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

STATE OF ALASKA,
Plaintiff,

vs

JOSEPH HAZELWOOD,
Defendant.

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

TRIAL BY JURY
FEBRUARY 14, 1990
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VOLUME 21

Original

ARLIS

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

Anchorage, Alaska
February 14, 1990
8:48 a.m.

APPEARANCES:

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1 PROCEEDINGS

2 FEBRUARY 14, 1990

3 (Tape: C-3615)

4 (1278)

5 (On record - 8:48 a.m.)

6 (Jury not present)

7 THE CLERK: ...is now in session.

8 THE COURT: You may be seated. Two matters
9 to take up before we get the jury in here. The first
10 -- I think it would be a good idea if counsel didn't
11 take their coffee breaks in Judge Rowland's office.
12 That's immediately next door to the jury room. The
13 walls are not as thick as they could be and I hear
14 people laughing in there and maybe they hear us laugh,
15 so if you want to take a coffee break in my office,
16 feel free to. It's geographically pretty far from the
17 jury room. It will avoid potential problems.

18 Next thing is I got a note from a juror. I'll
19 read it for the record. "Judge Johnstone: I believe
20 it is the Court's moral responsibility, if not legal
21 responsibility, to make every effort to assure the
22 jurors safe passage home. I respectfully request that
23 you keep yourself apprised of developing dire weather
24 conditions and that the jurors be advised accordingly.
25 Yesterday was the pits." Signed by a juror, who upon

1 further investigation, was one of the fortunate ones
2 that did not get into an accident on the way home
3 through Eagle River yesterday.

4 I was unaware of the weather conditions until I
5 left here. I'm going to give this to the
6 administrative director, let him handle this and if we
7 do get notified of dire weather conditions, it might be
8 necessary to let the jurors go home early during any
9 given day.

10 Apparently, this juror was not the only one that
11 lived in Eagle River and had a problem getting home
12 last night. I can certainly appreciate their concerns.
13 I don't believe it's the Court's moral or legal
14 responsibility to take weather checks periodically, but
15 I will make steps -- take steps to be apprised if there
16 are conditions that the Court system is aware of and
17 they can pass on to me.

18 I asked her specifically if she felt this was
19 going to, in any way, affect her ability to continue to
20 sit in this jury. She said oh, no, not at all. It
21 didn't concern that at all. It was just the driving
22 conditions home. Do counsel wish me to inquire
23 further of the jury on the record?

24 MR. COLE: I don't, Your Honor.

25 MR. MADSON: No.

1 THE COURT: Okay. We'll make this part of
2 the record as well. Is there anything we can do before
3 we get the jury in?

4 MR. COLE: I have nothing.

5 MR. MADSON: No, I have nothing.

6 THE COURT: Okay. Well, we'll bring the jury
7 in promptly at 9 o'clock and you can get Mr. Cousins up
8 on the stand and we'll resume.

9 THE CLERK: Please rise. This Court stands
10 in recess.

11 (Off record - 8:58 a.m.)

12 (On record - 8:59 a.m.)

13 (Jury Present)

14 THE CLERK: ..with Judge Johnstone presiding
15 is now in session.

16 THE COURT: Thank you. You may seated. I'm
17 real sorry about the weather conditions that
18 inconvenienced any of you folks on the jury last night.
19 You're not the only ones apparently. I've sent a jury
20 letter to the administrative director and to the trial
21 court administrator and I've asked them to let me know
22 if the weather conditions get such that they think it's
23 necessary to let people go home early and if they do,
24 we'll make arrangements, let the jury go home early to
25 avoid some of that rush hour so you won't have to go

1 through that again last night. I'm certainly sorry for
2 anything I may have done to not accommodate you.

3 We'll resume with the cross examination of Mr.
4 Cousins.

5 CROSS EXAMINATION OF MR. COUSIN, CONTINUED
6 BY MR. MADSON:

7 Q Mr. Cousins, let's resume with the, say,
8 inbound transit into Port Valdez. I think you
9 said yesterday you were on the bridge and the
10 pilot was on the bridge, directing the vessel in
11 after Rocky Point?

12 A Yes.

13 Q And you arrived there at about -- actually
14 started to dock at about what time?

15 A Without reference to...

16 Q Approximately.

17 A 2230.

18 Q Then, sir, is it not true that the first mate
19 or the chief mate -- is his function or primary
20 job to oversee the loading and unloading of the
21 vessel?

22 A That's correct.

23 Q Is this normal for your industry?

24 A I believe so.

25 Q Can you just kind of summarize what this

1 involves? I think you did yesterday, but very
2 briefly, what would his function be?

3 A Prior to the load, he's worked out a load
4 plan, written cargo orders that second and third
5 mate would read and sign, stating that we
6 understand how he wants to load the vessel. He
7 will be in charge of starting up the cargo.

8 Q When you say how do you load it, do you mean
9 so that the ship remains stable and level at all
10 times?

11 A Yes -- well, it -- yeah, what all it -- the
12 tanks will be topped off. Certain vessels load a
13 little bit differently than others. He will be
14 in charge of starting up the cargo. Actually in
15 Valdez, we'll begin with a dirty ballast. He'll
16 start that up...

17 Q That pumps it out of the ship or out of the
18 vessel to somewhere else?

19 A Yes, to shore. He's in charge of starting
20 that up. Once that's going, if he's not on
21 watch, he may get a chance to get a little rest.
22 As we near the end of discharge of dirty ballast,
23 he would be up to supervise the stripping of the
24 tanks, stopping the pumps, getting ready to begin
25 the load of cargo which he would start and

1 supervise the beginning of the load.

2 Q Is it fair to say that there isn't much wasted
3 time on the operation, getting cargo on the
4 vessel?

5 A Not much.

6 Q And he has to be there essentially throughout
7 this whole period, to oversee it?

8 A Yes.

9 Q And this may involve working all night?

10 A At times -- and again, that's what the second
11 mate and the third mate are there to assist him.
12 Once the load is started and it's started
13 satisfactorily and everything appears to be
14 fairly routine, that gives the chief mate an
15 opportunity to turn the cargo watch over to one
16 of the mates.

17 Q And I imagine the chief mate kind of sets his
18 own schedule as to when he thinks things are
19 going well or if he has to stay up or...

20 A Well, he normally goes -- state room and the
21 orders -- most all cargo orders that I've seen
22 would say if you see anything going on, give him
23 a call at any time.

24 Q In other words, he doesn't feel that he has to
25 be present personally at all times to watch? He

1 can rely on your judgment, the second mate's
2 judgment?

3 A That's correct.

4 Q And if something goes wrong, you call him,
5 right?

6 A Yes.

7 Q You, I think, went to work -- started your
8 next watch 8 o'clock the next morning. Is that
9 correct?

10 A Actually, a little bit earlier.

11 Q Okay. You were still loading at this time?

12 A Yes.

13 Q And that took essentially all day, did it not?

14 A Yes.

15 Q The -- is an estimate made of when the ship is
16 expected to be loaded and ready to sail?

17 A We keep track of loading rates and if the rate
18 changes appreciably, we will update what we call
19 the sailing board.

20 Q But if you're not there to see the board -- in
21 other words, if it says 8 o'clock -- 8 p.m. or
22 something like that and someone is ashore, how
23 would they find out that, say, it's going to be
24 an hour later?

25 A The only way that they would be able to find

1 out is to call the agent or the vessel.

2 Q How about if it's an hour earlier? The same
3 thing would apply?

4 A Yes.

5 Q I take it the loading of the Exxon Valdez on
6 the 23rd -- on the day was uneventful, routine as
7 far as you know?

8 A That's a fair characterization, yes.

9 Q And then I think you were off after noon for a
10 while to start again or when was your next watch?

11 A My next watch?

12 Q Yeah.

13 A Well, my next watch wouldn't begin until 8
14 that evening but I had other duties in between
15 noontime and 2000.

16 Q Okay. What did you do during that time
17 interval?

18 A After lunch, I went and took a salinity
19 reading.

20 Q A what reading?

21 A A salinity reading.

22 Q Oh.

23 A I had supper relief at 5 o'clock for the chief
24 mate and I helped in topping off -- I don't
25 recall the time specifically, perhaps around,

1 sometime around 1900, I think.

2 Q When did you start checking the gear and all
3 the associated equipment to see if it was
4 functioning?

5 A You know, again, without some reference
6 material, I can't give you a real good time.

7 Q Just approximately, sir.

8 A I -- 1930.

9 Q About how long does that take to run through
10 this pre-check?

11 A Twenty minutes.

12 Q As part of that checking system then, do you
13 actually turn the rudder to see if the rudder
14 angle indicator is operating properly?

15 A Yes.

16 (1770)

17 Q Did it do so on this particular evening?

18 A Yes, it did.

19 Q I think you also mentioned that one of the
20 other things you do is check the fathometer?
21 Right?

22 A Yes.

23 Q It has an alarm which would indicate you're in
24 water that is -- whatever your setting is at on
25 your instrument, it would ring an alarm when you

1 get to that level?

2 A Correct.

3 Q Is that used at all for navigation, sir?

4 A For navigation?

5 Q Uh-huh (affirmative).

6 A No.

7 Q In other words, if -- I mean, have you ever
8 heard of a situation or ever done this where you
9 were directed to make a turn or do any -- a
10 course change at a particular fathom mark on a
11 chart?

12 A No.

13 Q Maybe you could explain to the jury why that
14 would be so. Why would it be unusual to have a
15 fathom mark as a navigation...

16 A Well, you can't see it. You can't see it with
17 your eye. It is -- many other things that would
18 be much more reliable. If there was not a point
19 of land then you would have a position of
20 latitude and longitude that you would use.

21 Q Otherwise you're looking at an instrument
22 waiting for a certain figure just to show up that
23 says, you know, 38 or 40 or something? I mean
24 that's what you're looking for with a fathometer,
25 right?

1 A Yeah, I suppose so.

2 Q I think you said that in Prince William Sound
3 the fathometer is not used to any real extent, is
4 it?

5 A No, it's the depth alarm. It's not -- you
6 know, it's energized and it's used but the
7 application is limited because you go from
8 extremely deep water to no water.

9 Q Either too much water or plenty of water or
10 not nearly enough, right?

11 A Correct.

12 Q You tested the radar and that, I think you
13 said, was working properly.

14 A Both, yes.

15 Q And you used the 12-mile scale to do that?

16 A To tune.

17 Q To tune it?

18 A Yes.

19 Q By tuning, you adjust the gain so that your
20 targets come in at the best possible visual
21 sighting?

22 A The gain in the tuning, yes.

23 Q I think you said at about 8:20, the pilot, Mr.
24 Murphy then -- Captain Murphy came on board?
25 Correct?

1 A Yes.

2 Q And he was there for a while and I think you
3 said that the captain then came on board some
4 time after that -- Captain Hazelwood?

5 A Yes.

6 Q Did you actually see him come on board or just
7 onto the bridge, itself?

8 A I only recall the captain coming onto the
9 bridge.

10 Q And did you speak with him at that time?

11 A No, I didn't.

12 Q Did you hear him speaking to Mr. Murphy or
13 anybody else?

14 A Yes, I believe the agent was up there. I'm
15 pretty sure the agent was on the bridge at that
16 time.

17 Q How close did you get to him physically, would
18 you say?

19 A Not within 10 feet.

20 Q Did you have a chance to observe his demeanor
21 at all and his manner or method of walking or any
22 of his physical coordination? Anything like
23 this?

24 A Yes, I did.

25 Q Did you see anything at all unusual about

1 Captain Hazelwood at that time?

2 A No, I didn't.

3 Q Then you started the undocking procedure and
4 you assumed your normal station on the aft of the
5 ship?

6 A That's correct.

7 Q That went routinely?

8 A Yes, it did.

9 Q Who gave the orders to do things with
10 undocking? I mean as far as undocking was
11 concerned, were there certain orders given?

12 A Yes. Typically, we'll gather at the stern for
13 the aft docking people. I'll ask the master if
14 we can stop dropping lines aft and I'll let him
15 know when indeed we are going to drop lines aft
16 after he says it's okay. That's transmitted to
17 the engineer so that the screw is stopped. From
18 there, we'll -- and I direct the work being done
19 on deck. From there we move up to our spring
20 wires which are forward of the super structure.

21 Q Was anything unusual or different about the
22 orders or the manner of docking this particular
23 time?

24 A No.

25 Q Once you leave the dock then, the engine is

1 running, the pilot more or less directs the
2 course of the vessel out through to the pilot's
3 station, right?
4 A Yes.
5 Q To Rocky Point?
6 A Yes.
7 Q And I believe you said that was routine?
8 A That's correct.
9 Q You were on the bridge at all times?
10 A Yes, I was.
11 Q And who was at the helm, the wheel?
12 A I believe Paul Radtke was the helmsman when I
13 got up to the bridge.
14 Q And the pilot was there?
15 A Yes.
16 Q Anyone on look out?
17 A Yes. Harry Claar.
18 Q And where was he stationed? Forward, the bow
19 or...
20 A On the bow.
21 Q And he has a radio, of course?
22 A Yes.
23 Q I think you said at some time that the captain
24 went down below or at least, you did not see him
25 on the bridge, correct?

1 A That's correct.

2 Q Now, the -- let me just show a chart. Perhaps
3 that will be better with less glare but Mr.
4 Cousins, could you just more or less show the
5 route that you took out through -- from the dock
6 or the berth to the pilot station?

7 A The Alyeska berths are situated here
8 (indicating). From undocking we would generally
9 make a track something like this, make a turn and
10 transit the Narrows. From the Narrows, without
11 ice, typically just down the lanes.

12 Q I believe you said the captain came back on
13 board to your knowledge, somewhere before or
14 around Potato Point, right?

15 A That's my recollection, yes.

16 Q That's toward the end of the Narrows?

17 A Yes.

18 Q Did -- was there any unusual anxiety during
19 this transit at all on the part of you or the
20 pilot...

21 A No.

22 Q ...Mr. Murphy?

23 A No.

24 Q It was...

25 A Routine.

1 Q ...routine. You've done it many times?
2 A I haven't done it many times, but...
3 Q Well, a number of times?
4 A ...a few.
5 Q And it seemed to go just like it always did?
6 A Yes.
7 Q The course changes that are made, are they --
8 you know the course you take, is that pretty much
9 established through -- in other words, pilot
10 seemed to have a particular course in mind when
11 he goes...
12 A Yes.
13 Q ..those points?
14 A Yes.
15 (2128)
16 Q You basically stood there and watched, right?
17 A Well, you do a little bit more than that. You
18 are supposed to keep track of the vessel's
19 movement and observe the helmsman and take any
20 engine orders that the pilot would give.
21 Q The pilot would give them to you or -- and
22 then you'd transmit them to the helmsman? Is
23 that how it would...
24 A He would give it to -- he would give rudder
25 orders to the helmsman; he would give engine

1 orders to the watch officer.

2 Q Which would be you?

3 A Me.

4 Q Did anything that occurred on this particular
5 transit out to Rocky Point at all contribute to
6 the eventual grounding of the Exxon Valdez?

7 A No.

8 Q I think you said then that after the pilot was
9 off -- maybe we could go over that just very
10 briefly. Does the vessel slow down or alter
11 course to allow the pilot to get off?

12 A Some -- yes. It will do both usually,
13 depending on if the pilot boat needs a lee, there
14 could be a course change. Sometimes that isn't
15 required but the course change will also --
16 knocks them way off the vessel.

17 Q I take it the pilot was taken off the vessel
18 with no problem?

19 A There was no problems.

20 Q Now, do you know -- to your own knowledge,
21 sir, whether or not the chief mate had worked
22 such long hours that the captain was going to
23 take over his watch, say, at 4 a.m.?

24 A I didn't know.

25 Q After the pilot was off, was the course

1 changed then again?

2 A Yes, it was.

3 Q To what, sir?

4 A I don't re -- I recall coming to 200. There
5 was another change to 180 after that.

6 Q Who made those course changes?

7 A The captain.

8 Q And you were present and heard them, right?

9 A I don't know that I was present. I may have
10 been on the bridge, but not heard them. I did
11 hear of the 180 course change. I was informed
12 of that one.

13 Q This occurred on the bridge?

14 A Yes.

15 Q And this was in the presence of the captain?
16 You were standing together?

17 A Well, we weren't standing together. I was in
18 the course of doing something and the course
19 change was given.

20 Q Okay, fine. I don't -- but you heard it
21 clearly enough?

22 A Yes.

23 Q Did you see the captain also at this time?

24 A Yes, I did.

25 Q Did you see any change at all in his demeanor

1 or speech or anything else from -- at this point
2 compared to the earlier time when you saw him on
3 the bridge?

4 A No, I didn't.

5 Q Did the commands or orders he gave seem to be
6 -- you had no trouble understanding them or that
7 they made sense at the time?

8 A They were clear, yes.

9 Q Did he seem to be in command of the vessel?

10 A Yes.

11 Q Now, perhaps I got a little confused at this
12 point. Maybe you could relate again exactly
13 what actions you took after this course change
14 was made and what did you do next?

15 A At what point do you want to pick this up at?

16 Q Well, maybe I can ask you this. I think you
17 said the pilot was off at 2324, something like
18 that...

19 A Yes.

20 Q ...and then you came onto the bridge, you said
21 the captain wanted you to do a fix?

22 A That's correct.

23 Q In other words, he wanted you to plot your
24 position as to where the vessel was at that time?

25 A That's correct. I believe that -- at that --

1 during the process of taking that fix, I believe
2 the vessel started to swing, heading towards 200.
3 Q 200 in what direction? Could you just show
4 that on the chart to the jury, just approximately
5 what direction that would be?
6 A That would be -- well, kind of like this.
7 Q Southwesterly, right?
8 A Yes.
9 Q That was -- what made this course change? You
10 said it suddenly swung. What made it swing?
11 Maybe I misunderstood you. You said during some
12 process or some...
13 A During the process of taking the fix, the
14 vessel began to swing to the course of 200.
15 Q Okay, I see. About how long did it take you
16 to do this fix?
17 A Oh, perhaps -- do you mean the actual fix? Of
18 the fix and plotting?
19 Q Let's say just the fix.
20 A Just the fix. Perhaps 15 seconds -- 15 to 20
21 seconds.
22 Q And again, what do you do? Just those 15
23 seconds, what's involved in that?
24 A In that particular fix, it was two visual
25 sites and a range.

1 Q Using what equipment?

2 A The starboard bridge repeater -- bridge wing
3 repeater and the starboard radar variable range
4 marker.

5 Q Is it fair to say, sir, getting a fix is a
6 very commonly done and routine operation on a
7 ship?

8 A Yes.

9 Q And it's done -- with anyone with any degree
10 of skill, can be done very rapidly, can it not?

11 A That's correct.

12 Q Then how long did it take you to plot this
13 fix? By plot that means you actually went to a
14 chart and put it on there -- put a mark on there?

15 A That's correct.

16 Q And how long did that take?

17 A Oh, 30 or 40 seconds.

18 Q So, the entire fix and plotting took less than
19 a minute. Is that correct?

20 A Well, I didn't have a stop watch.

21 Q Yeah, right, but...

22 A Around a minute.

23 Q But it didn't take a great deal of time?

24 A No.

25 Q Is that fair to say? Where was the vessel

1 when you took this fix then? Could you just
2 point to it? I don't know if the pointer is
3 still up there or not. There usually is one up
4 there. If not...

5 A The approximate position at the time of the
6 fix was right in here (indicating).
7 Approximately in the middle of the separation
8 zone.

9 Q You're in the middle of the separation zone,
10 still at a course of about 200?

11 A Coming to 200.

12 Q At this time did you have a discussion with
13 the captain about what the plan was about the
14 ice, things like this?

15 A I think the conversation consisted of the
16 captain telling me that that we're going to
17 divert for the ice.

18 Q Okay. He had made the decision to divert
19 around the ice?

20 A Yes.

21 Q Diverting around ice is a fairly routine
22 operation in Prince William Sound, is it not?

23 A It's become routine. It wasn't always, I
24 don't think.

25 Q Well, has the ice conditions changed from your

1 experience over, say, the years?

2 A Yes.

3 Q Columbia Glacier ice has increased?

4 A Calving -- increasing amounts of ice and
5 larger pieces of ice.

6 Q On that topic, when you said that you looked
7 at the radar for the ice, correct?

8 A Yes.

9 Q I want to show you what you marked on the
10 chart yesterday. Sir, I believe you drew that
11 green outline on there as the extent of the ice?

12 A That's correct.

13 Q Now, that isn't a ice sheet, is it, of solid
14 ice?

15 A No, that's -- again, a general outline of the
16 area of the ice.

17 Q Would it be more accurate, Mr. Cousins, if
18 instead of that line there, you had little dots
19 to represent ice bergs, ice chunks or things like
20 that?

21 A Yes.

22 Q And these are varying sizes?

23 A Yes.

24 Q Some are small; some are big. Can you tell
25 from looking at the radar the position that you

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were at -- you were in at that time, could you tell how big some of the icebergs were or the size of the ice...

A By the targets on the radar? No, not really. I would say that from my experience that they were -- considering the strength of the return of -- that we were getting from the chunks of ice that they were of a pretty good size.

Q When you say pretty good size, I mean that leaves a lot to be, you know, understood. Can you describe it in terms of feet or anything like that?

A Perhaps not feet. I guess the description would be, as we know it, called bergy bits which is smaller than say an iceberg, larger than growlers which are smaller chunks of ice. I could characterize what you would see in bergy bits is perhaps the size of a small house sticking above the water line.

Q Like Twenty Questions. Bigger than a bread box and smaller than something else.

A Yes. Exactly.

Q In other words, some of them may pose a danger to a vessel like the Exxon Valdez and others would not. Is that fair?

1 A That's fair.

2 Q And you don't really know what -- let's say it
3 was a -- well, let me ask you this. When you
4 said the captain made this decision and told you
5 what the plan was, you -- in addition to your
6 duties of just carrying out the orders, you also
7 discuss it with him?

8 A That's correct.

9 Q You felt free to voice your opinion or
10 objection if you felt it was wrong?

11 A That's part of our job.

12 Q Did you feel there was anything wrong with
13 this decision?

14 A After I had taken some ranges and got this
15 view of the ice against the -- you know, in
16 relation to the traffic lanes and the hazards, I
17 thought that it was indeed a maneuver that was
18 practical.

19 Q I guess a decision could be made to either go
20 through the ice or try to go around it. Is that
21 basically what it came down to?

22 A Yes.

23 (2780)

24 Q You said in your direct testimony yesterday
25 that you felt you had plenty of room to make the

1 maneuver. Right?

2 A Yes.

3 Q You were a mile off Busby Island when you were
4 going to make the turn?

5 A Approximately yes.

6 Q And how far at this point then would be Bligh
7 Reef?

8 A I don't recall without...

9 Q Can you estimate? Two miles?

10 A No.

11 Q One mile?

12 A I don't know. (Pause) About two miles to
13 the northern edge of the reef.

14 Q You knew the characteristics of the vessel as
15 far as its ability to turn when it was fully
16 laden?

17 A Yes.

18 Q And you had no question in your mind that
19 under the conditions that existed at that time,
20 that maneuver was a prudent one?

21 A Correct.

22 Q I think you said that you asked the captain or
23 said something that you were going to tell
24 traffic but he said he'd already done that.
25 Correct?

1 A That was earlier.

2 Q Earlier, okay. By talking to traffic, that
3 means the Vessel Control Center, does it not?

4 A Yes, it does.

5 Q That's something that you felt you were
6 required to do was to inform them of your
7 intentions to go around the ice?

8 A Something that we have to do.

9 Q At that time you could see Busby light quite
10 clearly, could you not?

11 A Yes.

12 Q And you knew where Bligh Reef was and where
13 the buoy was?

14 A Yes.

15 Q It was visible certainly on your radar?

16 A Yes.

17 Q And was it visible at that time also visually,
18 just looking out the bridge window?

19 A At -- from what point are you talking about
20 now?

21 Q From the time you made the decision to divert
22 around the ice?

23 A Yes.

24 Q The earlier fix?

25 A Yes. Well, the Bligh Reef buoy wasn't. It

1 was visible on radar but visually, I don't
2 remember seeing it.

3 Q You knew where it was?

4 A Yes.

5 Q So I assume then, sir, that you knew to make
6 the maneuver; Busby Island was certainly not a
7 problem because you were a mile to the west of
8 Busby, right?

9 A Yes.

10 Q The only potential problem was making the turn
11 so you would go to the north of Bligh Reef and
12 get back into the traffic lanes at the same time,
13 skirting the southern edge of the ice?

14 A That's correct.

15 Q At 2324, you said the order was given to go
16 full ahead on the engine -- controls -- full
17 maneuvering speed?

18 A That was the time the pilot was off, yes.

19 Q What does full maneuvering speed mean?

20 A 55 RPM, laden -- I believe that's about 10
21 knots.

22 Q And is it true, sir, that the vessel such as
23 the Exxon Valdez will maneuver better or it's
24 easier to control at a faster speed as opposed to
25 a slower one?

1 A Yes, you'd get a quicker response from the
2 rudder.

3 Q On that topic, when you turn the rudder on
4 this ship, how long -- let's say you're going at
5 11 knots; draft is 50, 6 -- 50, 70 feet, when you
6 turn the rudder, say, 10 degrees, how quickly do
7 you see a response from the ship or does the ship
8 begin to respond, let's put it that way.

9 A Oh, you should see a response within 15 to 20
10 seconds.

11 Q Not instantaneous, but quickly?

12 A Yes.

13 Q Let me -- the captain did not tell you to put
14 any degree of rudder on the vessel, right?

15 A That's correct.

16 Q You indicated -- did you look at the chart --
17 were you standing there at the chart with him
18 while this discussion about what the maneuver was
19 going to entail?

20 A No, we did this at the radar.

21 Q The captain looked in the radar to see the ice
22 the same time you did?

23 A Well, I don't know that it was the same time.
24 I was observing the ice from a time of the 2339
25 fix on. We had two discussions at the radar and

1 obviously, the captain had to be aware of the ice
2 because that's why we were changing course.

3 Q Right. So you assumed, at least, that
4 sometime he had looked at the radar or knew about
5 it?

6 A Well, he had stated that we were diverting for
7 the ice.

8 (3089)

9 Q Did you know the earlier ice report from the
10 ARCO Juneau at all?

11 A No, I'd heard that there were -- there had
12 been a report of ice in the lanes but I didn't
13 hear the specifics of the report.

14 Q Now, if I understand correctly, sir, the
15 maneuvering question was this. When you became
16 abeam of Busby Island, you were going to make a
17 turn to the right which would then take the
18 vessel north of Bligh Reef and back into the
19 traffic lanes?

20 A That's correct.

21 Q When -- in other words, you have to be 90
22 degrees from Busby Island?

23 A Yes.

24 Q And then you -- and you're going -- because
25 you're going on a course straight south, 180

1 degrees, right?

2 A Yes.

3 Q And you then just at that point give an order
4 to the helmsman to say 10 degrees, 20 degrees,
5 something?

6 A Yes.

7 Q Now perhaps for the jury, you can explain 10
8 degrees may not sound like much. Can you explain
9 what you feel the ship like the Exxon Valdez does
10 with a 10 degree rudder? Is this a normal
11 routine maneuver or order?

12 A Yes, it is.

13 Q Did you anticipate using a 10 degree right
14 rudder as you approached Busby Island?

15 A Shortly -- in advance of getting abeam, I
16 decided that I wasn't going to use a large amount
17 of rudder, large being 20 or 30 degrees and that
18 I estimated that rate of turn would have taken us
19 into the ice.

20 Q At 20 or more?

21 A At -- yes. At more than 10, I thought that
22 that would produce a swing rate that would
23 actually bring us into the ice.

24 Q When you speak of swing rate, say at abeam of
25 Busby Island, a 10 degree rudder turn was

1 actually put on the vessel, can you explain what
2 you would expect by way of swing rate? How fast
3 the vessel would turn in a given amount of time?

4 A Well, it's -- at this point in time, it's kind
5 of hard for me to give you anything of any degree
6 of accuracy. I would hope for the swing rate to
7 increase from nothing up to at least five tenths
8 of a degree per second, perhaps a little bit
9 more.

10 Q Per second?

11 A Per second.

12 Q I believe you said the discussion after this
13 decision had been made centered around your
14 understanding of what was to be done and your
15 being comfortable with doing -- the captain was
16 not directly there, I mean right on the bridge
17 with you, right?

18 A Yes.

19 Q I think you said yesterday that you were asked
20 the question twice, whether you felt comfortable
21 with doing that.

22 A Yes.

23 Q This didn't cause you any unusual anxiety or
24 anything like that?

25 A No, it didn't.

1 Q I mean you knew your capabilities and
2 abilities as a seaman, right?

3 A Yes.

4 Q And Captain Hazelwood at least had some idea
5 of the same since he had sailed with you before?

6 A Yes.

7 Q I think you said that you did not know much
8 about the helmsman, Mr. Kagan, and his abilities
9 or lack of them.

10 A No, I didn't.

11 Q After the captain went down below and your
12 communication with him is via telephone, right?

13 A Yes.

14 Q Maybe I can use this exhibit here, if I can
15 -- Mr. Cousins, perhaps you could step down...

16 MR. MADSON: ...with the Court's permission,
17 would it be all right, sir?

18 THE COURT: Sure.

19 Q ...and show the jury where you were physically
20 located; at the same time where Captain Hazelwood
21 was. Let's turn it perhaps, so it would be a
22 little easier...

23 A And this is at the time of the phone call?

24 Q Yes.

25 A It's on the port side of the bridge, on this..

1 UNIDENTIFIED: Judge, can I lift it up, so
2 that it doesn't...

3 MR. MADSON: Well, I'd rather have some --
4 well, too late.

5 (3376)

6 A The phone that I was using is mounted on this
7 partial bulkhead between the nav area and the
8 chart room, about here (indicating). The
9 captain's office is located right here. His desk
10 and phone are just a matter of feet inside the
11 door.

12 Q Now, when you say right here, that's...

13 A D Deck. One deck below.

14 Q One deck below.

15 A The captain's desk is situated here and
16 there's phones on it.

17 (Side conversation)

18 Q I think you said yesterday, Mr. Cousins, that
19 from the captain's quarters to the bridge, if
20 someone was in a hurry, could take maybe 15
21 seconds?

22 A That's correct.

23 Q And certainly, you knew in your own mind that
24 had you asked the captain, say, I've got a
25 problem, he would respond and come up?

1 A Yes.

2 Q Do you feel at the time you were up on the
3 bridge that the captain still was directing the
4 control or directing and controlling the vessel?

5 A In a sense.

6 Q In other words, he had the power and the
7 ability to tell you what he wanted you to do and
8 you could then carry it out?

9 A That's right.

10 Q On the other hand, you could discuss that with
11 him and perhaps say, well, I don't think that's
12 what we should do because of the following and he
13 could then change his mind?

14 A That's part of my job, yes.

15 Q And at the time, the actual, physical
16 maneuvering of the vessel was not even done by
17 yourself, but it was done by Mr. -- being done by
18 Mr. Kagan? When I say physical, I mean hands on
19 the wheel type thing.

20 A That's right.

21 Q But you also had the ability to direct and
22 control Mr. Kagan by telling him what you wanted
23 to be done, right?

24 A By giving orders to him, yes.

25 Q And of course, you gave him, I think you said

1 yesterday, the order to go 10 degrees right
2 rudder?

3 A That's right.

4 Q Mr. Cousins, isn't it correct that in your
5 mind today there's no doubt that had that 10
6 degree right rudder command been executed at that
7 time off Busby Island, the ship would have
8 cleared Bligh Reef by a substantial margin?

9 A That's my belief.

10 Q When you told Mr. Kagan and said 10 degree
11 right rudder, do you know if he responded or not
12 and said, aye, aye sir or whatever seamen do?

13 A He would have responded 10 right. He would
14 repeat the command.

15 Q That's normal and routine, is it not?

16 A That's -- yeah, it's routine.

17 Q That's to make sure that the person you're
18 giving the order to understood it in...

19 A Yes.

20 Q ...repeating it?

21 A Yes.

22 Q At that time, you certainly had no reason to
23 believe that Mr. Kagan did not put 10 degrees
24 right rudder on the vessel?

25 A That's correct.

1 Q I take it though, sir, that you said you did
2 not actually look up at that point and see the
3 rudder indicator itself?

4 A That's correct. I was -- I gave the initial
5 rudder command and was in the process of calling
6 the captain.

7 Q Now that was the first conversation, correct?

8 A Yes. And that -- I had turned my back to the
9 rudder angle indicator.

10 Q And at that time you told him that we are
11 starting a turn?

12 A That's correct.

13 Q I assume there was no anxiety in your voice or
14 anything that would cause Captain Hazelwood to
15 think that that was not the case?

16 A That's correct.

17 Q To the best of your knowledge and belief, the
18 vessel was beginning to start turning to the
19 right?

20 A Yes.

21 Q Now, I'm going to get on another topic at this
22 point. Mr. Cole asked you yesterday about the
23 auto pilot itself. Going back to that point, you
24 said that you think at one point, you physically
25 turned it off, correct?

1 A Yes.

2 Q I think you said that was off at about 11:50

3 -- I'm in layman's hours again, 11:52 or 53?

4 A Yes, as the captain was leaving the bridge, I

5 switched the steering mode to helm.

6 Q And this was the same time the load program up

7 had begun?

8 A That was a little bit after.

9 Q And load program up, again, takes some 40

10 minutes to get up what's called sea speed. Is

11 that correct?

12 A That's my recollection that it takes that

13 long, yes.

14 (3780)

15 Q Now, Mr. Cousins, I'd like to have you look at

16 what's been marked as Defendant's Exhibit K.

17 Would you look at this, sir, and let me ask you

18 if you recognize that.

19 A Yes, this is our Sperry steering unit.

20 Q Would you hold that up so the jury can see it

21 and indicate where the button is that is the auto

22 pilot?

23 A The auto pilot?

24 Q Yeah. Turning it off and on.

25 A Well, this is the gyro mode button. It's on a

1 pad of six buttons. It's the upper left most
2 button that would put it into the auto pilot.

3 Q How about turning it off then?

4 A The helm -- going to helm mode, you depress
5 this button right here (indicating).

6 Q Now, when you say this button, what does it
7 say there?

8 A Helm.

9 Q Helm. And it's roughly how big in diameter?

10 A Oh, perhaps an inch or more.

11 MR. MADSON: Your Honor, I would ask that
12 Exhibit K be offered in evidence at this time.

13 MR. COLE: No objection.

14 THE COURT: Admitted.

15 EXHIBIT K ADMITTED

16 Q Mr. Cousins, if the vessel isn't actually --
17 is on auto pilot, is this readily apparent to you
18 at the time? Would you know that and how?

19 A If I hadn't put it into auto pilot?

20 Q Yeah. Just in general, I'm talking. You came
21 on the bridge and you want to know if it's in
22 auto or helm.

23 A Well, I would ask someone.

24 Q How about looking at anything?

25 A Well, if there was enough light there, you

1 would obviously see if the helmsman was steering
2 or not.

3 Q If it's in auto pilot, engaged in the auto
4 mode, you turn the wheel, does the rudder
5 indicator turn at all?

6 A The rudder indicator? No.

7 Q Does it -- the rudder does not turn, right?

8 A No, it's segregated at that point.

9 Q So, it wouldn't go six or seven degrees, let
10 alone 10 degrees if it was auto pilot?

11 A No. No.

12 Q Is it true then, sir, there is -- do you have
13 any doubt in your mind at the time you pushed the
14 button and disengaged the auto pilot, it did, in
15 fact, go off and you were on helm steering from
16 11:53 approximately on?

17 A There was no doubt.

18 Q Did the auto pilot have anything to do with
19 this grounding?

20 A No, it didn't.

21 Q Now, Mr. Cole asked you exactly what you did
22 yesterday after say, the first conversation with
23 the captain and you explained how you went here
24 and went there and you know, but let me back up
25 just a little bit. When did you actually say to

1 Mr. Kagan -- at what time, in other words, that
2 10 degrees right rudder? Is that 11:55 or 2355
3 hours?

4 A It would have been more like one minute later.
5 2356.

6 Q And you knew exactly where the vessel was at
7 that time?

8 A Yes.

9 Q No question you were abeam of Busby Island?

10 A Well, actually, we were -- I figured about two
11 tenths south of Busby.

12 Q Two tenths of a mile or nautical mile?

13 A Nautical mile.

14 Q And I think you said the leading edge of the
15 ice was approximately nine tenths of a mile from
16 Bligh Reef or from the buoy?

17 A No, not from the buoy.

18 Q Okay, from the reef itself?

19 A You have -- that was the distance between the
20 reef and the bottom edge of the ice.

21 Q Do you have any idea now about how much time
22 elapsed before you actually looked at the rudder
23 indicator and saw that it was only like at six?

24 A Approaching two minutes. Anywhere from a
25 minute and a half -- between a minute and a half

1 to two minutes.

2 Q During this time, you were at the starboard
3 radar at this time?

4 A No.

5 Q Port radar?

6 A After the telephone conversation, and I
7 returned to the -- I turned around and went to
8 the port radar, looked at the port radar, looked
9 up at the rudder angle indicator.

10 Q Is there -- there's only one overhead rudder
11 angle indicator, is there not?

12 A Well, there's actually two.

13 Q Oh, I'm sorry. One up on the forward bulkhead
14 and...

15 A Yes.

16 Q ...and one more or less directly right above
17 the console?

18 A Yes. On the starboard side.

19 Q Mr. Cousins, I'd like to hand you now what's
20 been marked as Defendant's Exhibit J and ask you
21 if you could recognize this, sir?

22 A Yes.

23 Q And what is that?

24 A This is a view of the starboard side of the
25 forward section of the bridge.

1 Q You may need to hold it up and just illustrate
2 where, for instance, the radar is.

3 A This is the starboard radar. This is the
4 rudder angle indicator. This is the steering
5 stand. The other radar that I was using would
6 have been over here.

7 Q From the other radar, the port radar, can you
8 see the rudder angle indicator?

9 A Not clearly, no.

10 Q How far would you have to move in order to see
11 it?

12 A Well, you'd -- as I recall, you'd need to step
13 fairly closely to the steering stand.

14 Q What about the other rudder angle indicator?

15 A That is located right here.

16 Q Now, is that...

17 A This is the smaller...

18 Q Could you see that one from the port radar
19 station?

20 A Yes, it's at an angle. I think it's more
21 directly in front of the steering stand.

22 MR. MADSON: Your Honor, I'd offer Defendant's
23 Exhibit J at this time.

24 MR. COLE: No objection.

25 THE COURT: Admitted.

EXHIBIT J ADMITTED

(Tape: C-3617)

(0060)

Q (Mr. Cousins by Mr. Madson:) Is the port radar essentially the same as the starboard radar?

A No, it isn't.

Q What's the difference?

A The starboard radar is a ten centimeter radar and it's equipped with a collision avoidance module. The port radar is a three centimeter radar without any other attachments.

Q You felt on this particular occasion the port radar was better for your purposes?

A That's correct.

Q Now, when you have a helmsman that you give an order to, you naturally assume it's carried out if the guy says yes, 10 degree right rudder, right?

A Yes.

Q You don't normally stand right over the helmsman's shoulder and watch every move he makes, do you?

A No, but -- not right over his shoulder, but you would observe that your order was indeed

1 executed.

2 Q Did you see Mr. Kagan actually turning the
3 wheel when you gave him the 10 degree right
4 rudder?

5 A Well, I could only see a silhouette of the
6 helmsman that was extremely dark in the
7 wheelhouse.

8 Q That's because you don't want any light to
9 interfere with your night vision?

10 A That's right.

11 Q Now, the chart room itself, is that lit so you
12 can see the charts and everything back there?

13 A Dimly.

14 Q But you have a curtain that's drawn across?

15 A Yes.

16 Q When you were on the phone with Captain
17 Hazelwood, the first conversation, when you told
18 him you started the maneuver, did he ask you what
19 rudder angle you had on or did you tell him?

20 A No. There was no discussion of the rudder
21 angle.

22 Q But you told him you were starting to make the
23 turn, right?

24 A Yes.

25 Q Now, did you come in -- after you hung up the

1 phone, you then took another fix or plot or are
2 we just looking at the radar this time?
3 A After the first conversation?
4 Q Yeah.
5 A I turned to the -- again, the port radar,
6 looked at the rudder angle indicator. It was at
7 that time that I stepped out onto the port bridge
8 wing and looked aft to Busby Island light.
9 Q And did it seem to be in the proper position
10 if you were starting to make a turn? Can you
11 tell?
12 A Well, I -- I -- no. I expected the light to
13 be more -- not off our port quarter but more
14 astern as the ship started to swing.
15 Q Did this cause you any concern at this time?
16 A Yes, it did.
17 Q What did you do then?
18 A I entered the bridge again. I believe it's
19 at this time that I ordered the 20 right, took
20 some -- a couple of ranges and may have --
21 although I don't remember returning to the chart
22 room to plot these, I believe that I did.
23 Q Were these the ones you described yesterday
24 and you said you did in haste?
25 A Yes. The scribe marks.

1 Q Okay. So you believe while you plotted them,
2 you did them somewhat in a hurry?

3 A That's correct.

4 Q About how long did that take, sir?

5 A A matter of seconds.

6 Q Again, 15 to 20 seconds?

7 A Yes, I -- 15. No more than 15.

8 Q I guess the question is why did you do these
9 in haste?

10 A Well, obviously things weren't going as I had
11 planned and my -- the reason that I walked out
12 onto the bridge wing was a quick check to see
13 whether we had go so far down that we were into a
14 red sector. It was a quick check to verify that
15 with a couple of quick ranges. I had ordered a
16 harder rudder, put an additional 10 degrees on
17 the original rudder order.

18 Q You ordered the 20 degree rudder angle before
19 you made this plot and fixed then -- or fixed the
20 plot?

21 A Well, before I plotted it, yes.

22 Q You were concerned enough at that point that
23 the vessel wasn't turning as you expected, right?

24 A Yes. It hadn't turned at all.

25 Q And is that when you also noticed that the

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1 rudder angle was only at six or seven degrees?
2 A That was prior to that.
3 Q As you were coming in, you came in and looked
4 at the radar, did you look at the rudder angle
5 indicator at that time, before you did your
6 actual fix?
7 A Yes, it was at 10 then. I had -- as I stated
8 yesterday, I told him, you know, put it over to
9 10.
10 Q And you actually saw that it was at 10?
11 A Yes.
12 Q Now from just visually from being on the
13 bridge, just being there and looking out, without
14 the use of radar or anything, it was -- you
15 couldn't see any landmarks. Is that correct?
16 Any mountains or any points of land or anything?
17 A No, only lights.
18 Q It was virtually just pitch black?
19 A That's right.
20 Q And radar is used to a great extent to
21 navigate vessels like the Exxon Valdez, is it
22 not?
23 A Yes.
24 Q I mean you could be in a virtual -- complete
25 fog and still navigate, can you not?

1 A Yes.

2 Q Can you estimate and I know, sir, you believe
3 it's very difficult but can you give the jury any
4 idea of the time that might have been involved
5 from the time you said you got your fix -- you
6 did your fix or plot and the time that you
7 actually heard the rumbling of the grounding
8 itself?

9 A You're talking about the plot prior to the
10 20...

11 Q That's right. The one you did in haste when
12 you said you were concerned.

13 A Perhaps up to a minute and a half to two
14 minutes.

15 Q During this time, you did not call Captain
16 Hazelwood and say, in effect, gee, Captain, the
17 vessel is not turning as I expected or I just
18 gave a 20 degrees right rudder?

19 A At that time, no, I didn't call him.

20 Q Did you still feel that even though you were
21 concerned that, you know, with a 20 degree right
22 rudder, you were going to have no problem
23 clearing Bligh Reef?

24 A I thought that we were going to clear.

25 Q At some point then you gave another rudder

1 command, did you not? The hard right?

2 A Yes.

3 Q Why did you do that, sir?

4 A We weren't -- although the heading change was

5 increasing rapidly, our advance was such that we

6 were really carrying down on to the reef. And

7 that was an attempt to, again, increase rate of

8 turn and hopefully, shorten that advance towards

9 the reef.

10 Q It simply made sense in your mind to turn

11 sharper or as sharp as possible at that point,

12 right?

13 A Yes.

14 Q Was it immediately after that then you went to

15 the phone the second time to call the captain?

16 A When I ordered the hard right, I was in the

17 process of calling the captain.

18 Q And I think you said yesterday that at that

19 time you were just telling him you think we're in

20 serious trouble when you heard rumblings or

21 sounds?

22 A The conversation went, captain, I think we're

23 in serious trouble. He said, what's the matter,

24 where's the rudder? And I said, I headed it a

25 hard right and I turned and it was at 20. The

1 initial contact -- impact on the reef. That was
2 it.

3 Q When you make a course change or a heading
4 change, is there something called a way that
5 changes, a way off the vessel or something like
6 that, a nautical term? Maybe, I'm...

7 A No, I don't think I understand you.

8 Q I probably don't either. In other words,
9 does the vessel tend to slide as it turns?
10 Maybe that's a better way of putting it.

11 A That would be an advance from the time that
12 you put a rudder over until it actually starts
13 off that line.

14 Q Could you say that it is nothing unusual or
15 substantially different about the Exxon Valdez
16 and its handling characteristics as opposed to
17 other tankers you've served on?

18 A They're not the same but they are very
19 similar.

20 Q Now you said yesterday that your original
21 estimate of the grounding time at 0004 was not
22 correct and it was actually later than that.
23 Where did the 4 come from, the four minutes
24 after? How did you arrive at that?

25 A I don't really recall. I mean it may have

1 been just a best estimate trying to reconstruct
2 the time that I might have gotten off the digital
3 read out on the console. At the time of contact
4 or impact on the reef, I did not stand there and
5 say, well, it's, you know, 0012. I didn't do
6 that.

7 Q And if you give a command of 10 degree right
8 rudder at 2356, let's say, and the grounding is,
9 you said yesterday I think, was closer to maybe
10 0011 or 12? Is that correct?

11 A Yes.

12 Q That's about the 15 minutes? Correct?

13 A Uh-huh (affirmative).

14 Q That's the time when you were on the bridge
15 and doing what you described yesterday, taking
16 -- look in the radar and things like this?

17 A Yes.

18 Q Is it true, sir, you didn't feel unusually
19 rushed or hurried in doing this until you
20 realized that there may be a problem, right?

21 A I felt, I think, during that time that I gave
22 the 20 degree right that it was time to...

23 Q Time to hurry.

24 A ...pick up. Yeah.

25 Q And again, I may have asked the question; I

1 may have not but from that time, the 20 degree
2 right turn order to the time you heard the
3 rumblings or whatever, the grounding was that,
4 you say, about two minutes or...

5 A A minute and a half to two minutes. Somewhere
6 in that time frame.

7 Q From your earlier testimony, had you asked the
8 captain to come up at that time, he could have
9 been there say in 15 seconds?

10 A Yes.

11 Q Do you feel, sir, that even if he had come up
12 at that time, there was anything that anybody
13 could have done?

14 A No.

15 Q It was predetermined it was going to hit the
16 reef, right?

17 A I believe so.

18 (0537)

19 Q Now, sir, when you testified yesterday that
20 -- Mr. Cole wrote down a lot of things on the
21 sheet. One of the things he wrote down was the
22 term, initial grounding. There was only one
23 grounding, wasn't there?

24 A Yes. It should -- initial contact.

25 Q I mean you heard these rumblings or vibrations

1 and they lasted for a period of time and then it
2 stopped?

3 A That's correct.

4 Q After the vessel stopped, the engines were
5 still running, correct?

6 A Yes.

7 Q I think you said that you went on the port
8 wing -- bridge wing at that time or immediately
9 after?

10 A Yes.

11 Q And you turned the lights on -- flood lights?

12 A Yes.

13 Q What do the flood lights do?

14 A They illuminated the deck and...

15 Q I know it's a dumb question. What did they
16 illuminate?

17 A They illuminated the deck and the side of the
18 vessel.

19 Q What were you looking for?

20 A Holes and oil gushing.

21 Q Did you see any of it port side?

22 A No, I didn't.

23 Q Did you go on the starboard side?

24 A Yes, I did.

25 Q What did you see there?

1 A We saw oil bubbling up into the water.

2 Q When you returned to the bridge, was the
3 captain there at that time?

4 A When I came in from the port bridge wing, he
5 was there.

6 Q That was your first trip out?

7 A Yes.

8 Q How long did you stay out there? Just enough
9 to flip the lights on and look and come back in?

10 A Yeah, two or three minutes.

11 Q Is it fair to say, sir, that this was an -- I
12 won't say unusual, but exciting...

13 A Shocking.

14 Q ...shocking event. When you saw the captain
15 come up on the bridge, did he tell you anything
16 to do right away?

17 A Yes. Get a fix.

18 Q Get a fix?

19 A Yes.

20 Q And that seemed like a proper or prudent order
21 to give at that time?

22 A Yes. We needed to know where we were on the
23 reef.

24 Q Yeah. Because you had to let somebody know,
25 right?

1 A Yes.

2 Q I take it you did that?

3 A Yes.

4 Q Did you see any change in his demeanor or
5 method of speaking or anything else that was
6 different at this time than any other time
7 earlier that evening?

8 A Other than the stress and shock, no.

9 Q He appeared to be somewhat in shock too?

10 A Well, we all were.

11 Q Did he still seem to give clear and concise
12 commands -- orders?

13 A Yes.

14 Q After you got the fix, did he tell you
15 anything to do with regard to the rest of the
16 crew?

17 A He instructed Maureen Jones, the look out,
18 myself to go below and inform crew members of our
19 situation.

20 Q There's a general alarm bell on the vessel, is
21 there not?

22 A Yes.

23 Q Was there one on the Exxon Valdez?

24 A Yes.

25 Q Was there any suggestion made to sound that

1 general alarm?

2 A We thought perhaps it might not be the best
3 thing to do. The chief mate had mentioned how
4 strong the vapors were just in the passageways
5 that he'd come through, so...

6 Q You didn't want to cause anyone any
7 unnecessary alarm or fear?

8 A Correct.

9 Q So the captain decided not to use that to
10 inform people...

11 A Right.

12 Q And you believed that to be a prudent order at
13 the time?

14 MR. COLE: Objection. Lack of foundation.

15 MR. MADSON: If he knows, Your Honor.

16 THE COURT: I think the witness can give his
17 opinion on that. Your objection as to foundation is
18 overruled.

19 Q I believe you said yes, it seemed appropri-
20 ate under the circumstances?

21 A Yes.

22 Q I want to go back just a little bit. I think
23 you said that when the vessel hit the reef, it
24 continued to swing to the starboard or to the
25 right?

1 A Yes.

2 Q At that time, of course, you did have the full
3 right turn rudder on?

4 A Yes.

5 Q And that's when you grabbed the wheel to
6 stabilize it? In other words, you centered the
7 vessel?

8 A Yes. Well, I did that to slow or stop the
9 swing -- stop the aft end of the ship from
10 getting up into the reef. That was the attempt
11 -- that was the intent.

12 Q Yeah, the intent was to protect the engine...

13 A Whether it did anything or not.

14 Q ...room and the crew down there, right?

15 A Yeah.

16 Q Was there crew or did you know there was crew
17 down in the engine room at that time?

18 A Yes.

19 Q Why are they there at that particular point of
20 this voyage? Do you know?

21 A Because they have to be. Until we make
22 departure, until we're out of those waters and
23 out into open sea.

24 Q You said the engines were shut down -- well,
25 again, I'm going in layman's terms, at about

1 12:20 p.m., at 0020, the first time?

2 A Okay. I don't have anything to reference that
3 but it sounds about right.

4 Q Did I say p.m.? I should have said a.m.

5 A Yeah.

6 Q That would have been roughly ten minutes after
7 the initial -- or after the grounding
8 approximately?

9 A I don't know that the engines run that long.
10 Of course, you're assuming that my time of the
11 grounding is correct.

12 Q No, actually, I'm asking you to give us your
13 best estimate or opinion as...

14 A I do not believe that it was ten minutes from
15 the time that we were fully fetched up on the
16 reef until the time that we stopped the engines.

17 Q Were you present on the bridge when the
18 captain gave any -- or talked on the phone with
19 the chief engineer, for instance, ...

20 A I was...

21 Q ...regarding the engines and...

22 (0787)

23 MR. COLE: Objection. Hearsay.

24 MR. MADSON: I'm only asking if he heard a
25 conversation and not what the content was, Your Honor.

1 THE COURT: All right. But don't relate
2 what the conversation was. The question was did you
3 just hear a conversation?

4 A There were a number of conversations and I
5 really can only tell you who they may have been
6 with. Certainly, the captain would have talked
7 to somebody, the chief engineer. I don't know
8 what the conversation was about. I didn't
9 overhear it or the chief mate.

10 Q Did you -- did the captain actually ask you or
11 tell you to go to the engine room or contact the
12 engine room at any time?

13 A I did.

14 Q For what purpose?

15 A To tell the engineers that we're going to stop
16 the engines.

17 Q Did you do that from the bridge?

18 A Yes.

19 Q By phone?

20 A Yes.

21 Q Well, how long were the engines off, if you
22 can estimate that time before they were
23 restarted?

24 A Oh, I don't recall. It was a period of time.
25 I'm not sure when they were restarted.

1 Q Were you present when the order to restart the
2 engines was given?
3 A Yes, I was.
4 Q And who gave that order?
5 A The captain.
6 Q Did he -- he didn't sound panicky or anything
7 like that?
8 A No.
9 Q He just said restart the engines?
10 A Yes.
11 Q And a number of engine commands were given
12 while you were there, correct?
13 A That's correct.
14 Q Were any of those engine commands ever -- to
15 your knowledge, in the stern or reverse position?
16 A No.
17 Q To get off the reef, sir, or from your
18 experience, isn't it commonly done to put engines
19 in reverse if you want to get off, if you went on
20 forward?
21 A That would make sense. Of course, my
22 experience in being on reefs is rather limited.
23 Q Was this the first and only time?
24 A This is the first. Correct. But I -- you
25 know, you logically assume that if you plowed

1 into a pile of rocks, the way that you're going
2 to get out is to back up.

3 Q You said that Mr. Kunkel, the chief mate, came
4 up to the bridge and there was a discussion about
5 stability of the ship?

6 A Yes. That took place between the captain and
7 the chief mate.

8 Q You weren't involved in that discussion at
9 all, sir?

10 A That's correct.

11 Q But you were present and overheard it?

12 A I overheard voices and that's it.

13 Q Oh, okay. You don't have any clear
14 recollection of what was said?

15 A None.

16 Q But you know the gist of the conversation was
17 the stability of the vessel, right?

18 A Yes.

19 Q The chief mate -- is part of his function to
20 determine -- in other words, things like
21 stability? I mean, can he do that?

22 A Certainly.

23 Q Can you do that?

24 A No, not to the extent that the chief mate
25 would be able to determine the stability

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stresses.

Q Do you know how he would do that? Just the means or method he would employ?

A A general idea.

Q How would that be sir?

A Well, he could do that -- work that manually, I suppose but we have on board computers that help calculate stability and stresses at various points along the ship's structure.

Q Does he have a computer or something that he can use at his disposal to program it?

A Yes, he does.

Q And of course, Mr. Kunkel would be the person to have that knowledge and not yourself as to how it was actually done?

A That's correct.

Q From the time the vessel was actually on the reef, I mean after you gave the -- or turned the wheel and got it centered, did the vessel ever move at any -- to any degree, any substantial degree after that?

A Did the position shift or...

Q Position shift is what I meant.

A Yeah. The position didn't shift.

Q It virtually remained motionless?

1 A Yes.

2 Q Do you know if the tide was coming in or out
3 at that time?

4 A As I recall, it was flood tide.

5 Q What does that mean?

6 A Incoming tide.

7 Q So the water -- the vessel would tend to rise
8 if it's on a reef?

9 A Yes, if there's any buoyancy there.

10 Q And of course, you were -- you were losing
11 cargo and losing oil?

12 A Yes.

13 Q At the same time was water coming in to
14 displace that oil or how does that work?

15 A Water would -- oil would drop out to the
16 extent that whatever the pressure is outside of
17 the hull, the level of water -- in other words,
18 it would equalize.

19 Q And of course, while you were...

20 A It would be a hole the size of the holes that
21 we had, the oil would be replaced by water.

22 (1027)

23 Q You didn't know exactly how big the holes were
24 but...

25 A I didn't.

1 Q ...I assume you knew they were substantial?
2 A Yes.
3 Q That was from the amount of oil that you could
4 see coming out?
5 A Yes.
6 Q And of course, you don't know exactly what was
7 in the captain's mind when he was giving engine
8 orders at this time?
9 A No.
10 Q And rudder commands?
11 A No.
12 Q You remained on duty for how long, sir, after
13 the grounding?
14 A I remained on the bridge until approximately 5
15 o'clock.
16 Q That was after the Coast Guard arrived? I
17 think you said they came on around 3:40,
18 something like that?
19 A Yes.
20 Q A.M.?
21 A Approximately.
22 Q And what were you really doing during this
23 period of time? I think you said -- let me back
24 up. You said the engines were shut down again
25 at 1:41 a.m. or 041, right?

1 A Yes.

2 Q The captain told you we're definitely not
3 going anyplace?

4 A Yes.

5 Q In other words, did you take that to mean the
6 vessel was stable, sitting where it was?

7 A Yes.

8 Q And what did you do after that? After 1:41
9 a.m.?

10 A I continued to monitor the vessel's position
11 to see whether there was any shift in it,
12 fielding telephone calls.

13 Q You weren't then in the captain's presence
14 much after 1:41 when the engines were shut down?

15 A That's correct.

16 Q At 1:41 did he seem any different than he had
17 seemed earlier?

18 A No.

19 Q Did the captain yell at you or accuse you of
20 anything?

21 A No.

22 Q Did he just basically ask you what happened?

23 A Yes.

24 Q Did you tell him what you thought happened?

25 A Yes, I did.

1 Q Now, at 1:41 when the engines were shut down,
2 was Mr. Kagan still on the wing in the helm?

3 A Yes.

4 Q Did you hear the captain say anything to Mr.
5 Kagan at this time about how well he had done or
6 anything like that?

7 A Yes, I remember a comment.

8 Q What did he say, sir?

9 A He said something to the effect of damned fine
10 job, Bob, or something like that.

11 Q How did you take that to mean? Was that a
12 compliment or sarcastic?

13 A Kind of dark humor.

14 MR. MADSON: I have no further questions at
15 this time, Your Honor.

16 THE COURT: We'll take a recess, ladies and
17 gentlemen, for about ten or 15 minutes. Remember my
18 instructions not to discuss the case among yourselves
19 or with any other person and not to form or express any
20 opinions.

21 THE CLERK: Please rise. This Court stands
22 in recess.

23 (Off record - 10:18 a.m.)

24 (On record - 10:45 a.m.)

25 THE CLERK: This Court is now in session.

1 THE COURT: Redirect, Mr. Cole.
2 (1157)
3 (Jury Present)
4 REDIRECT EXAMINATION OF MR. COUSINS
5 BY MR. COLE:
6 Q Mr. Cousins, at the beginning of your
7 testimony, yesterday, you indicated that you had
8 had not spoken with Mr. Madson before. Is that
9 correct?
10 A That's correct.
11 Q How many times have you spoken with Mr. Chalos
12 about this case?
13 A Once.
14 Q And where was that at?
15 A In Orlando.
16 Q Is that where you live?
17 A I live in Tampa.
18 Q And how about Mr. Russo? Have you ever
19 spoken with him about this?
20 A Yes, I did.
21 Q How many times have you spoken with him?
22 A Once.
23 Q When you have traveled in and out of Prince
24 William Sound in the trips you've made as -- on
25 the helm, were you ever relying on the VTC radar

1 system to tell you where you were?

2 A No.

3 Q Why is that?

4 A Because we maintain our own position.

5 Q You indicated prior that you had been alone on

6 the bridge in Prince William Sound. Had that

7 ever -- ever been for as long as an hour?

8 A No.

9 Q Had you ever been alone up on the bridge when

10 making a maneuver such as you've described here

11 that you made on March 23rd, 1989?

12 A No.

13 Q Have you ever been alone up on the bridge with

14 Bob Kagan at the helm?

15 A No.

16 Q How long would it take to travel from

17 Hinchinbrook to the Valdez terminal, if you had a

18 straight shot and no problems?

19 A As I recall, approximately four hours.

20 Q And you indicated that on several occasions,

21 tanker captains had left you up on the helm alone

22 while traveling through this area?

23 A Not on the helm but...

24 Q Up on the bridge.

25 A ...up on the bridge.

1 Q Were those all -- what type of circumstances
2 were those? Were they during daylight or night
3 time?
4 A Both.
5 Q And when it was during the night time, was
6 there ice in front of you at that time?
7 A No.
8 Q Did you have to make any maneuvers -- well,
9 let me withdraw that question. What was the
10 longest period prior to this evening that a
11 captain had not been on the bridge with you?
12 A Oh, perhaps 10 to 15 minutes.
13 Q Is that what you would consider a very brief
14 period of time?
15 A I consider that brief, yes.
16 Q And the 10 or 15 minutes was the period of
17 time you said Captain Hazelwood was off the
18 bridge when the tanker grounded? Was that
19 correct?
20 A Approximately.
21 Q Do you remember talking to the NTSB and being
22 asked questions about how long you had been left
23 alone on prior occasions by tanker captains?
24 A I vaguely remember the question, yes.
25 Q Do you remember telling the NTSB that -- you

1 were asked a question which said, "during that
2 time, was it, I think you followed up by saying
3 it was a very -- for a very short period of time.

4 Well, let me read it in context.

5 You were asked where you were left alone on
6 the bridge in the Prince William Sound area and
7 you indicated that during that time, was it, I
8 think, you followed it up by saying for a very
9 brief period? You said, correct.

10 A Yes.

11 Q Do you remember that?

12 A Uh-huh (affirmative). Well...

13 Q And you were asked but it was a much shorter
14 period than during this time. Right? Am I
15 correct? Do you remembering answering...

16 A I think that was in reference to the period of
17 time the master was off the bridge on our
18 approach and transit of the Narrows.

19 Q Okay. So that's what you were referring to at
20 that time?

21 A Yes.

22 Q Now, I'd like to talk to you for a minute
23 about the time that Captain Hazelwood was off the
24 bridge or Captain Murphy -- was Captain Murphy
25 was the pilot. Would -- if Captain Murphy had

1 made a mistake going through the Narrows, would
2 Captain Hazelwood have been able to correct it?
3 A Not as quickly as I could have.
4 Q And that was -- why?
5 A Because he wasn't on the bridge.
6 Q If you had so much confidence in Captain
7 Murphy, why did you remain on the bridge through
8 the Narrows?
9 A Somebody -- I'm a representative of the master
10 and I think that in our policy that -- it states
11 that a member of the crew -- a qualified member
12 of the crew has to be on the bridge.
13 Q That's in your policy manual itself, the Exxon
14 policy?
15 A Yes.
16 Q Why is it that you have someone up there
17 from...
18 A It's our ship. A pilot is -- you could
19 characterize him as a contracted -- contracted
20 employee for a short period of time to help us
21 get the vessel out of the port area.
22 Q Are you aware of any Coast Guard requirements
23 that require the chief mate to be in the cargo
24 control room during the loading and unloading
25 process?

1 A Yes, I don't -- I can't recall specifics of
2 our regulations right now, but I believe it
3 states that the chief mate direct or supervise
4 the loading and discharge of cargo and that a
5 qualified member shall assist him.

6 Q Would you explain to the jury about how common
7 or uncommon it is for the sailing board to be
8 changed?

9 A It's not all that common in Valdez. Loading
10 rates are usually pretty steady, fixed. They're
11 predictable. We're usually within a close
12 approximation of the original sailing board.

13 Q And how can a person who is off the vessel
14 find out about what time the sailing time is?

15 A We inform the dock of any changes; we also
16 inform the agent.

17 Q And the dock, does that mean the Coast Guard?

18 A No, that means the terminal personnel.

19 Q And a person can call up and ask those people
20 any time?

21 A Yes.

22 Q Were you aware of how much experience Captain
23 Hazelwood had in coming into the Port of Valdez?

24 A Not specifically, but I knew that he had
25 fairly extensive experience.

1 Q And when you say extensive, you mean over a
2 number of years?
3 A Over a number of years, correct.
4 Q Was there anything about the undocking process
5 out to Rocky Point that was otherwise other than
6 normal on this trip or routine? Would you
7 consider it nothing more than a routine transit
8 out that evening?
9 A It was pretty much routine, yes.
10 Q You didn't have any high winds or...
11 A Well, we did experience a short period of -- I
12 wouldn't characterize it as reduced visibility
13 but visibility greater than two mile but probably
14 less four.
15 Q That was in the Narrows?
16 A No, not in the Narrows. Prior to entering
17 the Narrows.
18 Q And that was when the pilot was in control of
19 the navigation?
20 A That's correct.
21 Q Now, you talked about fixes. Do you -- are
22 there any guidelines for taking fixes? Do you
23 take them at a certain length of time or does it
24 make a difference according to the situation?
25 A Well, a difference according to the

1 situation. That being if we're n confined
2 waters, six-minute plots, if you're able to -- if
3 you have the time to do that. I mean a six-
4 minute plot is something that is considered a
5 general rule when -- a prudent manner of keeping
6 track of your vessel position.

7 Q Now -- so it does make a difference what type
8 of circumstances you're traveling in as far as
9 how many fixes you make?

10 A Certainly. If we were out in the middle of
11 the Gulf of Alaska, hourly fixes or perhaps even
12 fixes of two hours would be more appropriate than
13 six-minute positions.

14 Q And the reason is again, for that? Why is
15 that?

16 A Well, you're in a more confined waterway or
17 inland water space than in the open sea.

18 Q Would you consider yourself to have been in a
19 confined area when you entered -- when you left
20 the vessel traffic zone and headed in the course
21 of 180 degrees?

22 A Yes.

23 (1840)

24 (Pause)

25 MR. COLE: Is this where all the Exhibits

1 are?

2 THE COURT: What are you looking for, Mr.
3 Cole?

4 MR. COLE: The operational -- (indiscernible -
5 away from mike).

6 THE COURT: Do you know the Exhibit number,
7 Mr. Cole? Is that 29, or 30 or 31, something like
8 that?

9 (Whispered side conversation)

10 Q (Mr. Cousins by Mr. Cole:) Mr. Cousins, the
11 Exxon shipping company puts out a revised bridge
12 manual, is that correct?

13 MR. MADSON: Your Honor, I'm going to object
14 at this point. That's beyond the scope of the cross
15 examination. I never asked him any questions regarding
16 any manual whatsoever.

17 MR. COLE: Judge, he asked about whether or
18 not traveling through ice and making this turn was a
19 routine operation. I'd like to ask Mr. Cousins where
20 he would -- what type of watch he would have said is
21 required under this situation to show that it's not
22 routine.

23 THE COURT: Objection overruled, Mr. Madson.

24 Q (Mr. Cousins by Mr. Cole:) It's correct that
25 there is a revised bridge manual that's put on

1 all the vessels. Is that correct?

2 A Yes.

3 Q And it sets out some of the policies and
4 guidelines that the mates and the captain are
5 supposed to follow while they're traveling aboard
6 an Exxon vessel?

7 A That's correct.

8 Q Is there a section on this that talks about
9 what type of watches are considered prudent in
10 certain circumstances?

11 A Yes, there is.

12 Q Would you tell the jury what watch you
13 consider this should have been placed under?
14 Maybe you could explain the different categories.
15 Is there an A, and a B and a C and a D?

16 A Yes. There's those four watch conditions and
17 they briefly describe certain situations that
18 you would encounter. For instance, Watch
19 Condition A would be dealing, as I recall, open
20 waters and it will proscribe the officer
21 complement -- the watch complement that should be
22 on the bridge at the given time, based on the
23 watch condition that exists.

24 Q What -- after having reviewed that manual,
25 what would have been the prudent watch detail

1 that should have been on board the Ex -- the
2 bridge of the Exxon Valdez that evening?

3 MR. MADSON: Your Honor, I'll object to the
4 form of the question. If he has an opinion as to what
5 he thinks he would have considered it to be and -- I
6 object to the word, prudent.

7 THE COURT: Can you style your question in so
8 that it tracks the manual and the policy rather than
9 the way it's asked?

10 Q (Mr. Cousins by Mr. Smith:) Would you
11 considered Watch C to be the pro -- the watch you
12 would prefer?

13 A That's correct. Yes, I would.

14 Q And would you read for the jury what the watch
15 requirements are under Watch C?

16 A "Watch Type C. In situations such as in
17 restricted waters with clear visibility and high
18 density traffic or when entering or leaving port
19 with clear visibility regardless of traffic."
20 And then it goes on to state what the bridge
21 complement should be.

22 Q What does it say about what the bridge
23 complement should be?

24 A "Supplementary personnel are necessary so that
25 there are two officers on the bridge with a look

1 out posted." And then it goes on to make a
2 statement about the automatic pilot. It defines
3 the role of the master and the role of the watch
4 officer.

5 Q What is the role of the master in that
6 situation?

7 A "The master or senior deck officer is in
8 charge of the watch and will coordinate and
9 supervise the overall watch organization and the
10 safe navigation of the vessel."

11 Q What about the watch stand?

12 A "The role of the watch officer is to assist
13 the master or the senior deck officer by
14 performing the duties outlined below. The
15 primary emphasis will be placed on navigation and
16 communications."

17 Q That would be the watch officer's role?

18 A Yes.

19 Q Now, what about the look out? On this
20 particular evening, the look out was Maureen
21 Jones? Is that correct?

22 A That's correct.

23 Q And she was out where?

24 A On the starboard bridge wing.

25 Q When you encounter ice, where is the best

1 place for the person who is out on watch, the
2 look out, to be under the right circumstances?

3 MR. MADSON: Your Honor, I object to that. I
4 don't even see the relevance of that. His opinion as
5 to where is the best position is?

6 THE COURT: Your question is difficult for me
7 to understand. The objection as to relevance is
8 overruled but rephrase your question to make it more
9 understandable.

10 Q (Mr. Cousins by Mr. Cole:) Where is it
11 easiest to see ice from on this ship, the bow or
12 the bridge?

13 A Depends if you're talking about daylight or at
14 night. At nighttime, on the night that we're
15 talking about, as far forward as possible, that
16 being the bow, but I really doubt that in my
17 opinion that would have been of really great
18 assistance to the watch officer.

19 Q Do you remember talking to the NTSB about
20 this?

21 A I haven't...

22 Q Do you remember being asked where would you
23 have preferred her to have been?

24 A I believe forward.

25 Q When you passed Busby Island and took a fix,

1 how far away from Busby Island were you?

2 A Approximately a mile.

3 Q Do you remember being -- writing down that you
4 were inside that, a mile -- within less than a
5 mile of Busby Island?

6 A I believe that the range was 1.1.

7 THE COURT: While you're up here, would you
8 call Mr. Madson please? (Pause)

9 (2214)

10 (Whispered Bench Conference as follows:)

11 THE COURT: I know you're not intending to,
12 but it really sounds like you're building a nest over
13 there sometimes which I don't...

14 (Indiscernible - whispering)

15 (2260)

16 (End of Bench Conference)

17 Q (Mr. Cousins by Mr. Cole:) Now, when you and
18 Captain Hazelwood were discussing where you would
19 turn at the radar, do you remember which radar
20 you were using?

21 A The starboard radar.

22 Q And how do you look at the radar? Is there a
23 way that both people can look at the radar at the
24 same time?

25 A Yes.

1 Q How does that happen?
2 A Standing shoulder to shoulder, looking at the
3 screen.
4 Q You were at the starboard radar?
5 A Yes.
6 Q Would you point out to the jury what this
7 thing is right here?
8 A This is for day time. It shields the sunlight
9 so you can -- referring to this shield, that's
10 off a night time.
11 Q That's off at night time?
12 A Yes.
13 Q So you were able to point that -- he was able
14 to point to a position. Is that right?
15 A Yes.
16 Q How important is it to know the capability of
17 the people that are working under you?
18 A Very important.
19 Q Are you confident that you heard the first
20 time the Exxon Valdez hit -- make contact with
21 the ground that morning?
22 A Could you...
23 Q Okay. Do you feel confident that you heard
24 the first time the Exxon Valdez strike a part of
25 Bligh Reef?

1 A Yes.

2 Q And that was when you were on the phone?

3 A Yes.

4 Q And would you describe for the jury how fast
5 the vessel started turning at that point? Did it
6 increase the rate of its turn or did it decrease
7 the rate of its turn after striking Bligh Reef?

8 A I believe it decreased the rate of turn.

9 Q And then at some point, it became grounded and
10 stopped altogether?

11 A Shortly thereafter.

12 Q And did the rate of turn increase or decrease
13 at that point?

14 A I couldn't say for certain.

15 Q Was the rate of turn -- the heading of the
16 ship going as fast prior to the grounding?

17 A Was it...

18 Q Was the vessel heading turning as rapidly
19 prior to the grounding?

20 A Well, I think the difference in the rate of
21 turn just prior to the grounding and just after
22 the initial contact was not that distinguishable
23 to me and I wouldn't say that there was a great
24 change in the rate. It continued to swing fairly
25 rapidly to the right. To give you a reference in

1 terms of speed at rate of turn, I really couldn't
2 do justice to that.

3 Q But it was fast enough that you had a concern
4 that the aft of the ship might be punctured?

5 A Yes.

6 Q And you took very quick actions after the
7 grounding occurred to counteract?

8 A Yes, that was -- you know, we're talking n
9 terms of split seconds. The series of jolts. I
10 knew we were going aground. I didn't know where
11 on the reef that we were at that time. I
12 suspected that we were on the very northern edge
13 of it, but it didn't -- I didn't think that it
14 we were going to come off the reef. That was
15 the sense that I had and my concern was that the
16 rate of the turn, the motion of the vessel was
17 going to carry us and carry the aft end of the
18 vessel into the rocks and very well, hole the
19 engine room.

20 Q From the captain's quarters, is there a radar
21 in the captain's quarters?

22 A No.

23 Q Are there any rudder control indicators in the
24 captain's quarters?

25 A Not in his office. No, I don't think that

1 there is anything like that.

2 Q Are there any gyro repeaters in the captain's
3 quarters?

4 A No.

5 Q Are there any Doppler systems in the captain's
6 quarters?

7 A No.

8 (2580)

9 Q Does he normally keep the charts of the voyage
10 laid out in his quarters, there?

11 A Well, the voyage charts would be up on the
12 bridge.

13 Q And is there any television system where he is
14 able watch the helmsman to make sure that he's
15 making appropriate turns from his quarters?

16 A No.

17 Q Could you see the reef itself when you were
18 looking at the radar?

19 A No, the reef is submerged.

20 Q You indicated that there were no other
21 equipment on Bligh Reef -- on the Exxon Valdez
22 that would have helped to avoid this incident.

23 A No, I -- you mean additional equipment that
24 may have prevented this? I can't think of any.,

25 Q And you also said that it's your belief that

1 if you had turned when you had instructed that
2 you would have avoided this grounding?

3 A Correct.

4 Q If Captain Hazelwood had been on the bridge
5 during this maneuver, would you have avoided the
6 grounding?

7 A Well, I can't say yes or no. I would assume
8 that another person up there would have caught
9 any errors that were made. The workload, being
10 divided more equally.

11 Q That's the purpose of having another person up
12 there?

13 A Yes.

14 Q Thank you.

15 MR. COLE: I have nothing further.

16 RECROSS EXAMINATION OF MR. COUSINS

17 BY MR. MADSON:

18 Q Mr. Cousins, you say you can't say whether it
19 would have made any difference if Captain
20 Hazelwood would have been on the bridge or not
21 because you don't know if he would have been
22 looking out a window or in the chart room or
23 doing something else.

24 A Correct.

25 Q It would be basically sheer speculation to say

1 now, what could or could not have been -- would
2 have happened, had he been up there.

3 A Yes.

4 Q Going back to Mr. Cole's earlier questions,
5 you indicated you did not rely on the VTC or the
6 VTS system to tell you where you are. It's not
7 an aid to navigation, is it?

8 A No.

9 Q In the sense that...

10 A No.

11 Q But on the other hand, have you ever been on a
12 vessel in Prince William Sound which has strayed
13 out of the traffic separation zone and have been
14 notified by the VTC to correct your course or get
15 back into the lane?

16 A No. I've been on a vessel where we were
17 required to give a report in at a certain time.
18 I believe there was no pilotage on board. In the
19 course of doing some other things, we were not
20 minutes late but seconds later, something, and
21 they called us.

22 Q So you feel that you were at least being
23 watched or under surveillance or being controlled
24 by the VTC system?

25 A Yes. I knew that we weren't being watched as

1 far out as what I was just talking about, but...

2 Q How far was that sir?

3 A Well, that was just past the entrance, heading
4 up into the Sound.

5 Q Now, you said the captain, during this period
6 of time, Captain -- when I say period of time,
7 that's the time you started just before you
8 executed the maneuver off of Busby Island until
9 the grounding was about 15 minutes. Right?

10 A Approximately.

11 Q It wasn't an hour?

12 A An hour, no.

13 Q Fifteen minutes?

14 A Yeah.

15 Q And again, sir, with your Coast Guard license,
16 you are a qualified watch officer to stand watch
17 by yourself, are you not?

18 A Yes.

19 Q There's nothing in there that says you have to
20 have a captain there present with you while
21 you're on watch.

22 A Not on the license, no.

23 Q And of course, captains have other duties
24 besides just navigating the vessel, don't they?
25 I mean they have paperwork, other things to do?

1 A Yes.

2 Q They also have to sleep, don't they?

3 A Yes.

4 Q Sometimes you're alone on the bridge and
5 you're in command of that vessel when you have
6 the con, right?

7 A That's correct.

8 Q You said the visibility was good at Busby
9 Island. It was beyond two miles anyway?

10 A Beyond two miles is correct.

11 Q Mr. Cole asked you a few questions about the
12 Exxon operating manual guidelines. They are in
13 fact only guidelines, are they not?

14 A Yes.

15 Q And the master determines the watch
16 conditions, does he not? He's given the
17 responsibility to do that?

18 A Yes.

19 Q At the time you had discussions with Captain
20 Hazelwood about the maneuver that was going to
21 occur and you were going to go around the ice,
22 you didn't tell Hazelwood, gosh, captain, this is
23 I think it's Watch Position C and not A and
24 therefore, I want somebody else up here, right?

25 A That's correct. There was no discussion about

1 watch type.

2 Q Under Watch Condition, type C, and I'm
3 referring to page 51 of the manual, it says
4 "Watch Type C. In situations such as in
5 restricted waters with clear visibility and high
6 density traffic or when entering or leaving port
7 with clear visibility regardless of traffic."
8 You said you believed you were in restricted
9 waters, right?

10 A Correct.

11 Q Was the visibility clear? Could you see
12 beyond two miles?

13 A Beyond two miles.

14 Q There was no high density traffic though, was
15 there?

16 A No.

17 Q Are you familiar then with what's called Watch
18 Condition A, sir?

19 A Yes.

20 Q Under Watch Condition A in open waters, that
21 is clear visibility regardless of traffic?

22 A Yes.

23 Q That means that no matter how many ships or
24 other vessels are around?

25 A Yes.

1 Q High traffic, right?

2 A Uh-huh (affirmative).

3 Q Or in restricted waters with clear visibility
4 and little or no traffic. Right.

5 A Yes.

6 Q Would you agree sir there's some room for
7 interpretation as to whether it's A or C?

8 A Certainly is.

9 Q Mr. Cole asked you also about seeing ice when
10 you're on the bow -- there's a look out on the
11 bow of the vessel as opposed to the bridge. If
12 you're traveling, let's say at 11.7 knots or
13 almost 12 knots on the Exxon Valdez and someone
14 is in the bow at night, very dark, how much
15 distance -- how far do you think they could see
16 ice ahead of them?

17 A They have no good estimate. I mean, we were
18 essentially skirting ice and no one could make
19 visual contact with the ice until we were
20 grounded and had some lights on and shined it out
21 into the water.

22 Q The ice would be very difficult to see at
23 best, right, visually?

24 A Yes, without any light.

25 Q And while you're on the bridge wing, you're

1 much higher? You're about 80 feet or thereabouts
2 above the water level?

3 A Yeah, approximately,.

4 Q And while you can't see, let's say, you're not
5 as close to the actual ice if you're going into
6 ice, you can still see ahead?

7 A Yes.

8 Q You're -- the limit of your visibility is to
9 the extent of, I suppose, your eyesight and the
10 light conditions?

11 A Yes. The only restriction, of course, is you
12 know whatever you can't see by what I'd call the
13 shadow of the bow.

14 Q So, if someone were up in the bow and suddenly
15 there was a chunk of ice ahead, by the time they
16 got on their radio and contacted the bridge, do
17 you think there was anything you could do about
18 maneuvering around it?

19 A No. Not if it was close aboard.

20 Q And isn't it true, Mr. Cousins, the whole idea
21 was not to go through the ice, but to go around
22 the ice?

23 A Yes.

24 Q And while a person is up there in the bow,
25 they are in a very exposed position, are they

1 not?

2 A Yes.

3 Q They're all by themselves, almost, you know,
4 some 800 feet maybe away?

5 A Yes.

6 Q To your knowledge, have bow look outs ever
7 been washed overboard or injured or...

8 A I have been on other vessels that have
9 experienced severe weather -- substantial
10 distance up into the Sound and one of the reasons
11 that oftentimes that we bring the look out back is
12 in anticipation of foul weather for the
13 protection of the individual, bring them back
14 where we know they're safe.

15 Q Thank you, sir.

16 MR. MADSON: I don't have any other
17 questions.

18 THE COURT: Would counsel approach the bench
19 please? Mr. Cole?

20 (3130)

21 (Whispered Bench Conference as follows:)

22 THE COURT: Are either one of you going to
23 explore whether he had -- he knew if Captain Hazelwood
24 had knowledge of his lack of pilotage?

25 UNIDENTIFIED: I'm not.

1 THE COURT: Okay. I'm not going to have
2 (indiscernible - whispering.)

3 (3155)

4 (End of Bench Conference)

5 REDIRECT EXAMINATION OF MR. COUSINS, CONTINUED

6 BY MR. COLE:

7 Q The work that a master has -- the paperwork
8 you talked about, that can be done while the
9 tanker is in Valdez, can't it?

10 A I suppose it depends on what the paperwork
11 consisted of. If it was relating to the load or
12 something that transpired while we were in port,
13 you know obviously couldn't do it in port.

14 Q Could do it out at sea once you got passage?

15 A Perhaps, yeah.

16 Q You had four days to get down to San
17 Francisco? Is that correct?

18 A Yes.

19 Q Where do you keep your licenses?

20 A There's a license rack on E deck on the
21 Valdez.

22 Q And all the crew members' licenses are kept
23 right there?

24 A Yes.

25 Q And would Captain Hazelwood have known that he

1 was the only one that had pilot...

2 MR. MADSON: Your Honor, I object to the
3 leading question. It's also beyond the scope of my
4 recross.

5 THE COURT: I'm going to let this be open.
6 I'll let you cross on this. You can recall the witness
7 for that purpose and the leading question is sustained.
8 Rephrase your question.

9 Q How would the captain had been aware of who
10 had pilotage endorsement on his tanker?

11 A Typically, the individual would inform the
12 master that he had pilotage or certainly that
13 information would have been perhaps transmitted
14 by fleet manning as to who they were sending and
15 what qualifications they had.

16 Q Did you ever tell Captain Hazelwood that you
17 had pilotage endorsement for that area?

18 A No.

19 MR. COLE: I have nothing further.

20 (3300)

21 RECROSS EXAMINATION OF MR. COUSINS, CONTINUED

22 BY MR. MADSON:

23 Q Did Captain Hazelwood have a pilotage
24 endorsement for that area, to your knowledge?

25 A Yes.

1 Q Was he on board during that transit?
2 A Yes.
3 Q Now, sir, we talked about your knowledge of
4 the area before and what a pilotage endorsement
5 really is. I think you told the jury that
6 essentially to your knowledge, it's a test of
7 your knowledge of the chart, right?
8 A Not exclusively, but that would be part of it.
9 Q But knowing where navigational hazards are?
10 A Yes.
11 Q In Prince William Sound, would you agree that
12 probably that knowledge would include where Bligh
13 Reef is?
14 A Certainly.
15 Q Busby Island?
16 A Yes.
17 Q Rocky Point?
18 A Yes.
19 Q Hinchinbrook?
20 A Yes.
21 Q The area in general?
22 A Correct.
23 Q In other words, it would satisfy the Coast
24 Guard that you knew the area well enough to know
25 that there's certain navigational hazards in that

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particular location?

A Yes.

Q And that you should take steps to avoid them?

A Right.

Q And you already knew that, correct?

A Uh-huh (affirmative).

Q Thank you.

MR. MADSON: I don't have any other questions.

MR. COLE: Nothing further.

THE COURT: May the witness be excused from further participation?

MR. MADSON: Yes.

MR. COLE: He may be excused? Yes, Your Honor.

THE COURT: Okay. You're excused from further participation in this case. You may call your next witness.

(3390)

MR. COLE: At this time, Your Honor, the State will call Maureen Jones.

THE CLERK: Ma'am, you'll find a microphone somewhere there. If you'll attach that to your jacket, please and remain standing and raise your right hand?

(Oath administered)

1 MAUREEN JONES
2 called as a witness in behalf of the plaintiff, being
3 first duly sworn upon oath, testified as follows:
4 THE CLERK: Ma'am, would you please state your
5 full name and then spell your last name?
6 A Maureen Louise Jones, J-o-n-e-s.
7 THE CLERK: And your current mailing address?
8 A 2840 South College Road, Suite 422,
9 Bloomington, North Carolina, 28412.
10 THE CLERK: And your current occupation?
11 A Merchant Marine.
12 THE CLERK: Thank you.
13 DIRECT EXAMINATION OF MS. JONES
14 BY MR. COLE:
15 Q Ms. Jones, can you tell the jury how long
16 you've worked in the maritime industry?
17 A Since June of 1987.
18 Q Did you go to school before entering the
19 Merchant Marine?
20 A Yes, I did.
21 Q Where did you go to school?
22 A Maine Maritime Academy.
23 Q And would you tell the jury what type of
24 school that is?
25 A It's a maritime academy. You go. You either

1 have the option of going into marine engineering
2 or nautical science as a major.

3 Q Which did you choose?

4 A Nautical science.

5 Q How long did it take -- did you graduate from
6 there?

7 A Yes.

8 Q How long did that take?

9 A It's a four-year. You graduate with a
10 bachelor degree.

11 Q And did you get any practical experience
12 during that time?

13 A Yes. I sailed out three times on other --
14 with three different companies and I made two
15 two-month school cruises.

16 Q And when you come out of that school, what are
17 you qualified -- what license are you qualified
18 to have?

19 A Third mate's license.

20 Q Did you get your third mate's license then
21 afterward?

22 A Yes, I did.

23 Q When did you take your first job then? Would
24 that have been 1987?

25 A Yes.

1 Q And who was that with?
2 A Sun Transport.
3 Q When did you start to work for Exxon?
4 A In September of 1987.
5 Q And what position did you -- were given when
6 you hired on with Exxon?
7 A Able bodied seaman.
8 Q When were you assigned to the Exxon Valdez?
9 A The first time I was assigned there was in
10 December of 1987.
11 Q So shortly after being hired by Exxon?
12 A Yes.
13 Q And did you work your assignments continually
14 on the Exxon Valdez or did you...
15 A No, I didn't.
16 Q Would you tell the jury a little bit about
17 what jobs you had after December of 1987?
18 A Well, after I got off the Valdez in February
19 of 1988, I got on a ship on the East Coast, a
20 chemical carrier and I did two consecutive tours
21 on there.
22 Q How long is a tour?
23 A Usually two months.
24 Q And then what were you assigned to after that?
25 A The Exxon Valdez.

1 Q Did you always work as an AB?

2 A No. I was third mate on the Exxon Charleston

3 on the East Coast.

4 Q Can you tell the jury how many trips you would

5 have taken in and out of Prince William Sound on

6 an Exxon vessel?

7 A Right now? How many have I taken in and out?

8 Q Well, up until March of 1989.

9 A Approximately five.

10 Q How many of those would you have been on the

11 bridge during the time that the vessel...

12 A I don't recall.

13 Q Do you think it was all five times or...

14 A No.

15 Q ...a couple of them?

16 A Wouldn't be all five.

17 Q When you were assigned to the Exxon Valdez in

18 1989, when did you come aboard? When did you

19 start your assignments?

20 A I believe it was February 5th.

21 Q Did you have a partner? An AB partner?

22 A At the time, yeah.

23 Q Who was that?

24 A I got on watch with Bob Kagan.

25 Q And who was the mate that you worked under?

1 A Initially, it was Nathan Carr and later it was
2 Lloyd LeCain.
3 Q What shift did you work?
4 A 12 to 4.
5 Q Do you remember arriving in Valdez on March
6 -- late evening of March 22nd, 1989?
7 A Yes.
8 Q You would have worked the 12 to 4 shift. Do
9 you remember what you did after the Exxon Valdez
10 arrived in port?
11 A Well, we arrived prior to the 12 to 4 watch.
12 We arrived and we just got off fast, just before
13 the 12 to 4 watch. So I was out on deck before
14 and then during watch, they started discharging
15 ballasts.
16 Q And you just helped monitor that procedure?
17 A Yes, and watched the lines.
18 Q After you got off duty that morning, when did
19 you go back on duty the next day? Or that -- I
20 guess, it was the 23rd? When did you go back on
21 duty on the 23rd?
22 A After we were at the dock. It would be noon
23 the next day.
24 Q Did you go into town that day?
25 A No, I did not.

1 Q What did you do during the afternoon shift
2 that day?

3 A The best I can recall is just monitor the
4 cargo and the lines again.

5 Q Anything out of the ordinary occur during that
6 time?

7 A No.

8 Q When did you get off duty then? In the
9 afternoon?

10 A At 4 o'clock.

11 Q When would you have been called back that
12 evening?

13 A I believe it was sometime around 7:30 that
14 they called stand by again.

15 Q What were your duties then when you were
16 called up at 7:30?

17 A To go out on deck and secure the gear because
18 it's usually rough in the wintertime. We bring
19 all the fire hoses in and all the life rings, et
20 cetera. We store them inside, so they don't get
21 washed overboard in the seas.

22 Q Did you have a position during the unloading
23 process at either the bow or the aft of the
24 vessel?

25 A During the unloading process?

1 Q I mean during the undocking process.

2 A During the undocking process, yes. I was on
3 the stern.

4 Q And after the vessel was aweigh that evening,
5 where did you go?

6 A After we got clear of the dock and we got done
7 on deck, I went back to my room.

8 Q What did you do when you were at your room?

9 A I took a nap.

10 Q How do shift changes occur? How are you
11 notified that your shift is coming on?

12 A They call us 20 minutes after the hour prior
13 to going up.

14 Q Did that happen in this case?

15 A Uh-huh (affirmative).

16 Q Were you called?

17 A (No audible response.)

18 Q What time that would have been that evening?

19 A Twenty after 11.

20 Q What did you do after being called?

21 A Well, I got up, brushed my teeth, et cetera
22 and put my clothes on, bundled up and went out to
23 take the look-out position.

24 Q Where did you go to?

25 A Well, initially, I was headed out to the bow

1 but as I stepped out of my room, the AB that I
2 was to relieve was standing there and told me
3 that we were shifting the look-out to the bridge
4 wing.

5 Q Where did you go then?

6 A Directly to the bridge.

7 Q What time would you have made it up to the
8 bridge?

9 A I wasn't watching my watch but as a rule, I
10 leave my room approximately 15 minutes before the
11 hour at the latest and then head right out. So
12 it was approximately 47 minutes after the hour.

13 Q When you got up there, who was there?

14 A When I got to the bridge, Jack Claar was on
15 the helm and the captain and Greg Cousins.

16 Q What did you do once you entered the chart
17 room? Where did you go?

18 A I proceeded out to the bridge wing.

19 Q Did you check the charts at all before going
20 out there?

21 A I don't recall. I know that that evening, I
22 looked at the chart and the radar and I don't
23 recall if it was before I went on watch or after
24 I had been on watch for some time.

25 Q Where would you have gone then after going to

1 the bridge?

2 A Well, I walked up on the port side, around the
3 curtains -- from behind the chart table and I saw
4 that door was closed and so I proceeded over the
5 console over to the starboard bridge wing.

6 Q Do you happen to recognize that diagram at
7 all? Does that look familiar?

8 A Yeah.

9 Q Would you show the jury with this pointer how
10 you came in and where you went to?

11 A Well, I came up the stairs and through the
12 passageway right there and to the bridge and from
13 behind the chart table, I walked over to the port
14 side.

15 Q And then where did you go?

16 A And then I walked up and forward, above this
17 console and across and to the starboard bridge
18 wing.

19 Q Where was the captain?

20 A He was right about there.

21 Q What was he doing?

22 A He and Greg appeared to be peering out the
23 window, keeping a look out.

24 Q Were they leaning or standing there or...

25 A They were standing. I didn't study them when

1 I walked up.

2 Q Did you report or did you just go straight out
3 on the bridge -- or out on the wing?

4 A Well, they saw me coming. They knew I was
5 there and there was some casual conversation as I
6 walked out and then I went right out to the
7 bridge wing.

8 Q And the diagram -- the model that's in front
9 of you, would you have gone all the way out on
10 the starboard wing?

11 A Yes, I was all the way out to the outboard
12 edge.

13 Q Out by where the asdic was placed?

14 A Uh-huh (affirmative). Even further outboard
15 than that. All the way to the end.

16 Q Did you take a radio out with you?

17 A I don't recall. I don't imagine I had one. I
18 imagine Paul would have secured it when he came
19 back -- this is just from -- the usual practice.
20 When you come up from the bow, because you don't
21 need a radio, if you're on the bridge wing. You
22 report directly. You don't radio your reports.

23 (Tape: C-3618)

24 (0052)

25 Q While you were out on the wing, the starboard

1 wing, do you remember seeing any lights?

2 A Yes.

3 Q Would you describe for the jury what you saw?

4 A Well, the light that came up while I was out
5 there, I saw a light, a red flashing light on the
6 starboard bow.

7 Q How often would it flash?

8 A Every four seconds.

9 Q And can you give the jury an idea of how long
10 after you got out on the starboard wing, how long
11 afterward, did you see this light?

12 A It was shortly, but I have no idea at the
13 time. I didn't check my watch when I went in and
14 reported the light.

15 Q What did you do after seeing the light?

16 A I went in and reported it.

17 Q Did it cause you any concern that you had a
18 red light on your starboard side?

19 A No.

20 Q And when you got into the -- on the bridge,
21 where did you go?

22 A When I stepped into the bridge, I didn't see
23 Greg or the captain where they were when I first
24 initially went to the bridge and I just made a
25 quick check. I didn't see anyone standing, you

1 know, the mate or the captain forward.

2 Q A check of where? Where were you looking?

3 A Basically just to see if someone was there.

4 You know, someone to report the light to. And I
5 didn't see anyone just at a quick glance and so I
6 went back behind the curtain.

7 Q Did you see who was at the helm?

8 A I imagine I did. I didn't, you know, directly
9 point it out.

10 Q Do you remember who was at the helm?

11 A I didn't look and verify that it was Bob Kagan
12 but I imagine Bob Kagan was up there. You know,
13 we had relieved the watch.

14 Q Where did you go then?

15 A I went back behind the curtain -- well, I
16 pulled the curtain aside.

17 Q Can you point to the jury where you went?

18 A Right here. This is the curtain, basically,
19 and I just pulled it aside and saw Greg back
20 there.

21 Q What did you tell him?

22 A I said we had a flashing red light broad on
23 the starboard bow, flashing every five seconds.

24 Q I thought that you said it was flashing every
25 four seconds.

1 A Yes, when I initially reported the light, I
2 said every five seconds. And I went back out to
3 the bridge wing and after I had time to observe
4 it for a longer period, I realized it was every
5 four seconds and I came back in and corrected my
6 report.

7 Q Would you explain to the jury what you mean
8 broad on the -- what you meant by broad on the
9 starboard side?

10 A Broad on the starboard bow is...

11 Q Or bow.

12 A ...45 degrees approximately from the center
13 line towards the starboard side of the ship.

14 Q What's the center line?

15 A The middle of the ship.

16 Q When you walked back out on the bridge, how
17 far did you go when you walked back on the wing,
18 how far did you go out on the wing?

19 A I imagine right back where I came from. All
20 the way out.

21 Q Do you remember?

22 A I know it was to the outboard edge.

23 Q Do you remember looking back and seeing Busby
24 light at all?

25 A I remember there were some lights astern of us

1 -- or abeam. I didn't check 'em out and see
2 exactly what lights they were. I remember
3 faintly seeing some lights though.

4 Q Do you remember whether they were green or
5 red?

6 A No.

7 Q Are you familiar with what a red sector is?

8 A Yes.

9 Q What does that mean?

10 A The light has a certain area -- they have, you
11 know, on the chart they have the certain degrees
12 from where you are looking at the light from and
13 if you are having from this, a bearing -- this
14 certain bearing on the light, you see it red.
15 If you are not in that area, that bearing you see
16 a white sector, a white light.

17 Q What does a red sector mean as far as your
18 ship is concerned? Does that cause you any
19 concern?

20 A It depends on the light.

21 Q If you were in a red sector, why would the
22 light flash?

23 A I don't understand what you're asking.

24 Q Now, did the ship get grounded then shortly
25 after you walked out on the bridge wing?

1 A The second time?

2 (0239)

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

5 MR. COLE: I'll ask the question.

6 THE COURT: All...

7 Q Did you walk out on the starboard wing then
8 after that?

9 A After that second report, yes.

10 Q Did you stay inside the bridge for very long
11 after reporting that to Mr. Cousins what you had
12 reported to him?

13 A Neither time. No, I didn't.

14 Q And the second time you reported to Mr.
15 Cousins, you told him it was flashing every five
16 seconds?

17 A Every four seconds.

18 Q Four seconds. How long after you were out on
19 the starboard wing did the grounding occur?

20 A I wasn't looking at my watch at the time. I
21 don't know. I don't know what time it was when I
22 reported...

23 Q Do you have any estimate how long you were out
24 there?

25 A After the second report, I'll give you a guess

1 of less than five minutes, the boat started
2 turning. That's just a guess.

3 Q Did you notice whether or not the vessel was
4 turning at any time prior to the grounding?

5 A Yes.

6 Q And was it a rapid turn or was it not a rapid
7 turn?

8 A It seemed to be a slow turn.

9 Q When you went into talk to Mr. Cousins, the
10 second time, did you see Captain Hazelwood there?

11 A I didn't look around for anyone. I just came
12 in, stated the fact that it was corrected in my
13 report.

14 Q Did you see Captain Hazelwood there?

15 A No, I did not.

16 Q How soon before the ship grounded did the ship
17 start to turn to the starboard side? Do you
18 have any concept of how long after the ship began
19 to turn that it grounded?

20 A That would be a guess again too because I
21 wasn't looking at my watch. I'll give you an
22 estimate of one minute.

23 THE COURT: Excuse me, I can barely hear you
24 and we've got you turned up as high as we can. So if
25 you'll move the microphone up a little higher, it might

1 help. Speak up a little -- more loudly if you can.

2 Thanks.

3 Q Would you describe for the jury what you heard
4 or what you felt when you first realized that you
5 had hit something?

6 A Initially, I heard a scraping sound and I saw
7 a type of aura around the bow of the ship and
8 then I felt the vessel jerking slightly.

9 Q How loud was the scraping sound?

10 A It was quite loud.

11 Q Do you know what the aura was that you saw on
12 the bow?

13 A No.

14 Q Would you describe that -- I mean, give the
15 jury an idea of what you're talking about? Were
16 there lights around or...

17 A I don't know if it was from the water
18 splashing up and reflection from the lights or
19 they were talking maybe it was phosphorescence.
20 They're studying that now, about maybe it was
21 heat induced. I don't know what it was caused
22 by. I just saw a type of a greenish glow.

23 Q How long did the scraping sound -- where did
24 it originate from?

25 A The bow.

1 Q And did it move down the ship at all?
2 A Not that I could determine, no.
3 (0400)
4 Q How long did the jerking go on? The jerking
5 feeling that you had?
6 A That's very hard to say.
7 Q Do you have any kind of an estimate?
8 A No.
9 Q How long after you first heard the scraping
10 sounds before the vessel came to a halt?
11 A You have to understand at this point in time,
12 I wasn't looking at my watch. I will give you a
13 guess that the whole process took less than 60
14 seconds. That's a guess, an estimate again.
15 Q But it wasn't just an immediate thing?
16 A No.
17 Q Do you remember being any breaks in between at
18 all, during this time for a short period, the
19 ship sailed without you hearing or feeling the
20 bumps?
21 A No, it seemed to -- the best I can recollect,
22 it was a continuous process.
23 Q What did you do then after the ship came to a
24 halt?
25 A I looked around and from the shore, I saw what

1 I assumed we were stopped. It looked like we
2 were dead in the water and I walked in to the
3 bridge, the main area of the bridge.

4 Q Was the vessel listing at all?

5 A Not that I can recall.

6 Q Would you explain to the jury what listing
7 means?

8 A It's actually a tilt on the vessel. A list,
9 you either have so many degrees to the port or to
10 the starboard and it is the degrees that --you're
11 either down to one side or the other. A vessel,
12 it can turn or rock on either side.

13 Q You couldn't feel any kind of a listing?

14 A Immediately, no.

15 Q When you got into the bridge, who was there
16 then? Who did you see?

17 A When I walked on to the bridge, who I saw
18 immediately was Greg and Bob Kagan.

19 Q What was Greg doing?

20 A I couldn't tell you.

21 Q Do you remember seeing him making any phone
22 calls?

23 A Yes.

24 Q When would that have been?

25 A Directly after, I believe.

1 Q Where was Mr. Kagan?
2 A Behind the wheel.
3 Q What did you do then?
4 A The next thing I recall happening is we turned
5 on this -- well, I walked out on the port bridge
6 wing.
7 Q And did you walk out there with anyone else?
8 A Yes, with Greg Cousins. I was behind him.
9 Q Were the lights on or off?
10 A I believe they were off at the time.
11 Q What happened then? What did you do out
12 there?
13 A Evaluated the situation.
14 Q How long would you have been out on port wing?
15 A I don't know. Not a long period.
16 Q Did you look on the side to see if there was
17 any oil coming out?
18 A At that time, no.
19 Q Where did you go then after that?
20 A I believe back onto the bridge.
21 Q And what happened when you got on the bridge
22 -- came back on the bridge?
23 A Shortly after that, we turned on the spot
24 lights and they were looking in the water for oil
25 after that.

1 Q Where were you looking from?
2 A The bridge wing.
3 Q Which bridge wing? Starboard or port?
4 A I believe I walked out on both of them.
5 Q Did Captain Hazelwood walk out on the port
6 bridge wing when you and Mr. Cousins were out
7 there?
8 A I don't remember.
9 Q When do you first remember seeing Captain
10 Hazelwood on the bridge after the grounding?
11 A I don't know. I wasn't looking at my watch
12 again. It was shortly thereafter.
13 Q Shortly thereafter. What do you mean? Was it
14 before you went out on the port bridge wing or
15 was it after that or...
16 A It was after. I believe after the first time
17 I walked out and possibly when I came back onto
18 the bridge, he was right there.
19 Q What did you do then after going out on both
20 bridges, both wings?
21 A I stayed right up there on the bridge.
22 Q Did you ever leave the bridge?
23 A Later on, yes.
24 Q When was that?
25 A I don't know again. All this time, I wasn't

1 looking at my watch but I went down to the deck
2 that we live on and I talked to a few people.

3 Q Why did you go down there?

4 A To wake them up.

5 Q Did you wake up everybody in the...

6 A No. Greg had gone down before me and he
7 mentioned he had talked to a few people and I
8 went down and talked to a few different ones.

9 Q Did you make sure that you woke everyone up or
10 did you know whether everyone had been woken up?

11 A Did I make sure we woke everyone up?

12 Q Is there any way you checked to make sure?

13 A Well, Greg told me some people that he had
14 talked to and I knew not to go and talk with
15 them.

16 Q What did you do after you went down and woke
17 some of the people -- what did you tell the
18 people when you woke them up?

19 A I believe that we had had an accident or that
20 we were aground.

21 Q Is that it?

22 A To the best I can recall, yes.

23 Q Where did you go after giving these warnings?

24 A Back to the bridge.

25 Q What was going on when you got up to the

1 bridge?

2 A I don't remember.

3 Q Well, were the engines still running?

4 A I didn't look at the telegraph. I couldn't
5 tell you.

6 Q Were there any orders being given?

7 A Later on, yes.

8 Q Well, what about this time when you got up on
9 the bridge? Was anything being done up there?

10 A I don't recall exactly what was going on when
11 I returned to the bridge. There was some
12 contacts made with Vessel Traffic Service,
13 letting them know at that time, where we were, et
14 cetera.

15 MR. COLE: Judge, would this be a good time to
16 stop?

17 THE COURT: Yes, sir. We'll take our lunch
18 break, ladies and gentlemen, until about 1:15. Don't
19 discuss this case among yourselves or with any other
20 person and don't form or express any opinions. See you
21 back then.

22 THE CLERK: Please rise. This Court stands
23 for recess and recall.

24 (Off record - 11:58 a.m.)

25 (On record - 1:19 p.m.)

1 (0702)

2 THE CLERK: This Court now resumes its
3 session.

4 THE COURT: Mr. Cole?

5 Q (Ms. Jones by Mr. Cole:) Ms. Jones, I
6 neglected to ask you one thing about when you
7 came in from the starboard wing the second time
8 after noticing that the light was flashing once
9 every four seconds. Do you remember that?

10 A Uh-huh (affirmative).

11 Q Where was Mr. Cousins at that time?

12 A He was standing just behind the port radar.

13 Q And where was Mr. Kagan?

14 A I assume behind the wheel.

15 Q I didn't hear you.

16 A Behind the wheel.

17 Q And when you told Mr. Cousins, just how did he
18 react?

19 A In the usual manner. Just repeated what I
20 said. Acknowledged my report.

21 Q Now, going back to where we left off then, you
22 had gone down and informed several people of the
23 grounding and then you came back up on the bridge
24 at some point. Is that correct?

25 A Correct.

1 Q Who was up on the bridge at that time when you
2 came up?

3 A I assume -- I don't remember exactly for sure.
4 Probably the captain, Bob Kagan and Greg Cousins.

5 Q And were any instructions about steering the
6 ship being given at that time?

7 A I don't know.

8 Q At some point however -- where did you go then
9 after you came up on the bridge?

10 A I remained on the bridge.

11 Q How long did you remain on the bridge?

12 A 'Til about 2:30 and then I returned back to it
13 after a while.

14 Q I can't hear.

15 A Then I returned back. After that, I was gone
16 for a short period and then I went back to the
17 bridge.

18 Q Well, let's talk about the time from when you
19 came up to the bridge after talking to people and
20 2:30 when you left the bridge. Where were you
21 during that time on the bridge?

22 A Either on the bridge wing or right inside the
23 bridge area.

24 Q And what was happening on the bridge during
25 that time?

1 A There was a couple of phone calls made,
2 talking on the radio to the commander of the port
3 and there was some engine maneuvers.

4 Q Tell the jury what those engine maneuvers --
5 as you saw, what were they?

6 A They consisted of dead slow ahead, slow ahead,
7 half ahead and full ahead, different rudder
8 orders.

9 Q What kind of rudder orders were given?

10 A Initially, I believe a number -- a course
11 number was given and then after that I believe it
12 was a degrees rudder was just put on.

13 Q What was the purpose of those rudder orders?

14 A I would not know.

15 Q Well, have you ever spoken with anybody about
16 the purpose of those rudder orders?

17 A No one ever told me what was being done at the
18 time.

19 Q Have you ever told anybody else what the
20 purpose of what those rudder orders were?

21 A I only would assume. I would have never been
22 told by the person who was giving the commands
23 what was the purpose of them.

24 Q Are you saying you didn't have any idea what
25 the captain was trying to do while you were up on

1 the bridge?

2 A I'm saying I was never told by anyone what he
3 was doing.

4 Q What did you think he was doing?

5 A What did I think at the time?

6 Q Yes.

7 A I assumed that he was trying to get the vessel
8 off but that was just what I thought. I had
9 never been told that by anyone.

10 Q You've told a number of people that though?

11 A Yes.

12 Q Correct?

13 A I've mentioned it before.

14 Q You've testified before the NTSB and you told
15 them in essence that he was trying to get it off
16 the reef?

17 A What I thought he was doing, yes.

18 Q And you talked with the troopers immediately
19 after this incident occurred. Correct?

20 A Correct.

21 Q And you told them that you thought he was
22 trying to get it off the reef?

23 A That's what I thought.

24 Q And you also talked to the FBI?

25 A Correct.

1 Q And you told them that also?

2 A Correct.

3 Q Now, why did you leave the bridge at 2:30?

4 A Went down to rig the pilot ladder for people
5 boarding the vessel.

6 Q Who were the people that were going aboard the
7 vessel?

8 A The Coast Guard.

9 Q When did you realize that the Coast Guard was
10 going to be coming out to the vessel?

11 A I believe I probably heard it on the radio.
12 They said they're on their way out.

13 Q And when you returned to the bridge, what were
14 your responsibilities until you went off at
15 4 o'clock that morning?

16 A After we rigged the pilot ladder, I just
17 remained on the bridge.

18 Q Did you take the helm at any time?

19 A No, I did not.

20 Q Do you remember when the anchor was dropped?

21 A I couldn't give you a time. I remember Mr.
22 LeCain going out and doing it.

23 Q Would it have been before or after the Coast
24 Guard arrived?

25 A I believe it was before.

1 Q What was the policy aboard Exxon tankers at
2 that time as far as possession of alcohol?
3 A Didn't allow it on board.
4 Q I can't hear you.
5 A They didn't allow it on board.
6 Q What were the consequences of having it on
7 board?
8 A I assume you would be fired.
9 Q And how about for alcohol use aboard the Exxon
10 Valdez?
11 A It was not allowed.
12 Q Did you have any alcohol aboard the Exxon
13 Valdez that evening or morning?
14 A No, I did not.
15 Q Were you aware of any alcohol being on board?
16 A No.
17 Q How many captains did you serve with while you
18 were assigned to the Exxon Valdez?
19 A Two.
20 Q Who were those two people?
21 A Captain Hazelwood and Captain Stalzer.
22 MR. COLE: I have nothing further, Your
23 Honor.
24 (1003)
25 CROSS EXAMINATION OF MS. JONES

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1 BY MR. CHALOS:

2 Q Good afternoon, Ms. Jones. You hold a third
3 mate's license. Is that correct?

4 A That's correct.

5 Q You're qualified as a third mate?

6 A Yes.

7 Q And you've served as a third mate? Correct?

8 A Yes.

9 Q You've stood third mate's watches on the Exxon
10 Charleston, I think you said?

11 A Yes.

12 Q You sailed with Captain Hazelwood before.
13 Have you not?

14 A Yes, I have.

15 Q That was in December, 1987 and January, 1988?

16 A Correct. And a little bit into February.

17 Q How long was that tour of duty?

18 A Just a little over two months, I believe.

19 Q That was on the Exxon Valdez?

20 A Correct.

21 Q On the evening of March 23rd, what were you
22 doing at about 8 p.m.?

23 A I was out on deck, securing fire hoses.

24 Q Did you see the captain come on board right
25 around that time?

1 A Yes, I did.

2 Q Could you tell the jury what you saw?

3 A I saw the radio officer and the chief engineer
4 come on board with pizzas and the captain
5 approximately 10 feet behind them also coming on
6 board.

7 Q Where were you standing in relation to the
8 gangway?

9 A I was back by the house, just alongside the
10 house on the port side.

11 Q About 50 or 60 feet away from the gangway?

12 A Approximately.

13 Q Did you have an opportunity to observe Captain
14 Hazelwood coming on board?

15 A I saw him walk, you know, probably about 40
16 feet or so. I didn't watch him come right
17 directly on board but I saw him as he was coming
18 into the house -- going into the house.

19 Q Did you notice anything unusual about his
20 manner of walking?

21 A No.

22 Q Did he appear to you to stagger?

23 A No.

24 Q Sway?

25 A No.

1 Q Were his movements steady?

2 A Yes.

3 Q Did you speak to Captain Hazelwood?

4 A Yes, I did.

5 Q How close were you to him?

6 A Just right within speaking distance.

7 Q A couple feet?

8 A Yeah.

9 Q Did you smell any alcohol on his breath?

10 A No, I did not.

11 Q Were his eyes watery?

12 A No.

13 Q Did he appear to you to be impaired in any

14 way?

15 A No.

16 Q What did you discuss?

17 A I asked him if he had a good time ashore and

18 he showed me his briefcase. I assumed that to

19 mean that he was -- a business trip and I started

20 joking him about having red suspenders on or

21 something, something that he was -- you know,

22 doing a type -- a lot of business work. You

23 know, going ashore and being a business

24 professional, et cetera.

25 Q What did he say to you?

1 MR. COLE: Objection. Hearsay.
2 THE COURT: Don't answer the question. Mr.
3 Chalos?
4 MR. CHALOS: Then I'll withdraw it, Your
5 Honor.
6 Q (Ms. Jones by Mr. Chalos:) Did you observe
7 the captain going into the living quarters?
8 A Yes.
9 Q Anything unusual about his walk at that time?
10 A No.
11 Q Was the captain walking normal as you knew him
12 at that time?
13 A Uh-huh (affirmative).
14 Q You finished securing for sea sometime around
15 10:20 or 10:30?
16 A Correct.
17 Q And then you went back to your room?
18 A Yes.
19 Q Took a nap?
20 A Yes.
21 Q And then you were woken at 11:20. Is that
22 right?
23 A Correct.
24 Q And sometime around a quarter 'til 12, you
25 started to go on watch?

1 A Correct.

2 Q And at that time, you were told by AB Radtke
3 that your watch had been changed to the bridge
4 wing instead of the bow?

5 A Correct.

6 Q Was there anything unusual about that
7 instruction?

8 A No.

9 Q Have you stood bridge wing watches before as a
10 look-out?

11 A Yes.

12 Q Is it the custom and practice once you drop
13 the pilot off in Prince William Sound to move the
14 look-out back to the bridge wing?

15 A As far as I can remember. On the ships that
16 I've been on, that's basically what it is. You
17 get rid of the pilot and you secure the ladder
18 and you secure the anchors, you shift to the
19 bridge wing.

20 Q Is it your practice when you come on watch to
21 look at the charts?

22 A Yes.

23 Q Do you do that because of your training as a
24 third mate?

25 A I like to know where I'm at.

1 Q Do you have a recollection of looking at the
2 charts on this evening?
3 A I know I did at one point in time. I don't
4 know -- I don't remember when it was.
5 Q Now, you said that you came in and walked
6 around to the front of the bridge and stopped and
7 spoke with the captain and Mr. Cousins. Do you
8 recall that?
9 A Yes.
10 Q How close were you to the captain?
11 A Within a couple of feet, again.
12 Q Did you smell any alcohol at that time?
13 A No.
14 Q Was this at about 11:50?
15 A A little before 11:50.
16 Q Did the captain appear to you to be in the
17 same condition as he had been that evening?
18 A Yes.
19 Q Earlier that evening?
20 A Yes.
21 Q Did he appear to you to be in any way
22 impaired?
23 A No.
24 Q Was his speech slurred?
25 A No.

1 Q Can you describe Captain Hazelwood's speaking
2 manner?

3 A He doesn't speak very loud. Uses quite a low
4 tone.

5 Q Deliberate? Deliberate in his speech?

6 A I wouldn't say really, no.

7 Q Now, what did you talk about?

8 MR. COLE: Objection. Hearsay.

9 THE COURT: Mr. Chalos?

10 MR. CHALOS: Your Honor, I'm not offering it
11 for its truth, only for the fact that they had a
12 conversation and she stood there for a minute or so,
13 talking with him.

14 THE COURT: Why don't you approach the bench?
15 I don't know what it's being offered for until I hear
16 it so maybe you can give me an offer of proof by the
17 bench. Quietly so the jury doesn't hear.

18 (1282)

19 (Whispered bench conference as follows:)

20 MR. CHALOS: (Indiscernible - whispering)

21 THE COURT: What is it that you think she's
22 going to say?

23 MR. CHALOS: Just basically small talk.

24 THE COURT: Without anything further, I'm
25 going to sustain the objection if you can't give me a

1 better offer of proof.
2 (End of whispered bench conference)
3 (1300)
4 THE COURT: Objection sustained.
5 Q (Ms. Jones by Mr. Chalos:) Before you went
6 on watch, were you told by Mr. Radtke that there
7 was ice ahead?
8 MR. COLE: Objection. Hearsay.
9 THE COURT: Counsel, approach the bench
10 please.
11 (1320)
12 (Whispered bench conference as follows:)
13 THE COURT: Asking for your offering for the
14 truth of the word that there's ice ahead.
15 MR. MADSON: (Indiscernible - whispering)
16 THE COURT: You know, it's declarant's state
17 of mind that isn't a state of mind exception. I think
18 it's gone to that purpose, that is to show that there's
19 ice ahead. I'm going to sustain the objection and I'll
20 continue to sustain the hearsay objections. They're
21 properly made.
22 (End of whispered bench conference)
23 (1345)
24 THE COURT: Objection sustained.
25 Q (Ms. Jones by Mr. Chalos:) Ms. Jones, before

1 you went out on the bridge wing, did you look at
2 the radar?

3 A I looked at the radar at one point. I don't
4 remember if it was after or before.

5 Q Did you see any ice on the radar?

6 A Yes, I did.

7 Q When you went out on the bridge wing, what was
8 the visibility?

9 A I'll give you an estimate. About 5 miles.
10 That's just an estimate.

11 Q Now you, in response to Mr. Cole's question,
12 you mentioned that you saw a light that you
13 originally identified as being five seconds and
14 then later corrected it to four seconds. Do you
15 remember that?

16 A Yes.

17 Q How far away did you estimate that light to be
18 from the ship....

19 A Oh, I wouldn't know.

20 Q ...at the time you saw it?

21 A I couldn't tell you that.

22 Q When you saw this light, you were all the way
23 out, as far as you can go on the wing. Is that
24 correct?

25 A Correct.

1 Q When you reported the light as broad on bow,
2 were you reporting it from your relative position
3 on the wing?
4 A Yes.
5 Q In other words, if you were standing in the
6 middle of the bridge, the relative position may
7 have been something less. Am I correct?
8 A Basically if you get down -- basically what
9 the look-out is there to do is report the light.
10 They know where it is. You just let them know.
11 Q Now, based on your experience as a mate and an
12 AB, seeing the red light on your port bow -- on
13 your starboard bow rather, doesn't necessarily
14 mean that you're standing into danger. Does it?
15 A No, it does not.
16 Q As a matter of fact, red lights when you're
17 headed out to sea are not always necessarily on
18 your port side -- again, your starboard side?
19 A Correct.
20 Q It's true, is it not, that you would have
21 reported the light, the red light that you saw,
22 no matter what side of the ship it was on?
23 A Yes. That was my job.
24 Q There was nothing about your sighting of the
25 light, the red light, on your starboard bow to

1 trigger any alarm in your head, was there?
2 A No, there wasn't.
3 Q When you came in and reported the light to Mr.
4 Cousins the first time, what did he say to you?
5 MR. COLE: Objection. Hearsay.
6 THE COURT: Mr. Chalos?
7 MR. CHALOS: I'll withdraw the question, Your
8 Honor.
9 Q You said you came in and reported the light
10 the second time. Am I correct?
11 A Correct.
12 Q And Mr. Cousins at that time was standing at
13 the port radar?
14 A Yes.
15 Q At the port radar, you would have been to the
16 left of the helmsman. Am I correct?
17 A Correct.
18 Q Did Mr. Cousins acknowledge the report?
19 A Yes.
20 Q Now, you mentioned that you noticed the ship
21 steering to the right or to the starboard hand.
22 Am I correct?
23 A It was turning towards the starboard.
24 Q Was that sometime after you made your two
25 reports?

1 A It was shortly after my second report.

2 Q When you say shortly, would you say two

3 minutes? Three minutes?

4 A It would be a guess again, since I wasn't

5 looking at my watch, but I would say less than

6 two minutes.

7 Q Now, could you describe to us how the ship was

8 turning?

9 A It wasn't a sharp turn.

10 Q Slow, lopping [sic] -- loping type of turn?

11 A Slow, easy turn, yes.

12 Q Did you notice the light at this point, what

13 it was doing relative to the ship's heading?

14 A It was coming across the bow to the port.

15 Q In a slow manner?

16 A Yes, that's how I assumed or that's where I

17 came up -- how I judged the rate of turn by

18 watching the light.

19 Q Now, you don't know, do you sitting here

20 today, how long after the turn started, the

21 grounding occurred?

22 A No.

23 Q I'd like to talk a little bit about the

24 grounding for a second. You mentioned that when

25 the ship first hit, you saw this aura on the bow.

1 Do you remember that?

2 A Correct.

3 Q And you started talking about heat induction.
4 What did you mean by that?

5 A There was -- phosphorescence. They've been
6 studying it and I have been asked about it --
7 approached about it after the fact that that's a
8 study they're doing that maybe it is -- they
9 wonder what makes it glow. You know, it's in
10 the water and I guess they're studying to see if
11 it's heat-induced. The friction.

12 Q When you say heat-induced, you mean the mass
13 -- the vessel mass hitting the rock?

14 A Yes.

15 Q Causing friction?

16 A Yes.

17 Q Resulting in light?

18 A That would be my guess. I'm not doing this
19 study; I don't know much about it but that's what
20 I would assume.

21 Q Now, you said you heard a loud noise and then
22 a jerky motion?

23 A Yes, I heard a scraping sound.

24 Q And you said that you thought it was -- it
25 took about 60 seconds for the ship to come to a

1 complete stop? Do you remember that?
2 A That was a guess again.
3 Q If I were to tell you that other witnesses...
4 MR. COLE: Objection.
5 MR. CHALOS: Your Honor, this is in evidence.
6 I'm going to give her a hypothetical.
7 THE COURT: That's for expert witnesses, not
8 for this witness. Objection sustained.
9 (1637)
10 Q Could the whole process have taken something
11 like around 30 seconds?
12 A Yes, it's possible. This was a very strenuous
13 -- whatever -- situation. I wasn't watching my
14 watch and time has a way of getting lost when
15 something like that happens.
16 Q You said that after the grounding, you saw Mr.
17 Cousins making some calls. Do you recall that?
18 A Yes.
19 Q Or at least when you came in from the bridge
20 wing after the grounding, you saw Mr. Cousins on
21 the phone?
22 A Yes.
23 Q Do you know who he was calling?
24 A No, I don't.
25 Q Did he tell you who he was calling?

1 MR. COLE: Objection. Hearsay.

2 THE COURT: Mr. Chalos?

3 MR. CHALOS: Your Honor, I'm only -- I'm not
4 asking what was said, only whether Mr. Cousins
5 indicated anything to her as to the phone call.

6 THE COURT: Objection sustained.

7 Q (Ms. Jones by Mr. Chalos:) Now you told Mr.
8 Cole that you were out on the port wing. You
9 looked over to the side and then you came back
10 into the bridge?

11 A After. Yes.

12 Q And you saw the captain at that point. Did
13 you not?

14 A At one point in the time, yes.

15 Q Did you see the captain out on the starboard
16 wing?

17 A I don't remember. I remember definitely for
18 sure him walking out on the port. I don't
19 remember for sure if he walked on the starboard
20 or not.

21 Q Did you look over the side with him at that
22 point?

23 A Yeah, probably at the same time, we were
24 looking over the side. We were all out there
25 looking.

1 Q How did the captain look when you saw him on
2 the bridge for the first time after the
3 grounding?
4 A He looked as he usually looks.
5 Q Did he look serious?'
6 A Yes.
7 Q Did he look sober?
8 A Yes.
9 Q Did he look in any way impaired?
10 A No.
11 Q Did he appear to be in control of the
12 situation at that time?
13 A As much as you could be, yes.
14 Q Did you hear the captain give any commands?
15 A Yes.
16 Q What were those commands?
17 MR. COLE: Objection. Hearsay.
18 THE COURT: Don't answer that question.
19 Q Did the captain give you any commands?
20 MR. COLE: Objection.
21 THE COURT: Don't answer the question.
22 There's an objection, Mr. Chalos and rather than --
23 when you ask another question, I'm assuming you're
24 withdrawing the question.
25 MR. CHALOS: I'm withdrawing the first

1 question.

2 THE COURT: Okay. There's an objection to
3 this question.

4 MR. CHALOS: Your Honor, may I just have a
5 moment?

6 THE COURT: Yes, sir.

7 Q (Ms. Jones by Mr. Chalos:) Okay, Ms. Jones...

8 THE COURT: Before we go any further, I just
9 want to make sure we understand each other. If I don't
10 hear you respond when I give you an opportunity with an
11 exception under our rules or some reason you have, I am
12 assuming that you are going on to the next question,
13 withdrawing your question.

14 MR. CHALOS: That's right, Your Honor.

15 (1811)

16 Q (Ms. Jones by Mr. Chalos:) Ms. Jones, did you
17 see the captain looking at the radar?

18 A Yes, I did.

19 Q Were you given any orders to go below and wake
20 up the crew?

21 A Greg and I spoke about it. He told me who he
22 had talked to.

23 MR. COLE: Objection. Hearsay.

24 THE COURT: The answer called for a yes or no
25 answer. "Were you given any orders to wake up the

1 crew." It didn't call for what the orders were so, the
2 answer is yes, now. Let's go on to the next question.
3 Q Were you given any orders to wake up the crew?
4 THE COURT: That just calls for a yes or no
5 response.
6 A That's hard to answer with a yes or no.
7 THE COURT: Okay.
8 A We talked about it and he told me who he had
9 talked to and I just went down and talked to some
10 other people. It wasn't a very planned out
11 thing. It was very casual. He didn't order me
12 to go down. We were just talking about it and
13 figured that was what we should do.
14 Q I take it you don't know whether the captain
15 gave any orders to Mr. Cousins about waking up
16 the crew?
17 A I'm not aware if he did or not.
18 Q You say at some point you saw the chief mate,
19 Mr. Cousins, and the captain standing in the
20 chart room?
21 A The chief mate came up and he walked from
22 behind the chart room and they went on back
23 behind the chart room and talked.
24 Q Was that before or after you went below?
25 A I don't know.

1 Q Did you hear any of the conversation that was
2 -- did you hear the captain and the chief mate
3 and the third mate speaking?

4 A No, I did not.

5 Q In response to Mr. Cole's question, you said
6 that you had assumed that the captain was trying
7 to get this vessel off the reef by engine
8 maneuvers and rudder commands he was giving. Is
9 that correct?

10 A Right.

11 Q Did the captain ever tell you that that's what
12 he was trying to do?

13 A No, he did not.

14 MR. COLE: Objection. Hearsay.

15 MR. CHALOS: Your Honor, I don't think that's
16 hearsay. I'm not asking this witness for the truth --
17 I'm not offering it for the truth, only her state of
18 mind.

19 THE COURT: Objection overruled. The answer
20 is no. Next question.

21 Q The assumption that you testified to is
22 strictly your own assumption. Am I correct?

23 A Correct.

24 Q Have you ever been aground before?

25 A Yes, I have.

1 Q And in those instances when you were aground,
2 was the engine put in reverse to get the vessel
3 off the strand?
4 A Yes, it was.
5 Q In this instance the engines were never put
6 astern. Is that correct?
7 A That's correct.
8 Q Did you notice the vessel's heading after the
9 grounding?
10 A I believe it was 289 once it settled.
11 Q Did you have occasion to observe the vessel's
12 heading after the engine and rudder maneuvers
13 were being performed?
14 A That's when I believe it was 289.
15 Q And did it remain at 289 through the whole
16 period of the engine maneuvers and rudder
17 maneuvers?
18 A I believe it might have changed a degree at
19 the most to the right or to the left during the
20 commands.
21 Q But that's all?
22 A Yes. To the best I can recall.
23 Q Did you notice any movement on the part of the
24 ship in the forward direction as a result of the
25 engine maneuvers?

1 A No, I didn't.

2 Q Who was giving the helm and engine orders?

3 A Captain.

4 Q Were you in close proximity when these orders
5 were being given?

6 A Yes, I was right in the bridge area.

7 Q How did the captain appear at that time?

8 A Very much in command.

9 Q Cool? Calm?

10 A Yes.

11 Q Did you notice any -- let me strike that and
12 rephrase it. Did you notice any impairment on
13 his part?

14 A No, I did not.

15 Q Did you smell any alcohol on his breath at
16 this point?

17 A No, I did not.

18 Q Did you do anything with respect to the fire
19 monitors?

20 A That was done after. When we called the port
21 aid out that I went down with the port aid and
22 put out the pilot ladder on the port side. I
23 returned to the bridge and they went out and
24 started -- they put in the scuffers and
25 (indiscernible - unclear) the fire monitors.

1 Q Just to be ready, I suppose?

2 A Yes. I imagine.

3 Q Have you ever seen Captain Hazelwood
4 intoxicated on board the Exxon Valdez?

5 A No.

6 Q Have you ever seen him impaired?

7 A No.

8 MR. CHALOS: I have no further questions of
9 this witness, Your Honor.

10 (2093)

11 REDIRECT EXAMINATION OF MS. JONES

12 BY MR. COLE:

13 Q Ms. Jones, I guess I'm a little confused. The
14 period that you were on the bridge from say,
15 12:30 to 1:40, you're saying that the heading of
16 the ship never changed?

17 A From 12:30 to 1:40. I'm saying when the
18 commands were given, I didn't notice much of a
19 heading change.

20 Q Well, what's a course recorder?

21 A It records the vessel's heading.

22 Q The actual heading of the ship. Is that your
23 understanding?

24 A Yes.

25 Q Would that be a better judge of what the

1 heading of the ship was than what you saw that
2 night, you think?

3 A Probably, since it's mechanical and perfect
4 and it was a while ago.

5 Q Okay. You talked about being off -- running
6 a ship aground. How many ships have you been on
7 that ran aground?

8 A I've been on ships before. It's a common
9 occurrence when you're going up the Mississippi
10 River. You get in the mud.

11 Q How many reefs are there -- rock reefs in the
12 Mississippi River?

13 MR. CHALOS: Objection, Your Honor. How would
14 this witness know how many reefs?

15 MR. COLE: I'll rephrase the question.

16 Q How many rock reefs have you run into on the
17 Mississippi River?

18 A None.

19 Q Do you think that the same tactics that you
20 used to get a tanker or a ship off of mud might
21 be a little different than those used to get a
22 tanker off of a reef?

23 A I'm not a captain. I wouldn't know that.

24 Q The only reefs -- the only time you've been on
25 grounded vessels is in the Mississippi River. Is

1 that right?

2 A No.

3 Q Where else have you been on grounded ships?

4 A Making a turn into Port Manatee, shifting from
5 Tampa.

6 THE COURT: I can't hear you any longer. I
7 could hear you earlier but I can't hear you. You fade
8 out. What did you say?

9 A I said when we were making a shift from Tampa
10 to Port Manatee, down in Florida.

11 Q What type of ground was that?

12 A I wouldn't know. That was quite a while ago.

13 Q You don't remember if it was mud or rocks?

14 A I don't know.

15 Q Did the ship sink after you ran aground?

16 A No, it did not.

17 Q How often do you look for signs of
18 intoxication when you see Captain Hazelwood on
19 board the Exxon Valdez?

20 A I would have no reason to look for a sign of
21 intoxication.

22 Q But do you look for signs of intoxication when
23 you talk with him?

24 A No.

25 Q Did you watch Captain Hazelwood the whole way

1 when he came aboard the Exxon Valdez at about 8
2 o'clock that evening?

3 A No, I said that I saw him walk approximately
4 40 feet just going into the house. I didn't see
5 him come on board.

6 Q Was it light or dark out?

7 A It was -- the lights were on deck. I could
8 see clearly.

9 Q How dark was it out?

10 A I don't recall.

11 Q But it must have been dark enough to require
12 the lights?

13 A I assume.

14 Q Can you tell the jury how many times -- how
15 many red lights flashed on your starboard side in
16 Prince William Sound?

17 A I don't know.

18 Q Are you familiar with the warning buoys in
19 Prince William Sound at all?

20 A Some, yes. I don't have 'em memorized.

21 Q Do you know any of them that flash on the
22 right side -- the starboard side?

23 MR. CHALOS: Your Honor, I'm going to object
24 as to foundation. Which way is the ship heading?
25 Where's it at?

1 MR. COLE: On the outbound -- I'll withdraw
2 that.

3 Q On the outbound voyage out of Prince William
4 Sound, are you aware of any that flash red on the
5 right side?

6 A It would depend on where you are in reference
7 to the channel. If you have a turn up ahead and
8 the light -- and visibility is good and you have
9 a light quite a ways up ahead after you make your
10 turn, it would be on your starboard side, but it
11 could be on the port side before you make your
12 turn.

13 Q Would you give the jury an example of where
14 that would happen in Prince William Sound?

15 A I don't have all the lights memorized. That's
16 a pilot's job.

17 Q You indicated from the first time that the
18 Exxon Valdez grounded until it came to rest, you
19 initially said -- you gave a guess of 60 seconds
20 and then Mr. Chalos asked you, could it have been
21 30 seconds and you said yes. Is that correct?

22 A I wasn't able to answer the question.

23 Q Could it have been more than 60 seconds?

24 A I wasn't watching my watch. It could have
25 been, yes. Could have been less.

1 MR. COLE: I have nothing further.

2 Q Thank you.

3 (2380)

4 RECROSS EXAMINATION OF MS. JONES

5 BY MR. CHALOS:

6 Q Ms. Jones, have you ever been intoxicated?

7 A Yes.

8 Q Do you know how that feels like?

9 A Yes.

10 Q Do you remember the movements that you had
11 when you were intoxicated? The way you acted?

12 A Yes.

13 Q Have you ever observed anybody else
14 intoxicated?

15 A Yes.

16 Q Have you observed people impaired by alcohol?

17 A Yes.

18 Q And the way they act?

19 A Yes.

20 Q Did Captain Hazelwood act in any way impaired
21 or intoxicated as you know it?

22 A No.

23 MR. CHALOS: No further questions, Your Honor.

24 MR. COLE: I just have two follow-up.

25 REDIRECT EXAMINATION OF MS. JONES

1 BY MR. COLE:
2 Q You gave a blood test and a urine sample in
3 this case. Isn't that correct?
4 A Correct.
5 Q And Captain Hazelwood...
6 MR. CHALOS: Objection, Your Honor.
7 THE COURT: This is going outside the scope of
8 the direct, redirect (indiscernible - unclear) recross.
9 MR. COLE: Judge, I can step forward and make
10 an offer of proof why I don't believe that's true.
11 THE COURT: Why don't you do that?
12 (2425)
13 (Whispered bench conference as follows:)
14 MR. COLE: I want to ask her if she noticed
15 any signs of intoxication. He just went into it here
16 and I want to know -- want to ask her if she noticed
17 any signs of intoxication when he gave his urine sample
18 and blood test until 11 o'clock that morning.
19 MR. CHALOS: I wouldn't have any objection
20 (indiscernible - whispering)
21 THE COURT: Okay. Without objection, I'll let
22 you proceed.
23 MR. CHALOS: Your Honor. Mr. Cole?
24 (Indiscernible - whispering)
25 THE COURT: We have foundation for it, okay.

1 (End of whispered bench conference)

2 (2456)

3 Q (Ms. Jones by Mr. Cole:) Ms. Jones, were you
4 called into the captain's quarters at one point
5 to give a blood sample?

6 A Yes, I was.

7 Q Did you make contact with Captain Hazelwood
8 within the half an hour that that occurred, prior
9 or after?

10 A He, I believe, was in his office when I went
11 up there.

12 Q When you went to give the blood sample?

13 A I believe so.

14 Q Did you notice any signs of intoxication at
15 that time?

16 A No, I did not.

17 Q Thank you.

18 MR. COLE: Nothing further, Your Honor.

19 THE COURT: Can this witness be excused from
20 further participation?

21 MR. CHALOS: No, just one -- a couple more
22 questions.

23 THE COURT: All right.

24 (2500)

25 RECROSS EXAMINATION OF MS. JONES

1 BY MR. CHALOS:

2 Q Ms. Jones, when you saw Captain Hazelwood in
3 his office at the time you gave a blood test, how
4 far away from you was he?

5 A I don't remember.

6 Q Would you say that he was across his office at
7 that point in time?

8 A I don't remember.

9 Q Okay.

10 MR. CHALOS: No further questions, Your Honor.

11 THE COURT: May the witness be excused from
12 further participation?

13 MR. CHALOS: Yes, as far as we're concerned.

14 THE COURT: Mr. Cole?

15 MR. COLE: Yes, Your Honor.

16 THE COURT: You're excused from further
17 participation in this case. Call your next witness.

18 MR. COLE: I have to go out and see which one
19 it is.

20 (Pause)

21 THE COURT: Would you call the name of your
22 witness, please?

23 MR. COLE: This is Mr. Meneses, Your Honor.

24 THE COURT: All right.

25 (Oath administered)

1 A I do.

2 EFRIN MENESES

3 called as a witness in behalf of plaintiff, being first

4 duly sworn upon oath, testified as follows:

5 THE CLERK: Sir, would you please state your

6 full name and then spell your last name?

7 A I'm Efrin Meneses.

8 THE CLERK: Spell your first name, too.

9 A My first name is Efrin. Meneses, that's my

10 last name. Efrin is my first name.

11 THE CLERK: And spell your last name?

12 A Meneses, my last name.

13 THE CLERK: Spell that.

14 A M-e-n-e-s-e-s.

15 THE CLERK: And your current mailing address?

16 A My home address, sir? I live 126, Daley City,

17 California.

18 THE CLERK: And your current occupation, sir?

19 A I'm not working right now. I work on Exxon as

20 ple (ph) chef.

21 THE CLERK: Okay. Thank you.

22 A Okay, sir.

23 DIRECT EXAMINATION OF MR. MENESES

24 BY MR. COLE:

25 Q Mr. Meneses, how long have you worked for

1 Exxon Shipping?

2 A Almost 11 years.

3 Q In what position do you work for them? What's

4 your job?

5 A I'm a chef. Of everything. I used to be and

6 still am a cook.

7 Q Were you the cook on the Exxon Valdez when it

8 went aground?

9 A I was, yeah.

10 Q Do you remember going to sleep the night

11 before?

12 A That day when that accident happened, I was

13 asleep.

14 Q What time did you get off work that evening,

15 the night before?

16 A 5 o'clock.

17 Q And that -- do you remember when the ship left

18 Valdez?

19 A I was asleep. I don't have no idea.

20 Q Did you wake up when the ship was grounded?

21 A I remember I was still laying down when the

22 ship was grounded. I don't know.

23 Q And what happened -- what did you do after

24 that?

25 A I just sleep -- I sleep again.

1 Q And when did you wake up?
2 A 5 o'clock in the morning.
3 MR. COLE: Thank you. I have nothing further.
4 CROSS EXAMINATION OF MR. MENESES
5 BY MR. CHALOS:
6 Q Good afternoon, Mr. Meneses.
7 A Good afternoon, sir.
8 Q Other than being a cook, you have no other
9 duties on the Exxon Valdez, do you?
10 A That's all I have.
11 Q No deck duties?
12 A No, sir.
13 Q No stations to go to?
14 A I have -- during every drill we have.
15 Q Now, let me ask you this. You say that you
16 woke up when the grounding occurred?
17 A Yes, sir.
18 Q You don't know if anyone tried to wake you up,
19 do you?
20 A Nobody. Nobody wake me up.
21 Q But, in fact, you did wake up when you heard
22 the grounding?
23 A Yes, sir. That's right.
24 Q And I take it you don't know whether Captain
25 Hazelwood told anybody to come down and wake you

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up?

MR. COLE: Objection. Your Honor, objection.
Hearsay.

THE COURT: The only way he would know that is
if somebody told him. He said he'd been asleep so the
objection is sustained. The form of the question is
improper.

MR. CHALOS: Your Honor, I have no further
questions of this witness.

THE COURT: Any further need for this witness?

MR. COLE: No.

THE COURT: Mr. Chalos?

MR. CHALOS: No.

THE COURT: You're excused, Mr. Meneses.

MR. COLE: At this time, the state would call
Ms. Melanie Wright.

THE COURT: You folks running out of pads?

UNIDENTIFIED: Not yet. Thank you, sir.

THE COURT: If you run out of pads or pencils,
just let us know and Mr. Purden will renew them for
you.

(Oath administered)

A I do.

MELANIE WRIGHT

called as a witness in behalf of plaintiff, being first

1 duly sworn upon oath, testified as follows:

2 THE CLERK: Ma'am, will you please state your
3 full name and then spell your last name?

4 A Melanie Wright.

5 THE CLERK: And then spell...

6 A Spell the first one too? M-e-l-a-n-i-e.

7 THE CLERK: And your last name's spelling?

8 A W-r-i-g-h-t.

9 THE CLERK: And your current mailing address,
10 ma'am?

11 A Exxon Shipping Company, Box 1512, Houston,
12 Texas.

13 THE CLERK: And your current occupation?

14 A Ship's cook.

15 THE CLERK: Thank you.

16 (2964)

17 DIRECT EXAMINATION OF MS. WRIGHT

18 BY MR. COLE:

19 Q Ms. Wright, would you tell the jury how long
20 you've worked for Exxon Shipping Company?

21 A Eight years.

22 Q And how long had you been serving on the Exxon
23 Valdez prior to its grounding?

24 A Fifty some days.

25 Q Do you remember the Exxon Valdez being in port

1 in Valdez on March 23rd, 1989?

2 A Yes.

3 Q What time did you get off work that day?

4 A Seven.

5 Q What did you do after you got off work?

6 A I went to the crew's t.v. room and watched
7 t.v.

8 Q Did you watch anything in particular? Do you
9 remember?

10 A I tried to watch the news and a movie. But the
11 movie that was on was one we'd already seen last
12 week in San Francisco, so we turned the t.v. off
13 and went to bed.

14 Q What time would you have gone to sleep that
15 evening?

16 A 10 o'clock.

17 Q What time did you wake up?

18 A Five in the morning.

19 Q Do you remember waking up prior to that?

20 A For a few seconds.

21 Q Why did you wake up prior to that?

22 A I heard an unusual noise.

23 Q Did you think anything about that?

24 A I thought the wind was blowing. Probably
25 because the wind blows a lot where I live and

1 when I was asleep, sometimes you can't tell if
2 you're at home or at work. And I heard a few
3 scraping noises in with that, but I didn't get up
4 or anything. Just went back asleep because it
5 got quiet. The engines shut down. It was quiet
6 and just went back to sleep.

7 A When did you learn that the Exxon Valdez had
8 grounded?

9 A When I came out of my room. I ran into the
10 oiler and he took me outside.

11 Q What time would that have been?

12 A A quarter 'til 6.

13 MR. COLE: I have nothing further, Your Honor.

14 (3119)

15 CROSS EXAMINATION OF MS. WRIGHT

16 BY MR. CHALOS:

17 Q Good afternoon, Ms. Wright. You don't have
18 any other duties on the Exxon Valdez besides
19 being a cook. Right?

20 A Yes.

21 Q You don't have any deck duties or any engine
22 duties?

23 A No. Just inside the house.

24 Q Do you know whether anyone knocked on your
25 door that evening?

1 A No. I would say nobody did knock on it.
2 Q But you did wake up when you heard the
3 scraping sound?
4 A Uh-huh (affirmative).
5 MR. CHALOS: I have no further questions, Your
6 Honor.
7 THE COURT: Mr. Cole?
8 MR. COLE: Nothing further.
9 THE COURT: May this witness be excused from
10 further participation?
11 MR. CHALOS: Yes, Your Honor.
12 MR. COLE: Yes, sir.
13 THE COURT: You're excused. Thank you.
14 MR. COLE: Your Honor, at this time, the state
15 will call Lloyd LeCain.
16 THE COURT: Sir, this is the witness stand up
17 here, please.
18 A Okay.
19 (Oath administered)
20 A I do.
21 LLOYD LE CAIN
22 called as a witness in behalf of plaintiff, being first
23 duly sworn upon oath, testified as follows:
24 THE CLERK: Sir, would you please state your
25 full name and then spell your last name?

1 A Lloyd George LeCain, Junior. And my last name
2 is spelled L-e C-a-i-n.

3 THE CLERK: And your current mailing address,
4 sir?

5 A 416 Evesham -- that's spelled E-v-e-s-h-a-m
6 Place. That's Longwood, Florida. 32779.

7 THE CLERK: And your current occupation?

8 A Merchant marine officer.

9 THE CLERK: Thank you.

10 THE COURT: Mr. Cole, keep your eye on the
11 clock. We'll break at a quarter of.

12 MR. COLE: A quarter of? Fine..

13 DIRECT EXAMINATION OF MR. LE CAIN

14 BY MR. COLE:

15 Q Mr. LeCain, how long have you been in the
16 merchant marine industry?

17 A Including time as a cadet, 21 years.

18 Q You mentioned cadet. Would you explain to the
19 jury what that means?

20 A I went to Texas A & M University and trained
21 as a merchant marine officer and I have a
22 bachelor's of science in marine transportation.

23 Q Can you just briefly summarize what types of
24 jobs you've held in the merchant marine industry?

25 A Able seaman for a short period and second mate

1 and third mate.

2 Q When did you get your third mate's license?

3 A That would be 1972 probably. Right around

4 the very end of 1971. Somewhere in December.

5 Q And your second mate's license?

6 A It was about six years later. 1978. I'm not

7 sure on that.

8 Q Approximately.

9 A 1978.

10 Q Do you have any special pilotage endorsements

11 that you received to go along with your second

12 mate's license?

13 A No, sir.

14 Q And how long have you worked for Exxon

15 Shipping Company?

16 A Over 17 years.

17 Q Did you sign on with them as an able bodied

18 seaman?

19 A Yes, I did.

20 Q Have you worked with Exxon ever since you

21 started with them 17 years ago?

22 A That's correct.

23 Q When did you get assigned to the Exxon Valdez?

24 A It was about five months before the accident.

25 It was in 1988 -- the end of -- July of '88 --

1 July or August of '88, I got transferred.

2 Q Who were the captains that you served under
3 while you were doing assignments on the Exxon
4 Valdez?

5 A Captain Hazelwood and Captain Stalzer.

6 Q And in your work with Exxon, have you
7 regularly been going in and out of Valdez?

8 A No.

9 Q Where have you worked primarily?

10 A Between Port Amarillo, Panama and New York or
11 Cherokee Grande (ph), Panama on the Atlantic Side
12 and Baton rouge, Louisiana.

13 Q So that would be considered mostly East Coast
14 work?

15 A Yes, sir. That's correct.

16 Q Can you give the jury an idea of how many
17 trips you made into Valdez?

18 A It's hard to say because I was on the Exxon
19 Baton Rouge years ago. I made maybe -- total
20 maybe 20 trips up and down in there and two or
21 three trips this time, so let's say somewhere
22 around 20.

23 Q The times you were on the -- is it the Exxon
24 Baton Rouge?

25 A Yes, sir.

1 Q When was that?

2 A That was 10 or 12 years ago. It was a long
3 time ago. I don't remember anymore.

4 Q When you were working on the Exxon Valdez
5 beginning in July, do you remember how many times
6 you would have been at the helm when the Exxon
7 Valdez came in to...

8 A I was never at the helm but I was the
9 navigation officer.

10 Q I'm sorry, yes, the navigation officer.

11 A Maybe three or four times. You know, when I
12 say times, I'm saying just watches on maybe two
13 or three transits but it wasn't, you know, that
14 many times.

15 Q Would you -- you were the second mate on the
16 Exxon Valdez. Would you tell the jury what were
17 your responsibilities while you were in port?
18 Let's begin in there.

19 A In port. Well, I was assisting the chief
20 officer with the cargo, preparing the charts for
21 sailing. I had duties with the steward's
22 department. And just to assist the chief officer
23 as necessary with the cargo. I mean, I'm right
24 under the chief officer. I help him with cargo
25 figures and things occasionally and that's just

1 about it.

2 Q Can we talk a little about preparing the
3 charts. Can you explain to the jury what you
4 mean by that?

5 A Okay. On the charts of the ship, we have all
6 our courses laid out coming -- where we're going
7 to. If it's a steady run, like we have San
8 Francisco up to Valdez and what we do is we laid
9 our courses out on the chart and we put Magic
10 Scotch Tape over the courses and then all the way
11 up, we plot our positions on the chart or our
12 charts we use for going up to wherever we're
13 going. And then when we -- before we sail, a
14 couple of hours before we sail, I'll erase all
15 the previous fixes on the chart 'cause we
16 wouldn't want to mix things up for the next
17 voyage.

18 So the positions usually stay on the chart
19 almost the whole time we're in port in case
20 somebody from the office wants to come down and
21 inspect the charts or something happens.

22 Q And would you have done this on March 23rd,
23 1989 when the Exxon Valdez was in?

24 A Yes, I would have. I did do that.

25 Q You remember doing that?

1 A Yes, I did.

2 Q Is there anything else that you do with the
3 charts?

4 A I correct the charts. There's something
5 called Notice to Mariners that comes out from the
6 defense mapping agency which has all corrections
7 to the chart, what lights have been added or
8 destroyed. Also there's a local notice for
9 mariners from the Coast Guard at different ports
10 with the same information on it. And what I do
11 is I bring the charts up to date. I correct the
12 lights and all that sort of thing and the Coast
13 Guard does inspect that on the ship. They make
14 sure that I've done that work.

15 Q When do they inspect you?

16 A It was not this trip. It was previous.

17 Q Now, did these notices to mariners, have any
18 of them -- while you were on the Exxon Valdez,
19 did any of them include ice hazards?

20 A I can't recall now.

21 Q Is there anything else that you do to keep the
22 charts in good working condition?

23 A Just order new additions when they come in. I
24 always check with the captain to make sure, you
25 know, -- when we get a new addition, I'll lay the

1 courses out and then the captain will check the
2 courses I laid out.

3 Q Is it common when you get a new chart to read
4 over the chart and look at it and read what's on
5 it?

6 A What I usually do is correct it first. Then
7 I look at it and if there's something unusual,
8 I'll point it out to the captain. Also, when I
9 do get the notice to mariners, a lot of times if
10 I see something unusual, I might tell the
11 captain. Some of the captains read the notice to
12 mariners themselves first and look through them.

13 Q But it's fair to say that as the navigation
14 -- as the second mate if you were to notice new
15 notes up on the charts themselves, you would
16 bring those to the captain?

17 A Yes, sir.

18 Q Would you tell the jury what was your
19 responsibilities then as a second mate when you
20 were out at sea?

21 A Well, I was a watch officer and that would
22 include a four hour -- two four-hour watches a
23 day. Just navigating the ship, maneuvering the
24 ship, if necessary, around traffic. I also run
25 the steward's department, put overtime in the

1 computer, steward's department. I order stores
2 for the deck department and the engine department
3 when I'm asked to. Just general duties. I work
4 8 hours a day as a watch officer and I have
5 collateral duties.

6 Q What were your times that you worked on the
7 Exxon Valdez? What was your block of time?

8 A I worked from 12 to 4.

9 Q And did you have people that -- ABs that you
10 were responsible for?

11 A Yes, I did.

12 Q Who were those two individuals?

13 A At this time?

14 Q Yes.

15 A That was Ms. Jones and Mr. Kagan.

16 Q How important is it to know the capabilities
17 of the people that work under you?

18 A It's pretty important -- very important. I
19 mean -- you're doing a job, you have to rely on
20 them.

21 Q How long did you work with Mr. Kagan?

22 A Just whatever the length of time was from San
23 Francisco up to Valdez. Seven days, eight days,
24 whatever that was.

25 Q Are you responsible while you are in port for

1 making sure that any of the instruments are
2 working properly?

3 A Not specifically. I mean I'll go to the
4 bridge while correcting charts, I'll make sure
5 the course recorders are wound up and things like
6 that but the actual instrumentation for the trip,
7 when you're going to leave, is checked by the
8 officer who's up there checking gear.

9 If I notice something that was absolutely
10 wrong -- another thing, like the radars, we don't
11 want to turn those on while we're handling cargo
12 because you'd have an explosion because of static
13 discharge and some of the other equipment like
14 that, so if it's in port, it would just be some
15 thing stuck out like, you know, the line in the
16 course recorder ran out of ink, something like
17 that.

18 Q Do you remember being on duty when the Exxon
19 Valdez entered Hinchinbrook on March 22nd, 1989?

20 A Not specifically. I'd have to take a look at
21 a log book to refresh my memory.

22 Q What would your shift have been that day?

23 A Oh, I would have had the 12 to 4 watch the day
24 before and then I would have had the 12 to 4
25 tying up when we got up to the dock. Then I had

1 -- I was up with the cargo a little a while until
2 around 5:30. I went to bed for about two or
3 three hours. Then I got up. I had something
4 going on in the steward's department, went down
5 to the steward's department. I had lunch. I
6 went to work for four hours and then I had
7 something else go on and I finally sat down in my
8 chair maybe for a short period when Mr. Cousins
9 -- he was supposed to let me sit down a little
10 longer than I supposed to, but he called me out
11 early. Just as an error. And then I finally got
12 to bed about, I guess, around 10:15 to 10:30,
13 somewhere around in there.

14 Q You covered a lot there.

15 A I know.

16 Q We're going to cover everything but...

17 A It's hard for me to remember too, so it's a
18 long time ago.

19 Q Can you basically tell the jury what you were
20 doing between 12 and 4 that morning?

21 A I think about -- we tied the ship up and I was
22 doing something with cargo, getting ready for
23 cargo operations.

24 Q Who would you have been working with?

25 A The chief officer.

1 Q And did you go to town that day at all?

2 A Absolutely not.

3 Q Why not?

4 A I'm busy working. I don't go ashore in

5 Valdez. It's a long ride from the place over to

6 the town. The cab ride is kind of expensive and

7 we'll only going to be in port a few hours, so

8 why go to town?

9 A Did you make any phone calls from Valdez?

10 A I can't remember if I called my wife or not.

11 I might have.

12 Q And when you came on at noon, what did you do

13 then?

14 A Well, I made a round of the deck. I then went

15 to the cargo control room and relieved Mr.

16 Cousins, I think it was about 10 of, and just

17 stood cargo watch for about four hours.

18 Q Did anything happen as to the rate of oil flow

19 while you were on deck that day -- on watch that

20 afternoon?

21 A It went up and down a couple of times. It

22 was something on dock and I forget how many

23 barrels the change was. I'm not going to say. I

24 don't remember now.

25 Q Do you remember having to change the sailing

1 board that day?

2 A I don't remember whether -- I really can't
3 recall.

4 Q Do you remember seeing the sailing board that
5 day?

6 A While I was walking around, I know it was out
7 there. See, it didn't concern me that much. I'm
8 not going ashore. And I'm just trying to
9 remember. I think the chief mate may have
10 changed the sailing board but I can't remember
11 anymore.

12 Q Do you remember what was on the sign that day?

13 A No, I don't. Not now.

14 Q If you saw it, might it refresh your
15 recollection?

16 A I saw log book entries.

17 Q The log book?

18 A Some sort of entry being shown.

19 Q How about this? Does it refresh your
20 recollection?

21 MR. CHALOS: What are you looking at there?
22 Can I ask you that please?

23 MR. COLE: Plaintiff's Exhibit number 36.
24 (Tape: C-3619)
25 (0010)

1 MR. CHALOS: Your Honor, I would object. I've
2 noted before my objection. This was taken in San Diego
3 sometime later. We don't know who put this on or when.

4 MR. COLE: It's being used to refresh his
5 recollection.

6 THE COURT: Any document can be used to
7 refresh recollection.

8 Q (Mr. LeCain by Mr. Cole:) Does this refresh
9 your recollection as to what time?

10 A It says 20 or 2100 on it. I don't know.
11 Well, I'd really have to look at the log book
12 entry for that day to...

13 Q Is that what you're looking for?

14 A Yeah.

15 Q That would be it?

16 A Should be it. Sailing board advanced to 20
17 and 2100. It says right here. That's my
18 notation -- my entry,

19 Q Okay. And who actually changed the sailing
20 board?

21 A It was one of the able seaman.

22 Q You don't remember seeing that board...

23 A No, sir. I don't.

24 Q After you got off work then that day, how long
25 did you work on cargo control that afternoon?

1 A I worked for four hours in the control room
2 and then I hung around a little while afterwards
3 and just, you know, see if something was going
4 on, topping it off or something and then I just
5 went down and had supper and then I went down to
6 the steward's department to see how things were
7 going, wanted to see, make sure things were
8 secured. That's about it.

9 I just sat down for a few minutes and then
10 went right back out on deck again because I got
11 called.

12 Q What were your responsibilities for the
13 undocking -- while the undocking occurred?

14 A Under the captain's directions, supervise
15 letting lines go off the dock.

16 Q Were you at the bow or at the aft?

17 A The bow.

18 Q Who did you have working for you?

19 A I can't recall.

20 Q What did you do after the undocking process
21 was done?

22 A Well, I helped secure the deck for sea and
23 about 10:15 or so, I called the bridge. I don't
24 know who I talked to up there. I just said I'm
25 going to go inside now, they don't need me out

1 here for this. And they said go ahead. And
2 that's the last -- the next thing I knew we were
3 -- I went in and laid down, went asleep and the
4 thing I knew we were having a problem.

5 Q Were having a problem. Is that...

6 A They grounded.

7 Q Did you hear that or were you...

8 A I felt it. I felt it. It was like running
9 your car about 30 miles an hour on a stone wall.
10 I've done that one time so I know what it feels
11 like. And that's about it.

12 Q What time was that when you woke up?

13 A I'm not exactly sure on that. I didn't look
14 at my clock really, I just -- you know.

15 Q When was the first time you remember looking
16 at your clock?

17 A I guess -- the chief mate got me up right
18 after it happened. I went to the -- I was up on
19 the bridge -- about 10 or 15 after the hour, I
20 was on the bridge.

21 Q When were you scheduled to be on duty that
22 evening?

23 A About ten minutes 'til 12.

24 Q Why weren't you called up?

25 A They just never called. It's a common

1 practice when we work over -- work extra hours
2 for people to hang on for people, hang over -- I
3 intended to hang over for the chief officer 'til
4 5, give him the extra hour of sleep and it was
5 commonly done. We just would do it.

6 Q What time would you have been called if you
7 had been?

8 A If you're going to be sleeping in an extra
9 hour, maybe around 12:30. Normally, if they were
10 going to get me up for my watch, it would have
11 been about 11:30.

12 Q You indicated that you had worked with Mr.
13 Kagan prior to this for a little bit prior to
14 coming up out of -- leaving Valdez. Do you
15 remember talking about that?

16 A Yes.

17 Q Had you had any problems with Mr. Kagan at the
18 helm?

19 A No. Coming out of San Francisco, he did
20 okay, steered the ship okay. We had to
21 supervise him but I mean it was, you know, just
22 keep an eye on him.

23 Q What do you mean you had to supervise him?

24 A Well, my job is to supervise the
25 quartermaster. So, I mean, we just watch people

1 steer the ship.

2 Q How would you rate Mr. Kagan in terms of his

3 ability?

4 A I'd say slightly below normal.

5 Q Did you ever have any discussions with Captain

6 Hazelwood about that?

7 A Yes, I did. It was just -- knew we had a

8 problem -- well, not a problem. We knew -- you

9 know he just told me to keep an eye on Kagan when

10 he's steering because...

11 Q Captain Hazelwood said that?

12 A Uh-huh (affirmative).

13 Q When did he tell you that?

14 A Coming out of San Francisco. Like I say I

15 kept an eye on him and had no problem.

16 Q Had you thought about that prior to going to

17 sleep where you were going to place Mr. Kagan and

18 Ms. Jones?

19 A Yeah, I was thinking possibly for the first

20 part of the transit, just to put Ms. Jones on the

21 wheel and maybe an hour down, put Kagan on the

22 wheel.

23 Q Why was that?

24 A The navigation load was heavier up there at

25 the top of Prince William Sound. I figured out

1 where I would be. So I never had Mr. Kagan in
2 loaded condition, but the chief officer had
3 talked to me and Cousins about keeping an eye on
4 Kagan about the steering ability and since Mr.
5 Cousins said he'd been with Kagan on a previous
6 ship, so I'm the one who was sort of left in the
7 situation where I didn't know and so I just
8 thought, well, I'll just change out. But if I
9 had had Mr. Kagan that's the way it was, I'm sure
10 he could have done it right.

11 Q What happened when after you were woken up,
12 what did you do?

13 A I went up to the bridge.

14 Q And would you describe -- do you remember the
15 grounding at all? Do you remember what the
16 sounds or anything that occurred?

17 A Just what I told you. It was just a grinding
18 sound -- it wasn't a grinding sound. It was a
19 feeling like running your car about 30 miles an
20 hour into a stone wall. I mean it wasn't really
21 much noise to it. It was just like a, you know,
22 a rock.

23 Q Do you know how long that...

24 A No, sir, I don't. Just remember I was
25 asleep, you know. I mean this sort of woke me up

1 out of my sleep.

2 Q When you got up to the bridge, where did you
3 go?

4 A I went into the wheel house and I stood there
5 and I could see what was happening and I -- well,
6 I just -- I asked Mr. Cousins what happened,
7 okay.

8 Well, see when I first went to the bridge, I
9 looked at the chart. That's the first thing I
10 did. I looked at the chart. I saw where we were
11 and I was absolutely startled. That's what
12 happened and I really felt -- it didn't make any
13 sense to me, being where we were. So I went out
14 on the bridge and I saw the captain there and
15 Kagan and Cousins and I -- so I said, Mr.
16 Cousins, what happened? He said "I was
17 maneuvering around ice and I slid up on the
18 rocks."

19 Q Where did you go after that?

20 A I said to Captain Hazelwood, I said I'm going
21 down to assist the chief officer and I went down
22 to the chief officer and assisted him.

23 Q Would you describe -- was there any fumes in
24 the stairwells or on any of the floors at that
25 time?

1 A No, there wasn't.

2 Q Do you remember ever smelling any?

3 A No.

4 Q Were you in a rush? Was this a casual thing
5 when you went down to the cargo control room?

6 A No. I went directly to the cargo control room
7 by stairs, not in a rush but in, you know,
8 deliberate way to go to work. I mean we had --
9 because obviously, we're hurt and when a ship's
10 hurt, we had to go to work, you know.

11 Q Where did you go then?

12 A After I was in the cargo control room?

13 Q No, where is the cargo control room?

14 A It's down a few decks from the bridge. It's a
15 stairwell that just goes down.

16 Q What did you do while you were in the cargo
17 control room?

18 A I talked to the chief officer. I looked at
19 the gauges that showed how much oil was in the
20 ship.

21 Q What did the gauges tell you?

22 A The gauges were a blur. We couldn't really
23 -- we didn't know how fast the oil was coming
24 out. It's usually the numbers moving, you know,
25 like a digital readout. How much oil is in

1 there. The number of feet between the top of the
2 oil and tank top and this was just real blurred
3 out. We were getting a few readings but we --
4 the oil was going out of the ship very, very
5 fast. It was obvious to the chief officer and
6 myself....

7 Q "We were having some real problems."

8 A Yes, sir.

9 Q Did you know the extent of the problems at
10 that time?

11 A No, sir, I didn't.

12 Q Showing you what's been marked for
13 identification as Plaintiff's Exhibit number 47.
14 Do you recognize that photograph?

15 A That's the cargo control board.

16 MR. COLE: Your Honor, I'd move for the
17 admission to what has previously been identified as
18 Exhibit 47.

19 MR. MADSON: No objection.

20 THE COURT: 47 is admitted.

21 EXHIBIT 47 ADMITTED

22 Q (Mr. LeCain by Mr. Cole:) Now, Plaintiff's
23 Exhibit number 48. Do you recognize that?

24 A That's another view of the cargo control room
25 -- the cargo control board.

1 MR. COLE: I would move for the admission of
2 what's previously been identified as Plaintiff's
3 Exhibit number 48.

4 MR. MADSON: No problem. No objection.

5 THE COURT: Admitted.

6 EXHIBIT 48 ADMITTED

7 Q Now, can you give the jury an idea of what
8 things you were looking at that were confusing?

9 A Well, not confusing. It was just that these
10 gauges showed the amount of oil in the tank, all
11 right, the ullages and things. You could just
12 tell it was going out very fast.

13 Q They were moving constantly?

14 A Yes, sir.

15 Q What happened then -- did you go down with the
16 first mate -- the chief mate down into the cargo
17 control room? Was he ahead of you?

18 A He was already down there. He had left before
19 I got there.

20 Q What was he doing when you went down?

21 A He was working the computer, trying to figure
22 out stability. We were trying to get some
23 figures and we were trying to ascertain what
24 happened to the ship. You have to understand
25 this was a very confusing period. You know, it's

1 like I say, it's a brave new world now. We've
2 got a wrecking at our ship; our job is to save
3 the ship, do whatever we had to do to stop what's
4 happening.

5 Q How long were you then in the cargo control
6 room?

7 A I can't recall. The chief officer dispatched
8 me to different parts around the ship. On deck
9 to check things out, check gauges and it was, you
10 know, in and out, in and out.

11 Q Was anybody helping you during this time?

12 A The pump man was on deck. A couple of the
13 engineers were around. Just that sort of thing.
14 People pulling together, trying to figure out
15 what was going on and what was happening.

16 Q When you were out on the deck, was there oil
17 out on the deck?

18 A For some period while I was out on the deck,
19 one of the engineers opened up a -- one of the
20 void spaces -- empty spaces. Oil had gotten in
21 there and when we opened up the sounding tube, we
22 had a spout of oil come up out of there like a
23 geyser. I was very concerned about this because
24 small particles of oil are explosive and I
25 planned to get this stopped. We managed to get

1 that stopped almost immediately. We did get a
2 little oil on the deck at that point.

3 Q And what else would you have been doing from
4 that period helping Mr...

5 A Just checking things out. Just -- you know, I
6 can't tell you all the things. It was just a
7 series of things trying to find out if looking
8 over the side, seeing if oil was coming out of
9 the ship, looking around the deck, seeing if
10 there were any cracks in the deck, just a number
11 of things like that.

12 Q Did you see the oil coming out?

13 A I could -- I could see oil in the water, oil
14 on the ship. I couldn't -- the oil is coming way
15 under -- far underneath the ship so you really
16 couldn't...

17 Q Do you remember lowering the anchor?

18 A Yes, I did that.

19 Q When would that have been?

20 A Sometime after 2 o'clock. I saw the Bell
21 Books and I think it's a different time in the
22 Bell Books.

23 Q But it was sometime after 2 o'clock?

24 A Yes, sir.

25 Q Do you remember when the Coast Guard came?

1 A I can't tell you the time they came. I can
2 remember them coming alongside the ship.

3 Q Had you already lowered the anchor at that
4 point?

5 A I believe I had.

6 Q Why would you have lowered the anchor?

7 A I guess we knew were on the rocks, weren't
8 going any place, wanted to hold the ship there.
9 We didn't want to just, you know, float off the
10 rocks.

11 Q Did you at some point in time, start to
12 prepare for lightering process?

13 A Yes. During that period, after the anchor was
14 down, I -- the chief mate directed me to see what
15 hoses we had in our focsle head and did that sort
16 of thing. It was to check -- a couple of hoses
17 up there. We were getting the hoses out and just
18 getting gaskets ready, getting wrenches ready,
19 everything that was necessary for the lightering.

20 Q When did you relieve Mr. Cousins on the
21 bridge?

22 A A little after 4 o'clock.

23 Q How long were you there?

24 A With few exceptions, almost, I think, close to
25 30 hours off and on. I did get off my feet 6

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o'clock that night but then the Exxon San Francisco came alongside -- or one of the other Exxon ships and I had to get out to supervise that. Supervise my end of the ship, the tying up and after that happened, it become late again; it was close to my watch, so I went right back on watch at midnight. And I stayed on until 6 in the morning. Then we flew out to the NTSB hearing.

Q Were you on board when Captain Deppe came on board?

A I can't recall. He might have come on board while I was at the NTSB hearing. I think he did.

Q What is the Exxon policy towards possession of alcohol?

A It's forbidden.

Q What were the consequences?

A Termination.

Q What about the use of alcohol on board?

A That's the same thing.

Q Did you have any alcohol on board the Exxon Valdez on the 23rd?

A No, I did not.

Q Did you know of any being on board the Exxon...

1 A No, I did not.

2 MR. COLE: I have nothing further, Your Honor.

3 THE COURT: We'll take our recess now. Don't
4 discuss this case among yourselves or anybody else.
5 Don't form or express any opinions.

6 THE CLERK: Please rise. This Court stands in
7 recess and recall.

8 (Off record - 2:39 p.m.)

9 (On record - 3:01 p.m.)

10 (0617)

11 (Jury present)

12 THE CLERK: This Court now resumes its
13 session.

14 THE COURT: Mr. Madson.

15 CROSS EXAMINATION OF MR. LE CAIN

16 BY MR. MADSON:

17 Q Mr. LeCain, you indicated you were on the
18 fateful voyage of the Exxon Valdez on March 23rd.
19 Correct?

20 A Yes, sir.

21 Q And you were the second mate at that time?

22 A Correct.

23 Q I think you described a number of your duties
24 and I think among them was a navigational officer
25 to keep track of the charts and updated charts,

1 things like this?

2 A Yes, sir.

3 Q When you spoke of -- I think you said the
4 Coast Guard sends out Notice to Mariners?

5 A Uh-huh (affirmative).

6 Q That's changes on charts, for instance?

7 A Yes, it is.

8 Q If a buoy is removed or something like that?

9 A That's correct.

10 Q Whatever the Coast Guard feels is important to
11 your -- aid you in navigation -- navigate a ship
12 or a vessel safely?

13 A That's correct.

14 Q And Mr. Cole asked you and I think you said
15 that there were no ice hazards that were issued
16 by the Coast Guard in Prince William Sound?

17 A I can't recall, you know, I just don't recall
18 that.

19 Q Now, sir with regard to your duties as watch
20 officer, let's say you're on the bridge as watch
21 officer, you and the helmsman are present, okay?

22 A Uh-huh (affirmative).

23 Q You give an order to the helmsman, 10 degree
24 right rudder. What does he do?

25 A He brings the ship -- the rudder and shifts it

1 ten degrees right.

2 Q How do you know that?

3 A It's indicated on a rudder angle indicator.

4 Q First of all, is that really a simple order,
5 10 degrees right rudder?

6 A Yes, sir.

7 Q You have to know your right hand from your
8 left?

9 A That's all you have to know.

10 Q And mechanically turning the wheel. Is there
11 a little arrow indicator on part of the front of
12 the wheel to indicate when it's 10 degrees?

13 A Yes, there was.

14 Q Let me show you this, sir.

15 A I'd have to see the stand again.

16 Q Let me show you now. This is Defendant's
17 Exhibit K. Do you recognize that, sir?

18 A Yes, that's the steering stand. The Sperry
19 SRT 2400.

20 Q Okay, could you just perhaps show the jury how
21 a helmsman would know, at least approximately,
22 when he was at 10 degrees?

23 A Right here. When you put the wheel always
24 goes to 10 degrees.

25 Q Maybe you can show a little more...

1 A This indicator here.

2 Q It's a dial. Looks like it's black with white
3 numbers on it.

4 A Right. And then there's...

5 Q Yeah, let me hand you know Defendant's Exhibit
6 J.

7 A The quartermaster is right here. Here's an
8 indicator up here, the amount of rudder. This is
9 lit -- lighter and you can always see it, so he
10 would be able to tell. And this sometimes may be
11 half a degree over -- a degree off so what you
12 would want to do is actually to keep your eye on
13 this when you change course.

14 Q When you say this, that's the...

15 A Sorry.

16 Q ...angle indicator.

17 A Angle indicator. Yes, sir.

18 Q That's mounted on the...

19 A On the overhead.

20 Q ...overhead. Can you see that fairly well
21 when you're on the bridge?

22 A Yes, you can.

23 Q So, if he gave you several orders like 10
24 degrees right rudder, how much time would elapse
25 before something would occur, the rudder

1 indicator would indicate that...

2 A Almost instantaneous. There'd be -- you
3 know, my eye would be on it to make sure he went
4 the right direction and he completed the order.
5 It would be done in a couple of seconds, the
6 rudder would go right over.

7 Q Just look up and it's a glance, right? You
8 can see that it's there?

9 A Right.

10 Q Where it's supposed to be or it isn't?

11 A Uh-huh (affirmative).

12 Q Now, with regard to Mr. Kagan, had you ever
13 had any problem in the past with him chasing the
14 compass as it's called?

15 A Not on my watch, no. I just kept a close eye
16 on him. Well, I keep a close eye -- any quarter
17 master does.

18 Q You keep a close eye on everybody?

19 A That's my job.

20 Q So you never had any -- Mr. Kagan never told
21 you he's had problems chasing the compass or
22 steering a particular course?

23 A Not on my watch. He never said anything about
24 it.

25 Q Well, how many times had you been with Mr.

1 Kagan on your watch?

2 A Only the trip out of San Francisco and at sea
3 -- that trip up -- just that short period.

4 Q So, if you believed you had some reason to
5 keep an eye on him and you kept an eye on him and
6 he didn't do anything wrong, apparently he could
7 steer all right? Or not -- I don't want to use
8 the steer. You do the steering. Correct, when
9 you give commands?

10 A Right.

11 Q He could follow rudder orders?

12 A That's correct.

13 Q If you said 10 degrees right rudder, you
14 looked up; it was on 10 degrees?

15 A Right. I would make sure it was there.
16 Anyone does.

17 Q Well, when you said the trip up from San
18 Francisco, is this the trip you're talking about
19 on March -- from the 14th to the 23rd, or
20 whatever it was?

21 A Yes. It was the trip previous to the
22 grounding. The trip up to Valdez. The trip from
23 San Francisco to Valdez. I had him steer in
24 command in San Francisco Harbor and he steered
25 okay as far as I was concerned. All right.

1 Q And in fact, did you not testify before the
2 NTSB hearing that you thought he did all right,
3 he was on the wheel coming out of San Francisco?
4 A Yes.
5 Q You thought that if you knew something about
6 him, you would have told the master?
7 A Right.
8 Q And you did not?
9 A Wait a minute. I mentioned to Captain
10 Hazelwood on the trip north that Kagan told me he
11 felt a little nervous about steering the ship
12 loaded and see, other quartermasters have told me
13 that before. It's different to steer a ship
14 loaded than it is to steer a ship light.
15 Q Now, are you saying that you told...
16 A I believe I told the captain.
17 Q You believe you told the captain?
18 A I told the captain.
19 Q Mr. LeCain, are you afraid perhaps that you
20 might be blamed for this?
21 A No, I'm not blamed for this -- afraid to be
22 blamed for this.
23 Q Are you sure?
24 A Yep.
25 MR. COLE: Objection. Asked and answered.

1 Q Mr. LeCain, if you thought you knew something
2 about Mr. Kagan and didn't tell the captain or
3 didn't tell Mr. Cousins, do you feel that perhaps
4 somebody might say it was your fault?
5 A No. Mr. Cousins was aware of Mr. Kagan's
6 steering problem.
7 Q How did you know that?
8 A He told -- Mr. -- the chief officer, I and
9 Cousins were on the bridge, having coffee --
10 there was plenty of coffee -- and chief officer
11 said to keep an eye on Mr. Kagan. He had a
12 steering problem. So Cousins was standing there
13 when that happened.
14 Q And when was this, sir?
15 A On the trip north from San Francisco to
16 Valdez.
17 Q And who -- where exactly did this take place?
18 A On the bridge, having coffee.
19 Q And who was present?
20 A Chief Officer and myself and Mr. Cousins.
21 Q Chief Officer Mr. Kunkel?
22 A Kunkel.
23 Q And Cousins?
24 A Uh-huh (affirmative).
25 Q So you're saying Cousins would be aware of

1 some steering problems that Mr. Kagan may have?

2 A Yes, sir. He told me he'd been on a previous
3 ship with Kagan and that Kagan was having
4 problems there.

5 Q Cousins told you...

6 A Cousins told me that, sir.

7 Q There's no question in your mind that he would
8 have watched Kagan very carefully, right?

9 A That's correct, sir.

10 MR. COLE: Objection. Calls for speculation.

11 MR. MADSON: If he knows, based on his
12 knowledge of that incident, I think he can answer.

13 THE COURT: Can you answer that question?

14 A I can't say what's going on through another
15 man's mind, Your Honor.

16 THE COURT: Objection sustained.

17 Q Mr. LeCain, do you remember being interviewed
18 March 29th of this last year?

19 A Uh-huh (affirmative).

20 Q March 29 by the Coast Guard office in Valdez?

21 A I remember the day, yeah.

22 Q Do you remember telling anyone at that time
23 that...

24 MR. COLE: Could we get a page cite? What
25 is...

1 MR. MADSON: One and two. I'm talking record
2 of interview, March 29th, 1989.

3 MR. COLE: This is the NTSB...

4 MR. MADSON: Well, that's what it says here.
5 I don't know. Interview summary.

6 THE COURT: Okay, Mr. Madson, if you're going
7 to use a document like that, be able to give Mr. Cole
8 the document cite so that he can refer to it.

9 MR. MADSON: Well, I thought I did, Your Honor
10 as soon as he asked me. I wasn't aware he didn't have
11 it.

12 A Your Honor?

13 THE COURT: There's no question to you, sir.
14 Wait until there's a question, unless you need to take
15 -- unless there's something you need personally to take
16 a break or something like that.

17 A Okay, sir. I'm sorry.

18 Q Do you recall that interview, sir?

19 A I recall the interview, yes.

20 Q Do you recall saying anything at that time
21 that Captain Hazelwood knew anything at all about
22 Kagan's abilities as a helmsman?

23 A I don't know. I forget. That was a long time
24 ago. I don't believe I said it.

25 MR. MADSON: Well, Your Honor, this might take

1 some time but I have a number of interviews and
2 perhaps, I could ask for a recess for this witness to
3 examine all his previous statements because I'll be
4 going into each and every one of them.

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

7 (1040)

8 (Whispered bench conference as follows:)

9 THE COURT: Was he ever asked a question about
10 (indiscernible - whispering) what do you know about
11 Kagan? Was he ever asked the question whether or not
12 he told Captain Hazelwood about Kagan's difficulties?

13 MR. MADSON: Your Honor, I think he was asked
14 a number of times.

15 THE COURT: If he was asked. But to ask him
16 if he ever said something like that or you know he
17 didn't you don't need to have him go through all these
18 things. That's not a proper question. And if he did
19 say anything and it's not in here, if he did say
20 something and it's inconsistent, then you can use that
21 to impeach him.

22 MR. MADSON: (Indiscernible - whispering)

23 THE COURT: (Indiscernible - whispering)

24 MR. MADSON: (Indiscernible - whispering)

25 THE COURT: That's right. In the absence of

1 that information without being asked is not relevant.
2 If it's asked and it's inconsistent, you can use that.
3 Otherwise, the form of the question is objectionable
4 and I'll sustain the objection. (Indiscernible -
5 whispering)

6 MR. MADSON: (Indiscernible - whispering)

7 THE COURT: If you're going to use an
8 inconsistent statement, you're going to have to make an
9 offer to me that he was asked that question. Now, if
10 he was never asked the question, all these
11 (indiscernible - whispering) statements he's given you.
12 These are questions and answers that are being asked in
13 interview so...

14 MR. MADSON: (Indiscernible - whispering)

15 THE COURT: Well, what's going to happen is
16 he's going to say no, after he reviews it and then Mr.
17 Cole is going to say were you ever asked this question
18 and he's going to say no, I was never asked the
19 question. Of course. Well, how long is it going to
20 take him to refresh his recollection if he didn't make
21 a statement. That's the problem with this kind of a
22 question. He could have given a deposition for six
23 hours and I'm not going to have him sit by and read a
24 deposition to find out if he wasn't asked the question.

25 MR. MADSON: It will probably take ten to 15

1 minutes, Your Honor.

2 (End of whispered bench conference)

3 (1148)

4 THE COURT: The objection is sustained as to
5 the form of the question.

6 Q (Mr. LeCain by Mr. Madson:) Mr. LeCain, do
7 you remember being interviewed by the state
8 police?

9 A Yes, I do.

10 Q On the 30th of March?

11 A Uh-huh (affirmative).

12 Q Were you ever asked the question about Captain
13 Hazelwood's knowledge of Mr. Kagan?

14 A I can't recall.

15 Q Do you recall at the NTSB hearing the question
16 being asked of you at page 709....

17 MR. COLE: Objection. Is he talking about
18 the NTSB or this interview with the troopers?

19 THE COURT: He just said NTSB hearing, Mr.
20 Cole.

21 MR. MADSON: I just said in NTSB, page 709,
22 of the transcript.

23 THE COURT: Why don't you give Mr. Cole just
24 a brief opportunity to get that in front of him? Do
25 you have that, Mr. Cole?

1 MR. COLE: I'll find it, Judge. Go ahead.

2 THE COURT: Okay. You may proceed.

3 Q (Mr. LeCain by Mr. Madson) Do you remember
4 being asked the question, Mr. LeCain, what is
5 your opinion of Bob Kagan's ability as a
6 helmsman? Do you remember what your answer was?

7 A No, I don't.

8 Q Do you remember saying "I felt he was all
9 right?"

10 A That's still my opinion. He's all right.

11 Q "I had him on the wheel coming out of San
12 Francisco. On light conditions, the man did
13 okay"?

14 A Uh-huh (affirmative).

15 MR. COLE: Judge, I object. Is he using this
16 to impeach him? If he's not, he hasn't said anything
17 different than that. Objection. Reading.

18 THE COURT: No. The testimony of this
19 witness indicated that he thought -- at least it's my
20 recollection, he thought there was some difficulty with
21 Mr. Kagan and told him there was some difficulty so, to
22 some extent this is inconsistent with that and it can
23 be used in the manner Mr. Madson is using it. I don't
24 know what the rest of the statement says and I think
25 maybe you ought to take just enough time so you can

1 have the statement in front of you, Mr. Cole, so you
2 can go along with it.

3 MR. MADSON: Your Honor, could I -- perhaps it
4 would be easier if I could ask the witness to just look
5 at this to see if it refreshes his recollection?

6 THE COURT: Well, which recollection are you
7 trying to refresh, Mr. Madson? He's given answers.

8 MR. MADSON: The questions and answers
9 regarding his opinion about Mr. Kagan's abilities.

10 THE COURT: No objection. You can use it.

11 Q (Mr. LeCain by Mr. Madson:) Do you want to
12 just read this and then maybe the next page, part
13 of it?

14 A Okay. "I felt he was all right..."

15 Q Just read it to yourself.

16 A All right.

17 (Pause)

18 Q Do you recall giving that statement then at
19 the NTSB?

20 A Yes, sir.

21 Q So, you're saying -- let me just ask you this,
22 sir. Are you saying today your opinion is the
23 same regarding Mr. Kagan as it was back at the
24 time you gave this testimony at the NTSB hearing,
25 regarding Mr. Kagan?

1 A Yes.

2 Q That he is all right?

3 A He's all right.

4 Q You're confident Mr. Kagan would tell you if
5 he had a problem?

6 A With my short experience with him, yes, I
7 would.

8 Q In fact, you told the NTSB that, did you not?

9 A Uh-huh (affirmative).

10 Q That if he had a problem, he'd tell you about
11 it?

12 A Uh-huh (affirmative).

13 Q Basically, all anybody would have to do is
14 simply glance at a steering -- a rudder
15 indicator to see if he followed a simple command?

16 A That's correct, sir.

17 Q Ten degrees or 20 degrees. Right?

18 A Uh-huh (affirmative).

19 Q Is it correct that in a normal situation, you
20 would have been on duty before midnight, on your
21 watch?

22 A Right.

23 Q At about what, ten minutes to or so?

24 A About that.

25 Q And it was only because you had worked late

1 and Mr. Cousins was giving you some extra sleep
2 that you weren't on duty at midnight on the 23rd?

3 A Correct.

4 Q You said this was common practice to hang
5 over?

6 A Uh-huh (affirmative).

7 Q In other words, the one was tired should get
8 more sleep and the guy who is fresher should take
9 over for awhile?

10 A Right.

11 Q You would do the same for somebody...

12 A I intended to do it for Mr. Kunkel.

13 Q Did you know that was going to happen?

14 A No, I didn't.

15 Q If it was common practice, didn't you have
16 some kind of idea that maybe they'd let you sleep
17 in a little longer?

18 A It was a common practice but it might or might
19 not occur. I wasn't aware of what hours sleep
20 Mr. Cousins had had.

21 Q Now, on the 23rd, at any time during that day,
22 did you ever say anything to Mr. Cousins
23 regarding Mr. Kagan?

24 A Not that I recall.

25 Q After the grounding itself, I think you said

1 you woke up because of the sound? Or is that
2 what it was that woke you up?
3 A No, it was the feeling of....
4 Q Vibration?
5 A ...vibration and the chief mate came into my
6 room and said that we had a problem.
7 Q And you -- did you go immediately up to the
8 bridge?
9 A Yes, I did.
10 Q Who was there when you got there?
11 A Captain Hazelwood and Kagan and Mr. Cousins.
12 Q And what was happening?
13 A They were doing something with the engines.
14 Q Was anything told to you about what the
15 captain's intentions were at that time?
16 A No.
17 Q Did he give you any orders?
18 A No, he didn't.
19 Q What did you do then?
20 A I said -- first thing I did was check the
21 chart. I went up -- before I went out there.
22 Q When you say "check the chart," what does
23 that mean?
24 A When I first went on the bridge, I checked the
25 chart, the position of the ship.

1 Q Was it marked on there?

2 A It was a position. I believe so now. I can't
3 recall, but I could see where the last fixes
4 were, I could see where the ship was. I went
5 out on the bridge. I saw the three of them
6 standing there.

7 I asked Mr. Cousins what happened and he said,
8 "I was maneuvering around ice and I slid up on
9 the rocks." And I then said to Captain
10 Hazelwood, "I'm going to go down and help the
11 chief mate." And he said go ahead and I went
12 down and helped the chief mate.

13 Q He said it was all right?

14 A Right.

15 Q Did you have a chance to observe Captain
16 Hazelwood at this point?

17 A Yes, I did.

18 Q Did he seem to be in command of the vessel?

19 A Yes, sir.

20 Q Was issuing orders?

21 A Uh-huh (affirmative).

22 Q Did he appear to be under the influence or
23 impaired in any way you could see?

24 A No, he did not.

25 MR. MADSON: I don't have any other questions.

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REDIRECT EXAMINATION OF MR. LE CAIN

BY MR. COLE:

Q Would you explain the difference to the jury
of steering a laden versus an unladen tanker?
Why is there a difference?

A Well, when the ship is heavy like laden, she
-- it's harder to steady her up. You put more
rudder on the -- the vessel is heavy and it wants
to keep moving so you have to apply rudder a
little earlier and more rudder to bring it back
to come to the new course. So, she has a
tendency to run. On a light vessel where you're
running light, you use less rudder to steady her
up, start her moving.

Q Now, on the steering console on the Exxon
Valdez, there was a monitor there?

A Uh-huh (affirmative).

Q That monitor would tell you of the turn of the
wheel and the turn of the rudder. Isn't that
correct?

A Correct.

Q Do you know whether Mr. Kagan had that turned
up or down at night?

A I really don't know.

Q He never talked to you about that?

1 A No.

2 Q When Mr. Kunkel told you to watch Mr. Kagan,
3 what did he mean?

4 A Well...

5 MR. MADSON: Your Honor, I object to that. It
6 calls for speculation as to what's in someone else's
7 mind, what he meant.

8 Q What did you understand it to mean?

9 MR. MADSON: I still object.

10 THE COURT: Overruled.

11 A The chief officer is the senior deck officer,
12 okay? You have a little conference when you get
13 into port and he was just pointing that Mr. Kagan
14 had a reputation he had trouble steering and that
15 we should keep a good eye on him when we're going
16 in and out of Prince William Sound.

17 Q Would you talk with -- what did you take it to
18 mean that you were supposed to do physically?

19 A Just keep my eye on that rudder indicator
20 whenever Kagan was given a command, make sure he
21 went the right direction and to check -- when
22 he's given a course, make sure he's on that
23 course.

24 Q When did you tell Captain Hazelwood about Mr.
25 Kagan's problem?

1 A On the way north.

2 Q Did he acknowledge that he heard you, that he
3 understood that?

4 A He said he heard it and he said that you know,
5 we have what we have and we have to keep an eye
6 on him. It's your job to watch the quartermaster
7 and that was it. Which it is. I'd like to say
8 also, if I could...

9 MR. MADSON: I'll object to any statements
10 unless there's a question asked.

11 THE COURT: Don't make any spontaneous answer.
12 Just respond to the questions, please.

13 MR. COLE: Your Honor, I don't have any
14 further questions.

15 (1672)

16 RECROSS EXAMINATION OF MR. LE CAIN

17 BY MR. MADSON:

18 Q Mr. LeCain, whether a vessel is light or
19 laden, if the command is given to turn 10 degrees
20 right rudder, the person does exactly the same
21 thing. Does he not?

22 A That's correct, sir.

23 Q It doesn't make a bit of difference. He still
24 turns until the rudder indicator says 10 degrees?

25 A Uh-huh (affirmative).

1 Q On the other hand, if somebody were steadying
2 up on a compass heading, that's different. Isn't
3 it? They're trying to read a compass heading and
4 keep the vessel controlled on a particular
5 heading?

6 A Right.

7 Q And would you agree that that is perhaps a
8 little more difficult to do than a simple turn,
9 10 degrees?

10 A Yes, it is. Takes a little skill.

11 Q And perhaps Mr. Kagan was a little weak in
12 that area in keeping on a particular course.
13 Right?

14 A Well, I don't know. I wasn't up there.
15 Coming up -- I've never been with him in a laden
16 condition.

17 Q Well, were you ever with him when he was
18 trying to keep it on a particular course?

19 A Coming out of San Francisco in a light
20 condition.

21 Q How many watches was he on while you were on
22 when he was the helmsman?

23 A I think one or two. I can't recall now.

24 Q Assuming it was two, on any occasion did he
25 deviate from the course that you told him to set

1 and you had to correct him?

2 A No.

3 Q Any wheel command that you gave him, whether
4 it was 10 degrees, 20 degrees, or whatever, you
5 had to correct because he did not do it properly?

6 A That never occurred with me.

7 Q The time you said you -- Mr. Kunkel mentioned
8 this. Was this the time with you and Kunkel and
9 Cousins when this was discussed?

10 A Yes.

11 Q The captain wasn't there?

12 A No.

13 Q Was anybody else present when you said you
14 told Captain Hazelwood about Mr. Kagan?

15 A No. It was on the bridge, talking.

16 Q Just the two of you?

17 A Uh-huh (affirmative).

18 Q Was there a helmsman there?

19 A No. During the daytime.

20 Q Who was on the helm?

21 A Automatic pilot?

22 Q Hm?

23 A The auto pilot.

24 Q Don't you normally have somebody on the helm?

25 A Not at daytime.

1 Q Not in the daytime?

2 A When we can get a man up there. Usually have
3 them down working.

4 Q Mr. LeCain, are you sure your recollection of
5 these events is not influenced by anything else?

6 MR. COLE: Objection, Your Honor.

7 THE COURT: I'll let him answer that question.
8 You can answer.

9 A No, it's not. It's just -- it was the answer
10 I expected from the captain. They gave us
11 certain ABs and we had them on ship and we had to
12 work with them. That was our job, to supervise.

13 Q During this period of time, were you suffering
14 from any let's say, any mental disturbances at
15 all?

16 A No.

17 Q Did you tell anybody else on the vessel,
18 Captain Hazelwood and Mr. Kagan that you were a
19 pilot on an F-14 that had crashed into a carrier?

20 MR. COLE: Objection, Your Honor.

21 THE COURT: Excuse me, could counsel approach
22 the bench, please?

23 (1810)

24 (Whispered bench conference as follows:)

25 THE COURT: That's the kind of thing you apply

1 to the Court for before it's powdered (ph) around in
2 front of the jury. When you say this period of time,
3 I'm not sure what you're talking about. Are you
4 talking about the time he told Captain Hazelwood during
5 this period, before this voyage, (indiscernible -
6 whispering)

7 MR. MADSON: There's a string of things, Your
8 Honor, that goes to (Indiscernible - whispering) bias,
9 prejudice, mental capacity.

10 THE COURT: Okay, look. We'll excuse the
11 jury and you can make an offer of proof about this.

12 (End of whispered bench conference)

13 (1836)

14 THE COURT: Ladies and gentlemen, we're going
15 to excuse you. I think I'm going to let you go home
16 early today. I looked out and it looks like it's
17 pretty clear sailing out there, down to Eagle River so
18 you're probably not going to have any problems. Looks
19 like it's pretty good weather and I'll give you an
20 early start today.

21 Don't discuss this case among yourselves or any
22 other person. Don't form or express any opinions. Be
23 safe and I'll see you back at 8:30 tomorrow morning.

24 (Without Jury Present)

25 MR. MADSON: Your Honor, let's -- maybe I'll

1 make a suggestion. I realize we're in a touchy area
2 and there may be even some conflict among counsel as to
3 the best way of approaching this if we should even do
4 it. I can make an offer of proof but whether it's
5 necessary or not remains to be seen. I would suggest
6 that could we adjourn early today and perhaps let the
7 Court know at 8:30 tomorrow morning -- or at least have
8 -- make it five minutes. Maybe that would do it.

9 THE COURT: Okay. Why don't we go ahead and
10 give you a few minutes to see if you can resolve --
11 now. You're talking about conflict between you and Mr.
12 Chalos. Is that what you're talking about?

13 MR. MADSON: Yeah. And I'd like to talk to
14 obviously too Captain Hazelwood here.

15 THE COURT: Okay. Well, why don't we give
16 you a few minutes? We'll come back in since the jury
17 is not here, we might as well use this time
18 productively and resolve these questions. I call your
19 attention to Evidence Rule 404B before you bring up the
20 kind of matter you brought up in front of the jury.
21 You should apply to the Court first. So we'll take a
22 break for about ten or 15 minutes.

23 THE CLERK: Please rise. This Court stands in
24 recess and subject to call.

25 (Off record - 3:32 p.m.)

1 (On record - 3:45 p.m.)

2 (1953)

3 THE COURT: You may be seated. Mr. Madson,
4 now is the time for you to set forth what you intend on
5 doing and what rules you're following at this time.

6 MR. MADSON: Well, Your Honor, the purpose of
7 this course is to impeach credibility and I don't
8 believe it belongs with 404. We're not trying to show
9 any prior bad acts or anything of that nature but I
10 think we're certainly entitled to show that the
11 witness, number one, may not be competent mentally to
12 recall and remember events that occurred and it
13 certainly goes to -- just to impeach credibility is the
14 basis for it.

15 By way of offering proof, until either now or
16 until very recently, Mr. LeCain has been on medical
17 leave with Exxon because of mental problems, emotional
18 problems and that he has in the very recent past, prior
19 to -- let's say prior to the incident, made statements
20 to the effect that he was a Trident Submarine Commander
21 in the Falkens War, that he was a Green Beret in
22 Vietnam, that he was involved in the Iran Contra Affair
23 and maybe more to the point, after the grounding and
24 when Captain Hazelwood was leaving the vessel, Mr.
25 LeCain offered him -- he said he had two cyanide pills

1 and he was queried as to why he needed two and he said
2 that he keeps them in case he has to commit suicide and
3 he needs two because he's Ninja-trained and one won't
4 do it.

5 That's pretty much the extent of it and I think
6 it goes to the basis of the man's mental stability,
7 Your Honor, and ability to recall, remember or
8 basically just state what the truth is because I think
9 he has a problem with fantasy.

10 THE COURT: Mr. Cole? (Pause) So that's
11 your offer? I want to make sure we get it all now,
12 because at the side bar, you said you had lots of
13 evidence of bias or other interest and I haven't heard
14 any bias of interest. All I've heard so far...

15 MR. MADSON: Your Honor, yeah, I don't...

16 THE COURT: Excuse me, I'm still talking.
17 All of I've heard so far is evidence of a mental
18 instability apparently according to your analysis. but
19 I haven't heard evidence of bias so far. Was there
20 something else you were going to bring up showing
21 evidence of bias?

22 MR. MADSON: Well, Your Honor, I have nothing
23 in particular about bias. I mean can I state that he
24 has made statements against Captain Hazelwood and we
25 have witnesses to prove that? No, we don't. I don't

1 know frankly if he has any bias but I think these kind
2 of questions can go into -- be gone into in a general
3 sense because the witness can be shown to be not
4 competent and certainly not to have proper recall,
5 memory and distinguish between what really happened and
6 what he believes happened. I think this bears directly
7 on that point.

8 THE COURT: Okay, but what you said at side
9 bench is you had lots of evidence of bias and there is
10 no evidence of bias I've heard so far. You just now
11 want to attack his credibility by some alleged
12 instability?

13 MR. MADSON: That's correct.

14 THE COURT: Okay. And -- Mr. Cole?

15 MR. COLE: Your Honor, my interpretation of
16 what now Mr. Madson is saying is that this is not a
17 competent witness. The Rule is found in 601 of the
18 Evidence Rules. It says a person is competent to be a
19 witness unless the Court finds that one, the proposed
20 witness is incapable of expressing himself concerning
21 the matters to be understood by the Court and the jury
22 either directly or through interpretation by one who
23 can understand him.

24 Or two, the proposed witness is incapable of
25 understanding the duty of the witness to tell the

1 truth. That burden is on the defendant. They are
2 supposed to object at the time the oath is administered
3 and they failed to do that.

4 Now apparently, they wish to impeach him -- I
5 assume there are other means of impeachment. There's
6 evidence of character and conduct of the witness. The
7 credibility of a witness may be attacked -- this is
8 Rule 608. I haven't heard anything as to their
9 offering evidence to his character for truthfulness or
10 untruthfulness. This is purely 404B. It goes to
11 collateral issues and we would ask the Court to inquire
12 into who is going to testify to all this evidence
13 apparently made by Mr. LeCain.

14 THE COURT: Anything further?

15 MR. COLE: No.

16 MR. MADSON: Well, for one, we have Mr.
17 Kunkel, Your Honor, who was aware of much of this and
18 we feel confident he's one witness that could support
19 what we're saying. By the way, it isn't a question of
20 competency now. We're not saying that he doesn't
21 understand the oath he just took. He's not too young
22 or is mentally unstable at the moment. He very well
23 understand the oath to say I promise to tell the truth.
24 The problem is he may not know what it is, Your Honor.
25 That's where I think we certainly have a right to go

1 into his understanding.

2 For instance, at the time, we could show that the
3 witness was under the influence of drugs or alcohol.
4 That's perfectly acceptable cross examination to show
5 that his memory, his recall, could be affected. I
6 think the same goes for a person's mental stability at
7 the time. Can he remember what happened and can he
8 distinguish between the truth of what happened and what
9 he simply believes to be the truth.

10 THE COURT: Mr. Madson, I don't find that your
11 offer has any substantive value. Assuming that you do
12 have people who could say those things about the
13 witness, that probative value is far outweighed by its
14 confusion of the issues. There's no expert testimony
15 that you've offered that would show that this man is
16 unable to remember or his recollection isn't correct or
17 some instability affects his ability to testify
18 truthfully.

19 It's evidence of character witness is prohibited
20 under Evidence Rule 608 which generally allows you to
21 impeach a witness with opinions concerning his
22 veracity. So I'm not going to let you get into this
23 area with this witness. I can appreciate your
24 surprise. You reached into what you thought to be an
25 innocuous bag and got yourself an alligator and I can

1 understand what you're doing but you can't do it this
2 way, Mr. Madson.

3 So we'll call the witness back tomorrow morning
4 and you can resume your cross examination at that time
5 or let him go and Mr. Cole can resume his redirect.

6 Is there anything further we can do now?

7 MR. MADSON: I have nothing else.

8 MR. COLE: The only thing I would ask the
9 Judge is a protective order be issued that Mr. Madson
10 not -- or whoever questions Mr. Kunkel not be able to
11 go into this if they think that he would say that.

12 THE COURT: Before evidence of character that
13 goes beyond our rules would be offered, would you just
14 let me know? We'll take it up outside the presence of
15 the jury.

16 MR. MADSON: I certainly will, Your Honor. I
17 don't think it was evidence of character. I may have
18 misinterpreted it but I will be ultra careful from now
19 on.

20 THE COURT: Okay. Thank you. If there's
21 nothing else, we'll stand in recess.

22 THE CLERK: Please rise. This Court stands
23 in recess.

24 (Off record - 3:53 p.m.)

25 ***CONTINUED***