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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

OMNIBUS HEARING  
NOVEMBER 28, 1989  
PAGES 212 THROUGH 381

VOLUME II

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BEFORE THE HONORABLE KARL JOHNSTONE  
Superior Court Judge

Anchorage, Alaska  
November 18, 1989  
8:40 o'clock a.m.

APPEARANCES:

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1 PROCEEDINGS

2 NOVEMBER 28, 1989

3 (Tape: C-3504)

4 (0033)

5 THE COURT: Please be seated. Thank you. Mr.  
6 Linton.

7 MR. LINTON: Judge, I'd ask permission of the  
8 court to have the next witness, Commander Steven  
9 McCall, testify telephonically. He is standing at a  
10 phone in St. Louis, Missouri where he is assigned to a  
11 Marine safety office now.

12 THE COURT: That's where he's stationed now?

13 MR. LINTON: Yes, sir.

14 THE COURT: Any objection from the defense?

15 MR. FRIEDMAN: No, Your Honor.

16 THE COURT: All right. In the absence of an  
17 objection and given that he's stationed in St. Louis  
18 and this is an omnibus hearing, I'll go ahead with it.  
19 It is generally not practice to do no telephonic  
20 witness testimony. But under the circumstances, I'll  
21 go ahead with it this time.

22 We'll see if we can reach him. Have you given  
23 Mr. Purden the telephone number?

24 THE CLERK: I had it and stuck it somewhere.  
25 Yes, here it is.

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THE COURT: Let's get a hold of him.

(Pause.)

THE COURT: Just a second. Is he going to be calling collect? How do we handle this? We'll charge the district attorney's office. When you call it, charge it to the district attorney's office.

How long do you expect this witness might be? Might be an hour or two, huh?

MR. FRIEDMAN: I'd guess more like 20 minutes, half hour.

(Side conversation.)

THE COURT: Is he still titled commander?

MR. FRIEDMAN: Yes, Your Honor.

(0210)

(Oath administered)

A I do.

STEVEN A. McCALL

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

THE CLERK: You may be seated. Would you please state your full name, and then spell your last name?

A My full name is Steven Alexander McCall,  
M-c-C-a-l-l.

1 THE CLERK: And your current mailing address?

2 A My current mailing address. Office mailing  
3 address is Commander 2nd Coast Guard District,  
4 1430 Olive Street, St. Louis, Missouri, 63103.

5 THE CLERK: And your current occupation?

6 A My current occupation is U. S. Coast Guard  
7 officer.

8 THE CLERK: Thank you.

9 THE COURT: Before we inquire, Commander, I'm  
10 going to see if we could turn this volume up. Will it  
11 go up any higher? Can you still hear me commander?

12 A Yes, I can.

13 THE COURT: Okay. Would you give us a short  
14 count to five, please?

15 A One, two, three, four, five, four, three, two,  
16 one.

17 THE COURT: All right. Thank you. We've got  
18 a volume we can live with, I think. Mr. Linton will  
19 inquire at this time.

20 DIRECT EXAMINATION OF COMMANDER McCALL

21 BY MR. LINTON:

22 Q What rank do you hold in the U. S. Coast  
23 Guard?

24 A I'm a commander in the U. S. Coast Guard.

25 Q How long have you been in the U. S. Coast

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Guard?

A Twenty years.

Q On March 24, 1989 where were you assigned?

A I was assigned as the commanding officer, Officer in Charge, Marine Inspection, and Captain of the Port for the Port of Valdez, Alaska.

Q Sometime on the morning of March 24, 1989 did you receive a telephone call about the Exxon Valdez?

A Yes. At home approximately 12:30 or so Friday morning, March 24, I received a call at home when I was in bed.

Q What were you told by the person who called you?

A The person who called me was Mr. Bruce Blandford, one of my watch standers -- Vessel Traffic Service watch stander. And he informed me that the Exxon Valdez had run aground on Bligh Reef.

Q Did -- in that initial telephone conversation from Mr. Blandford, did he tell you whether or not the vessel recorded leaking some oil?

A I believe he did. I believe he mentioned that the ship was aground and was leaking oil.

Q Having received a telephone conversation at



1 that telephone call, what did you do?

2 A I think I asked him has the exec' been  
3 notified yet -- that's Lieutenant Commander  
4 Falkenstein, and I believe he said, "No." And I  
5 told him, "Fine. Notify the XO and tell the XO  
6 that I'll swing by his house and pick him up on  
7 the way." We only lived about, oh, not even 50  
8 yards away from each other.

9 Q After the telephone call did you do that?

10 A Yes, I did. I hung up the phone, got dressed,  
11 met the exec', and he and I, I believe in his  
12 vehicle, went into the office and arrived there  
13 within five to 10 minutes or so after the phone  
14 conversation.

15 Q Once you had arrived at the Coast Guard  
16 station Marine Safety Office, did you and  
17 Lieutenant Falkenstein meet with Chief Warrant  
18 Officer Mark Delozier?

19 A Yes. Mark Delozier was called in and he  
20 arrived at the office after we did, but, yes, we  
21 met and spoke with Mr. Delozier.

22 Q And were you later joined by Dan Lawn of the  
23 Alaska Department of Environmental Conservation?

24 A Yes, we were. I phone Dan and advised him of  
25 what had happened, and told him that we were

1 getting ready to go out to the ship, and if he  
2 wanted to come along with us, we had the pilot  
3 boat getting lined up to take us out, and he said  
4 yes, he would want to come.

5 Q Was it under your direction that Lieutenant  
6 Commander Falkenstein and Chief Warrant Officer  
7 Delozier went to the Exxon Valdez?

8 A Yes, it was.

9 Q Would you have exercised that authority to  
10 send a Coast Guard investigator to the Exxon  
11 Valdez even if it had only been reported that the  
12 Exxon Valdez was hard aground on Bligh Reef?

13 A Yes, I would.

14 Q Would you explain your reasons, sir?

15 A Well, as far as my recollection goes, there  
16 has never been a grounding of an oil tanker in  
17 Prince William Sound. So just by that sheer fact  
18 alone, the tanker being aground in Prince William  
19 Sound outbound -- in other words, loaded, we  
20 would have responded to investigate the casualty.

21 Q Casualty defined as "grounding"?

22 A Casualty defined as grounding. Also, to  
23 verify that there was no pollution, even if there  
24 was a minor amount of pollution -- it was dark,  
25 it was evening -- or, it was early morning, we

1 would have send someone out to investigate that  
2 and to confirm that there was no danger to light.  
3 And, you know, also, when we do the casualty  
4 investigation we would be reviewing the vessel  
5 documents and chart recorders and interviewing  
6 personnel to find out what actually went on; what  
7 happened.

8 Q Was this the kind of event that attracted more  
9 attention than usual in your work?

10 A Yes, sir. A grounding of any vessel draws a  
11 certain amount of interest, but particularly the  
12 grounding of an oil tanker would generate  
13 substantial interest in the local news media, at  
14 least.

15 MR. LINTON: No further questions, Your Honor.

16 THE COURT: Commander McCall, Mr. Friedman  
17 will be cross examining you now.

18 A Yes, sir.

19 (447)

20 CROSS EXAMINATION OF COMMANDER McCALL

21 BY MR. FRIEDMAN:

22 Q Commander, my name is Rick Friedman. I am one  
23 of Mr. Hazelwood's attorneys. Can you hear me  
24 all right?

25 A Yes, sir, I can hear you fine.

1 Q Okay. Can you tell me what you and Lieutenant  
2 Falkenstein talked about when you first arrived  
3 at the Coast Guard Station?

4 A I can't say for sure, but obviously I believe  
5 we were discussing the fact of amazement  
6 initially that the ship had ran aground, and  
7 where it ran aground, and actions to be taken.  
8 Who was going to do what; who would go where; and  
9 just organize the initial response to both the  
10 casualty and the reported pollution.

11 Q Now, shortly after you arrived at the station  
12 you initiated a radio call to Captain Hazelwood,  
13 is that correct?

14 A Yes, sir, I did.

15 Q And that was to receive information on the  
16 spill and the grounding?

17 A Yes, sir. To receive information on the spill  
18 and the grounding. To find out what the status  
19 of the vessel was, that the master could advise  
20 me. And I believe up until that time that I  
21 spoke on the phone, I didn't realize or know who  
22 the master was. But when we spoke on the radio  
23 Mr. Hazelwood identified himself, and I had  
24 spoken to Mr. Hazelwood previously, like I have  
25 many of the masters that come in and out of

1 Valdez. And, in addition, he's an alumni of the  
2 same college that I went to. So we knew each  
3 other a little bit.

4 Q Okay. And at this radio call, Mr. Hazelwood  
5 told you, to the effect -- or, said to you to the  
6 effect, that there had been a problem with the  
7 third mate, and that they were working their way  
8 off the reef, is that correct?

9 A Yes, sir.

10 Q Okay. Did you, as the person in charge of the  
11 Coast Guard response at this time consider those  
12 two pieces of information to be significant?

13 A Yes, sir, I did. Let me take them separately.  
14 The comment about working his way off the reef.  
15 I believe I commented about -- words to the  
16 effect of, you know, "Don't do anything you can't  
17 undo. Don't do a lot of wiggling."

18 That was from, again, based on experience with  
19 other casualties. But also realizing that I  
20 really didn't feel I needed to tell the master of  
21 a large supertanker with a lot of experience, how  
22 do to his job. It was more of a memory  
23 refresher, I guess. Just stating what I felt I  
24 had to say.

25 The other aspect of his comment concerning the

1           third mate, that perplexed me a little bit,  
2           because I didn't know the details, obviously,  
3           that I know now. But my concern was, maybe the  
4           master was expressing that the third mate was  
5           having some problems of an emotional nature, and  
6           maybe -- you know, I didn't want to distract the  
7           master from doing his job maintaining control of  
8           the bridge and looking to the safety and  
9           seaworthiness of his vessel.

10          Q           Now, when you listened to -- or, when you had  
11           this radio conversation with the captain, was  
12           Lieutenant Falkenstein present?

13          A           Yes. The radio conversation with Lieutenant  
14           Commander Falkenstein was in the radio room with  
15           me, along with Mr. Blandford. And I forget who  
16           the other -- the petty officer on the radio room  
17           side was. But I believe there were at least four  
18           persons in the office. I don't think Mr.  
19           Delozier had arrived on the scene yet.

20          Q           All right. After your radio call with the  
21           captain, did you discuss with Mr. Delozier and  
22           Lieutenant Commander Falkenstein what you  
23           expected them to do out on the ship?

24          A           Yes, I did. Lieutenant Commander Falkenstein  
25           and I had discussed one of the things we

1 discussed on the way in, and then in the office,  
2 was that I wanted him to go out to the vessel to  
3 act as my eyes and ears and report back to me on  
4 the seaworthiness of the vessel and the pollution  
5 --the rate of pollution, and how bad a situation  
6 we had.

7 I wanted Mr. Delozier to go out to concentrate  
8 on the casualty investigation, you know,  
9 gathering information and assessing the situation  
10 from the casualty size early on. And I felt my  
11 job was -- effort would be best served by me  
12 coordinating over the phone with the chain of  
13 command from the Coast Guard side initiating a  
14 response from Alyeska, and fielding the other  
15 calls that I knew would be coming in from  
16 concerned citizens and news media.

17 Q Did you discuss with Mr. Delozier and  
18 Lieutenant Commander Falkenstein the issue or  
19 problem of the captain trying to get the vessel  
20 off the reef?

21 A I think in those early hours that was not a  
22 concern. And I think that was basically a  
23 feeling that, from my experience in working with  
24 the masters of those vessels, whether they were  
25 Exxon, Arco or whomever; meeting with a lot of

1           them; the all struck me as being experienced in  
2           control and risen to the position they were in,  
3           where I didn't feel I needed to tell the master  
4           how to do his job.

5           Q           I guess maybe I didn't phrase the question  
6                        very well. Let me go back a step. Without  
7                        reading back to the transcript of your  
8                        conversation with Captain Hazelwood, it sounds as  
9                        though you did express some concerns to Captain  
10                      Hazelwood about how he should handle the vessel.  
11                      And I'm not implying that you were telling him  
12                      what to do, but you did have some concerns that  
13                      you expressed to him over the radio, is that  
14                      correct?

15           A           Yes.

16           Q           Okay. And my question was simply, when Mr.  
17                        Delozier went out to the vessel and Lieutenant  
18                        Commander Falkenstein went out to the vessel, had  
19                        you discussed this issue with them? Not in the  
20                        sense of, "I want you to go out and tell the  
21                        captain what to do.", but in the sense of, "We  
22                        should keep track of what's going on."

23           A           I can't recall. That was probably implied,  
24                        but I can't recall specifically talking about  
25                        that issue.



1 Q Okay. Can you recall whether you talked to  
2 them about the problem with the third mate issue?

3 A Yes. Just basically reiterating that, you  
4 know, "You guys heard the radio conversation, the  
5 master's got a concern with the third mate. You  
6 know, just be aware of it and look into it.

7 Q Okay. Commander McCall, were you aware at the  
8 time you received this radio call that the master  
9 of a vessel leaking oil had a legal obligation to  
10 report that to the Coast Guard?

11 A Yes, sir.

12 Q Do you feel that Captain Hazelwood's calls to  
13 you complied with that requirement?

14 A Yes, sir.

15 Q Thank you. I don't have any other questions.

16 THE COURT: Thank you. I have a couple for  
17 the commander.

18 (0800)

19 THE COURT: Commander McCall, this is Judge  
20 Johnstone.

21 A Yes, sir.

22 THE COURT: I want to ask some questions about  
23 the facilities available to the Coast Guard in Valdez  
24 and surrounding areas. Specifically radar facilities.  
25 The Coast Guard have radar facilities available that

1 could detect an outgoing tanker outbound from Valdez?  
2 A As a general answer, I would have to say, yes.  
3 But the coverage of the radar varies with weather  
4 conditions, atmospheric conditions. And we've  
5 had -- that radar that's in place there, the -- I  
6 think the radar in question, the one at Potato  
7 Point -- since the casualty, at the request of  
8 the NTSB, we had done some evaluation of the  
9 range in plotting outgoing tankers. And I  
10 believe the figures for the month of April, that  
11 they asked us to look into, showed that we  
12 covered -- on occasion covered a tanker out to  
13 approximately the 30 mile mark, and at other  
14 cases we lost it at about four and half, five  
15 mile mark.

16 THE COURT: On March 24 of this year when the  
17 Exxon Valdez went aground at Bligh Reef, was there  
18 radar available to the Coast Guard to show that  
19 grounding at the time?

20 A Oh, yes, sir. When I arrived at the office I  
21 could see on our radar the broadside view of the  
22 Exxon Valdez in a position on the radar scope  
23 approximating -- you know, in the vicinity of the  
24 Bligh Reef buoy.

25 THE COURT: All right. Is there any policy,

1 either by Coast Guard policy rule, or federal  
2 regulation, that requires reporting of outbound tankers  
3 at designated points?

4 A Yes. The vessel traffic rule for the  
5 operation -- the vessel traffic system require  
6 various contact points when they are entering the  
7 system at -- well, even hours out from Cape  
8 Hinchinbrook, and when they are departing Valdez,  
9 entering the Narrows, departing the Narrows,  
10 dropping the pilot, and, you know, clearing  
11 certain legs on their way out.

12 THE COURT: What policy, if any, or rules, on  
13 March 24, was the Coast Guard required to follow if an  
14 outbound tanker was required to report abeam Naked  
15 Island and did not do so when he was supposed to?

16 A Had the vessel not -- you know, with a fair  
17 amount of time allotted -- had the vessel not  
18 reported his position off of Naked Island, we  
19 would have attempted to establish radio contact  
20 with that vessel, determining what his position  
21 was. You know, if it had slowed down or if it  
22 had a problem, or, you know, what was causing it  
23 to be late in arriving at its check point.

24 THE COURT: Would the operator of the radar,  
25 would he be involved in trying to locate the vessel if

1 it did not report?

2 A Out to Naked Island we historically have not  
3 plotted vessels out that far. At least not since  
4 the 1982 time frame. It's a radio communication  
5 that worked basically past the Bligh Reef buoy  
6 point. He would have -- we would have expected  
7 and would have called back if the vessel had not  
8 made transmission in the vicinity of Naked Island  
9 or later on in the vicinity of Cape Hinchinbrook,  
10 while departing the system.

11 THE COURT: Are vessels required to maintain  
12 two-way radio communication when they are outbound?

13 A Outbound and inbound, yes, sir.

14 THE COURT: All right. That's all the  
15 questions I have of Commander McCall. Does that open  
16 up any other avenues that counsel wishes to inquire,  
17 they may do so.

18 Mr. Linton?

19 REDIRECT EXAMINATION OF COMMANDER McCALL

20 BY MR. LINTON:

21 Q Is Naked Island one of the required reporting  
22 points?

23 A Yes, sir.

24 MR. LINTON: Nothing further, Your Honor.

25 THE COURT: Mr. Friedman?

1 (980)

2 RE-CROSS EXAMINATION OF COMMANDER McCALL

3 BY MR. FRIEDMAN:

4 Q Commander McCall, do I understand correctly  
5 that the radar in use at the time -- that is, on  
6 the 24th of March, had several different settings  
7 for different ranges?

8 A There were different scales on the radar,  
9 three mile, six mile, 12 mile.

10 Q And which scale did you have the radar on when  
11 you were able to see the ship when you arrived at  
12 the station?

13 A I believe it was on 12 mile scale, but I can't  
14 be sure.

15 Q Do you know what scale the radar was on at the  
16 time of the grounding?

17 A I believe it was on the six mile scale with an  
18 offset, so it could potentially cover the Naked  
19 -- the Bligh Reef position.

20 Q If Mr. Blandford were to say it was on the  
21 three mile scale at the time of the grounding,  
22 would you have any reason to doubt that?

23 A Well, we've got two radars, so -- you know,  
24 we've got two radar repeaters that are operating  
25 out of the Potato Point radar site. So one of

1 those could be on the three mile scale for the  
2 Narrows and one of them could have been on the  
3 six mile scale.

4 The way the system was set up prior to the  
5 casualty, you could use both of those PPI's -- in  
6 other words, the scopes in the BTX room with one  
7 on a three mile and one on a six mile, but you  
8 couldn't have one on a three and one on a 12.  
9 You get feedback and distortion of the radar. So  
10 the radar -- if one of them was on three, the  
11 other one would have more than likely been on  
12 six, but one could have been on six, with the  
13 other one on 12. Am I making myself clear?

14 Q I think so. And do I understand correctly  
15 that when a tanker reaches Naked Island there is  
16 a Coast Guard regulation that requires them to  
17 report to the Coast Guard station?

18 A Yeah. They call in and let us know when they  
19 are abeam Naked Island.

20 Q And what regulation is that?

21 A It's in the Vessel Traffic Rules, 33 CFR Part  
22 151. I...

23 Q That's all right. I didn't mean to -- if you  
24 have it at the tip of your tongue, fine. So it's  
25 in the CFRs, then?

1 A The VTS rules for Prince William Sound, yeah;  
2 various check points.

3 Q All right. If a vessel came abeam of Naked  
4 Island and did not call, is there some set  
5 procedure at the Coast Guard station as to how  
6 that situation will be handled?

7 A I don't believe that specific scenario is laid  
8 out in the Vessel Traffic Service Operator Guide  
9 that we have in the office -- operations manual.  
10 But the general scenarios similar to that are in  
11 there.

12 Q Okay. So it would be up to Mr. Blandford to  
13 decide how to handle it? Would it be Mr.  
14 Blandford who would make the decision on how to  
15 handle it if he received no radio transmission  
16 from the vessel as it reached Naked Island?

17 A Yes. It would be the watch stander, in this  
18 case, this evening, Mr. Blandford, yes, who would  
19 initiate contact with the vessel, and depending  
20 on the response of the vessel, could possibly  
21 notify his superiors, the officer of the day, the  
22 exec' or myself, depending on what the conditions  
23 were.

24 If the vessel was just delayed because he was  
25 slowing down for ice, or slowed down for whatever

1 reason -- yeah, he would be late, and he would  
2 explain that, and that would be it. If he was  
3 having mechanical difficulties, mechanical  
4 problems that were reported, the watch stander,  
5 Mr. Blandford in this case, would pass it up the  
6 line.

7 Q Okay.

8 MR. FRIEDMAN: Your Honor, could I have just a  
9 minute.

10 THE COURT: Yes.

11 Q Commander, I'll be back to you in just a  
12 second, if you could just hold the line.

13 A Okay.

14 (Pause)

15 Q Thank you, Commander. I don't have any other  
16 questions.

17 THE COURT: Mr. Linton, do you have any  
18 further questions?

19 MR. LINTON: No, Your Honor.

20 THE COURT: That completes your testimony,  
21 Commander McCall. Thank you for standing by. We're  
22 going to ring off now.

23 A Okay. You're welcome.

24 (Witness excused.)

25 (1200)



1 THE COURT: You may call your next witness.

2 MR. FRIEDMAN: Call Eric Dohm, Your Honor.

3 (1255)

4 (Oath administered)

5 A I do.

6 ERIC R. DOHM

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

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

11 A My name is Eric Raymond Dohm, D-o-h-m.

12 THE CLERK: And your current mailing address?

13 A 555 Market Street, San Francisco, California,  
14 94105.

15 THE CLERK: And your current occupation?

16 A Ship's master.

17 (1271)

18 DIRECT EXAMINATION OF CAPTAIN DOHM

19 BY MR. LINTON:

20 Q Could you tell us your educational background,  
21 please?

22 A Through high school, and then I graduated from  
23 the California Maritime Academy in 1970.

24 Q And could you give us an overview of your work  
25 history, please?

1 A I've been employed almost exclusively with  
2 Chevron Shipping Company since that time,  
3 starting at the rank of able seaman and working  
4 up through third mate, second mate, chief mate  
5 and master.

6 Q When did you receive your master's license?

7 A My master's license, in 1978.

8 Q At that time did you begin serving as a master  
9 of vessels?

10 A I started serving as master in February 1980.

11 Q And since that time you have served as a  
12 master for various vessels for Exxon?

13 A For Chevron.

14 Q Chevron Shipping Company?

15 A That's correct.

16 Q Would you explain what size a vessel -- in  
17 what services you have served, sir?

18 A Currently Chevron Shipping Company has two  
19 size vessels; 39,000 ton tankers and 70,000 ton  
20 tankers. Mostly -- predominantly in the west  
21 coast trade, Alaska, Hawaii, in the U. S. west  
22 coast with some trade to the east coast.

23 Q Have you served in all of those?

24 A Yes, I have.

25 (1695)

1 Q On March 23 and 24, 1989, were you on board a  
2 vessel bound to Valdez, Alaska?

3 A That's correct.

4 Q Would you explain where you were coming from  
5 and what vessel you were in, please?

6 A I was aboard the Chevron California at the  
7 time. We were inbound from Barber's Point,  
8 Hawaii to Valdez.

9 Q As you came to the approach to Prince William  
10 Sound, were there reports that you made in  
11 accordance with Coast Guard regulations for the  
12 Vessel Traffic System entering Prince William  
13 Sound?

14 A That's correct.

15 Q And would you tell the judge briefly what  
16 those reports are as you are approaching the  
17 entrance to Prince William Sound at Hinchinbrook?

18 A On the approach to Prince William Sound there  
19 is a required three hour pre-call prior to  
20 reaching Cape Hinchinbrook, and then followed by  
21 a one hour pre-call, and then reporting abeam  
22 Cape Hinchinbrook on the way in.

23 Q On your way into Valdez, Alaska is there some  
24 communication with the Alyeska Terminal as to  
25 where -- whether the terminal is ready to receive

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the vessel and load your vessel?

A Currently, at that time the communication with the Terminal was through Valdez Traffic. We didn't have any direct link with the terminal.

Q Explain to the judge what inquiries you would make and what responses you would receive in the ordinary course of business?

A Usually on the three hour pre-call we give the information of the vessel, the draft, and when we will be abeam Cape Hinchinbrook, if we're carrying any cargo, and a required report. And we ask at that time, usually, if there is a berth available and what our berth assignment will be. And then they will -- the Coast Guard will notify the terminal and receive any information as to berthing instructions.

THE COURT: Where is that -- I didn't get it. Where does the three hour pre-call take place?

A Three hours would be three hours outside Cape Hinchinbrook, approximately 50 miles outside Cape Hinchinbrook.

MR. LINTON: Judge, the captain was point out -- I will move plaintiff's Exhibit 1.

A We out outbound from Hawaii out in this area, so the three hour pre-call will be down in this

1 area, somewhere in there.

2 Q Referring to plaintiff's Exhibit 2, to an area  
3 roughly 5940 north and...

4 THE COURT: Abeam Middleton Island, out there  
5 someplace?

6 A Approximately.

7 MR. LINTON: Judge, I move the admission of  
8 Exhibit 2 that he's referred to.

9 THE COURT: Two's admitted.

10 EXHIBIT 2 ADMITTED

11 Q What kind of response would you be expecting  
12 once you communicated with the terminal. In the  
13 event they had a berth, what would ordinarily  
14 happen?

15 A They would tell us what the berth assignment  
16 was, and we would proceed in at Cape Hinchinbrook  
17 in making the required reports, and that's...

18 Q Go right on into Valdez.

19 A Go right on into Valdez, yes, sir.

20 Q Suppose that no berth was available, what  
21 would happen?

22 A We would be directed to proceed to Knowles  
23 Head Anchorage to anchor and await berth.

24 Q You've referred to a point as Cape  
25 Hinchinbrook. Was that one of the required

1 reported points?

2 A Yes, it is.

3 Q And would you show the judge the location of  
4 Cape Hinchinbrook?

5 A Cape Hinchinbrook is located in this area  
6 right here.

7 Q And so marked on the chart?

8 A Yes, sir.

9 Q And you were pointing.

10 A It's over there.

11 Q And it says "Cape Hinchinbrook". Okay.  
12 And you referred to Knowles Head area as an  
13 anchorage you would go to in the event that there  
14 was no berth available. Is that shown on the  
15 chart?

16 A Yes, sir. That is in this area up here marked  
17 -- the anchorage area is marked.

18 Q And it's marked by a...

19 A Purple line.

20 Q Purple quadrangle, saying "anchorage area"?

21 A Yes, sir.

22 Q "110.223, See Note 'A'"?

23 A Yes.

24 Q Okay. Just south of Knowles Head?

25 A Yes, sir.

1 Q In the course of an ordinary transit from  
2 Hinchinbrook Island into Valdez Harbor, are there  
3 required reporting points?

4 A Yes. You report in abeam Cape Hinchinbrook  
5 and then abeam Naked Island, and then at --  
6 picking up the pilot approximately at Rocky  
7 Point.

8 Q Would you point out Naked Island to the judge?

9 A Naked Island is right here (indicating),  
10 passing abeam.

11 Q And it is so marked on the chart?

12 A Yes, sir.

13 Q And then there was another reporting point you  
14 referred to?

15 A Rocky Point was the pilot station at the time,  
16 which is at the terminus to the traffic lane, the  
17 northern end.

18 Q And would you point that out for the judge,  
19 please?

20 A It's right in this area right here.

21 Q At the end of the pink line...

22 A Just off of it, yes, sir.

23 Q And it's so marked on the chart as Rocky  
24 Point.

25 There is illustrated on Plaintiff's Exhibit 2

1 a purple line which I was just referring to, from  
2 basically the area of Cape Hinchinbrook to the  
3 area of Rocky Point, there's a solid -- I guess  
4 it's a magenta line with two dotted magenta lines  
5 on either side of it. Do you know what that  
6 describes?

7 A That's the traffic separation scheme for  
8 Prince William Sound.

9 Q Would you explain parts of that to the judge,  
10 please?

11 A The shaded purple area in the middle is the  
12 separation zone, with the area between the shaded  
13 and the right hand side being the in-bound lane,  
14 and the shaded area and the dotted purple line on  
15 the left hand side would be the southbound --  
16 outbound traffic lane.

17 Q And those three areas, inbound lane, outbound  
18 lane and separation zone are so marked on the  
19 chart?

20 A Yes, sir.

21 Q In the course of the transit, then, beyond  
22 that point -- that is, beyond Rocky Point, into  
23 Valdez Harbor, what rules of reporting are there?

24 A The -- you report abeam Cape Hinchin -- Rocky  
25 Point and you will board a pilot at that time.



1 And then you report entering the narrows, and at  
2 Entrance Island on the far side of the Narrows.

3 Usually reports up there are taken care of by  
4 the pilot traditionally.

5 Q So at that point the pilot would be on board  
6 and the reports would not be made by the master  
7 or other officer of the...

8 A They would be directed by the pilot.

9 Q They would be directed?

10 A Yes, sir.

11 Q Is the Entrance Island shown on ...

12 A Yes. Entrance Island is where this light is  
13 here.

14 Q What you see is a light marked "QG7M". Is  
15 that the designation?

16 A Yes, sir. That's the navigation aid.

17 Q Let's go to Exhibit 1, 16708 NOAA chart. is  
18 Entrance Island -- excuse me, the point that  
19 you're referring to?

20 A Entrance Island, yes, sir, it's marked right  
21 here.

22 Q It's marked as...

23 A Entrance Island.

24 Q On the northwest tip of the mainland at the  
25 entrance to Valdez?

1 A It's at the northern end of the one-way zone  
2 in Valdez Narrows.

3 (1696)

4 Q Captain, on March 24, 1989, were you on the  
5 bridge of the Chevron California as it got to  
6 Hinchinbrook Island?

7 A Yes, I was.

8 Q And what time was the vessel abeam Cape  
9 Hinchinbrook?

10 A We reported abeam Cape Hinchinbrook at 0015 on  
11 the 24th.

12 Q Did you estimate a time for arrival at Naked  
13 Island?

14 A 0200.

15 Q And that was as part of the regular reporting  
16 process?

17 A Yes.

18 Q What is the distance from -- let's go back to  
19 Exhibit 2. (Pause) What is the distance from a  
20 point abeam Cape Hinchinbrook -- maybe you could  
21 point out where a reporting point abeam Cape  
22 Hinchinbrook would be?

23 A Well, in this instance we're abeam  
24 approximately about here. It's approximately 27  
25 miles to abeam Naked Island.

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Q Okay. You were pointing to the "h" -- the second "h" in Hinchinbrook Entrance?

A We were approximately two miles off Cape Hinchinbrook.

Q And then to a position abeam Naked Island, would you point to that on the chart?

A (Witness complies).

Q And that distance, you say, is approximately 27 miles?

A Approximately 27, yes, sir.

Q At what speed would your vessel ordinarily be travelling?

A Normally 16 knots.

Q And therefore what time period would it take for the vessel to have transitted from Cape Hinchinbrook to a point abeam Naked Island?

A Approximately an hour and 45 minutes.

Q So it was on that basis that you estimated your 2:00 position?

A Yes, sir.

Q Let me refer now to a point on Exhibit 1, which is marked with an "x" and "MJD" on it. And I would like for you to identify for yourself a point that is closest -- that is in the northbound traffic lane and closest to the point

1 with the red "x" on it, which would be, I take  
2 it, roughly somewhere in the area of the arrow  
3 with the 32155 loran reading underneath it.

4 A Uh-huh (affirmative).

5 Q What distance is that from a position abeam  
6 Naked Island?

7 A Approximately 13 miles.

8 Q How could one determine that from a nautical  
9 chart?

10 A Measuring with the latitude scale on the side  
11 of the chart.

12 Q Each minute of latitude equals a nautical  
13 mile?

14 A Yes, sir.

15 Q How long would it have taken your vessel to  
16 travel that distance?

17 A From Naked Island to...

18 Q Abeam Naked Island to the point identified as  
19 the point within the traffic lane but closest to  
20 the red "x" on Plaintiff's Exhibit 1.

21 A Approximately 50 minutes.

22 Q And therefore you estimate that the vessel  
23 would have been there as 2:50 a.m., regular local  
24 time?

25 A Yes, sir.

1 (1864)

2 Q In the course of the transit, did you expect  
3 to communicate with the Exxon Valdez?

4 A Yes, sir.

5 Q Would you explain to the judge why?

6 A We were -- in communicating with Valdez  
7 Traffic we were inquiring as to the ice  
8 conditions, and we were informed that the Exxon  
9 Valdez was outbound and would be able to provide  
10 an updated ice report later on in the transit.

11 Q And it was in anticipation of speaking to them  
12 about the ice conditions that you were expecting  
13 to communicate?

14 A Yes.

15 Q Where would you have expected -- where in the  
16 course of your transit would you have expected to  
17 engage in that communication?

18 A Somewhere in the vicinity of Naked Island or a  
19 little south of Naked Island.

20 Q Now, when one is meeting a vessel -- as one is  
21 exiting from Valdez, and meeting a vessel inbound  
22 or vice versa, you were inbound and exiting, is  
23 there a practice to watch for and communicate --  
24 and/or communicate with the inbound or outbound  
25 vessel -- the vessel coming the other way?

1 A I didn't quite understand the question.

2 Q When you are inbound or outbound in the

3 traffic system and there is traffic coming the

4 other way, is there any practice to communicate

5 with or look for the vessel -- the traffic coming

6 the other way?

7 A Yes, sir. You will keep track of them

8 visually on radar, the vessels coming the other

9 way. Normally communication usually is not

10 necessary because both vessels are reporting the

11 Valdez traffic and the situation is reported

12 through the Traffic System.

13 Q Do they customarily use the same frequency?

14 A Yes, sir.

15 Q And how is that identified?

16 A VHF Channel 13.

17 Q And so inbound traffic and outbound traffic

18 would be monitoring that station?

19 A That's correct.

20 Q Which is the station which is used to

21 communicate with the Coast Guard?

22 A Yes, sir.

23 Q Did you have radar on board the Chevron

24 California, which would have enabled you to have

25 seen traffic which you were meeting coming the

1 other way, whether inbound or outbound?

2 A Yes, sir.

3 Q Would you tell the judge how many such units  
4 you had and what ranges they are capable of  
5 operating on and normally operated on?

6 A The vessel is equipped with two Raytheon  
7 pathfinder radars; one a 10 centimeter and one is  
8 a 3 centimeter radar. They are capable of  
9 operating up to 64 miles, however normal  
10 operation in this area would be in the 12 and 24  
11 mile scales.

12 Q Would you be able to identify on those radars  
13 a vessel the size of the Exxon Valdez at the 12  
14 and 24 miles ranges respectively?

15 A You would be able to pick up the target not  
16 specifically identifying the ship.

17 THE COURT: At 24 miles, you say?

18 A In some cases, not in all cases.

19 Q Explain briefly what cases...

20 A Well, depending on the surrounding conditions  
21 and the location of the vessels and the  
22 atmospheric conditions, sometimes vessels aren't  
23 detected as far as 24 miles.

24 Q What do you recall the atmospheric conditions  
25 were in the part of Prince William Sound that you

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transitted that night?

A They were...

THE COURT: Excuse me. I think you got a witness that just came in.

(Pause)

Q I'm sorry, you were describing the conditions as you recall them.

A I recall the atmospheric conditions were fairly clear that night.

Q In the course of an ordinary transit are you able to see the vessels in the opposite traffic lane as they go out?

A Yes, sir.

Q Could you describe the lengths of the -- excuse me, the widths of the various parts of the traffic separation scheme so we know what -- over what distance one would be looking when...

A The separation zone, I believe, is approximately two miles wide, so vessels would be three to three and a half miles apart.

Q How wide are the lanes themselves?

A I believe they are just under two miles.

Q And ordinarily are you able to see traffic the size of the Exxon Valdez when it's basically abeam your position, or thereabouts?



1 A In clear weather conditions, yes, sir.

2 Q At night do ships carry lights which would  
3 assist in identifying a vessel at night?

4 A Yes, sir.

5 Q And are there standard patterns of lighting  
6 that enables you to identify not only that there  
7 is a vessel there, but what relative position you  
8 bear to the vessel?

9 A Yes, sir.

10 Q Could you describe that briefly to the judge,  
11 please?

12 A The general navigation lights consist of two  
13 forward facing range lights. The aft one being  
14 higher than the forward one, to give a  
15 prospective, port and starboard side lights, and  
16 astern light.

17 Q Are those lights commonly visible at a  
18 distance that corresponds to the maximum width of  
19 the Vessel Traffic System?

20 A The range lights are six mile visibility  
21 lights required.

22 Q Besides expecting to receive a radio  
23 communication from the Exxon Valdez about ice,  
24 did you expect to meet it and cross in the course  
25 of its outbound transit and your inbound transit?

1 (2200)

2 A I expected to pass the ship, yes, sir.

3 Q Did you have some idea where you expected that  
4 to occur?

5 A Somewhere south of Naked Island.

6 Q In fact, did you receive any such report from  
7 the Exxon Valdez, or did you pass it?

8 A No, sir.

9 Q Explain what happened?

10 A To the best of my recollection, inbound Cape  
11 Hinchinbrook when we passed about -- oh, sometime  
12 after passing Cape Hinchinbrook, we heard what  
13 was the Valdez reporting to the Vessel Traffic  
14 Center, but we did not hear the full context of  
15 the conversation.

16 Shortly after that, approximately 0043 or 45,  
17 I believe, we were contacted by the vessel  
18 traffic system to notify us that the port was  
19 closed and to proceed to Knowles Head Anchorage.

20 Q What does the closing of a port mean?

21 A In this instance the Coast Guard did not want  
22 us to transit into the Port of Valdez. I called  
23 for a reconfirmation of that and confirmed that  
24 we should proceed to Knowles Head Anchorage.

25 Q And on plaintiff's Exhibit 1, the -- is the

1 anchorage shown there as well?  
2 A Yes, sir, it's right here.  
3 Q And is it so marked with anchorage area  
4 110.233?  
5 A That's correct.  
6 Q And did you go there?  
7 A Yes, sir.  
8 Q And anchor there?  
9 A Yes, sir.  
10 Q How long did you stay there?  
11 A We were there for approximately six and a half  
12 days.  
13 Q Until the port was open?  
14 A Yes, sir.  
15 MR. LINTON: Nothing further, Your Honor.  
16 THE COURT: Mr. Friedman?  
17 MR. FRIEDMAN: Thank you, Your Honor.  
18 (2304)  
19 CROSS EXAMINATION OF CAPTAIN DOHM  
20 BY MR. FRIEDMAN:  
21 Q Captain, why didn't you hear the full  
22 conversation between the Exxon Valdez and the  
23 Traffic Control Center?  
24 A I think partly due to the transmission power  
25 of his VHF radio and my receiver, I just didn't

1 quite get the full conversation. Also, I wasn't  
2 standing right next to the radio, so by the time  
3 I heard it, I heard some reference to what was  
4 happening, but I wasn't clear on the context of  
5 the conversation. But the conversation wasn't  
6 directed at me, so I did not respond.

7 Q Do you recall, was there a -- was it a faint  
8 signal?

9 A It seemed like it wasn't fully clear. I don't  
10 recall if the signal was clear. I just don't  
11 remember catching the full context of the  
12 conversation.

13 Q If you have a report of ice in the channel --  
14 let me ask you this, first of all. At any point  
15 in going into Valdez, do you ordinarily slow the  
16 tanker down?

17 A On approach to the pilot station, yes, sir.

18 Q And would you, on occasion, slow it down  
19 before then if you had reports of ice in the  
20 traffic lanes?

21 A Yes, sir.

22 Q If on this evening you had -- well, you  
23 already had reports of ice in the traffic lane?

24 A Yes.

25 Q Ordinarily, how much would you slow down in

1 response to that?

2 A It depends on the existing conditions, the  
3 visibility, how much ice was being picked up by  
4 radar, what was reported to me. It would vary.

5 Q Now, if you slowed down in the traffic lane,  
6 that would put your -- you gave us an estimated  
7 time -- I think it's the red cross at 0250. If  
8 you slowed down, it would be some time later than  
9 that?

10 A Yes, sir, that's correct.

11 Q Thank you. I don't have any other questions.

12 THE COURT: Mr. Linton?

13 MR. LINTON: Nothing further, Your Honor.

14 THE COURT: What was the weather like at  
15 Knowles Point when you anchored?

16 A I believe it was clear that night, sir.

17 (Witness excused)

18 (2431)

19 THE COURT: Mr. Linton.

20 MR. LINTON: Yes, sir.

21 THE COURT: Is your next witness that  
22 gentleman that came in?

23 MR. LINTON: Yes, sir.

24 THE COURT: Okay. Is that the owner of  
25 Chitton Air (ph)? Gary Graham?

1 MR. LINTON: I didn't know he was the owner.  
2 I thought he was...

3 THE COURT: I think it's the owner of Chitton  
4 Air. I know him. He's flown me around a few times  
5 when I've been in Prince William Sound. He's an  
6 acquaintance of mine. I don't consider him a friend,  
7 just an acquaintance. And, if that poses any problem,  
8 now is the time to be heard about that.

9 MR. LINTON: Not from my stand point, Your  
10 Honor.

11 MR. FRIEDMAN: No.

12 (Oath administered.)

13 A I do.

14 GARY GRAHAM

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

17 THE CLERK: Sir, will you please state your  
18 full name and then spell your last name.

19 A My name is Gary E. Graham, G-r-a-h-a-m.

20 THE CLERK: And your current mail address?

21 A P.O. Box 731, Cordova, Alaska, 99574.

22 THE CLERK: And your current occupation?

23 A I'm an air taxi operator. I'm a pilot.

24 THE COURT: Just for the record. I want to  
25 state that my knowledge of Mr. Graham won't affect my

1 ability to view his testimony impartially. You may  
2 proceed.

3 DIRECT EXAMINATION OF MR. GRAHAM

4 BY MR. LINTON:

5 Q How long have you lived in Cordova, sir?

6 A This time, for about three and a half years.

7 Q And some time before that as well?

8 A Yes. On and off, as a pilot. I've lived  
9 there on and off working different jobs in  
10 Cordova.

11 Q And would you describe your business, please.

12 A I own an air taxi operation. We operate seven  
13 float planes and two wheel planes.

14 Q In Cordova?

15 A Yes, sir.

16 Q Do you have routes which take you to Tatitlek?

17 A Yes, I do.

18 Q There is off to your left there charts and I  
19 wonder if on what's been marked as Plaintiff's  
20 Exhibit 2, would you point out the location of  
21 the town of Cordova?

22 A Cordova is right down here on Eyak Lake and  
23 Orca Inlet.

24 Q So marked. And would you point out the  
25 location of the village of Tatitlek?

1 A Tatitlek is right here.

2 Q And it is so marked on here as well?

3 A Yes, it is.

4 Q Just to the east of Bligh Reef?

5 A Yes, it is.

6 Q Do you have regular routes that you fly in  
7 your business?

8 A Yes, sir, I do.

9 Q Would you explain what regular routes you fly  
10 to?

11 A Well, we have a U.S. Postal Services contract  
12 that takes us on Tuesdays and Fridays to Tatitlek  
13 and Ellamar. Ellamar, which is just a little bit  
14 north of Tatitlek and on the bay.

15 Q Is there an air strip that Tatitlek or at  
16 Ellamar?

17 A There's an air strip at Tatitlek and we land  
18 at Ellamar in a float plane.

19 Q You customarily go to Tatitlek on a float  
20 plane as well?

21 A Sometimes. It depends on whether we're going  
22 to Ellamar that day or not.

23 Q On Friday March 24, 1989 were you scheduled to  
24 fly such a route?

25 A Yes, sir, we were.



1 Q Were those scheduled routes every time -- each  
2 time you went...

3 A Yes, sir.

4 Q Is that required by contract with the Postal  
5 Service?

6 A Yes, sir, it is.  
7 (2675)

8 Q And at what time on March 24th, 1989 were you  
9 scheduled to make a flight to Tatitlek?

10 A Our schedule normally calls for us to depart  
11 Cordova around 9:00 a.m. in the morning.

12 Q What is the travel time of the average flight  
13 from, well first. Do you fly those routes  
14 yourself?

15 A Yes, sir, I do.

16 Q And were you scheduled to actually fly the  
17 route yourself on March 24th, 1989?

18 A Yes, I was.

19 Q What is the time of a flight from Cordova to  
20 the village of Tatitlek?

21 A In a wheel plane, it's about 15 minutes. In a  
22 float plane, it's about 20 to 25 minutes.

23 Q Which were you scheduled to fly that day?

24 A The wheel plane that day.

25 Q The landing strip at Tatitlek is in what

1 direction? What directions?

2 A It lies in a Northwesterly Southeasterly  
3 direction.

4 Q Do you recall in which direction the traffic  
5 pattern at the strip lay that day?

6 A That day the traffic pattern would have been a  
7 right hand traffic pattern out over Tatitlek  
8 Narrows, coming back around, and landing to the  
9 Southeast.

10 Q Is the traffic pattern set up so that aircraft  
11 stay to the west of the landing strip?

12 A Normally, sir, yes.

13 Q Would you describe where, with respect to the  
14 village of Tatitlek, the landing strip you're  
15 referring to is?

16 A The landing strip is adjacent to the village,  
17 approximately a quarter of a mile down the hill  
18 from where the village proper lies.

19 Q Is that to the south, north, east west...

20 A West.

21 Q ...of the village?

22 A West.

23 Q West of the village. There is on, I think  
24 it's Exhibit 1, a red "x" marked MJD, located  
25 roughly ten nautical miles west of the cupola in

1 Tatitlek. Would you estimate for us, with  
2 respect to the cupola marked in the village of  
3 Tatitlek, where the air strip is and what the  
4 distance would be from the air strip to the MJD  
5 red "x" that you see marked on Exhibit 1, please?

6 A The air strip would be -- would you like me  
7 to...

8 Q Yes.

9 A ...show you on it there?

10 Q That's right.

11 A The air strip runs this direction, right here.  
12 And it's approximately, well, I didn't think it  
13 was ten miles. I'd estimate it as somewhere  
14 between six and seven miles. But I suppose it is  
15 ten.

16 Q Just draw in the location and the direction of  
17 the air strip and put your initials by it to  
18 identify that line as the air strip.

19 (Pause.)

20 Q Did you fly the route that day?

21 A Yes, sir, I did.

22 Q And do you recall which direction the winds  
23 were so that you'd know what kind of approach you  
24 made to get into the traffic pattern?

25 A I do recall there was no wind that day. And,

1 normally, when we're landing there, the strip  
2 runs in an uphill, has a little bit of an uphill  
3 gradient landing to the northwest.

4 But, if there's any kind of a wind at all,  
5 we'll land into the wind. But, if there's no  
6 wind, and the run way is not icy, we'll normally  
7 land down hill to keep from having the make a  
8 hundred and eighty degree turn on the runway.

9 And I did that day make my approach out over  
10 Tatitlek Narrows, over Ellamar, and come back on  
11 around and land to the southeast.

12 Q In the ordinary course of such an approach,  
13 would you have had a view of the location of the  
14 red "x" with MJD beside it?

15 A Yes, sir, I would.

16 Q When you flew the route that day, did you see  
17 anything in the location of the red "x" at MJD?

18 A Yes, sir, I did.

19 Q What did you see?

20 A A tanker.

21 Q Was that the first time that day you had seen  
22 it?

23 A No, sir, it wasn't. I had been out earlier in  
24 the day when we heard about the tanker aground.  
25 We immediately jumped in an aircraft and went out

1 to see how bad it was.

2 Q Can you explain to the judge how you heard  
3 about it and then what you mean when you say you  
4 jumped in an aircraft? Was that business or was  
5 that just curiosity?

6 (2990)

7 A Well, it was actually business. Well, it was  
8 more curiosity. I'll back that up a little bit.  
9 I have to admit that I was very curious because  
10 we were all kind of afraid of it.

11 But I woke up. Normally, at that time of year  
12 it's kind of a laid back time of year for us.  
13 We're getting ready for the herring season to  
14 start.

15 And woke up at six o'clock in the morning to  
16 the news that there was a tanker aground and  
17 immediately flew out of bed. Went down.

18 And we usually keep an airplane fueled and on  
19 the dock or in the hanger. Normally, keep an  
20 airplane fueled in case there's an emergency  
21 medivac or something of this nature that we have  
22 to jump in and go.

23 And we immediately jumped in the aircraft and  
24 went out and saw the tanker.

25 Q What time was it that you saw the tanker?

1 A About 6:45. Between 6:45 and seven o'clock.

2 Q Was the sun up at that point that time of

3 year?

4 A The sun wasn't up, but there was sufficient

5 day light to see it.

6 Q Could you tell whether it was leaking oil?

7 A It was obvious it was leaking oil.

8 Q Could you discern a pattern of oil on the

9 water?

10 A Yes, sir, I could.

11 Q Can you show us or describe for us where it

12 was with respect to the vessel?

13 A The pattern of the oil was extending out in

14 this direction from the tanker.

15 Q With the black pen, would you go ahead and

16 mark the area that you've just described for the

17 judge here.

18 (Pause.)

19 Q And put your initials by it.

20 A Yes, I did, sir.

21 Q Drawing.

22 A Yes, I did.

23 Q Did you go out by yourself?

24 A No. We had some fishermen friends. Everybody

25 was obviously concerned about this because of the

1           upcoming fishing season. And we had some  
2           fishermen friends that wanted to jump on the  
3           airplane. So we had a load of fishermen on the  
4           aircraft.

5           Q           What was their concern?

6           A           With the upcoming fishing season. Whether or  
7           not we were going to have it.

8           Q           Whether it might be closed. A period might be  
9           closed.

10          A           Yes, sir.

11          Q           Kept closed.

12          A           Yes.

13          Q           By the Department of Fish and Game.

14          A           Yes.

15          Q           Had they come to you that morning with such a  
16          request that you fly such a flight?

17          A           Two of them had and I called another two of  
18          them that hadn't heard about it yet and asked  
19          them if they'd like to get on the aircraft and go  
20          with us.

21                    There was a lot of concern about what was  
22                    going to happen and what the impact would be on  
23                    the fishery. I mean, Cordova's a fishing town.  
24                    And we don't have any other source of income but  
25                    fisheries. And everybody was very concerned.

1 Q Did you say the 7:15 time was the time you  
2 departed Cordova or the time you were in the  
3 vicinity of it?

4 A I don't remember the exact time, but we were  
5 in the vicinity somewhere around seven o'clock to  
6 7:15.

7 Q Had you not been aware that the vessel's  
8 situation there on the rocks was already known  
9 publicly by having heard it broadcast over the  
10 radio, would you have told somebody that you had  
11 seen it?

12 A Oh yes, sir, I would have. I've been watching  
13 those tankers -- can I say something? I've been  
14 watching those tankers for a lot years. And  
15 everybody knows where the tanker lanes are at and  
16 where those tankers belong and where they don't  
17 belong. Everybody knows where Bligh Reef is at  
18 and knows the rocky areas in there.

19 There have been a lot of ships, over the last  
20 hundred years, that have gone down or run aground  
21 on those reefs.

22 If I had seen that there and it hadn't been  
23 obvious, I would have known.

24 Q And reported it?

25 A Yes, sir.



1 MR. LINTON: Nothing further, Your Honor.

2 (3237)

3 CROSS EXAMINATION OF MR. GRAHAM

4 BY MR. FRIEDMAN:

5 Q Mr. Graham, when was your scheduled Post  
6 Office flight

7 A I'm sorry. I didn't catch that.

8 Q As I understand it, you've got a Post Office  
9 contract.

10 A Yes, sir, I do.

11 Q To deliver mail. Had you not heard of the  
12 tanker grounding, you would have gotten up in the  
13 morning and eventually gone to do the postal  
14 route. Is that right?

15 A Yes, I would have.

16 Q And when would you have actually flown that  
17 route?

18 A Normally, we're able to pick the mail up from  
19 the Post Office at eight o'clock. And the  
20 Tatitlek and Ellamar is normally our first run of  
21 the day. We have other postal contracts, but  
22 normally on a Friday we run the Tatitlek-Ellamar  
23 mail first and then continue on around the sound  
24 with the rest of the mail at a later time.

25 Q Okay. So what's your best estimate as to when

1                   you would have seen the tanker?  
2           A           Between 8:30 and nine o'clock.  
3           Q           All right. Thank you. I don't have any other  
4                   questions.  
5                   THE COURT: Anything further?  
6                   MR. LINTON: Nothing further, Your Honor.  
7                   THE COURT: Thank you, Mr. Graham. You may  
8           step down, your excused.  
9                   (Witnessed excused.)  
10                   Let's take a little break.  
11                   THE CLERK: Please rise. This court stands in  
12           recess.  
13                   (Off record - 9:50 a.m.)  
14                   (On record - 10:08 a.m.)  
15                   THE COURT: Be seated. Thanks. Call your  
16           next witness.  
17                   MR. LINTON: Call Mary Anne Henry, Your Honor.  
18           (3308)  
19                   (Oath administered)  
20           A           I do.  
21                                   MARY ANNE HENRY  
22           called as a witness in behalf of the plaintiff, being  
23           first duly sworn upon oath, testified as follows:  
24                   THE CLERK: Ma'am, would you please state your  
25           full name, and then spell your last name?

1 A My name is Mary Anne Henry. My last name is  
2 spelled, H-e-n-r-y.

3 THE CLERK: And your current business mailing  
4 address?

5 A 1031 West 4th, Suite 520.

6 THE CLERK: And your current occupation?

7 A Assistant district attorney.

8 THE COURT: Before you inquire, I was advised  
9 that the audio pickup is picking up your voices when  
10 you are whispering back and forth, so you might want to  
11 watch that.

12 (3367)

13 DIRECT EXAMINATION OF MS. HENRY

14 BY MR. LINTON:

15 Q Tell us your educational background, please?

16 A I graduated from Crayton University with a  
17 degree in Mathematics. And then I graduated from  
18 Harvard Law School with a J. D. in 1976.

19 Q Where are you admitted to practice law?

20 A In the state of Alaska.

21 Q How long have you been admitted to practice in  
22 the state of Alaska?

23 A Thirteen and a half years.

24 Q And how long have you been employed by the  
25 District Attorney's Office?

1 A Thirteen and a half years.

2 Q And would you tell the judge where you've  
3 worked, and in what capacities within the state  
4 Department of Law in the District Attorney's  
5 Office?

6 A I've been an assistant district attorney in  
7 the Anchorage District Attorney's Office for five  
8 years, and then I transferred to Ketchikan, where  
9 I was the district attorney for five and a half  
10 years. And then more recently I've been  
11 reassigned to the Anchorage office again.

12 Q Did you prepare an affidavit in support of an  
13 answer to a motion to dismiss and suppress  
14 evidence on the grounds of Federal immunity?

15 A Yes, I did.

16 MR. LINTON: Judge, with the court's -- if I  
17 could just show that to you briefly. Judge, I'd ask  
18 that that be accepted as part of her direct testimony  
19 in the proceedings, and I have a few more questions.

20 THE COURT: I have the affidavit attached to  
21 the answer to the motion.

22 MR. LINTON: That's correct.

23 THE COURT: I have that.

24 And you wish to have that stand as direct  
25 testimony, subject to cross examination?

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MR. LINTON: Yes, sir.

MR. FRIEDMAN: That's fine, Your Honor.

THE COURT: And, for the record, that's a five page affidavit, sworn before a Notary Public on the 30th day of October, at Anchorage, Alaska.

A Perhaps I should clarify. I did two affidavits. One was in support of the opposition to the motion to dismiss for failure to present exculpatory evidence. That's another issue.

THE COURT: Was that a different date than the 30th, or the same date? The one I have is a five page affidavit.

A I believe that was a different date.

THE COURT: On paragraph two it says, "In April 8, 1989, I was assigned responsibility for determining whether a felony charge should be brought against Captain Joseph Hazelwood."

A Yes, Your Honor. The one dated the 30th, besides page one, is the one that refers to this hearing.

THE COURT: That we're referring to today? Okay. We'll accept it as testimony at this time.

MR. LINTON: Judge, I have a copy. Maybe it's easier for the record just to use a copy of that...

THE COURT: Sure. Fifteen is admitted subject

1 to cross examination.

2 EXHIBIT 15 ADMITTED

3 MR. LINTON: Judge, along the same kind of  
4 administrative lines, I'm going to be asking questions  
5 for the grand jury transcript. I'm just trying to  
6 think of what is the best way to make that a part of  
7 the record, and make sure we're all operating from the  
8 same set of documents.

9 I have had some indications that perhaps the  
10 defense's references are different than my references  
11 in grand jury, and...

12 THE COURT: I have a two volumes transcript of  
13 what I believe to be the grand jury proceedings. These  
14 are the originals received August 18. Is that the...

15 MR. FRIEDMAN: We have two different ones,  
16 Your Honor. Maybe we could just take a page at random  
17 and compare -- see which one the court has.

18 THE COURT: The one I have is a little over  
19 500 pages.

20 MR. FRIEDMAN: I have 503 pages, Your Honor,  
21 total.

22 THE COURT: Yeah. Mine does. Grand jurors  
23 decision with deliberations on 502. The first witness  
24 was William Edward Murphy.

25 MR. LINTON: Yeah, I was afraid that was --

1 mine goes up to -- the final attestation is on 671 in  
2 my -- I thought there might be that problem.

3 THE COURT: I think I have the original here.  
4 And perhaps we should proceed on the basis of the  
5 original. If yours is numbered differently, it might  
6 be a little hard to follow. It sounds like Mr.  
7 Friedman's and mine correspond.

8 MR. LINTON: Correspond. So, two out of three  
9 wins.

10 THE COURT: Two out of three wins.

11 MR. LINTON: Right.

12 THE COURT: Okay.

13 MR. LINTON: With the court's permission,  
14 then, if I need to refer to it, perhaps I could use the  
15 court's copy.

16 THE COURT: If you're going to refer to it, go  
17 ahead.

18 MR. LINTON: Thank you.

19 Q (Ms. Henry by Mr. Linton:) Ms. Henry,  
20 referring to the grand jury transcript, you were  
21 responsible for the presentation of the witnesses  
22 that are listed on the Grand Jury Transcripts?

23 A That's correct.

24 Q Brent Cole was not responsible for presenting  
25 any of the witnesses who testified?

1 A He was not responsible. As it turned out, he  
2 did present one witness, because I started  
3 choking.

4 Q At the time you decided which witnesses to  
5 call before the grand jury, had you received  
6 certain reports that had been identified to you  
7 as having been screened by me?

8 A At the time I decided -- or, at the time I put  
9 out a subpoena list, I did not have any reports.  
10 At the time I presented the witnesses on May 1,  
11 2, and 3, I had some reports, and then I got  
12 additional reports later before I presented  
13 witnesses on the 17th and the 22nd.

14 Q On what basis did you then decide who to  
15 subpoena to the grand jury?

16 A I was given the names, or at least the  
17 occupation of proposed witnesses from Larry  
18 Weeks.

19 Q Can you list the witnesses who he proposed  
20 that you call, and directed that you issue  
21 subpoenas for?

22 A Yes. Mr. Delozier, from the Coast Guard;  
23 Trooper Fox; Mrs. Delozier, Mr. Delozier's wife;  
24 a pilot by the name of Murphy. Mr. Weeks did not  
25 know his first name. A taxicab driver, name



1 unknown; two Alyeska security guards; Mr. LeBeau.  
2 I believe those are the only names I got from Mr.  
3 Weeks. If I could just refer to the list for a  
4 moment. Oh, Ms. Caples. He just said the ship's  
5 agent; he did not know her name. And Mr.  
6 Beevers. Those are the names that I got, or the  
7 occupations that I got from Mr. Weeks.

8 The intent was that Dean Guaneli was to obtain  
9 witnesses for me who had testified about damages,  
10 but I didn't have any names initially.

11 Q Could you tell me what you mean by "testify  
12 about damages"?

13 A Certain witnesses, particularly from Fish and  
14 Game and from DEC, who had made observations of  
15 damages to wildlife and also to the beaches, and  
16 who protected the hatcheries. They would be  
17 testifying as to the cost of clean-up, the cost  
18 of protecting the hatcheries, and just generally  
19 damages that they observed.

20 Q But the witnesses who were to testify to that,  
21 and were to be supplied at a later point by Mr.  
22 Guaneli?

23 A That's correct.

24 (3940)

25 Q Prior to grand jury did you receive -- well,

1 first, did Michael Fox testify at grand jury?

2 A No, he did not.

3 Q Have you ever received any statements from  
4 Michael Fox to be used in preparation of the  
5 case?

6 A No. I think one statement where he  
7 interviewed somebody else, but nothing where Mr.  
8 Fox had any information to give me.

9 Q Do you recall who that witness was?

10 A No, I don't.

11 (Pause)

12 Q Was it a witness that you called at grand  
13 jury?

14 A That I don't remember either.

15 Q Okay. (Pause) Let's go through the list of  
16 the witnesses who appeared at grand jury, and  
17 tell us whether you had...

18 MR. LINTON: First, if I may have a series of  
19 documents marked as the next state's exhibit. Perhaps  
20 we could go right on down the list, I guess, is the  
21 best way to do it.

22 (Pause)

23 (Tape: C-3503)

24 (000)

25 Q I place in front of you Exhibits 16, 17, 18,

1 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and  
2 30. I'm going to ask you whether you recognize  
3 them?

4 A Yes, I do.

5 Q Can you explain to the judge what they are?

6 A Setting aside Plaintiff's Exhibit 30 for a  
7 moment. The rest of the exhibits, 16 through 29,  
8 are transcripts of interviews with witnesses.  
9 The interviews being conducted by one of various  
10 state troopers.

11 The Plaintiff's Exhibit 30 is a group of  
12 documents of interviews -- not transcripts -- but  
13 summaries of interviews of witnesses. Again,  
14 these interviews being conducted by one of two  
15 FBI agents.

16 Q Did you have any of those prior to your  
17 presentation of witnesses to the grand jury?

18 A I had all of them prior to each individual  
19 witness testifying. So, for instance, I had Mr.  
20 Delozier's before he testified -- I mean, Mr.  
21 Murphy's before he testified, but I didn't have  
22 the FBI interviews until later. But I had them  
23 before those witnesses testified.

24 Q Did you have one for Mr. Delozier?

25 A I don't think I did. I had one for his wife.

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No, I don't believe I did. All I used him for was to introduce some documents, so...

Q There is one of those which has reference to Trooper Fox on it. Does that serve to refresh your recollection about Trooper Fox that you're referring to? Trooper Fox statement?

A Yes. The interview with Sergeant Michael Craig of the Alyeska Guards. Sergeant McGhee apparently interviewed him, but Trooper Fox was present. That is the only one where Trooper Fox was apparently present.

MR. LINTON: I move the admission of 16 through 29, Your Honor.

MR. FRIEDMAN: No objection.

THE COURT: Sixteen through 29 are admitted.

EXHIBIT 16 THROUGH 29 ADMITTED

Q (Ms. Henry by Mr. Linton:) Explain Exhibit 30, please?

A Exhibit 30, once again, is several documents which are summaries of interviews of witnesses. Those interviews being conducted by either Special Agent Don Steele or Special Agent Don McMullen.

Q They are interviews of what persons?

A Do you want me to go through every one?

1 Q Yes, let's go through every one.

2 A Okay. They appear to be mostly the employees  
3 of Exxon. The first one is Mr. Claar; second is  
4 Mr. Radke; Mr. Kunkel; Mr. LeCain; Mr. Roberson;  
5 Mr. Peacock; Carl Jones; Maureen Jones; Mr.  
6 Kagan; Mr. Glowacki; Ray Jones; Mr. Oldham; Ms.  
7 Haven; Mr. John Stewart; Mr. Boile (ph); Mr.  
8 Emell or Emill (ph); Mr. Monensis (ph); and Ms.  
9 Wright.

10 Q Let's compare Exhibit 30 to Exhibit 7, the  
11 crew list. With respect to the first individual,  
12 Mr. Claar. Was he a crew members?

13 A Yes, he was; on the Exxon Valdez.

14 Q And the next individual?

15 A Mr. Radke should be there. Yes. There he is.  
16 Do you want me to, again, go through these?  
17 Okay.

18 Q Mr. Kunkel.

19 A Mr. Kunkel is on the crew list. Mr. LeCain is  
20 on the crew list. Mr. Roberson is there. Mr.  
21 Peacock; yes, he's there. Let's see. Mr. Carl  
22 Jones is there. Maureen Jones is there. Mr.  
23 Kagan is there. Mr. Glowacki is there. Ray  
24 Jones is there. Graham Oldham is there. Ms.  
25 Haven is there. John Stewart is there. Francis

1 Boile is there. Michael Emmil is there. Mr.  
2 Monensis is there. And Ms. Wright is there.

3 Q So the reports that you had at the time of  
4 your presentation of this matter to the grand  
5 jury, each report applied to an individual who  
6 was listed on the crew list?

7 A Yes, that's correct.

8 Q Did Mr. Fox testify before the grand jury?

9 A No, he did not.

10 Q Explain why?

11 A I was told that he was -- he had information  
12 that I was not permitted to have. And, that, in  
13 fact, he had nothing that he could tell the grand  
14 jury. So I excused him. I met him in the front  
15 office -- the reception area of our office and  
16 apologized for bringing him up, and told him that  
17 I wasn't going to be calling him.

18 Q When you say he had nothing that he could tell  
19 the grand jury. Did you mean to say that he did  
20 not have any information about the circumstances  
21 of the grounding -- an oil spill, or that there  
22 was something else, which meant he had no  
23 information to give?

24 A I was informed he had nothing that he could  
25 tell the grand jury that would be permitted to be

1 presented to the grand jury.

2 Q And permitted under the guidelines set forth  
3 in your affidavit?

4 A That's correct.

5 Q How about Mr. Delozier?

6 A Mr. Delozier did testify.

7 Q Did he testify about anything, other than to  
8 identify records that he had seized from the  
9 ship?

10 A As best I recall, that's all he testified  
11 about. That was my only intent, was for him to  
12 identify records, documents. And if I recall,  
13 that's all he testified to.

14 Q Did you interview him or otherwise gain  
15 information from him about what he had observed  
16 while he was on board the ship, apart from  
17 records?

18 A No.

19 (512)

20 Q I would like to go through the witnesses,  
21 then, who appeared before the grand jury, as it  
22 appears on the face of the grand jury transcript.

23 Witnesses for the plaintiff, number one, were:  
24 William Edward Murphy. Did you have a statement  
25 about an interview -- concerning an interview

1 with William Edward Murphy?  
2 A I did.  
3 Q Would you identify the exhibit number which is  
4 that statement?  
5 A It's Plaintiff's Exhibit 27. It's a draft --  
6 it's not on final Trooper paper. That's all I  
7 had at the time.  
8 Q The interview was conducted on what date,  
9 according to the document?  
10 A April 4, 1989.  
11 Q The next witness was Patricia Caples. Did you  
12 have a statement from her?  
13 A I don't recall if I did. Yes, I did. That's  
14 Plaintiff's Exhibit 22.  
15 Q And it's dated?  
16 A March 28, 89.  
17 Q Next, Michael Edward Craig?  
18 A I had an interview with Sergeant Craig.  
19 Plaintiff's Exhibit 23, dated March 27, 1989.  
20 Q Richard L. Wade?  
21 A No, I did not have an interview with him.  
22 Q John R. Holsinger?  
23 A I had no interview with him.  
24 Q James F. Hayden?  
25 A I had no interview with him.



1 Q Mark James Delozier?  
2 A No interview with him.  
3 Q Robert A. Beevers?  
4 A I had no interview with him. I did talk to  
5 him, however, prior to his testimony.  
6 Q Thomas Michael Kron?  
7 A I had no interview with him.  
8 Q Joseph LeBeau?  
9 A No interview.  
10 Q Bruce Suzumoto?  
11 A No interview with him.  
12 Q James F. Hayden?  
13 A This is the second time he's testified; still  
14 no interview with him.  
15 Q Jerzy Glowacki?  
16 A Yes, I had one with him. That's Plaintiff's  
17 Exhibit 25, dated March 30, 1989.  
18 Q Lloyd LeCain?  
19 A Mr. LeCain's interview is Plaintiff's Exhibit  
20 16, dated March 30, 1989.  
21 Q Paul R. Radke.  
22 A Mr. Radke's interview is Plaintiff's Exhibit  
23 21, dated March 30, 1989.  
24 Q Harry Claar? C-l-a-r-r -- excuse me --  
25 C-l-a-a-r.

1 A Mr. Claar's interview is Plaintiff's Exhibit  
2 24, dated March 30, 1989.

3 Q James R. Kunkel, K-u-n-k-e-l?  
4 A Mr. Kunkel's interview is Plaintiff's Exhibit  
5 19, dated March 30, 1989.

6 Q Robert M. Kagan?  
7 A Mr. Kagan's interview is Plaintiff's Exhibit  
8 20, dated March 30, 1989.

9 Q Maureen L. Jones?  
10 A Ms. Jones' interview is Plaintiff's Exhibit  
11 17, dated March 30, 1989.

12 Q Gordon Paul Taylor?  
13 A I did not have an interview with Mr. Taylor.  
14 Q And Robert A. Beevers?  
15 A Again, no interview with him, although I did  
16 talk to him before he testified.

17 Q What I would like to do now is go through the  
18 same list.

19 A Excuse me. It looks like we have some  
20 duplicates here.

21 Q Two Kagan's?  
22 A Two of Mr. Kagan, yes. One is Plaintiff's  
23 Exhibit 20 and one is Plaintiff's Exhibit 18.  
24 They are both interviews of Mr. Kagan, and they  
25 appear to be duplicates.

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THE COURT: Nineteen and 20, you say?

A Eighteen and 20.

Q With respect to William E. Murphy, you told us you had a statement that was a basis for your questioning him before the grand jury?

A That's correct.

Q As to Ms. Patricia Caples, you had a statement which was the basis for questioning him [her] before the grand jury?

A Before questioning her, yes.

Q And as to Michael Edward Craig, you had a statement from him, which was the basis for questioning him before the grand jury?

A That's correct.

Q Before meeting -- in his presence -- questioning him when he appeared before the grand jury?

A That's correct.

Q Richard L. Wade, did you have a statement from him beforehand?

A No, I did not. Sergeant Stogsdill did interview him prior to his taking the stand.

Q Could you tell us briefly what Richard L. Wade has testified about?

A Mr. Wade owns a diving business in Valdez, and

1 he is one of the persons who dove underneath the  
2 Exxon Valdez for several days, I believe, after  
3 the grounding and the spill.

4 The purpose of his testimony was to introduce  
5 a diagram that he had done showing the damages he  
6 observed as he dove under the Exxon Valdez.

7 Q Where did you find his name to call him to the  
8 grand jury?

9 A I was provided his name by Mr. LeBeau.

10 Q And Mr. LeBeau is who?

11 A He is -- he works for DEC, and I think he was  
12 temporarily assigned in the Valdez area during  
13 this time period.

14 Q John R. Hilsinger. Did you have a statement  
15 from him?

16 A No, I did not.

17 Q Where did you get the name, John R. Hilsinger,  
18 H-i-l-s-i-n-g-e-r?

19 A From Dean Guaneli.

20 Q Would you explain the circumstances under  
21 which that was made -- that arrangement was made,  
22 to get the name in that fashion?

23 A Again, when I was initially assigned to this  
24 case, Dean Guaneli was assigned to provide me  
25 with witnesses who would testify as to damage,

1 for purposes of grand jury. And Mr. Guaneli sent  
2 me a memo giving me some names, with a summary of  
3 what he expected they might say if I called them.  
4 And I believe Mr. Hilsinger was on that memo.  
5 Mr. Guaneli may have given me that name orally.  
6 I'm not sure. But I think he was on the memo.

7 Q The next name?

8 A The next name is Mr. Hayden.

9 Q Did you have a statement from him beforehand?

10 A No, I did not.

11 Q Where did you get his name?

12 A From Mr. LeBeau, again, from DEC.

13 Q Had you made a request of Mr. LeBeau that  
14 caused him to do that?

15 A I did. I told Mr. LeBeau that I needed  
16 someone from DEC who could testify generally  
17 about the cost of clean-up, and also who could  
18 testify about the efforts to save various  
19 hatcheries, and the cost of those efforts. And  
20 Mr. LeBeau told me that Mr. Hayden was apparently  
21 responsible for a lot of the hatchery protection,  
22 and also was responsible for keeping track of the  
23 bills to turn over to Exxon.

24 Q The next name?

25 A That's Mr. Delozier from the Coast Guard.

1                   That name I got from Mr. Weeks.

2           Q           The next name?

3           A           Mr. Beevers. That name I got -- I also got  
4                   from Mr. Weeks.

5                   MR. FRIEDMAN: I'm sorry. Excuse me. I  
6                   missed that last name.

7           A           Mr. Beevers.

8                   MR. FRIEDMAN: Thank you.

9           A           The next name is Thomas Kron, K-r-o-n. I got  
10                   that name from Mr. Guaneli. He is another damage  
11                   witness.

12          Q           Next name?

13          A           Joe LeBeau from DEC. I got his name from Mr.  
14                   Weeks.

15          Q           Did you have any statements from Joe LeBeau at  
16                   the time you called him to testify?

17          A           I did not.

18          Q           What was the purpose of calling him?

19          A           He had taken some video film of the oil on the  
20                   beaches, and also picking up some of the  
21                   wildlife. And I wanted to present that video  
22                   tape to the grand jury.

23                   Additionally, he had collected some aerial  
24                   photographs. I believe -- I'm not sure if he  
25                   took them or not, but he was present when some

1           aerial photographs were taken, which showed some  
2           of the extent of the spill. And he also had some  
3           computer graphics, which, again, showed the  
4           extent of the spill over a period of time. And,  
5           finally, he brought in a sample of oil.

6           Q           A sample that he had taken at some...

7           A           A sample he had taken off one of the beaches.

8           Q           At the time he appeared before the grand jury,  
9           did you know whether or not he had been present  
10          on the Exxon Valdez on March 24, 1989?

11          A           I don't know if I knew that at that point or  
12          not.

13          Q           Did you ask him any questions about whether he  
14          had been on board?

15          A           No.

16          Q           And did you utilize any testimony from him  
17          about his observations on board on March 24,  
18          1989?

19          A           As far as I could remember, I don't think I  
20          did.

21          Q           The next name?

22          A           Bruce Suzumoto. I received his name from Dean  
23          Guaneli.

24          Q           The next name?

25          A           The next name is, again, Mr. James Hayden, who

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had already testified.

The next name is Jerzy Glowacki. We're now starting members of the crew of the Exxon Valdez. I got Mr. Glowacki's name from the police report. Specifically from the trooper interview, and also from an FBI interview.

Q Continue.

A Mr. LeCain, again, an employee on the Exxon Valdez. I got his name from the police reports.

Mr. Radke, also an employee. I got his name from the police reports. Mr. Claar, I got his name from the police reports. Mr. Kunkel, I got his name from the police reports. Mr. Kagan, same thing, from the police reports. And Ms. Jones, I got her name from the police reports.

The next witness is Gordon Paul Taylor, who, if I recall, is a civilian employee for the Coast Guard. What happened there is I had received from you an edited tape of a conversation purportedly between Mr. Hazelwood and the Coast Guard. And I wanted someone to introduce that tape. So I advised Ms. Robinson, the paralegal, that she should find out who, from the Coast Guard's, voice was on that tape, and to bring him



1 in. It turned out to be Mr. Taylor.

2 Q Other than to have him authenticate that tape,  
3 did you elicit any other testimony from him?

4 A I don't believe so. I might have asked him a  
5 little bit of background about his  
6 responsibilities, and perhaps some discussion of  
7 things that may have occurred before the tape.  
8 But then it was basically, "Do you recognize your  
9 voice on this tape."

10 Q Feel free to flip through the grand jury  
11 pages, if that helps.

12 (Pause)

13 A Yes. His testimony was very short. I asked  
14 him what his responsibilities were. I asked him  
15 what his shift was on the 23rd of March. And I  
16 asked him if he had listened to a portion of the  
17 tape, which he said he had. I asked him if he  
18 recognized it, and I played the tape. And opened  
19 it up to the grand jury for questions. That's  
20 all.

21 Q Did he tell you about what shift he worked?  
22 What did he tell the grand about what shift he  
23 worked?

24 A Well, what he said was, "Rotational 8:00 to  
25 4:00; 4:00 to midnight; and midnight to 8:00."

1           Those are the rotations of the shift. And that  
2           was in response to my question, "What shift did  
3           you work?" So, I'm not sure which shift he did  
4           work.

5           Q           In presenting matters to the grand jury, did  
6           you have any statement of Gregory Cousins?

7           A           No, I didn't.

8           Q           Did you have a statement of Joseph J.  
9           Hazelwood?

10          A           No, I didn't.

11          Q           At the time that your presentation to the  
12          grand jury occurred, or some of the presentation,  
13          had there been hearings from the National  
14          Transportation -- hearings of the National  
15          Transportation Safety Board been held in  
16          Anchorage?

17          A           Yes. I believe they began on the 15th or 16th  
18          of May. One day of grand jury presentation in  
19          this case was May 17th. So, yes, they were going  
20          on during that time.

21          Q           And did you listen to any of the testimony  
22          before the National Transportation Safety Board,  
23          or receive any, to your knowledge?

24          A           No, I did not.

25                   (Pause)

1 MR. LINTON: Nothing further, Your Honor.

2 THE COURT: Mr. Friedman?

3 MR. FRIEDMAN: Thank you, Your Honor.

4 (1127)

5 CROSS EXAMINATION OF MS. HENRY

6 BY MR. FRIEDMAN:

7 Q Ms. Henry, you indicated that you received a  
8 memo from Mr. Guaneli outlining the damages --  
9 witnesses that he thought might be available to  
10 you, is that right?

11 A That's correct.

12 Q Did he indicate what those witnesses -- what  
13 areas they would be able to testify to?

14 A Yes, he did.

15 Q Okay. As to the witnesses whose names were  
16 given to you by Larry Weeks, did you also get a  
17 memo from him outlining who they were and what  
18 they would be able to provide?

19 A No, I didn't. He just gave me the names over  
20 the phone.

21 Q Okay. And just for the record, who is Mr.  
22 Guaneli?

23 A Mr. Guaneli is an assistant attorney general  
24 working in the central office in Juneau.

25 Q And what role did he play -- let me step back

1 for a second and -- let me think for a second  
2 here. Would it be accurate to say that you  
3 viewed your role as taking the information that  
4 other people in the department passed on to you,  
5 and not going beyond that in terms of searching  
6 for other information?

7 A Essentially, that was my role. However, there  
8 were some things that I felt I wanted to  
9 presented to the grand jury self-searched. For  
10 instance, I'm the one that asked Mr. LeBeau about  
11 a witness that turned out to be Mr. Hayden. And,  
12 also, I believe it was my idea to call the diver,  
13 too.

14 Q Okay. You outlined in your affidavit, and Mr.  
15 Linton has outlined in his affidavit, how he  
16 would pass information on to you. Were there  
17 other people within the Department of Law, other  
18 than Mr. Guaneli and Mr. Weeks who would pass on  
19 factual information to you regarding this case?

20 A No.

21 Q Okay. And other than passing on information  
22 relating to potential damages witnesses, did Mr.  
23 Guaneli pass any other factual information out to  
24 you?

25 A Not that I recall. Part of his job, also, was

1 to communicate with Exxon, and the attorneys for  
2 Exxon trying to get documents from them. So I  
3 might have gotten a little bit of information  
4 regarding documents. But it was generally, Mr.  
5 Guaneli was keeping me advised as to his success,  
6 or lack of success in getting documents from  
7 them.

8 Q Okay. that's a specific answer to my specific  
9 question. I would like to now ask a more general  
10 question. What was, and what is your  
11 understanding about Mr. Guaneli's role in Captain  
12 Hazelwood's prosecution? Does it go at all  
13 beyond just providing the damages, witnesses, and  
14 the documents you discussed?

15 A I reviewed his role, also, as being sort of  
16 the liaison between the Department of Law and the  
17 attorneys from Exxon. For instance, he's the one  
18 that arranged us to be able to reboard the Exxon  
19 Valdez.

20 Q Now the same question for Mr. Weeks. First of  
21 all, could you identify for the record who he is?

22 A Mr. Weeks is also in the central office. He  
23 is chief of criminal prosecutions for the state.

24 Q All right. And can you describe for us your  
25 understanding of his role with regard to Captain

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Hazelwood's prosecution?

A My understanding is, he is simply my supervisor in this area. He is the one that decided I would be the person assigned to the case; he gave me the initial witness list. And then other than that, it's just been making decisions about the case as opposed to doing any kind of investigative or court work.

Q Do you have with you the memo that you received from Mr. Guaneli?

A I don't have it with me, but I do have it available.

MR. FRIEDMAN: Your Honor, I wonder if it would be appropriate to take a break at this time, so that I could take a quick look at that memo?

THE COURT: Okay. Are there any other documents you wish this witness to produce, that she could get during the break?

Q Ms. Henry, just to make sure I understand, you received no other memos from Mr. Weeks or Mr. Guaneli regarding this case, other than what we've just discussed?

A I did receive a copy of Mr. Guaneli's letter to the Exxon attorneys making certain requests, and a subpoena duces tecum that he served on

1           them. During the break I could check, but that's  
2           all I could remember.

3           Q           Okay.

4           MR. FRIEDMAN: There would be...

5           THE COURT: How long will it take you to get  
6           it, Ms. Henry?

7           A           They're just in the conference room across the  
8           hall.

9           THE COURT: Oh! Well, let's just stay in  
10          place, and why don't you go ahead and go get it.

11          (1356)

12          (Pause)

13          (1459)

14          THE COURT: Thank you, Ms. Henry. The record  
15          will reflect Ms. Henry has given these documents to  
16          both Mr. Friedman and Mr. Linton.

17          MR. FRIEDMAN: Your Honor, there's about four  
18          typed pages. I wonder if I could just have a minute to  
19          go through them?

20          THE COURT: Sure. (Pause) If you think you  
21          need a break, we could take one.

22          MR. FRIEDMAN: If that would be all right.  
23          Then I'll be able to just go straight through.

24          THE COURT: Sure. We have lots of time.  
25          That's not a problem. We'll take a break.

1 THE CLERK: Please rise. This court stands in  
2 recess subject to call.  
3 (Off record - 10:57 a.m.)  
4 (On record - 11:10 a.m.)  
5 (1500)  
6 THE COURT: Ready to go?  
7 MR. FRIEDMAN: Yes, Your Honor.  
8 Q (Ms. Henry by Mr. Friedman:) Ms. Henry, when  
9 did you first learn that you might be assigned to  
10 this case?  
11 A April 12.  
12 Q And how did you learn that?  
13 A Dwayne McConnell, the district attorney,  
14 called me into his office.  
15 Q And what did he tell you?  
16 A He said that Larry Weeks wanted me to take  
17 over the preliminary investigation of the case,  
18 and determine whether it should be presented to a  
19 grand jury.  
20 Q And did he tell you why?  
21 A Why, me?  
22 Q Well, why you, and did he also tell you  
23 whether there were any restrictions on what you  
24 could or couldn't do?  
25 A He told me that Mr. Linton, who had been in



1 Valdez for the initial investigation, was not  
2 going to be able to present the case to the grand  
3 jury because of some problems. That's all he  
4 told me at that point.

5 Later on that day we had a conference call  
6 with Larry Weeks, and Larry Weeks explained it in  
7 more detail.

8 Q Okay. At that point, in the first  
9 conversation with Mr. McConnell, did he tell you  
10 whether there would be any limitations on what  
11 you could or couldn't do in terms of  
12 investigating and presenting the case?

13 A I don't believe so.

14 Q And at that point did he tell you what charges  
15 were being considered by the office, or what  
16 charges they wanted you to consider presenting to  
17 the grand jury?

18 A No.

19 Q Was your next conversation about the case the  
20 one that took place on conference call with Mr.  
21 Weeks?

22 A That's correct.

23 Q Okay. And who was involved in that, if you  
24 recall?

25 A Mr. McConnell; Mr. Linton, briefly; and then

1 by phone from Juneau, Larry Weeks, Dean Guaneli,  
2 and Laurie Otto.

3 Q Who is Laurie Otto?

4 A She's also an assistant attorney general in  
5 the chief office.

6 Q In the Juneau office?

7 A Central office -- central office.

8 Q That means the Juneau office?

9 A Yes.

10 Q All right. Can you basically recount for us  
11 what took place in that conversation?

12 A Larry Weeks told me that he wanted me to look  
13 into the case and see if we had sufficient  
14 evidence to present it to the grand jury. At  
15 that point he told me that they were looking at  
16 potential charges of felony criminal mischief.

17 He also explained that the problem with Mr.  
18 Linton was that he had received some information  
19 that he could not use. And so that we were going  
20 to be building up, what he called a "Chinese  
21 Wall". Where Mr. Linton would screen information  
22 and give it to me, and then from there I could  
23 make decisions.

24 Q Did the topic of immunity ever come up?

25 A I don't think that word was used.

1 Q All right. Were you told what Mr. Weeks'  
2 involvement had been up to that point, in terms  
3 of the case?  
4 A No, I wasn't.  
5 Q Were you told what Mr. Guaneli's involvement  
6 had been up to that point?  
7 A No.  
8 Q And did you say this was April 12 when this  
9 conversation took place?  
10 A Yes.  
11 Q All right. And were you told whether or not  
12 you would be doing anything other than  
13 considering the case for grand jury?  
14 A That's all I was supposed to be doing. I wold  
15 not be handling the trial.  
16 Q And you were told this on April 12?  
17 A Yes.  
18 Q All right. Were you told who would be  
19 handling the trial?  
20 A No.  
21 Q And you were told that one person who would be  
22 giving you information was Mr. Linton, is that  
23 correct?  
24 A Yes. L-i-n-t-o-n.  
25 Q L-i-n...

1 A N-t.

2 Q Close enough. All right. And then you  
3 subsequently received information from Mr.  
4 Guaneli about potential witnesses?

5 A Yes. On the damage witnesses, by that memo.

6 Q Right. Okay. And I know I don't know how to  
7 spell that.

8 A G-u-a-n-e-l-i.

9 Q All right. And you received information from  
10 Mr. Weeks regarding information that you could  
11 present -- or, regarding witnesses who would have  
12 information for the grand jury?

13 A Yes. Just the witness name or their  
14 occupation, not what they would say.

15 Q Do you know how he got those names?

16 A No, I don't.

17 Q Did he give you -- if April 12 is the time you  
18 were first given the case, can you give us an  
19 estimate, or an exact date as to when Mr. Weeks  
20 would have given you the names for grand jury?

21 A During that conference call.

22 Q Okay. And did he tell you whether you were  
23 limited in any way in what you could say to these  
24 witnesses, or do with these witnesses?

25 A He did say that there were going to be

1 limitations on what I could do, and suggested  
2 that for some of the witnesses, that Mr. Linton  
3 talk to them first and caution them as to certain  
4 things they could not say to me.

5 Q Okay. Did he restrict you in any way in terms  
6 of what you could ask them about?

7 A At that initial conference call, no, he did  
8 not, because I still didn't understand exactly  
9 what the problem was. It wasn't until a day or  
10 two later when I was told there was a statute.  
11 And then I was told that I could not try to  
12 elicit any information regarding the report of  
13 the spill. In fact, it expanded to within  
14 several hours, or, I think it was a day after the  
15 spill.

16 Q And that's a conversation you had several days  
17 after the April 12 day?

18 A It was still that -- it was either Thursday or  
19 Friday. The 12th was Wednesday, and it was  
20 either the next day or the day after that.

21 Q Okay. And who did you receive the information  
22 about the statute from?

23 A It was either Mr. Linton or Laurie Otto.

24 Q Okay. And what were you told, other than that  
25 there was -- were you told about the immunity,

1 and were you given the statutory citation?  
2 A I wasn't given a statutory citation. I was  
3 simply told that there's a statute that provides,  
4 we cannot use information derived from a report  
5 of an oil spill.  
6 Q At that point, you were told not to elicit  
7 information regarding the report. And then you  
8 said it expanded to what?  
9 A Essentially, I was told that I would not be  
10 able to receive any information from  
11 investigators from the time of the oil spill for,  
12 I believe, the next 24 hours. I wasn't sure of  
13 it. I was just told that that's -- it was about  
14 a day after the report -- I was not to receive  
15 any information.  
16 Q Okay. Did you -- on April 12 do you recall  
17 whether the information had been filed at that  
18 point?  
19 A The misdemeanor information?  
20 Q Right.  
21 A Yes, it had been.  
22 Q And were you allowed to look at that?  
23 A I was only allowed to look at a portion of it.  
24 Mr. Linton whited out the probable cause portion  
25 of it, and only gave me the charging section.

1 Q All right. And have you ever seen the  
2 probable cause portion?  
3 A No, I haven't.  
4 Q Did you attend the misdemeanor arraignment for  
5 Captain Hazelwood?  
6 A I did.  
7 Q And what was your role at that hearing?  
8 A As the assistant for the state.  
9 Q At that hearing were you required, or did you  
10 address the issue of bail?  
11 A Yes, I did.  
12 Q Do you recall what your recommendation to the  
13 judge was regarding bail?  
14 A My recommendation was that bail be set at  
15 \$50,000.00, which is, my understanding, Mr.  
16 Hazelwood had already posted in New York. And,  
17 also, the same conditions that had been imposed  
18 there. I believe that's all I requested. Judge  
19 Stewart, I think, added a couple conditions.  
20 Q Okay. Was there any discussion of the  
21 probable cause statement at that hearing?  
22 A No, not that I recall.  
23 Q Did you ever talk to Mr. Linton about the  
24 scope of the criminal mischief in the second  
25 degree statute, and whether it applied to the

1 facts of this case?  
2 A No, I did not.  
3 Q Did you ever discuss that with Mr. Weeks, Mr.  
4 Guaneli, or Laurie Otto?  
5 A I'm sure I discussed it with Mr. Weeks.  
6 Q You indicated that -- I think you indicated  
7 that he had suggested that that was one thing  
8 that the office was considering, or would like  
9 you to consider?  
10 A That's correct.  
11 Q Did the discussion go beyond that?  
12 A No. Uh-uh (negative).  
13 (Pause)  
14 (1997)  
15 Q Now, I think in your affidavit you indicated  
16 that you were told not to approach -- you said,  
17 "I was told that I should not, and I did not,  
18 approach any of the investigators who had been  
19 working on the case before then." I'm not sure  
20 what that refers to. "Namely, Sergeant John  
21 McGhee, Sergeant Chris Stockard, Trooper Julia  
22 Grimes, Trooper Burk, Fish and Wildlife Trooper  
23 Michael Fox, Trooper Michael Alexander, and Gayle  
24 Savage, of the Department of Law." Is that  
25 correct?



1 A That is correct. Although, Trooper Fox's name  
2 was on the witness list, so that would be in  
3 error. I was told of the other witnesses though,  
4 Sergeant McGhee and the other ones. And I was  
5 told not to approach them.

6 Q And you did not approach them?

7 A I did not approach them. I did have a couple  
8 of phone conversations with Sergeant McGhee,  
9 complaining about the fact that I wasn't getting  
10 any police reports. And I had asked Mr. Linton  
11 about that, and he had said that he hadn't  
12 received them from Mr. McGhee. And, so when  
13 Sergeant McGhee called for something else, I  
14 picked up the phone and I said, "Will you please  
15 get on this."

16 Q Okay. But other than that you didn't talk to  
17 him?

18 A No.

19 Q Okay. And you didn't talk to the other  
20 investigators?

21 A No, I didn't.

22 Q Okay.

23 A And Trooper Fox, just to apologize and let him  
24 go.

25 Q Who is Gayle Savage?

1 A I believe he's an investigator with the  
2 Department of Law, working in the civil division.  
3 (Pause)  
4 Q Now, what was your understanding as to why you  
5 were not to approach these investigators?  
6 A Because they had information that I was not  
7 permitted to have.  
8 Q All right. And if you could just define for  
9 us -- I think you really have, but just so it's  
10 explicit, what was your understanding as to the  
11 information you were not to have?  
12 A Information that would have been directly  
13 derived from the report of an oil spill. We just  
14 shortened it to tainted evidence.  
15 Q Right. Okay. Now, when Mr. Linton would give  
16 you a particular report, or a particular piece of  
17 information, you, yourself, would have no way of  
18 determining whether that was derived from the  
19 original report or not, would you?  
20 A I wouldn't have any idea.  
21 Q And even today you wouldn't have any idea of  
22 that?  
23 A No.  
24 Q Just as an example, you don't know how  
25 investigators Burk, Grimes, the FBI investigators

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-- how they may have decided to formulate their questions of the crew members?

A I do not know that.

Q And you don't know how they may have -- how they even located some of the witnesses?

A I don't know that either.

Q You indicated that you were told by Mr. Weeks that there was a ship's agent who you might want to call at grand jury?

A Yes, that's how he referred to her.

Q Okay. And you had no police report for that ship's agent, at that time?

A At that point, no.

Q How did you locate that ship's agent?

A I don't remember if it was as a result of receiving her interview, or if I simply told the paralegal, Ms. Robinson, to locate the ship's agent and have her subpoenaed.

Q All right. Once you located the ship's agent, how did you know what questions you wanted to ask her at grand jury?

A That was based upon her interview.

Q So before you actually presented her to the grand jury, you had the interview?

A Yes, I did.

1 Q Now, I take it you were aware that Mr.  
2 Delozier had been on the ship the night of the  
3 grounding, is that right?  
4 A At some point I became aware of that, I'm not  
5 sure when.  
6 Q Okay. And you were also aware that he had  
7 these records that you wanted to present to the  
8 grand jury?  
9 A I was aware of that, yes.  
10 Q Did you know whether or not he seized them the  
11 night of the grounding?  
12 A I did not know that, although I think he dated  
13 the documents as to when he seized them, I just  
14 never looked.  
15 Q Okay. Now, you had -- I think you told us  
16 that you had no interview from Mr. Wade, is that  
17 correct? He's the diver.  
18 A That's correct. I know I didn't have one when  
19 he testified.  
20 Q Right. How did you know what to ask him?  
21 A His name was given to me as one of the divers,  
22 pursuant to my request. So, essentially,  
23 Sergeant Stogsdill sat down with him in our  
24 office and asked him to draw a diagram of the  
25 damages that he observed on the bottom of the

1 Exxon Valdez. And then once Sergeant Stogsdill  
2 finished interviewing Mr. Wade, Sergeant  
3 Stogsdill told me a brief summary of what he  
4 said. And then I put him on.

5 There was another diver that was called, and I  
6 can't remember his name. Sergeant Stogsdill also  
7 interviewed him and decided -- determined that he  
8 wasn't going to be much help, so he was excused.

9 Q In the beginning of your answer just then you  
10 made some comment about -- well, I forget what  
11 you said exactly. But could you tell us how you  
12 located Mr. Wade. Was he one of the names that  
13 was given to you by Mr. Weeks?

14 A No. His name was given to me by Mr. LeBeau.  
15 I told Mr. LeBeau I needed one of the divers to  
16 testify about the damage that he observed.

17 Q What was your understanding about Mr. LeBeau's  
18 involvement in the case, in terms of when he got  
19 involved, and what he had done?

20 A I don't know when he got involved. And I'm  
21 not sure exactly what he did initially. I know  
22 that he did go on to the beaches and take  
23 photographs. I also know that he did have  
24 tainted information.

25 Q Okay. He provided you with Mr. Wade. Did he

1 provide you with other information?

2 A Mr. Hayden's name, also.

3 Q How did you know that Mr. LeBeau had tainted  
4 information?

5 A Mr. Linton told me.

6 Q Okay. Did Mr. Linton tell you what you could  
7 and couldn't talk to Mr. LeBeau about?

8 A Yes, he did. And he also -- before I talked  
9 to Mr. LeBeau, he had Mr. LeBeau in his office  
10 for quite a while. And I assume the intent was  
11 to explain it to Mr. LeBeau.

12 Q And what were you told by Mr. Linton about  
13 what you could ask or couldn't ask Mr. LeBeau?

14 A Mr. Linton basically told me, "The only thing  
15 you should be asking Mr. LeBeau is to explain the  
16 video tape, the photographs, and the oil that he  
17 sees from beaches."

18 Q All right. But it sounds like you went beyond  
19 that, at least in terms of getting Mr. Wade to  
20 talk about damage to the vessel?

21 A With Mr. LeBeau?

22 Q Yes.

23 A I...

24 Q In other words, you asked Mr. LeBeau for  
25 something other than what you just described?

1 A That's correct. I did say to him that I was  
2 looking for a witness who could testify about the  
3 damage to the vessel. And he said, "Well, I know  
4 that two divers went down, and these are their  
5 names."

6 Q Okay. And do you know how he knew that?

7 A No, I don't.

8 Q You indicated in your direct exam that you had  
9 talked to Mr. Beevers?

10 A Yes.

11 Q Could you tell the judge who Mr. Beevers is?

12 A Mr. Beevers is a former master -- captain, who  
13 is now retired, who was hired, I believe by Mr.  
14 Linton, to assist in the investigation. I was to  
15 use him to interpret documents for me.

16 Q Was he going to interpret documents other than  
17 what Mr. Delozier introduced to the grand jury?

18 A Yes, he was. He was going to basically  
19 explain what the bridge of the Exxon Valdez  
20 looked like, and explain certain instruments, and  
21 how they worked. Also, just explain some of the  
22 rules of the sea, I guess. And then, also, the  
23 documents.

24 Q Were you aware of whether or not Mr. Beevers  
25 had been on the Exxon Valdez?

1 A Yes. I was aware that he was on the Exxon  
2 Valdez.  
3 Q And how were you aware of that?  
4 A Mr. Linton told me.  
5 Q What else were you told about Mr. Beevers and  
6 how you could use him?  
7 A I was told that he was also tainted. And Mr.  
8 Linton talked to him the day before I talked to  
9 Mr. Beevers. And I was told I should use him for  
10 purposes of interpreting documents. Also, use  
11 him as an expert to explain generally what  
12 happens on a tanker like this, and what each crew  
13 member's responsibilities are specifically.  
14 Particularly the masters.  
15 (2520)  
16 Q Did you know how Mr. Beevers came to be on the  
17 Exxon Valdez?  
18 A No, I don't.  
19 Q And an expert named Mr. Greiner. Did you ever  
20 talk with him?  
21 A Mr. Reiner?  
22 Q Greiner, with a G.  
23 A Greiner. Yes, I did. Yes.  
24 Q Okay. Can you tell me how you learned about  
25 him, and then what you talked with him about?



1 A I don't remember how I learned about him. I  
2 know -- Mr. Cole is the one that actually set up  
3 -- wanted to talk to Mr. Greiner. That's right.  
4 Mr. Linton was talking to Mr. Greiner on the  
5 phone, and came in and said, "Mr. Greiner is on  
6 the phone, do you want to talk to him?", and Mr.  
7 Cole did. And so we talked to him briefly over  
8 the phone.

9 Q By that point in time Mr. Cole had been  
10 assigned as the chief trial attorney?

11 A Yes.

12 Q And what did you talk to Mr. Greiner about?

13 A We talked to him about what help he might be  
14 in the presentation of the case to the jury -- to  
15 the trial jury.

16 Q Were you aware of whether or not he was  
17 considered tainted?

18 A I was aware that he had received some tainted  
19 information. I'm also aware that he was told to  
20 seal it and not look at it. And he told us over  
21 the phone that's what he had done.

22 Q All right. Do you know whether he had ever  
23 been on the Exxon Valdez?

24 A I believe he did reboard it when it was in San  
25 Diego. I don't know of any other -- he might

1                   have been on it before that, I don't know.

2           Q           Were you aware of whether either of these

3                   experts had participated in any search of the

4                   Exxon Valdez?

5           A           I believe I was aware that Mr. Beevers had

6                   been -- I know he had been on there. I'm not

7                   sure if he searched. He was a part of the search

8                   of the Exxon Valdez when Mr. Cole got a search

9                   warrant; whenever that was.

10          Q           Okay. What about before then?

11          A           I'm pretty sure I knew he had been on there.

12                   I'm not sure if I knew that -- I don't think I

13                   knew he had participated in a search.

14          Q           Okay. Were you aware of the searches of the

15                   Exxon Valdez prior to the time Mr. Cole conducted

16                   his search?

17          A           I knew that search warrants had been executed.

18          Q           Were you given access to either the warrants

19                   or the transcripts of the hearing, or the hearing

20                   itself?

21          A           No.

22          Q           Were you aware of what was obtained in those

23                   searches? That is, the ones prior to Mr. Cole's

24                   search?

25          A           I'm not aware of what was obtained. I may

1 have received some of the things that were  
2 obtained, but I don't -- I wouldn't have been  
3 told that's where they were obtained.

4 Q Okay. (Pause) You were allowed to get  
5 information from Mr. Stogsdill, weren't you?

6 A Yes.

7 Q What was your understanding of what Mr.  
8 Stogsdill was allowed to do?

9 A He was limited in the same way that I was  
10 limited. At the first conference call on April  
11 12, Larry weeks told me that I should try to find  
12 an investigator who was not tainted. And so I  
13 called Sergeant Stogsdill, who is out of the  
14 Soldotna post, and ask him if he, you know, had  
15 been down in Valdez, or was tainted at all. And  
16 from what -- my brief discussion with him, it was  
17 pretty clear to me that he was not tainted. So I  
18 asked him if he would be interested in helping  
19 me, and he said, yes. I then explained to him  
20 what our limitations were.

21 Q What did you explain to him?

22 A I told him that we would not be permitted to  
23 use any information directly derived from the  
24 report of the oil spill and that, in fact,  
25 everything we got would be screened by Mr. Linton

1 first.

2 Q All right. But Mr. Stogsdill, as an  
3 investigator, was he allowed to go interview  
4 people himself?

5 A Yes, he was.

6 Q Just as an example, you understood that Mr.  
7 Delozier was a tainted witness?

8 A That's correct.

9 Q Was Mr. Stogsdill allowed to -- under the  
10 rules imposed, was he allowed to go interview Mr.  
11 Delozier, based on what information you had, to  
12 see what else was out there?

13 A Not until more recently. During the grand  
14 jury portion of this, he did not interview Mr.  
15 Delozier, except to go over documents that Mr.  
16 Delozier was going to introduce. I believe after  
17 the grand jury indictment, Sergeant Stogsdill did  
18 talk to Mr. Delozier once or twice about things  
19 that had happened since the grand jury.

20 Q Things that had happened since. Do you know  
21 what those were?

22 A I don't know.

23 Q Under the rules that were imposed, though -- I  
24 guess what I'm having trouble with is, is the  
25 concept of an investigator who is supposed to

1 investigate the cause of this accident -- was he  
2 allowed to do anything, really, in terms of  
3 unearthing new facts?

4 A Yes, he was, to a certain extent. Again,  
5 under the understanding that he could not ask a  
6 witness, for instance, "Did you hear Captain  
7 Hazelwood talking to the Coast Guard?" He  
8 couldn't ask that. But he could ask, say, a  
9 crewman, what was happening after the grounding,  
10 as far as, you know, "What did you observe? Were  
11 you on the helm?", that sort of thing.

12 Q So could he ask -- let's assume Mr. Delozier  
13 went out to the vessel right after the grounding.  
14 Could he ask Mr. Delozier, "What did you see when  
15 you got there?"

16 A I would say he could probably ask him -- no,  
17 he couldn't.

18 Q And why is that?

19 A Because, it would be my understanding, the  
20 only reason Mr. Delozier would have been there is  
21 because of the report of the spill, as opposed to  
22 crewmen, who would already be there anyway. So  
23 he could talk to crew who would be present on the  
24 Exxon Valdez, not as a result of the spill, but  
25 because of their job.

1 Q Could Mr. Stogsdill ask, let's say, bar or  
2 restaurant people whether they had seen Captain  
3 Hazelwood on the 23rd?  
4 A Yes.  
5 Q And he could ask them whether they saw Captain  
6 Hazelwood drinking on the 23rd?  
7 A Yes. Or before that, also.  
8 Q Could he ask crew members whether there were  
9 any efforts to get the ship off the rocks?  
10 A Yes.  
11 Q Could he ask crew members whether -- I'm sorry  
12 -- could he ask crew members who had been on the  
13 con at the time of the grounding?  
14 A Yes.  
15 (Pause)  
16 Q The diagram that Mr. Wade gave to you, which  
17 was then presented to the grand jury. Do you  
18 know when Mr. Wade made the observations which he  
19 incorporated in that diagram?  
20 A I think he was called out at 4:00 p.m.  
21 Q On which day?  
22 A On the day of the spill. The spill -- shortly  
23 after midnight. So, then, 4:00 p.m. He was  
24 called out -- I don't know when he actually got  
25 into the water and began diving, but sometime

1 after that.

2 Q And I take it Mr. Stogsdill would be allowed  
3 to ask Mr. Wade what he saw at 4:00 p.m., and  
4 what was happening at that point in time?

5 A Yes. It was my understanding that by then we  
6 would have known about the spill, if it would  
7 have been reported or not.

8 Q Okay. What was your understanding as to where  
9 the line was being drawn, in terms of what Mr.  
10 Stogsdill could ask about -- a chronological  
11 line, where that...

12 A My understanding was that as long as it was  
13 inevitable discovery, that is, that if we -- if  
14 it was something where we knew that someone would  
15 have known about the spill anyway, we could go  
16 into that area.

17 My understanding is, Mr. Linton's line was a  
18 little bit more conservative than that, and  
19 simply took in the whole 24 hour period.

20 Q Which line were you trying to follow?

21 A Well, I was trying, as much as I could, to  
22 follow Mr. Linton's, but there were -- for  
23 instance, Mr. Wade, I discovered after the fact,  
24 actually had started his investigation that same  
25 day.

1 (Pause)

2 Q Mr. LeBeau -- what was your understanding as

3 to what Mr. Stogsdill could ask him, in terms of

4 time, again?

5 A Anything that occurred after the 24 hour

6 period.

7 Q All right. Now, we talked about Mr. Delozier,

8 Mr. LeBeau, Mr. Beevers, Mr. Greiner, as being --

9 shorthand expression -- "tainted witnesses".

10 What was your understanding as to who the other

11 tainted witnesses were that you were going to

12 have contact with?

13 A I can't think of anybody offhand that I would

14 have had contact with. Of course, I was told

15 about Trooper Fox, that I shouldn't have any more

16 contact with him. And then the other...

17 Q That's the same with all the troopers, right?

18 A And all the troopers. If you gave me a name,

19 I might be able to tell you, but I can't think of

20 anybody.

21 Q How about Pat Caples. Did you have an idea as

22 to whether she was tainted or not?

23 A My impression was that she was not tainted.

24 Q How about Pilot Murphy?

25 A Same thing, not tainted.



1 Q Did you know whether or not any blood or urine  
2 tests had been performed on Captain Hazelwood?

3 A I know an alcohol test was performed. I  
4 didn't know what the method was, if it was blood  
5 or urine, or what.

6 Q How are -- I'm sorry, I didn't mean to  
7 interrupt you. How are you aware that such a  
8 test was performed?

9 A I knew that from information that I received  
10 prior to being assigned to the case. And I can't  
11 recall. I assume it was radio broadcast, or  
12 something, on the news.

13 Q Okay. Now, were you aware that the NTSB  
14 hearings were being conducted at approximately  
15 the same time as the grand jury you were  
16 conducting?

17 A I was aware of that, yes.

18 Q And how were you aware of that?

19 A Because we were trying to work out bringing  
20 witnesses up for grand jury -- the crew witnesses  
21 -- the people that worked on the Exxon Valdez.  
22 We were trying to arrange to bring them up to  
23 testify. And I don't remember who told me, but  
24 someone told me, "Well, they're going to be in  
25 Anchorage anyway to testify at the NTSB hearings

1 during this given week; would you be able to put  
2 them on the grand jury at the same time?", and I  
3 said, "Yes.", so that's how we arranged it.

4 Q Who is Kelly Mitchell? I'm not sure what  
5 department he works for, actually.

6 (3447)

7 A That -- I don't know.

8 (Pause)

9 Q Mr. Linton tells me he works for the Alaska  
10 Marine Highway System. Does that refresh your  
11 memory in any way?

12 A No.

13 Q Okay. When you  
14 presented the case to the grand jury, or began  
15 the grand jury proceeding, did you have in mind  
16 that there was sufficient evidence to justify an  
17 indictment for criminal mischief in the second  
18 degree?

19 A Yes, I did.

20 Q And what was your legal theory? What did you  
21 feel established the elements criminal mischief?

22 A Well, the element of risk of damage of over  
23 \$100,000.00 was pretty easy. Widely dangerous  
24 means -- the theory -- although the oil spill was  
25 not in the definition -- my reading of the

1 definition, it looked like oil spill would be  
2 considered "widely dangerous means".

3 And then the only other element, basically,  
4 would be the recklessness. And that was based  
5 upon the -- mostly on Mr. Beevers' interpretation  
6 of what occurred. His reading of the course  
7 recorder and the Bell Logger, and explained to me  
8 what occurred. It was mostly on that. You know,  
9 how the ship was handled before the grounding and  
10 after the grounding.

11 Q Okay. Well, if you were -- if you were  
12 talking to the jury, but saying it shorter than  
13 you would say to the jury, what acts were there  
14 of recklessness, as you understood it?

15 A My understanding in this -- I don't want to be  
16 limited, because this is off the top of my head.

17 Q Sure.

18 A But from the fact that Mr. Hazelwood had been  
19 drinking prior to going to work; had left Mr.  
20 Murphy alone on the bridge, while he was piloting  
21 it to Pilot Point, or Rocky Point, and he was not  
22 supposed to leave the bridge, it was my  
23 understanding. And Mr. Murphy also told me that  
24 a master usually never leaves the bridge while  
25 he's on the bridge.

1           The fact that Mr. Hazelwood left Mr. Cousins  
2 alone on the bridge during an important period of  
3 time. The fact that, although they were trying  
4 to -- apparently to avoid ice, that, instead of  
5 slowing down to avoid the ice, they were still  
6 going full speed ahead. And although they had  
7 permission to divert their course, they didn't  
8 have permission to continue diverting it. They  
9 should have changed course again once they got  
10 into the outbound -- inbound lane. The fact that  
11 Mr. Cousins was not qualified to be in charge  
12 while the tanker was in those waters.

13           And then after the grounding, various actions  
14 by Mr. Hazelwood, which included being full speed  
15 ahead for a long period of time. And, also,  
16 ordering the helmsman to jockey the rudder  
17 several times.

18 Q           What was the conclusion about -- on that  
19 latter point, the conclusion about what that  
20 indicated? The going full speed ahead while the  
21 vessel was on the reef?

22 A           That he was causing more damage.

23 Q           Was there -- I think it was in the grand jury  
24 where I saw the suggestion that he was trying to  
25 get it off the reef as a result...

1 A I believe Maureen Jones said it was her  
2 impression he was trying to get it off the reef.  
3 I'm not sure what he was doing. If he was trying  
4 to get it off or not. And, also, the other thing  
5 that I forgot was, having it on autopilot in  
6 those waters prior to the grounding.

7 (Pause)

8 Q You're not aware of how the issue of Captain  
9 Hazelwood's drinking first became the subject of  
10 investigation, are you?

11 A No.

12 Q You're not aware of how the issue of him  
13 leaving the bridge, or leaving Mr. Cousins in  
14 charge first became an issue for investigation,  
15 are you?

16 A I'm now aware how it first became an issue. I  
17 still don't even know how it happened. If he  
18 announced it, or he just left, or what. But I  
19 knew that he was not on the bridge at the time of  
20 the grounding.

21 Q Right. But the point I'm making is, you're  
22 not aware of how the authorities began  
23 investigating that issue?

24 A Oh, no. Uh-uh (negative).

25 Q Likewise, you're not aware of how they began

1           investigating the issue of whether or not Mr.  
2           Cousins was qualified to be operating the vessel  
3           in those waters?

4           A           I'm not aware of how that came up initially.  
5                       (Pause)

6           Q           After presenting the case to the grand jury,  
7                       had you had any involvement with it up until  
8                       today?

9           A           Yes, I have.

10          Q           Can you tell us the nature of that  
11                       involvement?

12          A           After the indictment was handed down on the  
13                       22nd, I believe, of May, I worked with Mr. Cole  
14                       in trying to basically educate him as to what I  
15                       knew so far. And we also tried organizing all of  
16                       the paperwork that we had received from Mr.  
17                       Linton. We also had some brainstorming sessions,  
18                       I guess you would call it. That would be with  
19                       Mr. Cole, myself and Sergeant Stogsdill, as to  
20                       where to go from here.

21                       I continued doing that until my vacation on  
22                       June 2. And then when I returned from vacation,  
23                       essentially, I haven't really been working on the  
24                       case, although, I'm available in case Mr. Cole or  
25                       Mr. Stogsdill want to talk to me.

1 Q Are any other lawyers in the Department of Law  
2 consulted about the progress -- obviously the  
3 case has been separated in a sense, into two  
4 teams, if you will. And Mr. Linton is handling  
5 the legal litigation related to the immunity  
6 issue. So, let's put that aside.

7 A Okay.

8 Q In the area that you've been involved in, have  
9 any other attorneys from the Department of Law  
10 been consulted, other than Mr. Cole, yourself,  
11 and Mr. Adams, as the case has progressed?

12 A As far as information to gather, or preparing  
13 for trial?

14 Q Either one, right?

15 A Not that I can think of, except Mr. Weeks did  
16 advise us that Mr. Cousins, apparently, was  
17 available for an interview if we wanted to talk  
18 to him. But, basically, we've pretty well limit  
19 it to the three of us.

20 Q Did you talk to Mr. Cousins?

21 A No.

22 Q When were you informed that he was available?

23 A I would say within the last three weeks.

24 (Pause)

25 Q Without discussing the substance of it, have

1           you been privy to any discussions regarding  
2           potential settlement or resolution of this case  
3           short of trial?

4           A           Yes, I have.

5           Q           And who did you...

6           MR. LINTON:   May we approach the bench for a  
7           minute.

8           THE COURT:   Come on right up to this  
9           microphone.

10          (4007)

11                        (Indiscernible whispered bench conference as  
12           follows:)

13          MR. LINTON:   (Indiscernible - whispering).

14          MR. FRIEDMAN:  That's why I asked her not to  
15           reveal the substance.  And all I wanted to ask was who  
16           she's talked to about it.  In other words, I think, if  
17           Mr. Guaneli and Mr. Weeks are still involved in that  
18           issue...

19          THE COURT:   (Indiscernible - whispering).  
20           So why don't you just step back.  Do you need  
21           (indiscernible - whispering) -- you're not going to go  
22           into the substance of it?

23          MR. FRIEDMAN:  No.  All I'm going to do is ask  
24           her about who she talked to.

25          THE COURT:   Okay.



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MR. FRIEDMAN: All right.

THE COURT: How is that (indiscernible -  
whispering).

MR. FRIEDMAN: There are several cases that  
say that the state's not to use information  
(indiscernible - whispering) in any way. And one of  
the ways they talk about, is to use it in terms of  
whether to enter into plea discussions or decisions  
made plea discussions.

THE COURT: (Indiscernible - whispering).

MR. FRIEDMAN: I think we want it as quiet as  
he does.

(End of whispered bench conference.)

(4130)

Q (Ms. Henry by Mr. Friedman:) Again, Ms.  
Henry, without discussing what was said, can you  
tell me the people that you discussed that issue  
with?

A Mr. Linton, Mr. Cole, Mr. McConnell and Mr.  
Weeks, yes.

Q Do you anticipate that you would be available  
to talk to Mr. Cole during the trial and  
presentation of the case at trial?

(Tape: C-3505)

(15)

1 A Yes. One of the goals, I guess, or purposes  
2 in making sure that I remain untainted is that I  
3 -- I would be available to discuss things with  
4 Mr. Cole, or even assist in the trial.

5 Q You indicated that you made the decision not  
6 to interview or talk to Mr. Cousins. Why was  
7 that decision made?

8 A To me it is still not clear as to what  
9 information we -- how the interview could be set  
10 up so that we do not become tainted.

11 And, the other problem is that this attorney's  
12 name -- I've lost it -- Richmond -- Mr. Richmond  
13 told us that he did not want us to do a complete  
14 interview, but only ask questions, you know,  
15 specific questions. The problem is, since we  
16 haven't seen any of Mr. Cousins' statements we  
17 can't ask just a couple of questions. We would  
18 have to go through the whole thing. And Mr.  
19 Richmond's not willing to have us do that.

20 Q Back for a moment to the issue of you  
21 attending the arraignment. At the time that you  
22 did that did you have any conversations with Mr.  
23 Guaneli or Mr. Weeks about how they wanted that  
24 handled?

25 A Yes. I did.

1 Q Okay. Who did you talk to?

2 A Mr. Weeks.

3 Q And what did he tell you?

4 A Well, actually, it was a -- it was a mutual  
5 type of discussion. We were discussing whether  
6 or not we should offer our services, or the  
7 trooper services for protection. And if we  
8 should have media courtroom -- if I should set it  
9 up that way. And, also, talk to Mr. Dennis, who  
10 was, then, local counsel for Mr. Hazelwood to  
11 arrange -- when he would fly in, and if he could  
12 fly out again.

13 Q Okay. Was Mr. Guaneli in Anchorage at that  
14 time? In other words, did you talk to him in  
15 person?

16 A I don't recall talking to him in person.

17 Q Okay.

18 A I don't recall talking to him, actually, about  
19 this issue. It's possible, but I don't recall  
20 it.

21 Q I'm sorry. You said Mr. Weeks.

22 A Right.

23 Q Was Mr. Weeks in Juneau then?

24 A Yes. He was in Juneau.

25 Q Okay. So, you talked with him over the phone?

1 A Yes.

2 MR. FRIEDMAN: Could I have just a minute,

3 Your Honor. I think I'm...

4 (Pause)

5 Q (Ms. Henry by Mr. Friedman:) I don't have any

6 other questions. Thank you.

7 THE COURT: Mr. Linton.

8 (Pause)

9 (120)

10 REDIRECT EXAMINATION OF MS. HENRY

11 BY MR. LINTON:

12 Q Help me locate Mr. Beevers' testimony in

13 this Grand Jury transcript a second, please.

14 A It begins at 1 -- at page 134 of Volume I.

15 (Side conversation)

16 (Pause)

17 Q (Ms. Henry by Mr. Linton:) It's 70 pages,

18 then, on my version. Let's try -- you start at

19 134.

20 A Yeah.

21 Q 200.

22 (Side conversation)

23 A What -- which exhibits are you looking for?

24 Q (Ms. Henry by Mr. Linton:) I was looking for

25 the reference to (pause) Bell -- Bell Log, which

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was Exhibit 15.

(Pause)

UNIDENTIFIED SPEAKER: 6.

A Exhibit 15?

Q (Ms. Henry by Mr. Linton:) Yes, Grand Jury Exhibit 15, Exhibit 3 in these proceedings.

(Side conversation)

(Pause)

A I'm not finding it.

(Pause)

(Side conversation)

A Oh, here. All right. It was before the break.

(Pause)

Exhibit 15?

Q (Ms. Henry by Mr. Linton:) Okay.

(Side conversation)

A Where do you want to start?

Q First off, now, first off. Okay. When you had Captain Beevers appear before the Grand Jury did you ask him about a series of documents which have been marked in this proceeding as Exhibits 3, 6 and 5?

A Yes. I did.

Q Those were exhibits which had been introduced

1 by Mark Delozier as things he'd taken from the  
2 vessel before the Grand...

3 A Yes...

4 Q ...Jury.

5 A ...they are.

6 (410)

7 Q And in reaching what opinions and conclusions  
8 he had before the Grand Jury, it was the  
9 documents that were the source of those  
10 conclusions as far as you know?

11 A Yes. As far as his conclusions of the route  
12 of the Exxon Valdez.

13 He also -- in general, conclusions or opinions  
14 also included his own experiences.

15 Q On what page does he begin his discussion,  
16 then, of the first of those exhibits, Exhibit 15?

17 A I believe that would be page 159 of the first  
18 volume. Actually, I think before that.

19 (Pause)

20 All right. At page 156 and 157 he starts  
21 talking about the course recorder and the Bell  
22 Log. And then, I start asking him what those  
23 are.

24 Q And the Bell Log is which document?

25 A I believe -- I got them mixed up, but I

1 believe it's Exhibit 3, which is the printout of  
2 the bells.

3 Q The computer type printout?

4 A The computer printout as opposed to the  
5 written log...

6 Q Which is Exhibit 6?

7 A ...which is Exhibit 6.

8 Q Is there a relationship between the two?

9 A It's my understanding that there is a  
10 relationship. The computer, obviously does it at  
11 the time that a bell occurs. The handwritten  
12 document, Exhibit 6 -- it's my understanding they  
13 attempt to -- to enter those -- that information  
14 near the time that it occurred. Sometimes they  
15 may have to go back and fill in.

16 Q And, in the course of his presentation did he  
17 explain how to interpret the Bell Log, or the  
18 computer printout?

19 A Yes, he did.

20 Q And did he explain the course -- the -- the --  
21 the document that has Tally Book on the front,  
22 Exhibit 6?

23 A Yes, he did.

24 Q And how to interpret that?

25 A Yes.

1 Q And did he explain the course recorder, which  
2 is...

3 A That is...

4 Q ...Exhibit...

5 A ...Exhibit 5.

6 Q ...5? He explained that?

7 A Yes, he did.

8 (506)

9 MR. LINTON: Judge, at this point perhaps  
10 rather than belaboring the point with the witness, let  
11 me make a request.

12 In questioning the witness yesterday, Your  
13 Honor asked Mark Delozier how to interpret check marks  
14 in the book, specifically the check marks in the Tally  
15 Book for the time period after the grounding of the  
16 vessel on those entries which had been made before the  
17 entries, but which, chronologically fell afterwards.

18 THE COURT: I remember them.

19 MR. LINTON: There is a point in the Grand  
20 Jury transcripts where Mr. Beevers explains those.

21 I -- I guess the question is -- assuming that  
22 the Grand Jury is -- proceedings are before the court,  
23 then, at this juncture whether Your Honor takes that --  
24 those explanations as admissible in these  
25 proceedings...



1 MR. FRIEDMAN: I don't have any problem with  
2 that.

3 MR. LINTON: ...for the truth of those,  
4 rather...

5 THE COURT: So we don't need to call the...

6 MR. LINTON: ...an expert.

7 THE COURT: ...Mr. Beevers as a witness in  
8 this proceeding?

9 MR. LINTON: Well, as to that issue, right.

10 THE COURT: Right. As to just that issue with  
11 the...

12 MR. LINTON: Right.

13 THE COURT: ...marks on the -- the log?

14 Okay. Good. I'll just accept that. And that  
15 starts at page 156 through what page?

16 MR. LINTON: You have to go through each of  
17 the three documents to which I've referred, so it's --  
18 you go through the computer printout, and you go  
19 through the course recorder and you go through the  
20 Tally Book, which is the -- the handwritten -- Exhibit  
21 6 that I have placed on -- handed to Your Honor, there.

22 THE COURT: Any objection to using that as  
23 part of the evidence in this proceeding?

24 MR. FRIEDMAN: No, Your Honor.

25 THE COURT: Okay. I'll do it.

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(Pause)

MR. LINTON: Nothing further, Your Honor.

Oh, excuse me. Yes. There was one -- one other line of questioning, if I may?

I'd ask that this be marked as the next state's exhibit, please.

(620)

THE CLERK: state's 31.

Q (Ms. Henry by Mr. Linton:) Ms. Henry, do you recognize Exhibit 31 as the document you received as having been screened by me before your presentation to the Grand Jury? Not necessarily the whole presentation, but some -- some portion of it where Mr. Wade tes...

A I do recognize the document and I know that I got it from you. I just -- I'm not sure when I got it.

Q Before Grand Jury, or after Grand Jury, do you recall? Specifically the Grand Jury testimony of Mr. Wade?

A It seems to me that I did have this during the Grand Jury presentation, but I don't recall. This -- this is like the diagram that he drew, so I can't remember if I knew it from the diagram he drew, or from this.

1 MR. LINTON: Nothing further, Your Honor. I'd  
2 ask that be admitted, or at least identified so --  
3 admitted, even with that foundation, I'd -- that she  
4 doesn't know whether she saw it, or not.

5 MR. FRIEDMAN: That's fine.

6 EXHIBIT 31 ADMITTED

7 THE COURT: Without objection 31's admitted.  
8 (680)

9 RECROSS EXAMINATION OF MS. HENRY

10 BY MR. FRIEDMAN:

11 Q Ms. Henry, your understanding was that Mr.  
12 Beevers testified -- gave his opinions to the  
13 Grand Jury based upon the documents he presented  
14 to them, and his own past experiences, is that  
15 correct?

16 A That is my understanding, yes.

17 Q You don't know to what extent, if any, he may  
18 have relied upon searches of the vessel he  
19 participated in, do you?

20 A I know that he would have relied upon his own  
21 observation of the bridge of the Exxon Valdez,  
22 because he -- he said that there were some  
23 changes since he was a captain. So, I know that  
24 he included that.

25 Q Beyond that, you don't know what -- again, I

1 don't want to taint you, but assuming Mr. Beevers  
2 did participate in a search of the vessel, which  
3 can be considered a tainted search, you don't  
4 know to what extent he may have relied upon what  
5 he learned in that search for reaching certain  
6 conclusions, or opinions, do you?

7 A I don't know that he was well aware of the  
8 taint/untaint problem.

9 Q Uh-huh (affirmative).

10 A But, I don't know -- I can't tell you what he  
11 -- what, in addition, he relied on to -- from  
12 I've already told you.

13 Q Okay. Just one other question. Was it your  
14 understanding that Mr. Stogsdill could get leads  
15 from the Coast Guard investigators? In other  
16 words, he could talk to the Coast Guard  
17 investigators about what they had found?

18 (732)

19 A To a limited extent I think he could have. He  
20 -- he -- it was clear to him that he couldn't  
21 talk to, or get leads from the investigators who  
22 had received information during that time period.

23 Q Uh-huh (affirmative). I guess what I'm  
24 getting at is for the troopers, you said he was  
25 not to talk to any troopers who'd been working on

1 the investigation up until the time you got  
2 involved. Was that same restriction placed on  
3 him with regard to U. S. Coast Guard people? In  
4 other words, any U. S. Coast Guard investigators  
5 who'd worked on the case up until April 12th --  
6 or up through April 12th?

7 A It was my understanding that he could not talk  
8 to anyone who had information in that 24 hour  
9 period.

10 Now, I don't know if there were other Coast  
11 Guard people that came into the investigation  
12 after that time...

13 Q Uh-huh (affirmative).

14 A ...or not.

15 Q Okay. Let -- let me make sure I understand.  
16 So, if there was a U. S. Coast Guard investigator  
17 who had information about that initial 24 hour  
18 per -- who -- who was on the scene, or had done  
19 something in that initial 24 hour period, Mr.  
20 Stogsdill is not to contact that person?

21 A No. He could contact him. He had to just  
22 make sure to limit his contact. For instance,  
23 Mr. Delozier...

24 Q Uh-huh (affirmative).

25 A We knew, you know, that Mr. Delozier had

1            tainted information. And, I assumed it was based  
2            upon initial investigation. However, Mr.  
3            Stogsdill could talk to Mr. Delozier as long as  
4            they didn't talk about that 24 hour period.

5            Q            Okay. But, the rule as to the troopers was  
6            broader than that?

7            A            Yes.

8            Q            Couldn't talk to the troopers at all?

9            A            That's correct...

10          Q            Who had been...

11          A            ...beca...

12          Q            ...working...

13          A            That's correct.

14          Q            Okay. Was the rule, then, the same for the  
15          NTSB investigators and the DEC investigators as  
16          it was for the Coast Guard investigators?

17          A            Yes. He could contact them, but it had to be  
18          limited.

19          Q            Okay. And did you have any understanding as  
20          to why the rule was more restrictive as to the  
21          troopers than as to these other investigators?

22          A            Yes. Because we viewed the Coast Guard people  
23          and the DEC people not as investigators, but as  
24          potential witnesses.

25          Q            Uh-huh (affirmative).

1 A And it was important that we talk to them as  
2 potential witnesses, whereas we didn't really  
3 need to talk to the troopers because they weren't  
4 witnesses. They were simply asking witnesses  
5 questions. That was my understanding. So, that  
6 was the difference.

7 Q Did you know whether any of the troopers were  
8 witnesses, themselves?

9 A Not that I know of.

10 Q Okay. Thank you. I don't have any other  
11 questions.

12 MR. LINTON: Nothing further.

13 THE COURT: You can step down. You're  
14 excused.

15 (0858)

16 (Witness excused.)

17 THE COURT: Let's take what will probably be  
18 our last break of the day.

19 THE CLERK: Please rise. This court stands in  
20 recess.

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

22 (0863)

23 (On record - 12:35 p.m.)

24 THE COURT: Call your next witness.

25 (Oath administered.)

1 A I do.

2 MICHAEL JAMES OPALKA  
3 called as a witness in behalf of plaintiff, being first  
4 duly sworn upon oath, testified as follows:

5 THE CLERK: Please be seated. Sir, would you  
6 please state your full name and spell your last name.

7 A Michael James Opalka, O-p-a-l-k-a.

8 THE CLERK: And your current business mailing  
9 address?

10 A PO Box 777, Girdwood, Alaska.

11 THE CLERK: And your current occupation?

12 A Alaska state Troopers.

13 THE CLERK: Thank you.

14 (0918)

15 DIRECT EXAMINATION OF TROOPER OPALKA

16 BY MR. LINTON:

17 Q How long have you been a state trooper?

18 A Approximately ten years.

19 Q Earlier this year, were you assigned to be  
20 present at the National Transportation Safety  
21 Board hearings at the Captain Cook Hotel here in  
22 Anchorage?

23 A Yes, I was.

24 Q What was your purpose in being there?

25 A To be present during the hearings as a



1 representative of the state and, if need be, take  
2 any kind of security measures necessary, outside  
3 the realm of the private security that was hired.

4 Q Was such a thing required of you any time  
5 while you were there?

6 A There was one incident, yes.

7 Q Were you assigned responsibilities for  
8 listening to and recording the testimony in some  
9 fashion of any of the witnesses there?

10 A Not particularly that, no. I did, out of my  
11 mine edification.

12 Q For your own interest?

13 A Yes.

14 Q Did you transmit that information to anybody  
15 else?

16 A No, I did not.

17 Q Specifically, did you transmit it to any other  
18 troopers who you knew to be working on the Exxon  
19 Valdez oil spill case or Captain Hazelwood's  
20 case?

21 A I relayed some information relevant to my  
22 position or our position to the other trooper  
23 that was supposed to relieve me after a couple of  
24 days, yes.

25 Q Who was that?

1 A Hans Rolly.  
2 Q And his function was what?  
3 A Essentially the same as mine.  
4 Q But neither of you had any responsibility for  
5 engaging in gathering information and submitting  
6 it to troopers assigned responsibility for the  
7 case?  
8 A No, sir.  
9 MR. LINTON: Nothing further, judge.  
10 (0990)  
11 CROSS EXAMINATION OF TROOPER OPALKA  
12 BY MR. FRIEDMAN:  
13 Q Do you recall what time period you were at the  
14 hearings? They went on for...  
15 A There was Monday and Tuesday and the time was  
16 from the time it commenced, I think it was around  
17 eight o'clock, until seven or eight in the  
18 evening. It was rather a lengthy process each  
19 day.  
20 Q Okay. And you were there, then, the first two  
21 days?  
22 A Yes.  
23 Q And no other times?  
24 A No other times.  
25 Q And I think you said that you did listen to

1 what was going on during those...

2 A Yes. Thank you. I don't have any other  
3 questions.

4 MR. LINTON: Nothing further.

5 THE COURT: You may step down, your excused.

6 (1010)

7 (Witness excused.)

8 (Pause.)

9 MR. LINTON: Call Brent Cole, Your Honor.

10 (1055)

11 (Oath administered)

12 A I do.

13 BRENT COLE

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

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

18 A My name is Brent Cole, C-o-l-e.

19 THE CLERK: And your current business mailing  
20 address?

21 A 1031 West 4th Avenue, Suite 520.

22 THE CLERK: Your occupation, sir?

23 A Assistant District Attorney.

24 MR. LINTON: I'd ask that an affidavit be  
25 marked as the next state's exhibit.

1 THE COURT: The same use as Mary Anne Henry's?

2 MR. LINTON: Please, Your Honor.

3 THE COURT: Any objection?

4 MR. FRIEDMAN: No, Your Honor.

5 THE COURT: 32 was it?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: It's admitted.

8 EXHIBIT 32 ADMITTED

9 DIRECT EXAMINATION OF MR. COLE

10 BY MR. LINTON:

11 Q Explain what exposure you might have had to  
12 the case prior to being assigned to work on the  
13 prosecution of Captain Hazelwood on April 28,  
14 1989?

15 MR. FRIEDMAN: Excuse me, Your Honor. I  
16 neglected to bring something up when Ms. Henry finished  
17 testifying. I just needed to get it on the record and  
18 make sure it's not going to present a problem.

19 Mr. Linton and I talked about this this  
20 morning. There may be some trooper notebooks which  
21 have not been turned over to the defense, and it's not  
22 clear yet. He and I have an agreement that if after --  
23 if there are other trooper notebooks, and after  
24 reviewing them this evening I wish to recall Ms. Henry  
25 or Mr. Cole to ask about things in those notebooks,

1 that the state would have no objection.

2 I guess what I'm asking for is permission from  
3 the court -- that the court will honor that agreement  
4 so that I don't have to ask for a continuance now or  
5 something of the kind.

6 THE COURT: Agree?

7 MR. LINTON: I agree. I agree.

8 THE COURT: I'll accept it.

9 MR. LINTON: I think we've given everything,  
10 but I agreed to check it one more time, and if there is  
11 something new, I agree it's appropriate.

12 THE COURT: (Indiscernible - unclear).

13 MR. FRIEDMAN: Yes. Thank you.

14 Q (Mr. Cole by Mr. Linton:) Tell us about your  
15 exposure, please.

16 A Judge I was involved in the trial of state of  
17 Alaska v Dan Finnigan and George Miller, as I set  
18 out in my affidavit from March 2 through April 5  
19 of 1989.

20 It was a complicated robbery case. Many  
21 witnesses. A lot of immunity. I was -- it was a  
22 case that -- at the time oil spill was right when  
23 we were at the end of it, or getting close,  
24 somewhere in there -- in the middle of it. My  
25 exposure was not that great because I wasn't

1 reading the newspaper I was working until 10:00  
2 or 11:00 at night getting up early; coming in at  
3 6:00 in the morning; preparing the case; working  
4 in court until 2:00 o'clock, 1:00 o'clock,  
5 something like that.

6 There were a couple incidents that occurred  
7 before I went on vacation. I think only one that  
8 I remember. I distinctly remember being in Judge  
9 Rowland's courtroom -- or, not his courtroom, in  
10 his office. And Mr. Schapira was representing  
11 Mr. Miller, and Mr. Dieni, who was representing  
12 Mr. Finnigan, and the judge and I were there.  
13 And we were talking about something and it had to  
14 do with the trial.

15 At that time Judge Souter walked into the  
16 office. And Judge Souter said something to the  
17 effect of, "There was a blood test taken."

18 I don't remember if it was mentioned what the  
19 result was. I don't remember anything more than  
20 that. And my feelings are that it was indicated  
21 that he had been drinking, and that there was  
22 some proof. I don't know when the blood test  
23 was taken. It wasn't said.

24 That is all I can remember as far as any  
25 exposure prior to me going on vacation on the

1 7th. I believe I read some of the newspapers. I  
2 find it hard to believe that I didn't. I grew up  
3 in Alaska. But I don't remember anything that  
4 was involved.

5 I was in the office about 9:00 o'clock or  
6 10:00 o'clock one night. I received a phone call  
7 from Mr. Linton, who was in Valdez. And I knew  
8 he was in Valdez. We started talking and he  
9 needed some help. And he said -- I said, "Well,  
10 how are things going?"

11 And he generally told me that things were  
12 pretty screwed up. The civil attorneys didn't  
13 seem to know how to do a case and build a case.  
14 He was helping them with getting evidence of  
15 damages. Because I remember, he told me that he  
16 had the camera people go out ahead of the oil  
17 that was travelling so that they could get  
18 footage of the areas and how they looked before  
19 the oil hit -- before the oil came there.

20 He asked me to have Anita, who is his  
21 secretary, start collecting all of the Daily News  
22 Miner; Anchorage Times papers; the Wall Street  
23 Journal, as I remember; and the New York Times  
24 papers. He asked me to pass that message along.

25 THE COURT: When was this call to you, Mr.

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Cole?

A Judge, it was some time -- several days after Mr. Linton had gone to Valdez. I assume it was one of the nights -- it had to be between the 24th, when this occurred -- well, actually, it had to be between the time Mr. Linton went to Valdez and the 5th, when my case ended. Because I was working on the George Miller and Finnigan trial at that time. That's all we talked about that I could remember.

I then, on Friday the 7th, I had planned to take an expedition on Mt. Bona, which is in the Wrangell Mountains. I took that Friday off. We gathered gear; got our stuff ready; and we left for McCar -- Chitna. And we drove all day -- got up early in the morning Saturday, drove and flew in to a camp called the Ultima-Toolie Lodge (ph), which is past McCarthy about 60 miles, where some people there are hunting guides, and they also fly parties in to do mountaineering expeditions.

When we were there, there were no newspapers, no TV, and we were only in camp for about a day, but there was a shortwave radio, and you could pick up boats that were out in Prince William



1           Sound, and I'm not really sure how that happens.  
2           But I do remember that there were communications  
3           on the radio about some of the clean-up  
4           activities. And as I remember, some boat had  
5           capsized.

6           I don't remember talking about anything in the  
7           case then. We then were taken up the next day to  
8           -- I can't even remember the name of the glacier.  
9           We stayed there until the 22nd -- it was two  
10          weeks that we were without communication with  
11          anybody. During that time we had one tran radio,  
12          but it was just for jets that were flying above.  
13          If we had any safety problems we could contact  
14          them.

15          We came out on the 22nd -- arrived in  
16          Anchorage on the 22nd -- the night of the 22nd,  
17          and between then and the time that I was asked to  
18          try this case, I remember one other incident.  
19          And that happened to be either -- I can't  
20          remember if I was driving to work; whether I was  
21          watching the news; but I remember hearing a tape  
22          recording of a voice that I was -- as I remember,  
23          was told was Captain Hazelwood's. I don't  
24          remember what was said. I don't remember in what  
25          context it was.

1 I was contacted on a Friday. I believe it was  
2 April 28 in the afternoon by Mr. McConnell. He  
3 asked me if I was going to be in the DA's office  
4 for the next 6 to 8 months. Whether I would be  
5 interested in handling this case. I expressed an  
6 interest in doing it. And at that time received  
7 instructions about how I would be proceeding per  
8 Mr. Linton's plan.

9 Q What were you told?

10 A I was told that I was not to read the  
11 newspapers. I was told that I was not to listen  
12 to the news. I was told -- well, let me -- I  
13 need to qualify that. I was not to listen to the  
14 news or read the newspapers about anything that  
15 concerned the Exxon -- or the Exxon Valdez Oil  
16 Spill.

17 I was explained the reasons behind that, and I  
18 was told that I was not to meet or talk to other  
19 people about it. I was told I was not supposed  
20 to talk with any of the attorneys in our office.  
21 In fact, there was a memo that was sent around  
22 that I saw from Mr. Linton that essentially  
23 stated that -- I'm sorry -- Ms. Henry, myself,  
24 Sergeant Stogsdill. I guess -- I believe Sam  
25 Adams' name was on that, also -- or was added

1 later.

2 We were not to -- the attorneys in the office  
3 were not to contact us or talk to us about this  
4 case. I was told that I was not supposed to talk  
5 with other people who came up and talked to me  
6 about the facts of this case.

7 (1570)

8 Q Could you tell us what you had to do, if  
9 anything, with the presentation of the case to  
10 the grand jury?

11 A I got assigned the case on April 28. Certain  
12 parts of the grand jury proceeding happened  
13 almost immediately after that. And my  
14 involvement in that was minimal.

15 I spoke with Bob Beevers, the expert that Mr.  
16 Linton had talked to. I have to explain to you a  
17 little bit. I grew up in Fairbanks. I had never  
18 been near water. I knew nothing about the tanker  
19 industry. Didn't know the difference between a  
20 chart and a map. And so I sat down with Mr.  
21 Beevers and said, "Listen, you need to explain  
22 this to me because I don't understand what's  
23 going on at all. That was pretty much all I did  
24 for the initial part.

25 The second part of the grand jury proceeding,

1 in my mind, is the part where the tanker captains  
2 -- or the NTSB hearings were coming up and I  
3 helped coordinate the witnesses that were going  
4 to be called in our case.

5 In fact, Mary Anne Henry and I split up the  
6 duties, where I said, "I'll take these witnesses  
7 and draw up the questions for them -- for you,  
8 and you take these witnesses and you draw up  
9 those questions. And then we'll criss-cross to  
10 see if there's anything that we need -- we think  
11 we're forgetting."

12 Q These witnesses were crew members of the Exxon  
13 Valdez?

14 A Crew members of the Exxon Valdez.

15 I can't remember if I received permission -- I  
16 believe I did -- from Judge Shortell to sit in on  
17 the grand jury presentation, the second part,  
18 which I believe was the 17th.

19 My memory is that it happened on -- that  
20 Monday witnesses started coming in. We -- and  
21 Tuesday the NTSB hearing started. Monday night I  
22 went to the Captain Cook with Sergeant Stogsdill  
23 and he was going to be handing the subpoenas --  
24 we had worked out an arrangement with Exxon to --  
25 that they would make these people available to

1 us. And so he was going to be handing them both  
2 the grand jury subpoena and a trial subpoena.

3 I was also going to be introduced to the  
4 people so that I could have a feeling of, you  
5 know, who they were; they would know who I was.  
6 And so we went up to the floor. I can't remember  
7 which one it was in the Captain Cook.

8 The security person for Exxon was a man by the  
9 name of Jim Sturdevant, I believe. We would say,  
10 we would like to give this person their subpoena.  
11 He'd walk down the hall; pick up that person;  
12 come in.

13 And attorney by the name of Daegle (ph) was in  
14 the room. He represented Exxon, and he seemed to  
15 represent these people, too. He was kind of a  
16 person that helped them out. What we would do is  
17 they would come in; I would just stand there;  
18 Sergeant Stogsdill would hand them a subpoena;  
19 explain to them what it meant; ask them to  
20 contact us on Tuesday; pick up their statements  
21 so they could re-read it. Indicated to them that  
22 we were interested interviewing them before they  
23 testified. And we did that for a number of the  
24 witnesses, and I can't remember which ones we  
25 actually ended up serving that night.

1           The next day -- none of the witnesses agreed  
2           to talk to us except for Mr. Kagan, who was  
3           represented by an attorney from Louisiana, and I  
4           can't remember his name. And Mr. Hensley from --  
5           he used to be a public defender here and that's  
6           how I knew him.

7           We went over in the afternoon to speak with  
8           Mr. Kagan, and it was Mr. Hensley, the attorney  
9           from Louisiana, Mr. Kagan, Sergeant Stogsdill and  
10          myself.

11          The NTSB hearings were playing at that time.  
12          And we started talk -- in fact, they were on the  
13          TV and we started -- and I informed the attorney  
14          that we couldn't hear what was going on, and we  
15          asked him to turn it off. We spoke with Mr.  
16          Kagan for a short time there.

17          The next day I received permission from Judge  
18          Shortell, I believe, to sit in on the grand jury  
19          proceeding. That was a Wednesday. That that was  
20          when the crew members were called, except for  
21          maybe one or two other people.

22          (1950)

23                 THE COURT: Were these the individuals who  
24                 refused to be interviewed; the crew members?

25                 A           Yeah. Essentially -- yeah. I didn't get a

1 chance to interview them at all. We -- I just  
2 sat in the courtroom in the back.

3 At one point Ms. Henry -- I can't remember if  
4 she -- I think she started coughing and couldn't  
5 stop. And so I said, "Well, why don't you let me  
6 take over." And it was Mr. Claar. And I did the  
7 testimony of Mr. Claar.

8 I was involved in some of the decision making  
9 involving the indictments and sat in on the last  
10 day when it was the next hearing, which was the  
11 next week. It was, like, next Tuesday. The  
12 Tuesday following that. And that was my  
13 involvement in the grand jury.

14 Q What did you and/or Mary Anne Henry have to  
15 work with by way of reports or documents, to know  
16 who to call or to prepare witnesses for the grand  
17 jury?

18 A Well, who to call, for me -- I was not really  
19 involved -- I wasn't involved in the first part  
20 of who was called in the first couple days. Who  
21 was called in the second part, the crew members,  
22 I was involved in to the extent -- and we were  
23 limited by who Exxon had flown up for the NTSB.  
24 Those were the only people that we called.

25 What we had to work with was a trooper

1 interview. We received FBI interviews either the  
2 day before, on Monday or Friday. It was -- I  
3 can't remember if it was Monday or Friday, but it  
4 was right before the grand jury. We had various  
5 documents from the Exxon Valdez itself. Course  
6 recorders, log books, bell loggers, we had maps,  
7 charts, excuse me. We -- I spoke with Beevers,  
8 as I told you before.

9 The other area of things that we had were  
10 discussions between myself and Sergeant  
11 Stogsdill, and discussions between Mary Anne  
12 Henry and myself and the three of us.

13 Q I mean the question to apply to information or  
14 police reports furnished, as things that you had  
15 -- when you say you had conversations with them,  
16 what do you mean? Could you describe what you're  
17 talking about.

18 A Well, we just shot around and did a lot of  
19 hypotheticals. What if?

20 Q Explain why you had to do hypotheticals?

21 A Well, one of the critical periods is the  
22 period between the time Captain Hazelwood left  
23 the bridge -- first of all, we had no statements  
24 from Captain Hazelwood. So we were trying to  
25 figure out what was going through his mind. We



1 had -- what we did have is the statements from  
2 Radtke, who was out on the bow. We had Claar's  
3 statements. We had Kagan's statements and  
4 Maureen Jones. We had those four people that  
5 told us what went on -- oh, and we also had  
6 Murphy, who told us what went on on the bridge  
7 that evening.

8 Q If you read -- there is two characters  
9 missing. We knew that Captain Hazelwood was up  
10 there for a while and we knew Greg Cousins was  
11 there. We didn't have anything from Greg  
12 Cousins. We didn't have anything from Captain  
13 Hazelwood. And if you read Mr. Kagan's  
14 interview, it has -- you have a hard time  
15 picturing what's going on on the bridge.

16 So we sat around and tried to figure out what  
17 was going through these two guys' minds when this  
18 ship turned and went 180 degrees -- on a heading  
19 of 180 degrees.

20 We had no statements of what happened after  
21 the ship went aground, except we had a brief  
22 statement by Maureen Jones and a brief statement  
23 by Kagan. And we have the course recorder that  
24 shows the twisting. And we've got the instrument  
25 that shows the tanker being put full ahead. But

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we don't have any reasons for that.

So we sat back there and thought up hypotheticals of, well, maybe he was trying to do this. Or, maybe he was trying to do that. That's what I mean by sitting with Mary Anne Henry and with Sergeant Stogsdill.

There's a couple things that go on in this thing. Mr. Linton had not allowed us to talk with any attorneys.

One of the things that we do in the District Attorney's Office, is when we're -- when we have cases, we sit there and we talk. "Well, I've got this problem. What do you think about this?"

Well, it's not uncommon after work to sit around and say, "This is an issue that we have, or I have; how would you do this? Or, how would you have done this better? Or, how do I present this?"

So we really were narrowed down and to who we could talk to. We couldn't talk to Mr. Linton; we couldn't talk to anybody else. So it was just Mary Anne Henry, myself, Jim Stogsdill, and then a little bit after that, Sam Adams.

All we had as far as police reports were the interviews by the troopers of the crew members

1 and the FBI interviews. That's what I remember.

2 Q Had there been other aspects to this unusual  
3 nature of the case, like what you're describing?  
4 The situation that you had been placed in by the  
5 restrictions placed on you?

6 A You mean, how I was affected? How I dealt  
7 with this case?

8 Q Yes.

9 A Sure. A number of things. Whenever you get  
10 assigned to a case, particularly of this  
11 magnitude publicity, I've had friends from back  
12 east that I went to college with send me letters  
13 to my home address with clippings.

14 Q When I open up the letter, I see the clipping.  
15 I take it; fold it up; put it in an envelope.

16 My folks -- my dad's an attorney in Fairbanks;  
17 my uncle's an attorney in Fairbanks. They ask me  
18 questions. My mom asks me questions. My mom  
19 sends me clippings, what's going on in Fairbanks.  
20 I had to tell her to stop.

21 I really didn't talk with the case much about  
22 her though [sic]. I did talk a little bit with  
23 my dad just to explain the immunity issue.  
24 Because I can explain these things to him and he  
25 understands. Not that my mom doesn't understand,

1 but it would take longer and I could tell my dad  
2 about immunity, and independent source, and  
3 things like that. I'm probably gonna get in  
4 trouble for this.

5 But -- so in that respect, it was always  
6 telling him what we were doing, but it was never  
7 -- if he would ever ask about -- I just told him  
8 from the beginning, I can't have you tell me  
9 anything about the case. I can tell you what I'm  
10 doing, and what steps we're taking, and why we're  
11 taking them. And I would explain that to him.

12 People in town, as it became apparent that I  
13 was the one that had been assigned the trial in  
14 this case -- you can't help but have people come  
15 up to you and start talking to you about it. I  
16 basically told those people, "Look, I just can't  
17 talk about it for reasons that will become  
18 apparent later."

19 Newspapers. I didn't -- I bought a new house  
20 in July; I don't get any newspapers. I've read  
21 papers during that time, but every time I would  
22 look at a paper, if the headline looked like it  
23 had anything to do with the oil spill, I just  
24 didn't read it, I just went on.

25 I've had a couple roommates during this time.

1 Explained to them, if we were watching the news  
2 or something like that -- something about this  
3 case came up, I would have to walk out of the  
4 room, or they would go up and turn the volume  
5 down until the thing got taken care of. That's  
6 how I've had to isolate myself against other  
7 people.

8 It's caused a little bit of dissention in the  
9 office. Mr. Linton and I, on several occasions  
10 have had some real heated arguments -- I would  
11 call them arguments -- about turning over the  
12 NTSB hearing stuff.

13 When we were preparing for the grand jury we  
14 learned that there was going to be a  
15 representative from the state of Alaska there who  
16 was not going to be an attorney, and that there  
17 was going to be an attorney here. And my feeling  
18 was, "We should have somebody there. This is  
19 going to be a great opportunity to find out,  
20 because we didn't have statements of Mr. Cousins,  
21 and we didn't know whether Mr. Hazelwood was  
22 going to testify or not. At least at the  
23 beginning.

24 So we said, well, we should draw up questions  
25 for the state attorney to ask the crew members.

1           And we should have somebody there.  Either Mr.  
2           Linton or another attorney.  And we were just  
3           told, "You will not go near the NTSB hearings;  
4           you will not be there; you will not ask anybody  
5           any questions.  You will not contact the state  
6           attorney that's dealing with the matter.  And  
7           that caused some real problems for me, because I  
8           looked at the NTSB as something independent and  
9           Mr. Linton didn't.

10           We then were contacted at one point by the  
11           Department of Justice.  Two attorneys, Mark Nagle  
12           -- or, -- is it Mark Nagle?  Mr. Nagle and Mr.  
13           Harmon.  They were looking at an investigation  
14           into this incident.  They were conducting an  
15           investigation.

16           We had a meeting with them -- Mary Anne Henry,  
17           myself, those two individuals and an FBI agent  
18           named Steele.  And when we first met, I remember  
19           one of our big concerns is that this hearing was  
20           not going to take place.  And we didn't know  
21           whether we should raise a Criminal Rule 16  
22           discovery motion; that Mr. Linton should write it  
23           to you, or to whoever the assigned judge was,  
24           asking that the information that we had not  
25           received, or that we knew was out there -- we

1           suspected was out there, whatever way you want to  
2           put it -- would get turned over to us, because we  
3           weren't sure that the defense was going to raise  
4           this.

5           So when I went over and talked with these two  
6           people, the first thing I said was, "Have you  
7           guys ever done this before?"

8           They told us about a case down in Arkansas or  
9           Alabama -- down south where a tanker farm had  
10          burst, and there was huge big oil spill. And  
11          they -- but their facts were a little bit  
12          different, because they had independent people  
13          calling up authorities saying, "Look, this tanker  
14          -- you know, there's oil going all over." So  
15          they had easily -- it was easy to determine that  
16          -- an independent source. We didn't have that in  
17          this case.

18          So what we did then is the first -- after they  
19          said, well, the defense really didn't raise this  
20          issue in that hearing, except right at the end --  
21          right before the case ended up settling. And I  
22          said, "Well, how do we do this? Do we wait for a  
23          motion to come in? A motion to dismiss? A  
24          motion to suppress? Or do we file our own?"  
25          What I would call Criminal Rule 16 motion, to

1 turn over the documents to our attorney, the NTSB  
2 stuff, things like that. And they assured us that  
3 they thought it would come up in motion work  
4 before that happened.

5 We then sat down and they asked us what we had  
6 -- what type of information we had reviewed. And  
7 when we told them that we had not reviewed any of  
8 the NTSB information, and that we couldn't hear  
9 anything about the NTSB, they were a little  
10 shocked. Because at this time they wanted to  
11 know what our plans were with Greg Cousins. And  
12 they wanted us to listen to the NTSB hearings on  
13 Greg Cousins testimony.

14 THE COURT: Who is "they"?

15 A The two attorneys from the Department of  
16 Justice. So they encouraged us to get the NTSB  
17 transcripts and review his testimony and then get  
18 back with them on what our plans were.

19 I ended up getting a copy of the NTSB stuff  
20 from Midnight Sun Court Reporters. It was sent  
21 to our office with two disks. I turned it over  
22 to Mr. Linton, which was our standard procedure.

23 I also received a package from the Department  
24 of Justice containing the NTSB material and all  
25 the exhibits, which I never looked in. I just



1 handed it to Mr. Linton.

2 At one point we had been assured that the NTSB  
3 stuff was being screened or had been screened,  
4 and we would receive portions of it that were --  
5 somebody else had decided were not tainted. That  
6 didn't happen.

7 Bob Maynard was supposed to do that. He ended  
8 up -- there was a mixup in communication. He  
9 ended up not doing it. Mr. Linton went on  
10 vacation, so we didn't get it then. We've never  
11 seen the NTSB.

12 About three weeks -- a month ago we raised the  
13 issue again because we're looking at experts to  
14 come in and tell us certain things about what was  
15 going on just before the tanker hit, and -- oh, I  
16 have to back track.

17 We then enter into negotiations, or I had a  
18 lot of conversations with a gentleman by the name  
19 of John Clough who is an attorney down in Juneau,  
20 and he was representing Exxon. And we asked him  
21 -- we made a huge list of what things we wanted  
22 from Exxon. And he went back and came back to us  
23 and essentially said, "We're not going to allow  
24 you to interview any more of these witnesses.  
25 They've already testified at NTSB, or they've

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given depositions, and what we'll do is we'll turn over to you the NTSB stuff."

We also had asked for a lot of the information about how the ship was sitting on the rocks or on Bligh Reef, or however you want to characterize it. The angles. Whether it was listing. The underwater topography. And he told us that he -- that that information had been provided to the NTSB and they would be sending that to us. He did end of doing that. That information I gave also to Mr. Linton and haven't seen.

The experts that we've contacted need that information. I've continued to hound Mr. Linton, for lack of a better word, trying to get that turned over to us. And then about three to four weeks ago we had an other meeting where it was decided that we would wait until after this.

So when -- it's made it very difficult for us to hire any experts without the information.

THE COURT: What difference does it make that you'd wait until after this proceeding? Who would that affect the decision?

A Well, our feeling has been that after the -- when we were looking at this, we felt that what would happen -- again, we didn't know how this

1 was going to proceed. So what we did is we felt  
2 that what would happen is, they would have this  
3 hearing. And if there was a sufficient basis for  
4 determining -- see, Mr. Linton apparently cut off  
5 the information we received for the full day of  
6 the 24th. And there was things that was done on  
7 the 24th.

8 There were pictures that were taken on the  
9 24th. There were interviews that were conducted  
10 on the 24th. There were measurements taken.  
11 Things that we needed. And we figured that what  
12 would happen is, we would put on evidence that  
13 this would have been discovered way before the  
14 cutoff date that Mr. Linton arbitrarily set. And  
15 I -- and therefore we figured that when the court  
16 made a ruling on when -- if we won, the court  
17 makes an independent ruling on that, then he  
18 could turn over the stuff that he had kept from  
19 us.

20 We also felt that once and for all we could  
21 take care of this whether or not the NTSB was a  
22 tainted hearing. I mean, we just had real  
23 different philosophies on whether or not that  
24 was. And on top of that, here the Department of  
25 Justice, who had done things like this before,

1 had screened it, had turned it over, and I just  
2 could not understand why we couldn't do it in  
3 this case. That's why we did that.

4 THE COURT: Okay. Before we go any further,  
5 did you want to break at 1:20 today?

6 MR. FRIEDMAN: Yes, Your Honor.

7 THE COURT: If we got lots more testimony of  
8 Mr. Cole, we might as well do it now.

9 MR. FRIEDMAN: I had an issue I thought maybe  
10 I should bring up at this time, if that's appropriate.

11 THE COURT: Sure, we can do that. You wanted  
12 to break at 1:20, and if you've got time...

13 MR. FRIEDMAN: I thought I'd at least raise  
14 the issue.

15 THE COURT: Okay. Mr. Cole, I'm going to  
16 excuse you right now. You can step outside and we will  
17 resume your testimony tomorrow at 8:30.

18 A Okay.

19 (3020)

20 (Witness steps down)

21 MR. FRIEDMAN: Your Honor, the point I'm  
22 bringing up, I guess, is a legal point, it's a  
23 procedural point, and it's also a factual point, and  
24 they all kind of intersect around Mr. Cole. And rather  
25 than kinda spring it on him -- and I don't have any

1 reason to think that he even is aware of it. I thought  
2 I would raise it now and maybe we could decide how you  
3 want to approach it.

4 The cases say that at a Kastigar hearing the  
5 state has the burden of presenting to the court each  
6 piece of evidence it plans to use at trial. And  
7 showing how that piece of evidence is untainted. I'll  
8 use that shorthand phrase.

9 So my expectation tomorrow would be to ask Mr.  
10 Cole. Tell us each piece of evidence you plan to  
11 introduce at trial, and I presume we'll have a list of  
12 10, 20, 30 pieces of evidence.

13 I assume that later, then, Mr. Linton will get  
14 on the stand and say, "Here are additional pieces of  
15 evidence we wish to present at trial, and we will then  
16 have a master list and we will argue over whether it's  
17 tainted or not when this is all done.

18 THE COURT: Mr. Friedman, that could happen,  
19 if there is a trial, all the way up through trial,  
20 could it not?

21 MR. FRIEDMAN: I'm sorry, I...

22 THE COURT: It could happen all the way  
23 through trial, too, could it not? They think of some  
24 more evidence that might be relevant, they want to  
25 produce. They would have to go through the same

1 procedure.

2 MR. FRIEDMAN: I think that's exactly right.  
3 And I guess I just didn't think it was going to be fair  
4 to Mr. Cole to say, okay, tell us, while you're sitting  
5 there cold, every piece of evidence you want to present  
6 at trial. And so I wanted to give some warning, maybe  
7 through Mr. Linton, and I guess also make sure as to  
8 whether we're on the same wave length as to that's what  
9 we're doing here -- as to that's what -- in other  
10 words, that the state does intend to present that sort  
11 of evidence.

12 We don't have the burden, but I think it would  
13 help if we're all kind of here for the same reason in  
14 that sense.

15 THE COURT: I'm not sure that we all are on  
16 the same wave length. It seems like it's turning into  
17 that. At least we've heard some testimony about grand  
18 jury presentation and who was presented, and evidence  
19 tending to show lack of taint. I didn't know we were  
20 turning it into a trial Kastigar proceeding as well.  
21 Was that your intention at this time to do that, or was  
22 it your intention to get over, one way or the other,  
23 the immunity hurdles and then go to a Kastigar hearing.  
24 What was your intention, Mr. Linton?

25 MR. LINTON: I wish I had done a few more of

1 these before I tried to answer that question.

2 THE COURT: You and I have done just the same  
3 number, I think, before this.

4 MR. LINTON: I was a witness in one 17 years  
5 ago. I'm not sure I can answer the question in the  
6 time we got left here.

7 THE COURT: Well, let's not worry about it.  
8 Then we could worry about it tomorrow. But you're put  
9 on notice, there may be some questions here, and there  
10 are a lot of issues we're going to have to take up. It  
11 seems to me that there is always a possibility of  
12 putting off that portion of Kastigar to a later day and  
13 get directly to the immunity issue. But I don't mind  
14 doing it tomorrow and continue right on through.

15 MR. FRIEDMAN: The problem I see, Your Honor,  
16 is I'm not sure there is a difference between the  
17 Kastigar issue and the immunity issue. In other words,  
18 once we raise the claim of immunity, the state has the  
19 burden of presenting untainted evidence. And I think  
20 they acknowledge that. They're saying our evidence is  
21 untainted because of inevitable discovery, or what have  
22 you. And that's one route to clear the evidence if you  
23 accept that as an appropriate vehicle.

24 But if we are not trying to find out what's  
25 tainted and what isn't tainted, then I -- this is sort

1 of what I brought up at the beginning of the hearing.  
2 It seems to me that there is all kinds of possibilities  
3 of us going off in different directions.

4 If Mr. Linton isn't trying to show us his  
5 untainted evidence and how his evidence is untainted,  
6 then it is not clear to me what he is trying to show, I  
7 guess is my...

8 (3124)

9 THE COURT: Well, it would be nice if I could  
10 come up with some sort of a solution and say, okay, as  
11 of a certain time it would have been inevitably  
12 discovered and that doctrine applies to Fifth Amendment  
13 rights. It would be nice if I could come up with that.  
14 I can't do that right now until I hear more, and it's  
15 going to take me a little research and study to come up  
16 with some findings.

17 Now, even if I did come up with a time like  
18 that, there might be some evidence that was  
19 discovered -- or produced after that cut-off time, but  
20 was somehow connected with information supplied before  
21 the cutoff time. Your analogy of the blood test. That  
22 might be an example, I don't know.

23 But I can't come up with a solution right now,  
24 so I think we have to hear it all. Either that or go  
25 in the direction of the inevitable discovery, or the



1 independent source, and then stop and wait for me to  
2 come up with the decision and then come back in. But  
3 that seemed to be breaking it up. We could do that for  
4 just about every motion. We could see how you fare on  
5 those motions, and then come back in and take another  
6 shot. And I'd rather just do it all at once.

7 And if we can do all the -- the taint evidence  
8 in this hearing, I would like to do it as much as we  
9 can.

10 And I think it is a legitimate burden the  
11 state bears. If you want to let Mr. Friedman ask those  
12 questions, I suppose that's up to you. But that's a  
13 little different than you normally would proceed, I  
14 suppose.

15 MR. FRIEDMAN: I just want to make it clear, I  
16 was going to go down that road unless somebody told me  
17 to stop.

18 THE COURT: Well, I think you've put everybody  
19 on notice on what your intentions are. Maybe Mr.  
20 Linton will go down the road and will plow it for you a  
21 little ahead of time.

22 Anything else?

23 MR. FRIEDMAN: No. Thank you, Your Honor.

24 MR. LINTON: Nothing further, Your Honor.

25 THE COURT: Okay. We'll see you at 8:30.

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THE CLERK: Please rise. This court stands in recess.

(Off record - 1:27 p.m.)

(3648)

\*\*\*CONTINUED\*\*\*