
23 let's say, with what occurred that particular night --
24 I don't even know if he got fired. He might have quit.
25 You know, I'm just saying if he does say that yeah, he

1 was fired, that if there's any connection without
2 specifically mentioning that, but just, you know, does
3 he have any possible -- I think I can get into whether
4 or not he fears any possible criminal charges as a
5 result or if he had any criminal charges without going
6 into specifics and I would be glad to have the court or
7 anyone tell him not to answer with regard to, you know,
8 drug usage or anything like that.

9 THE COURT: All I can say is don't surprise me
10 with the nature of your question. I don't want to
11 admonish you in front of the jury. So, be cautious on
12 how you address this witness if you're thinking about
13 anything asking about criminal activity.

14 All right. Ready for the jury now, Mr.
15 Taylor? Okay, let's get the jury in.

16 (630)

17 (Jury present)

18 THE COURT: Ladies and gentlemen, thank you
19 for your patience. Sometimes we take up matters
20 outside your presence. I'm trying to do that in the
21 morning hours and the afternoon hours, but sometimes we
22 take up matters outside your presence that you would
23 normally be in here. Don't speculate on what we're
24 doing in here and I try to keep it to a minimum, but
25 sometimes it's unavoidable. And, that's why you're not

1 brought in right on time as we are doing something.
2 We're not just sitting around. You may resume.

3 Q (Mr. Taylor by Mr. Cole:) Now, what time did
4 you get off work on March 23rd, 1989?

5 A Between, say, 11:35, 11:45 that evening.

6 Q When was the last time you saw the Exxon
7 Valdez on your radar?

8 A I couldn't give you a specific time. I can't
9 recall that, but it was just south of Rocky
10 Point.

11 Q Have you had a chance to listen to a tape of
12 the conversations that you had with the Exxon
13 Valdez on March 23rd, 1989?

14 A Yes, I have.

15 Q And, do you recognize the tape that's in front
16 of you?

17 A Yes, I do.

18 Q Would you pull that out of its jacket there
19 and identify the number on the back of that tape?

20 A Exhibit 77.

21 Q And, do you recognize that particular tape?

22 A I initialed it. Yes, I do.

23 Q Does that appear an accurate representation of
24 the conversations that you had with the Exxon
25 Valdez from the time you made contact with it

1 around 8:30, quarter to 9:00 until you left that
2 evening about a quarter to 12:00?

3 A Yes, it is.

4 MR. MADSON: Your Honor, let me pose an
5 objection here. Can we approach the bench for one
6 second?

7 THE COURT: All right.

8 (760)

9 (Whispered bench conference as follows:)

10 MR. MADSON: Your Honor, this may be
11 acceptable as far as a (indiscernible - whispering)
12 recorded record of what was said. It's the words that
13 were spoken. However, if the State is trying to get
14 this in to show a difference in the speech pattern or
15 something like that, there's been sufficient foundation
16 to show that this particular recording was made
17 (indiscernible - whispering).

18 I'm not sure I understand, Your Honor, why
19 he's even trying to admit it. You want to prevent the
20 State from showing a slurring of words and a slower
21 manner (indiscernible - whispering). I guess the speed
22 at which the tape is recorded is very important.
23 That's why we have our expert (indiscernible -
24 whispering) checking on one right now.

25 THE COURT: What are you offering as for the

1 words, the demeanor -- or, the demeanor of Hazelwood?

2 MR. COLE: The words and the demeanor.

3 THE COURT: I'll excuse the jury on this one.

4 (End of whispered bench conference)

5 THE COURT: Well, we could have taken this up,
6 but I didn't know it was going to happen and neither
7 did counsel. So, we're going to excuse you and take it
8 up outside your presence. Don't discuss the matter;
9 don't discuss anything concerning the case. Don't
10 speculate what we're doing and please don't form or
11 express any opinions. Mr. Purden will give you keys.

12 (Pause)

13 (Jury not present)

14 (800)

15 THE COURT: On the side bench conference, Mr.
16 Madson raised the issue of whether or not this tape was
17 going to be offered to show the demeanor of Captain
18 Hazelwood's speech in addition to the truth of the
19 words or the words spoken by Captain Hazelwood. Mr.
20 Madson raised the issue that it's important on how a
21 tape is reproduced. There should be some indication
22 that it's an accurate reproduction and in absence of
23 that, he objects to its authenticity.

24 Do you wish to be heard, Mr. Cole?

25 MR. COLE: Well, I think that I can ask Mr.

1 Taylor if it's an accurate reproduction as he remembers
2 it of his voice and the person that he was speaking to.

3 THE COURT: There's an objection and I'm going
4 to sustain it unless there's a better foundation for
5 this -- because I agree with Mr. Madson. If you're
6 offering it for demeanor, I think the authenticity of
7 the reproduction is important and that's a foundational
8 matter.

9 MR. COLE: Then, I'm going to ask Mr. Taylor
10 that very question that I just set out.

11 THE COURT: Go ahead and I'll allow voir dire
12 as well.

13 Q (Mr. Taylor by Mr. Cole:) Mr. Taylor, the
14 tape that you've heard here, is it an accurate
15 reproduction of your voice and the voice that you
16 heard that evening?

17 A To the best of my recollection, yes.

18 THE COURT: Mr. Taylor, did you reproduce this
19 tape?

20 A No, I did not, sir.

21 THE COURT: When's the last time you heard the
22 original?

23 A I believe it was just before the NTSB
24 hearings.

25 THE COURT: Is there any difference between

1 what you heard on this tape and what you heard on the
2 original as far as the sound of the voices, the speed
3 in which you heard the conversations?

4 A Not that I can detect.

5 THE COURT: Anything further?

6 MR. MADSON: Yes.

7 VOIR DIRE EXAMINATION OF MR. TAYLOR

8 BY MR. MADSON:

9 Q Mr. Taylor, you did record this, as you said,
10 right?

11 A Did not.

12 Q Do you know what kind of equipment it was
13 recorded on?

14 A No idea.

15 Q Do you know when it was recorded?

16 A No.

17 Q The original recording is where at this time,
18 do you know?

19 A No idea.

20 Q But, do you know if it's still in existence?

21 A I do not.

22 Q Do you know from your past experiences as a
23 Coast Guard watch stander, what happened to the
24 tapes of vessel traffic? How long did you keep
25 them and things like that?

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A If it's a tape where there is nothing on it that anybody wishes to hear again, after 30 days it is erased.

Q And, you don't know right now if the original is in existence or if it has been erased, is that right?

A That is correct.

Q And, you did not have a chance to compare Captain Hazelwood's speaking on that occasion on that tape with other tapes of other times of traffic? In other words, had the right to compare them at different times?

A No, I did not compare them.

Q And, how many times would you say that you've heard Captain Hazelwood speaking to you over the radio?

A I couldn't tell you. I only remember this time that we're speaking of here.

MR. MADSON: I don't have any other questions, Your Honor.

THE COURT: Do you wish any further argument on the issue?

MR. MADSON: Like I said, Your Honor, we have an expert retained in this field because we more or less anticipated this might come up. It's our

1 understanding by way of offer of proof, the expert
2 witness could testify that the equipment that a copy is
3 made from is very important. The speed is very
4 important as the court may know. Even on small
5 recorders, a slight variation in tape speed could
6 change and alter things considerably in the manner of
7 speed. You know, how fast you're talking; how slowly
8 you're talking and in addition.

9 I've already made my argument on tape and I
10 want to go more than that on the foundational aspects.
11 But, there's another problem with that and that's under
12 404(a). Now, that's a little bit unusual, but what the
13 State is doing under 404(a) is trying to show evidence
14 of a character trait or demeanor or something like
15 that; that he is slowed, that he is precise and here is
16 a time, you know, that he was not, not in conformity
17 with the usual character trait.

18 THE COURT: This is a relevant character trait
19 and it would be admissible under our rules. As to 401,
20 you're objection is overruled.

21 MR. MADSON: Your Honor, excuse me, but can I
22 just make a comment on it? The way the rule reads,
23 evidence could be allowed if it's a relevant trait to
24 his character, which is offered by the accused or
25 rebutted by the prosecution. That means we have to do

1 it first. They're getting their court caught in the
2 head of the horse here.

3 THE COURT: You've done enough DWIs to know
4 that they take a video of somebody and they show that
5 video of how that person's demeanor is and this is just
6 a very small example of that. That objection is
7 frivolous and it's overruled.

8 MR. MADSON: Wait a minute. I'm sorry, I
9 didn't understand, but if this is the case, they're
10 going to play this tape to show that he was drunk, is
11 that the point? I guess that's the point.

12 THE COURT: The demeanor; to show his
13 demeanor. That's exactly what I think it's being
14 offered for and your objection is overruled. Now, as
15 far as the reproduction, Mr. Cole, how was this tape
16 reproduced; what kind of equipment, who did the
17 reproduction, where is the witness to lay that
18 foundation?

19 (1055)

20 MR. COLE: I don't know who did the
21 reproduction. We were sent these tapes by a law firm
22 out of Los Angeles. Here, Your Honor, I'm going to
23 show you what we've been provided.

24 MR. MADSON: Well, I don't know what this
25 really means, Your Honor. It doesn't tell me anything

1 about whether this tape is recorded from the original,
2 who did it, or how, or anything else and I don't know
3 who the law firm in Los Angeles is, but it very well
4 might be a plaintiff's firm, which would have some
5 interest in altering a tape.

6 MR. COLE: This tape was done by the NTSB and
7 this was provided along with a transcript, which I have
8 a copy of, Your Honor, indicating how the tape was made
9 and when it was made. The tape, itself, there was two
10 or three day sea (ph) that was taken down to Juneau,
11 was my understanding, where a machine down there
12 recorded it on a cassette tape. The tape that we have
13 we received from -- Mr. Linton can better explain where
14 we received it from, but it was taken from a firm in
15 Washington D.C. who sent us, my understanding was, a
16 copy from the original tape.

17 THE COURT: Okay, this is Exhibit 78. I'm
18 going to admit it for the purpose of this proceeding.
19 It will not go to the jury at this time, but it will be
20 admitted for the purpose of determining the foundation
21 for the tape.

22 EXHIBIT 78 ADMITTED

23 This appears to be a document that has been
24 prepared by the NTSB and on the bottom of it, it does
25 say "The recordings for March 23 and 24, 1989 were

1 transcribed by Jeannette DeLourge (ph), NTSB Bureau
2 Accident Investigation. The transcripts were reviewed
3 by L.Z. Katuran (ph) and R.W. Woody of the Marine
4 Accident Division."

5 Is there any further argument on the question?

6 MR. MADSON: Your Honor, all that document
7 says is that someone transcribed it, as I understand
8 it, and I have a copy of that. In here, we're getting
9 into a different area. Here are the words, okay, but
10 that doesn't show the demeanor.

11 MR. COLE: I've got a copy of it for the
12 court, too, of the transcript.

13 THE COURT: I'll have it marked as 78A and 78A
14 is admitted for purposes of this proceeding only to
15 establish the foundation for the tape. It's not to be
16 shown to the jury unless otherwise ordered.

17 EXHIBIT 78A ADMITTED

18 Any further argument, Mr. Cole?

19 MR. COLE: No.

20 THE COURT: All right. I'm going to allow the
21 tape in over objection. I don't think, at this time,
22 you've raised a genuine question as to the authenticity
23 of this duplicate. It is a duplicate. You've been
24 given a tape and your expert is going over that. I
25 think I'll let you bring that up in your case in chief

1 at a later time if you find there's some dispute
2 concerning it. It doesn't seem like there is a
3 dispute. You don't know if there is, at least at this
4 time.

5 It's permitted under Evidence Rule 1001 and
6 1003. I'm going to let it in at this time. Are we
7 ready with the jury now or do we need to take up any
8 other matters concerning this tape before the jury gets
9 here. You're about to play the tape, are you?

10 MR. COLE: No, there's some other tape and I
11 have to wait for the next person to come in.

12 THE COURT: Okay. Let's get the jury in.

13 (1298)

14 (Jury present)

15 THE COURT: Are there places on these tapes
16 where there are long periods of time with no
17 communication?

18 MR. COLE: No, we've...

19 THE COURT: You've eliminated a lot of the
20 gaps?

21 MR. COLE: It's a voice activated tape, it's
22 my understanding.

23 THE COURT: Is that correct; is it a voice
24 activated tape?

25 A The one at Valdez that we listened to?

1 THE COURT: The one that's in front of you;
2 the original of the one in front of you, is it a voice
3 activated tape recording machine?

4 A I have no idea what this one is. The one at
5 Valdez...

6 THE COURT: It's Valdez I'm talking about.

7 A It runs all the time. It runs for 24 hours.

8 THE COURT: It's not just voice activated
9 then?

10 A It's always running.

11 THE COURT: Where did you get that information
12 from, Mr. Cole?

13 MR. COLE: I thought Mr. Linton told me that,
14 Your Honor.

15 (Side conversation)

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION OF MR. TAYLOR, CONTINUED

18 BY MR. COLE:

19 Q (Mr. Taylor by Mr. Cole:) Mr. Taylor, you
20 listened to that tape. Do you recognize your
21 voice on there?

22 A Yes, sir, I do.

23 Q And, were you provided a transcript?

24 A Yes, I was.

25 Q That the transcript that you were provided, is

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that a fair and accurate copy of the
conversations that you had on that tape?

A Yes, it is.

Q And, the place where that transcript says VTC,
is that you, your voice, that's on the...

A Yes.

Q Did you recognize anyone else's voice on that
tape?

A I recognized the pilot's voice when he got
underway.

MR. COLE: Your Honor, I have nothing further.
(1353)

CROSS EXAMINATION OF MR. TAYLOR

BY MR. MADSON:

Q Mr. Taylor, excuse me one second -- okay,
first of all, you indicated you now work for the
Ship Escort System?

A Yes, I did.

Q What is that, sir?

A We have two follow the loaded tank vessels
outbound from the terminal to Cape Hinchinbrook,
abeam Cape -- to Bligh, from Cape Hinchinbrook to
Seal Rocks and also if a partially laden tanker
came in, we would escort them in from Cape
Hinchinbrook to the terminal.

1 Q Is that a private organization or...
2 A Alyeska is running it right now.
3 Q Alyeska runs it, but are you on contract or
4 something to someone working for Alyeska, is that
5 right?
6 A Yes, I am. That's right.
7 Q Private crew?
8 A Right.
9 Q Have you worked with Mr. Mark DeLozier by any
10 chance?
11 A He works in the same system, but I do not work
12 with him.
13 Q Now, sir, I would appreciate it if you would
14 just answer "yes" or "no", but let me ask you,
15 did the events that occurred on March 23rd, that
16 night, the grounding of the Exxon Valdez, have
17 anything at all to do with your no longer being
18 employed as civilian Coast Guard watch stander?
19 A No.
20 Q You voluntarily left?
21 A Yes.
22 Q When did you do that, sir?
23 A Let's see, I think it was in early April. No,
24 it was longer than that. May, I believe it was
25 May of '89 I left.

1 Q One month after the events on March 23rd or
2 something?
3 A Yes, around there.
4 Q Let me ask you a little bit about that job, if
5 you will. Are you normally the only person on
6 duty or is there two of you at the same time? I
7 mean, the job I'm speaking of,...

8 A At the same job?
9 Q ...of course, is the VTC Control Center, watch
10 stander.
11 A There's usually just one person there, but
12 there's two people in the room, but one person is
13 a radio man, one person is a VTC watch stander.
14 Q Do you alternate jobs at all or did you?
15 A No, sir.
16 Q In other words, you were a watch stander on
17 radar all the time. The other individual only
18 does the radio?
19 A Right. That's correct.
20 Q And, you did this for how long, sir?
21 A All together?
22 Q Uh-huh (affirmative).
23 A My Coast Guard career and such and all that?
24 Q Uh-huh (affirmative).
25 A Approximately four years, four and a half

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years.

Q How long were you at Valdez then doing this job?

A Approximately seven years actually. I was in the Coast Guard for five years bouncing back and forth as a vessel traffic controller and then when I came back, I was there for two and a half years, I believe, as a vessel traffic controller.

Q Okay. let's back up and say when you were in the Coast Guard, you did this same type of job only you were actually in the Coast Guard, right?

A That's correct.

Q Where did you do it?

A At Valdez.

Q You never worked as a traffic controller any where else in Valdez?

A No, sir.

Q I guess the question is, you're in the Coast Guard, you're doing this. Then, you get out of the Coast Guard and all of a sudden you're doing it again, but you're not in the Coast Guard. Can you explain that to us?

(1500)

A They civilianized the position. I was working as a gauger at the time for Caleb Brett and I was

1 getting tired of inhaling toxic vapors and the
2 chance for an indoor job, I already knew the job,
3 so I put in for it and I got it. That's it.

4 Q So, at the time you began working there and
5 all the time you were working as a watch stander
6 in Valdez, you were a civilian. You didn't wear
7 a uniform, you didn't salute anybody or anything
8 like that?

9 A That's correct.

10 Q When you began work as a, what we want to
11 call, I guess, a VTC watch stander, Vessel
12 Control Center...

13 A Vessel Traffic Center.

14 Q Vessel Traffic Center and there is something
15 else called a VTS, is there not?

16 A Vessel Traffic System.

17 Q Would you explain the difference between what
18 these initials mean?

19 A Well, the Vessel Traffic System is a system --
20 the entire system is a Vessel Traffic System.
21 The Vessel Traffic Center is where you work at.
22 It's the Coast Guard building; they have a place
23 called the Vessel Traffic Center. That's where
24 the radars are; that's where the radios are.

25 Q That's the point that you spotted on the map

1 for us a little earlier. You pointed to it and
2 said "That's where I work."
3 A Yes, sir.
4 Q Okay. VTS is the entire system...
5 A Right.
6 Q ...everyone operates under, right, as far as
7 tanker traffic is concerned?
8 A Yes.
9 Q What vessels operate on the system; which ones
10 don't, if you can answer that? How would anybody
11 know if they're coming in there?
12 A Well, any vessel over 300 gross tons propelled
13 by machinery. Any vessel over 100 gross tons
14 carrying passengers for hire. Any vessel over
15 eight meters in length towing or pushing and any
16 floating dredge or plant by law has to contact
17 the vessel traffic, be a player in the Vessel
18 Traffic System.
19 Q What training did you have to have before you
20 became a watch stander? I mean, what
21 requirements were necessary for that job?
22 A They went over the rules of the road with you.
23 You had to do a test on the rules of the road.
24 You had to fill out chartlets, you know, that you
25 are knowledgeable of the area, know how you use

1 radio telephone procedures and they just go over
2 with you, have another person there monitoring
3 you for approximately 30 days and then they tell
4 you if you are qualified or not.

5 Q Did you know what type of radar system was
6 used by the Coast Guard at the Valdez station
7 when you began work there?

8 A When I began to work there as a civilian?

9 Q Yes.

10 A Did I know or do I now know?

11 Q Do you know now?

12 A Yes, sir. I believe it's a Raytheon system.

13 Q When did the Raytheon system come into effect,
14 do you know?

15 A When was it put in?

16 Q Yes.

17 A It was put in before I got there. I do not
18 know exactly when it...

19 Q You don't know what was used prior to that
20 system being in effect at all, what was there, or
21 do you?

22 A I didn't understand.

23 Q What was used prior to the Raytheon system?

24 A Oh, it was an AIL system. A private system
25 was put in and the way I understand it, they put

1 in the Raytheon system so that Coast Guard people
2 could work on Coast Guard gear. Puts another
3 contractor out of a...

4 Q If I understand you correctly, you know, the
5 prior system, if something went wrong...

6 A Private contractors.

7 Q ...it was more expensive to repair or...

8 A That's my understanding.

9 Q Let me ask you this, sir...

10 MR. COLE: Your Honor, I'm going to object. I
11 object to this line of questioning as irrelevant.

12 MR. MADSON: Well, Your Honor, it's extremely
13 relevant to show that change was made prior to
14 grounding and the radar effectiveness and what areas it
15 covered and what it didn't cover. Who knew it?

16 THE COURT: It's about time for us to take up
17 the next motion, it sounds like to me. We're getting
18 in to that area, aren't we, Mr. Madson?

19 MR. MADSON: Well, Your Honor, I could go on
20 and get into -- well, no, I really don't think that I
21 can. Everything I'm going to talk about here is...

22 THE COURT: Sounds to me like you're getting
23 into that area, the threshold of it at least. Okay,
24 we'll call you back when we get finished. Don't
25 discuss the case and don't speculate on what we're

1 doing, please. And, don't form or express any
2 opinions.

3 (Jury not present)

4 MR. CHALOS: Your Honor, may we approach the
5 bench?

6 THE COURT: Come on up if you need to. We
7 don't have the jury.

8 (1713)

9 (Whispered bench conference as follows:)

10 MR. CHALOS: Your Honor, (indiscernible -
11 whispering). I would like to ask for a continuance
12 (indiscernible - whispering)

13 THE COURT: Can you assure me you would be
14 back on Monday?

15 MR. CHALOS: Absolutely, Your Honor. Thanks
16 (indiscernible - whispering).

17 THE COURT: What's your position on this, Mr.
18 Cole?

19 MR. COLE: I don't have any problem with that,
20 Your Honor.

21 THE COURT: Okay, let's step back. We'll make
22 it part of the record.

23 (End of whispered bench conference)

24 (1750)

25 THE COURT: Did you get all of that picked up?

1 Do you know?

2 THE CLERK: (Indiscernible - away from mike)

3 THE COURT: I'm going to excuse you. You can
4 step outside while we take up this next matter.

5 All right. There's an application to continue
6 the trial after today made by Mr. Chalos and I don't
7 think there's any reason to keep this information at a
8 side bench. It's a legitimate request for legitimate
9 reasons and if there's no opposition, Mr. Chalos, your
10 wife is having a baby, is that correct, and you want to
11 be relieved of the trial obligation tomorrow so you can
12 go back to New York and be with her for this?

13 MR. CHALOS: That's correct, Your Honor.

14 THE COURT: And, Mr. Cole; there's no
15 objection. This is something that has been brought to
16 the court's attention. I was thinking that before you
17 had enough power that you could proceed in your
18 absence, but it looks like you're dividing up these
19 witnesses about equally and given the complexity and
20 the number of witnesses, I appreciate Mr. Cole's non-
21 objection. I'm going to go ahead and recess the trial
22 after today and I'll let you go resume Monday based on
23 your assurance at side bench that you will be available
24 Monday morning, is that correct?

25 MR. CHALOS: That's right, Your Honor, and I

1 thank you very much. I'm sure my wife thanks you as
2 well.

3 THE COURT: Sure. Well, we will continue the
4 case after today until Monday, so tomorrow will not be
5 a trial day and I'll advise the jury accordingly.

6 So, let's take up the next matter. That is,
7 it seemed to me that you're getting into fault of the
8 personnel in the VTC. You're getting into at least not
9 them, but also the fault of the radar, the
10 unavailability of good radar, failure to recognize a
11 situation that may have been developing and are we now
12 getting into that area we need to address?

13 (1872)

14 MR. MADSON: Sure, we are. Now, Your Honor, I
15 just request that before I make more or less an offer
16 of proof, that the court have an opportunity to read
17 our written response. I do apologize for the delay.
18 We dictated it over the lunch hour and I did think it
19 was going to be here. It should be here at any time.
20 That's all I can say, but it's, you know, -- the State
21 responded in writing. The court usually likes it that
22 way. I mean I can certainly argue it, but he was going
23 to all the trouble to write it, I think it would be
24 nice if the court would read it.

25 THE COURT: I agree; I agree and I thought I

1 was getting read to -- let's hear Mr. Cole's argument
2 first of all and add anything you want to your brief.
3 It's entitled "Motion for Protective Order Number 4"
4 and as I understand it, you're arguing that they cannot
5 show fault of any of the operators of the VTC or the
6 Coast Guard or the government. They can't offer that
7 as evidence in this case based on Kusmider and other
8 case law.

9 MR. COLE: Your Honor, the only thing that I
10 would add is that it appears to me that the court has,
11 in the past, and the case law in the past has made a
12 distinction between civil cases and proximate cause
13 issues and criminal cases and proximate cause issues.

14 Now, in civil cases, I understand that in a
15 negligence action, one of the important things in the
16 past is to be contributory negligence and now is
17 generally a comparative negligence and the theories
18 behind oftentimes defenses are "Look, my guy wasn't
19 totally in the wrong. There was other people." From
20 the nature of Mr. Madson's opening, that's exactly what
21 he said. There were a lot of people that made
22 mistakes. Mr. Kagan, Mr. Cousins, the Coast Guard, the
23 watch standers and our understanding of the law is that
24 that is not a defense in a criminal matter.

25 You can argue that there are superseding

1 causation in criminal law, but to just say someone else
2 is negligent is not sufficient and a common sense
3 evaluation of it is as follows. A person is driving
4 and they're intoxicated and they're driving down the
5 road up here in Alaska and it's snowing. It snowed out
6 the day before and he's drunk and he drives across the
7 lane and hits somebody and hurts them very bad.

8 He can't come in and argue that the roads were
9 bad and that the State was negligent in maintaining the
10 roads and that the State is at fault and he isn't the
11 only one that's at fault in the defense of an assault
12 case where he's charged with recklessly causing the
13 injury to someone else.

14 And, that's the same thing that we have here.
15 We have actions by Captain Hazelwood going out to the
16 Bligh Reef and what he is trying to say through his
17 attorney's arguments is that the government was
18 negligent by not having a proper radar system out
19 there, by not watching him and number 1,...

20 THE COURT: And, by not notifying him.

21 MR. COLE: By not notifying him, by not
22 keeping him on the radar. Even though it's Captain
23 Hazelwood who put his ship in the position of peril,
24 the government is supposed to step in and say "Hey,
25 wait a minute, come back here." And, that's not their

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job.

Not only is it not their job, the testimony of Gordon Taylor, he's already testified, is that he lost the ship with their radar. You've heard that already in testimony that was given in the omnibus hearing. The failure of the Coast Guard to act is never a superseding cause and that was ruled in your case when you preventing the defendant from bringing in evidence that the paramedic failed to act to save the person that the defendant had injured and who ultimately died.

THE COURT: Do you find any distinction between the Kusmider case, which was a first degree murder case and where the defendant, I think, engaged in some intentional conduct, and a case where the culpable mental state is reckless? Do you find any difference between the two?

MR. COLE: No, I don't. I think that the case law that we cited, LaFabe (ph) -- there was one cite to cases about that. I can't remember where that was, but I feel that the same thing would happen in an assault where a person was driving down the road and complained that the State had not maintained the road well enough or that the manufacturer of the car should put in a different set of brakes.

Now, if that person could say "Look, my brakes

1 failed completely", that would be one thing. You know,
2 that's what known as a superseding -- unforeseeable
3 superseding intervening cause. "My brakes failed.
4 They went out. I went to an intersection. I hit
5 somebody." That's not what we have here. We don't
6 have the steering mechanism of the Exxon Valdez. Going
7 out, it was in perfect order.

8 What we have the defendant doing is saying
9 "These people's failure to act should be considered in
10 determining whether I'm the proximate cause of this
11 case." And, we submit that the case law prevents them
12 from so arguing.

13 THE COURT: What just if the defendant were to
14 present evidence in the form of experts, other captains
15 who come to the conclusion that we know that his Vessel
16 Transit System is not a mandatory thing. It's provides
17 information. It's not positive control like in
18 positive control in air space, but we have come to rely
19 on it. We've come to rely on this and we expect
20 they're going to do their job and we would expect they
21 would tell us about these things. Would that not go to
22 the overall standard of care or standard of conduct for
23 a captain in Captain Hazelwood's shoes to determine
24 whether he was reckless or not?

25 MR. COLE: I think if you could find people to

1 do that, that might be right. But, we've got a pilot
2 that's already testified "Do you depend on the VTS
3 system?" And, he said "Absolutely not." But, I don't
4 believe that whether or not they believe that they're
5 being tracked, if he says that, if the issue was
6 Captain Hazelwood actually believed it, I believe that
7 the best way for that evidence to come in, the most
8 relevant way, is for Captain Hazelwood to be up there
9 and say on the stand "I was depending on this system to
10 protect my vessel." But, other than that, I don't
11 believe that it does go to his state of mind. That's
12 their big argument, state of mind.

13 THE COURT: So, do I hear you say that if
14 there was foundational testimony later on, such as I
15 just indicated you indicated, then if there is fault of
16 the government employees, that would be relevant to
17 show whether or not Captain Hazelwood was reckless?

18 MR. COLE: I think that Captain Hazelwood
19 would -- well, I guess I just -- can I talk to Ms.
20 Henry for just a second?

21 (Pause)

22 THE COURT: Why don't we take a break while
23 you discuss this and why don't you call your associates
24 and see if that...

25 MR. MADSON: We'll do that, Your Honor. Thank

1 you.

2 THE COURT: You can use that phone right here.
3 We'll stand in recess.

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

6 (2297)

7 (Off record - 2:12 p.m.)

8 (On record - 2:44 p.m.)

9 THE COURT: You can retrieve the original
10 here, Mr. Madson and Mr. Cole, you can have a copy,
11 too. I just need one, so you can have two and you can
12 have one. We're not filing this, Mr. Madson, since you
13 told me it's in a rough order and you don't want it
14 filed, but we can use it for purpose of argument.

15 MR. MADSON: Your Honor, it's...

16 THE COURT: Unless you want this filed,...

17 MR. MADSON: Oh, no, no, we have the originals
18 that were done by hand, Your Honor. We live in such a
19 technical society now that we depend on these complex
20 machines that seem to let us down when we need them the
21 most. But, I can, as we call it in the trade, kind of
22 wing it.

23 Your Honor, what the State -- when I first
24 read this, I mean, I was quite surprised because, you
25 know, while in the opening statement, we were talking,

1 I talked in terms of blame, fault, things like this.
2 The distinction would try to be made very clearly that
3 that's totally different than a criminal case. I
4 thought I made that distinction extremely carefully.
5 So, the issue here, and there's only one sole issue,
6 it's isn't whether the Coast Guard caused this accident
7 or not. The issue, at this point, is whether not
8 Captain Hazelwood's state of mind constituted
9 recklessness or not.

10 And, to do that, it's imperative that all the
11 information that he had available to him, that he had a
12 right to rely on goes to the questions of first of all,
13 did he make a conscious decision to disregard a
14 substantial risk. If he had information that reduced
15 the amount of risk, in other words, in this situation,
16 and we fully expect the evidence will show that all
17 captains are required to have one of these VTS system
18 books on the bridge. It's a requirement.

19 And, in there it says "Radar Surveillance
20 System covers Valdez Island, Valdez Narrows and Port
21 Valdez from Coast Guard operated radar sites at Potato
22 Point and Valdez Spit. A continuous radar watch of
23 these areas will be maintained by the VTC. The course
24 speed and position of each vessel required to
25 participate in the VTS will be determined and its track

1 line recorded. This data will be made available to the
2 master and pilot for use in navigating the vessel."

3 In addition, there is numerous references in
4 there of what the Coast Guard is doing. The
5 requirement, for instance, and perhaps the court is
6 somewhat in a vacuum on here because it doesn't have
7 this in evidence yet, but the manual, itself, will say
8 that because of the risk of maritime disasters, that
9 the VTS control center must take every possible
10 precaution to avoid irreversible damage.

11 They talk about watch conduct standards. They
12 talk about -- well, no allow themselves to be
13 distracted. In other words, they're supposed to be
14 watching the radar and the times when they don't have
15 to be, when there's little or no traffic, they can do
16 some other administrative duties, things like this.
17 But, by in large, they are supposed to be monitoring
18 and the captains know that.

19 And, I think the court hit on the exact point
20 in this case and the distinction between this one and
21 the one cited by the State and that would be the degree
22 of culpability, comparing intentional acts to
23 recklessness. There's a vast difference and that was
24 an exact point here and the point also is that we do
25 expect -- we more than expect, we are sure that we can,

1 and will bring in, maritime captains of tankers in this
2 area that would say "Yes, I certainly thought we were
3 being covered by radar", because here's the real
4 clincher. They changed the system. The Coast Guard
5 changed the radar surveillance coverage from about
6 1974, I think finishing in 1987. Wait, let me get this
7 right. I think '84 to '87 is when the changeover
8 period was occurring.

9 The previous coverage, and I think this
10 witness and Mr. Blandford will testify to that, would
11 extend all the way down to Naked Island. That's what
12 the captains thought they had. Without anybody knowing
13 that, the coverage was cut back so coming even to Bligh
14 Reef was intermittent. Sometimes they had it;
15 sometimes they didn't.

16 But, the point is, they didn't tell anybody.
17 So, if the captain still thought that he could safely
18 make a turn and navigate and if somehow something was
19 going wrong and it went off course, the Coast Guard had
20 them on radar, was monitoring his progress, charting
21 his progress and would say "Wait a minute here. You're
22 off course. Something is wrong." And, I think a
23 little of that testimony came up today when you heard
24 Mr. Taylor say that yes, in the VTS system, if you got
25 off so much, we would radio and say you're a little bit

1 off course in your traffic lane and they would usually
2 respond.

3 Now, that, of course, is only done now in the
4 Narrows. Nowhere else. But, getting back to the main
5 point again, is that we fully expect this witness and
6 the other witness and everyone to show that they relied
7 upon this system. That's what it was there for. Now,
8 we're not blaming the Coast Guard. We're simply saying
9 that we should be allowed, be able to use this as far
10 as what his state of mind is concerned. Did he believe
11 that he had a right to rely on this, was it reasonable
12 and did this lower the degree of risk that was involved
13 in any decision that was made and I think the answer is
14 it may or may not, but I think it's something the jury
15 should be able to hear in order to evaluate, correctly
16 evaluate the defendant's state of mind. Thank you.

17 THE COURT: Mr. Cole? And, Mr. Madson, we're
18 going to record this as part of the record. It's not a
19 final draft and I'm going to waive some of the
20 requirements of Rule 11, but this is your office's work
21 product, the Opposition to Motion for Protective Order
22 Number 4. I'm going to take it as part of the record,
23 even though it's rough. I think we need to have this.
24 Log it in. And, some of the technical requirements of
25 being signed and some of your handwritten things I'll

1 waive.

2 (2687)

3 MR. COLE: Judge, our position is that there
4 is a distinction that needs to be made between proof as
5 to state of mind and proof as to causation. Our
6 protective order is directed toward causation and I
7 think that's what the Kusmider decision says.

8 Just as the decision that you gave me, the
9 paramedics in the Kusmider case, the paramedics'
10 negligence does not go to whether Mr. Kusmider
11 intentionally shot that person or recklessly did. As
12 to the defendant's attempt to get in this evidence
13 through state of mind, first of all, what happened
14 between 1984 to 1987 is two years before this incident
15 and how the radar was two year before is not relevant
16 in this particular matter.

17 Second, the best person to talk about what his
18 state of mind was and whether or not he was relying on
19 it is Captain Hazelwood, himself, not other people.
20 They cannot come up here and go through it. Sure, they
21 could bring in other tanker captains to talk about
22 "Well, I thought that this is the way it was", but it
23 shouldn't be through these witnesses. And, if other
24 tanker captains want to come in here and say that they
25 thought they were being covered by radar and they would

1 leave the bridge, then we'll take that testimony when
2 it shows up, but we're getting ahead of the ball game
3 right there by going into it at this point.

4 Our position is state of mind does not apply
5 because they can't, number 1, link up what these
6 witness would say with Captain Hazelwood's knowledge
7 and number 2, these aren't the proper people to be
8 bringing up state of mind of a tanker captain and 3,
9 it's just not relevant because what happened in the
10 past, when it was two years earlier is not relevant to
11 show the situation in 1989.

12 MR. MADSON: Well, Your Honor, maybe I'm
13 totally confused, but this morning we had the motion on
14 changes in the VTS system after the grounding which the
15 court ruled on. I got the clear implication that the
16 State was not requesting the protective order with
17 regard to anything that happened before that in changes
18 that were made. If they did, they certainly didn't
19 imply that, nor did they even move for that.

20 I though we made it very clear. We're talking
21 about afterwards, not before. But, certainly I think a
22 standard or a known in an industry is perfectly
23 acceptable in evidence. I mean, when there's a
24 requirement, it's like a rule or regulation. We're all
25 supposed to know that and I think the implication can

1 be made that there are rules and regulations such as
2 the VTS system and no one is immune from that. It's
3 all in the bridge; it's required to be there. It's a
4 clear inference that people are supposed to know that
5 and secondly, from the evidence the court will hear and
6 already has heard, Captain Hazelwood was responding to
7 the VTS system. He was calling in; he was doing these
8 things. That shows he knew what the VTS system was all
9 about.

10 THE COURT: When this was first presented to
11 me in reading the defendant's -- the stress or the
12 thrust of it was to show causation. I was under the
13 impression that the evidence of negligence of
14 government employees, if any, including their failure
15 to warn, or failure to properly observe or the
16 government's failure to provide a more adequate system
17 of that was part of the argument went to the causation
18 of the grounding and not to the state of mind of
19 Captain Hazelwood.

20 In my opinion, that would be an improper
21 purpose under Kusmider. It would be showing a
22 negative. That is, a failure to act or a failure to do
23 something which would possibly constitute a superseding
24 cause, but under Kusmider and other appropriate
25 authority, that would not be admissible to show Captain

1 Hazelwood was not at fault.

2 It has since come to my attention that it
3 might have some bearing on culpability, but not at this
4 stage of the proceeding. You're going to have to lay a
5 foundation for this type of information and I think it
6 comes to the two edged sword. I don't know what the
7 evidence is going to be. I don't what other experts
8 are in the field are going to say, other captains and
9 commanders of similar vessels are going to say.

10 What I've heard so far from Captain Murphy is
11 that you would not rely on the Coast Guard or the
12 government and that edge is it may be negligence or
13 evidence of negligence to solely rely on that
14 expectation. I don't know if Captain Hazelwood's going
15 to take the stand and indicate he relied on it, whether
16 other experts are going to say it's something you would
17 rely on. It would give you an opportunity to go below,
18 for example, because you could depend on this second
19 set of eyes. It would maybe allow you to put it on
20 autopilot where you would normally not if you didn't
21 have somebody that was giving you traffic and radar
22 advisories. It might give you the opportunity to give
23 the helm over to somebody who might not otherwise be
24 qualified because you had a back-up set of eyes.

25 I don't know what the expertise are going to

1 say, but at this stage in the proceeding, the only
2 thing I can see it being offered for is causation. I
3 can only see it being offered to show that the
4 government was maybe also at fault, too, which is an
5 improper purpose. So, any evidence of negligence on
6 the part of the government at this time, through its
7 agency employees or other fault of the government in
8 not maintaining or providing a different kind of radar
9 system, in my opinion, would be for an improper
10 purpose.

11 It's not probative at this time on Captain
12 Hazelwood's fault. It would potentially confuse the
13 jury and it would be a needless consumption of time.
14 So, I'm going to rule in favor of the Motion for
15 Protective Order without prejudice at a later time,
16 should the issue become appropriate to re-look at it.

17 MR. MADSON: Your Honor, I would think with
18 regard to the court's ruling that certainly jury
19 instructions, proper instructions could cover what they
20 can consider the evidence for, but I guess the court is
21 not precluding this from maybe having to recall these
22 witnesses and bring them back here again.

23 THE COURT: I'm not telling you how to do your
24 case. I'm saying at this time, I'm not allowing the
25 evidence to come in because it would come in solely for

1 an improper purpose in my opinion at this time and it
2 depends on the foundational material you can lay for
3 this in the future. Your offer, so far, I accepted as
4 a good faith offer, however it's a little bit ahead of
5 its schedule it's not going to come in at this stage of
6 the proceeding.

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

8 THE COURT: And, it might not at all for all I
9 know. I don't know.

10 MR. MADSON: But, if the court hears evidence
11 from other captains that said they rely on this, this
12 system is commonly done, certainly I think that that
13 stage would be an appropriate time to renew this thing,
14 I would imagine. Is that fair to ask at that time?

15 THE COURT: I'm not going to give you a ruling
16 on that. That's not before the court at this time.

17 MR. MADSON: Well, I guess it helps in knowing
18 how we're going to plan this, but we'll do the best we
19 can.

20 THE COURT: Well, I know you would like to
21 know all the answers in advance and it would be helpful
22 for everybody, but I don't know the answers and I can't
23 give you advisory rulings at this time. So, are we
24 ready now with the witness?

25 MR. COLE: Yes. I'll step outside and get Mr.

1 Taylor.

2 MR. MADSON: Well, wait just a minute. He's
3 still under cross examination, right?

4 MR. COLE: Yes. Judge, the other issue we
5 have for the next witness is Mr. Blandford and his
6 alcohol and the opiate.

7 THE COURT: Well, are we finished with Mr.
8 Taylor?

9 MR. MADSON: Well, I'm just trying to decide
10 if there's any purpose in recalling him, Your Honor,
11 because obviously, I wanted to ask him about the VTS
12 system and what they're supposed to do. If I can't ask
13 them what they're supposed to do, well, there's no
14 point in asking any questions.

15 THE COURT: I didn't suggest that you can't
16 ask them what they're supposed to do. I said "evidence
17 of fault", "evidence of negligence" that they didn't do
18 their job. At this point, it's offered to show that
19 that was the cause of the grounding is not admissible
20 on the grounds that it's an unnecessary expense of
21 time. It confuses the issues that are presented to the
22 jury. It's not probative on any of the elements in
23 this case. Now, it's up to you if you want to cross
24 examine him or not.

25 MR. MADSON: I'll try it as far as I can go,

1 Your Honor. That's all I can do.

2 (Side conversation)

3 (3307)

4 (Jury present)

5 THE COURT: Thank you for your patience.

6 Q (Mr. Taylor by Mr. Madson:) Mr. Taylor, I'm
7 trying to figure out where we left off, but by in
8 large, you indicated that as a VTS watch stander,
9 your duties were to monitor tanker traffic or
10 certain traffic in Prince William Sound, right?

11 A That's correct.

12 Q You have a manual to go by, did you not,
13 something called the "Prince William Sound Vessel
14 Traffic Service Manual"?

15 A Yes.

16 Q You kind of hesitated when you said that. Is
17 there something about the manual that's unusual
18 or...

19 A Just the way you said it.

20 Q What did I say that was wrong, sir?

21 A Well, you said "Vessel Traffic Service
22 Manual".

23 Q Operating manual?

24 A Okay, for the Vessel Traffic System, that's
25 it; that's the one.

1 Q Okay. It;s something that you were required
2 to be familiar with, were you not?

3 A Yes, I was required to be familiar with it.

4 Q And, in that, is it not true, sir, that the
5 purpose or policy of the VTS system was to
6 monitor the traffic in the Prince William Sound
7 area in order to prevent collisions or other
8 maritime accidents?

9 A Yes.

10 Q Well, does it have any other purpose?

11 A Well, to inform everybody of what's going on,
12 to make things easier for the people in the
13 system.

14 Q Is it fair to say that there were certain
15 things that could be construed as requirements of
16 tanker vessels under the system, but in the other
17 respects, it did not control the navigation of
18 the vessel. In other words, the master had the
19 right to control the navigation of the vessel in
20 the manner he thought was best and most safest
21 and prudent?

22 A Yes.

23 Q So, in some respects, it's a guideline, is
24 that fair to say?

25 A Yes.

1 Q For instance, there's nothing in the VTS
2 manual and the copy is required to be on the
3 bridge of the ship, is it not?
4 A Yes, it is.
5 Q There's nothing in that manual that you're
6 aware of that says when a captain can change
7 course, when he can't change course?
8 A Right.
9 Q Nothing that says when he can go below, when
10 he can't go below.
11 A That's correct.
12 Q Anything that says when he can put a mate in
13 charge and when he can't?
14 A That's correct, the way I understand it.
15 Q The only question you asked with regard to
16 pilotage is you said when the vessel is off of
17 Cape Hinchinbrook on the inbound lane, the
18 question is simply asked do you have pilotage,
19 right?
20 A To get pilotage for Prince William Sound, yes,
21 that's correct.
22 Q And, when outgoing, the same question is asked
23 or is it sometimes not asked? It's just assumed
24 that...
25 A It's just assumed.

1 Q ...because a vessel went in, it would go out
2 the same way, right?

3 A It's assumed that they would tell us if
4 anything was different.

5 Q What would you do if they didn't tell you?

6 A Well, you wouldn't know. After the fact, the
7 Coast Guard would probably take action against
8 the master or the vessel.

9 Q The Coast Guard, they may or may not do
10 something, right?

11 A Right. If they know about it, they'll
12 probably do something about it, I'm sure of that.

13 Q The manual doesn't say anything about where
14 the person with endorsement is supposed to be at
15 all times, does it?

16 A Not that I can remember, no.

17 Q Basically, you have someone on board that has
18 a pilotage endorsement?

19 A Right.

20 Q Now, you indicated that in leaving the lanes,
21 now, when I say "lanes", if you look at the chart
22 up there, just again to perhaps illustrate your
23 testimony, the purple color is the separation
24 zone, is it?

25 A That's correct.

1 Q And, so, vessels that are going north have to
2 stay to the right of that zone?
3 A Right.
4 Q Which would be, I guess, to the east, is that
5 correct?
6 A Right. That's the inbound lanes.
7 Q And, vessels coming south would be to the west
8 or on that chart to the left, right? How wide is
9 this zone in between?
10 A Well, everything is a mile. You get a mile
11 per lane, a mile for the traffic separation zone,
12 roughly a mile. Say, a nautical mile, 2,000
13 yards; how about that?
14 Q Is it fair to say from your experience, sir,
15 that leaving the lanes when there was ice
16 encountered was a routine or normal procedure for
17 vessels?
18 A I would say deviating from the outbound lane.
19 I wouldn't say leaving the lanes was a normal --
20 deviating from one lane to another was, I would
21 say, that was a normal -- I wouldn't say leaving
22 the lanes was, no.
23 Q Well, what would you have done if the vessel
24 said "I may have to leave the lanes here to go
25 around ice"? You wouldn't have done anything,

1 just know about it, right?

2 A Just know about it, right.

3 Q So, you didn't say "Well, wait a minute. You
4 can't do that"?

5 A No.

6 Q If it was a real dangerous situation in your
7 mind and your experience, would you be required
8 to notify your superior or...

9 A Yes, I would let them know.

10 Q The night the Exxon Valdez was in radio
11 communication with the station there, the control
12 center, you did not at any time make any requests
13 or inform your superior officer about any
14 maneuvers the vessel was making which, in your
15 opinion, were dangerous or hazardous?

16 A No, I didn't.

17 Q Were you on duty when the Arco Juneau came in,
18 sir, that same night?

19 A Yes, well, I would say it was, I believe I was
20 on duty when they went out. I believe they were
21 coming out; they were going out. It was four
22 hours earlier, correct.

23 Q When did they leave with respect to the Exxon
24 Valdez?

25 A Approximately four hours earlier, I believe.

1 Q And, they issued an ice report, did they not?

2 A Yes, they did.

3 Q That's part of your job, too, wasn't it, to
4 write reports and then funnel these back out to
5 other people?

6 A Right.

7 Q And, if I recall correctly, you said that the
8 report came through; they reported ice. Do you
9 know where exactly -- you said it was off point
10 Freemantle, I think, extending down toward Bligh
11 Reef?

12 A Bligh Reef buoy, right. Bligh Reef and Flat
13 Reef buoy.

14 Q Did they expand on that at all? I mean, was
15 it a large sheet of ice, was it just more ice
16 than normal or what did you take it to be?

17 A Large concentration, I believe, is what they
18 used, large concentration of ice extending from
19 Point Freemantle over to Bligh Reef buoy into the
20 southbound lanes and partially into the
21 northbounds, I believe, is what they said. So,
22 they had to deviate out of their lane from the
23 southbound into the northbound lane over by Bligh
24 Reef buoy and skirt around it.

25 Q Do you recall exactly where it went, sir? Did

1 you plot it at all; did you plot the vessel's
2 movements?

3 A No, the last I saw them was when they told me
4 they were going to deviate around there. I saw
5 them for a bit on the radar make their turn and
6 then that was the last of them until, you know,
7 -- I didn't see them until they were back in the
8 lanes and then it was all radio contact after
9 that.

10 Q Can you show where the vessel made it's turn?

11 A Not exactly. I sure couldn't.

12 Q Would you be able to look at a chart; would
13 that refresh your recollection, a chart from the
14 Arco Juneau?

15 A Probably not, no.

16 Q It would not?

17 A No.

18 Q But, your recollection is that it did deviate
19 totally out of the lanes to go around the ice?

20 A No, I didn't see -- not totally out of the
21 lane. It deviated from the southbound lane into
22 the northbound lane, I believe is what they told
23 me.

24 Q What they told you?

25 A Yeah.

1 THE COURT: Would counsel approach the bench
2 just for a minute, please?

3 (3847)

4 (Whispered bench conference as follows:)

5 THE COURT: The more I think about this, the
6 more I think that I'm going to let him get into this at
7 this time on what Mr. Taylor did or did not do when he
8 saw or did not see and give us more than what he
9 thought and you're already into it to some extent.
10 This is the area you want to get into, is that right?

11 MR. MADSON: Well, I'm just leading up to some
12 of the issues.

13 THE COURT: Yeah, I'm going to let him do it
14 at this time, Mr. Cole. I'm going to let him ask these
15 questions about what Mr. Taylor saw and didn't see and
16 what his responsibilities were at this time and how we
17 will resolve the approximate cause with instruction
18 that it would not be offered for the purpose of showing
19 causation. It would be offered to show who really
20 caused the problem here. I see a difference between
21 this and Kusmider.

22 In Kusmider, the idea was "Yes, okay, maybe I
23 shot the person, but there was intervening cause."
24 Here, I don't think there's a denial of any
25 recklessness. It's not a confession and an avoidance

1 situation. It's a situation where the defendant is
2 saying "I didn't do anything wrong. The government did
3 something wrong." And, that's a little different.

4 So, I'm going to let him get into it this time
5 and we can argue a little more articulately over this
6 at a later time on the issues of alcohol and stuff like
7 that. We'll get into that then, but no evidence of
8 alcohol or drugs until we take it up.

9 (End of whispered bench conference)

10 (3943)

11 MR. MADSON: Excuse me, Mr. Taylor, one
12 second. I wonder if you could mark this? Your Honor,
13 Mr. Cole and myself have entered into a stipulation
14 whereby the authenticity of this chart of the Arco
15 Juneau would be admitted.

16 MR. COLE: Mr. Madson, I would like to take
17 this up with the Judge.

18 MR. MADSON: Sure.

19 (4000)

20 (Whispered bench conference as follows:)

21 MR. COLE: I thought you were going to put it
22 on (indiscernible - whispering).

23 MR. MADSON: (Indiscernible - whispering)

24 THE COURT: Okay, calm down both of you; calm
25 down both of you. Now's not the time for pointing

1 fingers. For one thing, at the very beginning, Mr.
2 Madson, I told you do not offer stipulations in front
3 of the jury at any time to avoid this very type of
4 thing from coming up. Now, is there going to be a
5 stipulation of the authenticity at this time?

6 MR. COLE: My understanding is they were going
7 to (indiscernible - whispering) and I told them that.

8 THE COURT: Then, there's not stipulation on
9 that...

10 MR. MADSON: I'm going to ask him if he
11 recognizes this as the chart.

12 THE COURT: That's not the issue. The issue
13 is the stipulation and there's no stipulation at this
14 time.

15 MR. MADSON: That's fine. (Indiscernible -
16 whispering).

17 THE COURT: Oh, no, I mean, all he's saying is
18 that he's not willing to stipulate at this time. You
19 still might be able to give it to him to authenticate,
20 I don't know. (Indiscernible - whispering)

21 MR. MADSON: Well, I better find out. I could
22 ask him.

23 THE COURT: Okay.

24 (End of whispered bench conference)

25 (4079)

1 THE COURT: Ladies and gentlemen, disregard
2 Mr. Madson's last statement that there is a stipulation
3 concerning the authenticity of this chart. There is no
4 such stipulation.

5 Q (Mr. Taylor by Mr. Madson:) Let me hand you
6 what's been marked Defendant's Exhibit F if I can
7 get it the right way here.

8 A There you go.

9 Q And, ask you if this would refresh your
10 recollection as to whether or not that was the
11 course you remembered the Arco Juneau being on
12 the evening of March 23rd? You're shaking your
13 head.

14 A No.

15 Q You don't recognize this...

16 A I do not recognize that.

17 Q Had Captain Hazelwood radioed back and said
18 "We are definitely leaving the lanes. We're
19 going to deviate around the ice, changing course
20 to 180", you still wouldn't have done anything,
21 right?

22 (Tape: C-3608)

23 (000)

24 A Probably not. No, I don't think I would have.

25 Q It wasn't that unusual an occurrence that

1 would raise to that elevated level of concern
2 that you would, you know, contact somebody or
3 radio back or anything like that?

4 A I would have rogered what he said and probably
5 written it down.

6 Q Do you feel, sir, that captains of tanker
7 vessels have a right to rely on the information
8 you're giving them?

9 MR. COLE: Objection, lack of foundation.

10 THE COURT: Objection overruled. You can
11 answer the question.

12 A What was the question again, please?

13 Q Do you think Captains of tanker vessels such
14 as the Exxon Valdez have a right -- is it
15 reasonable to expect that the captains of those
16 vessels could rely on the information the Coast
17 Guard VTC center is giving them regarding ice or
18 anything else?

19 A They can only rely on what we give them. You
20 know, it changes from time-to-time, but we only
21 give them what we get.

22 Q How often do you ever call a vessel and say
23 "You're off radar now. I can't see you anymore"?

24 A I don't really...

25 Q You don't?

1 A I've never done it unless they've asked "Do
2 you see me on radar", and then I come back and
3 answer like "You're off radar right now. No, I
4 don't see you."
5 Q Then, let's get back to this point, sir. When
6 you were working there in 1986, was this in part
7 of the changeover from one radar system to
8 another?
9 A Was what?
10 Q The Center, were they undergoing a change in
11 the radar system?
12 A When I came back to work in '86, I believe the
13 change was already completed.
14 Q Did you work at all with the previous system?
15 Were you familiar with it?
16 A I worked with it when I was in the Coast Guard
17 as a petty officer back in '83 or '84. I worked
18 with it for a while, yeah.
19 Q And, where was that?
20 A That was at Valdez.
21 Q Just making sure.
22 A Okay.
23 Q Let me ask you this, with regard to the older
24 system, the one you said that was privately
25 maintained, what type of range, or what type of

1 coverage did it have with regard to Prince
2 William Sound?

3 A Basically the same as the Raytheon.

4 Q You did not have coverage down to Naked
5 Island?

6 A No.

7 Q You did not?

8 A You could see Naked Island on a good day. You
9 could see a blip down there. A person couldn't
10 walk up and look at a chart and look at that and
11 say "Gee, that's the outline of Naked Island."
12 No, you could see a target down there on a good
13 day and the radar was working perfectly.

14 Q So, would you say the coverage in the
15 earlier, older type radar, only extended perhaps
16 as far as Bligh Reef?

17 A It was probably extended a little farther, but
18 that's the general area where pick-up -- yeah,
19 Bligh Reef, maybe a little bit south of that, not
20 much farther for, like, picking up a contact and
21 being able to know what it is.

22 Q Under the Vessel Traffic System Operating
23 Manual, do you recall, sir, whether or not in
24 that manual it indicates that there's radar
25 coverage in the, say, Valdez Arm.

1 A Say it again, please?

2 Q Does the manual, itself, indicate that there's
3 coverage in Valdez Arm?

4 A I don't recall.

5 MR. MADSON: Your Honor, I wonder if I could
6 mark three items for exhibits at this time? I
7 apologize for the delay, Your Honor, (indiscernible -
8 away from mike).

9 THE COURT: Mr. Madson?

10 (200)

11 (Whispered bench conference as follows:)

12 THE COURT: I think we're going to need to
13 establish a little better record on this before we go
14 any further and I think, Mr. Cole, you better stop
15 shaking your head. Next time, I'm going to sanction
16 you to that conduct. I'm going to let the jury go.
17 We're not going to be able to finish this witness.
18 We're getting into an area now that needs to be flushed
19 out a little more before we get too deep into this.
20 Yeah, we'll just have to have Mr. Taylor and Mr.
21 Blandford come back on Monday.

22 (End of whispered bench conference)

23 (239)

24 THE COURT: Ladies and gentlemen, we're going
25 to get into an area now that's going to require a

1 little more attention given outside your presence and I
2 don't think we're going to be able to finish it in
3 enough time to give anymore meaningful time to jury
4 trial. So, I'm going to excuse you for the rest of the
5 day.

6 I've got news, I think it's going to be good
7 news for you. That depends on how you take it, but
8 we're not going to have trial tomorrow because of a
9 medical reason of one of the people involved here and
10 don't be concerned about what that is. It is not
11 evidence and it should not be taken one way or the
12 other by you. Just as a decision we made here to
13 accommodate some people involved because of medical
14 reasons.

15 So, we will resume on Monday morning at 8:30.
16 Tomorrow is not a trial day, so you have three days in
17 a row off. It may give you some time to take care of
18 some of the affairs that you have been neglecting, I'm
19 sure. Don't discuss this case with any person. That's
20 real important. You've got three days. People might
21 start coming up to you and talking to you, so avoid
22 that and don't form or express any opinions and be
23 particularly mindful of my instructions to avoid media
24 coverage. Have it screened for you.

25 So, we'll see you back at 8:30 a.m. on Monday

1 with my thanks for your patience and please be safe
2 over the weekend.

3 (Jury not present)

4 THE COURT: Would you close the door for me?
5 Thanks. You can step outside, thanks very much. We'll
6 see you back on Monday morning, 8:30 a.m. You're under
7 subpoena, are you not?

8 A Yes, sir.

9 THE COURT: Okay, you're still under subpoena.

10 (Pause)

11 THE COURT: Okay, we're going to have to flush
12 out this issue a little more and before we have this
13 witness complete his testimony, I think what I'll do is
14 expect tomorrow morning, counsel can argue some of
15 this. We can use that time productively even though
16 Mr. Chalos will not be here. It's being handled by Mr.
17 Madson. Is there problem with Mr. Madson handling it
18 in your absence?

19 MR. CHALOS: No, Your Honor.

20 THE COURT: We'll be able to argue this. As I
21 give it more thought before we finish with this witness
22 and have to make the witness come back and maybe
23 require further foundational testimony, I'm starting to
24 see a difference between this and the analysis on
25 Kusmider and I don't want to get too deep into it and

1 commit error if I can correct it now.

2 What I'm hearing the defendant's theory as is
3 that "We were not reckless and therefore we don't have
4 to get to causation." And, Kusmider deals with a case
5 where somebody got shot in the neck. It was clear that
6 the person -- that the defendant shot the victim in the
7 neck and his argument was that we didn't. It wasn't
8 that we didn't shoot the person. His argument was "We
9 weren't the cause of the death."

10 Now, there's a difference. In this case, the
11 defendant seems to be saying "We weren't reckless. We
12 didn't create the problem. We weren't reckless. It
13 was the government that was reckless and created the
14 problem." Maybe acknowledges to a Perry Mason type
15 story where the defendant didn't do it. Somebody else
16 did it. And, it goes to one of the elements, that is,
17 the recklessness and the more I think about it, it
18 seems to me the more the defendant should be able to
19 show that they didn't do this. It was "The government
20 had done it" since their position is they were not
21 reckless in the first place.

22 I'm not making a ruling at this time, but I'm
23 going to let you know I'm reconsidering it sponte sua
24 in giving counsel an opportunity to brief this matter
25 more thoroughly before I make a final decision. I

1 don't want to go off half-cocked on this and so we'll
2 hear this tomorrow morning. I expect counsel to have
3 some case authority for me, not just Kusmider, but some
4 other case authority to give me a little better job of
5 briefing that's been done so far so we can flush it out
6 tomorrow. Would 10:00 be an appropriate time; would
7 you be able to get things done by then?

8 MR. MADSON: I think we could, Your Honor. I
9 think the law library must open at 8:00 and we have
10 some time yet available today, so...

11 THE COURT: Okay, Mr. Cole, can you get up to
12 steam by then?

13 MR. COLE: Uh-huh (affirmative).

14 THE COURT: Beg your pardon?

15 MR. COLE: Yes. My only question is am I
16 addressing the issue of whether the defendants are
17 saying their not reckless at all, period. They have no
18 culpable conduct or that they are partially culpable,
19 but not reckless?

20 THE COURT: We're not dealing with causation
21 here. This evidence is not being offered for
22 causation. It's being offered to show that the
23 defendant was not reckless as I understand the theory
24 so far. It was the government that was reckless. The
25 government recklessly created this problem.

1 It's not a confession and avoidance defense
2 I'm hearing. "We were reckless, but we didn't cause
3 it." I'm hearing them say they weren't reckless. The
4 government was reckless and there was a grounding, but
5 it was not because of the recklessness of Captain
6 Hazelwood. It was because of the government's failure
7 to see and warn or provide a radar that was available.

8 Now, I'm not saying that that is an
9 appropriate theory or it's going to come in, but it
10 seems to me that we don't necessarily have to wait for
11 that type of evidence to come in until the defendant
12 presents his case because then it forces the defendant
13 possibly to take the stand when he would not otherwise
14 have to and it might be infringing on his right to
15 remain silent and that's what I'm concerned about at
16 this time.

17 So, we'll flush it out tomorrow at 10:00.
18 We'll stand in recess.

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

21 (480)

22 (Off record - 3:28 p.m.)

23 ***CONTINUED***

24

25

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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

TRIAL BY JURY, CONTINUED
FEBRUARY 9, 1990
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VOLUME 18 (B)

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

Anchorage, Alaska
February 9, 1990
9:00 o'clock a.m.

APPEARANCES:

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1 PROCEEDINGS

2 FEBRUARY 9, 1990

3 (Tape: C-3608)

4 (480)

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

7 THE COURT: Be seated.

8 The reason we're late, I just received the
9 State's response to defendant's cross examination and
10 an informal opposition to motion for protective order
11 4. I had to read it.

12 Before you go into it further, did you find
13 any case authority. I notice that your brief, Mr.
14 Cole, is five pages, doesn't have any citation to
15 anything. It just is argument. Did you find any case
16 authority to support your position.

17 MR. COLE: Well, I cited evidence rule 403 and
18 that's the basis of it.

19 THE COURT: Okay.

20 MR. MADSON: Your Honor, I have another
21 citation, if the court would like to have it. We just
22 got this a minute ago and I could only give it to
23 you...

24 THE COURT: Okay. What is the citation?

25 MR. MADSON: ...the citation, itself. It

1 stands for the proposition the court raised yesterday
2 about incriminating third parties, or guilt of other
3 parties.

4 And it is, let's see, I've got to find the
5 title of it. People v Green 27 Cal.3d 164, Cal 609
6 P.2d 468.

7 THE COURT: 609 P.2d 468?

8 MR. MADSON: I may have made a mistake here,
9 Your Honor. I'm trying to read this. It's a computer
10 print out page and I don't believe that's a correct
11 cite. It says, "Rejecting". So, let's get the right
12 one here.

13 I apologize, Your Honor. Scratch that. I'm
14 not used to working with computers.

15 226 Cal 112 41 Cal.3d 826, 718 P.2d page 99.
16 And it is a 1986 case out of California.

17 THE COURT: Have you got a copy of it?

18 MR. MADSON: I think I do, Your Honor. I
19 think I read it myself.

20 THE COURT: You have not read it, yourself?

21 MR. MADSON: Well, I've read -- be advised
22 that Mr. Russo has read it, but I haven't had a chance
23 to really go through it in detail, but it isn't, you
24 know...

25 THE COURT: What's it stand for? Give me the

1 idea what this case is all about, then?

2 MR. MADSON: To be admissible, defense
3 evidence tending to show that a third party is guilty
4 of an offense charged need not show substantial proof
5 of a probability that the third party committed the
6 act. It need only show it be capable of raising a
7 reasonable doubt as to the defendant's guilt. It's
8 just a standard proposition of the law, Your Honor.

9 THE COURT: Okay. I don't need to review that
10 case. I understand that principle.

11 Do you wish to be heard any further, Mr. Cole,
12 on your application? This is your motion for
13 protective order. I'm going to hear additional
14 argument. If you have something to add now, let's hear
15 it.

16 MR. COLE: Well, judge, I guess about the only
17 things that I have to say are...

18 THE COURT: Now we're dealing with evidence of
19 the radar equipment that was available present, and in
20 the past, and whether the Coast Guard had previously
21 tracked, plotted and warned tanker vessels in the past
22 of the Bligh Reef area, the conduct on the watch by
23 both Taylor and Blandford, the reasons why they did, or
24 did not see the Exxon Valdez as it was exiting the arm,
25 and we'll also deal with Mr. Blandford's blood alcohol

1 content today as well.

2 As I understand he had a 20 alcohol content 24
3 hours after the grounding, and his reason was he had a
4 couple of drinks before he went to bed, and that
5 accounted for the high alcohol.

6 And the State opposes the defendant's attempt
7 to bring in this evidence of his blood alcohol.

8 So, let's address all of this today. See if
9 we can resolve it.

10 MR. COLE: That's fine. Would you like me to
11 address all three of those right now?

12 THE COURT: Sure.

13 MR. COLE: As I see it, and, judge, I'm sorry
14 if you feel that I didn't address those motions. Ms.
15 Henry and I went back to the office last night and we
16 tried to sit down and hash out what the issue is that's
17 concerning you, is concerning the court, and this is
18 our best response.

19 But, as I see it, there are two separate areas
20 on this issue, and one of them is the equipment that
21 used to be available in Prince William Sound and is now
22 available, and whether the U. S. Government is somehow
23 at fault for not having a different type of equipment
24 in the VTC system.

25 And, then, the second issue is the failure of

1 the watch people to properly plot, chart and warn on
2 this particular night.

3 I see those as two different issues. I do
4 believe that as we have set out in our brief that
5 Captain Hazelwood is entitled to have a defense that I
6 felt the Coast Guard was a second set of eyes, and I
7 was in no way negligent in leaving the bridge because I
8 felt the Coast Guard had the capability, 1, and 2, did
9 actually, in fact, watch my ship, and that they would
10 warn me in case there was a problem. That is a defense
11 that he could run. It's not consistent with what he
12 said in his opening, but defenses change and they can
13 change their defense right now if they like.

14 It's not proper to show causation, or this is
15 partial fault, but if he wants to say that he's not at
16 all responsible, it's solely the responsibility of the
17 VTC, then he can do that. The only problem with that
18 that we see is that is a foundational relevance. At
19 this point in the trial, he has not properly showed
20 what relevance it is of what these systems were in the
21 past and what the Coast Guard could have done to make
22 this a better system. And to do that he has to put on
23 evidence, we believe, if what he is trying to show is
24 his state of mind is that A, he in fact relied upon
25 that evidence, or on what he perceived to be a tracking

1 system that tracked him all the way out to Bligh Reef
2 and did, in fact, warn people, he expected them to warn
3 him.

4 Or, 2, he could show by the custom, as we've
5 set out in our brief that tanker captains and pilots
6 rely on the VTS system to, in fact, track and warn them
7 in the area of Bligh Reef.

8 Now, the defense could probably put on some
9 testimony that tanker captains do rely to a certain
10 extent, pilots, on the VTC in the area of the Narrows.
11 But, I think that the evidence has already been what
12 you've seen a brief glimpse of it through the pilot,
13 Mr. Murphy, that they really don't. The captain is
14 sitting there on a tanker with two radars on his ship
15 and that they do not rely on the VTS once they get past
16 the Narrows.

17 The question is should they be allowed to
18 present this evidence, and then later on try and
19 establish the link up of relevance at another time.
20 And we believe that the substantial problem is this.
21 If you allow them to go into that, the State will
22 suffer prejudice if in the later time of this trial the
23 defense does not hook up and link up the foundational
24 requirements as far as relevance.

25 And that could happen, the State could be

1 prejudiced in two ways. First, the court could hear
2 evidence through these VTC people of all the other
3 types of equipment that they used to have and how far
4 it went out, and things like that. And then, later on
5 -- and defendants could then come in and bring Sperry
6 representatives and Raytheon representatives and say
7 all these great schemes that they could have put in
8 there to assure that these tanker captains were being
9 plotted and tracked and warned, and then we could get
10 three weeks down to trial and not one tanker captain
11 could come in here and say, "I relied on it."

12 And you would be put in the position of
13 instructing the jury, "Well, all that information back
14 there I want you to disregard all that, because the
15 defendant failed to link up to relevance." And that's
16 a difficult thing to do. Especially if it's a lot of
17 evidence.

18 Second, there is a substantial chance that
19 what will happen is if we let them hear all this and
20 the necessary relevance is not linked up, foundational
21 requirements, that the jury will take that evidence and
22 apply it to the issue of causation which Mr. Madson
23 talked about in his opening, which you have already
24 ruled is not a proper means of using that evidence.
25 And there's a chance that the jury is going to say,

1 "Well, you know, they had all this stuff before and
2 maybe the Coast Guard was partially at fault," and
3 things like that, and not be able to follow the court's
4 instruction.

5 It would be a waste of time in addition to
6 that, if we go through a number of witnesses who talk
7 about the potential if the defense is not able to link
8 up the foundational requirements. That is the
9 prejudice to the State.

10 That's how we evaluate the evidence of prior
11 systems.

12 If at a later time in their case they put on
13 evidence that, "Look, tanker captains reasonably relied
14 on this stuff, then they can call back VTS watch
15 standers, talk all about the other systems, and how it
16 used to be and why these tanker captains came to rely
17 on these people, and particularly down in the Bligh
18 Reef area. We don't have any problem with that.

19 But, I believe that the proper way to proceed
20 is to first require somebody to get up there and say,
21 "I relied on this." Or, "It's the custom of the
22 industry to rely on the VTS system down in the Arm,
23 down toward Bligh Reef." And until that happens, I
24 think that this is a premature line of inquiry.

25 The second area that I would like to address

1 today is the watch stander's, Taylor and Blandford's,
2 failure to act on this particular night. Now, Mr.
3 Madson, the way I look at it, if Mr. Madson wants to
4 get up here and talk about the VTS people and how they
5 failed to track Captain Hazelwood that particular
6 night, he can go ahead as far as I'm concerned. That's
7 fine. I'm more than happy to let him do that.

8 I don't have any problem with that.

9 THE COURT: All right.

10 MR. COLE: And, finally, Mr. Blandford's 20.
11 Mr. Blandford's 20, judge, the evidence was Mr.
12 Blandford was asked, "I had a couple drinks after
13 work." He didn't know he was going back to work. He
14 was off duty. He was at home. He gave an interview to
15 an NTSB person several days after this incident. He
16 said, "I had four bourbons," or bourbon and water.
17 Something like that. He had several strong drinks.
18 Nothing inconsistent with a reading -- we believe not
19 inconsistent with a 20.

20 I'm not sure what question he was asked at the
21 NTSB. And when he said -- I think he said he had a
22 couple of drinks. I believe that without some kind of
23 offer of proof by the defense that would indicate that
24 this person was drinking, and you have to remember,
25 judge, he's in the VTC system center from 12 o'clock

1 that night until 11:00 that day. He's got the
2 Commander of the Port in there, because the Commander
3 of the Port is talking on the radio in the area at
4 about 1:50 -- no. 1:10, or somewhere between 1:00 and
5 2 o'clock. I think that's correct. Yeah. Right
6 around 1 o'clock.

7 I believe that without some type of belief
8 that he is intoxicated, and we're talking about 13
9 hours after he's on duty, 13 hours after the Exxon
10 Valdez went aground when the test is given. If you...

11 THE COURT: 13 hours after it went aground?

12 MR. COLE: Well, no. I think it was actually
13 2 o'clock when he actually gave the test. The Exxon
14 Valdez went aground at about 12 o'clock the day before.

15 THE COURT: When was his watch stand on?

16 MR. COLE: No. I apologize. I can't tell you
17 exactly when that thing was done, because he left, I
18 think, between 11:00 and 12:00. It was a couple hours
19 later. Maybe it was at 1:00. Maybe it was at 2:00.

20 THE COURT: Okay.

21 MR. COLE: Let's say it's 12 hours. 12 hours
22 back would put him at something like a .4 -- a .45 at
23 the time of the grounding. And judge, there's just no
24 evidence that he's at .45 at the time of the grounding.

25 So, that's what our position on those three

1 issues.

2 (1130)

3 MR. MADSON: Your Honor, there's a number of
4 misconceptions, and I think erroneous comments on the
5 part of the prosecution in this matter. And if we can
6 just direct ourselves to the heart of it.

7 First of all, the Coast Guard person here, the
8 civilian watch stander, ex-civilian watch stander, Mr.
9 Taylor, and then, of course, Mr. Blandford are going to
10 testify -- one has already testified.

11 He talked about the VTS system, what it was
12 supposed to do and what their role is, and what he did.
13 Now the State says I can't go into what he did, what
14 the system stands for, and what he didn't do, because
15 this might bear on their failure to act, or their
16 negligence, gross negligence, or recklessness.

17 First of all, the door is opened. Secondly,
18 what he's talking about the manual, and Mr. Cole's
19 saying, "Well, we can't go into this now, because we
20 may not be able to connect it up later that other
21 mariners actually rely on this system."

22 Well, first of all, let's get one thing out of
23 the way. By way of offer of proof we expect, and we
24 not only expect, we can ensure the court that there are
25 at least two, certainly one, if not two, to say that

1 the industry did rely on the Coast Guard VTS system.
2 They had no knowledge the radar system had changed.
3 They were under the belief they were under radar
4 surveillance according to the manual, itself.

5 Now, independent of any expertise, or any
6 opinion, or other mariners, the manual, itself, and how
7 it's operated, and there are conditions of operation
8 has become very well read in this case. The manual,
9 itself, says that the Coast Guard has the authority to,
10 and does establish vessel traffic services, and require
11 vessels to comply, to control vessel traffic under
12 certain conditions by controlling their movements,
13 routes, speeds, and operating conditions. It requires
14 certain operating conditions, certain capabilities in
15 hazardous areas, or under hazardous conditions.

16 This is the manual that's required to be on
17 the bridge of every ship that is required to comply
18 with the VTS system. That, in itself, says, "You,
19 Captain Hazelwood, must comply with this. And here's
20 what we're doing: collision avoidance system." And
21 not only that, but it also tells every mariner that,
22 "This radar surveillance system covers Valdez Arm,
23 Valdez Narrows and Port Valdez, and a continuous radar
24 watch of those areas will be maintained by the VTC."

25 It's telling them, "We're watching you." Now,

1 what more reliance can a person have. If more is
2 needed, we will have people to come on and say we have
3 been not only told we were off course as far down as
4 Naked Island by the radar standers, but we were
5 directed to get back on course, actually directed and
6 controlled.

7 It just seems so incredulous that we can not
8 ask people -- since all this stuff has come into
9 evidence, we can't ask the same questions in a
10 different way to show one very important thing.

11 First of all, I think there's another
12 misconception, and that's causation. If we look back
13 at the statute here, the felony charge, in all but the
14 negligent discharge statute, causation isn't even an
15 issue here. It's just a risk. Did he disregard a
16 risk?

17 So, the cause is not really the issue. It's
18 the risk. And the risk, of course, is striking a rock
19 or another navigational hazard, or something like this.
20 That's what we're talking about. And we have every
21 right I would say, to say they didn't do their job, and
22 as a result this occurred.

23 But, more importantly than that, the case I
24 cited, Your Honor, Egmond (ph), I believe it was, 702
25 P.2d 643. In the time we had available, Your Honor, we

1 started looking at causation under recklessness,
2 because we discussed that a little bit yesterday, and
3 whether the same applies under a higher mental standard
4 such as intentionally shooting somebody, and then
5 saying, "Well, I shot him, but I didn't cause the
6 death, because someone else did. They had an accident
7 on the way to the hospital," or something like that.

8 There's a fatal distinction there, and I think
9 the court realized that yesterday. You can't equate
10 one with the other. We're talking about recklessness
11 here, and what the State has to prove is that a given
12 defendant, having certain faculties, education,
13 experience, intelligence, would and should have
14 perceived this risk. In other words, what did he know,
15 and what should he know.

16 Now, switch that around a little bit here.
17 There's a couple analogies that can be made. Let's
18 assume that Mr. Blandford or Mr. Taylor radioed Captain
19 Hazelwood and said, "We do not want you to go on this
20 course. Do not go on course 180, or 200. We find that
21 to be hazardous, do not do it." Or, "We advise you not
22 to do it," if not direct. And he does it. The State
23 would be in here jumping up and down and saying, "Boy,
24 that is really relevant evidence of recklessness. It
25 goes to his state of mind, his total disregard."

1 All we're doing is saying we have every right
2 to show just the converse of that situation. I think
3 another analogy, and whether it's appropriate or not I
4 leave to the court, but let's take an automobile case
5 where a person goes through an intersection where it's
6 controlled by a red light, let's say. And he goes
7 through the red light, has an accident, kills somebody
8 and he's charged with, let's say manslaughter,
9 involving a mental state of recklessness.

10 The State is saying he disregarded this
11 traffic signal. He went right through it and hit
12 somebody. But, let's suppose the -- and the State
13 comes in with a person who says, "Yes. That's my job
14 to maintain these signals, keep them running. It's for
15 the protection of the public." And the signal was
16 working. You bet that would be relevant evidence.

17 Let's switch it around again. Let's say the
18 defendant says, "Wait a minute. That light -- there
19 was no light there. It wasn't working." Doesn't he
20 have a right to rely on that to show lack of
21 recklessness, and to show through the State that
22 perhaps it was not working? And that's essentially all
23 we're doing here.

24 So, there are really two concepts here. And I
25 think they are adequately set out in our written

1 memorandum, and I don't think that we need to dwell on
2 it too much longer. But, to me, there is certainly
3 sufficient evidence before the jury right now to show
4 the VTS manual, it's standards, how they operate.

5 And I think it's necessary to go into it to
6 show, not only how it operates, but how it does not,
7 what problems they have with the system and what
8 information they gave the people that are really
9 relying on it, not necessarily to do it all for them,
10 but certainly as an aid, certainly as an assistance,
11 certainly as something they can well, if something goes
12 wrong, not only do I have my people on the ship, and I
13 got my own eyes, but maybe sometime I've got to go to
14 sleep. Maybe sometime I'm sick. All these maybes, but
15 in the back of your mind you still say, "Well, the
16 Coast Guard is there, and their job, their function, is
17 to help protect us from getting off course, from
18 hitting objects, things like this," preventing exactly
19 the disaster that occurred here.

20 And going on then, to Mr. Blandford.

21 THE COURT: Let me ask you about Mr.
22 Blandford. Do you have any evidence other than the
23 blood alcohol taken approximately 12 hours later, that
24 he was drinking at the time, or prior to his watch
25 standing.

1 MR. MADSON: We have no eye witness testimony
2 to that effect, Your Honor. Here's what I...

3 THE COURT: Any evidence, other than the blood
4 alcohol test?

5 MR. MADSON: Here's what I was going to
6 suggest with regard to Mr. Blandford. I am trying to
7 call an expert right now, out of state on this subject
8 to show that his statement that he, Blandford, said "a
9 couple of drinks after work," you're not going to get a
10 .20 urine alcohol, not blood, but urine. This means
11 that there has to be sufficient time to go through the
12 blood stream into the urine, and it's ready to leave.

13 So, there is absorption time there that is
14 critical. And what I was going to propose is say,
15 until I can talk to this expert and get an absolute
16 firm commitment from him, that, "Yes. This is
17 inconsistent with that after hours drinking," that he
18 would have had a certain amount of alcohol which would
19 be, let's say arguably illegal in his system while he
20 was there working as a watch stander, then I think we
21 have a real question of relevancy and bias at that
22 time, which we could bring it in. But, until I could
23 make, give that court that assertion I would not ask
24 Mr. Blandford that question.

25 I would agree it could be highly prejudicial

1 and it wouldn't be relevant unless I can make an offer
2 of proof to show something. And I honestly can't do
3 that at this minute. But I think certainly by the time
4 Mr. Blandford is called as a witness I'd be able to
5 make an offer of proof, and if I can't I'll basically
6 tell the court we can't.

7 THE COURT: The State's motion for a
8 protective order regarding Mr. Blandford is granted at
9 this time. If you at such time have further
10 information to present, do so, but do it outside the
11 presence of the jury.

12 MR. MADSON: Oh, of course, Your Honor. Yes.

13 THE COURT: Anything further, Mr. Cole?

14 MR. COLE: No.

15 THE COURT: All right. Based on the arguments
16 I have in front of me, the record I have in front of
17 me, with this witness at least Mr. Taylor, and
18 presumably Mr. Blandford also, I'm not going to let the
19 defendant show through cross examination what radar was
20 installed in the past, or could have been installed. I
21 think that introduces a collateral issue.

22 There may very well have been better radar
23 available. It may well have been radar in the past
24 that would have shown the Exxon Valdez further away.

25 There may have been a positive control system

1 that could have been implemented. Any number of things
2 could have happened that did not, in fact, occur, were
3 not part of the system. And to introduce the potential
4 for those things would introduce the collateral issue
5 which would consume unnecessary time, it would
6 potentially confuse the jurors. And it would be unduly
7 prejudicial. It would divert attention from the
8 elements of the case here, and that is whether or not
9 Captain Hazelwood recklessly created a risk.

10 I will, however, allow evidence provided that
11 the evidence -- the cross examination is reasonably
12 within the scope of the direct. I will allow cross
13 examination to show how the existing system worked on
14 the 23rd and 24th of March, how it was used on that
15 occasion, or not used.

16 I will allow evidence as to Taylor and
17 Blandford's use of the system at that time, the reasons
18 for the use.

19 There were omissions, or commissions. I will
20 allow cross examination pertaining to those.

21 And I will allow cross examination, provided
22 it's reasonably within the scope of the direct on
23 questions such as the customs and procedures employed
24 by the watch standers for vessels entering and exiting
25 the Valdez Narrows and the Valdez Port using that

1 system.

2 I think that it's important for the jury to
3 have information on how the system was worked, what the
4 customs were concerning that particular system to give
5 them a complete picture of Captain Hazelwood's use of
6 that system and his alleged recklessness.

7 As for whether or not the defendant relied on
8 it, what the custom or practice of tanker captains
9 were, that's something for the defendant to present in
10 it's case in chief unless it's opened up by the State
11 in it's direct, then it's something that I expect the
12 defendant will do in it's case in chief.

13 If the State does open those areas up as to
14 custom and usage by other tanker captains, I think
15 proper cross examination would allow examination of the
16 reliance on the system by other as well.

17 So, no Blandford blood alcohol testimony will
18 be put in based on Mr. Madson's statement that he can't
19 presently tie it up. I find that that would be unduly
20 prejudicial and introduce a collateral issue. It would
21 certainly be not relevant to the issues of the case on
22 the case now.

23 We've resolved Taylor. And I think we
24 resolved the rest of it, unless I missed something.

25 Mr. Madson, do you think you understand my

1 ruling?

2 MR. MADSON: Yes. I guess the only concern I
3 have right now is what about the admissibility of the
4 VTS manual that's required to be on the vessels? I
5 would ask that that be admitted, that the manual,
6 itself, which goes to the question of reliance?

7 THE COURT: I think at some time that might be
8 appropriate to get admitted. I don't know if this is a
9 proper witness to do it. It will be subject to proper
10 objection.

11 If this witness...

12 MR. MADSON: The reason I didn't, Your
13 Honor...

14 THE COURT: ...would reasonably be able to
15 testify that it was on board the Exxon Valdez, or what
16 use of it was made by the defendant. He might be able
17 to testify if this is something he knows about. But,
18 as far as its custom and usage, I don't know if he's
19 qualified to do that or not. Maybe another witness is
20 more qualified.

21 MR. MADSON: That's fine, Your Honor. We can
22 do that. We can tie that up.

23 THE COURT: Any questions concerning the rule,
24 Mr. Cole?

25 MR. COLE: Uh-uh (negative).

1 THE COURT: Okay. Is there anything else we
2 can do now before recessing 'til Monday?

3 MR. MADSON: I can't think of anything else.

4 THE COURT: Why don't we just kind of sit
5 around for about a half a minute in case you come up
6 with something we can resolve.

7 MR. MADSON: I can't believe there'd be one
8 more issue with this case, Your Honor, but every day it
9 seems to amaze me.

10 MR. COLE: No. I don't have anything, judge.
11 We do have all the employees coming in this
12 weekend. We will have plenty of witnesses, I believe
13 through next Thursday.

14 THE COURT: These statements taken of them, in
15 the meantime...

16 MR. COLE: Right.

17 THE COURT: You might rifle a copy over. I'm
18 about to hit the gavel, you know, sold, you know, I'm
19 about to do that an leave.

20 MR. MADSON: One second, please. I mentioned
21 something I was going to...

22 Yeah. Just to let the court know that I plan
23 on having a written memorandum for a motion for
24 reconsideration of the inbound tape, the cassette here,
25 that has been identified and has gone into evidence,

1 just to let the court know that we expect something in
2 on that.

3 THE COURT: Okay. I don't know that the tape
4 has gone into evidence yet, has it?

5 MR. MADSON: I thought it had. But, anyway...

6 THE COURT: No. It hasn't been admitted yet.

7 MR. MADSON: ...it'll be the nature of another
8 protective order motion.

9 THE COURT: You're going to object to it and
10 this is going to be...

11 MR. MADSON: Yes.

12 THE COURT: ...in support of that objection,
13 and in support of your motion to reconsider?

14 Okay. We'll stand in recess.

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

17 (1823)

18 (Off record - 10:37 a.m.)

19 ***CONTINUED***

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