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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 15, 1990
PAGES 4026 THROUGH 4227

VOLUME 22

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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 15, 1990
8:56 o'clock a.m.

APPEARANCES:

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PROCEEDINGS

FEBRUARY 15, 1990

(Tape: C-3619)

(2373)

(On record - 8:56 a.m.)

(Without Jury Present)

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

THE COURT: You may be seated. Did you get the motion for expedited consideration, counsel?

MR. COLE: Yes, sir.

MR. CHALOS: Yes, sir.

THE COURT: All right. When did you plan on calling Dr. Peat?

MR. COLE: This afternoon.

THE COURT: Are you going to be prepared to address this with some authority by the time you call him?

MR. COLE: I don't know. We're going to try obviously but I can't...

THE COURT: Might I suggest that you call him tomorrow and maybe fill another witness in. Is that possible?

MR. COLE: We'll try to do that.

THE COURT: Yeah, that would be the way to handle that and that way tomorrow morning, that will

1 give you an opportunity to look into the authority and
2 we can address it before his testimony tomorrow morning
3 and that would give the defense some opportunity to get
4 into it tomorrow morning, too. What time this
5 afternoon had you planned on calling him? Do you
6 know, approximately?

7 MR. COLE: Well, the order of witnesses that
8 we have today is Mr. Kunkel, Mr. Conner who took the
9 blood, Mr. Stock who took it from him and Dr. Peat.
10 So I would believe he would be on around, you know, 1
11 or 2 o'clock today.

12 THE COURT: Okay. And if during the lunch
13 hour, you can get together some authority and we can
14 address this at 1:15, I'll do that. I don't expect it
15 should take very long, once we get both sides up to
16 steam on this with some authority.

17 I am assuming, Mr. Madson, that your position is
18 somewhat aligned with the motion. Is that correct?

19 MR. MADSON: Your Honor, this is exactly what
20 I raised earlier and I will have additional authority,
21 I think, along the same proposition.

22 MR. COLE: I am not familiar with the motions
23 that were raised earlier because I was kept apart from
24 that. I'll have to have Mr. Linton...

25 THIS COURT: This particular motion was not

1 raised earlier but there was an ancillary motion
2 regarding the blood alcohol was raised earlier.

3 MR. MADSON: Your Honor, along with the
4 motions to dismiss for lack of jurisdiction, this
5 motion was covered by that. I mean that motion
6 covered this in addition because my argument was that
7 since federal law had preempted state law in this deal
8 that obviously this blood alcohol would be illegal if
9 used in state court.

10 THE COURT: I understand, Mr. Madson. There
11 was not a motion to quash Dr. Peat's testimony brought
12 earlier. I understand what you're saying though.

13 Mr. Cole, let me ask you a question. You say
14 you're not aware of these things being brought earlier.
15 Are you still under that direction not to become aware
16 of these things that have been brought up earlier?

17 MR. COLE: Judge, I've had so much to review
18 that I have not gone back and looked at everything that
19 went on before. I've just been concentrating on this
20 case itself. I have not gone back, not under an order
21 or anything like that.

22 THE COURT: Okay. Okay. If it was, I was
23 going to encourage you to get somebody who was
24 familiar. Maybe you could get Mr. Linton over here,
25 so you don't need to get so familiar...

1 MR. COLE: Well, that's what my plans were.
2 To have Mr. Linton and Mr. Adams look...

3 THE COURT: Let's see how it goes. If you get
4 something together by noon on this or by 1:15, we can
5 take it up before resuming the jury proceeding.

6 MR. COLE: We are putting this a little out of
7 order at Dr. Peat's request. In fact, that's what's
8 kind of ironic about this. He has some type of meeting
9 that he wants to fly to Cincinnati to as soon as
10 possible, so I arranged to have him go a little bit out
11 of order and then when I find out -- then I find out,
12 they're going to fight the whole thing, so...

13 THE COURT: Well, if you can fill in another
14 witness, I don't -- if he's been moved up to
15 accommodate him and now he's filed a motion to quash
16 his subpoena, I don't have much hesitancy in putting
17 this off until tomorrow morning and keeping him in over
18 night. But if we can do it at 1:15, then that seems
19 like it's going to solve everybody's time problems.
20 I'll do it whenever is convenient to the parties.

21 MR. COLE: We will do our best to have
22 something before you this afternoon.

23 THE COURT: Okay. Anything else we can take
24 up now? We have a juror with the lights on in his car
25 and we've dispatched security to go down there and get

1 into her car. She locked her keys in and so it will be
2 about 10 to 15 more minutes. Anything we can take up
3 here during this time or do we just want to...

4 MR. MADSON: The only thing is, Your Honor, I
5 guess -- well, I suppose I could leave sometime today,
6 if the Court wanted to hear this thing and it could be
7 done, let's say, at 1:15 or 1:30. The Court apparently
8 wouldn't have any objection if I left and worked on the
9 motion?

10 THE COURT: No, sir.

11 MR. MADSON: Okay.

12 THE COURT: No, sir. As long as Mr. Chalos
13 is here and ready and able.

14 MR. CHALOS: Ready.

15 THE COURT: Okay. We'll stand in recess
16 until we get the jury in.

17 THE CLERK: Please rise. This Court stands
18 in recess and recall.

19 (Off record - 9:02 a.m.)

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

21 (With Jury Present)

22 THE CLERK: ...with the Honorable Karl
23 Johnstone is now in session.

24 THE COURT: Thank you. You may be seated.
25 We'll resume with the cross examination of Mr. LeCain.

1 MR. MADSON: I have no other questions, Your
2 Honor.

3 MR. COLE: No questions.

4 THE COURT: Well, it looks like you're
5 excused at this time. May he be excused from any
6 further participation?

7 MR. COLE: Yes.

8 MR. MADSON: Your Honor -- well, let's see.
9 I don't believe so. He may be excused.

10 THE COURT: He may be excused?

11 MR. MADSON: Yes.

12 THE COURT: Okay, you're excused form further
13 participation, Mr. LeCain.

14 MR. COLE: Your Honor, at this time, we would
15 call Mr. James Kunkel.

16 (Oath administered)

17 A I do.

18 JAMES R. KUNKEL
19 called as a witness in behalf of the plaintiff, being
20 first duly sworn upon oath, testified as follows:

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

23 A James R. Kunkel, K-u-n-k-e-l.

24 THE CLERK: Your current mailing address?

25 A 5825 Stonehaven Drive, Kennesaw, Georgia,

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30144.

THE CLERK: Would you spell the name of the town?

A K-e-n-n-e-s-a-w.

THE CLERK: And your current occupation?

A I sail as chief mate for Exxon Shipping Company.

DIRECT EXAMINATION OF MR. KUNKEL

BY MR. COLE:

Q Mr. Kunkel, would you tell the jury what your position was on the Exxon Valdez the day it grounded?

A I was the chief mate or chief officer.

Q How long had you been in the maritime industry?

A I started at King's Point in 1970. Went to school for four years, and graduated in 1974, with a third mate's license and a Bachelor of Science.

Q Would you tell the jury just briefly -- can you give them a history of what type of jobs you held in the maritime industry?

A When I got out of school my first job was on a tugboat as a third mate. I did that for a little over a month. And then I worked for the corps of

1 engineers on what they call a hopper dredge for
2 about a year and a half. And then I went on
3 active duty with the Coast Guard for three years
4 as an ensign and then a lieutenant.

5 In 1979 I got out of the Coast Guard and took
6 employment with Exxon Shipping Company.

7 Q Had you been working with them ever since?

8 A Yes.

9 Q What positions have you held with Exxon?

10 A Third mate, second mate and chief mate.

11 Q When did you get your second mate's license?

12 A That would be hard.

13 Q Approximately?

14 A Approximately '78 or '79, I think.

15 Q And when did you get your chief mate's
16 license?

17 A I believe '81 to '83, somewhere in that area.
18 I can't tell for sure.

19 Q And when did you get your master's license?

20 A I believe it was in '87.

21 Q Have you worked on other ships since the
22 grounding?

23 A Yes, I have.

24 Q Could you give the jury an idea of how many
25 and what positions you held?

1 A I was chief mate on the Exxon Philadelphia,
2 the Exxon New Orleans, and the Exxon Jamestown
3 since being discharged from the Exxon Valdez.

4 Q Do you have any intentions of becoming a
5 master for a vessel?

6 A That's always your ultimate goal. And if
7 offered the position I would take it, yes.

8 Q Would you tell the jury what interests you
9 about being a master?

10 A Well, getting the command of the vessel, ship
11 handling, being overall in charge of the ship.
12 Ideally, that's what I've been preparing for in
13 each phase of my career, learning each and every
14 aspect of the job with the idea that eventually I
15 would become master and know how to do all the
16 jobs underneath me.

17 Q Do your responsibilities increase at each
18 level?

19 A Yes, they do.

20 Q Would you tell the jury what type of
21 responsibilities a master has?

22 A He's overall in charge of the ship; all
23 aspects of the vessel.

24 Q When you say overall in charge of the ship,
25 can you break that down? Is there anything in

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particular?

Let me ask it this way: Is he in charge of the crew; the safety of the crew members?

A Yes, he is.

Q And is he in charge of the safety of the ship itself?

A Yes, he is.

Q And of the cargo?

A Yes.

Q Would he be in charge of how the ship is run?

A Yes.

Q What are the -- are there detrimental parts about being a master?

MR. CHALOS: Objection, Your Honor.

MR. COLE: I'll rephrase it. May I proceed?

THE COURT: Yes. Rephrase it.

Q (Mr. Kunkel by Mr. Cole:) Why -- are you interested in becoming a tanker captain, or would it make any difference? There's other ships you can be a master on.

A Well, that's a tough one to answer. You know, I work for a company right now that has exclusively tankers. So if I was to leave Exxon, then, yes, I could seek employment on other types of vessels. But if I continue working at Exxon

1 Shipping Company, then my option is to be a
2 captain aboard a tanker.

3 Q Are there risks involved with being the master
4 of a tanker vessel?

5 MR. CHALOS: Objection, Your Honor.

6 THE COURT: You're gonna have to give me more
7 than just an objection. What is your objection?

8 MR. CHALOS: No foundation for that question.
9 And irrelevance.

10 THE COURT: I'm going to let him answer the
11 question.

12 Q (Mr. Kunkel by Mr. Cole:) Are there any
13 increased risks with being a tanker captain of a
14 crude oil tanker?

15 A Versus a different ship, is that what you're
16 saying?

17 Q Yes. Versus a different ship -- like, a grain
18 carrier.

19 A Uh-huh (affirmative).

20 Q Is there...

21 A Well, with a tanker, yes. There is always a
22 possibility of an oil spill, but you could also
23 have a spill on other ships. There could be a
24 bunker tank that punctures. Maybe a double
25 bottom that has some kind of petroleum product.

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That's one of the aspects of it.

Q It would be different than having a spill of a grain ship?

MR. CHALOS: Your Honor, I object. No foundation. No relevance.

THE COURT: He could give his opinion. Objection overruled.

Q Would it be different -- I'll just withdraw the question.

Do you have -- are you aware of pilotage endorsement requirements?

A Yes, I am.

Q Would you explain to the jury...

A Wait. Wait. You asked me two questions, sir.

Q Are you aware of pilotage endorsement requirements in the Prince William Sound area?

A I'm aware that there is a requirement for an endorsement there, yes.

Q Do you have one?

A No, I do not.

Q Why are there -- why is there a need for pilots?

A Well, because it's required by law.

Q Is there a reason for that, other than it's required by law? Do they provide any special

1 services?

2 A Well, now, which pilot -- what are we talking
3 about? I mean, a state pilot -- the service of a
4 state pilot or the service of having an
5 endorsement on my licence?

6 Q No. Pilotage -- a state pilot?

7 A Yes. They do provide a service that -- in
8 that they're to guarantee safe passage of a ship
9 in an area where it's been determined by the
10 government that local knowledge is important for
11 the passage of the vessel.

12 Q Could you have gotten pilotage endorsement for
13 the Prince William Sound area?

14 A I could get pilotage endorsement to anywhere
15 if I make enough trips to do it and take the
16 case.

17 Q Is there a reason why you haven't gotten it up
18 to this point?

19 A No. The basic reason is I do not have enough
20 trips to be even considered for it yet.

21 Q And that would be trips on the bridge?

22 A Yes. Either as an observer or the officer on
23 watch.

24 Q Have you received any specialized training
25 since being at -- working for Exxon? Special

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courses that you've been sent to?

A Yes, a number of courses.

Q Would you explain to the jury what those have been?

A Well, they sent me one time to a simulator in Leguardia in New York. This was free exploration or pre-opening of the Hondo Platform in Santa Barbara. They sent me to a firefighting school in Texas where we learned for about a week basic firefighting techniques, and actually put out fires that could conceivably have been started on a tanker.

And, also, I've been to a school in California. It's called cargo handling school. Where they instructed us on the use of IG, inert gas, crucial (ph) washing, and loading and discharging tankers safely.

Q Do you have any yearly requirements for the renewals of any of your licenses?

A Every five years you are required to renew your license.

Q Would you tell the jury when you were assigned to the Exxon Valdez?

A Well, let's see, I was assigned to the Valdez in the fall of '88. That is when I was told that

1 I would no longer be on the ship that I had been
2 on, which was the Exxon Lexington, and that my
3 new assignment would be on the Exxon Valdez.

4 Q What position were you to hold when you were
5 assigned?

6 A Chief mate on there.

7 Q And was that a permanent or a temporary
8 assignment?

9 A Well, in this world what's really permanent.
10 You know, I was told that that would be my
11 permanent assignment, yes.

12 Q How many assignments did you have on the Exxon
13 Valdez prior to the grounding?

14 A I had done one assignment, and that was in the
15 fall of '88.

16 Q How long had that assignment lasted?

17 A Approximately two months.

18 Q What runs was the Exxon Valdez making at that
19 time?

20 A At that time, when I was on there, it strictly
21 went to Valdez and San Francisco; maybe a trip or
22 two to L. A., I'm not sure. However, the run
23 still consisted of going to the terminal in
24 Panama. At that time that was still in the
25 vessel's run. Although, I personally didn't make

1 that run.

2 Q For the two months that you were aboard?

3 A Uh-huh (affirmative).

4 Q Who were the captains of the Exxon Valdez

5 during the first assignment that you had aboard?

6 A I believe that Captain Stalzer was there for a

7 very short period of time. Probably during the

8 change-over of their command, and then Captain

9 Hazelwood.

10 Q Can you tell the jury when your second

11 assignment began?

12 A I believe I reported March 8th of 1989.

13 (3455)

14 Q And who was in command of the Exxon Valdez at

15 that time?

16 A Captain Hazelwood.

17 Q Can you give the jury an idea of how many runs

18 on the Exxon Valdez you made into Prince William

19 Sound during the course -- in and out of the Port

20 of Valdez during those two assignments?

21 A Well, probably four, maybe five.

22 Q And have you been assigned to tankers in the

23 past while you've been working for Exxon that --

24 where your assignment included going into and out

25 of the Port of Valdez?

1 A In 1979 I was on a ship that went there.

2 Q Approximately, can you give us an idea of how
3 many runs you made that time?

4 A I really can't. I'm sorry, I can't remember
5 that one.

6 Q Of the four to five runs that you made on the
7 Exxon Valdez, would you tell the jury how many
8 times you would have been at the helm while you
9 were going in and out of Prince William Sound?

10 A Well, I was never at the helm.

11 Q I'm sorry, on the bridge.

12 A I was on the bridge, oh, maybe three or four
13 of those times in pieces of the transit, yes.

14 Q Is there a reason why chief mates don't spend
15 a lot of time on the bridge coming into and out
16 of Valdez?

17 A Well, on a number of occasions the master will
18 take your watch so that you might rest, with the
19 idea that you'll be up most of the time during a
20 load, and leaving -- you'll be pretty tired. And
21 so on a number of occasions -- Captain Hazelwood
22 did take my watch a number of times.

23 Q I would like to talk for a little bit here
24 about the responsibilities that you had as a
25 chief mate on board the Exxon Valdez. Who were

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you responsible to?

A I was responsible to the captain.

Q Can you give the jury -- let's talk about this period. While you are loading and unloading the vessel, briefly, what are your responsibilities during that time?

A It would be my responsibility to plan the discharge of the ballast that's on the ship. That's the water that contains an oily mixture. And then plan the loading of the cargo. So prior to even getting there I've already got in my mind what we're going to do, and I've written up orders to my junior officers telling them how I want the job done.

Once we're alongside the dock, normally I would be there for the start of the dirty ballast and the finish of the dirty ballast. In between time, perhaps a junior officer, unless I was on watch, would be watching that event.

Then it would be my job as...

Q Could we stop just right there for a minute. Would you explain to the jury what you mean by "dirty ballast"?

A A tanker has to take on water in order to meet its stability and draft requirements,

1 Q While at sea, do you have a shift that you
2 have to report for?

3 A Yeah. You have -- pretty much as the chief
4 mate you have the choice of which watch. It
5 could either be the 4:00 to 8:00 or the 8:00 to
6 12:00. It depends basically on the chief mate,
7 and then also having a discussion with the
8 master. But basically it's one in the same.

9 You work four hours, you're off eight hours,
10 you work four hours, and you're off eight. That
11 means you're on watch on those four hour periods
12 of time.

13 Q When you say "you're on watch", what do you
14 mean by that?

15 A That means that you would be on the bridge and
16 the navigation of the vessel is your
17 responsibility. You must take the fixes, fill in
18 the log books, insure that the vessel stays on
19 course and doesn't hit anything.

20 Q Do you have people that assist you on your
21 shift?

22 A You have two unlicensed sailors assigned to
23 your watch. They are AB's, is what they're
24 called.

25 Q That would be short for able-bodied seaman?

1 A That's correct.

2 Q How important is it to know the capabilities
3 of the crew members -- the ABs that you have
4 working for you?

5 A Well, you have to have an idea of their
6 limitations as well as their capabilities.

7 Q Why is that?

8 A Well, you take for granted that if they have
9 the document and the company has assigned them
10 there, they have the capability to perform the
11 job. But like everybody in every other
12 individual in this world, some perform better
13 than others.

14 (3899)

15 Q How about knowing the capabi -- do you also
16 oversee the other licensed officers on board the
17 ship?

18 A Yes. The second and third mate are
19 technically, also, under my jurisdiction.
20 However, when it comes to the navigation of the
21 vessel, usually they report directly to the
22 captain.

23 Q Do you remember which shift you worked on the
24 Exxon Valdez?

25 A I was on the 4:00 to 8:00 watch.

1 Q And do you remember who the ABs that you had
2 assigned to you at that time?
3 A No, I sure don't.
4 Q If I showed you a crew list, would that
5 refresh your recollection?
6 A It probably would, yes.
7 (Pause)
8 Well, now that I'm sitting here, does Peacock
9 sound like one, or somebody like that? I don't
10 know. I know we had -- nah! I can't recall.
11 Q Does that refresh your recollection?
12 A Let me see. It wasn't her. Okay. It would
13 have to be -- yes, this guy, Peacock -- John
14 Peacock and Carl Jones.
15 Q Were you familiar with any of the other able-
16 bodied seamen that were working on the Exxon
17 Valdez at that time?
18 A You will have to let me see the list again.
19 (Pause) To the best of my knowledge, the only
20 person I ever sailed with before was Mr. Kagan.
21 And the rest of them, it was my first trip with
22 them.
23 Q When did you sail with Mr. Kagan before?
24 A I think it was in '84 or '85.
25 Q In what capacity was he working?

1 A He was what they called AB maintenance man.
2 And I think it was on the Exxon Lexington. And
3 what his capacity was at sea, he was a day
4 working maintenance person, but in port areas he
5 was an AB helmsman.

6 Q Have you worked with Captain Hazelwood before
7 coming on the Exxon Valdez?

8 A No, never.

9 Q Let me ask you this question: you talked
10 about someone's capability. You assume that they
11 are capable if they have an AB license. Does
12 that mean that in every situation they are the
13 right person to have at the helm?

14 MR. CHALOS: Objection, Your Honor. No
15 foundation.

16 THE COURT: Objection overruled.

17 (Tape: C-3620)

18 (000)

19 A Okay. What does that mean?

20 Q That means you can answer the question if you
21 can remember it.

22 You indicated that you assume that a person is
23 capable if they have an AB license?

24 A Uh-huh (affirmative).

25 Q Does that mean that that person should be at

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the helm -- is qualified to be at the helm at all times?

A That means he is qualified to be at the helm.

Q Does it mean that you would put him at the helm in all situations?

A It means that I have the option, if I wanted to change him, but I've never -- if you're asking -- well, are you asking about Mr. Kagan?

Q Well, I'm just asking broadly, first.

A Broadly. I never had the occasion to remove an AB from the wheel and replace him with another AB.

Q But you have that authority?

A I have that authority, yes.

Q Did you have any discussions with Captain Hazelwood about Mr. Kagan?

A Yes, I did.

Q And what were those discussions about?

THE COURT: Can we have a foundation, please, for that?

Q When did you have these discussions with Captain Hazelwood?

A I joined the ship in either L. A. -- I think it was Los Angeles that I joined the ship. And prior to leaving San Francisco I had a

1 general discussion about Mr. Kagan with Captain
2 Hazelwood.

3 Q And what did you discuss?

4 A Basically, in my own words I said, "Hey, Joe,
5 what's the story with Kagan?"

6 He said, "Well, what do you mean?"

7 And I said, "Well, I had him before on the
8 Lexington and he needed a lot of practice
9 steering. He was okay following orders and doing
10 what he was told to do. How's he doin' on here."

11 And Captain Hazelwood's response was that he
12 went in and out last trip, Prince William Sound,
13 with no mishap; did okay.

14 Q Do you remember writing an evaluation of Mr.
15 Kagan?

16 A Yes, I do.

17 Q And in that evaluation did you indicate at
18 that time that he was someone that needed to
19 be...

20 MR. CHALOS: Objection, Your Honor. I think
21 we're getting into hearsay.

22 MR. COLE: It goes to his conversation with
23 Captain Hazelwood, Your Honor. State of mind.

24 MR. CHALOS: Your Honor, unless Captain
25 Hazelwood saw that evaluation, or that evaluation was

1 discussed with him, it would be irrelevant and hearsay.

2 THE COURT: It sounds like it's hearsay, Mr.
3 Cole, and it doesn't doesn't sound like it's an
4 inconsistent statement of this witness, unless you can
5 show me an exception, the objection will stand.

6 Q (Mr. Kunkel by Mr. Cole:) Did you have any
7 other discussions with Captain Hazelwood about
8 Mr. Kagan?

9 A Well, that's a tough one. You're always
10 talking to the captain about the other officers
11 and the crew. A captain is supposed to
12 constantly get feedback from his chief mate on
13 how people are doing.

14 I never went to Captain Hazelwood after that
15 conversation with any type of disciplinary action
16 or feedback from my junior officers that Mr.
17 Kagan was not doing his job.

18 Q Was Mr. Kagan a person that had to be watch
19 carefully while he was on the bridge, at the
20 helm?

21 MR. CHALOS: Objection, Your Honor. This
22 witness didn't work with Mr. Kagan on the Exxon Valdez.
23 If he's talking about the Exxon Lexington, I would
24 object.

25 THE COURT: Why don't you give us a foundation

1 for the times this witness may have observed Kagan and
2 when he observed him.

3 Q Was Mr. Kagan at the helm at any time when you
4 were the first mate on the Lexington?

5 A Yes.

6 Q And was he a person -- did you get a chance to
7 observe him?

8 A Yes.

9 Q And was he the type of person that you could
10 rely on, or did he have to be watched when you
11 gave him turning instructions?

12 MR. CHALOS: Objection, Your Honor. No
13 foundation. Watched in what situation.

14 THE COURT: Objection overruled.

15 Q Was he the type of person that you had to
16 watch when you gave turning instructions?

17 A It depends on what you mean by "turning
18 instructions". I mean, if I told him to take the
19 rudder and to put it someplace, he always did it,
20 no problem.

21 If I told him, "Look, what I want you to do,
22 Bob, is come to a course." Then, even if it was
23 the best helmsman in the fleet, I would have
24 still stood there and watched him. Anytime
25 they're coming to a course, I find you have to

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watch.

Q Did you have any discussions with either Mr. LeCain or Mr. Cousins about Mr. Kagan?

A Yes.

Q And what did you tell them?

A Well, it was a general, almost like a "BS" session during a morning coffee break. I don't know specifically, but normally I took afternoon naps, so it had to be in the morning. And it was just a general discussion about him, as well as all the other ABs on the ship. I wanted their feedback, if they sailed with any of them. And I gave them my feedback, if I had sailed with them.

Q Did you give them any instructions about Mr. Kagan?

A No. It wasn't my place to tell them how to run their watch, only to provide them with any information that I had.

(260)

Q Now, would you outline for the jury when you were on the bridge, on your four hour shift, what would your responsibilities be at that time, when you were out at sea?

A Out at sea. All right. Well, what do you want to do, walk through a watch?

1 Q Yes.

2 A You're called probably about a half hour, 40
3 minutes before the watch, depending on your
4 preference. You get up there usually about 10
5 minutes before the watch starts. And at that
6 time you should check the compasses. Make sure
7 that the master gyro and the repeaters agree; the
8 course recorder, time and heading agree. Try to
9 get a position, if possible, to check your
10 satellite and Loran position with, perhaps, a
11 radar fix, if you're close enough to get it. Try
12 to find out what the last -- what has happened on
13 the last watch and what's ahead of you on your
14 watch.

15 Then go in and have a talk with the mate on
16 watch. Find out from him what's the current
17 course, speed, and if any of the equipment is not
18 working. Are there any special orders that the
19 captain has left that aren't already included in
20 his night orders. And then you assume the watch.

21 At sea you're usually on the automatic pilot
22 with an AB up there. And you might tell that AB
23 that, hey, you're going to be making a course
24 change in an hour or so. Maybe there's traffic
25 in the area. You'd tell him, head's up, there's

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possible fishing boats, or whatever.

Then it's your job on the hour, usually, to put a fix down, either by Loran or satellite, or celestial, if you can get that. In the Gulf of Alaska, usually it's overcast in the wintertime.

And then towards the end of the watch, filling out all your paperwork as to how the watch went. If there was any occurrences, like, changing of a course, or a sighting, or whatever, and then call the next watch.

Basically, don't hit anything and stay on the line. That's what you're trying to do.

Q What type of navigational instruments were available to you to do this? And you can refer, if you like, to the exhibit there to your right; the bridge.

A Well, you had -- let's see, on her I'm sure you had a Sat-Nav, which is the instrument that gets fixes from satellites. You had a Loran C, which takes its fix from lights that are emitted from -- almost like radio beacons, basically, is what it boils down to. So that would be your main electronic gear for getting a fix.

To help you as far as seeing further than your eye could see, would be your two radars. One on

1 each side of the wing. Number 11 and number 20
2 -- I guess you're calling it 23.

3 And then, of course, on number 23, you've got
4 what they call an automatic plotting device. And
5 what it does is, it's got a computer in it. And
6 if you have a target out there, a ship or a boat,
7 or whatever, that will -- you instruct it to pick
8 it up and it will plot it electronically and tell
9 you that ship's course and speed and how close
10 it's going to come to you so that you could avoid
11 hitting that ship.

12 Q Does it have an alarm on it?

13 A Yes, it does.

14 Q How do you set the alarm?

15 A Well, I would have to read the books to tell
16 you the exact procedure, but basically you decide
17 how big a CPA -- that's the closest point of
18 approach, you want. This is one of the alarms.

19 Q How close you want to get to...

20 A To the other ship. And then if after plotting
21 it you're going to come any closer than that, a
22 little red light, I think, on this one -- it
23 might be another color, will flash and a little
24 buzzer will go off.

25 Another set of alarms, you what they call the

1 -- your heading number.

2 Q And rate of turn?

3 A Okay. Let's see, I think on the screen you
4 get that readout. You also see this little
5 display moving right or left. And then this rate
6 of turn indicator here would show you your rate
7 of turn (indicating).

8 Q And rudder angle?

9 A Rudder angle would normally be this guy here
10 (indicating). And then on the bridge of the
11 Valdez they've got this thing that comes down
12 overhead.

13 Q Around the area of number 22?

14 A Yeah, I guess that's where it is. Somewhere
15 up in here. There's a big thing that you could
16 be over here, or here, or here, and see it.

17 Q Are there rudder indicators outside on the
18 wings?

19 A Yes. Just outside -- I don't know, it might
20 be here. Most of the ships are right in here,
21 because it's kind of protected. But I believe
22 it's right in here. You get a rudder angle
23 indicator on this side, and also over there
24 (indicating).

25 Q How about the communication equipment that you

1 had on board the Exxon Valdez?

2 A Okay. Internally you could speak over what
3 would appear to most people would look like a
4 normal telephone.

5 Q Would that go to all the rooms?

6 A That goes to all the rooms. I think it goes
7 to the engine-room, and probably some of the main
8 work areas, like the cargo control room.

9 (544)

10 Q Then you have what they call a sound powered
11 phone. And basically you crank it and a bell
12 rings at the station that you're trying to get
13 ahold of. And if there is somebody there they
14 will hear either a bell, or sometimes it's a
15 warbling sound. Then we had a PA type system,
16 too, where you could have, like, an intercom type
17 situation.

18 Q And radios?

19 A Okay. I believe we had either two or three --
20 probably three VHF radios, and that would be how
21 we would talk to other ships, Valdez traffic,
22 Coast Guard, what have you. And -- yeah, that
23 would be three VHF's I think is what we had.

24 Q You can sit down. I would like to talk a
25 little bit about coming into Prince William Sound

1 on March 22, 1989. Do you remember arriving into
2 Prince William Sound that day?
3 A Yes.
4 Q Where had you come from?
5 A We come from San Francisco.
6 Q Were you laden or unladen at that time?
7 A We'd be unladen. We were in ballast.
8 Q Do you remember at all approximately what time
9 you would have docked that evening?
10 A Well, midnight sticks in my head. Something
11 around there; 2300; 2400.
12 Q Would a deck log help you to remember?
13 A Sure.
14 Q Would you have been called to the bridge,
15 then, that evening, for docking?
16 A Yes.
17 Q And would you tell the jury, was there
18 anything eventful or uneventful that occurred
19 that evening during the docking?
20 A No, not that I'm aware of.
21 Q That you remember?
22 A No.
23 Q What would you have done, then, after the
24 docking of the Exxon Valdez in Valdez?
25 A Okay. Well, let's see. I never answered your

1 original question about what time did we dock.
2 Do you still want to know that?
3 Q Sure.
4 A We were finished our -- what we call "all
5 fast" at 2336. That would be 11:36 p.m. After
6 that I would -- my first contact would be with
7 some of the Alyeska personnel. They would be
8 doing a safety inspection of the ship. They
9 would also be connecting the chic-sand arms.
10 Chic-sands basically...
11 Q What is that?
12 A They are the arms that hook to the ship where
13 the oil comes from. So you've got to have a way
14 to get the oil from the land to the ship. And
15 the arms -- like big hoses made out of metal.
16 Metal hoses is what they are.
17 And they come on board and put the chic-sands
18 on. In the meantime there is a gauger on board
19 who is gauging out my tanks to see how much dirty
20 ballast I have on board and where it's at.
21 Q Would you explain how someone does that?
22 A The gaugers come aboard with what they call an
23 MMC. Really, that's a brand name for a device
24 that allows you to gauge the tanks when they are
25 closed. In the old days you would open it and

1 look down in it. Nowadays the cargo in the ship
2 is protected by a blanket of inert gas, and this
3 gas is oxygen deficient, which means you can't
4 have fire.

5 Q Maybe if you could stand up and use that
6 blackboard. I'll move this. (Pause) Could you
7 give us a cross section of a cargo tank and show
8 the inert gas layer -- show how that is?

9 MR. CHALOS: Your Honor, I assume we're
10 talking about the Exxon Valdez here?

11 Q We are talking about the Exxon Valdez, aren't
12 we?

13 A Okay. This is the Exxon Valdez, but by no
14 means can I draw you a tank on the Exxon Valdez.

15 Q That's fine. I think Mr. Chalos would be
16 happy if you just draw that.

17 A All right. This would be a tank, let's say,
18 looking this way, with a tank cut in half. And
19 then you have liquid, which, in this case is
20 water. At the top of the liquid is floating a
21 little oil.

22 All right. So the gauger would stand here
23 with a stand which he could connect his device,
24 basically like this with a tape that runs here,
25 and then a little readout window here that --

1 electrically it works. And this is closed so
2 that it can't blow up. It has no spark producing
3 capacity.

4 So the tape drops down and on the end of the
5 tape is what they call a probe.

6 Q Where is the inert gas?

7 A Okay. This here would be IG (indicating).
8 They actually call it IGS. Okay. Inert gas.

9 This probe is connected to a tape. And as it's
10 going through this space of gas there is no noise
11 at all. As soon as it hits this surface it will
12 start making a sound. At that time the gauger
13 will read a number and he will be able to tell
14 what this distance is here.

15 Okay. Then he goes through the oil -- maybe
16 it might be six inches thick. And that oil --
17 now the sound will change and he will know he's
18 hit water. So he'll get this measurement now, if
19 this is where the water began.

20 All right. And then he takes it all the way
21 down and he gets the total measurement. So by
22 doing that he could say how much here is water;
23 how much is oil. And then he has tables that he
24 goes into with those numbers and figures out how
25 much is on the ship.

1 Now, if we were loaded and the ship now is
2 full of oil, it would be the same process, only
3 there might be a little bit of water down here
4 now. Oil floats on top of the water. So now all
5 of this area here is oil (indicating). The bob
6 hits the oil and makes a noise. He goes all the
7 way down. It makes another noise when it hits
8 the water. He already knows how deep the tank
9 is. Now he knows how much oil is in that tank.

10 He also takes a temperature in the middle of
11 the oil so that he could determine later on,
12 working up what we call net numbers.

13 Q Before you get into that, let me show you an
14 exhibit here. Maybe that will help you.

15 When he does this the first time with the sea
16 ballast, then you get these numbers and then you
17 start to unload the dirty ballast?

18 A Correct.

19 Q And when that was done, what do you do, after
20 the dirty ballast is unloaded?

21 A After the ship is empty, to my satisfaction,
22 then the gauger will come aboard again,
23 supposedly independent of both the ship and
24 shipping company and Alyeska. And he will check
25 the ship, or she will check the ship, to see that

1 indeed it is dry. And it's never dry, dry, dry.
2 There's always a little bit left. So that has to
3 be put into the calculation later on, because you
4 never did get rid of all that water.

5 Q And after that calculation is done, then do
6 you begin to fill up the cargo tanks?

7 A Yes. He would swing -- well, it's a process
8 which involves swinging the valves -- lining the
9 vessel up differently. You are no longer taking
10 it out now, you're putting it in.

11 Q Where are you during this process? Where do
12 you work out of? Is there a particular...

13 A Normally, on a ship of this size, the Exxon
14 Valdez, I would be in the cargo control room.

15 Q And is that where you were on March 23 when
16 this was happening?

17 A Yes.

18 Q Can you control the loading and off loading
19 that goes on, from the cargo control room?

20 A Yes, you can.

21 Q And these exhibits here, can you just briefly
22 explain to the jury what this is and how you use
23 it?

24 A All right.

25 Q You might have to hold it up and show them a

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little bit.

A All right. Basically, this side here, as best as I can recall -- it's been a while since I've been on the Valdez. They are your pump controls. You have a pump room, which is forward of -- in front of the cargo control room. And you are able to control the speed of the pumps from right here (indicating). You can make them go faster, or slower, or shut them down if you want to.

Now, over here you have two functions, and that is the board that looks basically like a ship, and this panel here (indicating). You control the valves to the individual tanks.

Here you have gauges which are basically giving you by remote the information that this gauger got with the MMC stand.

So they've got, on the Exxon Valdez, like a little radar right here (indicating), and it sends signals to the fluid and it bounces back -- it's my understanding of the principle anyway -- and it's able to measure the time lag. It converts that and sends me a little number up here, and that's how I read it. Then I know what level the oil is in that tank.

The big round gauges here are what they call

1 sand and gore gauges (ph), and they are more of a
2 mechanical piece of equipment. At the ballast
3 tank, which is the only place those are, is -- it
4 goes -- it comes off a spool and it hits the oil
5 and there is a reading that you can look at
6 locally or by means of, like, a little motor. It
7 sends that same information to me in the cargo
8 control room.

9 Q Now, the Exxon Valdez -- can you give the jury
10 an idea of the layout -- of a general layout of
11 how the -- what were the ballast and what were
12 the cargo...

13 A Well, I don't know here.

14 Q If you would like to refer -- let me just ask,
15 do you recognize what's been marked for
16 identification as plaintiff's Exhibit 85?

17 A It appears to be a copy of the oil record book
18 for the Exxon Valdez.

19 Q And would you mind just briefly looking
20 through it to see if it appears to you to be an
21 accurate copy of that?

22 (Pause)

23 A Yes. But I don't know -- something is missing
24 here.

25 Q But other than that it appears to be an

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accurate copy?

A Other than that, yes. It appears to be accurate.

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

MR. CHALOS: Your Honor, may I have a short voir dire?

THE COURT: Yes.

(1122)

VOIR DIRE EXAMINATION OF MR. KUNKEL

BY MR. CHALOS:

Q Mr. Kunkel, you said something was missing. What's missing from here?

A I would have to look at it again.

Well, it looks like on page 59 -- you know, normally you would start an entry at the top and there's nothing there, so I don't know what it is.

Q You mean something has been redacted?

A I don't know what that means. Redacted is a term I'm not familiar with.

Q Covered over.

A Well, possibly, I don't know.

I'm just saying that there's a space here from where -- normally it would start like that,

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right?

Q Yes.

A And there's a space and then it starts.

MR. CHALOS: Your Honor, it seems that the redaction that I'm talking about is in the time period of the vessel's grounding. May I approach the bench?

THE COURT: Yes.

(1174)

(Whispered bench conference as follows:)

THE COURT: Wait until Mr. Cole gets here.

(Entire bench conference indiscernible - whispering).

(End of whispered bench conference)

(1218)

THE COURT: Eighty-five is admitted without objection.

EXHIBIT 85 ADMITTED

DIRECT EXAMINATION OF MR. KUNKEL, CONTINUED

BY MR. COLE:

Q You can use this. This might help you.

A Okay. So we're back to drawing a diagram now?

Q Yes. To give the jury an idea of what the cargo tanks looked like on the Exxon Valdez.

A Okay. Let's see. Let's call this the pump room so I don't get confused.

Q Maybe you could just put a "B" on the ballast

1 tanks. The "B" that you just placed up there,
2 what is that called?

3 A Okay. On this ship -- on the Valdez we had
4 what we called segregated clean ballast. That
5 means if there are tanks on board here that have
6 the capability of handling clean sea water, they
7 have a system which is not connected to the cargo
8 system, which also does not run through any cargo
9 tanks. Okay. That's the theory of clean
10 ballast.

11 Q That would be dirty ballast on board the Exxon
12 Valdez and clean ballast?

13 A And clean ballast, correct. So the B tanks
14 are tanks where only clean water can get into,
15 providing there are no problems like a fractured
16 bulkhead or something like that. It's
17 unforeseen.

18 Q Then where would you keep the dirty ballast?

19 A On this ship I believe most of the time we
20 kept most of the dirty ballast here and here
21 (indicating). I could look in here to make sure,
22 but I think that's where it was. Yeah. The last
23 time I was on there it was three and five center.

24 Q And where would you keep the crude oil when
25 you were laden?

1 A All tanks except the B tanks.

2 Q That would be both port, and center, and
3 starboard...

4 A Right here, here, here (indicating). Whoops!
5 Okay. Now, this tank also -- the ship has little
6 tanks here that they call "slop tanks". But they
7 are basically still cargo tanks.

8 Q And what do they carry, the slop tanks?

9 A Well, the ship itself, at some time or other,
10 generates slop. And slop would be perhaps
11 residues that came out of the engine-room bilges
12 that have been tainted with oil. And it may look
13 just as clean as water to you or I, but if it's
14 been tainted or remotely tainted, we're not
15 allowed to put it in the water. So we
16 immediately keep it here and we'd send it ashore
17 with the dirty ballast.

18 Q And you noted the pump room. Would you tell
19 the jury what that is?

20 A Down inside there are the pumps which would --
21 I would use when I'm discharging cargo or
22 ballast, to take the cargo out of the ship and
23 send it to the terminal.

24 Q And is it an open area where you could walk
25 around?

1 A Yes.

2 Q And how do you get down to that area?

3 A Well, there's two ways. You could either walk
4 down the ladder or you could ride the elevator if
5 the elevator is working.

6 Q And where would the engine-room be located?

7 A The engine-room is back in here.

8 Q Thank you. Now, would you explain to the jury
9 some of your concerns that you while you're
10 loading one of these tankers. Are there any
11 things that you have to be careful of?

12 A Well, first of all you have to be careful that
13 there's no leaks in the pipeline. You have to be
14 careful that you don't overflow a tank. You also
15 want to be able to make sure that you are not
16 contaminating the ballast system. We're loading
17 the ship, you say?

18 Q Yes.

19 A Okay. You're also concerned about the
20 stability -- not the stability so much, but the
21 stresses that you're putting on the ship.

22 Q Could you explain just briefly what stresses
23 you would put on a ship while you would be
24 loading it?

25 A Well, you want to make sure that you're not

1 loading the ship in such a fashion that you're
2 putting too much weight, let's say, in one area.
3 Or, maybe, let's say if I had held all of the
4 ballast on the ship, I would still be very heavy
5 in the forward end, and if I started loading too
6 much up here, maybe that would give me too much
7 stress up there.

8 Q Do these ships actually bend?

9 A Yes.

10 Q Would you tell the jury a little bit about how
11 that occurs? Is that designed?

12 A Yes. They're designed to actually flex with
13 the seaway.

14 Q And when you talk about the -- not so much the
15 stability but the bend and sheer, those concerns
16 that you have, can they be caused by putting too
17 much oil in one tank too quickly?

18 A Yes.

19 Q What would happen, for instance, if you filled
20 up your number three tanks first? Could that
21 cause problems?

22 A Well, I would like to run it through, but the
23 concept is, yes, that you would put too much in
24 the center of the ship and cause it to break.

25 Q Have you been aware of ships that have

1 actually broken apart while they were loading?

2 A Yes. Either ships or barges, I've read of
3 them happening. I've never experienced it.

4 Q So it is kind of a critical time then; this
5 period when you're loading up these tankers?

6 A Yes.

7 Q Do you have any instruments to help you?
8 Besides the two photographs that you looked at,
9 is there anything else that helps you during this
10 process?

11 A Well, these MMC stands. I'll have the ABs
12 going out there to, you know, cross reference my
13 gauges.

14 Q How about a computer? Do you have a computer
15 program on board?

16 A Yes. We have -- on the Valdez we have what
17 they call the Load Master computer.

18 Q How do you use the Load Master computer?
19 Well, first of all, where was it? Where was it
20 located?

21 A It was right there in the cargo control room.

22 Q How would you use that Load Master computer
23 program?

24 A Well, I would use it to plan the load, and I
25 would also use it to -- during the load to see

1 how the ship was doing. What kind of draft I was
2 getting. To check that. To make sure that the
3 machine was working properly. Then at the end of
4 the load I would put in the numbers that we
5 actually ended up with on the different tanks and
6 use that to determine, by calculation, the draft,
7 and compare that to the actual draft that I see
8 on the side of the ship. And then also to
9 examine the stress of the sheer and bending
10 moments to see that they were within allowable
11 limits.

12 Q Now, my understanding is this helps you in a
13 number of ways, and it allows you to formulate a
14 plan for loading of the tanker -- this program.

15 A That's correct.

16 Q And you do that by entering data as to which
17 tanks you intend to load, or how does that help
18 you formulate your plan?

19 A Well, prior to getting alongside the dock,
20 I'll look at one of the past loads. And I'll use
21 that temperature and gravity to determine the
22 weight of the cargo. And I'll do a load that
23 way.

24 And then when I get to the dock I'll get the
25 actual weight and temperature of the cargo and

1 input that into the machine to see, you know,
2 what I'm going to end up with. And to a T, it's
3 always within an inch or two of drafts.

4 Q And we're talking about -- how high are these
5 tanks?

6 A I believe these on the Valdez are, like, 90
7 feet or something like that.

8 Q So your computer is accurate to within inches
9 then? Within inches of how deep the oil will be
10 when you're through.

11 A Okay. The computer is only as accurate as the
12 numbers that I put into it.

13 Q The computer also tells you certain things
14 about stability and stress, is that correct?

15 A Uh-huh (affirmative).

16 Q And could you just briefly -- is there a
17 prescribed limit with which you can sail out on
18 the ocean under these limits?

19 A Yes. Yes. The naval architects have decided
20 what stress numerals are allowable. And it's
21 broken down into sheer and bending moments. And
22 basically, after I've loaded the ship, the
23 computer figures these out again and compares the
24 two.

25 Q Compares what?

1 A The bending and sheer moments. After they
2 compared it they give me a percentage. The
3 bottom line is, as long as that percentage is
4 plus or minus 100%, it says the vessel can go
5 into a seaway or harbor, depending on what I've
6 told it that I want it to use, safely, and not
7 crack or break apart.

8 The definition of "seaway" varies, but
9 basically it's out at sea. I'm sure that
10 somewhere there is a definition of seaway.

11 Q But you checked just before you leave the
12 dock?

13 A That's one of the things I check, yes. The
14 other thing is what they call GM. And that's the
15 metacentric height. And basically the naval
16 architects, when they designed the vessels, have
17 established what is acceptable GM, which is a
18 measurement of stability, from what the vessel
19 must have in order to go to sea.

20 Q It's a number?

21 A It's a number. And by me inputting different
22 ullages in the ship, that translates into
23 different weights. The weights are all over the
24 place. They apply moments to those weights.
25 Then they come up with a point they call "G", the

1 center of gravity. They compare that to "M", the
2 metacenter -- GM. Okay. And that's a distance.
3 And that distance must be a certain number or the
4 ship cannot sail safely.

5 Q And that number is prescribed by naval
6 architects?

7 A Well, it's prescribed by the naval architects,
8 but it's mandated by regulations that the Coast
9 Guard comes up with. And they're basically not
10 saying that the ship would be unstable with a
11 number that's less than that, but that it does
12 not meet the damage requirements that the coast
13 guard has prescribed.

14 Q There's a little bit of air?

15 A Right. It's designed so that if you hole a
16 few compartments, you'll list over and the main
17 deck will be, I think it's three inches or
18 something like that, above the water. You won't
19 sink.

20 Q Essentially, then, you get a number for GM and
21 you compare it to what's required under law, and
22 if you meet that, you can sail?

23 A Correct.

24 Q And it's the same thing for this bend and
25 sheer?

1 A Correct.

2 Q You get a percentage; you meet that and you
3 can sail?

4 A That's correct.

5 Q Now, on the day in question did you do that?
6 Did you run those tests before you left the...

7 A Yes.

8 Q And were there any problems?

9 A No.
10 Leaving the dock?

11 Q Yes.

12 A No.

13 Q Now, I would like to talk -- we just had
14 started getting into it when I kinda interrupted
15 you again. How is the amount of oil measured,
16 and do you receive any documentation about that?
17 Let's start with a simple question.
18 Is there any documentation that you get
19 concerning the amount of oil that you have as
20 cargo?

21 A Yes, I do.

22 Q And what's that called?

23 A A gauger's report. Gauger report.

24 Q You're looking at an exhibit there?

25 A Yes.

1 Q That exhibit is what's been previously
2 admitted as plaintiff's Exhibit 12. Do you
3 recognize this?
4 A Yes. This appears to be the gaugers report
5 alongside the dock at Alyeska just prior to
6 leaving Valdez.
7 Q And what is this gauger's report? What's the
8 bottom line of this report?
9 A Well, basically they say I've got 1,286,738
10 barrels of something on the ship. 861 of those
11 barrels is water. Therefore, 1,285,877 barrels
12 on the ship is oil.
13 Q So the first figure is just...
14 A Gross liquid, or gross volume.
15 Q And then the second figure that would be on
16 there?
17 A Is the free water that they found in the tank.
18 Q And that would have been measured through the
19 little mechanism you described?
20 A Uh-huh (affirmative).
21 So then the next figure is what is called
22 "gross oil". Now, the terms I'm using are the
23 ones I would normally use on the ship.
24 Q What are the terms that they have written?
25 A They say gross observed volume less free

1 water, then gross observed volume GOV.

2 The first one they call it is TOV, Total
3 Observed Volume. Then they say less free water.
4 And then GOV, Gross Overall Volume.

5 Q And that tells you how much crude oil you have
6 on board the tanker?

7 A Correct.

8 Q Now, there are some calculations that go on
9 after that. Would you just briefly explain to
10 the jury why -- or, what those calculations are?

11 A This is gross oil. And in the industry they
12 have established a standard -- they call that
13 "net".

14 So what has to be done now, so that everybody
15 is talking the same amount of oil, they want to
16 reduce or expand, depending on the temperature,
17 the volume to what it would be at 60 degrees. So
18 throughout the industry, 60 degrees is the
19 standard temperature for oil. And oil expands
20 and contracts with temperature.

21 Q Is that kind of a standard, so that everybody
22 in the market can know what they're getting?

23 A Exactly.

24 Q Convert it to one standard temperature?

25 A This is true.

1 Q And that gives you a volume?
2 A Right.
3 Q That everybody can agree upon?
4 A That's correct.
5 Q So the terminal has -- in the laboratory has
6 come up with -- on this case, an API of 27.6.
7 API, American Petroleum Institute, they come up
8 with tables, and they basically say that if you
9 have an oil in one port with a temperature of 104
10 degrees and an API of 27.6; if you multiply that
11 volume times .98088, that will give you the
12 proper volume at 60 degrees. So now everybody is
13 talking 60 degree volume.
14 And that's what this column is, and that's the
15 next one that they give you here.
16 Q So on this Caleb Brett, after determining what
17 your gross oil volume -- you just do a little
18 calculation that tells you what the industry
19 standard would be?
20 A Right.
21 Q Is that essentially it?
22 A Uh-huh (affirmative). Then, also, I think on
23 these guys here, they will also convert it to
24 weight.
25 Q They give you a weight.

1 A So they can now take a volume, add a net
2 temperature and convert that into weight.
3 Q And that's what this document was?
4 A Yes.
5 (2080)
6 Q How much oil, Gross Observed Volume, was on
7 the Exxon Valdez when you left port?
8 A According to this report the gross observed
9 volume was 1,286,738 barrels.
10 Q Now, when you left -- when did you get done
11 with the loading on March 23?
12 A At 1924 we finished loading cargo on the 23rd.
13 Q What time were people to be back that evening?
14 A I believe the sailing board was set for ship
15 to sail 2100; crew to be aboard 2000.
16 Q 2100 would be what time if you were in 12 hour
17 times?
18 A 9:00 p.m.
19 Q Do you remember actually seeing the board that
20 day?
21 A What do you mean?
22 Q The sailing board. Do you remember actually
23 looking at it that day? If I showed you a copy
24 of it, would that refresh your recollection?
25 A Yeah. Okay. That looks like the sailing

1 board on the Exxon Valdez.

2 Q Does that look like the one that you saw on
3 the 23rd?

4 MR. CHALOS: Your Honor, I'm going to object,
5 unless Mr. Cole is speaking about the actual numbers or
6 just the board itself.

7 MR. COLE: I'm speaking about the actual
8 numbers. I'm asking him the question.

9 Q Is that the one -- the way it looked on the
10 23rd?

11 A All right. I mean, I cannot recall this
12 board, but when I left to go check the drafts,
13 the board said something like this.

14 Q Do you remember...

15 A The times were this.

16 Q Do you remember if it said anything about
17 Easter?

18 A No, I do remember it saying "Happy Easter".

19 Q What time would you have -- after completing
20 the loading process, what time would you have
21 called the crew out to start beginning the
22 undocking process?

23 A Well, I believe we called them out right
24 around the finish of the cargo time, maybe even a
25 little earlier.

1 Q And that would have been, again? What time?

2 A Twelve hour time would be 7:24 p.m.

3 Q What did you have to do after finishing up the
4 loading process?

5 A When the cargo was finished, I was on the dock
6 reading the drafts. After reading the drafts and
7 being content that they were exactly what I
8 wanted, I directed Mr. Cousins to close all the
9 valves in the control room -- make sure they were
10 closed; to call the pumpman out to assist and to
11 make sure that the chic-sands were being
12 disconnected. And I probably made a phone call
13 to my wife while I was there at the dock to tell
14 her we were leaving and I'd talk to her in a
15 couple weeks or a couple days.

16 Then I came back on board. They were still
17 disconnecting the chic-sands. I asked the
18 pumpman how it was going; fine. I saw the ABs
19 and gave them a brief description of what I
20 wanted done, in that, you know, we would be going
21 out into the Gulf of Alaska, and it was March,
22 and I wanted as much of the loose gear, including
23 some of the hoses and stuff put away.

24 And I also informed them that the pilot ladder
25 had been sitting there the whole time exposed too

1 snow and ice, and I didn't want the pilot
2 slipping and falling when he departed. I wanted
3 them to bring it up and make sure there was no
4 ice, et cetera.

5 Q Did that get cleaned off?

6 A Yes, it did.

7 Okay. Then I -- it didn't in my presence at
8 that moment, but it was taken care of.

9 Then I went down into the pump room and looked
10 around down there to make sure that nothing had
11 come loose and that everything was still closed
12 and sealed off.

13 Then I went up to the cargo control room and
14 examined all the valves. Make sure that they
15 were closed. And I think at that time I put some
16 numbers into the computer, just off of my gauges.
17 They weren't the Caleb Brett gauges. You know,
18 they were off of my gauges, to make sure, at that
19 time, is when I checked the stability and the
20 stress factors on the ship.

21 And everything looked good. The agent, I
22 think, came in there and wanted to see the log
23 book. And I told her it was gone, because Mr.
24 Cousins, by that time, had headed to the bridge
25 to test the gear.

1 Q Okay. Did you ask him to test the gear then?

2 A Yes, I did.

3 Q And after the agent spoke with you, what
4 happened then?

5 A Well, I think the agent left to go look at the
6 log book, I assume. And the gauger was still
7 working her numbers. And -- I think it was a
8 female, I'm not sure what gauger we had that day.
9 Anyway, I checked the numbers to see that they
10 agreed basically with my gauges, plus or minus a
11 few inches. There's always going to be a minor
12 discrepancy. And then I signed this sheet here.

13 Q After signing that sheet, did you get a copy
14 of it?

15 A Yes.

16 Q And where did you go after you had done that?

17 A Well, I imagine I went up to my room; threw
18 some water on my face; maybe had a cup of coffee,
19 or what have you, something along those lines.
20 eventually I made my way up to the bridge.

21 Q Do you remember what time you got to the
22 bridge that evening?

23 A At this moment in time, no, I don't.

24 Q Who was on the bridge when you got there?

25 A Mr. Cousins was up there; I think the pilot

1 was there; and the agent might have been there,
2 also.

3 Q Did you do any kind of a check of the
4 equipment that evening while you were on the
5 bridge?

6 A I did a minor check, yes.

7 Q Would you tell the jury what you did?

8 A I physically turned the wheel to make sure
9 that the rudder was moving. I physically checked
10 both radars. I picked up a target on the APR
11 just to see -- Automatic Plotting, just to see
12 that it worked. And I think -- well, I know I
13 also checked the gyro to make sure that it agreed
14 -- the master gyro and the repeater.

15 Q When did the captain come on board that
16 evening?

17 A I don't know when he actually came aboard the
18 vessel..

19 Q Was it some time after you had done your test?

20 A I don't know.

21 Q Or were you in the middle of the test?

22 MR. CHALOS: Objection, Your Honor. The
23 witness says he didn't know.

24 THE COURT: Sustained.

25 Q Do you remember what he was dressed in when he

1 came up on the bridge?

2 A No, sir, I don't.

3 Q When did you undock that evening?

4 A Right around 2100. The captain came up to the
5 bridge. That's all I know. I don't know when he
6 came on board the ship.

7 Q What was your role then, that evening, in
8 undocking?

9 A I was at the telegraph -- or, excuse me, at
10 the throttle on this ship. And I was keeping the
11 Bell Book and just overseeing -- hearing what was
12 going on as far as the undocking was going.
13 Eventually the quarter master came up there.

14 Q The quarter master being the helmsman.

15 A The helmsman, or AB. And when he arrived on
16 the bridge, I was also watching that he was
17 performing whatever rudder commands the pilot or
18 the captain were giving.

19 Q Anything eventful about the undocking process
20 that evening?

21 A No, sir, there was nothing.

22 Q Did it go smoothly?

23 A I thought it went very smoothly, yes.

24 Q A routine undocking?

25 A Yes.

1 Q Were there any heavy winds or anything that
2 evening?

3 A No, there was no heavy winds. I believe it
4 had been snowing most of the day, but the
5 visibility was acceptable. We could see the
6 other berths and everything.

7 THE COURT: Mr. Cole, would this be a good
8 time to take a break?

9 MR. COLE: Sure.

10 THE COURT: We'll take about a 15 minute break
11 ladies and gentlemen. Don't discuss the matter among
12 yourselves. I'm sure you're getting tired of hearing
13 this, but it's required to constantly remind you. And
14 don't form or express any opinions.

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

17 (Off record - 10:36 a.m.)

18 (On record - 11:00 a.m.)

19 (Jury present)

20 (2569)

21 Q (Mr. Kunkel by Mr. Cole:) Mr. Kunkel, before
22 we get started, I'm showing you what's been
23 marked for identification as Plaintiff's Exhibit
24 84. Do you recognize that?

25 A It looks like a copy of my present license

1 that I hold.

2 Q Is it an accurate copy?

3 A It appears to be, yes.

4 MR. COLE: I would move for the admission of

5 what has previously been identified as Plaintiff's

6 Exhibit 84.

7 MR. CHALOS: No objection.

8 THE COURT: It's admitted.

9 EXHIBIT 84 ADMITTED

10 Q (Mr. Kunkel by Mr. Cole:) When you're on a

11 ship do you bring your license on board with you?

12 A Yes, you do.

13 Q Where is that license placed when you are on

14 board?

15 A Normally they have a rack that's right outside

16 or on the bridge itself, and you slide it in

17 there so that it could be read by the Coast

18 Guard.

19 Q And do you look at those when you -- to see

20 who the people are that are on board with you?

21 A Yes.

22 Q When we left we were talking about maneuvering

23 out of -- off the dock. Where is the -- where

24 are the other mates during the unloading process

25 -- the undocking process?

1 A Normally there is one mate on the bow, the
2 front end of the ship, and there is another one
3 on the stern -- the rear end of the ship, and
4 they let go of the lines. And they -- it's their
5 function to direct the unlicensed personnel in
6 the letting go of the lines and to -- "singling
7 up to the springs" is what we call it, or the
8 lines that are pretty much right at the center of
9 the ship, facing fore and aft. They are used for
10 positioning the ship.

11 Q Now, that evening after you had let the lines
12 go, were you replaced at some time?

13 A Yes. Shortly after we were off the dock -- it
14 couldn't have been very far off -- Mr. Cousins
15 had completed taking care of his duties on deck,
16 and came up to the bridge to stand the rest of
17 his watch, because he was on the 8:00 to 12:00
18 watch.

19 Q What did you do when you were replaced?

20 A I went to my room and went to sleep.

21 Q Was there anything that you were aware of that
22 was wrong with the steering or the navigational
23 instruments, or the communication instruments?

24 A No, I was not aware of any equipment problems.

25 Q Where did you go after you left the bridge

1 then?

2 A I went to my room.

3 Q What happened then?

4 A Well, I took a shower and then I went to bed.

5 Q How long had you been up that day?

6 A Well, that's a hard question to answer. You
7 know, I had been -- from the time we docked to
8 the time we let go, I stood my regular watch. I
9 had been up for the ballasting, the stripping of
10 the ballast, the start of the load of the cargo,
11 I stood my morning watch. I had been up there
12 when the 8:00 to 12:00 and the 12:00 to 4:00
13 exchanged watches, just to make sure that they
14 understood how I wanted to load the ship. And
15 then I stood my 4:00 to 8:00 watch, and also went
16 to 10:00 at night.

17 So there were period of time in there where I
18 would get maybe a two to three hour nap, and then
19 I would work for a couple hours and then I would
20 get a two or three hour nap.

21 Q And when were you going to be scheduled to be
22 back on shift?

23 A My shift would start at 0400 again.

24 Q Were you awakened late that night or early the
25 next morning?

1 A Apparently the ship was shuddering to the
2 point where I noticed something didn't seem
3 correct, so I got up to check it out and find out
4 what was wrong. And I didn't know it at the
5 time, but apparently it was around midnight or a
6 little after.

7 Q What did you think when you woke up?

8 A Well, my first impression was that they were
9 making a turn -- a hard turn. And then I started
10 hearing a clanking sound, and I thought perhaps
11 something had gone wrong with the engine -- the
12 turbo mechanism may have blown up or
13 malfunctioned. I have no idea what that would
14 sound like, but it sounded like a mechanical
15 noise; something wrong mechanically.

16 Q Was it underneath you? Or, do you remember
17 any place in general were that...

18 A No, it was pretty much permeating my room.

19 Q Where is your room located on the levels?

20 A Well, you have the bridge; you have the
21 captain/chief engineer's deck; and then the next
22 deck, I live on that all the way on the starboard
23 side, or righthand side of the ship.

24 Q What did you do then?

25 A Well, I put on a pair of coveralls and I made

1 my way up to the bridge and I entered the back of
2 the bridge, which is the chartroom. And Mr.
3 Cousins was coming into the chartroom, if I
4 remember right. And I asked him, "What happened,
5 Greg? Did the turbo go?"

6 And he said something to the effect, "No. I
7 think we're aground. The old man knows."

8 Q Did you see Captain Hazelwood at that time?

9 A No, I did not.

10 Q What did you do then?

11 A I told Mr. Cousins that I was going to head
12 down below to the cargo control room and see if I
13 could ascertain what was going wrong, if anything
14 was wrong.

15 Q Did you know anything about the condition of
16 the ship at that time?

17 A I had no idea.

18 Q And did you go directly to the cargo control
19 room, or where did you go?

20 A No. I stopped off at my room first and
21 grabbed my survival suit. I had no idea -- you
22 know, like I said, I didn't know what was going
23 on. I just knew we were aground and I might be
24 too busy to come back up there. That's what was
25 going through my mind.

1 I knocked on Mr. LeCain's door, the second
2 mate -- he's right next to me. And I said,
3 "Lloyd, you better get up, it looks like we've
4 got a problem."

5 He said, "How bad is it?"

6 I said, "I don't know, it sounds like it might
7 be bad."

8 Because, in my mind, you're aground; you're in
9 Alaska; it's all rocky bottom, as far as I know.
10 So I figured we had problems.

11 Then I went down to the control room and on
12 the way I -- right next to the control room is
13 the pumpman's room. I knocked on his door, and I
14 said, "Jack, I think you better get up, we may
15 have some problems here." Then I went into the
16 control room.

17 Q Had you ever been aground before then?

18 A I've been aground, I think, one time in the
19 Mississippi River, but for a very short period of
20 time, where we just kinda squirmed around a
21 little bit and then kept on going.

22 Q When you say "squirmed around a little bit",
23 you just went forward and backward and kept going
24 full ahead?

25 A Yeah. The ship hid some mud and we just went

1 like this -- slid around a little bit and then
2 kept going. You know, I could tell the ship
3 slowed down, and then it picked up speed, in the
4 mud.

5 Q Is the Mississippi, is it a mud -- is it
6 pretty much mud at the bottom of the Mississippi?

7 A Yes.

8 Q When you got to the cargo control room, what
9 did you see?

10 A Well, I looked at the gauges that we described
11 earlier, and on an average, the tanks had lost
12 about 10 feet of oil -- the cargo tanks.

13 Q Could you give the jury some kind of an idea
14 of how much oil you're talking about?

15 A Somewhere in the 100,000 to 115,000 barrel
16 range. It was no longer where it was supposed to
17 be.

18 Q What went through your mind right then?

19 A I went, "Well..." -- I said, "We've really hit
20 something bad. A lot of oil has moved around.
21 We've got a big hole -- we've got holes in the
22 ship." Not a big hole, but I figured we had
23 holes in the ship.

24 Q How could you tell that you had more than one
25 hole in the ship?

1 A Well, it's only my perception because all of
2 the tanks showed this change. There were so many
3 tanks, not just one tank. All the center tanks
4 and all the starboard tanks showed some kind of
5 movement, including the ballast tanks which, when
6 we left, were empty. The starboard ballast tanks
7 were empty. Now they had something in them.

8 (3039)

9 Q Okay. Let me go back to this drawing that you
10 made here. (Pause) Give the jury an idea with
11 this pointer, maybe, which tanks you saw had been
12 disturbed?

13 A Okay. I saw one, two, three, four, five
14 center -- all showed that something had come out
15 of them. They are oil tanks. I showed that one,
16 three, and five port showed that something had
17 come out of them; oil. I showed that two
18 starboard and four starboard, something now was
19 in them, and it wasn't in them originally. I
20 also showed a little bit in the forepeak, but the
21 tape only showed about four or five feet in
22 there.

23 And that that time that could have very easily
24 been just the trim of the ship that could have
25 caused that. Because you never get it dry. So

1 the fact that all these tapes were moving, and
2 this one was not, I could assume we had a little
3 weight in there, but it may not have been holed.

4 Q And the condition of the port side tanks?

5 A All of these tanks appeared to be just as I
6 left them from leaving the dock in Valdez.

7 Q When you were on the -- going up and back to
8 the cargo control room, did you notice any kind
9 of a list at that time?

10 A When I got down to the cargo control room she
11 was still apparently on an even keel. She was
12 flat. She did start taking a list later on, yes.

13 Q What did you do after you saw the instruments
14 in the cargo control room?

15 A I picked up the phone and I called the bridge
16 and I asked to speak to the captain.

17 Q And what did...

18 A The captain came on the phone. And he said
19 something to the effect of, "How bad is it?"

20 And I said, "Captain, we've got movement in
21 all the center tanks and all of the starboard
22 tanks."

23 Q Did you tell him anything else?

24 A No. Basically, "We have movement in the tanks
25 starboard -- center tanks and starboard tanks, so

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we're definitely hold."

Q What did you do then after that?

A Then I went -- at his instructions, he said, "Well, let's see if you can run -- whatever you've got, run a program; let's see what we've got."

So I sat down at that computer you talked about and I entered that the vessel was aground. I assumed it was somewhere around the middle of the ship. I didn't know.

Q Now, wait a minute. Would you explain to the jury what you mean by "entered that it was aground"?

A The computer has a program in it which you can tell it that the ship is aground, and therefore it will use that information in determining the stress -- the bending and stress moments on the ship.

Q Is there any instrumentation aboard the ship that could tell you exactly what damage has been done to it at that time?

A No, not that I'm aware of.

Q So do you know how the -- when you put in "grounded", does it assume that the ship is still structurally stable? I mean, that's it's

1 structurally intact, or do you know?

2 A Yes.

3 Q It assumes that it's structurally intact?

4 A That's correct, it does.

5 Q What information did you put into the computer
6 at that time?

7 A I put in all of the ullages, which we
8 discussed before, that were now on the tanks.
9 And I made an assumption that we were about 50
10 foot draft.

11 Q When you say "50 foot draft", what do you
12 mean?

13 A That's the depth of the -- how deep the ship
14 was.

15 Q In the bow or the center?

16 A Both. I said they were both 50 foot. The
17 program will not work unless you input manually a
18 draft. Normally the program will compute the
19 draft for you based on the ullages. But a
20 grounding means that the ship can't seek its
21 normal depth. So that's why I had to put in some
22 drafts.

23 I knew we left at 56. I said 50 sounds good,
24 let's try it.

25 Q What did you find out?

1 A At that time it showed that the stability of
2 the vessel was still acceptable, and that the
3 bending and stress moments had been exceeded.

4 Q And that is according to the grounded portion
5 of this program?

6 A That's correct.

7 Q And that's without taking into consideration
8 any structural damage that might have occurred?

9 A That's correct.

10 Q What did that information tell you?

11 A Well, on the surface it told me that the ship
12 could not go out into a seaway based on its
13 current stress and bending moments. I took --
14 well, okay. I made the printout of this and took
15 it to the bridge and showed it to the captain.

16 Q And did you explain to him that you had run it
17 on the grounded program?

18 A Yes.

19 Q As captain of the tanker, would he be aware of
20 how the computer system works?

21 MR. CHALOS: Objection, Your Honor.

22 THE COURT: Lay a better foundation.

23 Objection sustained.

24 (3430)

25 Q Is it one of the responsibilities of a master

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of a ship to be aware of how the cargo control system works?

A Yes.

Q Would a master of a vessel be aware of how the computer program aboard a tanker operates?

A The captain should be aware of how to work the computer, yes.

Q If you were to get sick and not be available, who would do the cargo control input and output?

A It would probably be the second mate if he had the ability to do so. And if not, then the captain would have to do it.

Q Was the captain -- so, would -- were you aware that the -- I'll withdraw that.

When you got up to the bridge and you informed the captain of this, what did he tell you?

A Well, something along the lines of -- let's see. I explained to him that I -- obviously, that we should not be leaving the Prince William Sound based on this data. And he looked it over and said, "Yeah, I agree with you on that."

And I said, "Well, do you want me up here to assist you?"

And then he said, "No, I think your best place would be to continue in the cargo control room

1 and also start examining the pump room and any of
2 the void spaces." In other words, start
3 investigating as much as I could what was going
4 on.

5 He also said, "We better start thinking about
6 laying out firefighting gear, maybe lowering the
7 life boats."

8 And somewhere along the lines I said, "Well,
9 do you want to ring the general alarm."

10 He said, "No, but that might cause panic and
11 we should get a much better assessment of our
12 situation before we fly off the handle."
13 Something to that effect.

14 So I left the bridge and went below.

15 Q What time did you reach the bridge with this
16 report? Do you have any idea?

17 A Well, people have asked me that a number of
18 times, and I'm assuming that it's somewhere in
19 the 12:30 area.

20 (3670)

21 Q Did you tell the captain that the grounding
22 computer that you had used did not take into
23 consideration any structural damage?

24 A I did not specifically say that to him, no.

25 Q When you left the bridge where did you go?

1 A I think the first -- this time I went back to
2 the control room. By that time the pumpman had
3 come back and informed me that he had made a tour
4 around the ship. That, you know, he could smell
5 oil. And I said, "Yeah, I can smell it, too."
6 Q Did that smell concern you at all?
7 A Of course, yes, it did.
8 Q Well, it was just there was so much of it, it
9 was very strong, but it dissipated rather
10 rapidly.
11 Q When you were at the bridge the first time, do
12 you remember where the captain was when you
13 talked to him?
14 A If I recall, he was on the port side of the
15 bridge wing -- of the bridge -- not the wing, but
16 on the bridge.
17 Q By the forward bulkhead?
18 A I can't say for sure.
19 Q Was the tanker being run at that time?
20 A I do not know the answer to that question.
21 Q Is there a danger of explosion or fire when yo
22 have an oil spill such as this?
23 A Well, any time you have hydrocarbon products
24 in the open atmosphere there's a danger of an
25 explosion.

1 Q What happened, then, when you got back to the
2 cargo control room?

3 A Well, if I recall, I believe the pumpman, I
4 sent him down to check out the pump room. By
5 then the second mate had come in and asked me how
6 it was going. I told him that obviously we had
7 damage. I think sometime around that area I
8 might have instructed -- no, it would have been
9 later, I think, when we finally started putting
10 gear out.

11 The second mate, I'm not really sure if he was
12 involved at that time with the lifeboat or not.
13 Basically, I was in the control room most of the
14 time.

15 The engine-room called me to inform me that
16 the engine-room -- double bottoms were in tact,
17 which I can also put into the computer showing
18 that there had been damage in the engine-room,
19 but it appeared there wasn't. And the chief
20 engineer, I think, was going down to the pump
21 room with the pumpman to check the void space or
22 double bottom space under the pump room to see if
23 that was okay.

24 Q When you got back too the cargo control room
25 the second time, what did the dials and

1 information tell you then?

2 A Well, I guess after a short period of time,
3 maybe 20 minutes or so -- 25 minutes, more had
4 leaked out of the ship, or the gauges had
5 changed. So I sat down this time and tried to
6 put it into the computer again.

7 Q What happened?

8 A Well, it rejected it for some reason and went
9 blank. And so I had to reboot up the computer.
10 And when I did this I wouldn't allow me to enter
11 a grounded state again.

12 Q Would you explain to the jury what it means to
13 reboot?

14 A Well, basically the computer is fed the
15 information off of a disk. And that information
16 is the loading program. Well, once it lost that,
17 I had to put that back in and tell the computer
18 to get that back into its memory so that I could
19 use that information again.

20 Q How long would that have taken you?

21 A Well, for me it takes a little while. I'm not
22 computer literate, so it took me, I would say,
23 three to five minutes maybe to get everything
24 going the way it's supposed to.

25 Q And did you then -- after you say you couldn't

1 get it to accept the grounded program?

2 A Uh-huh (affirmative).

3 Q What did you do then?

4 A I put in the current ullages that the tanks
5 were now showing from my control station. And
6 after getting out this number I went up to see
7 the captain again.

8 Q Well, how did you run the program if you
9 didn't have the grounding -- not grounding part
10 available to you?

11 A I ran it as an intact program.

12 Q So you said...

13 A Everything is fine; what do I have.

14 Q And what was the result?

15 A The result was, the ship was no longer meeting
16 required stability.

17 Q What about the stress levels?

18 A The stress levels were showing okay.

19 Q Now, when you say, "No longer meeting the
20 stability requirements", does that mean that the
21 ship should have been put out to sea or not?

22 A The ship should not go to sea.

23 Q Would the ship -- was there a concern at that
24 point that the ship would not float?

25 A That's correct.

1 Q And would, in fact, capsize or sink?
2 A That's correct.
3 Q And this is with the computer program being
4 with an intact ship?
5 A Correct.
6 Q Which you knew wasn't probably the case?
7 A Which I knew was not the case.
8 Q What did you do with that information?
9 A I went up and saw the captain again.
10 Q What time would that have been?
11 A I think it's in the 1:00 o'clock area. It
12 could have been as late as 15 or 20 minutes
13 after, but it had to be somewhere in the 1:00
14 o'clock area.
15 Q Did you talk to the captain?
16 A Yes.
17 Q Where was he then?
18 A He was on the port side again, I believe.
19 Q And what did you tell him?
20 A I said that based on this readout here, where
21 we are intact, no damage at all, we no longer
22 meet required stability. I recommend we don't go
23 anywhere and wait until daylight.
24 Q And this would have been right around 1:00
25 o'clock?

1 A To the best of my knowledge, in the 1:00
2 o'clock area, yes.

3 Q Were you concerned with the safety of the ship
4 at this time?

5 A Yes.

6 Q Where did you go, then, after that?

7 A I believe that he told me to go down in the
8 cargo control room and keep a monitor on what's
9 going on, and also -- let's see what we have
10 available to us. Let's start thinking along the
11 lines of, can we pump any of the tanks. Can we
12 open and close certain valves. Let's try to find
13 out what our status is along those lines.

14 And in the meantime, I believe somebody was
15 asking them for numbers. Quantity of oil that
16 had escaped. And he asked me to also see if I
17 could figure up some numbers.

18 Q How much oil did the Exxon Valdez lose, that
19 you were aware of?

20 A Well, then or when I left the ship?

21 Q That morning, did you give somebody any
22 indication?

23 A In the morning I -- within a few hours -- and
24 somebody asked me what's the total. I showed
25 about 138,000 barrels that I could not account

1 for. And that, I believe, is -- all right. I
2 believe it was around 130,000 or so -- 138 I
3 think is the number I gave, from the best of my
4 recollect.

5 (Tape: C-3621)

6 (000)

7 Q And after you had a chance several days later,
8 did you make a recalculation of how much oil?

9 A Well, there was recalculations going on every
10 two hours.

11 Q What was the final best estimate?

12 A The final number, when I left the ship in the
13 middle of May, was 260,000 barrels.

14 THE COURT: How many gallons is a barrel?

15 A Forty-two gallons to a barrel, sir.

16 Q Were you aware of what was going on up on the
17 bridge while you were down working in the cargo
18 control room?

19 A Well, I don't know what you mean by "aware",
20 sir.

21 Q Well, what did you believe was occurring up on
22 the bridge while you were down in the cargo
23 control center that morning?

24 MR. CHALOS: Objection, Your Honor. Lacks
25 foundation.

1 THE COURT: Sustained.

2 Q Did you have any conversations with anyone
3 about what was going on up on the bridge?

4 A No, I did not.

5 Q Did you see the vessel being run at all? Did
6 you find out the vessel was being run at all?

7 A Not while I was in the cargo control room, no.

8 Q When did you find that out?

9 A One of the investigators, somewhere along the
10 line, brought that to my attention.

11 MR. CHALOS: I move to strike that last
12 answer.

13 MR. COLE: I have no response.

14 THE COURT: I'm going to overrule the
15 objection.

16 (Pause)

17 Q After that, can you give the jury an idea --
18 do you know when the anchor was dropped?

19 A I don't know specifically. I don't know the
20 exact time the anchor went down, no.

21 Q Can you give the jury -- do you remember when
22 the Coast Guard came aboard?

23 A I believe someone -- well, at that time, no.
24 I don't know when they came aboard.

25 Q Do you remember them coming aboard?

1 A I remember them coming aboard, yes.

2 Q Had it happened before then or after?

3 A I think the anchor went down before the Coast
4 Guard arrived.

5 Q And did you meet the Coast Guard when they
6 came aboard?

7 A Yes, I did, sir.

8 Q And where did you meet them at?

9 A I believe I met them on the bridge. I did
10 meet them, but it was in the house somewhere.

11 Q And who did you deal with then with the Coast
12 Guard?

13 A Commander Falkenstein and I.

14 Q Was there any talk about having to abandon the
15 ship at any time?

16 A There was no talk about abandoning it. There
17 was the talk about being prepared as best we
18 could if it became necessary.

19 Q Did you later find out that the forepeak was
20 holed?

21 A Yes.

22 Q What significance was that? Or, would that
23 have been if you had known that?

24 A Well, it would have meant that we -- if the
25 vessel was damaged, we wouldn't even have any

1 reserve buoyancy up there.

2 Q And what would that mean?

3 A That would mean that any margin of safety of
4 having that empty and full of air, buoyant, was
5 removed.

6 Q What would that mean as far as the safety or
7 stability of the vessel, if it had come off the
8 reef?

9 MR. CHALOS: Objection, Your Honor. No
10 foundation.

11 THE COURT: Objection overruled.

12 A Okay. I would really have to put that into
13 the machine, to tell you the truth. I could only
14 make a general assumption that an empty tank will
15 float better than a full tank. But that's as far
16 as I could go without numbers.

17 Q Do you remember speaking with an NTSB
18 investigator about this?

19 A Yes.

20 Q If I showed you a copy of that, would it
21 refresh your recollection of what you would have
22 told him?

23 A Yeah.

24 (Pause)

25 Q Just read that to yourself.

1 A Okay. (Pause) Okay. Unfortunately, I
2 believe, if you read my NTSB testimony, I
3 remember distinctly telling him this so-called
4 summary was totally inaccurate, sir.

5 Q So that right there is not accurate?

6 A Right. The portion about the forepeak had to
7 do with the amount of oil in the forepeak. And
8 that after finding the tape was broken, that
9 changed the amount of oil, because we found the
10 forepeak to be full of oil. That's what the
11 forepeak conversation was about to the best of my
12 knowledge.

13 Q Do you recall what the Exxon policy was as far
14 as alcohol use and possession?

15 A It's not allowed on the ships, and the use is
16 not allowed.

17 Q What were the consequences?

18 A Well, you would suffer disciplinary action,
19 possibly up to termination; being fired.

20 Q And were you aware of any alcohol on board the
21 Exxon Valdez on March 23rd or March 24th?

22 A No, I was not aware of any alcohol at all.

23 Q Were you aware -- you didn't have any and no
24 one else had?

25 A Well, I don't know what anyone else had. I

1 know I didn't.

2 Q To your knowledge, no one else had any?

3 MR. CHALOS: Objection, Your Honor. I think

4 the witness answered the question. I'll withdraw my

5 objection.

6 Q Now, I asked you a couple questions about Mr.

7 Kagan and your evaluation of him. After

8 evaluating him back in 1985, did you make any

9 special notations about the need to supervise

10 him? Do you remember?

11 A I sure don't remember.

12 Q If I showed you a copy of that, would that

13 refresh your recollection?

14 A Yes. Okay. Now, what is it -- oh, read the

15 whole thing. (Pause) Okay.

16 (304)

17 Q Do you remember how long you had an

18 opportunity to observe Mr. Kagan?

19 A No. It looks like June of '85 to July of '85,

20 almost a full month -- over a month.

21 Q And do you remember noting whether or not he

22 needed any special attention?

23 A At that time, yes. I thought he needed

24 special attention in certain areas.

25 Q You indicated that he tended to drift off?

1 MR. CHALOS: Your Honor, I object. I think
2 we're getting far afield here. It's not relevant to
3 what we're talking about in this case. What he might
4 have been evaluated at in 1985.

5 THE COURT: Objection overruled.

6 Q You indicated he tended to drift off, is that
7 correct?

8 A Yes.

9 Q And you indicated, also, that he needs extra
10 supervision, and you underlined that twice?

11 A Yes.

12 Q And that would have been based on your
13 observations of him for about a month?

14 A Yes.

15 Q Would those type of comments have been the
16 things that you had discussed with Captain
17 Hazelwood or the first mates when you talked
18 about him?

19 A No, not necessarily. If I recall, I felt that
20 Mr. Kagan needed extra supervision when assigned
21 a task to go work. If I told him to go paint a
22 bulkhead -- normally you could send a sailor to
23 paint. Mr. Kagan, I'd have to make sure he used
24 the right paint; that he was applying it
25 property; using the right brush, et cetera.

1 voices in that tape?

2 A Yes.

3 Q Would you tell the jury who you recognized on
4 that tape?

5 A Well, there was two voices that came out and
6 that was Captain Hazelwood's and Gregory Cousins'
7 voice.

8 Q In the tape, is it at the beginning or at the
9 end where Mr. Cousins speaks?

10 A It seems like it's more towards the end, if I
11 recall.

12 Q Captain Hazelwood's voice is a distinctive
13 voice.

14 A In the first part, yeah. Right at the end is
15 where Cousins picks up.

16 Q And is that transcript a fair and accurate
17 representation of the tape that you heard?

18 A Yes, it is.

19 MR. COLE: Judge, I would move to play -- move
20 for the admission of what's previously been identified
21 as Plaintiff's Exhibit 79.

22 MR. CHALOS: We object, Your Honor, unless Mr.
23 Cole can show who made this tape, when it was made,
24 what machines were used, whether the machines --
25 whether this is from the original or from a copy, at

1 what speed it was recorded, and who made the recording.
2 We would object to its introduction.

3 THE COURT: Objection overruled. It's
4 admitted.

5 EXHIBIT 79 ADMITTED

6 MR. COLE: Judge, I'd move to play that at
7 this time.

8 THE COURT: All right. You may.

9 MR. COLE: I have a matter I'd like to take up
10 at the bench if defense counsel could...

11 (555)

12 (Whispered bench conference as follows:)

13 MR. COLE: Judge, I have transcribed copies of
14 this so that someone could understand it.

15 THE COURT: You don't have to do that at side
16 bench, you can do it back there. It doesn't have to be
17 made private. You can make that application like any
18 other one.

19 (End of whispered bench conference)

20 (560)

21 MR. COLE: Judge, I have transcribed copies of
22 this, and I would like to distribute those to the jury
23 and counsel.

24 MR. CHALOS: We object, Your Honor. We've
25 looked over the transcription and they are not an

1 accurate copy of the tape. Specifically, the
2 transcripts that Mr. Cole has have included pauses
3 Captain Hazelwood may have made in his transmissions,
4 but they omit pauses and people stumbling over their
5 words of other witnesses. So it's not a fair and
6 accurate transcription, so I would object on that
7 basis.

8 THE COURT: Mr. Cole?

9 MR. COLE: The witnesses have testified -- we
10 had three witnesses come in here and say they've
11 listened to the tape; it's fair an accurate
12 representations. Mr. Blandford, Mr. Taylor, Mr.
13 Kunkel. This is not the best evidence. The evidence,
14 obviously -- it's the court, as the court's instructed
15 juries in the past. This is being offered to assist
16 the jury in listening to the tape and helping them
17 follow it.

18 THE COURT: I'm gonna let the jury look at it,
19 Mr. Chalos.

20 MR. CHALOS: Just one more thing, Your Honor.
21 With respect to Mr. Blandford and Mr. Taylor, as well I
22 take it, as Mr. Kunkel. There was never any questions
23 asked of them, or that are being presented with the
24 actual transcript and being voir dired by me as to
25 whether the pauses of other witnesses were included in

1 the transcript. So for that purpose I would say it's
2 not an accurate transcript.

3 And, Your Honor, insofar as the tape itself...

4 THE COURT: I've ruled on the tape already,
5 Mr. Chalos.

6 Ladies and gentlemen, we're going to give you
7 a copy of what's been described as a transcript. That
8 is not the evidence in this case. The evidence is what
9 you hear on the tape recording. Any differences
10 between what you see in the transcript and what you
11 hear should be resolved in favor of what you hear. You
12 should disregard any differences that show up on the
13 transcript. A transcript is going to be given to you
14 as merely an aid to listen to the tape.

15 Once again, I want to stress that the
16 transcript is not evidence. As soon as the tape is
17 completed you are to return the transcript to the front
18 counter. They will be retrieved by Mr. Cole.

19 Mr. Cole, you may distribute the -- and let's
20 mark one for identification as part of the record.

21 Would you show Mr. Chalos the transcripts?
22 Thumb through them to make sure they're all the same.

23 MR. CHALOS: Your Honor, I would like to bring
24 to the attention of the court one thing. I am not
25 aware that this tape has any times in it, but the

1 transcript lists the times. I don't know where these
2 times come from or whether, in fact, these times are
3 accurate or not. Which is a further reason that I
4 object to this transcript.

5 THE COURT: Mr. Cole.

6 MR. COLE: The times have been testified to by
7 the pilot, by the individuals with the Coast Guard.

8 MR. CHALOS: They haven't testified to all the
9 times, Your Honor. I would ask that if we're going to
10 use this as a transcript, that the times be eliminated.

11 THE COURT: Ladies and gentlemen, disregard
12 the initials which will be on the left hand side. And
13 disregard the times, which will be on the left hand
14 side. They're not in evidence as far as the tape is
15 concerned. You won't hear on the tape, the times and
16 you won't hear these initials. The only thing you will
17 hear are words that might correspond to the words on
18 the transcript.

19 Insofar of any discrepancy between what you
20 hear and what you read, disregard what you read.

21 MR. CHALOS: Your Honor, I would like to make
22 an application in that regard.

23 THE COURT: Mr. Chalos, you have made several
24 applications. I give you an opportunity to object; you
25 make your objection; and I make a ruling. Then you

1 object some more now. You're going to have to get all
2 your reasons in before I make a ruling.

3 MR. CHALOS: Well, may I say...

4 THE COURT: Is this something different now,
5 other than what we've already discussed?

6 MR. CHALOS: I was going to make a suggestion
7 to the court, Your Honor.

8 THE COURT: Okay.

9 MR. CHALOS: Rather than hand to the jury the
10 document that has the times, even though you've
11 instructed them not to look at it, I can't see how --
12 they're not gonna be able to do that, or they won't do
13 it. So my suggestion would have been that perhaps we
14 break for lunch and have Mr. Cole copy this,
15 eliminating the times and the initials. This way we
16 are assured that the jury doesn't look at the times and
17 isn't influenced by the times.

18 THE COURT: Mr. Cole, we're getting close to
19 the lunch hour anyway. I doubt you'll be able to play
20 this tape before we would normally take our lunch hour.
21 So we will take a break. That's a good suggestion.
22 And you will redact the portion of the transcript that
23 has the initials purporting to be who is speaking on
24 the transcript, and also the times. And you'll pass
25 that by Mr. Chalos and by myself, and then we'll take

1 that up when we come back at 1:15.

2 MR. COLE: I...

3 THE COURT: Sir?

4 MR. COLE: I just request that once the jury's
5 dismissed we bring something up.

6 THE COURT: Okay. We'll take a lunch break
7 ladies and gentlemen. We'll let you out now. We'll
8 come back at 1:15. We may be taking a matter up at
9 1:15, we may not, I don't know. But to make sure that
10 we're ready to go, in the event that we don't take a
11 matter up, I would like to have you here at 1:15.

12 Don't discuss this case among yourselves or
13 with any other person. And don't form or express any
14 opinions, and avoid the media as per my earlier
15 instructions. Have a nice lunch. We'll see you back
16 at 1:15.

17 You may step down, Mr. Kunkel. (Pause) Would
18 you close that door, please? Thank you.

19 All right.

20 MR. COLE: Judge, just as an offer of proof,
21 we have had the Coast Guard people testify that the
22 names here, "VTC" correspond with them. That they were
23 on duty from -- Mr. Taylor was on duty up until
24 midnight, and that the VTC in that -- of the transcript
25 corresponds with his voice.

1 I could ask Mr. Kunkel one question -- one or
2 two questions, if "JH" corresponds with Joseph
3 Hazelwood's statement.

4 Mr. Blandford came on and testified that his
5 names -- where it says VTC after 12:00 o'clock, is him.
6 He also testified that -- if I remember correctly, that
7 COTP is Captain of the Port, who he identified as Mr.
8 McCall, testifying with Captain Hazelwood. And I could
9 ask Mr. Kunkel if G. C. is Mr. Cousins.

10 In addition to that, this tape was done by
11 Trooper Fox this past weekend directly off the tape.
12 The tape runs continuously on the bands, as far as the
13 time. And Trooper Fox can testify to this, that it
14 runs continuously. That it's voice activated. In
15 other words, the tape keeps running, but when a voice
16 comes on Channel 13, it automatically picks it up. And
17 that is how they get these times along the left hand
18 side.

19 That is our offer of proof as to leaving the
20 times and the VTC initials that are on here.

21 THE COURT: You may very well have somebody
22 who could testify to that. They haven't so far, and
23 there is no foundation for the time so far. And your
24 offer of proof, while I made in good faith, is not
25 supportive of admitting this transcript with the times

1 alongside of it. We need to have a witness to lay that
2 foundation.

3 And as far as the EV's and the VTC's, I'm
4 still sustaining the objection. That's part of the
5 evidence in this case. It's not a transcript, though.
6 The transcript is not evidence, and you have witnesses
7 who have said this, you can get the witness to say --
8 Mr. Kunkel's here. You can keep him on the stand and
9 you can ask him "When the following words were said,
10 who was that?", things of that nature. But I'm still
11 going to order redaction of this tape.

12 MR. COLE: That's fine.

13 THE COURT: Okay. We'll come back at 1:15.

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

16 (Off record - 11:50 a.m.)

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

18 (925)

19 THE COURT: Thank you. You may be seated.
20 We have before the Court a motion for expedited
21 consideration filed by Mr. Feldman, attorney for
22 Dr. M. A. Peat who is expected to be called this
23 afternoon, who may not be called this afternoon as the
24 way things are going. We're not going as fast as I
25 think we thought we might. However, Mr. Linton is in

1 town and there's a motion for expedited consideration
2 and I've decided we can hear it now.

3 Mr. Feldman is present on behalf of the proposed
4 witness, Michael A. Peat, M.D. as is defense counsel,
5 Mr. Chalos. Mr. Linton is here on behalf of the state;
6 Mr. Cole is also in court, although not sitting at
7 counsel table.

8 Mr. Feldman, is there anything you want to add to
9 your motion?

10 MR. FELDMAN: No. I mean there are some -- it
11 was obviously done in some haste because of the time
12 schedule we're on here and there's probably more to be
13 said. There's probably more to be said. There are
14 some additional regulations that are probably pertinent
15 but not discussed in the brief memo we filed.

16 The point I'd like, I suppose, to make clear is
17 that from the perspective of Dr. Peat, we seek guidance
18 from the Court so that he doesn't run afoul of these
19 regulations. He's here and if the Court determines
20 that it's proper for him to testify and that there is
21 no legal reason why this information should not be
22 obtained from him, then he will of course comply with
23 the court's order.

24 And his principal concern, that of his company,
25 is that he not run afoul of those regulations, that he

1 not abrogate any responsibility he has under the
2 federal law and that he not subject himself or his
3 company to the kinds of claims, I suppose,
4 theoretically could be made if he were to violate the
5 law as established by Congress and the federal agency.
6 That's the reason why we're here.

7 THE COURT: All right. Mr. Madson, on behalf
8 of the defendant, do you want to supplement this
9 argument in any way?

10 MR. MADSON: I do, Your Honor, and to a
11 certain extent, it's fairly difficult and I'll explain
12 why, but I would incorporate the arguments made by Mr.
13 Feldman in his memorandum as far as why the regulations
14 do not permit the disclosure of this information, but
15 more importantly, as the Court will note from my
16 previous motion, I stressed -- the main point of my
17 motion to dismiss was based on not so much -- well, it
18 encompassed and included a violation of federal law by
19 disclosing this material.

20 My feeling was by the time it was at the Coast
21 Guard, that was -- my argument was directed to them and
22 their obligation not to disclose it to state law
23 enforcement officials.

24 Mr. Feldman has since expanded that as far as the
25 private employer is concerned -- the private

1 organization that did the testing and certainly, I
2 would encompass the same arguments he made. However, I
3 think my main point was that we have no business doing
4 this. The state has no business doing this because the
5 federal regulations and federal law has clearly
6 preempted the field.

7 Now, I discussed CFR 95 before where it said the
8 Coast Guard -- in the Coast Guard regulations, it
9 clearly states that it does not preempt -- these
10 regulations do not preempt the state from enforcing DWI
11 laws regarding recreational vessels. They do, however,
12 make it very clear that they preempt the field of
13 commercial navigation. With regard to that -- and
14 here's my problem.

15 I was downstairs earlier, at the law library
16 trying to find Executive Order 12612. The reason for
17 that is in Federal Register, Volume 53, number 224
18 dated November 21, 1988 and that concerns these very
19 rules and regulations that we're talking about. One
20 of the things they have to do is make a determination
21 of what's called federalism. That is, its application
22 with regard to the laws of the states or foreign
23 countries. I think particularly here, it's the laws of
24 the state.

25 And it says, "this regulation," speaking of the

1 drug and alcohol regulation, "has been analyzed in
2 accordance with the principles, criteria contained in
3 Executive Order 12612 and has been determined that the
4 proposed rule making" -- that's this rule -- this is
5 the commentary on it, by the way -- "does not have
6 sufficient federalism implications to warrant the
7 preparation of a federalism assessment."

8 And here's the important part. "The rules affect
9 the safety of vessels in interstate and foreign
10 commerce and are directly related to the qualifications
11 of personnel licensed by the U.S. Coast Guard and their
12 working conditions on vessels. These are expressed
13 statutory responsibilities of the United States Coast
14 Guard and there are no similar state responsibilities
15 or programs in these areas."

16 Again, it's emphasis on the preemption in this
17 particular field. As I stated, I cannot find this
18 order. I would very much like to do that and I would
19 urge the Court to wait and see if this order says what
20 I think it does but I honestly don't know until I see
21 it.

22 My guess would be in the context of this
23 commentary is that it would be setting forth sufficient
24 reasons to preempt or not preempt state law or
25 conflicting law in the field, but what has been stated,

1 and again it's in Title 95 and I don't remember the
2 exact title CFR -- 33 CFR, rather, 95.05 or some --
3 .04. That's where the Coast Guard very distinctly
4 said these regulations preempt the field except for
5 recreational vessels.

6 And again, I made that argument before and I just
7 want to again try to emphasize why my position is that
8 this drug or alcohol information should not be
9 disclosed because simply the state has no business
10 regulating it. Thank you.

11 THE COURT: Thank you. Mr. Linton.

12 (1236)

13 MR. LINTON: Judge, since Your Honor has
14 previously ruled on the preemption point, I'll address
15 myself to the statutory and regulatory objections
16 raised by Mr. Feldman.

17 First, Judge, Dr. Peat has already testified to
18 these things in a public forum before the National
19 Transportation Safety Board. I have a copy of his
20 testimony that I would ask be marked as an exhibit so
21 we can have it clear that he has before testified to
22 the blood test results of the test of Captain Hazelwood
23 specifically, and in fact, went beyond that -- beyond
24 simply testifying to the test results but went so far
25 as to project that at the time of the grounding, the

1 blood alcohol level would have been .22 rather than the
2 .06 that was tested. So his testimony has already
3 been a matter of public record in the public form. If
4 there's some privacy regulation which the defense
5 claims meant that this shouldn't have been public at
6 all, it is already in the public forum.

7 Secondly, this is not that complicated an issue.
8 This is what happens all the time to hospitals who have
9 drivers who are involved in -- drunk drivers who are
10 involved in collisions. They're taken to a hospital.
11 They're treated medically. In the course of medical
12 treatment, they draw blood alcohol to try to figure out
13 whether the wooziness that they see is a function of a
14 bump on the head or the function of intoxication. If
15 it's a bump on the head, then it may need medical
16 treatment. If it's intoxication, it may not.

17 And so hospitals draw and make such samples and
18 when it comes time for the state to prosecute them
19 whether it's for driving while intoxicated or
20 manslaughter, the state subpoenas the records of that
21 individual at the hospital. The defendant then on
22 trial whose blood alcohol was taken by the hospital has
23 standing to object to the admission of the results, but
24 the hospital, itself, has no particular interest in the
25 privacy rights of the defendant. And that's true of

1 Dr. Peat and his laboratory here.

2 They have no particular privacy interest. In
3 Captain Hazelwood's records, it's his interests or
4 perhaps the Coast Guard's interests since they were the
5 ones that sent the test results there.

6 With those general remarks, let me address myself
7 to the specific regulations. Let me start with the
8 regulations applying to vessel operation.

9 In the argument that we've had before in the
10 admissibility of records, if I might approach the board
11 here, Judge, there is in 33 CFR Section 95.035 a
12 provision which reads this way. "Only a law
13 enforcement officer or a marine employer may direct an
14 individual operating the vehicle to undergo a chemical
15 test when reasonable cause exists. Reasonable cause
16 exists when the individual is directly involved in the
17 occurrence of a marine casualty incident as defined" et
18 cetera, et cetera.

19 So in 33 CFR, there's authority for both a law
20 enforcement officer and a marine employer to draw blood
21 samples. When the record is before Your Honor, Your
22 Honor can conclude that this was drawn by a law
23 enforcement officer. Actually a law enforcement
24 officer is defined in part 95 to include a U.S. Coast
25 Guard commissioned warrant or petty officer and Chief

1 Warrant Officer Delozier is the one who directed the
2 test.

3 So this was actually a test drawn by a law
4 enforcement officer, not by a marine employer. A
5 marine employer means the owner, the managing operator,
6 charterer, agent or master or a person in charge of a
7 vessel other than a recreational vessel and under these
8 acts, Exxon Shipping Company, Captain Hazelwood would
9 be a marine employer who drew the sample. But CWO
10 Delozier was not a marine employer.

11 Now the Coast Guard -- let me talk about the
12 scheme of regulations of marine employer testing
13 because that's the emphasis of the memorandum submitted
14 by Dr. Peat. And let me show you why that doesn't
15 apply.

16 As set forth in the memorandum by Dr. Peat in
17 enacting the regulations, the Coast Guard recognizes
18 there's going to be a lot of things that happen --
19 marine casualties that happen that they're not going to
20 be able to get to. There's just so many people -- so
21 many more of those than there are people in the Coast
22 Guard to get to them.

23 So the Coast Guard decided to impose by
24 regulation a requirement that marine employers take
25 blood samples for drug testing purposes under a number

1 of circumstances. The way they chose to define it in
2 46 CFR, Section 4.06 is they chose to say if it's a
3 serious marine incident, then the employer is obliged
4 to take the test if he wants. Now, of course, I'm just
5 going to go down this track to show you that even if
6 Exxon Shipping Company had done this, they would have
7 been required to report it to the Coast Guard and we
8 would have gotten to the same place as we are today,
9 even if it had been a marine employer.

10 Actually when the Coast Guard enacted the
11 regulations, they required the marine employer to do a
12 number of things. They required the marine employer to
13 take such samples when there was a serious marine
14 incident but also in the regulation book, part 16,
15 required them to set up pre-employment drug testing,
16 periodic testing while employees were -- while
17 employees were working and random testing. It was all
18 a part of the regulatory scheme.

19 In fact, the pre-employment testing didn't come
20 into effect for large employers until June 1st, 1989,
21 after Captain Hazelwood's matter and for smaller
22 employers, not until December 21st, 1989 and -- but
23 we're not talking about pre-employment or periodic
24 testing or random testing directly. I'll get to them
25 in just a second.

1 Let me focus on the serious marine incident.
2 Judge, I have a copy of each of these regulations, 33
3 CFR 95.035 and I'm handing a copy to Mr. Feldman here
4 in which you can follow along.

5 (Pause)

6 Judge, I also have copies of part 4 of 46 CFR.
7 This is the section that we've talked about before.
8 This is the section which required Captain Hazelwood to
9 report a marine casualty and you notice that as it
10 existed at the time, there was a 4.05 and then it
11 skipped to a 4.07 in the existing regs. Well, in the
12 amendments that Mr. Feldman talks about, they created a
13 4.06 and the 4.06 then would fall in between this Coast
14 Guard investigation and -- the stages of the Coast
15 Guard investigation. And what it does is imposes upon
16 the marine employer when there is a serious marine
17 incident an obligation to test.

18 And it defines marine casualty -- well, it
19 defines the circumstances which constitute a serious
20 marine incident. One is a marine casualty plus death
21 or injury to a person or \$100,000 of damage but most
22 importantly in subsection B, discharge of oil of 100
23 -- 10,000 gallons or more is a serious marine incident.
24 If you follow that along, you'll see that ultimately in
25 4.06-60, the employer is required or the testing

1 laboratory is required to submit the tests to a medical
2 review officer. The medical review officer, an
3 employee of the employer, then is required to submit
4 that test to the Coast Guard.

5 Strangely enough, even in these other cases, the
6 marine employer can be required to submit the test to
7 the Coast Guard under the regulation. That is, even
8 under these pre-employment tests, periodic testing,
9 random testing, in 16.380, the regulation provides that
10 an employer shall not release the results of these
11 random tests or these periodic tests or these pre-
12 employment tests except pursuant to 4.06.60. That is,
13 when there has been a marine casualty and there is a
14 need to know that kind of information.

15 So what you have, Judge, are two different things
16 going on here. There is authority for the Coast Guard
17 in its function as an investigating agency to draw
18 blood samples and have them tested and get the results,
19 so they can use them in prosecutions of persons for
20 license actions or for criminal offenses. There is
21 also authority for marine employers to get those in
22 certain circumstances.

23 This case happens to correspond to one of those
24 certain circumstances and even if this blood test had
25 been taken by Exxon employees, the lab would have been

1 required to submit it to the employer and the employer
2 to the U.S. Coast Guard. So we're in a situation where
3 either the Coast Guard would have had authority to give
4 it to the state or via the employer, the Coast Guard
5 would have gotten it and then have authority and then
6 give it to the state.

7 So it's clear that having given them to the
8 state, the Coast Guard has no objection to the use of
9 them. The only person left who has any legitimate --
10 any grounds of legitimate standing to say he objects to
11 them would be Captain Hazelwood and it's evidence that
12 would be admissible against him and in evidence at
13 trial and therefore, he has no privacy interests under
14 these circumstances.

15 This wasn't a random test. This wasn't pre-
16 employment test. Then he might have had such rights
17 had he not have been involved in a marine casualty or
18 serious marine incident, but he was and by virtue of
19 having been involved in it, he doesn't have any privacy
20 interests any more.

21 There are citations by Dr. Peat to certain
22 provisions of the United States Code. There's a
23 citation to 5 USC, Section 73.01. Five USC, Section
24 73.01 reads this way. "The President may prescribe
25 regulations for the conduct of employees in the

1 executive branch." Let me show you. The quotation
2 that you see in the memorandum is not actually a
3 quotation of 5 USC, Section 73.01. Five USC, Section
4 73.01 simply says the President can prescribe regs for
5 the executive branch -- regs for employee conduct in
6 the executive branch.

7 Now, the provision that is actually quoted in the
8 brief there comes from a statute passed by Congress and
9 the language appears in the packet I've handed you.

10 UNIDENTIFIED: I'm missing page 45.

11 MR. LINTON: Okay.

12 THE COURT: You're missing 45? So am I.
13 Looks like it's probably definition term -- definition
14 section.

15 MR. LINTON: The part that's quoted in the
16 -- appears on -- actually what came from the pocket
17 parts is the last page of the documents I just handed
18 you. It appears on page 133 in the lower right hand
19 corner of the very last page. The quotation comes
20 from a statute which actually starts getting quoted
21 about two pages back.

22 There was a bill passed by Congress to make funds
23 available, it says, pursuant to Executive Order Number
24 15. 5-- excuse me, Number 12564. That was the
25 Executive Order enacted pursuant or to -- it may have

1 proceeded but it was an Executive Order designed to
2 implement the authority of the President to regulate
3 the conduct of the employees of the federal branch.

4 And in this bill funding that kind of thing, on
5 the very last page is the language quoted by Dr. Peat
6 in his memorandum, subsection E. "The results of a
7 drug test of a federal employee may not be disclosed
8 without prior written consent of such employee unless
9 this disclosure" abba dabba dabba dabba. And so it's
10 clear that what language he's picking on is the
11 language from regulations having to do with drug
12 testing of federal employees, not someone in Captain
13 Hazelwood's condition.

14 Now, these are relevant in one sense. That is,
15 such regulations are relevant in one sense, but only a
16 very limited sense. When the Coast Guard went to enact
17 regulations that would tell employers how to conduct
18 these tests, they refer to some other things. That
19 is, they refer to some other tests. That is, they
20 refer to the testing procedures that are prescribed for
21 federal employees and you can see in the preamble of
22 the regulations that the Coast Guard chose not to
23 impose all those on employers, marine employers, who
24 were engaging in drug testing under the regulations
25 that they prescribed.

1 In the summary section, the very first page of 53
2 Federal Register, 47002. "The Department of
3 Transportation is adopting a modification of the
4 Department of Health and" Social Services -- excuse me,
5 "Health and Human Services mandatory guidelines for
6 federal work place programs. The purpose of the
7 modification is to adapt the procedures and safeguards
8 developed by the Department of Health and Human
9 Services more closely to the circumstances of drug
10 testing programs in industries regulated by the
11 Department of Transportation."

12 So the answer is yes, there is some relationship
13 in that when the Department of Transportation went to
14 prescribe work place regulations, drug testing
15 regulations for marine employers, they used ones like
16 those for federal employees but they're different.

17 Now, these do contain provisions which, if you
18 look at them, they say oh, you shouldn't tell anybody
19 about the results. For example, on page 47012 of the
20 Federal Register, in Section 40.33, up in the upper
21 right hand corner, it says "recording and review of
22 results that have come from employer testing. Medical
23 Review Officer's Responsibilities. Positive Test
24 Results." It's actually in Section 40.35,
25 "Protection of Employee Records." "Employee contracts

1 with laboratories shall require the laboratory maintain
2 employee test records in confidence as provided in DOT
3 agency regulations."

4 So this being one of the code of federal
5 regulations cited by Dr. Peat in his memorandum simply
6 refers you to other Department of Transportation
7 regulations for the disclosure of those things and
8 there is express authority in 4.06.60 for a laboratory
9 like this to report it to a medical review officer.
10 The medical review officer to report it to employee and
11 employee right to the Coast Guard. So even if it
12 happened to have been Exxon Shipping that ordered this,
13 we'd be right in the same position.

14 But basically, Judge, it's just not -- Dr. Peat
15 is in no different position than any hospital who
16 treats someone who is subsequently criminally
17 prosecuted for an offense which involves intoxication
18 and when appropriately subpoenaed, should come before
19 the court and give the test results.

20 THE COURT: Mr. Feldman.

21 (2129)

22 MR. FELDMAN: I don't think that I agree with
23 Mr. Linton's analysis of the interplay of these
24 regulations and I'll just sort of briefly touch on the
25 points he raised and tell you why.

1 First of all, the overall thrust of what Mr.
2 Linton, I think, argues to the Court is that because
3 these regulations contemplate that disclosure is going
4 to be made to some people or some agency or some
5 authorities for some purposes under some circumstances,
6 then necessarily what the regulations envision is that
7 everything will be disclosed to everybody under all
8 circumstances and one does obviously not logically
9 follow -- the second doesn't logically follow from the
10 first.

11 The regulations were obviously enacted or adopted
12 to fulfill the Congressional intent that this type of
13 testing occur specifically in marine casualty
14 occasions. So that a variety of public, you know,
15 policy or goals could be fulfilled. Nowhere in any of
16 these regulations or statutes does it suggest or imply
17 or even hint that criminal prosecution is one of those
18 goals or policies. In fact to the contrary.

19 There are other goals and policies that are
20 mentioned and criminal prosecution is not mentioned at
21 all except to the extent that the notion or the
22 possibility of disclosure to law enforcement agencies
23 was explicitly mentioned or raised as an issue in the
24 earlier drafts of the regulations and excluded from the
25 final regulations, so one would logically think that

1 the -- or conclude that the exclusion of that type of
2 disclosure from the final regulation's enactment by the
3 agencies is indicative of what the agencies intended to
4 do here.

5 I think that Mr. Linton has missed the boat with
6 respect to the sequence of the adoption of these
7 regulations and how they relate to each other. What
8 happened first was the National Institute of Drug
9 Abuse, NIDA which is a commissioned type organization
10 operating under Department of Health and Human Services
11 -- is that what it is now? Now, that Education is
12 out. And they adopted the first drug testing
13 regulation which Mr. Linton has referred to which I
14 believe are 49 of the CFR and then when the Coast Guard
15 got around to enacting additional regulations
16 thereafter and it's clear that the Coast Guard
17 regulations are intended to apply not only to federal
18 employees and such but to a whole hosts of categories
19 of private individuals who could be involved in marine
20 casualties such as, I suppose, Captain Hazelwood.

21 And when the Coast Guard adopted those
22 provisions, it's absolutely clear that it enacted those
23 provisions and adopted by reference or made reference
24 to and enacted the companion regulations that had
25 previously been enacted by NIDA in Title 49 of the Code

1 of Federal Regulations. And it seems inconceivable but
2 that the conclusion has to be that in doing so, the
3 Coast Guard meant to include in the federal employee
4 category or to afford the same protections as were
5 afforded federal employees in the NIDA regulations in
6 49 CFR to a category of private individuals who would
7 fall within the Coast Guard regulations.

8 And if that weren't obvious just by reading the
9 regulations and seeing what they say, you know, I would
10 invite Mr. Linton to show where it is in the
11 regulations that says that that proposition is not
12 correct. Where does it say that federal -- that
13 private individuals are not treated like federal
14 employees for that purpose.

15 Certainly the regulations make specific reference
16 to the fact that the procedures set out in the NIDA
17 regulations and 49 CFR apply to the testing procedures
18 or testing programs that are pursued pursuant to the
19 Coast Guard regulations.

20 So I think there's a leap there made by the state
21 in terms of the interplay of these regulations and how
22 somehow this category of private individuals falls
23 outside the regulations, but I don't think it's borne
24 out by the language of the regulations itself.

25 Let me just touch on this business of whether the

1 testing is made by employer or by the Coast Guard.
2 Clearly, the regulations contemplate that employer
3 testing, the results of employer testing are to go to
4 the Coast Guard. In fact the regulations identify a
5 specific U.S. Coast Guard form that is to be completed
6 by the employer and submitted in the aftermath of drug
7 testing following a marine casualty.

8 So there's no question but that the information
9 will go to the Coast Guard. That doesn't tell us very
10 much about what happens to that information after it's
11 disclosed to the Coast Guard or what further use may be
12 made of it and what the Coast Guard can do with it.
13 And there's certainly no indication in the regulations
14 that upon disclosure to the Coast Guard that it
15 thereafter becomes useable for a whole host of other
16 purposes and in fact, the regulations are rather
17 tightly drawn to prevent widespread use of those -- of
18 that information.

19 But in any event, one has to ask the question
20 what is the difference between what has occurred here
21 in a setting in which the Coast Guard apparently
22 ordered the test to occur versus what would have
23 occurred had, in fact, the test been ordered or
24 performed by the employer directly and then the
25 information provided to the Coast Guard pursuant to the

1 form which the regulations specifically require.

2 And the answer, it appears to me, that there
3 really isn't any difference. I mean the reality is a
4 marine casualty occurred; a test was performed and the
5 results were made known to the Coast Guard. All that,
6 I assume, is not in dispute.

7 And so whether the test was initiated in the
8 first instance by the employer directly by the Coast
9 Guard would not seem to tell us very much about the
10 extent to which that information is or is not available
11 under these regulations. I think it misposes the
12 question -- misraises the issue to suggest that this is
13 already public information and therefore, why are we
14 here at all.

15 The question isn't whether it's been disclosed
16 in some other setting because clearly the regulations
17 contemplate that this information is going to be
18 disclosed in some settings for some purposes. It's not
19 a question of whether it's been used or made known to
20 someone like the NTSB for example or even the public at
21 large.

22 The question is what use can be made of this
23 information and at least, as pertains to my client, the
24 question that I'm concerned with is what authority does
25 my client have to disclose information or what

1 provisions of law exist that precludes my client from
2 disclosing that information. And my client has no
3 direct interest or outcome -- interest in the outcome
4 of this case obviously and I feel like I'm here mostly
5 as an amicus to the court, just to alert the court to
6 these concerns and have the issue ruled on.

7 But I think it's a more delicate balance that's
8 being struck here than the state's argument would
9 suggest. I don't think the hospital analogy is very
10 helpful. Hospitals are not subject to this kind of
11 federal regulations, so the fact that hospitals collect
12 this information and thereby, have to give it up under
13 certain circumstances doesn't tell us very much. If
14 regulations like these existed, I assume that the
15 hospitals would have the same problems that my client
16 has under these circumstances.

17 THE COURT: Well, under your theory is there
18 any authority to release it to the NTSB?

19 MR. FELDMAN: Well, yeah -- this gets in an
20 area where my knowledge is a little bit fuzzy because
21 there is, as I recall and there may be someone who
22 knows more about this than I do in this room perhaps;
23 I'm not sure -- but as I recall there was at some point
24 in time an issue that arose concerning whether it was
25 the NTSB or the Coast Guard that actually owned these

1 samples or had custody of the samples.

2 The chain of custody, as I recall, was not
3 entirely clear as to whether the samples had come to
4 the laboratory via the NTSB or via the Coast Guard.
5 And in any event, it's clear that this information is
6 useable for certain transportation or Department of
7 Transportation related purposes so I'm not sure that I
8 could shed a lot of light on the NTSB use of it except
9 that I think there are some facts that would shape the
10 impressions of that issue that I don't have and I'm not
11 sure who else may have them at the present time.

12 THE COURT: Mr. Madson.

13 (2548)

14 MR. MADSON: Yes, Your Honor. I do have a
15 comment or two.

16 First of all with regard to the NTSB, I think the
17 Court has to understand that the purpose of that
18 particular forum was not to prosecute. It was simply
19 to find a cause of an accident and to assist in
20 preventing any marine disasters in the future. So
21 there's a difference in how these samples were used,
22 assuming that it was used and it was obtained lawfully
23 for that particular hearing.

24 I think more importantly though -- and by the way
25 on that subject, Mr. Linton raised a question -- in

1 fact, said "well, this was a law enforcement officer
2 that took the sample and not a marine employer." Your
3 Honor does not have the testimony of Coast Guard
4 Officer Delozier and I don't have it with me either,
5 but my recollection of his testimony -- and he was
6 asked the question "by what authority did you take this
7 sample." He frankly didn't know.

8 He at first I think indicated he was doing it as
9 an agent of the employer and in fact I believe
10 Commander Waldron, the Coast Guard commander, asked him
11 about these very regulations and asked him if he was
12 familiar with them and he said no. He'd seen them
13 come across his desk but he just thought he had the
14 authority. But at one point in time he did stress that
15 he thought he was acting for the employer. If the
16 Court feels that that is important and I think it is,
17 it may bear directly on this question that Mr. Linton
18 has raised, we could certainly obtain a copy of that
19 and again, I'm only speaking from my memory of this and
20 I hesitate to do it but that is my recollection that
21 there was some real question as to what authority he
22 thought he had and how -- what he was acting under. If
23 that makes any difference.

24 But for my purposes, if Mr. Linton is correct in
25 everything he said and I'm certainly not conceding that

1 he is, but assuming that to be the case, what the state
2 is doing here under Title 33, part 95 of the
3 regulations, Vessel Operating Regulations this is
4 called, they're picking and choosing. They're saying
5 "well, this applies but this doesn't apply; this
6 applies but this doesn't." As the Court heard the
7 other day, "well, there's a .04 figure under these
8 regulations, we want to use that." I guess maybe
9 they'll be able to use that, but this other part of
10 disclosure well, we don't think that applies, so you
11 don't use that. But looking at it in the context of
12 the overall regulations, Your Honor, I would urge the
13 Court and I have the proper cites here now, 33.95.001
14 under "Purpose"; 95.005 under "Applicability" and
15 95.025 "Adoption of State Standards".

16 Even if the state's argument is accepted 100%, it
17 would require them to confine their law enforcement
18 activities to recreational vessels because it says,
19 this part does not preempt enforcement by a state of
20 its applicable laws and that's what we're here -- I
21 don't believe we're under any particular Coast Guard or
22 federal law violation. It's concerning operating a
23 recreational vessel while intoxicated. Again, under
24 adoption of state standards, the same language is used.
25 It says "this section." Now, that's state's standards

1 applies to recreational vessels on waters within the
2 state, et cetera, et cetera. I just don't know how we
3 can just ignore the fact that this isn't a recreational
4 vessel and they have simply no business doing this.

5 (2770)

6 THE COURT: Mr. Madson, I've ruled on the
7 preemption argument already. That's been ruled adverse
8 to your interests and the Court of Appeals refused to
9 take it on the petition to review. I see no reason to
10 change my ruling on the preemption argument which
11 you've been making again.

12 The release of this information is going to be
13 ordered by this Court at this time. Dr. Peat will be
14 ordered to testify. I've concluded looking at the
15 documents and I was prepared before we came in here
16 that this was in my opinion taken by a law enforcement
17 officer, even if it was an employer required test,
18 release under the circumstances that exist in this case
19 is authorized by law. There's no right of
20 confidentiality Captain Hazelwood has in this case
21 under these circumstances, so Dr. Peat will be ordered
22 to testify. And your presence is no longer required,
23 Mr. Feldman.

24 MR. FELDMAN: Could I just inquire as to what
25 the schedule is with regard to Mr. Peat's testimony,

1 when he'll be needed?

2 THE COURT: Mr. Cole, are we going to be able
3 to get to Dr. Peat today?

4 MR. COLE: I just am not sure yet.

5 THE COURT: Why don't you, through Ms. Henry
6 or some other representative keep in touch with Mr.
7 Feldman so he can be made available on short notice.
8 Is Dr. Peat present in court?

9 DR. PEAT: Yes.

10 THE COURT: Okay. Did you understand the
11 order, sir?

12 DR. PEAT: Yes, I did.

13 THE COURT: Okay. Thank you sir. Are you
14 ready with the jury now? Let's get the jury in and
15 if we can round up Mr. Kunkel.

16 (2877)

17 MR. COLE: Judge, we have to do one thing
18 before the jury comes in.

19 THE COURT: Scott. The court is still in
20 session, ladies and gentlemen. Thank you.

21 Yes, Mr. Cole?

22 MR. COLE: I want to make sure that there's no
23 confusion about what we're about to do. The transcript
24 that I had deleted, which is by the court's order, was
25 done. The transcript begins where this tape is set.

1 Now, there is information that is on the tape
2 from when the ship left the dock in Valdez prior to
3 this, but we did not intend to play that. That was
4 testified about by Mr. Taylor. But the transcript that
5 I have that I offered for the jury, begins with the
6 part that we expected to play for the jury, because I
7 didn't feel that the court would want to have a
8 transcript of something that wasn't going to be played.

9 THE COURT: Okay. It's my understanding, and
10 maybe I'm incorrect, that the transcript, where it
11 starts out, "Yeah. Valdez Traffic, Exxon Valdez,
12 over." That is what we're going to hear, the very
13 first thing on the tape. And the tape and the
14 transcript are going to correspond exactly throughout.
15 And then when you come to the end of the transcript
16 that will be the end of the tape, or visa versa?

17 MR. COLE: That's correct.

18 THE COURT: And you redacted the first two
19 columns in the transcript, is that correct?

20 MR. COLE: Yeah. Ms. Henry had it.

21 THE COURT: I have a non-redacted copy here.
22 So we'll mark that for identification, and we will also
23 mark the redacted copy for identification, also. Make
24 it part of the record. But they won't -- either one of
25 them will not go to the jury as evidence, and only the

1 redacted portion will go during the playback.

2 Mark this as court's exhibit. Is that a
3 redacted copy? Thank you.

4 We'll let you go ahead and put that up there
5 on the bench. Is there anything else we need to do
6 before we get the jury?

7 (Side conversation - testing recorder)

8 All right. Let's bring the jury in now,
9 Scott.

10 (Jury present)

11 (3115)

12 THE COURT: You'll notice in front of you
13 there's a stack of transcripts. If you pass that
14 around so everybody has one. If you don't get one,
15 raise your hand after a minute or so here. (Pause)
16 All right. Everybody has one now.

17 You may resume.

18 MR. COLE: Judge, I would request to play the
19 tape.

20 THE COURT: Yes, sir.

21 (3200)

22 (Tape played)

23 (4200)

24 (Tape: C-3622)

25 (000)

1 (Tape played)
2 (0030)
3 Q (Mr. Kunkel by Mr. Cole:) Mr. Kunkel, the
4 last exchange on the tape, do you recognize who
5 that crew member of the Exxon Valdez was?
6 A To the best of my knowledge, it sounded like
7 Greg Cousins.
8 Q I'm showing you -- you have in front of you
9 what's been marked for identification as
10 Plaintiff's Exhibit number 14. Do you recognize
11 that?
12 A Looks like a copy of the bridge organization
13 manual. It's issued by Exxon Shipping Company.
14 Q Is that carried on every ship...
15 A Yes.
16 Q ...all the tankers?
17 A Yes, it is.
18 Q To the best of your knowledge, is that a fair
19 and accurate copy of the bridge manual?
20 A Well, just by rifling through, yes, I'd say it
21 looks like one.
22 Q And did you sign this copy of this manual?
23 A Yes, I did.
24 Q And when would that have been?
25 A Looks like on 10/10/88, I said that I certify

1 that I read and understood the contents of this
2 manual, including amendments and revisions.

3 MR. COLE: I would move for the admission of
4 what's previously been identified as Plaintiff's
5 Exhibit number 14.

6 MR. CHALOS: Your Honor, we object to the
7 admission of this document without a foundation. We
8 don't know what it's being offered for. These are just
9 company guidelines.

10 THE COURT: I'm going to admit it. Your
11 objection is foundation. I admit there's some
12 relevance to that but I'm assuming that Mr. Cole is
13 going to tie it up here.

14 MR. CHALOS: Well, that was the second part of
15 my objection. We don't know what the relevance of this
16 document would be to what Captain Hazelwood is charged
17 with.

18 THE COURT: Are you going to tie this up
19 somehow?

20 MR. COLE: We've already discussed it as far
21 as the watch, Your Honor, with Mr. Cousins and I do
22 plan on tying it up.

23 THE COURT: Objection overruled.

24 MR. CHALOS: Your Honor, I would also add to
25 the record that Captain Hazelwood's signature does not

1 appear on the signature page.

2 THE COURT: You may proceed, Mr. Cole.

3 Disregard the last comment by Mr. Chalos, ladies and

4 gentlemen.

5 Q (Mr. Kunkel by Mr. Cole:) Is that a manual

6 that a master of a tanker ought to be familiar

7 with before he steps on board his tanker?

8 MR. CHALOS: Objection, Your Honor.

9 Q That manual?

10 MR. CHALOS: Foundation and relevancy.

11 MR. COLE: I'll withdraw it,.

12 Q Are masters required to read that manual also?

13 A It's my understanding that all deck officers

14 are required to read this manual.

15 Q And be familiar with it?

16 A And be familiar with its provisions.

17 MR. COLE: I have nothing further, Your Honor.

18 THE COURT: Mr. Chalos will have some

19 questions for you now.

20 (0179)

21 CROSS EXAMINATION OF MR. KUNKEL

22 BY MR. CHALOS:

23 Q Good afternoon, Mr. Kunkel. You're a King's

24 Point graduate, are you not?

25 A Yes, sir, I am.

1 Q King's Point is the United States Merchant
2 Marine Academy?
3 A Yes, sir.
4 Q It's a federal academy like West Point and
5 Annapolis?
6 A Yes, sir.
7 Q Now, you said that you worked for the Corps of
8 Engineers for a period of time?
9 A Yes, I did.
10 Q And what did you do for the Corps of
11 Engineers?
12 A On there, I was a third mate on what they call
13 a seagoing hopper dredge.
14 Q Was that involved just in dredging or in
15 salvage operations as well?
16 A Strictly in dredging.
17 Q You also worked for the Coast Guard?
18 A I did a tour of three years with the Coast
19 Guard, yes.
20 Q What did you do for the Coast Guard?
21 A I was called a marine inspector. The duties
22 were divided up in licensing, investigation and
23 in inspection.
24 Q Was that the Marine Safety Office in New
25 Orleans?

1 A At that time, it was called the Marine
2 Inspection Office, MIO. I think now they call it
3 MSO, but I have no idea how their infrastructure
4 has changed.

5 Q Were you involved in any casualty
6 investigations?

7 A To the best of my knowledge, the only thing I
8 investigated was a grounding of a vessel in the
9 Mississippi River, but that really wasn't a -- I
10 don't know if that would be considered an
11 investigation because I went up there and made a
12 report and turned it into an investigator.

13 I was an inspector at the time and I was told
14 to go up there to see if there was any damage or
15 any problems and then to get a statement from the
16 captain and give that to a formal investigator.
17 My investigation in the Coast Guard was mainly
18 concerned with enforcement of Coast Guard
19 regulations.

20 Q Now, you hold a master's license, do you not?

21 A Yes, I do.

22 Q But you've never sailed as a master?

23 A No, I have never sailed.

24 Q Is it a fair statement to say that a master of
25 a vessel is, in addition to being in overall

1 charge, an administrator on the vessel?
2 A Yes, he is.
3 Q Would you -- would he be akin to the chief
4 executive officer of a company?
5 A Yes.
6 MR. COLE: Objection. Foundation.
7 THE COURT: Objection is overruled. You had
8 plenty of time to make it, Mr. Cole.
9 Q In your experience, a master has a lot of
10 paperwork to do as part of his job, does he not?
11 A Yes, sir.
12 Q It's also your experience, is it not, that
13 masters delegate a lot of the duties that they
14 have to their mates...
15 A Yes.
16 Q ...the chief mate, the second mate, the third
17 mate, the chief engineer?
18 A Yes.
19 Q Now, these particular mates, the deck mates if
20 you will, are all licensed by the Coast Guard,
21 are they not?
22 A Yes, they are.
23 Q They had to take tests to qualify?
24 A Yes.
25 Q And they had to serve for a period of time

1 when they want to move their licenses up, let's
2 say from a third mate to a second mate?
3 A Yes, sir.
4 Q And have to exhibit a certain proficiency in
5 various matters?
6 A Yes.
7 Q Including navigation?
8 A Yes.
9 Q And the ability to read charts?
10 A Yes.
11 Q The ability to handle the radar?
12 A Yes.
13 Q To be able to plot?
14 A Yes.
15 Q To be able to identify targets on the radar?
16 A You'll have to make me understand what you
17 mean by identify the target.
18 Q Well, have you taken your radar observer test?
19 A Yeah. I mean if you're telling me identify
20 what the target is doing, yes. As to what the
21 target actually is, just on the radar, of course
22 not.
23 Q Yes, I mean what the target is doing.
24 A Yes.
25 Q Now, your job as a chief mate of the Exxon

1 Valdez was both navigation while at sea...

2 A Yes.

3 Q ...and handling the cargo, loading and
4 discharging in port. Am I correct?

5 A That's correct.

6 Q Incidentally, were you in a position where you
7 were intended to be an executive officer of the
8 deck department?

9 MR. COLE: Objection. Foundation.

10 Q Are you the second ranking officer in the deck
11 department besides the master?

12 A Am I...

13 THE COURT: Well, that's another question.

14 MR. CHALOS: Let me withdraw the first one,
15 Your Honor, and ask him the second.

16 THE COURT: Okay.

17 Q Are you the second highest ranking officer in
18 the deck department?

19 A I am the highest ranking officer in the deck
20 department.

21 Q Now, in carrying out your duties of cargo
22 handling, I believe you said your usual position
23 is in the cargo control room. Is that correct?

24 A That's correct.

25 Q But you do leave the cargo control room from

1 time to time?

2 A Yes.

3 Q When you leave the cargo control room during
4 cargo operations, you generally leave one of the
5 other mates behind?

6 A Yes.

7 Q You give them instructions as to what you want
8 to do?

9 A Yes.

10 Q And you expect them to carry it out?

11 A That's correct.

12 Q And sometimes, there are pumpmen in there as
13 well. Is that right?

14 A Yes, there is.

15 Q And if you left the mate and a pumpman in the
16 cargo control room during cargo operation, you
17 would expect the mate to keep an eye on the
18 pumpman, I take it?

19 A Yes.

20 Q You know you spoke about the Exxon Valdez
21 being a three-mate ship. In your experience,
22 has the number of crew members been reduced in
23 recent years on Exxon vessels?

24 A Yes, they have.

25 Q How has that reduction affected the job that

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you do?

A It depends. Now, if we were a four-mate ship, I would not stand a watch and that would mean that I could dedicate my whole time, my workday, to the maintenance of the vessel and the administration of the vessel whereas now, I stand a watch. That means eight hours of my day is used up being on the bridge as a navigating officer. To do that job properly, you shouldn't be involved in too many other duties. And that would be the difference in that.

Q Now, as a result of that, does the captain have to take on more of the administrative duties that you might be doing on a four-man ship -- four-mate ship?

A Well, I'm really not in a position to answer that because I really don't -- I don't have an idea of what the master would have been doing when it was four mates. In other words, I went almost straight to three mates.

(0500)

Q Fair enough. Now, let's talk about the watch that you stand at sea. You stand a 4 to 8 watch?

A On the Valdez, I stood the 4 to 8 watch.

1 Q And you mentioned that -- you gave us a list
2 of your duties. Can you tell us what your
3 navigational duties are?
4 A When on the watch?
5 Q Yes.
6 A Okay. Basically, to maintain a position of
7 the vessel.
8 Q How do you do that?
9 A Either electronically with Loran or satellite
10 or during the day, celestial. I could use the
11 sun, stars.
12 Q That's when you're out at sea?
13 A Out at sea. Right.
14 Q How about if you're in a place like Prince
15 William Sound?
16 A Well, there you would be relying heavily on
17 visual bearings, radar ranges and bearings.
18 Q Is it a difficult process to take a bearing or
19 to take a fix, let's say, in Prince William
20 Sound?
21 A No, sir.
22 Q It's just a matter of taking a range and a
23 bearing, isn't it?
24 A Well, it's a matter of knowing how to do it
25 and if you do know how to do it, it's very

1 simple. There are plenty of landmarks in Prince
2 William Sound to use.

3 Q Would you expect a third mate with several
4 years of experience to be able to do that with no
5 problem?

6 A Yes, I would.

7 Q Now, with respect to the steering of this
8 vessel, as the mate on watch, what instruments do
9 you have to tell you what the vessel is steering
10 and how the helm is being handled?

11 A You have the rudder angle indicator which
12 would give you an indication of where the rudder
13 is at any time. Then you also have the gyro
14 repeaters which would tell you what course the
15 vessel is on. You also have a view screen in
16 front of the steering stand; it tells you what
17 the vessel is doing.

18 Q How many rudder indicators are there on the
19 bridge of this ship? And by bridge, I mean even
20 the wings.

21 A Let's see. You know, I can't remember...

22 Q Yeah, you can come over...

23 MR. CHALOS: ...with your permission, Your
24 Honor?

25 THE COURT: Sure.

1 Q Point out the rud -- where they are.
2 A Rudder angle indicators.
3 Q Rudder angle...
4 A Here (indicating).
5 Q That's one.
6 A Here. You can see these from the outside.
7 Q If you're on the wing, you can see them?
8 A Right. You don't have to be inside; you
9 could be outside, taking a bearing, to get a
10 position, just look over your shoulder and see
11 where the rudder is. Then up here, there's a
12 rudder angle indicator like this so inside, you
13 could just take a look and see it. Then also,
14 right here, the big round one that's lit up.
15 Almost any angle on the bridge, you can see that.
16 Q Is that the one overhead...
17 A That's the overhead. Correct. So, 1, 2, 3,
18 4. Then also, there's one on the screen here
19 that you can see the little -- there's like a
20 little digital read out and it moves back and
21 forth and shows you where the rudder is.
22 Q So, if you wanted to see at any time where the
23 rudder angle is at that particular time, all you
24 have to do is glance up from any place on the
25 bridge?

1 A That's what it's designed for, yes.

2 Q And that's all it is? It's just a glance up?

3 A Yeah, look up and you'll see it.

4 Q Now, how many gyro repeaters do you have?

5 A Okay. You have this one here (indicating) on
6 the front of the vessel, right up here. Okay,
7 on each wing, you have one so while you're out
8 there taking a bearing, you can also look at the
9 repeater and right at the front of the ship
10 there's a little line so's all you have to do is
11 glance and you'll see the number. That's your
12 course.

13 So you can tell that on either wing of the
14 bridge. You can tell it by looking straight
15 ahead of you at this. Then the other one -- then
16 there is one also in the television screen here
17 plus on both radars as you look down into the
18 radars, there's a gyro repeater on each one of
19 these with a heading flasher that tells you what
20 direction you're heading and what that heading
21 numeral is.

22 Q Let's talk about that for a second. If you're
23 the mate on watch and you know the course that
24 you're on and you've just ordered a rudder
25 change, you would expect at some point, the

1 heading of the vessel to change. Am I correct?
2 A Yes, sir.
3 Q Based on your experience of the Exxon Valdez,
4 if you put on 10 degrees to the right rudder and
5 you're drawing 57 feet, proceeding at 11.75
6 knots, how quickly after you put the rudder over
7 would you expect the heading to change?
8 A I would say in less than -- no longer than 30
9 seconds, something is going to happen.
10 Q So, if you're the mate on watch and you wanted
11 to check if your ship's heading has changed in
12 response to a rudder command, all you have to do
13 is look at any one of the indicators...
14 A Right.
15 Q ...that you just told us about?
16 A Something should be happening.
17 Q You can look at the radar and that would tell
18 you whether your heading has changed?
19 A Yes, sir. The little flasher will move.
20 Q There's also a trail, is there not, as to the
21 ship's turning on the radar screen?
22 A Yes, but that would not always be there
23 depending on the scale you're on.
24 Q And also you can tell your heading change if
25 you're out on the wing by just looking at the

1 repeaters. Am I correct?

2 A That's correct.

3 Q Mr. Kunkel, do you know how many degrees of
4 heading change you would expect in one minute's
5 time if you put the rudder over to 10 degrees,
6 you were laden down to 57 feet and you were
7 traveling at 11.75 knots?

8 A No, sir, I don't.

9 Q Now, when a third mate stands a watch, a
10 navigation watch, are his duties basically the
11 same duties that you have?

12 A Yes, they are.

13 Q So, whether you're standing the watch or the
14 third mate is standing the watch, you're
15 basically doing the same thing?

16 A We're doing exactly the same thing on watch on
17 the bridge.

18 Q And he's just as qualified as you are in
19 respect to navigation of the vessel. Is he not?

20 A That's correct.

21 Q I'd like to ask you a little bit about your
22 day in -- your night and day in Valdez on the
23 22nd and 23rd. You say you tied up somewhere
24 around 10, 10:30 that night. Am I correct? I
25 can show you the log...

1 A I think it was -- didn't we say 11:30? I'm
2 not sure. I believe...

3 Q Okay, let's say 11:30. Were you on the
4 bridge at the time?

5 A Yes, I was.

6 Q Was Captain Hazelwood on the bridge?

7 A Yes.

8 Q Was he directing the docking of the vessel?

9 A Yes.

10 Q Did you hear him give orders at that time?

11 A Yes.

12 Q Did you observe his mannerisms?

13 A Yes.

14 Q You observed his demeanor?

15 A No. What do you mean by that, sir?

16 Q Well, his demeanor as a captain giving orders?

17 A Yeah, I observed him giving orders, correct.

18 Q Now, you stayed up until at least 4 in the
19 morning?

20 A Probably 'til about 8.

21 Q Til 8 in the morning?

22 A Uh-huh (affirmative).

23 Q Then you took a short nap, you say?

24 A Yes.

25 Q Then you woke up, went on watch?

1 A Well, I took a little nap. I got up around
2 noon, checked things out and then kind of spent
3 some time to myself, took a nap, made a phone
4 call and then 1600, went on watch.
5 Q And then you stayed up until about 10:30 that
6 night, I think you said?
7 A Yeah.
8 Q Were you tired?
9 A Yes.
10 Q On the basis of your experience, does fatigue
11 play a factor in the operation of these vessels?
12 A Sometimes, it can, yes.
13 Q In this particular case, you were due to come
14 back up at 4 o'clock in the morning?
15 A Correct.
16 Q Was it your perception that Captain
17 Hazelwood...
18 MR. COLE: Objection. Hearsay.
19 THE COURT: Let him finish the question, but
20 don't answer it.
21 Q Had any arrangements been made as to who would
22 take your watch at 4 in the morning?
23 MR. COLE: Objection. Hearsay.
24 MR. CHALOS: Your Honor, I don't think this is
25 hearsay...

1 THE COURT: Overruled. You may answer the
2 question.
3 A So, what does that mean?
4 Q You can answer.
5 A All right. Give me the question again, one
6 more time.
7 Q Had any arrangements been made as to who would
8 take your watch at 4 a.m. on the 24th?
9 A Yes.
10 Q What arrangements were made?
11 A Just as I was leaving the bridge, Captain
12 Hazelwood told me, don't worry about your watch;
13 we've got you covered. I'll stand it.
14 Q At about 4 o'clock on the 24th, the vessel was
15 just be passing Hinchinbrook or thereabouts. Am
16 I correct?
17 A I think it's a six-hour journey. Yes, sir.
18 Q So at sometime during that watch, you would
19 have been going out of Hinchinbrook?
20 A Uh-huh (affirmative).
21 Q And it's customary, is it not, as you're
22 leaving Hinchinbrook to get a bunch of messages
23 -- a clutch of messages?
24 A Usually, there's a bunch of messages that the
25 captain sends, yes, and I'm not sure what they

1 all are. I know I supply him with numbers.

2 Q Now, I'd like to go back a little bit and
3 bring you back to the bridge at about 8:30 on the
4 evening of the 23rd. Do you recall that? Just
5 before you undocked?

6 A Okay, I'm on the bridge; cargo is finished.
7 We're getting ready to let go?

8 Q Right. And you did your checks, as you said.
9 The captain arrived on the bridge at some point?

10 A Yes, he did.

11 Q Did you have the opportunity to observe him?

12 A Yes.

13 Q Did you speak with him?

14 A Yes.

15 Q Did you smell any alcohol on his breath?

16 A No.

17 Q Did he appear to you to be, in any way,
18 impaired?

19 A No.

20 Q Did he appear to you, in any way, to be under
21 the influence of alcohol?

22 A No.

23 Q Now, the captain directed the undocking, I
24 take it?

25 A Yes, he did.

1 Q Did you hear him give any orders?
2 A I heard all of his orders via the radio.
3 Q Based on your experience of these matters --
4 in docking matters, were his orders clear and
5 correct?
6 A They were clear and in order.
7 Q Was the captain's demeanor on this particular
8 occasion the same as it had been the night
9 before?
10 A Pretty much so, yeah.
11 Q Did you notice any change at all?
12 A No, not really.
13 Q Now, when the captain arrived on the bridge,
14 he asked you a series of questions, did he not?
15 A Yes.
16 Q What were you asked?
17 A He asked me...
18 MR. COLE: Objection. Hearsay.
19 MR. CHALOS: No, Your Honor. This is not
20 hearsay. This is -- I'm laying a foundation for the
21 actions that this witness took which is clearly not
22 hearsay.
23 (0966)
24 (Whispered Bench Conference as follows:)
25 THE COURT: What is it you expect him to say?

1 MR. CHALOS: He's going to testify as to a
2 series of orders...
3 THE COURT: I understand. What orders?
4 MR. CHALOS: (Indiscernible - whispering) I
5 have them written down.
6 THE COURT: You have them written down?
7 MR. CHALOS: (Indiscernible - whispering)
8 THE COURT: Bring 'em up here and tell me.
9 (Pause) Did you get a chance to read these? Bottom
10 of the page. Any objection?
11 MR. COLE: No, not if that's what he's going
12 to talk about.
13 (Indiscernible - whispering)
14 THE COURT: You're going to be offering
15 evidence of what the captain said as admission
16 (indiscernible)?
17 MR. CHALOS: (Indiscernible- whispering)
18 THE COURT: Do you know what all those
19 questions are going to be at this time?
20 MR. CHALOS: (Indiscernible - whispering)
21 THE COURT: Okay, why don't you go ahead and
22 finish this inquiry off and then we'll take a break and
23 when we do take a break -- you can go ahead and ask
24 some more questions and when we do take a break, then
25 we'll cover some of that.

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(End of Bench Conference)

(1083)

THE COURT: You're withdrawing your objection to this line of inquiry at this time?

MR. COLE: Yes.

THE COURT: Okay. You may proceed.

Q (Mr. Kunkel by Mr. Chalos:) Mr. Kunkel, do you recall what you were asked by the captain when he came up on the bridge?

A Not the precise questions, but more or less, how'd the load go? What's the draft? How's the gear? Everything ready to go? Basically, it's my duty to turn the ship back over to the captain and he asks me questions about the status of the vessel.

Q As a chief mate, you are in charge of the loading operations? The captain has nothing to do with the actual loading or discharge operation. Am I correct?

A Well, no, not completely. I'm in charge of the loading operation but prior to the loading, I always talk to the captain about the load. He would still be ultimately responsible for his ship so I want him to know what I'm doing.

Q And you had worked with Captain Hazelwood, you

1 say, back in the fall of 1988?

2 A Yes.

3 Q And that was for about two months?

4 A Approximately two months, correct.

5 Q So during that particular time plus I think

6 you were on this ship for about 15 days...

7 A Uh-huh (affirmative).

8 Q ...on this particular occasion?

9 A Yes.

10 Q You had had a chance to observe Captain

11 Hazelwood, I take it?

12 A Well, yeah.

13 Q And you had a chance to listen to him speak?

14 A Yes.

15 Q Now, you said that you left the bridge at

16 about 10 o'clock that night?

17 A Yes.

18 Q Was the captain on the bridge when you left?

19 A Yes.

20 Q Just turning to another subject for a second,

21 is it your understanding that the Coast Guard

22 monitors the movement of vessels such as the

23 Exxon Valdez on their radar around Bligh Reef?

24 A It's my understanding that they monitor the

25 ships throughout Prince William Sound. As far as

1 the range of the radar, I'm not sure.

2 Q You do know that you are being monitored by
3 the Coast Guard on radar at some point. Am I
4 correct?

5 A Yes. And it's my understanding it's
6 somewhere in the area where you're approaching
7 the pilot, which would be what? Rocky Point or
8 something, but it's before that. That's my
9 understanding.

10 Q Now, I'd like to direct your attention to the
11 point in time after the grounding. You said
12 that you came up on the bridge.

13 A You'll have to be more specific.

14 Q After...

15 A Right immediately?

16 Q Yes, the first time you came up on the bridge
17 after the grounding.

18 A Yes.

19 Q That's where you met Mr. Cousins?

20 A Yes.

21 Q And he told you that we're aground and the
22 captain knows all about it?

23 A Right. Something to that effect.

24 Q All right. You were in the chart room at the
25 time, were you not?

1 A Yes.

2 Q You didn't go out to the actual bridge or to
3 any of the bridge wings?

4 A No, I did not.

5 Q So you don't know if Captain Hazelwood was on
6 the bridge or one of the wings at that time?

7 A That's correct. I do not know.

8 Q You said you then went below and woke up the
9 second mate and the pumpman?

10 A Right.

11 Q Who was the pumpman?

12 A Mr. Stewart. Jack Stewart.

13 Q And after that you went into the cargo control
14 room?

15 A Yes.

16 Q What did you do there specifically?

17 A Well, the first thing I did was look at the
18 gauges and -- with a quick scan, based on the
19 fact that I just finished loading the ship about
20 four or five hours earlier, I knew where I had
21 stopped the tanks, so just looking at 'em, I
22 could see that a lot of product had escaped from
23 the tanks. So I picked up the phone and called
24 the bridge.

25 Q Who answered the phone?

1 A I believe it was the third mate.
2 Q What was the purpose of your calling the
3 bridge?
4 A To talk to the captain.
5 Q Did you talk to the captain?
6 A Right, yes. Right then.
7 Q What did you say to the captain?
8 A I said captain, it looks like we have damage
9 to the vessel and I have movement in the center
10 tanks and all the starboard tanks and possibly
11 the fore peak.
12 Q Did you receive any instructions from the
13 captain?
14 A Yes.
15 Q What were those instructions?
16 A He said okay, Jim, why don't you try to put
17 that into the computer and see if we can't find
18 out what our status is, stability and stress
19 wise.
20 Q How did the captain sound on the phone?
21 A He sounded like the captain.
22 Q Cool, calm, collected?
23 A Definitely.
24 Q Was it your perception that he was in command
25 of himself and his faculties?

1 A Yes.

2 Q Did you do what the captain told you to do?

3 A Yes, I did.

4 Q What did you do next?

5 A I took this print-out that I'd got and since I

6 got something on there that indicated possible

7 danger to the ship, the stress was too high, I

8 walked it to the bridge.

9 Q Let's stop a second. You got the orders from

10 the captain, I take it, you went to your

11 computer?

12 A Uh-huh (affirmative).

13 Q And entered certain data?

14 A Right.

15 Q And that data dealt with the vessel being

16 aground?

17 A Correct.

18 Q With certain draft?

19 A Well, I went in there and I put the new

20 ullages that I'd gotten off the cargo console and

21 then to enter a grounding, I had to estimate

22 where I thought the damage was and I just said,

23 okay, let's put it around the middle of the ship

24 and I had to enter a forward and after draft and

25 I think I put 50 feet. I'm not sure what I put

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there.

Q When you said you had to estimate where the damage was, what did that involve?

A Well, it just said what compartments are holed. And I'm not sure exactly how many I put in there. I may have put five; I might have put ten. I'm not sure, but in other words, I had to tell the computer that there were a number of holed compartments.

Q So you're telling the computer that we have holes in each one of the compartments and we're losing cargo?

A Right.

Q And you want the computer to then tell you what your stability and your stresses are?

A That's correct.

Q And you say you got a print-out of that information?

A Yes.

Q Just so we cover this again, the results of the print-out were that your stability was sufficient but you had certain stresses that were below acceptable levels. Am I correct?

A That -- well, they were above acceptable levels.

1 Q Right.

2 A Too much stress.

3 Q Let's just talk about that for a second. The
4 numbers that you use as a base against which you
5 measure have a certain safety factor built in it,
6 do they not?

7 A That's correct.

8 Q And it doesn't necessarily mean that if you
9 exceed those factors that your ship is going to
10 break in two?

11 A That's correct.

12 Q Or that it's going to crack in four or five
13 places?

14 A Correct.

15 Q Or even in one place?

16 A That's correct.

17 Q Now, what kind of stability were you reading?

18 A I believe it was just over 1. It's a ratio of
19 what's required GM and what is actual GM and the
20 ratio was greater than 1.

21 Q Which means greater than 100%?

22 A Right. And it means acceptable.

23 Q Right. You took this particular tape and
24 went up to the bridge?

25 A Well, it was a print-out, yes.

1 Q Did you walk up to the bridge?
2 A Yes.
3 Q What was the situation with respect to the
4 fumes at this time?
5 A Well, when I was walking up there, I recall
6 that the fumes seemed to be enough to smell and I
7 was wondering if maybe they were a little bit on
8 the thick side.
9 Q Was that the first time you went up...
10 A Yes.
11 Q ...or the second time?
12 A The first time.
13 Q The first time when you didn't see the
14 captain?
15 A Oh, wait, wait, wait, wait. No, no, you got
16 me a little confused. You got me doing a print-
17 out and going up to the bridge, right?
18 Q Right.
19 A Well, the print-out is like way after the
20 first time I go up on the bridge.
21 Q When did you smell the fumes...
22 A This time. I'm carrying the print-out up to
23 the bridge.
24 Q And the fumes are heavy at this time?
25 A In my estimation, yes. I thought that they

1 were heavy. I'm breathing hard; I'm looking at
2 data that shows my ship is damaged; and I'm
3 trying to get to the bridge as soon as I can to
4 give it to the captain.

5 Q Are you breathing hard because of the fumes or
6 because of the excitement..

7 A More the excitement.

8 Q Okay. You're back on the bridge now?

9 A Yes.

10 Q The captain is there?

11 A Yes.

12 Q Did you approach him with the figures?

13 A Yes, I did.

14 Q What did you tell him?

15 A Well, I think he -- we brought it in to the
16 chart room where there was light and he looked at
17 it and I brought to his attention immediately
18 where the bending and the sheer moments had been
19 exceeded and I also showed him the stability part
20 of it and he looked at it and I said it looks
21 like if we leave here, we may be exceeding our
22 stress limitations.

23 Q Okay. Let's just take this slowly.

24 A About what time is this?

25 A I'm thinking that this is in the 12:30 area,

1 more or less.

2 Q Now, when you're in the chart room with the
3 captain and you have the light on, how close are
4 you to him?

5 A I guess like maybe you and your partner are.
6 Something along those...

7 Q Mr. Madson?

8 A Yes.

9 Q About a foot or so away?

10 A Well, that looks more like three or four feet
11 to me, but yeah, okay. Let's say three feet...

12 Q I must be fatter than I thought. (Laughter)
13 Okay. Did you smell any alcohol...

14 A No, I didn't.

15 Q ...on Captain Hazelwood's breath?

16 A No.

17 Q What was his demeanor at the time?

18 A It looked like he was real concerned about my
19 report and he was very calm, collected.

20 Q Did you tell him that we have sufficient
21 stability at this point?

22 A I told him that according to this report, the
23 best data that I have available, it looks like
24 we're still stable.

25 Q And the captain had asked you to give him this

1 information, had he not?

2 A Yes, he had.

3 Q With respect to the exceeding the limits on
4 the stress, you said that you told the captain
5 that we shouldn't go to sea at this point. Is
6 that correct?

7 A That's correct.

8 Q Were those -- the exceeded limits limits for
9 the vessel working in the seaway outside
10 Hinchinbrook?

11 A Yes.

12 Q You weren't talking about going off the reef
13 or being in Prince William Sound; you were
14 talking about going to sea...

15 A I was talking about..

16 Q ...outside.

17 A Excuse me. I'm supposed to wait until you
18 finish. I was talking about leaving
19 Hinchinbrook, going out to sea. That from inside
20 Hinchinbrook, there's a different set of numerals
21 that's called harbor condition and I was not
22 talking about that. I was talking about leaving
23 Hinchinbrook, going to sea.

24 Q The stresses that would have been exceeded
25 would have been caused by waves and wind, I take

1 it?

2 A That's my understanding of the stability
3 program.

4 Q In Prince William Sound, the area was calm,
5 was it not -- the seas were calm?

6 A Yes.

7 Q So they wouldn't add any stress to the vessel,
8 would they?

9 A I don't think so.

10 Q Had you done a harbor condition run at that
11 point?

12 A No, not at that point, no.

13 Q What did the captain say when you gave him
14 this information?

15 A Well, I looked at him and I think I said
16 something along...

17 MR. COLE: Objection. Hearsay.

18 MR. CHALOS: Your Honor...

19 THE COURT: Let's take a break. We'll take
20 this up outside the presence of the jury. Don't
21 discuss what we're doing or speculate on what we're
22 doing and don't discuss the matter among yourselves or
23 any other person and don't form or express any
24 opinions. We'll call you back as soon as we can.

25 (Jury not present)

1 (1725)

2 THE COURT: We're still on the record and
3 we'll take this up at this time. Mr. Kunkel, you may
4 have to stay here, sir.

5 A Oh, okay.

6 THE COURT: I don't know for sure, but we'll see.
7 You want a glass of water? Mr. Chalos, Mr. Kunkel
8 would like a glass of water. Could you give him a
9 glass?

10 MR. CHALOS: Oh, I'm sorry.

11 THE COURT: Ladies and gentlemen in the back.
12 We're still on the record. Unless we take a break,
13 I'd appreciate it if you'd keep the noise down. We're
14 recording everything. Unless you see me walk out,
15 we're generally still on the record. All right, Mr.
16 Chalos.

17 MR. CHALOS: Yes, Judge...

18 THE COURT: The objection is to hearsay and you
19 can address that now.

20 MR. CHALOS: I have several grounds why I think
21 that the question is not hearsay -- or the answer won't
22 be hearsay.

23 THE COURT: What do you think the answer is
24 going to be? Let's get the answer first so we can
25 decide.

1 MR. CHALOS: Well, I think Mr. Kunkel will say
2 that the captain told him, unless he gave him the
3 information, to go back down and do some additional
4 calculations to ascertain how much oil had been lost,
5 to run some additional scenarios and give him some more
6 information about the stability of the vessel.

7 THE COURT: Okay. Do you still have an
8 objection, Mr. Cole?

9 MR. COLE: That's not hearsay.

10 THE COURT: Exactly.

11 MR. CHALOS: That's precisely...

12 THE COURT: Okay. That answer can come in.
13 Let's go through as many questions as require an answer
14 of what Captain Hazelwood said now so we can resolve
15 most of it now.

16 MR. CHALOS: I think there's going to be a series
17 of questions where Mr. Kunkel said to the captain,
18 captain, I think we should ring the general alarm and
19 then I'm going to ask him, of course, what did the
20 captain respond and he's going to say the captain told
21 me to stay calm, let's not ring the general alarm;
22 let's not get everybody excited.

23 Instead, what I want you to do is go below and
24 get me some more information. I've sent people around
25 to wake up the crew, break out the lifeboats as he's

1 already testified and get the fire equipment ready as
2 well.

3 THE COURT: Do you have any objection to that?

4 MR. COLE: It's already been testified to.

5 THE COURT: There'd be no objection, I take it,
6 then.

7 MR. CHALOS: Mr. Kunkel came back up some
8 time. He said around 1 o'clock. It could have been as
9 late as 1:20 or thereabouts...

10 THE COURT: It was 1 or 1:15, I think, in his
11 testimony.

12 MR. CHALOS: Something like that. I wanted to
13 explore the time with him but at that point, they had
14 another conversation and presented Captain Hazelwood
15 with some additional information and of course there
16 will be a series of questions, what did you tell the
17 captain; what did the captain say to you?

18 THE COURT: Well, what do you think the captain
19 -- what do you think Mr. Kunkel is going to say or Mr.
20 Kunkel, maybe you can tell us...

21 MR. CHALOS: I would prefer Mr. Kunkel say it.

22 THE COURT: So why don't you ask the question;
23 we'll see what the answer is.

24 Q (Mr. Kunkel by Mr. Chalos:) Mr. Kunkel, when
25 you came back up the second time to give some

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additional information to Captain Hazelwood, you had another print-out. Is that right?

A Yes.

Q What did you say to the captain at that point?

A I said that I had just run another stability input on the computer and I put in the new ullages that had taken place. We had lost more cargo and got more water in the ballast tanks and if the vessel was intact and not aground, we could not go to sea. We could not leave the rock. We were quote unquote beyond the safety factor of stability that -- we had less GM than was required.

Q And what did the captain say to you then?

A Something along the lines of then, I guess we're not going anywhere. That's about it. Something like that.

Q Did he say anything about shutting down the engines?

MR. COLE: Objection. Judge, I object to Mr...

MR. CHALOS: Your Honor, we're trying to get the questions out so we can see...

THE COURT: What is your objection? This is outside the presence of the jury, Mr. Cole.

1 MR. COLE: I object to Mr. Chalos putting
2 words into..

3 MR. CHALOS: This is cross examination, Your
4 Honor.

5 THE COURT: Objection overruled. Go ahead.

6 A The captain never said anything to me at all
7 about the engines.

8 Q When the captain told -- well, this is getting
9 into examination areas that are not hearsay, Your
10 Honor.

11 THE COURT: Okay. So the statement is "I
12 guess we're not going anywhere" is what Mr. Kunkel is
13 going to say that Captain Hazelwood said. Is there
14 objection to that?

15 MR. COLE: I don't have any objection to
16 that.

17 MR. CHALOS: Well, I'm going to just ask him
18 one general question. Did he say anything else?

19 A When? When I showed him the stability...

20 Q Yes, the second time.

21 A No, I asked him again, do you want me up here?
22 And he said no, that your best position is down
23 below and that was it, so I left.

24 Q The first time that you came up and gave him
25 the calculations when there was sufficient

1 stability, aside from the things that I said you
2 were going to say, was there anything else the
3 captain said?

4 A I'd given him the first run; he's taken a look
5 at it; I've told him I do not recommend we go to
6 sea, i.e., we do not leave Cape Hinchinbrook and
7 now...

8 THE COURT: What did he say in response to
9 that when you told him?

10 A In response to that, okay, very well. I
11 asked him do you want me up here? He said no.
12 He said why don't you go down below, get some
13 more scenarios, let's find out what the pump room
14 looks like, check your ballast tanks; also work
15 up some options for me.

16 And I asked -- by that, I believe I asked
17 him, well, what do you mean? He says, well, can
18 we ballast down? Don't open up any valves, he
19 told me, on the side of the ship. He says, but
20 let's find out what we can and cannot do,
21 something along those lines.

22 THE COURT: Did he say anything else to you?

23 A Well, that was the time I said ring the
24 general alarm bell. And he said no, let's not
25 cause a panic; let's get a better assessment of

1 the situation. I mean these aren't word for
2 word, Your Honor, I mean it's something along
3 those lines.

4 THE COURT: I understand that. And did you
5 not also say that he sent somebody to go down and get
6 people up too? Is that what you testified earlier?

7 A I can't recall if he said that to me at that
8 time or not.

9 Q (Mr. Kunkel by Mr. Chalos:) He did say
10 something about the lifeboats which has already
11 been testified....

12 A Yes, he did say to get the lifeboats to the
13 embarkation deck.

14 MR. CHALOS: Those are the questions, Your
15 Honor.

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

17 MR. COLE: No.

18 THE COURT: Okay, why don't we take our break
19 and we'll come back in about ten minutes.

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

22 (2031)

23 (Off record - 3:06 p.m.)

24 (On record - 3:22 p.m.)

25 (Jury Present)

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THE CLERK: We're back on the record.

THE COURT: All right, Mr. Chalos.

Q (Mr. Kunkel by Mr. Chalos;) Mr. Kunkel, I'd like to direct your attention to the first meeting that you had with Captain Hazelwood on the bridge. This is when you came up with the computer tape. Do you recall that?

A Yes.

Q And I believe when we left off, you said that the computer tape that you showed Captain Hazelwood had certain information?

A Yes.

Q And that information was that you were stable enough that you had good stability but that the bending -- the stresses, the sheer stresses were exceeded if the vessel were to proceed beyond Cape Hinchinbrook. Am I correct?

A That's correct.

Q Now, what did Captain Hazelwood say to you after you gave him this information?

A I think he told me okay, I understand. We can't go out to sea. I asked him -- I believe it was then, do you want to ring the general alarm and he said no, that would perhaps create panic or something and let's get a better

1 assessment or evaluation of what our situation
2 really is.

3 Q Why did you suggest that the general alarm be
4 rung?

5 A I can only write it off to my experience
6 level. The ship has hit the rocks; it's the
7 middle of the night, maybe wake everybody up.
8 But looking back on retrospect, well -- I don't
9 know. In retrospect, I don't think it would
10 have been a good idea.

11 Q It would have been pretty dangerous to put men
12 into the water at point in time, would it not?

13 A Well, at any time in Prince William Sound, it
14 would be very dangerous to put people in the
15 water.

16 Q When the captain spoke to you at that
17 particular moment, were any anxieties or fears
18 that you had eased?

19 A Yes.

20 Q Did the captain have a calming effect on you
21 at that point?

22 A Yes, he seemed like -- he gave the impression
23 that he had command of the situation and I felt
24 comfortable that he would be taking charge of it.

25 Q If you felt that the captain was intoxicated

1 or impaired, would your anxieties be eased the
2 way they were?
3 A No.
4 Q Now, you mentioned something about the
5 lifeboats and the fire stations. What did the
6 captain tell you in that regard?
7 A Well, he told me, don't go -- don't get all
8 excited, but let's go ahead and get the lifeboats
9 lowered to the embarkation decks and that would
10 mean that it would be quicker to get into 'em if
11 necessary and also the fact that, you know, let's
12 get a monitor or two appointed so that we can
13 protect the house in case there was a fire and at
14 my earliest convenience, maybe the watch could
15 start thinking about bringing out all the gear
16 that we had secured for the Gulf of Alaska. We
17 had put it away so that it wouldn't get washed
18 overboard.
19 Q This is what the captain was telling you at
20 12:30?
21 A Approximately, that time, yes.
22 Q Did you consider the orders to be correct?
23 A Yes, I thought it sounded like a good idea.
24 THE COURT: Excuse me just a second. Mr.
25 Chalos, Mr. Cole, could you -- just a minute please?

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(2220)

(Whispered Bench Conference as follows:)

THE COURT: I just noticed that the blackboard still has some of that material from our -- the one right behind you and if you just want to turn it over (Pause) Okay.

(End of Bench Conference)

Q (Mr. Kunkel by Mr. Chalos:) And you mentioned in addition to those instructions, the captain also told you to go back to -- strike that. Let me go back. Were the captain's orders followed?

A Yes. Yes, I started implementing them. Correct.

Q The boats were lowered the embarkation deck?

A Yes.

Q A fire monitor was put out?

A Yes.

Q He also gave you some additional instructions about the cargo control room. Am I correct?

A Yes. I asked the captain, do you want me to stay here and assist you? And he said, no, the best place for you is in the cargo control room to monitor the situation and also to get back to him as to whether -- what we could do, you know,

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with the ship, what do we have available. Start investigating pump rooms, voids, engine room bottoms, et cetera.

Q Did you, in fact, go back to the cargo control room?

A Yes.

Q Did you start the invest -- this was after you've started -- or you gave instructions for the lifeboats and the fire monitor?

A Yes.

Q And did you start that investigation that the captain ordered?

A Yes, I did.

Q What specifically did you do?

A Well, I had the pumpmen at that time go down to the pump room and see that indeed the pump room was tight; there was no leaks in the pump room. The engine room, I called them and they responded that they had sounded some of the voids and the double bottom and that all seemed to be well under the engine room. Then I instructed the pumpmen to find out if there was -- if the double bottom under the pump room had been damaged, so now I've got two hull protection for my pump room. I believe they also checked out a

1 couple of the voids and discovered that one of
2 the starboard voids had been -- this all didn't
3 take place right then. In other words, these
4 actions -- I started them in motion.

5 Q All right. And I think you said they took
6 about 20, 25 minutes before you got back some
7 information from people?

8 A Yeah, about 20 minutes later, I got some
9 information and I also had again started to go
10 back into the computer with another set of
11 ullages.

12 Q Okay. Before you went back into the computer,
13 did you have any telephone conversations with the
14 captain?

15 A If I did and I can't remember -- I can't
16 remember if I did or not. At some time, I did
17 tell him about the --that the pump room was okay,
18 but I don't recall when, and that was via phone.

19 Q All right now, you started to put some
20 information into the computer and the computer
21 blanked out?

22 A Correct.

23 Q Then you had to bring the screen back up, I
24 take it, and then program back up?

25 A Yes.

1 Q You said that took you about five minutes --
2 three to five minutes?

3 A Three to five minutes because I'm not really
4 that quick with it and I also had to, you know,
5 reinput base figures in it, base data.

6 Q That could have taken you more than five
7 minutes?

8 A Well, I don't think so.

9 Q Now, at some point you ran some additional
10 figures and you got some additional results?

11 A Yes.

12 Q And then ultimately you went back up on the
13 bridge?

14 A Yes.

15 Q You said it was around the 1 o'clock hour;
16 could have been 15, 20 minutes later. Isn't
17 that correct?

18 A Well, I really -- you know, I would say no
19 more than 15 or 20 minutes.

20 Q So, it could have been as late as 1:20?

21 A That's a possibility.

22 Q Okay. What did the figures tell you -- the
23 second set of figures?

24 A The figures told me that if the vessel was
25 intact with no damage, she was not fit to

1 proceed; she was not fit to go to sea or leave
2 the dock by regulation, we did not meet required
3 GM.

4 Q You weren't able to put in the grounding
5 program at that point. Is that right?

6 A That's correct. For some reason, it wouldn't
7 take it.

8 Q Do you have any reason to believe that the
9 information you were getting out of the computer
10 might not have been accurate at that point?

11 A No, I had no reason to believe -- the computer
12 -- the information I gave it was the actual
13 ullages on the ship. And therefore, the
14 information I got out of the computer told me
15 exactly if the vessel was intact, she did not
16 meet required GM. I had no reason to doubt that.

17 Q How far below the required GM was the figure
18 you were getting?

19 A Not much. Not much.

20 Q Just slightly?

21 A Slightly below it. It was less than 1, maybe
22 a point -- they make a ratio of require -- I
23 think it's actual versus required, okay. And it
24 should always read greater than 1. I believe it
25 read like .98, something like that.

1 Q .98?

2 A Uh-huh (affirmative).

3 Q That's not much below the required?

4 A That's correct.

5 Q A reading of .98 does not necessarily mean
6 that the ship is so unstable that it's going to
7 capsize, does it?

8 A That's correct.

9 Q And it doesn't mean that it's going to break
10 up?

11 A That's correct.

12 Q Or in any way sink?

13 A That's correct.

14 Q You gave this information to the captain?

15 A Yes.

16 Q What did you say to him?

17 A I said, captain, it looks like if the ship was
18 intact, we don't meet required stability,
19 therefore, I recommend we do not move the ship
20 until we get a better assessment of our
21 condition.

22 Q And what did the captain say to you?

23 A He said, very well. I guess we're not going
24 any where.

25 Q Did you take that to mean that the captain was

1 saying we're going to stay right where we are at
2 this point in time?
3 A Yes.
4 Q Now, I'd like to go back to the first time you
5 spoke to Captain Hazelwood. You said on the way
6 up, the fumes were kind of strong. How were
7 they on the way down?
8 A Hardly noticed them.
9 Q They had dissipated by that time?
10 A To my reckoning, yes.
11 Q Mr. Cole asked you some questions about the
12 danger of explosion at this particular time.
13 It's correct, is it not, that there's always a
14 danger of explosion during a loading and
15 discharging process of cargo?
16 A Sure. There's always a danger of it.
17 Q And it doesn't necessarily mean because you
18 have the danger of explosion that an explosion is
19 going to occur?
20 A That's correct.
21 Q Is smoking permitted in the quarters?
22 A Yes.
23 Q Is it permitted on the bridge?
24 A Yes.
25 Q Did the captain give you any other

1 instructions the second time you came up?

2 A Well, I believe I asked him again do you want
3 me up here? He said no, go ahead down below. It
4 looks like we're taking a list and I believe at
5 that time, the tide was changing and he did tell
6 me the best place for you was in there now and be
7 aware that we may have to do something so try to
8 -- don't open any sea valves or skin valves is
9 what we would call them, but see if we have the
10 ability to put water in the ship and keep her
11 there. In other words, make her heavier.

12 Q That's what the captain told you?

13 A He told me be sure that we can at least pump
14 water into 2 and 4 port, so that the ship would
15 be heavier and stay where she was.

16 Q Now, again, you took that to mean that the
17 captain's intentions were to keep the ship right
18 on that reef?

19 A At that point in time, yes. This is after I
20 told him that we do not meet required stability.

21 (2720)

22 Q What was the captain's demeanor the second
23 time you saw him?

24 A Pretty much the same as the first time I'd
25 seen him. Very sullen, but, you know, very --

1 all business and cool, calm, in charge.

2 Q The captain, you say, told you not to touch
3 any of the overboard valves or any of the valves?

4 A Well, he said don't exercise them, but we
5 never would know if we could close them again,
6 okay. What he wanted -- my perception of what he
7 wanted me to do was find out if we had the
8 ability to put water into some tanks and make the
9 ship heavier without opening them to the sea.
10 In other words, a controlled -- controlled
11 ballasting down in a controlled situation versus
12 just letting the sea water run in because we may
13 not be able to close them up again.

14 Q Did you consider his orders to be a good idea
15 at that time?

16 A At that time, I thought that was the only
17 option we had.

18 Q You considered the orders to be prudent?

19 A Yes.

20 Q There came a time, did there not, when the
21 vessel took a list starboard and settled on the
22 reef?

23 A Yes.

24 Q Was that shortly after this conversation...

25 A Yes.

1 Q ...that you had with the captain?

2 A That's correct.

3 Q Did you feel that once that maneuver took
4 place, that is the vessel settling on the reef,
5 that the vessel was -- that the danger of the
6 vessel slipping off the reef had diminished?

7 A Yes, I felt that after the ship had listed to
8 starboard, then we started -- it stopped listing.
9 It stayed that way for awhile and started to ease
10 back to port -- well, to zero list. I knew that
11 we weren't going anywhere 'til the next tide
12 change at the earliest.

13 Q Did the captain mention to you in the second
14 conversation about the tide coming in?

15 A Well, not specifically. He said we're --
16 something along the lines of get down to the
17 control room because things are changing. You
18 may have to ballast us down. I didn't find out
19 'til later that it was a tide change that was
20 going on.

21 Q Okay. Now, did you have any further
22 conversations with the captain after this second
23 conversation?

24 A Well, let's see. Things settled down quite a
25 bit. Now, that we weren't going anywhere. I

1 believe the Coast Guard came on board. Before
2 they came on board -- no, I didn't really have
3 any specific conversations with the captain
4 except that everything here looks okay, we've
5 checked out some other areas; they look all
6 right. And then after the Coast Guard came
7 aboard, that was it. I basically never saw the
8 captain again except in passing, in the hallway.
9 He was either talking to a Coast Guard inspector
10 or a lawyer.

11 Q I'd like to change subjects for a second. Is
12 it the practice and custom on vessels you've
13 served on to take the look out and bring them
14 back to the bridge wing once the pilot is dropped
15 off in Prince William Sound?

16 A It's my understanding that is the practice,
17 yes.

18 Q Mr. Kunkel, do you know how helm watches are
19 set on the Exxon Valdez, that is, the AB watches?

20 A Oh, yeah. Normally, I think they use a --
21 it's like an odd/even number. Like on an odd
22 day, -- there's two AB's, okay, today's an odd
23 day; I'm the helmsman; you're the look out first
24 round and then at the two hour change, you
25 switch; tomorrow is an even day, so you've got

1 the first one and I get the second one.

2 Q And when the ABs come up for watch, they know

3 which day they're on the helm first and...

4 A Well, most of the time they do, but every so

5 often, as the officer, you've got to say, okay,

6 guys, remember what today is.

7 Q Now, ABs in the Exxon fleet are assigned to

8 the vessels by the company, are they not?

9 A Yes, they are.

10 Q And the captain and the mates have to use the

11 ABs that are assigned at a particular time, do

12 they not?

13 A That's correct.

14 Q And ABs are certified by the Coast Guard, are

15 they not?

16 A That's correct.

17 Q And part of the certification is that they're

18 qualified helmsmen as an AB?

19 A That's how they get their document, correct.

20 Q Based on your experiences, is a 10 degree

21 right rudder command a simple course order?

22 A Yes, very simple.

23 Q Is a course change involving a 10 degree

24 right rudder a simple course change for a mate to

25 make?

1 A Yes.

2 Q Is that one of the simpler tasks that a mate
3 would have on watch?

4 A Well, I'm not sure what you want me to compare
5 it to, but it's a very simple task.

6 (3043)

7 Q I'd like to talk about Mr. Kagan a second.
8 You had seen him steer before, did you not?

9 A Yes.

10 Q As a matter of fact, you had seen him steer in
11 the Houston Ship Channel?

12 A Yes.

13 Q In the Panama Canal?

14 A Yes.

15 Q Off the Santa Barbara Channel?

16 A Yes.

17 Q Those are all fairly confined waters, are they
18 not?

19 A Yes.

20 Q How did he do on those occasions?

21 A He was acceptable.

22 Q Was he capable of following a rudder command?

23 A Yes.

24 Q Did you have any doubt that he could follow a
25 rudder command?

1 A I have no doubt he can follow a rudder
2 command.
3 Q When you said that he needed supervision, you
4 were talking about what?
5 A Steering.
6 Q Can you describe what you meant by steering?
7 A Well, steering in my estimation is telling him
8 a course and having him hold that course and then
9 telling him to come to another course and using
10 his own judgment on the use of his rudder or his
11 own rudder commands to arrive at that course and
12 to do it in a smooth fashion. And I do not feel
13 at that time -- I don't know how he is now -- but
14 at that time I do not feel Mr. Kagan did that in
15 a smooth manner and needed practice.
16 Q You're not talking about a situation where you
17 tell him come to 10 degrees right -- or give me
18 10 degrees right rudder?
19 A No, no.
20 Q Or 20 degrees right rudder?
21 A No. That's...
22 Q Those commands he would follow.
23 A Follow to the T, no problem.
24 Q You never relieved Mr. Kagan at the helm, did
25 you?

1 A No, I never did.

2 Q By that, I mean you didn't take him off and
3 replace him with another AB?

4 A No, I never had to do that.

5 Q Mr. Cole asked you some questions about the
6 1985 evaluation of Mr. Kagan.

7 A Yes.

8 Q You never showed that evaluation to Captain
9 Hazelwood, did you?

10 A No.

11 Q Or to Mr. Cousins?

12 A No.

13 Q And you have no reason, sitting here today, to
14 believe that Kagan was incapable of following a
15 simple rudder command, do you?

16 A I have no reason to believe that.

17 Q Do you have any reason to believe that Captain
18 Hazelwood suspected that Kagan couldn't carry out
19 a simple rudder command?

20 MR. COLE: Objection. Speculation.

21 MR. CHALOS: I'm asking for his perception,
22 Your Honor.

23 THE COURT: It sounds like it might be based
24 on something he's heard...

25 MR. CHALOS: Or seen himself, Your Honor, as a

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possibility.

THE COURT: You can answer the question.

A Okay. Could you ask me that again, please?

Q (Mr. Kunkel by Mr. Chalos:) Yes. Do you have any reason to believe that Captain Hazelwood suspected that Kagan couldn't carry out a simple rudder command?

A No. I've never suspected that.

Q Are you familiar with Gregory Cousins?

A This was the first time I'd ever met Gregory Cousins.

Q Did you have an opportunity to observe him at all in carrying out his duties?

A I only observed him in his cargo duties and in his everyday collateral duties about the vessel.

Q Do you have an opinion as to his competence in those duties?

A I thought it was exceptional.

Q Do you have any reason to believe that Captain Hazelwood suspected that Gregory Cousins couldn't or wouldn't follow a simple order -- course change order?

A No, I have no reason to believe...

Q Have you ever heard of a product called Moussy beer?

1 A Yes.

2 Q Is Moussy beer permitted on the Exxon vessels?

3 A It's not anymore, but it was.

4 Q At the time, prior to the grounding?

5 A Yes.

6 Q Now, have you ever used a fathometer in Prince
7 William Sound for navigation purposes?

8 A Well, I've used the fathometer in many places.
9 I can't tell you for sure, Prince William Sound,
10 but I'm sure that I have since I always -- you
11 know, I always have it on inside.

12 Q What I'm talking about is have you ever used a
13 fathometer to come to a certain fathom point on a
14 chart and make a maneuver?

15 A No.

16 Q Would a mariner customarily use a fathom point
17 on a chart to make a maneuver?

18 A No.

19 Q What would a mariner use to pinpoint his
20 position before starting a maneuver?

21 A Well, preferably visual bearings, if not that,
22 radar ranges and bearings and a combina...

23 Q When you say visual bearings, you're talking
24 about lights?

25 A Two lights, get a bearing on each of them and

1 draw an X as to where they are; then double check
2 it with your radar range.

3 Q Has anyone ever given you an order to turn on
4 a fathom mark on a chart?

5 A No.

6 Q Have you ever given anybody an order to turn
7 on the fathom mark?

8 A No.

9 Q Mr. Kunkel, when you listened to some tapes
10 this morning or this afternoon of transmissions
11 that were made by Captain Hazelwood just before
12 and after the grounding, you listened to those
13 transmissions, did you not?

14 A Uh-huh (affirmative).

15 Q Is that the way Captain Hazelwood normally
16 sounds?

17 A Yeah, I can by -- into -- he sounded normal.

18 Q You didn't notice any difference from his
19 normal speech pattern, did you?

20 A No, not really.

21 Q In the first transmission that we heard,
22 Captain Hazelwood started -- it appears to say
23 Exxon Bat -- and then he said the Exxon Valdez.
24 Have you ever in a radar transmission
25 misidentified the ship you were on?

1 A Numerous times.

2 Q To your knowledge, has Captain Hazelwood

3 served as a master of the Exxon Baton Rouge?

4 A I didn't know that at the time, but yeah, now

5 I understand. Yes, he did.

6 Q Had you ever, prior to listening to this tape,

7 ever heard Captain Hazelwood misidentify this

8 ship on which he was on in a regular

9 transmission?

10 A Yes.

11 Q That's a common thing?

12 A It happens and you always catch yourself.

13 Q Now, you're familiar with the Exxon Valdez

14 handling characteristics, are you not?

15 A I'm not an expert at it, no.

16 Q You've maneuvered this ship?

17 A I've maneuvered her a bit, yes.

18 Q Have you ever changed course with it?

19 A Yes.

20 Q Was she always responsive?

21 A Yes.

22 MR. CHALOS: Your Honor, may I approach the

23 witness and put a chart up?

24 THE COURT: Yes.

25 Q (Mr. Kunkel by Mr. Chalos:) Mr. Kunkel, I

1 want you to assume for a moment that a fix was
2 taken off of Busby, about a mile off of Busby at
3 2355. The vessel is laden to about 57 feet and
4 she's traveling about 11.75 knots. Now, I want
5 you to assume that within a minute of 11:55, 10
6 degrees right rudder is applied to this vessel.
7 On the basis of your knowledge with this ship,
8 should she have cleared Bligh Reef and gotten
9 back into the lanes with no problems?

10 A I'd assumed she'd do it with no problems at
11 all.

12 MR. COLE: Your Honor, can we approach the
13 bench here just briefly?

14 THE COURT: All right.

15 (3603)

16 (Whispered Bench Conference as follows:)

17 MR. COLE: I'm going to ask that the defense
18 counsel just be a little bit more careful with that
19 Exhibit. It's already torn. It's an important Exhibit
20 for the rest of the witnesses that are coming up here.
21 I don't have to recall Mr. Cousins back....

22 THE COURT: You've made your point.

23 (End of Bench Conference)

24 (3629)

25 THE COURT: You may proceed.

1 Q (Mr. Kunkel by Mr. Chalos:) Well actually,
2 Mr. Kunkel, you were shown the Exxon Bridge
3 Organization manual?
4 A Yes.
5 Q Now, this manual is only for Exxon tankers, is
6 it not?
7 A Well, I know every Exxon tanker has one of
8 these on board.
9 Q All right. The point I'm making it's not a
10 Coast Guard manual; it's not a federal
11 regulation; it's not a state regulation; it's
12 just a company in-house procedures. Is that
13 correct?
14 A That's correct.
15 MR. CHALOS: Your Honor, I have no further
16 questions at this time.
17 THE COURT: Mr. Cole, how long do you estimate
18 your redirect is going to take?
19 MR. COLE: It's going to be a little bit of
20 time.
21 THE COURT: So, why don't we go ahead and
22 recess for the day? You'll come back tomorrow, Mr.
23 Kunkel, 8:30. We'll recess until 8:30 tomorrow
24 morning.
25 Remember my instructions please; don't form or

1 express any opinions, not to discuss the case among
2 yourselves or any other persons. Remember my
3 instructions regarding the media information. See you
4 back at 8:30 tomorrow morning.

5 We'll stay on the record for just a couple
6 minutes. You can step down. Thank you.

7 (Jury not present)

8 THE COURT: I assume that the defendant has
9 out of state witnesses that defendant will be calling.
10 Is that correct?

11 MR. CHALOS: (No audible response)

12 THE COURT: Mr. Cole, maybe by tomorrow
13 morning, you could give us your best estimate of how
14 long you expect the state's case to take? That would
15 be a courtesy to the defendant and to the jury and to
16 the Court. When you think you might be closing, that
17 way they can start lining their witnesses up. We
18 won't have any unnecessary delays.

19 MR. COLE: I anticipate either at the end of
20 next week or the beginning of the week following.

21 THE COURT: If your estimate changes at any
22 time would you let us know? Is there anything else
23 we can take up?

24 MR. CHALOS: No, nothing further, Your Honor.

25 MR. COLE: No.

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

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

(3809)

(Off record - 3:54 p.m.)

CONTINUED