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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 16, 1990
PAGES 4228 THROUGH 4443

VOLUME 23

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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 16, 1990
8:45 a.m.

APPEARANCES:

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1 PROCEEDINGS

2 FEBRUARY 16, 1990

3 (Tape: C-3623)

4 (0037)

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

6 (Jury Present)

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

8 THE COURT: You may be seated. We'll start
9 with the redirect of Mr. Kunkel and Mr. Kunkel, you're
10 still under oath.

11 REDIRECT EXAMINATION OF MR. KUNKEL

12 BY MR. COLE:

13 Q Good morning, Mr. Kunkel.

14 A Good morning.

15 Q Are there any Coast Guard regulations that
16 require you as the chief mate to be in the cargo
17 control room during the entire loading and
18 unloading process in Valdez?

19 A I'm required to monitor the loading when I'm
20 on watch, but no, I'm not required to be in the
21 cargo control room the whole time.

22 Q On the morning following the grounding, you
23 indicated you had two conversations with Captain
24 Hazelwood concerning the stability of the Exxon
25 Valdez -- stability and stress factors of the

1 Exxon Valdez.

2 A Correct.

3 Q And the first one would have taken -- can you
4 give the jury an estimate of how long that
5 conversation would have lasted?

6 A Probably three to five minutes at the most.

7 Q And the second one, how long would you
8 estimate that conversation to have been?

9 A Probably not too much longer.

10 Q And in response to Mr. Chalos' questions, you
11 indicated that it could have been as late as
12 1:20?

13 A Correct.

14 Q You've also said that it could have been as
15 early as 12:30, the second conversation?

16 A No. Well, if I did, then I stand corrected.
17 The first conversation took place at about 12:30;
18 the second conversation took place approximately
19 1 o'clock. I believe those were my words.

20 Q In either one of those conversations, did
21 Captain Hazelwood ever tell you that he was
22 trying to stay on the reef or get off the reef?

23 A He never indicated either one, sir.

24 Q So you really don't know what he was trying to
25 do from the time of the grounding until about

1 1:40 that morning?

2 A That's correct.

3 MR. COLE: May I approach the clerk, Your
4 Honor?

5 THE COURT: Sure.

6 MR. COLE: Mr. Purden, could I get one more
7 sticker?

8 Q (Mr. Kunkel by Mr. Cole:) I'm going to place
9 this on this diagram here, Mr. Kunkel, and if you
10 would, again, you can -- you don't have to stand
11 up, but if you would just look at that diagram
12 and tell the jury which holes -- which tanks
13 again had been damaged when you came down at
14 12:15 to 12:20, the first time to the cargo
15 control room.

16 MR. CHALOS: Objection, Your Honor. It goes
17 beyond cross examination. I never asked about the
18 hole in the tanks.

19 MR. COLE: It was brought up in direct
20 examination.

21 THE COURT: I think the scope of the cross
22 was quite broad. I'll go ahead and let...

23 Q (Mr. Kunkel by Mr. Cole:) Just -- would you
24 point to the tanks that you had -- that you saw
25 the first time that had sustained damage that

1 morning.

2 A Okay, by damage, what do you mean?

3 Q The tanks that you saw had lost oil.

4 A Okay. The tanks that had lost oil were 1, 2,
5 3, 4, and 5 center; 1, starboard; 3, starboard; 5
6 starboard had lost oil.

7 Q Could you tell whether damage had been done to
8 the fore peak or the starboard ballast tanks?

9 A The two starboard and the fore starboard tank
10 showed something coming in.

11 Q Could you tell how fast that was coming in?

12 A Very fast. It was -- it was coming in very
13 fast. The fore peak showed -- off the top of my
14 head, five to eight feet of something inside of
15 it but the tape had stopped, so it was not
16 showing movement like the rest of the tanks.

17 Q The tape stopped, meaning it was not coming in
18 or...

19 A Meaning the tape was stopped. That's my
20 first assessment.

21 Q And how much oil had you lost in the first 20
22 to 30 minutes since the grounding? Would you
23 write that on that?

24 MR. CHALOS: Your Honor, again, this was
25 covered on direct. Asked and answered.

1 THE COURT: Mr. Cole, it sounds to me like it
2 was on direct.

3 MR. COLE: I can lay the foundation and I've
4 got one other question after this, Judge. I think
5 it's pertinent, the information that he passed along to
6 Captain Hazelwood. That's what they have been going
7 into on their cross examination.

8 THE COURT: All right. We'll see. I'll give
9 you an opportunity to tie it up with something new.

10 Q (Mr. Kunkel by Mr. Cole:) Would you write up
11 there -- yesterday, you indicated it was between
12 110 and 115,000 barrels?

13 MR. CHALOS: Your Honor, why does he need to
14 write? Can't he just say it?

15 MR. COLE: Judge?

16 THE COURT: Yes, Mr. Cole?

17 MR. COLE: This is my redirect. I'm just
18 asking him to place it up there so that he can show the
19 jury what was going on that morning to show why -- what
20 information he passed along to Captain Hazelwood.

21 THE COURT: Objection sustained.

22 Q (Mr. Kunkel by Mr. Cole:) How much oil was
23 lost in the first 20 to 30 minutes that morning?

24 A I do not know how much was lost -- Your Honor,
25 I'm not sure if I understand his question. You

1 can say lost like over the side or that I can't
2 account for, looking at my numbers. I'm not
3 sure what you mean.

4 Q How much oil could you not account for?

5 A Okay. I could not account for approximately
6 110 to -- whatever my number was I gave you.
7 What was it, 110 to 120?

8 Q 115. 115,000 barrels? Is that...

9 A Correct. About in the area of 115,000
10 barrels, I could not account for.

11 Q So at that time you didn't need a computer to
12 tell you that the Exxon Valdez had sustained
13 serious damage that morning, did you?

14 MR. CHALOS: Objection, Your Honor. It's
15 leading. There's no foundation. And also
16 argumentative.

17 THE COURT: It is leading. Maybe you could
18 rephrase your question, Mr. Cole.

19 MR. COLE: No. I have nothing further.

20 MR. CHALOS: Your Honor, may we approach the
21 bench a second?

22 (0310)

23 (Entire bench conference indiscernible)

24 (0329)

25 THE COURT: The defendant will be allowed to

1 reopen the cross for a couple of inquiries.

2 MR. COLE: Judge, I'd move for the admission
3 of what's been identified as Plaintiff's Exhibit 84 --
4 or Exhibit 86.

5 MR. CHALOS: No objection, Your Honor.

6 EXHIBIT 86 ADMITTED

7 RECROSS EXAMINATION OF MR. KUNKEL

8 BY MR. CHALOS:

9 Q Good morning, Mr. Kunkel. I'd like to ask
10 you a question about the sailing board. Do you
11 remember Mr. Cole asked you about it. You said
12 at the time of sailing, the sailing -- or
13 somewhere near sailing, the sailing board was at
14 2100, meaning that the ship was leaving at 9 p.m.

15 A Correct.

16 Q Had that time been changed at all during the
17 day?

18 A Yes.

19 Q To what time was it changed?

20 A There was an occasion where on the 12 to 4
21 watch in the afternoon, it was put out to crew on
22 board 2100; ship to sail 2200.

23 Q Which means 10 o'clock?

24 A 10 o'clock. 10 p.m.

25 Q So if anyone checked in the afternoon to find

1 out what time the ship was leaving, they would
2 have been told that it was leaving at 10 o'clock?

3 A Correct.

4 Q Now, I'd like to ask you a little bit about
5 the loss of oil that Mr. Cole brought up. At
6 the time that the grounding occurred, were your
7 pressure vacuum valves opened or closed?

8 A Okay, on the grounding -- just prior to the
9 grounding, the pressure vacuum valves are always
10 in a closed position.

11 Q After the grounding, did they open?

12 A Yes, they lifted.

13 Q Was that as a result of the grounding?

14 A Yes.

15 Q What is the effect of the pressure vacuum
16 valves opening?

17 A Well, the pressure vacuum valves relieve the
18 pressure in the individual tanks and then if the
19 pressure is too great, it would -- well,
20 actually, in this case, we're talking vacuum.
21 The vacuum was too great; the liquid vacuum
22 breaker went and that means there's a liquid seal
23 that goes. Now the system is basically to
24 atmosphere.

25 Q Now, is the effect of the vacuum breaking to

1 cause the oil to drop down...

2 A Yeah, that's what...

3 Q ...and push itself out of the ship?

4 A Well, as the oil is dropping down, it's

5 pulling a vacuum, just like a -- well, you know,

6 that's what it's doing. It's pulling a vacuum.

7 Q And at the same time, I take it, the water is

8 rushing in. Is it not? In other words, the oil

9 is being displaced by water?

10 A Probably so, yeah.

11 Q And the net effect of that is to make the ship

12 heavier, is it not?

13 A That's correct. That's my understanding.

14 Q If one wanted to make the ship lighter again,

15 that is, create the buoyancy that it had with the

16 oil in it, what would you do?

17 A Well, I'd go around and close off the system.

18 The whole inert gas venting system. I'd close

19 and blank it all off.

20 Q And if one wanted to cause the ship to rise,

21 if you will, as opposed to settling, would you

22 close the vents off?

23 A Yes.

24 Q All right. Did Captain Hazelwood give you any

25 orders to close the vents at that time?

1 MR. COLE: Objection. Outside the scope.

2 MR. CHALOS: Your Honor, this goes to the
3 issue of the oil being lost and how much oil was lost
4 and how it continued to be lost.

5 THE COURT: Mr. Cole, rather than require Mr.
6 Kunkel to be brought back up here for the defense of
7 the case, I'm going to allow the defendant to open into
8 this limited area of inquiry. Otherwise, you're going
9 to have to bring him back up.

10 MR. CHALOS: Thank you, Your Honor.

11 Q (Mr. Kunkel by Mr. Chalos:) Mr. Kunkel, did
12 the captain ever tell you to close off the
13 pressure vacuum valves?

14 A No, sir.

15 (0490)

16 Q Now, you stated that you didn't know what the
17 captain was doing between 12:30 and 1:40. Am I
18 correct?

19 A That's correct.

20 Q On the basis of the instructions and commands
21 he was giving to you -- he gave you commands on
22 two separate occasions at least, did you believe
23 that the captain was trying to keep the vessel on
24 the reef?

25 A Now, what time frame are we talking about,

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sir?

Q From 12:30 to 1:40.

A Well, after 12:30 to 1:40, okay. Could you, you know, give me that question again now.

Q Yes. On the basis of the instructions the captain was giving to you and on the basis of what you observed when you went to speak with him, did you believe at that time, even though the captain didn't tell you, that he was trying to keep the vessel on the reef?

A At that time, no, I did not, no.

Q Did you have any belief at all?

A It was my -- I felt that perhaps we were trying to get off the reef at the beginning.

Q And...

A Later on, I realized that he was trying -- by telling me to ballast the ship down and to --that well, we're staying here. Those were indications that he was trying to stay on the rock.

Q In any event, the captain didn't tell you one way or the other what he was doing?

A That's correct. He never told me one way or the other.

Q Okay.

1 MR. CHALOS: I have no further questions,
2 Your Honor.

3 REDIRECT EXAMINATION OF MR. KUNKEL

4 BY MR. COLE:

5 Q Mr. Kunkel, do you remember speaking with the
6 FBI about this matter?

7 A Yes, I do.

8 Q Do you remember -- let me show you your
9 statement -- statement two of the statements to
10 the FBI interview.

11 A Yes, just as I just said, "At first I thought
12 that he might be trying to get the ship off the
13 reef."

14 Q If you read it, it says -- doesn't it say, "it
15 is Kunkel's assumption that the captain on the
16 bridge was attempting to dislodge the vessel from
17 the reef during the two hours he was working on
18 the scenarios"?

19 A No, I don't know what the exact question was
20 when this man asked me that, sir. This is a
21 summary.

22 Q Is that what it says?

23 A That's what that says there, yes.

24 Q Did you say that or did you not say that?

25 A I don't know if I said that or not, sir. It's

1 a summary.

2 Q When the captain told you to ballast the ship
3 down, that was later in the morning?

4 A Well, it was in that time period that you just
5 asked me about. He said to be ready to ballast
6 her down.

7 Q In the two-hour period?

8 A Yes.

9 Q Be ready to ballast her down?

10 A Correct.

11 MR. COLE: Nothing further.

12 RECROSS EXAMINATION OF MR. KUNKEL

13 BY MR. CHALOS:

14 Q Mr. Kunkel, when you thought the captain might
15 be trying to get the vessel off the reef, that
16 was right after you told him, "We have high
17 instability, Captain.". Is that right?

18 A It was in that time period, yes.

19 MR. CHALOS: I have no further questions.

20 THE COURT: May this witness be excused from
21 further participation now?

22 MR. COLE: No, we would ask that he remain
23 under subpoena at least until noon.

24 THE COURT: 'Til noon? Any problem with
25 that?

1 MR. CHALOS: No, sir.
2 THE COURT: Do you know how to get a hold of
3 him in case you need him?
4 MR. COLE: Yes.
5 THE COURT: Okay. You're excused for the
6 moment at least. You may call your next witness.
7 MR. CHALOS: Your Honor, may I ask the reason
8 why this witness needs to be under subpoena until noon?
9 THE COURT: I don't think that's information
10 that has to be disclosed but if Mr. Cole wants to tell
11 you, it's okay, but not in front of the jury. Let's
12 call the next witness please.
13 (685)
14 MR. COLE: Yes, Your Honor. At this time, the
15 state would call Mr. Scott Conner.
16 (Oath administered)
17 A I do.
18 SCOTT M. CONNER
19 called as a witness in behalf of plaintiff, being first
20 duly sworn upon oath, testified as follows:
21 THE CLERK: Sir, would you please state your
22 full name and then spell your last name?
23 A Scott M. Conner. C-o-n-n-e-r.
24 THE CLERK: And your current mailing address,
25 sir?

1 A 3940 East 112th. Anchorage.

2 THE CLERK: And your current occupation?

3 A Health Services technician, United States
4 Coast Guard.

5 THE CLERK: Thank you.

6 THE COURT: You may inquire.

7 DIRECT EXAMINATION OF MR. CONNER

8 BY MR. COLE:

9 Q Mr. Conner, where do you live right now?

10 A In Anchorage.

11 Q And who do you work for?

12 A The U.S. Coast Guard.

13 Q How long have you worked for the Coast Guard?

14 A I've been in the Coast Guard 14 years, 2
15 months.

16 Q And what's your position there again?

17 A I'm the Coast Guard's medical liaison at
18 Elmendorf Air Force Base.

19 Q Would you tell the jury what that means?

20 What's a medical liaison?

21 A Well, I take care of all the Coast Guard
22 personnel throughout the State of Alaska that
23 utilize Elmendorf Hospital which is the only full
24 service military hospital in the state.

25 Q Would you describe for the jury the training

1 you had to get to that position?

2 A I went to basic corpsman school in 1977 and
3 after that, I went to laboratory technicians'
4 school during '77 and 1978. And then it's just
5 been on the job training for years after that,
6 working independent duty and so on.

7 Q Has your position required you to draw blood
8 or take urine samples from people?

9 A Oh, yes.

10 Q Would you explain what training you've
11 received in that area as far as proper protocol?

12 A I was trained with the U.S. Navy at Oak Knoll
13 Navy Regional Medical Center in Oakland,
14 California in a 17-week laboratory technician
15 program in 1977 and '78.

16 Q Can you give the jury an idea of how many
17 times you've been required to perform blood --
18 take blood samples?

19 A Thousands.

20 Q Do you remember being in Valdez in March of
21 1989?

22 A Yes, sir.

23 Q Would you tell the jury when you went out to
24 Valdez during that time?

25 A I arrived in Valdez around, I believe, the

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21st. The incident was the 24th?

Q Just to the best of your recollection.

A Okay, I believe the 21st of March. And I routinely go to Valdez to perform physicals, to update their medical records and to assure that their medical health care contracts are in order and they don't have any problems medically.

Q Is that what you did on this particular trip?

A Yes, sir.

Q Do you remember when you were scheduled to return to Anchorage?

A I was scheduled to return that...

Q Well, let me ask you this. If you can't remember, were you at the airport, getting ready to go when you were given a phone call?

A I was -- I was departing the area when I was instructed to return to Marine Safety Office.

Q Do you remember when you were to leave that morning? Where were you when you got the call?

A I was at the -- I was in the parking lot of the airport when the Coast Guard vehicle from the station pulled us over and directed me to return back to the base.

Q And...

A That was about 8:30 in the morning.

1 Q Who called you back?
2 A Commander McCall.
3 Q Where did you report back to?
4 A To his office.
5 Q And that would be where?
6 A In the Marine Safety Office in Valdez.
7 Q Why were you called back?
8 A I was called back to wait for his
9 instructions. The only thing that I was told at
10 the time was that I had been recalled.
11 Q When did you find out what your instructions
12 were going to be?
13 A About half an hour later.
14 Q What were you told were your instructions?
15 A I was told that I would be flown out to the
16 Exxon Valdez to draw blood samples from the crew.
17 Q After finding out about that, what did you do?
18 A At that time, I contacted the laboratory at
19 Elmendorf Hospital just to make sure that there
20 wasn't any other types of blood samples that I
21 would need to draw or specialized blood drawing
22 equipment and then from there, I went to the
23 Valdez Community Hospital and acquired the
24 necessary equipment to draw the specimens.
25 Q What did you have to get there?

1 A I picked up the Vacutainer venipuncture
2 equipment along with...

3 Q Can you explain what that is for the jury?

4 A Sure. The plastic holders, blood tube holders
5 and the needles that screw in the front of 'em
6 and then also, the blood tubes for the exams that
7 were going to be necessary. Red top tubes which
8 are empty and are commonly called clot tubes and
9 then also grey top tubes which have sodium
10 fluoride in it which stabilizes the blood when
11 you're drawing for alcohol levels.

12 Q Now, did you get anything else while you were
13 there?

14 A No, just accompanying stuff. Alcohol pads and
15 band aids and stuff like that.

16 Q Now, did you -- where did you go after you
17 received that stuff -- after you got that stuff?

18 A I went back to the Marine Safety Office where
19 they outfitted me with a Mustang suit.

20 Q When did you leave Valdez in a helicopter? Do
21 you have any idea?

22 A About 9:30, a quarter 'til 10.

23 Q Where did you land when you got to the Exxon
24 Valdez?

25 A On the deck of the ship. Forward port side.

1 Q Do you have any idea when you got to the
2 tanker itself?
3 A No. Didn't take very long to get out there.
4 (1031)
5 Q Who did you report to when you got there?
6 A I was brought right up to the captain's
7 quarters and Mr. Delozier and Mr. Falkenstein
8 were in the passageway, outside of his quarters.
9 Q What happened when you spoke with them?
10 A They just asked me if I had everything I
11 needed and then Mr. Delozier brought me into the
12 captain's quarters.
13 Q Did you become aware at some point that there
14 was another toxicology kit on board the Exxon
15 Valdez?
16 A Yes. As soon as I walked into the captain's
17 quarters and Mr. DeLozier had expressed to me
18 that the urine samples had already been taken and
19 showed me what he had that had already been on
20 board the ship, pre-packaged specimen kits.
21 Q Did you see the urine samples at that time?
22 A Yes.
23 Q And had they been marked?
24 A Yes.
25 Q And how were they marked?

1 A They were marked with a label on the side with
2 the individual's name.

3 Q And had they been sealed?

4 A I don't recall. I'm not sure.

5 Q Did you do anything with them after that, with
6 the urine samples?

7 A I sealed them before the pack -- as I
8 completed the blood drawing on each individual,
9 everything was sealed and packaged and so on.

10 Q Now, you touched briefly about the other
11 toxicology kit. What happened when you learned
12 about the other toxicology kit?

13 A Well, when I saw the other kit, I looked them
14 over and they were especially designed for mishap
15 situations and they had both a red top tube,
16 blood tube and a grey top tube with sodium
17 fluoride in it, right in the box and each
18 container came with security seals. A chain of
19 custody form was adhered to the cover of the box
20 and there was chain of custody paperwork to be
21 placed inside the box.

22 Q Had you ever done anything like this before?

23 A Yes, sir.

24 Q Would you explain what happened then?

25 A When it was done before?

1 Q Yes. Just briefly, how had you been involved
2 in something like this before?

3 MR. MADSON: Well, I'd object, Your Honor. I
4 believe that's totally relevant. We don't know where,
5 when, the circumstances or I mean he's already told you
6 he had prior experience in it.

7 MR. COLE: This goes to the procedure that he
8 followed, his concerns that he was involved -- what his
9 concerns were.

10 THE COURT: Okay. We'll let you try it. Go
11 ahead. Objection overruled.

12 Q (Mr. Conner by Mr. Cole:) Had you been
13 involved in something like this prior?

14 A Not to this magnitude, but as far as security
15 of samples, yes. Multiple times throughout my
16 career in the Coast Guard for mishaps that had
17 occurred, be it a helicopter crash or vehicle
18 accident on the base or whatever.

19 Q And were you aware of the importance of a
20 chain of custody?

21 A Oh, yes, sir. That's part of law enforcement
22 training that you receive in all your
23 correspondence courses for advancement within the
24 Coast Guard.

25 Q Would you explain to the jury what is meant by

1 chain of custody?

2 A Chain of custody is assurance by signature and
3 in-person exchange of materials from one person
4 to another.

5 Q What does it assure?

6 A It assures that it hasn't been tampered with.

7 Q So that you have a pure sample to be tested?

8 A Yes, sir.

9 Q What about the importance of obtaining a good
10 sample? Were you aware of that necessity?

11 A Yes, sir.

12 Q Now, after you decided to use the toxicology
13 test, who was the first person that was tested?

14 A Captain Hazelwood.

15 Q Would you describe for the jury what happened
16 when you asked to test him or he was asked to be
17 tested?

18 A Well, after I put all the kits in order and
19 laid everything out and I also -- I supplemented
20 them with materials that I brought with me, more
21 tubes strictly because of the nature of the
22 incident. And I don't recall if Captain
23 Hazelwood was in his quarters at that moment or I
24 believe I told Mr. Delozier I was ready to draw
25 the samples and he got Captain Hazelwood who was,

1 I believe, just across the passageway in another
2 room and he brought him in. Captain Hazelwood
3 sat down at his desk and I proceeded to draw his
4 blood. I explained...

5 Q Did he give you a sample before -- a urine
6 sample before drawing his blood?

7 A Yes. It was given to Mr. Delozier.

8 Q Were you watching that?

9 A No. I don't believe I was even on board the
10 vessel at that time.

11 Q Would you explain what procedure you used in
12 giving Captain Hazelwood -- or obtaining the
13 blood sample from Captain Hazelwood?

14 A Sure. I asked Captain Hazelwood to place his
15 arm on the table where I applied a tourniquet to
16 the upper arm and I bathed the antecubital space
17 or the inside of his arm with an iodine solution
18 and I explained why it was brown because that we
19 were drawing for alcohol and I proceeded to draw
20 the samples of blood.

21 Q How many samples did you draw?

22 A Three.

23 Q Why did you draw three?

24 A You would normally draw two. One, for drugs
25 which would be the red top tube and the other for

1 alcohol which would be the grey top tube and I
2 drew an additional grey top tube because I was
3 well aware of the nature of the mishap and that
4 if a sample had been tested positive that it
5 would probably be sent to another lab for
6 confirmation and I drew an additional sample so
7 that there would be a sample available with a
8 security seal in place.

9 Q After drawing this blood sample, did you seal
10 these tubes in any way?

11 A Yes. In each package there was a strip of
12 orange security seals and the individual's name
13 and social security number was placed on the
14 label on the tube and one of these orange self
15 destructing or not quite self destructing but one
16 of these orange seals was placed over the top of
17 the tube and when all the tubes had been secure
18 and there was a -- I placed a security seal which
19 I'd brought with me....

20 Q What do you mean by security seal?

21 A Well, it's just a plastic strip that if it's
22 tampered with at all, it just parts, much like
23 you find on a lot of over-the-counter drugs
24 nowadays. If it's been opened, the seal would be
25 broke and I placed all of these in the container,

1 a styrofoam container, the three blood samples
2 and the urine sample and there was a sheet that
3 came with it with instructions and also there was
4 places to sign and the time that the samples were
5 taken and I signed this. Captain Hazelwood
6 signed this. This was placed inside the box.
7 The lid was put on the box and additional seals
8 were placed on the outside of the box on each
9 end.

10 There was a chain of custody form that was
11 adhered to the top of the styrofoam box where the
12 incident, the time, the place, the individual's
13 name, my name and I signed it and Captain
14 Hazelwood signed it. And also in there, Mr.
15 Delozier signed as witness.

16 Q What time did you draw the samples of blood
17 from Captain Hazelwood?

18 A I believe it was approximately 10:20 or 10:30,
19 somewhere around there.

20 Q Now, when you were speaking with Captain
21 Hazelwood, did you notice any signs of
22 intoxication at that time?

23 A No, sir.

24 Q Did you complete all this securing of the
25 sample before you went on to the next individual?

1 A Yes, sir.

2 Q Who else did you administer these tests to?

3 A Gregory Cousins, Robert Kagan and Ms. Jones
4 -- Maureen Jones, I believe.

5 Q And were the steps that you took any different
6 in obtaining blood samples from those individuals
7 than those that you've described about for
8 Captain Hazelwood?

9 A No, sir. Not in obtaining the blood samples.
10 In Ms. Jones' sample, however, the urine
11 container was not sealed properly and had
12 contaminated the inside of the packaging box and
13 so we threw that out and a new urine sample was
14 obtained and everything was packaged up and
15 sealed accordingly.

16 Q Was the blood and urine sample packaged up in
17 each individual package then?

18 A Yes, sir. They were in the same container.

19 Q For each person. And how did you seal the
20 urine samples?

21 A Well, I brought -- I brought some seals with
22 me, just some long thin strips with adhesive on
23 'em that we utilize in the Coast Guard for our
24 drug testing program and I just placed those over
25 the top and then I took the name label and put

1 that around so that the security seal went over
2 the top and then the name seal went over the ends
3 of that seal so it couldn't be removed.

4 (1600)

5 Q So at the end of this you have four individual
6 boxes?

7 A Yes, sir.

8 Q And each one is sealed with a chain of custody
9 notice on the front of it?

10 A On the inside and also, adhered -- it was pre-
11 adhered to the surface of the container.

12 Q And you did what with those samples then?

13 A I -- there was another form that was filled
14 out and they're all put in a large manila
15 envelope and I placed them in the bag that I had
16 with me and departed the ship.

17 Q Do you remember when you arrived back in
18 Valdez?

19 A Shortly after noon, sir.

20 Q And that evening did you spend the night in
21 Valdez?

22 A Yes, sir.

23 Q What did you do with the samples while you
24 were in Valdez that day?

25 A Well, I...

1 Q Did they stay in your possession?

2 A Most of the time, yes, they were.

3 Q What did you do with them?

4 A Well, I held onto the samples for about an
5 hour and a half, two hours that afternoon at the
6 MSO and then it was determined to draw the blood
7 samples of the watch standers in the Vessel
8 Traffic Center and I drew a blood sample and a
9 urine sample from Petty Officer Weidman who was
10 the Coast Guardsman on watch and after we
11 received instructions from, I believe, the
12 Department of Labor, I obtained a urine sample
13 from Mr. Blandford.

14 Q Then what did you do?

15 A Then I sat around for about an hour and a
16 half. Nobody was quite sure what to do with the
17 specimens at that time and I left the station and
18 I took the specimens with me and I left to go get
19 a hotel room before they were all gone and I got
20 a hotel room at the Village Inn and I had them
21 with me. I was in my room for about a hour,
22 maybe an hour and half at the most and I had the
23 specimens with me and then -- and I changed and I
24 left and went back to the Coast Guard Office and
25 I had the samples with me.

1 They did have a locked refrigerator at the
2 Coast Guard office. However, nobody had the key.
3 The individual that had the key was on the Coast
4 Guard vessel which was out on scene at the Exxon
5 Valdez and I sat around with them for a while
6 longer and I put 'em in the station's
7 refrigerator in the kitchen, in the galley. I
8 put them in the walk-in refrigerator on the
9 shelf. I placed them in a box and put 'em in
10 there on a shelf.

11 Q When did you come back and pick those up?

12 A Approximately 8 o'clock the next morning.

13 Q Were they in the same condition as when you
14 had left them?

15 A Yes, sir. I opened the box, took the bag
16 out, went through the container, all the security
17 seals were still in place. They hadn't been
18 tampered with and I don't believe anybody even
19 knew they were there except for myself. I did
20 not notify anybody that I put them there.

21 Q You specifically looked at each one of the
22 packages to make sure that they had not been
23 tampered with?

24 A Yes, sir.

25 Q Where did you go from there?

1 A From there, I got a ride out to the airport
2 and I took the next air flight out, back to
3 Anchorage.

4 Q And when you got to Anchorage, what happened?

5 A When I to Anchorage, I went home. I put the
6 samples in my refrigerator and I called my
7 executive officer, Commander Morraney (ph) at the
8 Marine Safety Office, Anchorage and explained to
9 him what I had in my possession but still at that
10 point, nobody knew what to do with them. And he
11 told me to stand by and that he would get further
12 instruction back to me and he called me back
13 about a half an hour later and instructed me to
14 meet Lieutenant Commander Stock at the Marine
15 Safety Office in the Federal Building.

16 Q Did you do that?

17 A Yes, sir, I did.

18 Q What happened when you got there?

19 A I got there, Mr. Stock was already in the
20 office and I brought the samples over to him,
21 showed him what I had. I had repack -- I had
22 repackaged the specimens from Mr. Blandford and
23 Petty Officer Weidman. I just placed them in
24 more stable containers, small boxes with padding
25 material, so they wouldn't roll around and Mr.

1 Stock filled out a chain of custody form which I
2 signed, he signed and he also signed the top of
3 each one of the containers from the crew members
4 on the vessel.

5 Q What was the condition of the containers
6 containing the crew members' urine and blood
7 samples at that time when you handed them to
8 Lieutenant Stock?

9 A They were the same. They hadn't been tampered
10 with. All seals were intact.

11 Q Seals of the boxes?

12 A Yes, sir.

13 MR. COLE: If I could have just one minute,
14 Your Honor. (Pause) No, I have nothing further.
15 (Pause) Judge, can we take up one matter outside --
16 at the bench here?

17 THE COURT: All right.

18 (1954)

19 (Whispered bench conference as follows:)

20 MR. COLE: Judge, I assume the protective
21 order on Mr. Blandford is still in effect?

22 MR. MADSON: I'm not going to ask the results
23 of any test on Blandford, no.

24 THE COURT: You didn't need to make that quite
25 so loud. Step back. (Indiscernible - whispering)

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(End of whispered bench conference)

(1970)

CROSS EXAMINATION OF MR. CONNER

BY MR. MADSON:

Q Good morning, Mr. Conner. It is Conner and not Conners, isn't it?

A Yes.

Q Okay, thanks. You are normally stationed right here in Anchorage. Is that correct?

A Yes, sir.

Q And that's also true back in March of last year, your normal duty station was here?

A Yes, sir.

Q I guess -- why did you go to Valdez that time?

A I went down to finish up some occupational physicals and to check on their medical contracts which were in place because there was that time. You start asking questions and see if they're having any problems with them because they're all to be renegotiated during the summer and just to check their medical inventory, their aspirin and stuff.

Q Is this done on a routine basis?

A Yes, sir. I try to get there at least once a quarter. I have been back twice since.

1 Q Do you notify anybody down there before you
2 arrive and tell them you're coming or do you just
3 kind of pop in?
4 A No, sir. They know I'm coming. Sometimes
5 they even pay for the travel funding.
6 Q Who is the they? I mean who do you...
7 A Well, I talked to Petty Officer Gonzales.
8 He's the yeoman in personnel there and I usually
9 talk to Mr. Falkenstein and let him know I'm
10 coming if there's anything anybody needs for me
11 to bring or act as a courier from Anchorage down
12 to Valdez.
13 Q Do you believe that you would have done your
14 normal routine and let people know you were
15 coming on this particular event -- that time,
16 rather in March of last year?
17 A Oh, yes. Yes.
18 Q Do you recall talking with Mr. Falkenstein?
19 A I'm sure I talked to him the preceding week or
20 days anyway.
21 Q So, the very least they knew you were coming
22 and what you'd would be doing?
23 A Oh, yes, sir.
24 Q So when you got there, what day did you
25 arrive?

1 A Sir, I arrived there two days prior to the
2 incident. If the incident was the 24th, I
3 believe I got there the 21st, so about three
4 days. I either spent two or three days there.

5 Q Did you talk to Mr. Falkenstein?

6 A When I go there?

7 Q Yeah.

8 A Yes, sir. I check in with them to let them
9 know I'm at their unit.

10 Q What about Mr. Delozier? Do you know him?

11 A Yes, sir. I've known Mr. Delozier for a
12 couple of years.

13 Q Did you talk to him when you arrived in
14 Valdez?

15 A Yes, sir, just making rounds through the
16 offices, just saying "Hi" to everybody.

17 Q So, he knew you were there too?

18 A Yes, sir.

19 Q So then on the morning, I believe, you said of
20 the 24th now, you were leaving Valdez to fly back
21 to Anchorage?

22 A Yes, sir.

23 Q I think you said that -- what time does the
24 flight leave? Do you know?

25 A The flight, I believe, is scheduled to leave

1 at 9:45.

2 Q And you were getting a ride from your duty
3 station out there to the airport?

4 A Yes, sir.

5 Q What time did you get there then at the
6 station?

7 A About 8, a quarter after 8.

8 Q At this time, did you hear anything about the
9 Exxon Valdez and what was going on?

10 A Yes, sir.

11 Q I imagine that was pretty much a topic of
12 conversation at I think you call it the MSO?

13 A Yes, sir. The Marine Safety Office.

14 Q What is it?

15 A Marine Safety Office.

16 Q I mean everybody was talking about it. Right?

17 A Those that were there, yes sir.

18 Q Did you know that Delozier and Falkenstein
19 were out on the vessel itself at that time?

20 A No, sir. I did not. I spent very little
21 time at the station. I was just looking for a
22 ride.

23 Q And you got that ride, but you didn't get to
24 the airport, I take it. Somebody stopped you?

25 A Got to the airport, didn't get inside.

1 Q Let me go back to the night before. Did you
2 have any social contacts at all with any of the
3 Coast Guard people that knew you were staying
4 overnight and where you were, things like this?
5 A Yes, sir, I did.
6 Q Who was that?
7 A I saw Mr. Delozier after hours.
8 Q Where was that?
9 A I met him at the Pipeline Club.
10 Q What time was that? Do you recall?
11 A Oh,, probably around 8 o'clock.
12 Q And did you drink any beer there?
13 A Yes, sir.
14 Q How about Mr. Delozier? Did he have any beer?
15 A I know he had -- I think he had one beer,
16 because I think I bought it and that was it.
17 Q He may have bought more beer but you don't
18 recall?
19 A Not while I was there, he didn't.
20 Q Did you leave first?
21 A No, sir. He left first.
22 Q Do you know what time he left?
23 A I believe it was around 9:30, 10 o'clock, but
24 I'm not quite sure.
25 Q You stayed for awhile then?

1 A Yes, sir.

2 Q You were off duty, right?

3 A Yes, and I travel to Valdez quite often. I
4 know an awful lot of the townspeople. You know,
5 I saw them and we just talked, catching up.

6 Q It's a common place to go, the Pipeline Club,
7 is it, just to socialize, have a few beers, a few
8 drinks?

9 A It's the center of town, sir.

10 Q Eventually, you'll see everybody in there,
11 right?

12 A Yes, sir.

13 Q I take it the next morning, you were not
14 feeling any effects from the alcohol you consumed
15 the night before?

16 A No, sir.

17 Q You didn't give yourself a blood test, did
18 you?

19 A No, sir.

20 Q When you were stopped on the way to the
21 airport, did anybody tell you what they wanted
22 you for?

23 A I don't believe so, sir. No, they just told
24 me that I had been recalled to the Marine Safety
25 Office and I inquired by who because it was

1 highly irregular and they told me I'd been
2 recalled by Commander McCall and to report back
3 to the MSO and wait outside his office.

4 Q And I think you said about a half hour later
5 then you were informed you were going to fly out
6 by helicopter to the Exxon Valdez?

7 A Yes, sir.

8 Q And you were going to take some blood samples,
9 right?

10 A Yes, sir.

11 Q And this was about 9:30 or 9:45 that morning,
12 the 24th?

13 A Yeah....

14 Q I'm not trying to pin you down to the exact
15 times, but I believe that's what you said before.

16 A Right. Once I was told by Commander McCall,
17 it didn't take very long at all.

18 Q Did you know what time the accident occurred?
19 The vessel went aground?

20 A No, sir. Not at that time.

21 Q When did you find that out?

22 A After I got back to the Marine Safety Office
23 from the ship and you know, you just start asking
24 questions.

25 Q Do you know why it took so long to get you out

1 to the Exxon Valdez?
2 MR. COLE: Objection. Speculation.
3 MR. MADSON: If he knows, Your Honor.
4 THE COURT: Objection overruled. If you know
5 as to your personal knowledge.
6 A No, sir.
7 Q When you came on board, I think you saw
8 Delozier and Falkenstein there, right?
9 A Yes, sir, I did.
10 Q Did you see a state trooper there or somebody
11 who was...
12 A I don't think he was a state trooper. I think
13 he was Fish and Wildlife because he was dressed
14 in brown.
15 Q Did he have a brown uniform on?
16 A I believe so, but I'm not sure. But I don't
17 think he was a state trooper. He didn't act like
18 one.
19 Q I won't touch that. This guy -- did you
20 recall his name, sir?
21 A No, sir.
22 Q Would you know him again if you saw him?
23 A Probably not.
24 Q Did you speak to him at all?
25 A Just -- you know, just cordially. "Hello",

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"Good morning". That was it.

Q He didn't shake hands, identify himself or anything like that?

A I'm sure he did. I'm sure he introduced himself and I did so in return, but...

Q Do you recall any orders, instructions or suggestions that he may have given you in taking the samples or in how to hold them for later use?

A Oh, no, sir.

Q Well, did you consider this to be a Coast Guard investigation at the time you were out there or did you know?

MR. COLE: Objection. Relevance.

THE COURT: Don't answer the question yet.

MR. MADSON: Well, Your Honor, I think it's appropriate to ask him why he's there. You know, what is he doing it for, if the state requested him to or the Coast Guard did?

THE COURT: Objection overruled.

Q (Mr. Conner by Mr. Madson:) The Coast Guard officer, Delozier or Falkenstein, requested you to come out and do this or somebody did in the Coast Guard?

A Somebody must have contacted Commander McCall.

Q Oh, I see.

1 A Because he's the one that directed me to go
2 out there.

3 Q McCall is the captain of the port. Is that
4 what he's called?

5 A Yes, sir.

6 Q And he is obviously with the Coast Guard?

7 A Yes, sir.

8 Q Getting back to my question then, did Mr. Fox
9 or let's assume his name is Fox but the person
10 you believe to be a Fish and Wildlife officer,
11 was he present when you took the tests?

12 A I don't believe that he was in the room in the
13 captain's quarters for the duration.

14 Q Do you recall if he explained to you at all
15 why he was there?

16 A No, sir.

17 Q Was it your understanding then that after
18 these tests were going to be taken, the blood
19 samples were going to be drawn rather, that you
20 were to physically take them and give them to
21 somebody in the Coast Guard for whatever person
22 they want to use them for?

23 A Eventually, yes, sir.

24 Q Now you said the tests were actually, or at
25 least the one on Captain Hazelwood was taken at

1 about 10:20 or 10:30 that morning. Is that
2 right?

3 A I believe so, sir. All the times are marked
4 on the containers.

5 Q Okay. They are marked on there.

6 A Yes, sir. The time is clearly marked on the
7 front of each container, along with the chain of
8 custody.

9 Q So, you're testifying to your best
10 recollection, right?

11 A Yes, sir.

12 Q And I think you said the ones that were on
13 board were the ones that you actually used.
14 Right?

15 A Yes, sir.

16 Q Now, you said the ones in the kit, the ones
17 that were on board the vessel, had a red top
18 container and a grey top container?

19 A Yes, sir.

20 Q And in addition to these grey top container
21 that was in the kit, you used a second one.
22 Where did that one come from? Did you have it
23 with you?

24 A Yes, sir. This is the material I brought with
25 me. I was not aware that these kits were on

1 board the vessel. And I acquired this equipment
2 from the Valdez Community Hospital.

3 Q And was it exactly the same, the grey top tube
4 kit or the tube that you brought on board, was it
5 the same as the one that was contained in the kit
6 that was on board?

7 A No, sir.

8 Q Well, maybe I'm confused. Why do you say --
9 it's a grey top...

10 A The difference -- the difference -- well, they
11 are the same type of tube. They have the same
12 function. However, the one that was in the kit
13 was a 15 milliliter tube and the ones I brought
14 with me were a 7 milliliter tubes. That's the
15 only difference was their size.

16 Q Size, right?

17 A Yes, sir.

18 Q What's a normal sample that you draw for blood
19 for testing?

20 A For blood alcohol, 7 milliliters is ample.

21 Q Can you explain how much that is to the jury
22 in terms of something we can relate to? A few
23 drops or...

24 A Well, there's 28 milliliters in an ounce, so
25 seven would be one quarter of an ounce. Seven

1 milliliters would be a quarter of an ounce.

2 Q The urine samples that you testified to
3 earlier, you said those were already done,
4 prepared and sealed by the time you got on board,
5 Right?

6 A They were taken and the names were affixed to
7 each one of them and I placed the seal over the
8 top of the containers.

9 Q But you don't know when the samples were
10 actually taken?

11 A With the exception of Ms. Jones, no, sir.
12 (2640)

13 Q And at the time you took the sample from
14 Captain Hazelwood, you said that you saw no signs
15 of intoxication at all?

16 A No, sir.

17 Q Did you smell any alcohol on his breath?

18 A No, sir.

19 Q How close did you get to him? I mean
20 obviously, you had to be fairly close to take a
21 sample, right?

22 A Right in his face.

23 Q Do you believe you're familiar with the smell
24 of alcohol on a person's breath, sir?

25 A Yes, sir.

1 Q And you're familiar with the signs of
2 intoxication on an individual?
3 A Yes, sir.
4 Q Was there some conversation that went on at
5 this time or was it totally silent?
6 A There was very minimal conversation, just
7 explaining what was to be done.
8 Q If I could describe to you if you will, I
9 assume it wasn't jovial?
10 A Oh, no, sir. No, sir.
11 Q I mean everybody was very serious, right?
12 A Extremely depressed.
13 Q Everybody seemed to feel the same way?
14 Everybody was down?
15 A All except for Mr. Delozier, Mr. Falkenstein
16 and myself and the public safety official there.
17 Q You sealed the individual samples then,
18 correct?
19 A Yes, sir.
20 Q Now, by that if you got three tubes for each
21 individual, you put those in one container and
22 then seal the whole container or are we just
23 talking about seal each individual tube?
24 A No, each individual tube was the -- the seals
25 that I had were about one inch by maybe one and a

1 half inches. And I placed that over top, over
2 the rubber stopper on each tube and adhered the
3 seal over the stopper to the glass sides of the
4 tube and they were placed in the container and
5 the container was sealed also.

6 Q Then you took the samples back to Valdez, I
7 imagine by the same helicopter that brought you
8 out?

9 A Yes, sir.

10 Q And would have got there noon or shortly
11 after?

12 A Sometime around then, yes, sir.

13 Q You went back to the MSO but you didn't know
14 what to do with the samples. Right?

15 A Nobody did, sir.

16 Q You say nobody did. Did you ask a lot of
17 people "what am I going to do with these", right?

18 A I asked -- I asked people that were senior to
19 me.

20 Q And they didn't know what to do with them
21 either?

22 A "Just hold on to them."

23 Q Did you just physically hold on to them then?

24 A For quite a while, yes, sir.

25 Q I think you said you then went back to get a

1 hotel because the rooms were filling up rapidly?
2 A Yes, sir.
3 Q And you took them with you again in your hand
4 or briefcase or something, right?
5 A Yes, sir.
6 Q When you got back there, did you do anything
7 with them? You know, what did you do at the
8 hotel?
9 A I just put them up in the window sill. It's
10 -- it's a common thing with biological samples
11 that you just -- you keep 'em cool, regardless if
12 they need to be kept cool or not. You just...
13 Q So your intent in putting them in the window
14 sill was because of the temperature, to keep them
15 cool?
16 A Yes, sir. 'Cause the room was real hot.
17 Q Was it cool by the window?
18 A Yes, sir.
19 Q Was the window opened?
20 A A little -- about two inches, yes sir.
21 Q Then you said you went back after about oh, an
22 hour or an hour and half, back to the MSO.
23 Right?
24 A Yes, sir.
25 Q And I think at that time, well, you knew there

1 was a refrigerator there but you couldn't get
2 into it? It was locked.

3 A That's correct, sir.

4 Q I assume by this time somebody had a key?

5 A No, sir.

6 Q You break it?

7 A No, sir. No, this is a small refrigerator
8 that is used for holding of urine samples when
9 Coast Guard people -- Coast Guard personnel are
10 tested on a periodic basis and it had a hasp and
11 a lock on it. This is not where I put the
12 samples. I put the samples in the galley reefer,
13 the walk-in refrigerator right along side the
14 carrots and the lettuce.

15 Q How about a six pack of beer?

16 A No, not in there, sir.

17 Q Maybe I'm confused but the refrigerator you
18 wanted to put them in that had the lock on it,
19 that was a separate special refrigerator just for
20 this purpose? You lost me on this.

21 A It wasn't designed for the purpose exactly at
22 hand, sir. When Coast Guard personnel are
23 randomly selected for drug testing, two samples
24 are drawn. One sent to the lab and another is
25 held in house. And those are to be in a locked

1 refrigerated container. And every Coast Guard
2 unit has one of these and there's somebody that
3 has the key. However, the person with the key
4 was not there.

5 Q So then you used the galley refrigerator, the
6 big one?

7 A Yes.

8 Q Where they keep the food and the lettuce and
9 all that stuff? Right?

10 A Yes, sir.

11 Q And was that -- were you present at the
12 station at all times then while it was in the --
13 samples were in the refrigerator?

14 A No, sir.

15 Q Was it locked?

16 A Normally, it is. However, I did not go back
17 after hours to see if it was locked. I am going
18 to speculate that it was not locked during the
19 evening due to the increase of activity and the
20 galley being open 24 hours for the crews that
21 were coming and going.

22 Q So you left them there and then went back to
23 the Village Inn, stayed overnight and picked them
24 up the next morning?

25 A Yes, sir.

1 Q I think you also said in response to Mr.
2 Cole's question that you were also asked to take
3 samples from the Coast Guard or the watch
4 standers. Right?

5 A Yes, sir.

6 Q I think you said you took only a urine sample
7 from Mr. Blandford. Is that correct?

8 A Yes, sir.

9 Q Why only a urine sample?

10 A That's what I was instructed.

11 Q You don't know the reason; you just...

12 A No, sir.

13 Q ...were told just take a urine sample?

14 A That's what I was instructed.

15 Q You got back to Anchorage and I think you said
16 the same thing occurred there as far as what to
17 do with the samples. There was some indecision,
18 if I could use that word, about what to do with
19 them?

20 A Well, no, not once I was in Anchorage. There
21 wasn't any indecision. I spoke with the
22 executive officer and he told me just to stand by
23 and I don't believe that was indecisive. He was
24 just...

25 Q He wanted to find out what to do or what the

1 next...

2 A Well, no, sir. I believe he just wanted to
3 contact one of his investigating officers to take
4 care of this.

5 Q And of course you gave them to Mr. Stock who
6 is also a Coast Guard officer. Right?

7 A Yes, sir.

8 Q Is he your next in line or superior or...

9 A Well, he is one of my superiors, sir.

10 Q Thank you.

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

12 MR. COLE: Judge, I have no further questions.

13 THE COURT: May this witness be excused from
14 further participation?

15 MR. COLE: Yes, sir.

16 MR. MADSON: I have no objection.

17 THE COURT: Okay. You're excused. Call
18 your next witness.

19 (3067)

20 MR. COLE: At this time, we would call
21 Lieutenant Stock.

22 (Oath administered)

23 A I do.

24 GARY J. STOCK

25 called as a witness in behalf of plaintiff, being first

1 duly sworn upon oath, testified as follows:

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

4 A My name is Gary John Stock. Last name,
5 S-t-o-c-k.

6 THE CLERK: And your current mailing address?

7 A Is in care of U.S. Coast Guard Marine Safety
8 Office, 222 West Seventh, P.O. Box 17, Anchorage
9 Alaska. Zip is 99513.

10 THE CLERK: And your current occupation, sir?

11 A Senior investigating officer for Coast Guard
12 Marine Safety Office, Anchorage.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION OF MR. STOCK

15 BY MR. COLE:

16 Q Lieutenant Stock, do you remember when you
17 contacted Mr. Conner?

18 A As I recall, I was contacted first by my
19 executive officer. I believe I got a phone call
20 -- actually, I believe I was beeped. I had the
21 duty and I was on the beeper and I was beeped and
22 I was told by the duty officer to call the XO and
23 I did. And he told me to get a hold of, I
24 believe, Scott Conner at the time.

25 Q Did you get a hold of him then?

1 A Yes, I did. He and I spoke over the phone and
2 he told me what he had and I told him to meet me
3 at the office, at our office in the Federal
4 Building and we would exchange the samples and I
5 would deal with them.

6 Q When was this?

7 A It was, I believe, as I recall, the 25th of
8 March about 2:30 or 3 o'clock in the afternoon,
9 Saturday, I believe.

10 Q Did you take possession of the package that he
11 delivered to you?

12 A Yes, I did.

13 Q And did you examine those packages?

14 A Yes, I did. I examined the samples
15 individually to ensure that the sample lids were
16 intact and that the safety seals were intact and
17 I went through them individually with Petty
18 Officer Conner just to ensure that I knew what
19 samples were what and that kind of thing and I
20 broke them down individually and logged them in
21 on our custody forms.

22 Q And had any of them been tampered with?

23 A Not that I could see. I specifically looked
24 at that to see if any had been tampered with or
25 the seals broken inadvertently and there was no

1 appearance that they were.

2 Q What did you do with the samples then?

3 A Well, once Petty Officer Conner signed them
4 over to me on our custody forms, I took
5 possession of them and he left and I put them in
6 a box and I contacted our unit urinalysis
7 coordinator who is Chief Warrant Officer
8 Gearhauser to get custody of the key and padlock
9 for our refrigerator in the warehouse where we
10 store our personnel urinalysis samples.

11 Q Now, would you tell the jury what samples you
12 -- what were the samples that you actually had
13 then in your possession?

14 A Well, I had a number of samples. There was
15 some blood and urine samples from six or seven
16 individuals. I can recall the names of the
17 majority of them. I may miss one but I remember
18 Captain Hazelwood was one. Maureen Jones, I
19 believe, was the look-out. Mr. Blandford which
20 I believe was a Coast Guard civilian watch
21 stander in the Vessel Traffic Center. I don't
22 have the file with me but if I had the file, I
23 could go through them individually.

24 Q If I showed you some chain of custody
25 packages, might that refresh your recollection?

1 A Sure. Sure. (Pause) Yes, okay. I did
2 have one from the mate, Gregory Cousins and this
3 is my chain of custody form with my name on it.

4 Q You've already spoken about that.

5 A Yes. Mr. Blandford. And also, yes, Mr.
6 Weidman. I don't know who that individual was.
7 I don't recall, but -- and that's right, Mr.
8 Kagan. Right, uh-huh (affirmative).

9 Q Would those have been the packages that you
10 had?

11 A Yes, that's correct.

12 Q So, what then did you do with those packaged
13 samples?

14 A Well, like I say, I contacted our coordinator
15 to obtain access to our refrigerator in the
16 warehouse and I got the padlock from him and the
17 only key to that padlock that he has, he gave to
18 me and I put the samples in the refrigerator over
19 the weekend.

20 Prior to doing that, I contacted the doctor
21 who represents the ChemWest Laboratory that I was
22 going to send them to, to talk to and I believe
23 her name was Dr. Jill Henes, I believe, as I
24 recall. I believe she was in North Carolina at
25 the time. She called me and we spoke and I

1 asked her if it was all right to store the
2 samples in the refrigerator over the weekend
3 because there was nobody at the lab in Sacramento
4 to accept them and also there was no Federal
5 Express airplane going out of Anchorage that
6 weekend, so I had kind of a problem with that, so
7 I wanted to just ensure that there was no
8 problems in storing the samples over the weekend
9 in the refrigerator and she assured me that there
10 was no problem with that at all.

11 Q What did you do with the samples physically?

12 A I personally took them to our warehouse down
13 on King Street and placed them in the refriger-
14 ator, locked the refrigerator. It has a hasp and
15 lock and I was the only one that had the key to
16 that padlock and I placed them in there over the
17 weekend.

18 And Monday morning, I contacted a packaging
19 outfit, I believe it's called ACE Parcel and told
20 them that I would be bringing the samples to them
21 that morning and I went down to the warehouse,
22 took the samples out, took them down to the
23 packaging outfit and I believe the gentleman's
24 name was Hank Schwab (ph). I signed -- or I gave
25 the samples to him. They were signed over to him

1 on the custody form and packaged and they were
2 Federal Express'd to ChemWest Laboratory in
3 Sacramento, California.

4 Q Now, when you got the samples out of the
5 locker at the Coast Guard storage locker, what
6 condition were they in at that time?

7 A They were in the same condition as they were
8 when I put 'em in there that Saturday afternoon.

9 Q So that would have been Monday? You looked at
10 them?

11 A That's correct.

12 Q Showing you what's been marked for
13 identification as plaintiff's exhibit number 87,
14 do you recognize that document?

15 A Yes. That's the receipt that I received from
16 the packaging outfit. That was the Federal
17 Express receipt to ChemWest from me and my
18 signature appears in the lower left hand corner.

19 Q Is that an accurate copy of the receipt that
20 you received that day?

21 A Yes, sir, it is.

22 MR. COLE: I would move for the admission of
23 what's previously been identified as plaintiff's
24 exhibit number 87.

25 MR. MADSON: No objection.

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THE COURT: Admitted.

EXHIBIT 87 ADMITTED

Q And where did you have this sent to?

A I sent it to ChemWest. Address, 600 West North Market Boulevard in Sacramento, California.

Q And that was on what day?

A 27/March/1989.

Q And the packages when you last saw them were in the same condition as when you had received them from Med Tech Mr. Conner?

A The Coast Guard.

Q The Coast Guard?

A Right. Yes, sir, that's correct.

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

MR. MADSON: I have no questions, Your Honor.

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

MR. COLE: Yes.

THE COURT: You're excused.

MR. COLE: Could we possibly take a break at this time, Your Honor?

THE COURT: All right. We'll take about a 15-minute break, ladies and gentlemen. Remember the instructions, not to discuss the matter among yourselves or with any other person, not form or

1 express any opinions.

2 THE CLERK: Please rise. This Court stands
3 in recess and subject to recall.

4 (Off record - 10:13 a.m.)

5 (On record - 10:35 a.m.)

6 (3673)

7 (Without Jury Present)

8 THE COURT: You may be seated. Mr. Madson,
9 do you need to take something up?

10 MR. MADSON: Yeah, I thought it best maybe at
11 this time, Your Honor, rather than have the jury come
12 in here and just be interrupted because of the
13 objection I would make would take a little time and
14 we'd probably just have to start over.

15 Mr. Cole told me that Mr. Peat is the next
16 witness, the one who did the testing. That's fine, but
17 he also told me that he's going to testify apparently
18 regarding the analysis of the urine sample that was
19 given by Captain Hazelwood.

20 The problem with that, Your Honor, is that the
21 results of these tests are being introduced in evidence
22 because of the Court's ruling that they were taken
23 lawfully, pursuant to a Coast Guard authority. That's
24 fine. I'm not raising that now. I'm just saying
25 that if that's the case, the Coast Guard regulations

1 then are important as to why a urine sample is taken
2 and its purpose. Its purpose is nothing to do with
3 intoxication. The purpose of taking a urine sample
4 under the Coast Guard regs and that's I believe, Part
5 40 CFR -- 49 CFR, Part 40. That's for the purpose of
6 testing for drugs, other than alcohol.

7 That was apparently done and it was negative. But
8 that isn't even relevant to this case. The operating
9 regulations, that's CFR -- 33 CFR 95 strictly -- very
10 clearly says that it's the blood analysis that
11 determines whether a person is intoxicated or not. So
12 the results of a urine test are absolutely irrelevant
13 to this. They're not meaningful at all because the
14 Coast Guard regs acknowledge that urine tests is
15 meaningless by itself. That doesn't mean anything and
16 they clearly say that...

17 THE COURT: Where do the regs say that a urine
18 test that discloses alcohol is meaningless?

19 MR. MADSON: Well, I think it's meaningless
20 here for the very reason, Your Honor, they say "an
21 alcohol concentration of .10% by weight or more in
22 their blood," not urine. I mean that -- the urine
23 analysis is totally irrelevant because it does not
24 relate to blood alcohol. It has nothing to do with it
25 and I think any expert will acknowledge that that by

1 itself doesn't mean anything. It means simply that
2 it's passed through the system but it is not blood
3 alcohol and does not relate to any standard of
4 intoxication regarding blood alcohol.

5 The purpose of the urine test was to test for
6 drugs other than alcohol because apparently they remain
7 in the system longer or something. I don't know why
8 the reason is, but to get into that raises another
9 whole issue which is going to totally confuse the jury,
10 require more expert testimony and lengthen the case --
11 the trial of this case because of what is a totally
12 irrelevant number.

13 THE COURT: Let me make sure I understand.
14 You foresee Dr. Peat testifying that he tested a urine
15 sample...

16 MR. MADSON: That's right.

17 THE COURT: ...and that his test disclosed
18 some alcohol content in the urine?

19 MR. MADSON: That's right. Which we think
20 would show that it's higher than the blood alcohol.
21 The state is going to use that in some type of argument
22 to confuse the jury. If nothing else, to say "look,
23 this number is higher than the blood alcohol". You
24 know, there is no -- here again, it gets confusing,
25 Your Honor, because we're in state court and under

1 state court, there may be evidence of urine -- alcohol
2 in the urine for a certain limited purposes but not
3 under the Coast Guard regulations for this cite. It
4 just gets extremely confusing. I mean we run into two
5 different things; we're running down two divergent
6 paths here, but you know, it just raises again, I
7 think, what is a totally confusing, unnecessary issue
8 that has nothing to do with -- I mean nobody can take
9 that number, the urine blood alcohol, and say, yes,
10 based on this, he has or had at that time X percentage
11 of alcohol in his blood which is a requirement under
12 the regulations or under our statute.

13 THE COURT: But doesn't it go to show that he
14 had some alcohol in his system?

15 MR. MADSON: That's the purpose of the blood
16 test, Your Honor.

17 THE COURT: Isn't that also the purpose of the
18 urine test, to show that he had some alcohol in his
19 system. Otherwise, how did it get there?

20 MR. MADSON: Well, the purpose of the urine
21 test, according to the Coast Guard, is a test for
22 drugs. It's very clear they separate the two. Urine
23 is for drugs; blood is for alcohol.

24 THE COURT: Okay. Mr. Cole.

25 MR. COLE: Judge, I don't know what Mr.

1 Madson's experts have told him about urine and blood,
2 but my understanding in cases that I have done and I
3 know Mr. Madson has done a tremendous number of DWIs,
4 that it is not uncommon for urine to be about 1. -- the
5 level of urine -- alcohol in urine to be about 1.3
6 times greater than the amount of alcohol that's found
7 in blood.

8 THE COURT: Well, is this going to be in the
9 form of testimony? Is this an offer of proof of what's
10 going to happen?

11 MR. COLE: Yes.

12 THE COURT: Okay.

13 MR. COLE: And this evidence of the urine is
14 going to number one, confirm that alcohol was in Mr.
15 Hazel -- Captain Hazelwood's system and number two,
16 going to be used to confirm the accuracy of the blood
17 tests. I think it's relevant. If Mr. Madson is
18 objecting on the grounds of relevance, which he seems
19 to be, it is relevant to confirm the blood sample and
20 to show the pres -- the amount and to show the presence
21 of alcohol in the system.

22 THE COURT: I assume your objection was
23 relevance. Now is that -- am I correct on that
24 assumption?

25 MR. MADSON: Well, that's in addition to the

1 obvious other objections I've made, Your Honor. I'm
2 not waiving them.

3 THE COURT: I understand, but your current
4 objection is relevance, not...

5 MR. MADSON: Yeah, it's relevance...

6 THE COURT: ...no other objection we're
7 talking about now?

8 MR. MADSON: It will tend to mislead, confuse
9 the jury and raise unnecessary issues. Now, what Mr.
10 Cole said is a little bit different than what I thought
11 he was going to understand the witness was going to
12 say. Maybe not this witness, but -- let me just ask.
13 Is this witness only going to testify as to results?

14 MR. COLE: That's correct.

15 MR. MADSON: I still object to the results
16 coming in, Your Honor, on the grounds of relevance and
17 we can probably argue that later.

18 THE COURT: This witness is not going to
19 testify -- relate that back to a little after midnight?

20 MR. COLE: That's not the purpose of him
21 being called. His purpose is to bring in the blood
22 tests that was taken and the analysis that was done of
23 the crew members.

24 THE COURT: And this witness is not going to
25 relate between the two, one being higher than the other

1 taken earlier showing no alcohol taken between the two
2 tests or any thing like that. There's no evidence like
3 that going to be suggested by this witness?

4 MR. COLE: All I was going to ask him is when
5 you saw the blood -- the results of the blood sample
6 and when you saw the results of the urine, did that
7 concern you as to the validity of the blood tests?

8 THE COURT: He's going to testify about
9 results and results only. Is that right? Is that
10 correct?

11 MR. COLE: Unless -- you know, unless they
12 open up the door.

13 THE COURT: Depends on what happens on the
14 cross. Okay, your objection is overruled, Mr. Madson.

15 MR. MADSON: Your Honor, perhaps it would be
16 the best time to take this other matter up too, as long
17 as we're here and I guess the Court -- I don't know if
18 the Court has got a copy of this state's notice of
19 expert that we received this morning.

20 THE COURT: Yes, I just got it.

21 MR. MADSON: Well, we did too. This raises a
22 whole new issue obviously. And all I can say, Your
23 Honor, is if the state wants to use an expert such as
24 this at this time, first of all, we strenuously object
25 at this stage of this trial with maybe one week of the

1 state's witnesses coming in to come in with somebody
2 totally different, off the wall. We had no idea in the
3 world they were going to have anybody like this. We
4 obviously cannot be prepared to meet this, if this is
5 allowed.

6 Now, I understand what the law is, that normally
7 -- and I say normally, when you're surprised with late
8 discovery, things like this, the testimony is usually
9 allowed but at the very least, the defense has a right
10 to have a sufficient length of time, a continuance to
11 be able to meet this and get another expert. Frankly,
12 I don't even know if this sort of stuff meets the fry
13 test of scientific reliability. It seems a little far
14 fetched but in any event, if this is allowed, Your
15 Honor, we're going to have to have at least 30 days to
16 try to, you know, find an expert -- come up with -- we
17 have to get the same tapes they used, get them to them,
18 let them listen to them, come up with their
19 conclusions. We have no idea of what this is going to
20 do.

21 (Tape: C-3624)

22 (0030)

23 THE COURT: When might you be calling Keith
24 Johnson, Ph.D. speech research laboratory and David B.
25 Pisani Ph.D. in psychology -- when might you be calling

1 these witnesses?

2 MR. COLE: When might we? We might call them
3 a week from Monday -- end of next week, but I would
4 think later.

5 THE COURT: Have you spoken with either of
6 these individuals?

7 MR. COLE: Mr. Adams has, yes.

8 THE COURT: All right. Have you been in
9 correspondence with these individuals?

10 MR. COLE: We made the first correspondence
11 yesterday, I believe. We found out about it on Tuesday
12 afternoon, Wednesday is when we were first made aware
13 of these reports.

14 THE COURT: When would you know if you're
15 going to call these witnesses for sure? And maybe you
16 can tell me why you haven't made that decision by now?

17 MR. COLE: Well, the reason is it primarily
18 came up in Mr. Chalos' cross examination of Mr. Kunkel
19 yesterday when he asked Mr. Kunkel after he heard the
20 tape of Captain Hazelwood, "Is that the voice of
21 Captain Hazelwood" and Mr. Kunkel said, "Yes, that's
22 him." "Is that the way he normally sounds." This
23 evidence is going to be offered to show that that isn't
24 the way he normally sounds. I think that we will make
25 the decision by Monday. I mean I need to talk...

1 THE COURT: I think the question that was
2 asked of him was "Did he sound any different than he
3 did earlier" and the answer was "Not really." And
4 that wasn't explored. The answer "not really" wasn't
5 explored on cross examination. That answer would
6 suggest there might be something but it wasn't explored
7 and there's been several witnesses testify that the
8 captain spoke in a slow, deliberate with pause type
9 effect. This is not really new, his mannerism of
10 speech. I mean we've heard witnesses testify about...

11 MR. COLE: Well, we've also heard a number of
12 witnesses that Mr. Chalos has asked "you saw him -- you
13 heard him on the 22nd? Is there anything different
14 from the way he appeared on the 22nd, the way he talked
15 as to when you saw him, heard him on the 23rd?"

16 THE COURT: Well, let's flush it out as much
17 as we can right now, Mr. Cole. What would you be
18 intending to call these witnesses for and I think the
19 defendant has a right to know this at this time, as
20 early as possible, so we won't have to grant an
21 unusually long continuance because of the surprise
22 nature of your witnesses.

23 Have you provided them with any, beside the
24 notice of expert?

25 MR. COLE: I've provided them with a package.

1 It's the curricula vitae of the two individuals, an
2 article dated July and August of 1989 and the
3 alcoholism clinical and experimental research done by
4 these individuals -- by one of these individuals.
5 That's volume 13, number 4.

6 I have also provided them with a research on
7 speech perception by the Indiana University. It's a
8 report to the NTSB of analysis of speech produced by
9 the captain of the Exxon Valdez. In it, it sets out
10 exactly what steps and what analysis these individuals
11 took. It's about a 10 to 15-page report to the NTSB.
12 That was all given to them.

13 THE COURT: When?

14 MR. COLE: Today. We received it yesterday.

15 THE COURT: Well, I would suggest if you're
16 actually intent on trying to get these witnesses to
17 testify that you make anything available that you get
18 from them including summaries of your conversations
19 with them to the defense counsel. Captain Hazelwood's
20 speech should have been known to you to be an issue in
21 this because that's evidence of intoxication, how a
22 person slurs his words or doesn't slur his words before
23 and after and the comparison between known sobriety and
24 somebody who may have had something to drink. This
25 should not be brought up at such a late date.

1 So, if you intend on trying to get them in
2 evidence, and I'm by no means suggesting you will at
3 this late date, I would suggest you get as much
4 information to defense counsel as you can.

5 MR. COLE: Yes, sir.

6 (0220)

7 THE COURT: Okay. Can we bring the jury in?

8 MR. MADSON: Oh, Your Honor, one other thing
9 very quickly. We've asked that Mr. Kunkel not be
10 released from his subpoena, Your Honor. We don't know
11 what's going to happen today, so the state requested it
12 be until noon. Well, we'd just like to leave it in
13 effect for longer just to make sure.

14 THE COURT: Why don't you...

15 MR. MADSON: Subject to recall, you know.

16 THE COURT: As I understand, Mr. Kunkel is
17 from outside the state. And he's under state
18 subpoena. Is that correct?

19 MR. COLE: That's correct.

20 THE COURT: When you release him, you let me
21 know when you're ready to release him and then the
22 burden at that time for housing him and for taking care
23 of his fees will rest on the defendant. You let us
24 know at that time and let Mr. Kunkel know when you're
25 going to need him.

1 MR. MADSON: That's right, Your Honor. We're
2 not thinking of needing him right, today or tomorrow or
3 next week, but just that he remains under subpoena so
4 if he leaves, obviously he's still subpoenaed but we'll
5 have to pay his transportation back, of course.

6 THE COURT: That's fine.

7 MR. COLE: No problem with that.

8 THE COURT: Okay. Let's get the jury in.

9 (Jury present)

10 THE COURT: Thank you for your patience,
11 ladies and gentlemen. Sometimes we don't come back in
12 10 or 15 minutes like I say and the reason we don't is
13 we're taking up some matters outside your presence to
14 speed up the matter when you do come back in so we
15 don't have to interrupt unnecessarily. Don't
16 speculate on what we're doing but just keep in mind
17 that we are working. Would you call your next
18 witness?

19 MR. COLE: Your Honor, at this time, the state
20 would call to the stand Dr. Michael Peat.

21 MR. PEAT: Can I affirm, please?

22 THE CLERK: Yes, sir.

23 (Oath administered)

24 A I do.

25 (0323)

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DR. MICHAEL PEAT

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

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

A Michael Allen Peat. P-e-a-t.

THE CLERK: And your current mailing address?

A 600 W. North Market Boulevard, Sacramento,
California, 95834.

THE CLERK: And your current occupation?

A Forensic toxicologist.

THE CLERK: Thank you.

MR. COLE: Thank you, Your Honor.

DIRECT EXAMINATION OF MR. PEAT

BY MR. COLE:

Q Dr. Peat, was your chemical lab asked to test
several blood samples back in March of 1989?

A Yes, we were.

Q Was that out of the Exxon Valdez grounding?

A Correct.

Q Would you explain to the jury what your
present position is?

A My present position is as vice president of
toxicology for CompuChem Laboratories.

Q Where do you live right now?

1 A In Sacramento, California.

2 Q Would you describe for the jury your
3 undergraduate education?

4 A Yes, I've an undergraduate degree in chemistry
5 which I obtained from Oxford Polytechnic in
6 England in 1969.

7 Q And your graduate degrees?

8 A I have a doctorate degree in pharmacology
9 which I obtained from the University of Utah in
10 1982.

11 Q Would you describe for the jury what your
12 employment has been since 1969 when you graduated
13 from college?

14 A Yes. I was first employed by the metropolitan
15 police forensic science laboratory, Taptnew (ph)
16 Scotland Yard in London. I worked there from
17 1969 to 1974. From 1974 until 1976, I worked
18 with the University of London at Charing Cross
19 Hospital medical school where I directed a
20 forensic and medical toxicology laboratory.

21 In October of 1976, I moved to the United
22 States and was employed by the Center for Human
23 Toxicology at the University of Utah from 1976
24 until 1984. From 1984 until October of 1986, I
25 was with Chemical Toxicology Institute in Foster

1 City, California and in 1986, October, I joined
2 CompuChem Laboratories.

3 Q And during this time have you also been a
4 teacher in various institutions or professor?

5 A Both at the University of London and at the
6 Center for Human Toxicology at the University of
7 Utah, I held faculty positions.

8 Q Would you explain to the jury -- you work for
9 CompuChem. Is that correct?

10 A That's correct.

11 Q Would you explain to the jury what ChemWest
12 is?

13 A ChemWest is a subsidiary, totally owned
14 subsidiary of CompuChem based in Sacramento,
15 California.

16 Q And where is CompuChem's other headquarters
17 located?

18 A In research, Triangle Park, North Carolina.

19 Q Would you tell the jury what the address of
20 CompuChem is in Sacramento?

21 A It's 600 W. North Market Boulevard.

22 Q And do you know a woman by the name of Dr.
23 Jill Henes?

24 A Yes, I do.

25 Q Who is she?

1 A Dr. Henes is the technical director of the
2 environmental testing group in Sacramento.

3 Q Does CompuChem -- ChemWest in Sacramento have
4 any type of certification?

5 A On the drug analysis side of the business,
6 yes. It's certified by the National Institute
7 on Drug Abuse. The National Laboratory certi-
8 fication program organized by that institute.

9 Q And what does that allow you to do?

10 A It allows us to test urine samples for federal
11 employees and for federally mandated drug testing
12 programs for the presence of drug abuse.

13 Q Are there rigorous -- are there standards that
14 must be upheld in order to get a certification of
15 that type?

16 A Yes, there are.

17 Q Would you explain to the jury what those would
18 be?

19 A Yes. The initial program is that you are
20 shipped three sets of samples to analyze over a
21 period of three to four months. You have to
22 pass those samples -- that is, you have to get
23 them correct. If you do that, you're then
24 inspected by a team of three inspectors for two
25 days. That team of inspectors would inspect your

1 facilities, your records, your staff, your chain
2 of custody procedures and other procedures within
3 the laboratory. If you pass all those criteria,
4 you're then certified by the NIDA program.

5 To maintain certification and you have to
6 every two months do a series of performance
7 testing samples, pass those and every six months,
8 undergo another two-day inspection.

9 Q Getting back to your qualifications, do you
10 have any professional certification?

11 A Yes. I'm board certified in forensic
12 toxicology.

13 Q And who would that be by?

14 A By the American Board of Forensic Toxicology.

15 Q When did you become certified?

16 A I believe in 1981.

17 Q Do you have any state licenses?

18 A I'm licensed as a laboratory director by the
19 states of California, New York and Maine.

20 Q Are you involved in the memberships of any
21 society in your field?

22 A Yes, I am.

23 Q Would you tell the jury about those?

24 A I am a member of the American Academy of
25 Forensic Sciences, the Society of Forensic

1 Toxicologists, the International Association of
2 Forensic Toxicologists, the Royal Chemical
3 Society, and the California Association of
4 Toxicologists amongst others.

5 Q Have you ever had any editorial board
6 appointments?

7 A Yes. I serve on the editorial board of the
8 Journal of Medical Toxicology, the Journal of
9 Forensic Sciences and Forensic Sciences Review.

10 Q Have you been called upon to be a reviewer of
11 national standards in any area?

12 A Yes, I have.

13 Q Would you explain that?

14 A I'm a member of the Advisory Board of the
15 National Institute on Drug Abuse which oversees
16 the laboratory accreditation program.

17 Q For laboratories throughout the United States?

18 A That's correct. I'm also a member of the
19 Toxicology Resource Committee of the College of
20 American Pathologists which oversees their
21 accreditation program.

22 Q Have you ever been -- do you have any
23 appointments to any professional organizations?

24 A Yes. I've served in various elected
25 positions for a number of organizations.

1 Q Would you briefly describe what those are?
2 A Yes. I'm currently program chairman of the
3 American Academy of Forensic Sciences Meeting.
4 I've served as president of the California
5 Association of Toxicologists; I've served as
6 chairman of the toxicology section of the
7 American Academy of Forensic Sciences and on
8 numerous committees for the organizations that I
9 mentioned above.
10 Q How do you keep updated in the field of
11 toxicology now today?
12 A Primarily by review of the literature and
13 books that are published and by attendance at
14 both national and international meetings.
15 Q And have you written any publications
16 yourself?
17 A Yes. I have authored or co-authored, I
18 believe, about 40 publications including articles
19 and book chapters.
20 Q And have those dealt with the use of gas
21 liquid chromatography. Is that correct?
22 A Certainly, that has been part of the some of
23 those publications, yes.
24 Q Would you give the jury an idea of how many
25 times you've been -- you personally, have been

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requested to test blood samples for the presence of drugs and alcohol?

A It's certainly within the thousands that myself or the laboratory -- the laboratories that I've directed have been asked to do that.

Q How about urine tests for the presence of alcohol or drugs?

A Again, those tests are in the thousands.

Q Have you been called upon to testify as an expert witness in the past?

A Yes, I have.

Q Can you give the jury an idea of how many times you've been called upon as an expert witness?

A I've testified as an expert witness on over a hundred occasions.

Q And would you give the jury an idea of where in the country you've testified as an expert?

A I've testified in a number of states, probably half the states in the United States and also in courts in Great Britain and Canada.

Q Now, I'd like to focus for a minute on the procedure that you use on your laboratory or the standard procedure for drawing blood. Do you receive out of state samples at your laboratory?

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A Yes, we do.

Q And is there any sort of standard procedure for drawing blood in the community?

A Certainly. If we're contacted prior to the drawing of a blood specimen, we'll recommend the use of grey stopper tubes.

Q What do you mean by grey stopper tubes?

A Grey stopper tubes are a blood tube that contain potassium oxalate and sodium fluoride. The oxalate acts as an anti-coagulant and the fluoride as an anti -- or an enzyme inhibitor.

Q Essentially, what does that substance do? What does it protect?

A It protects the breakdown of some drugs that are metabolized by enzymes and also inhibits enzymes that may undergo biochemical reactions to produce some compounds, including alcohol.

Q And how do you receive these samples generally from out of state?

A Generally, they're received by some overnight delivery service such as Federal Express or Airborne or U.S. mail.

Q Would you describe the procedure that your laboratory uses when it receives samples like this?

1 A Yes. The samples are received in a secured
2 receiving area. That area of the laboratory is
3 separated from the rest of the laboratory and
4 only people who work in it and some management
5 staff are allowed access. Access is restricted
6 by electronic card keys. Once a sample is
7 received in there, the shipment container is
8 first inspected to ensure that it has not been
9 damaged in shipment, there's no obvious breakage
10 of the seals, if there are seals on the shipment
11 container. If that's the case then the shipment
12 container itself is opened and depending what the
13 samples are, they're inspected directly to make
14 sure the evidence seals are intact or if they're
15 in separate boxes, then again those separate
16 boxes are inspected to make sure the seals are
17 intact.

18 Q What would happen if there was something that
19 was wrong? A sample had been tampered with?
20 What would your -- the people that you work for
21 do?

22 A The operating procedure is to note that on the
23 receipt chain of custody. For example, if a box
24 was received with the seal broken, that would be
25 noted on the chain of custody. For some of our

1 analyses, that matter is then brought to the
2 attention of the director or the manager and the
3 client or the person shipping the specimens is
4 contacted directly.

5 Q And are these records kept in the ordinary
6 course of your business there?

7 A Yes, they are.

8 Q And would these notation be noted immediately
9 after observing the problem?

10 A They would be noted upon receipt.

11 Q Now, after you have determined that there has
12 been no contamination or no breaking of the
13 seals, what does your business do with the
14 samples?

15 A The samples are then transferred to temporary
16 storage which is a refrigerator, locked
17 refrigerator, in the secure area and then they're
18 analyzed for whatever the particular request is.
19 Their handling within the laboratory is then
20 documented on an internal chain of custody form.
21 That internal chain of custody form documents who
22 handled the specimen on what date and what time.

23 Q Do the individual blood samples -- the samples
24 that you receive, do they -- do you give them
25 numbers?

1 A Yes, they're allocated a CW number or they
2 were at the time of the receipt of these
3 specimens. That CW number is a sequential number
4 that relates to the year. For example, CW-1-89
5 through CW-300 or 400-89.

6 Q And does that number follow -- is there a file
7 created at that point?

8 A Yes, there's a file created for that set of
9 specimens so if we receive a blood and urine from
10 an individual, they're both given the same CW
11 number and both the blood and urine chain of
12 custody, et cetera, goes into the same file.

13 Q And is that file then kept with the samples as
14 they're transferred from person to person?

15 A No, the file itself is kept in the secure
16 area, separated from the samples. It is
17 retrieved from the secure file area when the
18 samples are handled and the chain of custody
19 filled in. It's the chain of custodies that
20 accompany the specimens, not the original file.

21 (0949)

22 Q And when the samples are taken for testing,
23 would you describe briefly how you test a blood
24 sample that you receive? How is it tested in
25 your laboratory?

1 A Yes, the blood samples are retrieved from the
2 temporary storage in the refrigerator. They're
3 lined up and the chain of custodies from the
4 files are obtained. And the chain of custodies
5 is annotated by the person who retrieved the
6 blood specimens. All the blood specimens in a
7 particular batch or a particular run are
8 retrieved together and each one has its unique CW
9 number.

10 For alcohol analysis, for example, a line of
11 tubes, separate tubes, clean tubes is lined up
12 next to the blood tubes and each of those is
13 given a CW number. The blood specimen from the
14 blood tube is then transferred or a portion of
15 that blood specimen is then transferred to this
16 pre-numbered clean tube for analysis.

17 Q How does that analysis occur?

18 A For alcohol, that analysis occurs by gas
19 liquid chromatography.

20 Q Do you have ways of testing the accuracy of
21 your gas chromatography equipment?

22 A Yes. The chromatography equipment is
23 calibrated prior to the analysis of unknown
24 specimens or specimens we don't know the alcohol
25 concentration for. That calibration occurs by

1 the injection of three solutions of known
2 concentration of alcohol.

3 Q And is there a variation range within which
4 you must obtain before you can say that that's a
5 calibrated instrument and ready to compare -- to
6 test the samples?

7 A The calibration occurs by what we call linear
8 regression which is a ratio of the response of
9 the alcohol in the known calibrator to a peak
10 area ratio. And then we run periodically
11 throughout the year external proficiency testing
12 samples and controls and generally, their
13 variance is within 5%.

14 Q Now, how is a urine sample tested?

15 A In exactly the same manner, except in that
16 case, the urine containers are removed. Again,
17 they have a unique ChemWest number and again,
18 transferred to tubes, pre-labeled, pre-numbered
19 tubes for analysis.

20 Q And at the conclusion of this, is it your
21 practice to write reports?

22 A At the conclusion of the analysis, there is a
23 review by either the manager or the director of
24 the laboratory and then the manager or the
25 director will prepare a report for issuance to

1 the requesting agency.

2 Q And would you be the person that signed that
3 review, back in March of 1989?

4 A In this case, yes.

5 Q Now, I'd like to direct your attention to
6 March -- late March of last year, did you or your
7 laboratory receive a phone call to conduct blood
8 and urine testing in this manner?

9 A From memory, Dr. Jill Henes received a phone
10 call over the weekend from the Alaskan -- or the
11 U.S. Coast Guard in Alaska relating to this
12 incident. I was away from the office and home
13 that weekend. I was notified about it on a
14 Monday -- on the Monday, I had several
15 conversations with the Coast Guard in Alaska.

16 Q And when did your laboratory receive the
17 samples from the U.S. Coast Guard?

18 A On March 28, 1989.

19 Q Would you tell the jury who in your office
20 received those packages?

21 A The packages were received by a Karen Metcalf.
22 Karen is the supervisor of the receiving area.

23 Q That you discussed earlier? That's what you
24 discussed about earlier?

25 A Yes.

1 Q And were there any problems with the condition
2 of the packages that you received on that day?
3 A Can I consult?
4 Q Sure.
5 A Each of the packages were received on that day
6 indicate that the shipment containers themselves
7 were sealed and that the specimen containers were
8 both sealed and labeled. No problems were noted
9 on the initial chain of custodies for any of
10 those specimens.
11 Q Would you describe for the jury then which --
12 could I get you a class of water?
13 A Yes, that would be fine.
14 Q From whom did you receive samples then?
15 A The specimens were received from Federal
16 Express.
17 Q And did you receive samples from -- did you
18 open files for Captain Hazelwood and Maureen
19 Jones and Greg Cousins and Mr. Kagan?
20 A Yes, we did.
21 Q And you received a couple of other ones also?
22 A Yes.
23 Q Now, starting with Captain Hazelwood's sample,
24 where did they go after the receiving room?
25 A They never have -- in fact they still are in

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the secured receiving area.

Q When they -- they're still there right now?

A Correct.

Q After you received them on March 28th, where did they go?

A They were transferred from the temporary storage refrigerator in the receiving area.

Q And is that a secured area?

A Yes, that is a locked refrigerator within the secured receiving area.

Q And from there, where were they taken? Captain Hazelwood's?

A Captain Hazelwood's specimens are still, in fact, in a long term freezer storage in that area. Aliquots or portions thereof were removed for analysis and transferred to the laboratory.

Q Would you describe when they were tested then, these portions of Captain Hazelwood's sample?

A They were tested on -- portions of the samples were tested for alcohol on March 28th.

Q And were you present during the testing that occurred that day?

A I was present in the laboratory; I was not present all the time the specimens were being tested.

1 Q Did you review the testing and procedures that
2 were done that day?
3 A Yes, I did.
4 Q And did you review the calibration that was
5 done that day of the instruments that were used?
6 A Yes.
7 Q Was there any reason why -- let me rephrase
8 that. Were there any problems with the
9 calibration prior to this sample -- the testing
10 of those samples, the blood samples?
11 A No, the analysis was performed under our
12 normal operating procedure and the results were
13 satisfactory.
14 Q Speaking first to the blood sample that was
15 tested that day for Captain Hazelwood, was there
16 found the presence of alcohol in that blood
17 sample?
18 A Yes, there was.
19 (1298)
20 Q And would you tell the jury what that result
21 was?
22 A The blood was found to contain 0.061% weight
23 per volume of alcohol.
24 Q And did you also test Captain Hazelwood's
25 urine sample that day?

1 A Yes.

2 Q And did you determine -- did you find the
3 presence of alcohol in that?

4 A Yes.

5 Q And would you explain to the jury what the
6 results of that was?

7 A That was found to contain 0.094% weight per
8 volume of alcohol.

9 Q And I'm showing you what's been marked for
10 identification as plaintiff's exhibit number 88.
11 Do you recognize that document?

12 A Yes, that is the copy of the report I issued
13 on March 29th, 1989.

14 Q And is that a fair and accurate representation
15 of that report you did for Captain Hazelwood's
16 blood and urine samples?

17 A Yes, it is.

18 MR. COLE: I would move the admission of
19 what's previously been identified as plaintiff's
20 exhibit number 88.

21 THE COURT: Preserving your earlier
22 objections. Any other objections?

23 MR. MADSON: Nothing else in addition, Your
24 Honor.

25 THE COURT: Okay, it's admitted.

EXHIBIT 88 ADMITTED

1
2 Q Now, Dr. Peat, there is a difference between
3 the blood and urine results that were achieved in
4 this sample. Would you explain that difference
5 to the jury?

6 A Yes. Alcohol, as with any other drug, is
7 excreted through the kidney into the urine which
8 is stored in the bladder. The urine alcohol
9 reading then represents an average of the blood
10 readings, if I can call it that, over a number of
11 hours or the number of minutes, that the urine
12 has been excreted by the kidneys into the
13 bladder. It can be higher or it can be lower
14 than the blood reading but there's no reason to
15 expect it would be the same as the blood reading.

16 Q And generally, what is -- is there a number
17 that is a difference between blood and urine?

18 A Under some very controlled circumstances,
19 there is a ratio that can be used to back
20 calculate urine to blood.

21 Q Oh, okay. Urine to blood.

22 A But only under very controlled circumstances.

23 Q Now turning your attention to the tests that
24 were done for Mr. Kagan. When was his blood and
25 urine samples received in your office?

1 A On March 28th, 1989.

2 Q And were there any discrepancies in the
3 shipping of the package that were noted at that
4 time?

5 A No, there were not.

6 Q And when were samples of Mr. Kagan's blood and
7 urine tested for alcohol?

8 A On March 28th.

9 Q And did you review the testing that was done
10 that day?

11 A Yes, I did.

12 Q And did you sign your name to a report in that
13 matter also?

14 A Yes, issued on March 29th.

15 Q And was any blood -- was there any alcohol
16 detected in the blood or the urine of Mr. Kagan?

17 A No, there was not.

18 Q Showing you what's been identified as
19 plaintiff's exhibit number 89, do you recognize
20 that document?

21 A Yes, it's a copy of a report issued over my
22 signature on March 29th.

23 Q Is that a fair and accurate copy of the report
24 that you did?

25 A Yes, it is.

1 MR. COLE: I would move for the admission of
2 what's previously been identified as plaintiff's
3 exhibit number 89.

4 MR. MADSON: No objection other than
5 previously noted, Your Honor.

6 THE COURT: It's admitted.

7 EXHIBIT 89 ADMITTED

8 Q (Mr. Peat by Mr. Cole:) Now, would you
9 explain to the jury when you received a report
10 from Mr. Cousins?

11 A We received samples...

12 Q Or received the samples from Mr. Cousins.

13 A On March 28th, 1989.

14 Q And were there any problems noted with the
15 sample that you received from Mr. Cousins?

16 A No, there was not.

17 Q And when was samples of Mr. Cousins' urine and
18 blood tested for alcohol?

19 A On March 28th.

20 Q And did you sign a report in that matter also?

21 A Yes, I did.

22 Q Was there any alcohol detected in his blood or
23 urine?

24 A No, there was not.

25 Q Showing you what's been identified as

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plaintiff's exhibit number 90, do you recognize that report?

A Yes, it's a copy of the report issued over my signature on March 29th, 1989.

Q And is it a fair and accurate representation of the report?

A Yes, it is.

MR. COLE: I would move for the admission of what's previously been identified as plaintiff's exhibit number 90.

MR. MADSON: Same, Your Honor.

THE COURT: It's admitted.

EXHIBIT 90 ADMITTED.

Q Finally, did your laboratory receive a sample of blood and urine from Maureen Jones in this matter?

A Yes, we did.

Q When did you receive that?

A On March 28th, 1989.

Q Would it have been by the same person who received the other three samples?

A Yes, Karen Metcalf received all these samples.

Q Were there any discrepancies noted in those samples that you received?

A No, there was not.

1 Q When were samples of her blood and urine
2 sample tested by your laboratory?

3 A On March 28th, 1989.

4 Q And did you prepare a report in that matter?

5 A Yes, I did.

6 Q Was there any alcohol detected in Ms. Jones'
7 blood or urine?

8 A No, there was not.

9 Q Showing you what's been marked for
10 identification as plaintiff's exhibit number 91,
11 do you recognize that document?

12 A Yes, it's a copy of a report issued over my
13 signature on March 29, 1989.

14 Q And is it a fair and accurate representation
15 of that report?

16 A Yes, it is.

17 MR. COLE: I would move for the admission of
18 what's been identified as plaintiff's exhibit number
19 91.

20 MR. MADSON: Same previous objection, Your
21 HOnor.

22 THE COURT: It's admitted.

23 EXHIBIT 91 ADMITTED

24 Q (Mr. Peat by Mr. Cole:) Now, Dr. Peat, you
25 also tested the urine for several drugs in the

1 course of this examination. Is that correct?

2 A Yes.

3 Q Was any of these drug factors, was there a
4 presence of any of those in any of the reports?

5 A No, the presence of the common drugs of abuse
6 were ruled out in the four people indicated.

7 Q Now, briefly, I would ask you you talked about
8 a 5% verification [sic]. Would you explain to
9 the jury what you mean by that? And if you
10 would, let me put Captain Hazelwood's blood
11 alcohol results on the board. Would you explain
12 to them what 5% variation means?

13 A Yes. That means if that sample had been
14 tested -- in fact it was tested in duplicate on
15 that particular day, it was tested over a number
16 of assays throughout that day, it would vary 5%
17 either way for acceptability, so it would be .058
18 to .064 would be the range that you would expect
19 for that specimen when tested on that day.

20 Q Thank you, Dr. Peat.

21 MR. COLE: I have nothing further.

22 CROSS EXAMINATION OF MR. PEAT

23 BY MR. MADSON:

24 Q Good morning, sir.

25 A Good morning.

1 Q You testified that you are the director of the
2 laboratory. Is that correct?
3 A Correct.
4 Q By director, that means you are in charge of
5 the entire facility?
6 A Yes.
7 Q I assume you report to somebody else?
8 A Yes.
9 Q Who would that be?
10 A The president and CEO of the corporation.
11 Q So you are at least upper management level, if
12 not middle management, at least. Right?
13 A Correct.
14 Q Now, you indicated that you reviewed the
15 reports and signed off on these, but is it
16 correct then that you did not personally do these
17 laboratory tests?
18 A That's correct.
19 Q Is it fair to say then, sir, that you rely on
20 the people under you to do a competent and proper
21 job?
22 A Yes.
23 MR. MADSON: I don't believe I have any other
24 questions.
25 Q Thank you. Oh, excuse me, I do too. You

1 said you were asked to perform these tests at the
2 request of the United States Coast Guard.
3 Correct?
4 A Yes.
5 Q You were never asked to do this by the State
6 of Alaska? Is that right?
7 A I never had any contacts, as far as I
8 remember, with the State of Alaska.
9 Q Are you here today under subpoena?
10 A Yes, I am.
11 Q Along with your records?
12 A Correct.
13 Q Thank you.
14 MR. MADSON: I have no other questions.
15 THE COURT: Anything further from the witness?
16 MR. COLE: No.
17 THE COURT: May the witness be excused from
18 further participation?
19 MR. COLE: Yes, Your Honor.
20 MR. MADSON: Yes.
21 THE COURT: Okay. You're excused, sir.
22 Thank you.
23 (1782)
24 MR. COLE: Judge, can I step outside to see if
25 our next witness is here?

1 THE COURT: (No audible response.) Did he
2 take some exhibits with him?
3 THE CLERK: I'm not sure.
4 THE COURT: I think he might have. Before Dr.
5 Peat gets too far away, did he inadvertently take some
6 exhibits with him? Do you have all the exhibits that
7 Dr. Peat identified? I only see, it looks like one on
8 the counter there. You had them at counsel table,
9 then?
10 MR. COLE: Yes. Here they are. Here.
11 THE COURT: Okay. Thanks. Wanted to make
12 sure. You may call your next witness.
13 MR. COLE: Your Honor, at this time, the
14 state would call Mr. Mark DeLozier.
15 (Oath administered)
16 A I do.
17 MR. MARK DELOZIER
18 called as a witness in behalf of plaintiff, being first
19 duly sworn upon oath, testified as follows:
20 THE CLERK: Sir, would you please state your
21 full name and then spell your last name?
22 A It's Mark James Delozier. D-e L-o-z-i-e-r.
23 THE CLERK: And your current mailing address?
24 A Post Office Box 1934, Valdez, Alaska.
25 THE CLERK: And your current occupation?

1 A I'm a vessel supervisor.

2 THE CLERK: Excuse me?

3 A Vessel supervisor.

4 THE CLERK: Thank you.

5 THE COURT: Would you try to speak up a little
6 bit, please. Move the microphone up a little bit.

7 Maybe that will help a little bit. Thanks.

8 DIRECT EXAMINATION OF MR. DELOZIER

9 BY MR. COLE:

10 Q Good morning, Mr. DeLozier. How are you
11 today?

12 A Fine.

13 Q Would you tell the jury where you live now?

14 A Valdez, Alaska.

15 Q How long have you lived there?

16 A Oh, three years.

17 Q And what brought you to Valdez?

18 A I asked to come up to Valdez with the Coast
19 Guard.

20 Q Who's your wife?

21 A Jane DeLozier.

22 Q And what brought -- you came up with the Coast
23 Guard three years ago. What was your position
24 when you came up to Alaska?

25 A I was marine inspector, marine investigator.

1 Q And when did you leave the Coast Guard?
2 A I departed work on August 15th, '89 and was
3 detached from the Coast Guard, retired on
4 November 1st, '89.
5 Q Where do you work right now?
6 A I work for North Employment Agency.
7 Q And what are you doing for them now?
8 A I'm a vessel supervisor escorting laden
9 tankers out of Prince William Sound.
10 Q Now, back in March of 1989, what was your
11 position at that time?
12 A I was chief of marine safety department at the
13 Marine Safety Office in Valdez, Alaska. Combined
14 duties were marine inspection, marine casualty
15 investigation, pollution investigation and
16 environmental protection.
17 Q Who was your immediate superior there in
18 Valdez?
19 A I reported directly to the executive officer,
20 Lieutenant Commander Tom Falkenstein and then to
21 the commanding officer, Commander McCall.
22 Q And how long had you held that position?
23 A For the entire time I was there.
24 Q Would you briefly describe for the jury, give
25 them an idea what things you did while you were

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at that job? Did you fill out investigation reports if oil was spilled in the harbor or what was it that you did?

A Well, primarily for the pollution investigation, I had a team of petty officers that completed those tasks. I was overall in charge of it and they would turn in their reports -- investigation reports to me and then they would be passed up to my boss. As far as the marine inspection and marine casualty investigation, I completed all that myself.

Q Would you tell the jury were you working on March 23rd, 1989?

A Yes, I was.

Q What time would you have gotten off work that day?

A I worked 8 to 4 daily, Monday through Friday and alternate a week on and week off with after hour duty with another warrant officer that's stationed at the office.

Q Would you have been on duty that evening?

A On duty?

Q The off week duty?

A I alternate with the duty inspector/duty investigator with another warrant officer and I

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do not believe I was on duty that particular night. However, I am the department head of that office and I do feel a responsibility to try to keep appraised of everything that goes on whether I'm on duty or whether I'm not.

Q What did you do after work then that day? Do you recall that?

A I went home. I got the kids settled. I helped my wife prepare dinner. She was leaving at approximately 7:30. Thursday night is our ladies' darts nights and she left at 7:30. I finished preparing the dinner, getting the kids all settled, watched the news, sat back. Around 8 o'clock, I went over to the Pipeline Club to watch her play darts.

Q What was your wife doing when you got there?

A Playing darts.

Q How long did you stay at the Pipeline Club?

A About two hours.

Q Did you have anything to drink there?

A Yes, I did.

Q What did you have to drink?

A I had two Miller Lites.

Q Did you see anyone you recognized while you were at the Pipeline Club that evening?

1 A Certainly.

2 Q Would it have been people that were playing
3 with your wife?

4 A Yes.

5 Q Anybody else that came to mind?

6 A Valdez is a small town. You know almost
7 everyone there.

8 Q After you got done at the Pipeline Club, where
9 did you go to?

10 A I went home.

11 Q Who was with you when you went home?

12 A My children.

13 Q Who went with you home from the Pipeline Club?

14 A No one went with me. My wife drove herself to
15 the Pipeline Club and I came up an hour or a half
16 an hour later or so in my own car. I also left
17 alone. She came home afterwards.

18 Q When you got home, do you remember going to
19 sleep then?

20 A Sure.

21 Q What time would you have gone to sleep?

22 A Not later than 10:30.

23 Q Do you recall being awakened early that
24 morning?

25 A Yeah.

1 Q Would you explain to the jury what happened
2 then?

3 A The phone rang. My daughter picked up the
4 phone because the phone is out in the living
5 room. She answered it, came in and woke me up.
6 Told me the phone was ringing. Told me it was
7 for me. I went and answered the phone and they
8 told me the Exxon Valdez was hard aground,
9 leaking oil. I said okay, I'll be in in a
10 moment.

11 Q What did you do then?

12 A Put on my clothes and went in the office.

13 Q Do you remember what time you would have
14 arrived in -- at the VTC Center that day?

15 A I suppose it was about a quarter 'til one.

16 Q Who was there when you got there?

17 A Commander McCall, Lieutenant Commander
18 Falkenstein, Bruce Blandford, radio watch
19 stander, I don't recall who it was and then
20 everyone started showing up.

21 Q Would you tell the jury who Commander McCall
22 is?

23 A He's the commanding officer of the Marine
24 Safety Office in Valdez. The former commanding
25 officer.

1 Q He would have been the head of the Valdez
2 Coast Guard?
3 A He's overall in charge of the whole operation.
4 Q Was a plan devised as to the Coast Guard's
5 response to the Exxon oil spill there that
6 morning?
7 A Was there a what?
8 Q A plan devised that morning for your initial
9 response as to the Exxon Valdez oil spill?
10 A Yes.
11 Q What was that to be?
12 A That myself and Lieutenant Commander
13 Falkenstein would head on out to the Exxon Valdez
14 by way of the pilot launch and assess the
15 situation.
16 Q Was there anyone that was to go with you at
17 that time?
18 A Yes. A DEC representative who would have been
19 Dan Lawn. That's who it was.
20 Q What vessel did you take when you left the
21 harbor that evening?
22 A The Silver Bullet.
23 Q Do you recall when you left that morning?
24 A Just around 2:15, 2:30, somewhere around
25 there.

1 Q How long does it normally take to get out to
2 Bligh Reef?
3 A Depends on how fast the boat is.
4 Q In that vessel.
5 A That vessel. I think -- say, about 45
6 minutes to an hour. Maybe a little longer.
7 Q When you got out to the Exxon Valdez, what
8 could you see?
9 A I could see the ship off in the distance. The
10 deck was lit. I saw a tug boat off the bow. As
11 we approached closer, I saw the other pilot
12 launch, the Cherikof standing by. As we got
13 within oh, I'd say about 500 yards, you could see
14 oil spreading from the vessel all around.
15 Q Did you have any difficulties or any problems
16 getting on board the Exxon Valdez then?
17 A I didn't. I was a little bit fearful for the
18 person in front of me and myself.
19 Q Let me rephrase that question. Did you
20 remain on the Silver bullet to go alongside the
21 Exxon Valdez?
22 A No, we didn't.
23 Q What happened?
24 A We were transferred to the Cherikof.
25 Apparently, the Cherikof had already been in the

1 oil so her hull was dirty. The Silver Bullet was
2 not dirty so instead of having both vessels
3 dirty, then we transferred to the Cherikof.

4 Q And where did you go from there?

5 A We went around to the port side of the vessel.
6 That's where the pilot ladder was and we took a
7 look at the situation. The oil was too thick and
8 spread out over the area too great or too large
9 an area, so we asked the vessel to move the pilot
10 ladder over to the starboard side, because it
11 wasn't as thick over there -- or wasn't -- it
12 wasn't right at the section where the pilot
13 ladder was lowered.

14 Q When you got over to the starboard side, could
15 you see the oil coming out of the Exxon Valdez?

16 A Oh, absolutely.

17 Q Could you describe what you saw to the jury?

18 A The oil was coming out of the vessel at a very
19 intense rate. I remember observing right at the
20 water line where the hull meets the water line,
21 the oil was bubbling up into the air. Sometimes
22 it was bubbling up 16, 18, 20 inches high. The
23 thickness of the oil spread out approximately a
24 hundred, 200 yards away from the vessel. This
25 was on the starboard side and then up around the

1 bow. The farther you got out into the slick, the
2 thinner it got, but up against the hull, I would
3 estimate it to be foot, a foot and a half deep.

4 Q Were there any fumes in the area?

5 A Yes, there were.

6 Q In your opinion, was there a danger of
7 explosion at that time?

8 A Yes.

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

11 THE COURT: Mr. Cole, the answer came in
12 awfully fast. I'll let the objection stand. You can
13 argue at this time.

14 MR. COLE: Based on his common sense and
15 experience.

16 THE COURT: I'm going to overrule the
17 objection. I know it's hard to make these objections
18 because the question and the answer happened so quickly
19 and if you can't make it in time, I won't deem it being
20 waived in the future. Go ahead.

21 Q (Mr. DeLozier by Mr. Cole:) Now, in the
22 boarding process, who boarded the vessel with you
23 that morning?

24 A Commander Falkenstein went up the ladder first
25 and, Dan Lawn went up second and I went up third.

1 Q How long had you been in the water, waiting to
2 arrive -- waiting -- how long had you been
3 sitting alongside the Exxon Valdez or just right
4 -- a short distance away before you were actually
5 able to board the vessel?

6 A Ten minutes, I would say. Maybe a little
7 longer.

8 Q What time did you actually get up on the
9 bridge of the deck of the Exxon Valdez?

10 A I don't recall, but I read numerous reports
11 that I arrived around 3:30.

12 Q And does that seem about correct to you?

13 A Yes.

14 Q When you went on board the Exxon Valdez that
15 morning, what was your purpose? What was the
16 purpose of the Coast Guard's presence?

17 A To assess the situation.

18 Q Did you have any concerns about the safety of
19 the crew members or the stability of the vessel?

20 A Absolutely.

21 Q And were those your primary concerns or
22 secondary concerns?

23 A That was my primary concerns.

24 Q And Commander Falkenstein? Do you know what
25 his concerns were?

1 A I know him well enough to say that would be
2 his prime concern also.

3 Q Who were you met by when you got up on board?
4 Do you recall?

5 A I believe it was one of the ABs.

6 Q And where did you go from there?

7 A Walked across the deck, across the cargo
8 piping, down the port side into the house, into
9 the elevator and up to the master's deck. Walked
10 up to the wheelhouse and met Captain Hazelwood on
11 the port side up on the -- by the forward
12 windshield.

13 Q While you were going across the deck, did you
14 notice any signs of oil on the deck?

15 A While I was boarding the vessel, I saw two
16 patches of oil that was dripping down the side of
17 the vessel. The one on the aft starboard side
18 was about 24 foot wide and extended from the main
19 deck down to the water line. The one up on the
20 bow, next to the number one tanks, was about 10
21 to 15 feet wide and extended from the main deck
22 down to the water lie. As I crossed the main
23 deck, I also observed oil running down the fish
24 plate on the starboard side and then...

25 Q What did you say? The fish plate?

1 A Fish plate.

2 Q What's that?

3 A That's a piece of steel that's welded to the
4 side of the main deck, goes around the perimeter
5 of the vessel.

6 Q Who was on the bridge when you got up there?

7 A Maureen Jones, Greg Cousins and that's all
8 that I can recall. Now this is -- well, and
9 Captain Hazelwood and then the three people that
10 boarded the vessel, myself, Mr. Lawn and
11 Falkenstein and obviously, the AB who assisted us
12 up there.

13 Q Where was Captain Hazelwood -- well, let me
14 -- could you use that pointer to show the jury
15 where Captain Hazelwood was?

16 A He was standing right up there, next to that
17 window.

18 Q Was he standing there or leaning there or how
19 was he?

20 A He was leaning up against the window with his
21 elbow on the window sill and his other hand --
22 well, actually his elbow on the window sill and
23 his hand over his mouth like this.

24 Q Did you go over and talk to him at that time?

25 A Yes.

1 Q What was your purpose in talking to him at
2 that point?

3 A Well, my boss was there, Lieutenant Commander
4 Falkenstein and him being a senior officer, I
5 followed his suit. In other words, I allowed
6 him the opportunity to talk first. My purpose
7 for being there would have been to delve into the
8 investigation and also to ascertain any
9 structural problems or anything of this nature
10 that we may be of help about.

11 Q When you say investigation, do you mean,
12 figure out why the Exxon Valdez was sitting on
13 Bligh Reef?

14 A That would have been one of my duties, but
15 that wouldn't be the prime purpose for me being
16 at that particular place at that moment.

17 Q How far away were you from Captain Hazelwood
18 when this initial conversation occurred?

19 A I personally was about four foot away and then
20 I stepped closer.

21 Q Did you notice any signs of intoxication from
22 Captain Hazelwood at that time?

23 A Yes.

24 Q What did you notice?

25 A I smelled alcohol on Captain Hazelwood.

1 Q Would you characterize this as a slight or
2 obvious odor of alcohol that you smelled on him?

3 A It was very intense and very obvious.

4 Q Did you notice whether Captain Hazelwood made
5 any attempts to cover this up?

6 A It was my impression that he was attempting to
7 cover it up by putting his hand over his mouth
8 and also by drinking coffee.

9 Q Why do you say that?

10 A It's just my impression.

11 Q What would the purpose have been of doing
12 that?

13 MR. CHALOS: Objection, Your Honor. Is he
14 asking what was Captain Hazelwood's purpose of this
15 witness?

16 MR. COLE: His impressions.

17 THE COURT: Objection sustained.

18 Q Was he smoking at that time?

19 MR. CHALOS: Objection, Your Honor. Could we
20 approach the bench?

21 THE COURT: All right.

22 (2920)

23 (Whispered bench conference as follows:)

24 (Entire bench conference indiscernible)

25 (End of bench conference)

1 THE COURT: I'm going to let the evidence in.
2 Objection overruled.
3 (2984)
4 Q (Mr. DeLozier by Mr. Cole:) Was Captain
5 Hazelwood smoking then? When you saw him then?
6 A Yes.
7 Q And what did you do then after you determined
8 -- did you make a determination that there might
9 be some problems with this?
10 A With what?
11 Q With the presence of alcohol on Captain
12 Hazelwood's breath?
13 A Well, at first I was standing about four foot
14 away, like I said, and I detected the odor of
15 alcohol. To be sure, I was a little bit amazed
16 to start with and to be sure, I stepped closer to
17 within the distance of about two foot to make
18 sure that that's exactly what I smelled and where
19 it was coming from. And as I stepped closer, I
20 was positive at that point that that's exactly
21 what I smelled. I waited for the discussion to
22 terminate between Falkenstein, Dan Lawn and
23 Captain Hazelwood and myself. And after I had a
24 moment with -- or after they broke away, I
25 grabbed Tom Falkenstein and said come on outside

1 to the bridge wing; we need to talk.

2 Q Which bridge wing did you go out on?

3 A To the starboard bridge wing.

4 Q And what did you tell Lieutenant Commander

5 Falkenstein then?

6 A I asked him if he smelled the same thing that

7 I smelled. And he indicated to me...

8 MR. CHALOS: Your Honor?

9 THE COURT: Excuse me, just a minute. Just

10 a minute.

11 MR. CHALOS: I believe the witness is going to

12 get into hearsay.

13 THE COURT: Mr. Cole.

14 MR. COLE: Your Honor, this is not being

15 offered -- it's being offered to show what he did after

16 that.

17 THE COURT: Objection sustained.

18 Q (Mr. DeLozier by Mr. Cole:) After you spoke

19 with him about this, what did you do?

20 A I pulled out my radio and we called the

21 marine safety officer on channel 81 and we

22 informed them that we should get the commanding

23 officer and advise him that we were going to make

24 a phone call to him momentarily.

25 Q Were you directed to do that or did you take

1 that step?

2 A I gave the radio to Falkenstein. He didn't
3 know how to operate it properly so I switched it
4 to the proper channel and then I called.

5 Q At that time, you indicated that you wanted to
6 speak to the commanding officer. Is that right?

7 A No. I said that to relay to the commanding
8 officer to be prepared for a phone call. We
9 would be calling him momentarily.

10 Q How did you intend to talk to the commander?

11 A By the on board telephone system.

12 Q Would that be the Mari-Sat telephone?

13 A Yes.

14 Q Were you aware at that time of any equipment
15 that was on board to take blood and urine tests?

16 A No, I wasn't.

17 Q Where did you go then after that?

18 A Down to the radio room.

19 Q And what did you do while you were down there?
20 What happened when you were there?

21 A The radio operator assisted Falkenstein in
22 making the connection by Mari-Sat telephone to
23 the station. And they had a discussion on the
24 telephone and I was sitting right next to him and
25 as he was talking to the commanding officer, I

1 would be, you know, listening, observing what he
2 was saying and if I had any input or anything to
3 add, then I would inform him and he would relay
4 it to the commanding officer.

5 Q What steps did you take in the course of that
6 conversation to try and confirm your suspicions
7 of Captain Hazelwood's drinking?

8 MR. CHALOS: Objection, Your Honor.

9 MR. COLE: I'll withdraw it.

10 Q Did you ask for testing equipment to be sent
11 out to test Captain Hazelwood?

12 MR. CHALOS: Objection, Your Honor. I think:
13 the witness said that Mr. Falkenstein had the
14 conversation. I don't think this witness said he made
15 the call to the commander. And Mr. Falkenstein will
16 testify here, I'm sure.

17 THE COURT: Are you asking him if he asked...

18 MR. COLE: Yes, I'm asking if he asked.

19 THE COURT: ... on the Mari-Set radio. Did
20 you talk on the radio -- on the telephone?

21 A At that particular moment, no I did not.

22 However, I did make the request to Falkenstein.

23 THE COURT: Okay, to Falkenstein, not on the
24 radio. Okay.

25 Q (Mr. DeLozier by Mr. Cole:) Did you make a

1 request of Lieutenant Commander Falkenstein to
2 have something sent out to test Captain
3 Hazelwood's breath at that time?

4 A Yes, I did.

5 Q What did you tell them?

6 A I informed Lieutenant Commander Falkenstein
7 that we needed to contact the commanding officer
8 so that he could make some arrangements in town
9 to have some sort of a law enforcement person, a
10 medical person or a doctor or something of that
11 nature to come out with either a breathalyzer
12 equipment or equipment to take blood and urine
13 tests. I told him that they should make the
14 arrangements to have this stuff sent out to us.

15 Q Did you make your intentions, the information
16 you have just provided, to Lieutenant Commander
17 Falkenstein -- did you tell anybody else on the
18 Exxon Valdez what you intended to do?

19 A No, it was between myself and Falkenstein.

20 THE COURT: Mr. Cole, this would be a good
21 time for us to take our lunch break. We'll come back
22 approximately 1:15. Then we'll get started. I'd like
23 to have you folks back about then. Don't discuss the
24 matter and don't form or express any opinions.

25 THE CLERK: Please rise. This Court stands

1 in recess and recall.

2 (Off record - 11:54 a.m.)

3 (On record - 1:23 p.m.)

4 (3372)

5 THE CLERK: This Court now resumes its
6 session.

7 THE COURT: We'll recess a little early today,
8 ladies and gentlemen, and get you a little jump on the
9 traffic. We're going to recess at 3:30 today for those
10 of you who are a little bit out of town, you'll get a
11 little earlier start.

12 MR. COLE: May I resume, Your Honor?

13 THE COURT: You may proceed.

14 Q (Mr. DeLozier by Mr. Cole:) Mr. DeLozier,
15 when we finished, you were talking about the
16 first phone call. Why didn't you ask Captain
17 Hazelwood to remove himself as captain of the
18 Exxon Valdez after you smelled alcohol on his
19 breath?

20 A Would you repeat that question?

21 A Why didn't you ask Captain Hazelwood to remove
22 himself as master of the Exxon Valdez after you
23 smelled alcohol on his breath the initial time?

24 A I think things were well in hand and he did
25 not seem to be creating any problems with the

1 vessel upon our arrival.

2 MR. CHALOS: I'm sorry, Your Honor. I didn't
3 hear that.

4 THE COURT: I'm having a real hard time
5 hearing you too and I know you can talk louder and
6 we'll do the best we can with the amplifier. You try
7 to talk up and we'll turn it up too.

8 A Okay.

9 Q Could you repeat that again? Why was it that
10 you didn't have him removed?

11 A It was not my responsibility to remove him.
12 There was a more senior person on board and
13 secondly, I personally didn't feel as though that
14 he was creating any nuisance or problem with the
15 vessel.

16 Q Who did you feel was the most knowledgeable
17 person about the Exxon Valdez at the time you
18 initially boarded?

19 A Regarding what?

20 Q The characteristics of the vessel and how it
21 was to be run?

22 A Can you define that better?

23 Q Well, I'll just withdraw the question. Do you
24 remember -- you indicated that you had your
25 initial phone conversation, you and Lieutenant

1 Commander Falkenstein, had your initial phone
2 conversation with the Coast Guard. Do you
3 remember what number you would have been calling
4 that morning?

5 A Yes.

6 Q Would you tell the jury what that number was?

7 A 835-4791.

8 Q After the initial phone call, did you and
9 Lieutenant Commander Falkenstein divide up the
10 responsibilities that the two of you would be
11 assuming that morning?

12 A Yes, we did.

13 Q Would you explain to the jury how that
14 division of responsibility was made?

15 A I believe it was just prior to the phone call
16 that we decided that we should start in different
17 directions. Whereas Mr. Falkenstein would go
18 about and take care of the problems with the
19 vessel itself and I would take care of any
20 matters pertaining to the investigation of the
21 casualty.

22 Q What did you do then after you made the
23 initial phone call to Commander -- who would that
24 have been -- McCall?

25 A McCall.

1 Q What did you do then next?

2 A Went back up to the wheelhouse and observed
3 the crew members actions, went back to the chart
4 table and was looking at different documents and
5 charts and navigational aids and so forth around
6 the wheelhouse, trying to keep an eye on Captain
7 Hazelwood.

8 Q Why were you trying to keep an eye on Captain
9 Hazelwood?

10 A I felt as though it would be a good thing to
11 do.

12 Q Were you able to keep an eye on Captain
13 Hazelwood throughout the morning?

14 A Pretty much so.

15 Q What periods were you not able to keep an eye
16 on Captain Hazelwood? Were there any substantial
17 periods that you were not able to keep an eye on
18 Captain Hazelwood?

19 A Can you define substantial?

20 Q More than half an hour.

21 A Yes, there was.

22 Q When did that occur?

23 A At around 4:30, maybe around 5 o'clock in the
24 morning, he asked me if he could retire to his
25 cabin for a quick cat nap at which time he did.

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I said it was okay with me and he went into his room and cat napped for about, I'd say about 45 minutes to an hour maybe.

Q Where were you during that time?

A I was mainly in the radio room, in his office and in the wheelhouse.

Q Had he given you permission to use his office that morning?

A He invited us into his office. He did not actually say that, you know, we could use it in those words.

Q Do you recall a representative from the State of Alaska Department of Fish and Game arriving that morning?

A Yes, I do.

Q When would that have occurred?

A I believe that was around 6 a.m. or 7 a.m.

Q Who would that have been?

A Trooper Mike Fox.

Q What happened when he arrived?

A I met him on the port bridge wing. He had come up and he was sent out to the vessel by the commanding officer, Commander McCall, as per our request to conduct a -- in our opinion, was to be a test for alcohol. Upon his arrival, I

1 indicated to him what we had and he was under the
2 impression that he was supposed to come out to
3 the ship to take a hold of an unruly drunk and I
4 said no, that's not what we have here. I said we
5 have the indication that there has been some
6 alcohol involved in this casualty and we need to
7 take either a blood, urine, or breathalyzer test
8 and he said he was not prepared to do that.

9 Q Had you contacted the Coast Guard prior --
10 between the time you initially made the phone
11 call to Commander McCall and the time that
12 Trooper Fox arrived?

13 A Yes.

14 Q Had you been the one that contacted Commander
15 McCall?

16 A I was with Commander Falkenstein both times
17 that he made the phone call. He personally made
18 the phone call and I sat in on the conversation
19 with him, only hearing one side of the
20 conversation.

21 Q Now after Trooper Fox arrived -- was he in a
22 uniform by any chance?

23 A His usual uniform.

24 Q Which would be -- what color was it?

25 A I believe it was khaki.

1 Q So was it your understanding that Commander
2 McCall would be taking care of this?
3 A Absolutely.
4 Q Did you inform him of who you wanted the test
5 conducted of, what particular person?
6 A Yes.
7 Q And did you tell him by name that it was
8 Captain Joseph Hazelwood?
9 A Well, I would say the master.
10 Q Did he know it to be Captain Hazelwood?
11 A Did who?
12 Q Commander McCall.
13 MR. CHALOS: Objection, Your Honor. He's
14 asking for what Captain McCall knows or doesn't know.
15 MR. COLE: Only if he knows, Judge.
16 THE COURT: I'll overrule the objection. Did
17 he have personal knowledge if he knew who you were
18 talking about.
19 A Yes, he knew.
20 Q That it was Captain Hazelwood?
21 A Yes.
22 Q When did it come to your attention that there
23 might be a means of testing people for alcohol
24 aboard the Exxon Valdez?
25 A After Mike Fox arrived and we made the third

1 phone call to the office, Commander McCall
2 suggested that -- I don't know where he got the
3 suggestion or the thought -- he suggested to us
4 that there was a possibility that there would be
5 test kits aboard the vessel.

6 I informed Commander Falkenstein and
7 Commander McCall that the possibility of that
8 test kit being aboard was slim, being as though
9 it was under my impression that the requirement
10 to have that on board was not mandatory at that
11 particular time. After that conversation on the
12 telephone, I went and asked Captain Hazelwood if
13 he had -- if he indeed had test kits aboard and
14 he acknowledged that he did.

15 Q What did you do once you learned about these
16 toxicology test kits?

17 A I asked him if he would break them out so we
18 could start conducting tests on the individuals
19 that I had pointed out.

20 (Tape: 3625)

21 (0020)

22 Q Where did you have these kits taken? What
23 place on the ship?

24 A Captain Hazelwood went to the store room which
25 I believe was on the port side of the same level

1 that his cabin is on and he retrieved the kits
2 and brought them into his office at which time he
3 informed me that there was a company policy
4 regarding drawing blood samples from crew members
5 or employees of Exxon and that it was only to be
6 done by a qualified medical person for the
7 purpose of drawing blood samples.

8 I reviewed the company policy that he handed
9 to me and I wasn't prepared to take any blood
10 samples, using those kits anyway. I was more
11 interested in taking urine samples. So after him
12 and I conferred about the blood samples, I asked
13 him, I said, "well, let's just go ahead and start
14 taking the urine samples" and he called the other
15 crew members up and one by one, we took the urine
16 samples.

17 Q When did you indicate to him that he was going
18 to have to give a sample also?

19 A After completing the urine samples of the
20 other persons.

21 Q Now one of the individuals that you tested was
22 -- you asked to do that was Maureen Jones. Is
23 that correct?

24 A That's correct.

25 Q Did you take any special procedures in

1 acquiring her urine sample?

2 A Special in which way?

3 Q Did anybody help her?

4 A I did not personally witness her drawing the
5 sample.

6 Q How was it done?

7 A There was a female third assistant engineer on
8 board and I asked her to come up, break out the
9 sample bottle and discussed the instructions on
10 how to do it. She and Ms. Jones then went into
11 the captain's head and closed the door behind
12 them and she came out with the sample and handed
13 it to me.

14 Q After you got these three samples, how did you
15 keep track whose samples was whose?

16 A Captain Hazelwood is the one who actually took
17 possession of the urine samples and I would go
18 into the laboratory with the person, witness the
19 urine being drawn, come out with the bottle.
20 They would hand it to me and I, in turn, would
21 hand it to Captain Hazelwood. He would then seal
22 it up and put the appropriate dates and
23 signatures and written work that needs to be done
24 on those.

25 Q And when it came time for Captain Hazelwood to

1 give his urine sample, what happened?

2 MR. CHALOS: Objection, Your Honor. May we
3 approach the bench?

4 THE COURT: All right.

5 (0130)

6 (Whispered bench conference as follows:)

7 (Entire bench conference indiscernible)

8 (End of bench conference)

9 (0171)

10 THE COURT: We need to take up a matter
11 outside your presence, ladies and gentlemen. We'll
12 call you back as soon as we can. Please don't discuss
13 the case and don't form or express any opinions.

14 (Without Jury Present)

15 THE COURT: All right, you may make your
16 objection and articulate it. The case that you have
17 given me is Burnett versus Municipality of Anchorage.
18 It's a Court of Appeals of Alaska 1984 case, 678 P.2nd
19 at 1364.

20 MR. CHALOS: Yes, Your Honor. My objection
21 goes to this. On the basis of what Mr. DeLozier has
22 testified at the NTSB and I think it was one of the
23 police reports, I believe the answer he will give to
24 the question posed by Mr. Cole is that the captain told
25 him at the time that he asked him for a urine sample

1 that he was unable to urinate.

2 Our objection is that on the basis of that case,
3 that kind of information is inadmissible. Captain
4 Hazelwood was not in custody at the time; he was not
5 being searched and the fact that he said that he could
6 not urinate at that time is not relevant or probative
7 and its prejudicial value far outweighs any probative
8 value that it might have.

9 THE COURT: All right. Mr. Cole?

10 MR. COLE: Well, I haven't seen the case so I
11 can't really address that case but it seems to me that
12 Captain Hazelwood's attempts to avoid giving a sample
13 are relevant to the issues in this case. The officer
14 has already testified as to Captain Hazelwood's
15 attempts in his mind to cover up the breath, the off
16 -- keep the officers from obtaining a breath sample.
17 Without -- you know, when you just spring something on
18 me, I think that it is material; I think that's the
19 test and I believe it's relevant to show that Captain
20 Hazelwood initially refused.

21 In addition to that, it goes to show what
22 happened when he was showed the blood thing -- when he
23 was shown the blood kit. And it explains the testimony
24 in that respect.

25 THE COURT: We'll just take a minute here.

1 We'll go over the case together. (Pause)

2 (Pause)

3 MR. COLE: Judge, I think it would be helpful
4 if Mr. Chalos would point out which section he believes
5 is applicable to this case.

6 THE COURT: As I understand from what Mr.
7 Chalos offered at side bar, he expects that the
8 witness, if asked, will state that Captain Hazelwood
9 appeared reluctant to or was unable to give a urine
10 sample. Is that correct, Mr. Cole, is that what you
11 expect the witness to say?

12 MR. COLE; Yes.

13 THE COURT: Is that about right, Mr. DeLozier?

14 A I'm sorry.

15 THE COURT: Was Captain Hazelwood unable to
16 give a urine sample or reluctant in any way?

17 A Yes.

18 THE COURT: How would you describe it? I
19 asked you two questions there. Why don't you -- was
20 he reluctant, in your opinion, in any way?

21 A He said that he could not provide a urine
22 sample to me at that time.

23 THE COURT: Did he tell you why he could not?

24 A No.

25 THE COURT: He just could not give you a urine

1 sample. That was his answer?

2 A That's correct.

3 THE COURT: And was he able to give you a
4 urine sample at that time?

5 A At that time?

6 THE COURT: Yes.

7 A No.

8 THE COURT: How long after that before you
9 got one from him?

10 A An hour.

11 THE COURT: And did you ask him at that time
12 for a urine sample?

13 A An hour later?

14 THE COURT Uh-huh (affirmative).

15 A Well, after I found out he was unable to
16 provide a urine sample to me, approximately an
17 hour had gone by and then Petty Officer Conner
18 showed up with the blood sampling kits where he
19 was a qualified technician to draw blood so in
20 lieu of taking the urine, I opted to take the
21 blood samples.

22 THE COURT: Did you ever take a urine sample
23 of Captain Hazelwood?

24 A Yes. As soon as I indicated to Captain
25 Hazelwood that we were prepared to take a blood

1 sample, that's when he said -- well, he just
2 grabbed the bottle and said, "I'll give you a
3 urine sample too."

4 THE COURT: Okay.

5 MR. COLE: The other question I think the
6 Court should ask him is whether he viewed that as an
7 attempt -- an evasive attempt to keep from giving a
8 urine sample. His initial denial.

9 THE COURT: Ask that now? Did you view it
10 based on the circumstances as you saw that he was
11 intentionally evading giving the urine sample?

12 A That was my impression. Yes, sir.

13 THE COURT: What was that impression based on?

14 A Based on the fact that when I first observed
15 him and I felt as though he was covering up his
16 breath and then when I found out that the tox
17 kits were on board and told him whom I wanted to
18 have the urine tests conducted by or for, then he
19 ended up being last in line. That there was a
20 reluctance to me. And then finally when he said
21 that he could not urinate.

22 THE COURT: So, it's clear that the thrust
23 here, Mr. Cole, in my opinion is to offer this evidence
24 to show reluctance or an intentional attempt by Captain
25 Hazelwood to evade giving the urine sample. Is that a

1 fair characterization of what you're...

2 MR. COLE: Yes.

3 THE COURT: ...it's being offered for?

4 MR. COLE: Mr. Madson has pointed out what he
5 believes to be the applicable part of this Burnett
6 decision which is really the Ellison (ph) decision.
7 In the language, he says "in contrast the admission of
8 an individual's refusal to consent to a legal search in
9 one case may inhibit individuals from exercising the
10 right" -- is this what you're...

11 MR. CHALOS: No, no, It's not at all.

12 MR. COLE: Well, that's what you pointed to.
13 Right there.

14 MR. CHALOS: The next sentence?

15 MR. COLE: "Evidence -- therefore hold that
16 evidence of refusal to consent to a search is
17 inadmissible regardless of the legality of the search."

18 Now, Judge, in a DWI, evidence that somebody
19 resists giving a breath sample -- in my experience has
20 been that that's admissible.

21 THE COURT: You have an implied consent law
22 that applies in DWI, Mr. Cole. It doesn't seem that
23 that applies in this case.

24 MR. COLE: Well....

25 THE COURT: Implied consent for motor vehicle

1 operation on the highway...

2 MR. COLE: The same law exists for the Coast
3 Guard, Your Honor. There's a Coast Guard regulation
4 that says if you refuse, that evidence may be used
5 against you and that's found in -- I don't have the
6 section but it's in the same 33 95.

7 MR. CHALOS: We'd be glad to find that Your
8 Honor. It says "may be used in administrative
9 proceeding." That's all it can be used for.

10 MR. MADSON: License revocation or suspension
11 only.

12 THE COURT: How much longer do you expect this
13 witness will take and I know that there's going to be
14 some cross. Perhaps you can withhold this question
15 and we can give you an opportunity to do some research
16 on it. My inclination, Mr. Cole, is that this is a
17 legitimate objection, that you should be prepared to
18 meet at some time and if you want a ruling at this
19 point, my ruling would be to sustain the objection
20 without prejudice for you to look at that case and
21 maybe do some research on it and be able to bring it up
22 during redirect.

23 MR. CHALOS: For Mr. Cole's assistance, I
24 would cite 33 CFR, Section 95.040 which makes it clear
25 it's to be used only in administrative license action

1 issues.

2 MR. COLE: Does the Court mind if I just take
3 these two cites down real quick?

4 THE COURT: Sure. Go ahead. We want to give
5 you an opportunity to meet this objection.

6 MR. COLE: I apologize for not being better
7 prepared, sir. Your Honor. Judge, and I don't mean
8 to question the Court but I would just a little bit of
9 clarification. May I ask Mr. DeLozier if a sample was
10 obtained at that time from Captain Hazelwood and am I
11 permitted to ask at a later time, were you able to
12 obtain, without going into his impression?

13 MR. CHALOS: Your Honor, I think that that's
14 the same thing. That it implies that there was some
15 sort of reason why the sample wasn't given earlier and
16 I think the inference is that perhaps Captain Hazelwood
17 was unable or reluctant to -- I think it goes to the
18 same objection.

19 THE COURT: I don't see that there'd be any
20 harm in keeping you away from that area entirely as to
21 whether he was able to give a sample at that time. You
22 can go into when he was able to give a sample without
23 any inference that Captain Hazelwood refused because
24 that's the thrust of what you're trying to get across
25 here is that he refused. And I want to avoid that

1 impression being given to the jury until we've had an
2 opportunity to argue this.

3 MR. COLE: I do need to ask him when he got
4 samples from the other crew members.

5 THE COURT: That's fine. I don't want the
6 jury to be left with any impression though that Captain
7 Hazelwood refused because there is a constitutional
8 privilege here that we're dealing with.

9 MR. COLE: Mr. DeLozier understands that, I
10 assume, now too?

11 Q (Mr. DeLozier by Mr. Cole:) We're only going
12 to ask when you got your samples from the three
13 crew members and then we're going to go to the
14 time period where you took the other samples, the
15 blood and Captain Hazelwood's urine at that time.

16 A Uh-huh (affirmative).

17 THE COURT: Think you're clear on that?

18 A Yeah.

19 THE COURT: We'll get the jury back in. Mr.
20 DeLozier, would you like a glass of water?

21 A No, thanks.

22 (0944)

23 (Jury Present)

24 THE COURT: Mr. Cole.

25 Q (Mr. DeLozier by Mr. Cole:) Now, Mr.

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DeLozier, you indicated you received urine samples from the three crew members. Is that correct?

A That's correct.

Q What time were those urine samples collected?

A I believe it was about 9:30.

Q What happened then -- what did you do then after -- let me rephrase that. Did you end up making another phone call to the Coast Guard after collecting the urine samples?

A No.

Q What did you do then after you collected the urine samples?

A I stood by, waiting for the medical technician to come out so that we could draw blood samples.

Q And when did that occur?

A I believe it was about 10 o'clock or 10:30.

Q Explain where you were when he came on board. When you first heard that he was on board?

A Who was on board?

Q Mr. Conner.

A I was in the radio room. Mr. Conner walked passed the doorway to the radio room and I was surprised to see him because I did not expect him to show up. I expected probably a local medical

1 type person or a law enforcement type. And as
2 soon as I saw him, I went out and greeted him and
3 told him that his purpose here was to draw blood
4 samples off of the four crew members that I
5 designated and that we would start with Captain
6 Hazelwood.

7 Q Where did you go then?

8 A Into Captain Hazelwood's office.

9 Q And what happened -- was Captain Hazelwood in
10 there?

11 A Yes, he was.

12 Q What happened when you asked him to give a
13 blood sample?

14 A Asked Captain Hazelwood to give a blood
15 sample?

16 Q Uh-huh (affirmative). Did he give a urine
17 sample?

18 A When?

19 Q At that time.

20 A Yes, he did.

21 Q What happened? How did that occur at that
22 time?

23 A Well, Petty Officer Conner and myself walked
24 into his office. I said, "Captain," I said,
25 "this is Petty Officer Conner. He's a medical

1 technician and he's qualified to draw blood
2 samples." I said he's here for the purpose of
3 drawing the blood samples off of the four persons
4 and I said we will start with you. At that
5 particular moment, Captain Hazelwood stood up.
6 He grabbed the urine sample off the desk, the
7 urine sample bottle, walked into the bathroom. I
8 followed and well, he said as he picked up the
9 urine sample, he said, "well, I will give you a
10 urine sample now." So he walked on into the
11 bathroom and provided the sample, came out,
12 sealed up the jar and then he sat down and Petty
13 Officer Conner commenced to draw blood.

14 Q What time did that occur?

15 A I believe it was around 10:30, 10:45,
16 somewhere in there.

17 Q Where did you stay while these blood samples
18 were being taken?

19 A Right there in the office.

20 Q And you watched and observed them?

21 A Uh-huh (affirmative).

22 Q And did you help Mr. Conner in packaging up
23 the material at all?

24 A Yes. Yes, I witnessed -- the kits require
25 that the sample be drawn and then the sample

1 bottles be sealed with an adhesive seal. And
2 each one of the seals have to be dated and
3 initialed and then witnessed and then I think
4 there's a record of all the samples that were
5 taken which goes all together in a box. Once
6 all the samples were completed and the
7 appropriate initials and so forth was placed on
8 them, then the containers were sealed up and set
9 aside.

10 Q Now, after, did you have anything more to do
11 with keeping possession of those samples that
12 were drawn?

13 A After all the samples were complete and all
14 the boxes were sealed up, I then informed Petty
15 Officer Conner that he was directed to -- by me
16 -- to take possessions of these things and to
17 leave them in his possession until they were
18 turned over to a proper custodian which in turn
19 would see to it that they were taken to the lab
20 to be analyzed.

21 Q Did you interview any of the crew members
22 after that?

23 A Yes, I did.

24 Q Would one of those people have been Greg
25 Cousins?

1 A No.

2 Q When was he interviewed?

3 A He was interviewed before the tests were
4 taken.

5 Q And at the conclusion at that interview, did
6 you ask him to take you up to the chart room and
7 point out some positions on the charts?

8 A Yes, I did.

9 Q Do you remember which chart that would have
10 been? Would it have been 16 708?

11 A Yes.

12 Q Did you ask him to point where he was
13 instructed -- can you see the...

14 MR. COLE: ...Judge, may I inquire if the
15 glare -- people can see with the glare? Are you okay?

16 UNIDENTIFIED: Just a little bit on the right
17 hand side.

18 THE COURT: We may not be able to get the
19 glare off for all of you on this. With the overlay
20 off, can you all see it now? Without a glare? Okay.

21 MR. COLE: Does that help?

22 Q Where did he point on the chart...

23 MR. CHALOS: Objection, Your Honor, hearsay.

24 MR. COLE: I don't believe it's testimonial
25 in nature.

1 THE COURT: Objection sustained. It is
2 testimonial under 801. It's 801A, Mr. Cole.

3 Q (Mr. DeLozier by Mr. Cole:) At some point,
4 did you ask Captain Hazelwood to come up to the
5 chart room?

6 A No, he was already up there.

7 Q Was he up there at the same time?

8 A Same time as Mr. Cousins?

9 Q Uh-huh (affirmative).

10 A No.

11 Q Did you ask him to point out where he
12 instructed Mr. Cousins to turn?

13 A Did I ask Captain Hazelwood?

14 Q Yes.

15 A Could you rephrase that -- or not rephrase it,
16 restate it?

17 Q Did you ask Captain Hazelwood to point out on
18 that chart where he instructed Mr. Cousins to
19 turn the vessel that evening?

20 A Yes.

21 Q And would you show the jury where on that
22 chart he pointed to?

23 A The 38 fathom mark. Just below the 55 fathom
24 mark which is south of Busby Island light.
25 Right there.

1 Q And I'm showing you what's been marked for
2 identification or already admitted as plaintiff's
3 exhibit number 30 and number 29. Do you
4 recognize those photographs?

5 A Yes.

6 Q These are photographs, are they not, of the
7 chart that you saw that morning?

8 A They're the navigational chart that was
9 present in the wheelhouse. Is that what you're
10 talking about?

11 Q Yes.

12 A Yes, they are.

13 Q And would you point out to the jury on what's
14 been marked as plaintiff's exhibit number 30
15 which 38 fathom mark Captain Hazelwood pointed
16 to?

17 A It was this one right here with the circle
18 around it.

19 Q Is that where the scratch mark is also?

20 A Yes. Yes.

21 Q And did Captain Hazelwood take a pencil -- how
22 did he mark it?

23 A He marked it with a lead pencil.

24 Q And is that circle area the pencil mark that
25 he placed there?

1 A Yes.

2 Q Now, after this was done or during the course
3 of your investigation, did you seize any
4 documents per the Coast Guard?

5 A Yes.

6 Q And I'm showing you what's been marked for
7 identification as plaintiff's exhibit number 93.
8 Do you recognize that document?

9 A Yes.

10 Q What is that?

11 A It's a copy of Captain Hazelwood's Coast Guard
12 license.

13 Q And is that a fair and accurate copy of the
14 license that you saw on board the Exxon Valdez
15 that morning?

16 A Yes.

17 MR. COLE: I would move for the admission of
18 what's been identified as plaintiff's exhibit number
19 93.

20 MR. MADSON: No objection.

21 THE COURT: Admitted.

22 EXHIBIT 93 ADMITTED

23 Q Where did you get that exhibit? Where did you
24 see that exhibit?

25 A It was posted under glass outside of Captain

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1 Hazelwood's office. I asked him to provide me
2 copies of all the licensed officers on board and
3 sometime during that day or the following day, he
4 provided these to me.

5 Q And would you read the second and third lines
6 of that license to the jury, please?

7 A This section here?

8 Q Yes.

9 MR. CHALOS: Your Honor, I'm going to object.
10 The document speaks for itself.

11 THE COURT: Objection overruled.

12 Q Go ahead.

13 A Starting with "first"?

14 Q Uh-huh (affirmative).

15 A "First class pilot of steam or motor vehicles
16 of any gross tons upon the waters of Prince
17 William Sound from Hinchinbrook entrance to Rocky
18 Point, Alaska."

19 Q Thank you. Now, did you in the course of
20 your investigation, seize a bell logger from the
21 Exxon Valdez?

22 A Yes, I did.

23 Q And is plaintiff's exhibit number 3 that bell
24 logger that you seized?

25 A This is a copy of it, yes.

1 Q I'm showing you what's been marked for
2 identification as plaintiff's exhibit number 92.
3 Do you recognize that document?
4 A This one?
5 Q Yes.
6 A Yes.
7 Q What is that?
8 A That's a copy of this.
9 Q Is there any difference between that copy and
10 that copy that you had? Well, let me withdraw
11 that. Is this an accurate representation of
12 that copy less the stamp overlaying the numbers?
13 A And the written in...
14 Q Up on top?
15 A On top.
16 Q But the numbers on the 24th are accurate?
17 A Yes, it's the same.
18 MR. COLE: I would move for the admission of
19 what's been identified as plaintiff's exhibit number
20 92.
21 MR. CHALOS: No objection.
22 THE COURT: Admitted.
23 EXHIBIT 92 ADMITTED
24 Q And the blood samples that were taken of the
25 crew members, were those all taken after Captain

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Hazelwood?

A After Captain Hazelwood's blood sample?

Q Was drawn?

A Yes.

Q Now, in the course of this investigation, did you open up a bottle or a can of Moussy?

A Open it up?

Q Yes.

A No. Subsequent or during the investigation?

Q Yeah. During the investigation at all?

A Yeah, I believe I did.

Q Why did you do that?

A I believe I did it a few weeks after the casualty and I was trying to determine, along with another person, what it smelled like. We were curious.

MR. COLE: Judge, I have nothing further.

(1655)

CROSS EXAMINATION OF MR. DELOZIER

BY MR. CHALOS:

Q Good afternoon, Mr. DeLozier.

A Good afternoon.

Q Sir, what documents did you review before coming here today?

A I reviewed a transcript of the tape interview

1 that I did with Captain Hazelwood on the 24th of
2 March, 1989. I reviewed the interview -- not
3 interview but the questioning that I participated
4 in of the National Transportation Safety Board
5 open hearing.

6 Q That's your testimony you...

7 A My testimony. I saw copies of the exhibits
8 that you just posed to me here. I believe there
9 was another interview that I did also. Oh, it
10 was an interview with State Trooper Paul Burke.

11 Q You were recently interviewed by State Trooper
12 Stogsdill? Do you recall that?

13 A No.

14 Q You don't recall being interviewed by State
15 Trooper Stogsdill?

16 A Interviewed?

17 Q Yes.

18 A Recently?

19 Q Yes.

20 A No.

21 Q You don't recall on February 1st, 1990, being
22 interviewed by Mr. Stogsdill of the D.A.'s
23 office?

24 A I talked to him.

25 Q What do you mean, you talked to him?

1 A He called me in to talk to me. I don't
2 believe it was an interview.

3 Q Let's not fight about semantics. You do
4 recall speaking with the state trooper. Do you
5 not?

6 A I talked with him, yes.

7 Q And you covered basically the testimony that
8 you gave here today?

9 A Not -- somewhat, yeah.

10 Q Did you cover the events of your participation
11 in the investigation of the grounding?

12 A Ever so briefly.

13 Q Let me ask you this, Mr. DeLozier. Do you
14 hold any merchant mariner's licenses?

15 A A document.

16 Q What document?

17 A Merchant mariner's document.

18 Q Which one?

19 A Z-Card. Tankerman.

20 Q Ordinary seaman?

21 A Tankerman.

22 Q You don't hold an AB's ticket?

23 A No.

24 Q You don't hold a third mate's license?

25 A That's correct.

1 Q You don't hold any mate's license. Is that
2 correct?
3 A None whatsoever.
4 Q And you haven't sailed, have you, as a
5 merchant mariner?
6 A About 16 years in the Coast Guard.
7 Q In the course of the Coast Guard, have you
8 ever been on cargo ships?
9 A The Coast Guard does not have cargo ships.
10 Q Right. Have you ever been on a tank...
11 MR. COLE: Objection, Your Honor. I object
12 to Mr. Chalos' comment on the witness' statement.
13 MR. CHALOS: I'll be careful. Be sure on
14 that.
15 Q I take it, you've never sailed on a tanker?
16 A You take it wrong.
17 Q You have sailed on tankers?
18 A Yes.
19 Q When?
20 A Port Arthur, Texas.
21 Q When?
22 A 1983.
23 Q For how long?
24 A Just a few days.
25 Q Now, one of the documents that you seized form

1 the Exxon Valdez was a crew list. Was it not?
2 A That's correct.
3 Q Do you recall the number of crew members on
4 the ship at the time of the casualty?
5 A At the time of the casualty, I recalled.
6 Right now, I don't.
7 Q Whatever number that was would be on the crew
8 list. Am I correct?
9 A I believe you're correct.
10 Q Incidentally, the company that you work for
11 presently, is that owned by Alyeska?
12 A No.
13 Q It's not?
14 A No.
15 Q Are you contracted to Alyeska?
16 MR. COLE: Objection. Relevance.
17 A No, I'm not.
18 Q I mean your company?
19 MR. COLE: Objection.
20 A I don't know.
21 THE COURT: Just a minute. Mr. DeLozier,
22 when you hear an objection, just don't answer.
23 MR. CHALOS: Your Honor, I'm only asking this
24 as background.
25 THE COURT: Counsel, approach.

1 (1886)

2 (Whispered bench conference as follows:)

3 THE COURT: (Indiscernible whispering) civil
4 litigation. If you're trying to show bias, I'll let
5 you do it but when he says no, that's the end of it.
6 (indiscernible) let you use any extrinsic evidence.

7 (End of bench conference)

8 (1900)

9 Q Mr. DeLozier, is your company contracted to
10 Alyeska?

11 A I don't know.

12 Q Mr. DeLozier, the Coast Guard initially
13 started the investigation into the grounding.
14 Did they not? They were the first governmental
15 agency assigned to the investigation?

16 A That's correct.

17 Q And within a day or so the Coast Guard was
18 relieved of responsibilities. Were they not?

19 A I don't know that to be a fact.

20 Q Do you remember testifying or giving a
21 statement to the state troopers that your
22 particular involvement was turned over the NTSB
23 within a day of the grounding?

24 A The Coast Guard has the prime jurisdiction to
25 investigate all marine casualties. This

1 particular casualty was serious enough to require
2 the commandant of the Coast Guard to turn over
3 the investigation to the NTSB. I was directed to
4 assist in any way possible.

5 Q Do you know whether the reason...

6 MR. COLE: Objection. I'm sorry.

7 Q Do you know what the reason was for the NTSB
8 taking over the investigation?

9 MR. COLE: Objection. Relevance.

10 MR. CHALOS: Your Honor, this goes to the area
11 that we covered with the watch standard. If you
12 recall, about the possibility that....

13 THE COURT: I'll let you explore it for a few
14 questions. Just a couple of questions. If you don't
15 get it there, then you'd have to move on.

16 MR. CHALOS: Okay.

17 Q (Mr. DeLozier by Mr. Chalos:) Do you remember
18 my question?

19 A Would you repeat it?

20 Q Yes. Do you know the reason why the NTSB was
21 put in charge of the investigation?

22 A I don't know the reason, no.

23 Q Has -- strike that. Did you ever learn that
24 the reason was because of the possible
25 involvement of the Coast Guard in the grounding

1 as being the reason for the NTSB taking over?
2 MR. COLE: Your Honor, may we approach the
3 bench?
4 THE COURT: Do you have an objection?
5 MR. COLE: Yes.
6 THE COURT: He already answered he didn't
7 know and I'm going to sustain the objection. Go into
8 another area at this time.
9 Q (Mr. DeLozier by Mr. Chalos:) Mr. DeLozier,
10 in response to Mr. Cole's question, you said you
11 didn't know if you were on duty on the evening of
12 the 23rd. You didn't believe you were. Do you
13 recall that?
14 A Uh-huh (affirmative).
15 Q Are there logs at the Coast Guard base that
16 would tell us whether you were on duty or not?
17 A There's a watch list that's printed, yeah.
18 Q Does the Coast Guard maintain that watch list
19 for a period of time?
20 A Not to my knowledge.
21 Q If we were to -- are there any records that we
22 could check to find out whether you were on duty
23 on the evening of the 23rd?
24 A It's possible.
25 Q Do you recall whether you were on duty or not?

1 A No, I don't specifically recall whether I was
2 actually the duty investigator on that particular
3 day. No, I don't.

4 Q Now, you told us that on the evening of the
5 23rd, you were in the Pipeline Club around 8
6 o'clock?

7 A Uh-huh (affirmative).

8 Q Is that the time you arrived, about 8 o'clock?

9 A I said about 8 o'clock.

10 Q And you had what to drink?

11 A Two Miller Lites.

12 Q You remember that distinctly, that it was two
13 Miller Lites?

14 A It's what I said.

15 Q Could it have been more?

16 A Nope.

17 Q How do you remember that it was two?

18 A 'Cause I counted 'em.

19 Q You were keeping track of how much you drank?

20 A Uh-huh (affirmative).

21 Q Are you a frequent visitor to the Pipeline
22 Club?

23 A Yes.

24 Q You drink when you go there?

25 A Occasionally.

1 Q Now, you say you left at about what time?
2 A Left where?
3 Q The Pipeline Club.
4 A I left there at about 10 o'clock.
5 Q So, in a two hours time, you had two beers?
6 A Two beers. That's right.
7 Q Did you discuss your wife's testimony with her
8 before you came here today?
9 A No.
10 Q You had no discussions at all?
11 A No.
12 Q Did your wife testify that she -- you left
13 alone, I take it?
14 A Uh-huh (affirmative).
15 Q If your wife testified that she left with you,
16 together at 10:30, would she be mistaken?
17 A Yes.
18 Q Now, do you remember testifying before the
19 NTSB back in mid-May?
20 A Yes.
21 Q Do you remember being asked where you were at
22 the time that you received the call from the
23 Coast Guard base?
24 A You mean at the time of the casualty?
25 Q Yes.

1 A Do I remember where I was?

2 Q No. Do you remember being asked the question

3 where you were -- where were you at the time you

4 got the call from the Coast Guard base?

5 A I believe so, yeah.

6 Q And you said you were home in bed. Do you

7 remember that?

8 A Yeah.

9 Q And they asked you how long had been in bed?

10 A Uh-huh (affirmative).

11 Q And do you remember your answer?

12 A No, I don't.

13 Q You said four hours. So, if you got called

14 at 12:30 and if you were in bed for four hours,

15 you would have been in bed by 8:30. Wouldn't

16 you?

17 A That computes, uh-huh (affirmative).

18 Q So when you told them you were in bed for four

19 hours, that wasn't true.

20 A Or did I say about four hours or did I say

21 precisely four hours or did I say around four

22 hours.

23 Q I can tell you exactly what you said.

24 MR. CHALOS: I read from page 667, Your

25 Honor, of the NTSB testimony. You...

1 MR. COLE: The official transcripts or the
2 unofficial?

3 MR. CHALOS: Well, I think the Midnight Sun
4 Court Reporter transcript. But you can follow along.

5 Q (Mr. DeLozier by Mr. Chalos:) Do you
6 remember being asked this question? "Mr.
7 Delozier, where were you when you got the call to
8 go out to the Valdez?" Answer, "I was home in
9 bed." Question, "How much sleep had you had at
10 that point when you got called?" Answer, "I had
11 approximately -- 1.00 -- four hours maybe." Do
12 you remember that?

13 A Well, I remember the testimony, yeah. I don't
14 remember it verbatim.

15 Q Now, you never told the NTSB, did you, that
16 you had been out that night in a bar drinking?

17 A I only answered the questions that they asked
18 questions to.

19 Q If your wife said in her testimony that you
20 arrived home somewhere between 10:30 and 11
21 o'clock, that would be a mistake, would it not?

22 MR. COLE: Objection. Asked and answered.

23 THE COURT: Objection overruled.

24 A Say again?

25 Q If your wife testified under oath that you got

1 home somewhere between 10:30 and 11 o'clock that
2 night, you're saying that would be a mistake?

3 A No, she said what she said. That's her
4 opinion. That's her recollection of what she
5 remembers.

6 Q I see. But based on your recollection, that's
7 not correct?

8 A That's correct.

9 Q Now, do you remember telling State Trooper
10 Stogsdill that you thought you saw Captain
11 Hazelwood in the Pipeline Club around 8 o'clock
12 the night of the 23rd?

13 A Uh-huh (affirmative).

14 Q Is that correct?

15 A Is that correct, what?

16 Q That he was in there at 8 o'clock?

17 MR. COLE: Judge, I would ask that Mr. Chalos
18 be required to read the whole thing under rule 106.

19 MR. CHALOS: All right. I'll read, Your
20 Honor, from the notes.

21 MR. COLE: If he'd asked him -- I think he
22 first has to ask the proper foundation questions. If
23 he's using that as impeachment, he has to give the
24 witness an opportunity to look at it and explain it.
25 If he's using it to refresh his recollection, he needs

1 to show it to him. He just cannot read this into the
2 record.

3 THE COURT: It's hearsay the way you're doing
4 it, Mr. Chalos.

5 MR. CHALOS: Yes, Your Honor. I'll read it
6 from...

7 THE COURT: You have to ask him, first of all,
8 if he saw Captain Hazelwood in there and if he says
9 yes, then you don't get to use that under any
10 circumstances. If he says no, then you might be able
11 to use that but there's no foundational question. That
12 questions wasn't asked by Mr. Cole that I recall nor by
13 you so far.

14 MR. CHALOS: I'll withdraw the question.

15 THE COURT: Okay.

16 (2370)

17 Q Mr. DeLozier, I like to switch gears now and
18 get you on that pilot boat going out to the ship.
19 Do you remember the visibility that night?

20 A Uh-huh (affirmative).

21 Q What was the visibility?

22 A Where?

23 Q Going out to the ship.

24 A Where?

25 Q Around the ship.

1 A Around the ship. Appeared to me like it was
2 about 10 miles.

3 Q I believe you've also previously said that you
4 didn't see any ice around the ship. Is that
5 correct?

6 A When did I say this?

7 MR. COLE: Judge. Objection. I object to him
8 saying that...

9 MR. CHALOS: Okay, let me -- I'll rephrase...

10 MR. COLE: ...unless he lays the proper
11 foundation.

12 THE COURT: The objection as to the form of
13 the question is sustained.

14 MR. CHALOS: I'll rephrase it, Your Honor.

15 Q (Mr. DeLozier by Mr. Chalos:) When you were
16 going out to the ship, did you see any ice?

17 A Yes. Going out to the ship, I did see ice.

18 Q How far north of the ship did you see any ice?

19 A We encountered ice at the entrance to Tatitlek
20 Narrows.

21 Q Could you point to that on the chart, please?

22 A It was out in this area.

23 Q And where was the ship at the time?

24 A The ship was on Bligh Reef.

25 Q Well, would you point to that for the jurors?

1 A (Indicates)
2 Q Did you see any ice at all around the ship?
3 A When we were approaching?
4 Q Yes.
5 A No, I did not.
6 Q Now, when you got to the ship about -- I think
7 you said about 3:40 in the morning, were the
8 engines stopped?
9 A Engine?
10 Q Engines?
11 A Engines. To my knowledge, they only had one
12 engine, main engine.
13 Q Was it stopped?
14 A I didn't get down to physically look at it but
15 I assume it was. I didn't see any prop wash.
16 Q Could you see any prop wash?
17 A No, I did not.
18 Q Was the vessel hard aground at this point?
19 A I take it to be hard aground, uh-huh
20 (affirmative).
21 Q Did you notice the vessel listing slightly to
22 starboard when you got on board?
23 A Not at that time, no.
24 Q With respect to the fumes that you smelled,
25 you said there was a heavy concentration of

1 fumes. Do you recall that?
2 A Uh-huh (affirmative).
3 Q Where was that?
4 A Where was it?
5 Q Yeah. That you smelled the heavy
6 concentration of fumes.
7 A All over.
8 Q Down at the water line?
9 a Uh-huh (affirmative).
10 Q Going up the gangway?
11 A Uh-huh (affirmative).
12 Q In the house?
13 A Uh-huh (affirmative).
14 Q Up on the bridge?
15 A Yes.
16 Q Heavy concentration of the fumes on the
17 bridge?
18 A Not as heavy as it was closer to the surface
19 of the water but there was fumes present.
20 Q Did it affect your sense of smell at that
21 point?
22 A Not at all.
23 Q Now, when you got on board, did you go
24 directly to the bridge?
25 A I think I already described my efforts in

1 getting up on the ship. Do you want me to repeat
2 that?
3 Q Yes, please.
4 A I went out the starboard ladder, crossed the
5 main deck, over the cargo piping, down the port
6 side, into the house, up the elevator, up to the
7 captain's deck and then up into the wheelhouse.
8 Q And that's where you saw Captain Hazelwood?
9 A That's where he was standing.
10 Q For the first time.
11 A That's right.
12 Q You didn't see him in any passageways down
13 below anywhere did you, as you were going up?
14 A No, because he was up in the wheelhouse.
15 Q Right.
16 MR. COLE: Objection, Your Honor.
17 MR. CHALOS: I'm sorry, Mr. Cole.
18 Q Now, Mr. Lawn was with you along with
19 Commander Falkenstein. Am I correct?
20 A Mr. Lawn?
21 Q Lawn.
22 A Yes.
23 Q And all three of you approached the captain on
24 the bridge?
25 A Yes.

1 Q And the captain was standing off to the port
2 side of the bridge, you say?

3 A Yes.

4 Q Did all three of you go close to him at that
5 time?

6 A I think Dan Lawn stayed back a few paces.

7 Q And it was then that you smelled what you said
8 was the strong smell of alcohol?

9 A Within about the first five minutes.

10 Q It was at that point that you saw Captain
11 Hazelwood with his hand over his mouth?

12 A Yes.

13 MR. CHALOS: Your Honor, may I approach the
14 witness, please?

15 THE COURT: Yes, sir.

16 Q You took the action of putting his hand over
17 his mouth as an attempt on his part to somehow
18 hide the fact that he might have had alcohol. Is
19 that right?

20 A That's correct.

21 Q I'm going to show you a series of four
22 photographs which we've marked as defendant's
23 exhibit L, M, N and O for identification and ask
24 you, do you recognize these pictures as pictures
25 of Captain Hazelwood?

1 A Oh, yes.
2 MR. CHALOS: Your Honor, I offer these
3 pictures into evidence at this time.
4 MR. COLE: I don't have any objection.
5 THE COURT: All right. They're admitted. L,
6 M, N, and O with objection.
7 EXHIBIT L ADMITTED
8 EXHIBIT M ADMITTED
9 EXHIBIT N ADMITTED
10 EXHIBIT O ADMITTED
11 (2680)
12 Q Mr. DeLozier, when Captain Hazelwood was
13 covering his mouth, was he using the two finger
14 cover-up?
15 A No.
16 Q Was -- this is a two finger and a hand cover-
17 up, Exhibit L.
18 A Uh-uh (negative).
19 Q Was he using just the two finger cover-up,
20 Exhibit N?
21 A No.
22 Q Was he using perhaps the one finger cover-up,
23 Exhibit O?
24 A No.
25 Q Was he using the hand cover-up, M?

1 A Similar.

2 Q Did it ever occur to you, Mr. DeLozier, that
3 perhaps the covering of Captain Hazelwood's mouth
4 is a habit rather than an attempt to conceal
5 alcohol?

6 A I didn't think about that at the time.

7 Q How about now?

8 MR. COLE: Objection.

9 Q Do you think maybe it's a habit?

10 THE COURT: Objection overruled.

11 A Do I think it's a habit? I don't have any
12 opinion at all.

13 Q Mr. DeLozier, when you say you smelled alcohol
14 on Captain Hazelwood's breath, are you sure you
15 weren't smelling your own breath?

16 A 100% sure.

17 Q But you had been drinking?

18 A I had two Miller Lites.

19 Q Beer, I take it from your experience, lingers
20 on the breath. Does it not?

21 A Sometimes.

22 Q Now, you say after that you called Commander
23 Falkenstein to the bridge wing?

24 A Starboard bridge wing.

25 Q To the starboard bridge wing. To tell him

1 about what you had just smelled. Is that right?
2 A Observed.
3 Q Was it you telling him that "I think I smell
4 alcohol on this guy's breath?"
5 A No. I asked him if he smelled what I smelled.
6 Q Just stepping back for a moment, you say that
7 when you came up on the ship, you saw several
8 patches of oil on deck. Do you remember that?
9 A Uh-huh (affirmative).
10 Q You didn't mention that fact to any of the
11 interviewers, state troopers or the NTSB before.
12 Have you?
13 A Sure have.
14 MR. CHALOS: I'll withdraw the question.
15 THE COURT: The question has been withdrawn.
16 MR. CHALOS: Your Honor, I have a special
17 request from Mr. Madson for a break with the Court's
18 permission.
19 THE COURT: Sure. We'll take a break, ladies
20 and gentlemen. I'm going to let you go at 3:30, one
21 way or the other so you can plan on that. In the
22 meantime, don't discuss this case among yourselves or
23 with any other person or don't form or express any
24 opinions and I'll take a matter up with counsel after
25 you've taken your break, Mr. Madson.

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1 THE CLERK: Please rise. This Court stands
2 in recess and recall.

3 (Off record - 2:37 p.m.)

4 (On record - 2:47 p.m.)

5 (Without Jury Present)

6 THE COURT: You may seated. Let's take up
7 the evidence matter now. Mr. Cole, are you ready to
8 go? I think we're getting close to the end of this
9 witness and this is as good a time as any.

10 MR. COLE: The evidence. I'm not going to go
11 into it.

12 THE COURT: Okay. You're not going to ask
13 the question whether Captain Hazelwood could or could
14 not? This is the urine sample.

15 MR. COLE: Right. I would like to ask when he
16 was placed on notice that he was going to have to give
17 a sample. I think that's important and I don't think
18 that's in -- in any way affects the privilege but I do
19 think that's important for relevance purposes to show
20 that a person who is placed on notice that he is going
21 to have to give one would not have anything to drink.

22 THE COURT: No. No, that's not going to come
23 in. You've got as much out on that as you're going
24 to and in case you change your mind, I'm going to rule
25 in favor of -- and I'm not going to go into the

1 constitutional reasons but I don't know how this
2 witness can give an opinion whether or not Captain
3 Hazelwood saying "I can't give one" is the same as "I
4 won't give one." And it's not like a blood sample
5 where you can take one involuntary. If you can't go,
6 you can't go and I think there's a real problem with
7 the probative value on that being outweighed by its
8 undue prejudicial fact.

9 So, are we ready for the jury now?

10 MR. CHALOS: Ready.

11 THE COURT: Okay. Let's go.

12 (With Jury Present)

13 (3004)

14 THE COURT: Are we going to finish up with
15 this witness today?

16 MR. CHALOS: We're going to go until 3:30.
17 I'm going to do my best.

18 THE COURT: Thank you. Mr. Chalos.

19 Q (Mr. DeLozier by Mr. Chalos:) Mr. DeLozier,
20 in response to Mr. Cole, you said the only sign
21 of intoxication that you saw around 3:40, 3:45
22 was the smell of alcohol. Am I correct?

23 A That's correct.

24 Q When you came out of the Pipeline Club after
25 having two beers, would you consider yourself

1 intoxicated?

2 A None, whatsoever.

3 Q In your opinion, if someone smelled your
4 breath at the time, would they smell the beer on
5 your breath?

6 A Probably would.

7 Q Now, did you see any signs of impairment on
8 Captain Hazelwood? Was he slurring his speech?
9 Were his movements unsteady?

10 A No.

11 Q Was Captain Hazelwood issuing orders during
12 the time that you saw him on the bridge?

13 A No.

14 Q Now, your job and Mr. Falkenstein's job when
15 you went out on the ship was to insure the safety
16 of the crew's life. Was it not?

17 A Somewhat.

18 Q And also to make sure that the safety of the
19 ship was looked after?

20 A Somewhat.

21 Q If you believed that the captain was impaired
22 or intoxicated, you had the authority to relieve
23 him. Did you not? When I say you, I'm talking
24 now about the Coast Guard.

25 A Coast Guard, yes.

1 Q And the Coast Guard being you and Mr.
2 Falkenstein at that time?
3 A That's right.
4 Q But you didn't take any such action. Did you?
5 A The vessel was aground. It wasn't going
6 anywhere.
7 Q And I take it then, you didn't think there was
8 any impending danger then?
9 A There was impending danger to the vessel in
10 my opinion.
11 Q But you didn't relieve Captain Hazelwood?
12 A He wasn't doing anything.
13 Q He was still captain of the ship. Was he
14 not?
15 A Yes, but he wasn't contributing much.
16 Q I take it the Coast Guard didn't take command
17 of the ship when you came on board?
18 A That's correct.
19 Q So Captain Hazelwood was still in charge?
20 A Still the master.
21 Q And the captain gave you no reason to believe
22 that he was incapable of carrying out his duties
23 as a captain. Did he?
24 A Only for the fact that I smelled alcohol on
25 his breath.

1 Q Other than that, you had no reason to believe
2 that he was incapable of carrying out his duty>?
3 A That's correct.
4 Q Now, you say that Captain Hazelwood asked you
5 if he could go below for about an hour or so to
6 take a nap. Is that right? At 5 o'clock in the
7 morning?
8 A Somewhere about that time.
9 Q And he did leave for about an hour, you said?
10 A Yes.
11 Q Had you searched his room prior to his going
12 down there to take a nap?
13 A No.
14 Q Had you told him that you suspected him of
15 having been drinking at that time?
16 A No.
17 Q Did you tell him that you wanted to do any
18 alcohol test on him or the crew?
19 A No.
20 Q Is there a particular reason why you didn't
21 say anything to him then?
22 A Yes.
23 Q What was the reason?
24 A I didn't want to arouse their suspicion and
25 possibly try to do something before we were able

1 to actually complete a test.

2 Q What would he do at that point in time?

3 A Barf.

4 Q What was that?

5 A Probably go into the bathroom and barf or wash

6 his mouth out or...

7 Q And you think that would have affected his

8 blood alcohol level?

9 A It's possible.

10 Q Do you have any training in blood alcohol

11 readings?

12 A No.

13 Q Now, I take it you don't know what Captain

14 Hazelwood did in his cabin at that point in time?

15 A He said he was going to go in there to take a

16 nap.

17 Q Other than what he told you, you don't know

18 what else he might have done?

19 A That's correct.

20 Q Now, is there a particular reason why you

21 didn't search the captain's cabin before he went

22 down to take a nap?

23 A Uh-huh (affirmative).

24 Q What's the reason?

25 A I don't know of any laws in the book that says

1 you can't have alcohol on the vessel.

2 Q In fact, alcohol under the Coast Guard
3 regulations is permitted on board a vessel. Is
4 it not?

5 A No, I didn't say it was permitted. I said I
6 don't know of any laws that says they cannot have
7 it on board.

8 Q So if he had alcohol on board the vessel, he
9 would not be in violation of any Coast Guard
10 regulation?

11 A If he consumed alcohol and if he had an
12 alcohol -- blood alcohol content above 0.4,
13 then...

14 MR. CHALOS: Your Honor, I move to strike as
15 non-responsive to my question.

16 THE COURT: Mr. DeLozier, did you not
17 understand the question? If you don't understand the
18 question, tell him you don't understand it, but don't
19 go beyond the scope of the question.

20 A Repeat the question.

21 Q The question is that if Captain Hazelwood had
22 alcohol on board the vessel in his cabin, that
23 would not be in violation of any Coast Guard
24 regulation? Would it?

25 A That's correct.

1 Q Now, Trooper -- let me take that back. I
2 don't think he's a trooper. Fish and Wildlife
3 Officer Mr. Fox came on board about 6:30?
4 A Somewhere about then.
5 Q Was the captain back on the bridge by then?
6 A I believe he was getting up at about that
7 time.
8 Q I believe you said that you saw Trooper Fox or
9 Game Warden Fox on the bridge?
10 A Uh-huh (affirmative).
11 Q And he thought he was coming on board to
12 wrestle a drunk. Is that right?
13 A To take care of an unruly drunk. Right.
14 Q Does that in any way refresh your recollection
15 as to where the captain was? Was he there when
16 Fox came on board?
17 A He wasn't present when I was conversing with
18 Mr. Fox.
19 Q Now, did Mr. Fox suggest -- strike that. Let
20 me go back. You had or Mr. Falkenstein had
21 called for someone to come out with a
22 breathalyzer kit. Is that right?
23 A Uh-huh (affirmative).
24 Q And when Mr. Fox showed up, he didn't have
25 such a kit?

1 A That's correct.

2 Q All he came out with was his handcuffs, I take
3 it and a billy club?

4 A And his pistol.

5 Q And his pistol. Now, did Mr. Fox suggest to
6 you that there may be some test you could do
7 short of the breathalyzer test?

8 A Short of the breathalyzer test?

9 Q Yeah, he didn't have a breathalyzer with him.
10 Did he suggest any sort of sobriety test that
11 could be done?

12 A Yeah, he said he could do a field sobriety
13 test.

14 Q Are you familiar with a field sobriety test?

15 A Yes.

16 Q What does that involve?

17 A Walking a straight line, hand/eye
18 coordination.

19 Q Touching your nose?

20 A Yes.

21 Q Counting backwards?

22 A Uh-huh (affirmative).

23 Q Walking backwards?

24 A Uh-huh (affirmative).

25 Q When Mr. Fox suggested that test, what did you

1 say?

2 A I said I didn't think that would be useful.

3 Q And the reason for that was because you

4 thought Captain Hazelwood would pass that test.

5 Did you not?

6 A No, I didn't think it would be useful because

7 in order for him to be in violation of our

8 regulations which would be .04, I think we were

9 approaching the time frame in which his blood

10 alcohol level was probably low enough where any

11 type of hand/eye coordination test would not be

12 useful at all.

13 Q Well, how would you know that? You didn't

14 know the last time he drank, did you?

15 A No, I didn't know when he drank.

16 Q He could have drank in his cabin when he went

17 down below. Right?

18 A I didn't know that he drank at all.

19 Q Except for the smell of alcohol?

20 A That's right.

21 Q So you suspected he was drinking?

22 A I suspected he was drinking.

23 Q And you didn't know when he had his last

24 drink?

25 A That's right. I don't know whether he had

1 one at all.

2 Q Do you remember when you were asked these
3 questions at the NTSB, you said that the reason
4 you didn't do the field sobriety test was because
5 Captain Hazelwood's hand/eye coordination was
6 good at that time based on your observation?

7 A I don't recall that, but I do recall, you
8 know, being...

9 MR. COLE: I'd like to see that statement
10 before it's introduced.

11 MR. CHALOS: Shall I read the question and
12 answer into the record, Your Honor?

13 THE COURT: Just a minute, please. Just a
14 minute.

15 MR. CHALOS: The question...

16 THE COURT: Just a minute, please.

17 MR. COLE: Judge, may we approach the bench?

18 THE COURT: All right.

19 (3630)

20 (Whispered bench conference as follows:)

21 MR. COLE: Judge, I'm going to ask Mr. Chalos
22 to read (indiscernible) any prior inconsistent
23 statements (indiscernible).

24 THE COURT: That's not true. You don't have to
25 disclose it to him. But the subsection 2 on 613 and

1 the question had been asked; the foundation has been
2 made and he did not have to show him the statement. He
3 asked he made such a statement without disclosing it to
4 him but he has to disclose it to you upon request which
5 you did. Now, if he's not accurately asking the
6 question, you can point that out to me, make sure he
7 asks the question that was asked earlier. But
8 otherwise, the procedure is correct.

9 MR. COLE: (Indiscernible)

10 THE COURT: Let me see what was said and see
11 how close he came. (Pause) I think Mr. Cole has a
12 point here. If you're going to use the statement to
13 impeach him, the first question you asked has to bear
14 some close resemblance to the question you're going to
15 use to impeach him and it didn't in this case.

16 MR. CHALOS: (Indiscernible)

17 THE COURT: Okay, and that's the purpose of
18 showing it to opposing counsel so that we can determine
19 that the question has a foundation.

20 (End of bench conference)

21 (3800)

22 MR. CHALOS: Your Honor, I'll withdraw my
23 previous question.

24 THE COURT: All right.

25 Q (Mr. DeLozier by Mr. Chalos:) Mr. DeLozier,

1 was there anything in Captain Hazelwood's
2 behavior at the time Mr. Fox suggested a field
3 sobriety test that would lead you to believe that
4 he wouldn't be able to pass that test?

5 A No.

6 Q Did Mr. Fox make any suggestions to you...

7 MR. COLE: Objection. Hearsay.

8 THE COURT: Before you answer the question,
9 let 's hear all the question but don't answer, Mr.
10 DeLozier, and we'll see.

11 MR. CHALOS: If I may rephrase it, Your Honor.
12 I'll withdraw and start another question.

13 Q Was there any suggestion made by anyone that a
14 blood test rather than a breathalyzer test be
15 taken?

16 A Yes.

17 Q Who made that suggestion?

18 A Mr. Fox made that suggestion.

19 Q Did you and Mr. Fox discuss the possibility
20 oft taking Captain Hazelwood into town and have a
21 test performed?

22 A Yes.

23 Q Who suggested that?

24 A I don't recall specifically who suggested it.

25 Q Was there any reason why that wasn't done?

1 A Yes, after we conferred with Mr. Falkenstein
2 and then a conference with Commander McCall, it
3 was being considered as an alternative, but it
4 turns out that we were able to get someone out
5 before we had to actually remove them.

6 Q Did you know that at that time there were
7 people in the local hospital who could perform
8 blood test if one was required?

9 A Yes.

10 Q Was there any thought given to taking Captain
11 Hazelwood off the ship at that time and bringing
12 him into the hospital to do a blood sample?

13 A Yes.

14 Q Why wasn't that done?

15 A Couldn't get a taxi cab out there.

16 Q Taxi to where?

17 A Out to the vessel.

18 Q Weren't there pilot vessels standing by?

19 A Yes.

20 Q Why wasn't one of those pilot boats used to
21 bring him back to Valdez?

22 A Probably because they were dirty.

23 Q You came out on which boat?

24 A Silver Bullet.

25 Q And that was maintained off to the side of the

1 ship, wasn't it?

2 A I don't recall. I believe she went back in.

3 Q What would have been the problem with one of

4 the boats going back to the harbor?

5 A Probably wouldn't have been no problem. It

6 was considered.

7 Q But not done?

8 A No, it wasn't done, no.

9 Q The night before the 24th, you had been out

10 drinking with Scott Conner. Did you not?

11 A No, I wasn't out drinking with Scott Conner.

12 Q You weren't drinking with Mr. Conner?

13 A No, I was not out drinking with Mr. Conner.

14 Q Did you see him at the Pipeline Club that

15 night?

16 A Yes, I did see him at the Pipeline Club.

17 Q Did he buy you a beer?

18 A Yes.

19 Q He did?

20 A Yes.

21 Q But you don't consider having been out with

22 Mr. Conner then?

23 A I didn't specifically go out with Mr. Conner;

24 Mr. Conner came in while I was already there. He

25 was selling his dart supplies.

1 Q At 5:30 in the morning, I take it, you knew
2 that Mr. Conner was in town. Did you not?
3 A Yes.
4 Q Why didn't you consider bringing him out to
5 the ship at that point to do a blood test?
6 A He's not a regularly assigned person from that
7 station.
8 Q But you knew he was in town?
9 A I didn't know if he was still in town or not.
10 Q Are there any flights that leave Valdez after,
11 let's say, 10 o'clock at night?
12 A I don't keep track of the flights. I don't
13 know.
14 Q Are there any flights that leave before 5
15 o'clock in the morning?
16 A I don't know.
17 Q But you testified that you were really anxious
18 about the passage of time between the time you
19 smelled the alcohol and whenever the test would
20 be done. Right?
21 A Uh-huh (affirmative).
22 Q Now, prior to your asking Captain Hazelwood
23 for a blood sample or to give blood, which I
24 think you said was somewhere around 10:30, had
25 you told him that you wanted to take blood from

1 him?

2 A Yes.

3 Q When was the first time you told him you

4 wanted to take blood from him?

5 (Tape: C-3626)

6 (0012)

7 A I said earlier in the morning when I asked him

8 about if he had the tox kits aboard at that time

9 is when I mentioned that I needed to take both

10 blood and urine tests from the specific people.

11 Q At what time did you ask him for the tox kits?

12 A I think it was about 9:30. 9 o'clock.

13 Q Prior to that time did you mention to him that

14 you wanted to take blood from anyone?

15 A No.

16 Q Now, at the time that blood was taken from

17 Captain Hazelwood, were you in the room?

18 A Yes.

19 Q That was in the captain's stateroom?

20 A Office.

21 Q Office. How close were you to Captain

22 Hazelwood?

23 A He was sitting at the desk; I was sitting

24 right in front of -- or standing right in front

25 of the desk.

1 Q What would be the distance?

2 A If that's the desk and Captain Hazelwood is
3 sitting where he is right now, I was standing
4 right in front of it, approximately three foot.

5 Q Did you have occasion to smell his breath at
6 that time?

7 A Yes.

8 Q Did you smell alcohol on his breath at that
9 time?

10 A No.

11 Q Do you remember...

12 MR. CHALOS: Your Honor, may I have just a
13 minute? I just want to...

14 THE COURT: Certainly.

15 (Pause)

16 Q Mr. Delozier, do you remember...

17 MR. COLE: Can I see a cite, please?

18 MR. CHALOS: Page 4.

19 MR. COLE: Of?

20 MR. CHALOS: Of the NTSB interview.

21 Q Do you remember giving the NTSB an interview?

22 A Yes.

23 Q Let me show you page 4 of a summary of that
24 interview and ask you if this is what you said to
25 them. "The master's blood sample was taken and

1 he was also able to provide a urine sample at
2 that time. The master still smelled of
3 alcohol." Is that correct?

4 A Is what correct?

5 Q That that's what you told the NTSB?

6 A Isn't that a summary of what I said?

7 Q Well, having shown you this, is your answer
8 that he smelled of alcohol or that he had no
9 smell of alcohol?

10 A Right now, I don't believe I remember that he
11 smelled of alcohol during the blood test.

12 Q When you gave this interview to the NTSB on
13 March 31st, 1989, was your memory fresher then
14 that it is today?

15 A It was probably fresher, yes.

16 Q So if you had told them that at the time that
17 the blood test was taken, he smelled of alcohol
18 then, your memory would be much better than it is
19 today. Would it not?

20 A Certainly.

21 Q Now, this test that you did of the crew, the
22 blood and urine test, you would have done that
23 regardless of whether you smelled alcohol on
24 Captain Hazelwood's breath. Is that right?

25 A Eventually, yes.

1 Q Do you remember searching the captain's room
2 at some point?
3 A Yes.
4 Q What did you find when you searched the room?
5 A Found two bottles of empty Moussy beer in his
6 trash can in his state room and he has a small
7 refrigerator that was stocked with soda and there
8 was also some Moussy beer in there.
9 Q Is that when you opened the Moussy beer to
10 smell it?
11 A I don't believe so. No.
12 Q You had done that previously?
13 A No.
14 Q When...
15 A I believe I opened the Moussy beer probably
16 two or three weeks after I got off the vessel.
17 Q And what was the smell that you smelled in the
18 Moussy beer? Was that the same as a regular
19 beer, same smell?
20 A Well, it smelled stale. Kind of like an
21 import beer.
22 Q Is that the kind of smell you smelled on
23 Captain Hazelwood's breath?
24 A No, not at all.
25 Q Different smell?

1 A Different smell.

2 Q Now, when you looked in the captain's cabin
3 stateroom, I take it you didn't look in his
4 closet?

5 A No, I did not.

6 Q You didn't look in any of the drawers?

7 A No.

8 Q You did look in the cabinet adjacent to the
9 refrigerator though, right?

10 A To my knowledge, right now, there is a
11 refrigerator and adjacent to that there was a
12 door. I opened up the door and I believe that
13 was where his safe was and I just closed it back
14 up and that was it.

15 Q I'd like to turn to another subject now. You
16 testified that the captain went over to the chart
17 and placed a circle at a particular spot in lead
18 pencil. Am I correct?

19 A Uh-huh (affirmative).

20 Q You took that original chart off the ship,
21 didn't you?

22 A Yes.

23 Q You confiscated the chart as part of your
24 investigation?

25 A Yes.

1 Q Where is the original chart now?
2 A I believe -- well, I turned it over to the
3 Coast Guard.
4 Q Have you had an opportunity to look at the
5 chart since you took off the ship?
6 A Oh, yeah.
7 Q You have?
8 A Uh-huh (affirmative).
9 Q And did you look to see if there was a pencil
10 mark at the 38 fathom mark?
11 A Yes.
12 Q And what did you find?
13 A That there was a pencil mark at the 38 fathom
14 mark.
15 Q Are you sure it was a pencil mark and not two
16 scratches?
17 A Yes.
18 Q A pencil mark?
19 A Yes.
20 Q Distinct?
21 A Distinct.
22 MR. CHALOS: Your Honor, may I pick up an
23 exhibit there?
24 THE COURT: (No audible response.)
25 Q I'm going to place before you what's been

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1 marked into evidence as exhibit 15. And ask you
2 is this is a copy of the original chart that you
3 took off the vessel?
4 A Yes. Uh-huh (affirmative).
5 Q You'll have to say yes or no.
6 A Yes.
7 Q I show you on this chart a fix of 2339 and a
8 circle. Do you see that?
9 A Yes.
10 Q That's pretty distinct, right?
11 A Uh-huh (affirmative).
12 Q A pencil mark and a circle.
13 A No, that's ink.
14 Q Ink?
15 A I believe it is.
16 Q Is it your testimony that the vessel's chart
17 is kept in ink?
18 A No. I'm saying I think that is ink there.
19 Q Are you familiar with plotting at sea?
20 A Yes.
21 Q You're also familiar that the charts are kept
22 in pencil so they can be erased. Are you not?
23 A Yes.
24 Q But you think that was in ink?
25 A It appears to be in ink, right now.

1 Q You can tell that from the copy?
2 A Well, it's darker.
3 Q Look at the fix at 23:55. That's got a circle
4 as well, right?
5 A Uh-huh (affirmative).
6 Q Pretty distinct as well?
7 A Uh-huh (affirmative).
8 Q And look at the fix at 004. See this fix
9 here?
10 A Uh-huh (affirmative).
11 Q That's pretty distinct as well.
12 A Uh-huh (affirmative).
13 Q Where is this circle at the 38 fathom mark
14 that you're talking about?
15 A This chart is a reproduction but it's right
16 around the 38 fathom mark right there.
17 Q But there's no mark there, is there?
18 A Well, I can still see it.
19 Q Where do you see it, sir?
20 A Around the 38 fathom mark.
21 Q Do you see a distinct pencil mark there,
22 circle -- anything?
23 A On this particular reproduction, I see a faint
24 portion of the circle which was drawn by Captain
25 Hazelwood when I questioned him about the

1 position in which he was -- he instructed Mr.
2 Cousins to turn.

3 Q Didn't you just testify that the mark he put
4 on was a very distinct mark?

5 A On the original chart, uh-huh (affirmative).

6 MR. CHALOS: Your Honor, at this point, I
7 would call for the original because it's my
8 recollection...

9 THE COURT: We'll take that up outside the
10 presence of the jury.

11 Q Certainly, on this chart, there's no distinct
12 mark, is there, at the 38 fathom mark?

13 A Right.

14 Q The answer is there's not?

15 A That's correct.

16 Q Sir, you were on board this vessel until
17 Sunday, the 26th?

18 A That's correct.

19 Q During that period of time, the weather was
20 fairly calm, was it not?

21 A Yes.

22 Q And the oil that had come out of the ship for
23 the most part was in the area of the ship. Was
24 it not?

25 A Yes.

1 Q Were you on board when a storm came up on that
2 Sunday?

3 A We left as it was -- well, it was windy, yes.
4 We had a heck of a time getting off.

5 Q Lastly, Mr. DeLozier, did you ever express an
6 opinion as to what could be done to minimize
7 these types of accidents?

8 (0457)

9 MR. COLE: Objection. Relevance.

10 MR. CHALOS: Your Honor, he was there; he saw
11 the casualty, expressed an opinion. I would just like
12 to explore it.

13 THE COURT: Objection sustained. Also as to
14 the form of the question.

15 Q Mr. DeLozier, did you have an opportunity to
16 compare the ship's clock to whatever time you use
17 to measure? Let me withdraw that. That's a
18 horrible question. Did you have an opportunity
19 to observe the accuracy of the ship's clocks?

20 A Yes.

21 Q And you found them to be accurate. Did you
22 not?

23 A I believe one of them was not accurate.
24 Either mine or his.

25 Q But you do recall doing a time check and

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finding the ship's clocks to be accurate? Do you recall that?

A Again, I don't know which one was accurate.

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

THE COURT: Mr. Cole.

MR. COLE: Judge, I'd ask that Mr. DeLozier be allowed to approach the jury and point out something on this photograph.

THE COURT: Is that in evidence in this?

MR. COLE: Yes.

REDIRECT EXAMINATION OF MR. DELOZIER

BY MR. COLE:

Q Mr. DeLozier, if you could come out from behind there.

THE COURT: And you take -- you can just take that -- is that long enough now, Scott? Yeah, I think the cord is now long enough.

Q Here you go. Would you point to the jury where Captain Hazelwood circled with a pencil...

A This faint circle made with a lead pencil which goes around the 38 fathom mark, the right hand side. It was through the 8 and then the circle extends around up through the 50 and tail is up to the 55.

1 Q Thank you. When you returned home from the
2 Pipeline Club, did you get ready for bed that
3 evening?
4 A Yes.
5 Q And one of the things you did, you brushed
6 your teeth?
7 A Yes.
8 Q When you looked through Captain Hazelwood's
9 room, you said that you found two Moussy cans.
10 Did you seize those items?
11 A Two Moussy bottles.
12 Q Bottles.
13 A Yes.
14 Q You seized them?
15 A Yes.
16 Q The empty ones?
17 A Yes.
18 Q What was done with those?
19 A They were turned over to the NTSB and they
20 didn't have a need for them and within the next
21 four weeks after the casualty, I was involved in
22 making duplicates of much of the evidence and the
23 empty bottles -- well, they could not be
24 reproduced and the state had already come aboard
25 and obtained, I don't know, a couple cases of

1 Moussy Beer, I believe, and we just didn't feel
2 as though it was -- there was a need to hang on
3 to those. I don't know what ultimately happened
4 to them.

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

6 MR. CHALOS: Your Honor, may I have Mr.
7 DeLozier approach the jury?

8 THE COURT: Yes.

9 RECROSS EXAMINATION OF MR. DELOZIER

10 BY MR. CHALOS:

11 Q Mr. DeLozier, would you show the jury please
12 where the 23:55 fix was on this chart at Busby?:-

13 A Right there.

14 Q The circle there and the time 23:55.

15 A Right. The dot is the position there.

16 Q And you say the point where the captain drew
17 with his lead pencil a distinct mark is just
18 below here at the 38 fathom mark?

19 A Right here.

20 Q This one right here?

21 A Uh-huh (affirmative).

22 Q And this is what you call a distinct mark on
23 this blown-up photograph?

24 A Yes.

25 MR. CHALOS: Your Honor, may I approach the...

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THE COURT: All right.

MR. CHALOS: May I hand it to the jury?

THE COURT: We'll pass that one around this time. That will be the only one we'll pass around without application.

MR. CHALOS: You may...

THE COURT: Pardon me? What number is it?

MR. CHALOS: Oh, I'm sorry.

UNIDENTIFIED: Exhibit number 30.

THE COURT: Okay. Don't discuss it, ladies and gentlemen of the jury. You're just supposed to look at it.

Q (Mr. DeLozier by Mr. Chalos:) Mr. DeLozier, you stated that you reviewed a copy of the interview that you conducted with Captain Hazelwood before coming here today?

MR. COLE: Objection. Outside the scope.

MR. CHALOS: We could call him back, I suppose, Your Honor. It just one or two questions.

THE COURT: I want to release this jury the next two or three minutes. How much...

MR. CHALOS: Two more questions and I'm done.

THE COURT: Okay. I'm going to reopen. If you need to, you can...

Q (Mr. DeLozier by Mr. Chalos:) Do you remember

1 reviewing a copy of the interview?

2 A Yes.

3 Q It's true, is it not, that there's no mention
4 in that interview of a 38 fathom mark?

5 A That's true.

6 MR. CHALOS: No further questions, Your Honor.

7 THE COURT: Anything further?

8 REDIRECT EXAMINATION OF MR. DELOZIER

9 BY MR. COLE:

10 Q When was that interview done? Before or after
11 you looked at the chart, the interview with
12 Captain Hazelwood?

13 A He's reviewed that -- Captain Hazelwood's
14 interview was done around 1300. The interview
15 with Mr. Cousins was done, I believe, 7 o'clock
16 -- 7 or 8 o'clock in the morning. I didn't --
17 or Mr. Hazelwood didn't circle it until after the
18 interview that I conducted with him.

19 Q Thank you.

20 (0780)

21 RECROSS EXAMINATION OF MR. DELOZIER

22 BY MR. CHALOS:

23 Q Mr. DeLozier, you have me confused. I
24 thought you told us before that the chart was
25 circled at the time that you were interviewing

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the third mate.

A Say again?

Q I thought you told us earlier that the chart was circled by the captain, as you said, at the time that you were interviewing the third mate?

A No, I did not say that.

Q You say that the captain circled this when?

A After my interview with him.

Q You're absolutely certain about that?

A Quite.

MR. CHALOS: Your Honor, may I have just one minute?

THE COURT: All right.

MR. CHALOS: Your Honor, I would like to show the witness a series of questions and answers that he gave at the NTSB and ask him one or two more questions about them.

THE COURT: Show them to Mr. Cole first. At least give him the pages.

MR. CHALOS: Page 658 and 659 in my transcript.

(Indiscernible side conversation)

THE COURT: Let's proceed please. If you have an objection, you can make it but don't engage in colloquy, Mr. Cole.

1 Q (Mr. DeLozier by Mr. Chalos:) Let me show
2 you on page 658 and 659 of your NTSB testimony
3 and ask you to read to yourself, just right in
4 here, this question by Mr. Woody and run down to
5 about here.

6 A Okay.

7 Q This indicates that the captain pointed to the
8 38 fathom mark after you had your interview with
9 the third mate. Did it not?

10 A That's correct.

11 Q And your interview with the third mate was
12 what? About 7 o'clock in the morning?

13 A About that, yes.

14 MR. CHALOS: No further questions.

15 THE COURT: This is it, so make it good.

16 We're going....

17 REDIRECT EXAMINATION OF MR. DELOZIER

18 BY MR. COLE:

19 Q When you said after Mr. -- you had this
20 Captain Hazelwood point out this point after Mr.
21 Cousins' interview, were you referring to the
22 time after you'd interviewed him at 1 o'clock?

23 MR. CHALOS: Objection, Your Honor. Leading.

24 THE COURT: Overruled.

25 A Whenever...

1 Q Let me show you your statement. What did you
2 mean by "after the interview with the third mate,
3 I interviewed or talked to the master about the
4 subject at which time he said yes, this is it."
5 When were you referring to as "after the
6 interview?"

7 A After the third -- after Cousins' interview.

8 Q And would that have been when you had the
9 master point this out on the bridge?

10 A This was after his interview, yes.

11 Q Thank you.

12 MR. COLE: Nothing further.

13 THE COURT: All right. Can the witness be
14 excused from further participation?

15 MR. CHALOS: Your Honor, I -- after everyone
16 leaves, I would like to make an application for the
17 original chart. I would reserve my right to bring him
18 back.

19 THE COURT: Okay. Very well. Okay, I'm
20 going to let you go home. As I indicated earlier, this
21 is a three-day weekend for you folks. You don't have
22 to come back until Tuesday morning at 8:30. We're
23 going to get started at 8:30. At least, I'm going to
24 set that as my goal, with you folks in the jury box at
25 8:30, so if you'd come back to the jury room at 8:15,

1 that will give us enough lead time.

2 In the meantime, don't discuss the case among
3 yourselves or any other person. You might find an item
4 of evidence interesting; you might find some testimony
5 interesting; you might be inclined to say something,
6 even if you -- and I didn't mean to be so abrupt but
7 even if you point out something on that picture, that's
8 discussing the case. So don't even think about
9 discussing the case with anybody and don't form or
10 express any opinions.

11 Avoid the media. There's media around about
12 this case and I think I've told you that and I've been
13 assured by your silence you haven't been exposed to it.
14 And I want to continue to get that assurance from you
15 folks.

16 So I'll see you next Tuesday at 8:15. And be
17 safe. Mr. Chalos.

18 (Jury not present)

19 MR. CHALOS: Your Honor, Mr. DeLozier has
20 testified that the captain put a distinct pencil mark
21 at the 38 fathom mark of the chart. I have personally
22 gone over to the Coast Guard office around the time of
23 NTSB hearings and looked at the original chart. There
24 was no pencil mark. There are what appear to be
25 scratch marks which is what Mr. Cousins testified to

1 but there is no distinct pencil mark. If Mr. Cole is
2 going to insist that these are pencil marks or that
3 this is a mark that Captain Hazelwood put on, then I
4 would call for the original of the Coast Guard
5 document. Because I think now the marking on the
6 document is becoming an issue.

7 MR. COLE: If Mr. Chalos has an objec -- I
8 don't know what the authority this Court has over the
9 U. S. Coast Guard or whoever has this but if Mr. Chalos
10 has an objection to that, he can send someone over like
11 we have and have them look at the chart and they can
12 come in here and testify and say, "I have looked the
13 original; I didn't see a mark there." That's what
14 we're going to do.

15 THE COURT: Well, the big chart is not in
16 evidence yet. It hasn't been offered yet.

17 MR. CHALOS: Fifteen is not in evidence?

18 THE COURT: That's what my clerk says.

19 MR. CHALOS: Well, Your Honor, I'd like to
20 offer it into evidence at this time.

21 THE COURT: Okay, number 15. Any objection?

22 MR. COLE: No.

23 THE COURT: Admitted.

24 EXHIBIT 15 ADMITTED

25 (1170)

1 THE COURT: 15 is admitted. I don't know what
2 to tell you, Mr. Chalos, about your application. I'll
3 issue a subpoena to pick it up. I don't know if it's
4 going to be honored or not. I mean if you think you
5 need it and you want to get a subpoena duces tecum, to
6 get somebody to bring it over, I'll do what I can. If
7 Mr. Cole has access to it and they'll voluntarily give
8 it to him, then I would expect Mr. Cole in his office
9 in the Court, to obtain that from the Coast Guard.

10 MR. COLE: I can't get it, Judge. I've
11 already requested it. They can do the...

12 THE COURT: It seems to me -- but there's been
13 no objection, it seems to me that the authenticity now
14 of the documents have been placed in evidence is
15 somewhat in question based on the testimony of this
16 witness. However, they're in evidence and the only
17 thing we can do is try to get the original now, so I'll
18 do what I can and if you want to send somebody over
19 there to view it, I don't think you want to make
20 yourself a witness at this time, Mr. Chalos, so you..

21 MR. CHALOS: No, I don't. I'll send someone
22 over if that's the only way we can do it. But we'll
23 prepare a subpoena for Your Honor's signature and see
24 if they produce it.

25 THE COURT: Anything else we can do now before

1 Tuesday morning at 8:30?

2 MR. MADSON: I don't believe so, Your Honor.

3 MR. COLE: The only thing that would be
4 helpful, Judge, is in the transcripts. If there's
5 going to be -- they have a different transcript. It
6 was a transcript of the NTSB that was done by Exxon and
7 by the U.S. government the day -- they were done
8 immediately. We have the official copy of the NTSB
9 and we have such a difficult time. Could they either
10 use this one that we have or give us a copy of theirs?

11 THE COURT: That sounds like a fair request.
12 Either you should get together and both of you use the
13 same one, if you can, if that's possible, because it
14 will make it a lot easier.

15 MR. CHALOS: I don't think we have the
16 official transcript, Your Honor, but whatever I intend
17 to use in the future, I'll make extra copies and give
18 them to Mr. Cole.

19 THE COURT: But that's not the point. The
20 point is he wants to compare it with the official.

21 MR. CHALOS: Oh, I see.

22 MR. COLE: I have a copy of the official
23 transcript that I can provide for the defense over the
24 weekend.

25 THE COURT: That would be nice. Why don't

1 you do that. And we're going to start our new schedule
2 8:30 'til 1:30 next week. I've got 2:30 and 3:30
3 hearings and we won't have a lunch break during that
4 schedule. We'll stand in recess.

5 THE CLERK: Please rise.

6 THE COURT: Oh, by the way, now is the witness
7 free to leave?

8 MR. CHALOS: Your Honor, I would like to
9 reserve my right to bring him back if we get the
10 original chart.

11 THE COURT: Okay. Do you expect to be out of
12 the state? Are you going to go back to Valdez?

13 A I'll be going back to Valdez and go back to
14 work on Thursday morning.

15 THE COURT: Next Thursday? You mean a week...

16 A Next Thursday morning.

17 THE COURT: So until then, like Tuesday and
18 Wednesday, you'd be available if necessary?

19 A Provided I can get back to go to work.

20 THE COURT: Pardon?

21 A Provided I can get back to go to work by
22 Thursday morning.

23 THE COURT: And what do you have to do on
24 Thursday morning? What kind of work? You'll be taking
25 a ship out or something?

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A Yes.

THE COURT: Okay. Well, would we know by Tuesday or Wednesday then?

MR. CHALOS: Well, we'll get the subpoena drawn up over the weekend and we'll try and serve it on them first thing Tuesday morning.

THE COURT: Okay. We'll leave it at that.

THE CLERK: This Court stands in recess.

(1293)

(Off record - 3:41 p.m.)

****CONTINUED****