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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 20, 1990
PAGES 4444 THROUGH 4636

VOLUME 24

Original

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BEFORE THE HONORABLE KARL S. JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 20, 1990

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1 PROCEEDINGS

2 FEBRUARY 20, 1990

3 (Tape: C-3626)

4 (1339)

5 THE CLERK: The Superior Court for the State
6 of Alaska, Judge Carl S. Johnstone presiding, is now in
7 session.

8 (Jury not present.)

9 THE COURT: Please be seated.

10 Was there a short matter that needed to be
11 taken up before the jury came in?

12 MR. MADSON: Your Honor, the only thing I
13 wanted to bring to the court's attention and to make
14 sure it was all right is, we have an expert witness,
15 Mr. Joe Weinert (ph) who we would like to have remain
16 in the courtroom to hear testimony.

17 It's been my experience that experts can be
18 allowed to listen to other testimony to aid or assist
19 in evaluating their opinion, but I wanted to make sure
20 that would be okay.

21 THE COURT: What's the next evidence going to
22 be?

23 MR. COLE: A tape and then Captain Deppe and
24 Captain Stalzer who are Exxon officials. I don't think
25 we're going to put on any experts today.

1 THE COURT: If there's no experts, what's the
2 need for the expert to be in here? First of all, is
3 there objection to this expert being in here?

4 MR. COLE: No... I don't know what he's an
5 expert on or anything, but ...

6 THE COURT: Why don't you tell us.

7 MR. MADSON: Naval architecture, Your Honor.

8 THE COURT: Okay. Is there going to be any
9 evidence on naval architecture through the next three
10 witnesses or pieces of evidence?

11 MR. COLE: There might be with Captain Deppe
12 describing what's going on, he comes on board the
13 vessel that evening.

14 THE COURT: I don't mind experts sitting in
15 while other experts are testifying so they can
16 understand what the testimony is and preparation for
17 it. But is it just to let him sit in here and watch
18 the trial while we're... Is that the purpose of his
19 presence now?

20 MR. MADSON: Well, since the other testimony
21 is going to matter in his opinion one way or the other,
22 it shouldn't affect it at all. I mean, it's just, I
23 think it would be incidental and it certainly wouldn't
24 be prejudicial in any way that I can see, the fact that
25 he's in here listening to people testifying on other

1 matters. But, it's your court, Your Honor.

2 THE COURT: I understand. There's no
3 objection. I don't mind him sitting in here. I
4 generally exclude witnesses so they don't listen to
5 testimony in order to rebut it except for experts.

6 MR. MADSON: Sure.

7 THE COURT: I just don't want to get into a
8 situation where I have to make that decision; every
9 witness comes in and wants to watch the trial.

10 MR. MADSON: I can't imagine a situation of
11 that happening here.

12 THE COURT: Okay. Any problem with this
13 witness?

14 MR. COLE: None.

15 THE COURT: Okay. You're ready now with the
16 jury?

17 MR. COLE: Uh-huh (affirmative).

18 MS. HENRY: Yes, Your Honor.

19 (Pause.)

20 (Jury present.)

21 (1515)

22 THE COURT: Good morning, ladies and
23 gentlemen. I understand that one of you got a call
24 saying that somebody saw you on CNN and I'm sure that
25 was an inadvertent coverage by the jury of media

1 people. And I'm sure that won't happen again. I
2 apologize for that intrusion, if you consider it an
3 intrusion.

4 Mr. Cole, are you ready to proceed?

5 MR. COLE: Yes.

6 MS. HENRY: Your Honor, the state's next
7 witness is Dan Lawn. Sir, would you step forward.

8 THE CLERK: Sir, you'll find a microphone on
9 the top of the counter. You'll attach that, please,
10 and remain standing and raise your right hand.

11 (Oath administered.)

12 A I do.

13 DANIEL JOSEPH LAWN

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

16 THE CLERK: Would you please state your full
17 name and then spell your last name?

18 A Daniel Joseph Lawn, L-a-w-n.

19 THE CLERK: And your current mailing address?

20 A Post Office Box 1483, Valdez, Alaska 99686.

21 THE CLERK: And your current occupation?

22 A I'm an environmental engineer for the
23 Department of Environmental Conservation in
24 Valdez.

25 THE COURT: Thank you.

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THE COURT: Ms. Henry.

DIRECT EXAMINATION OF MR. LAWN

BY MS. HENRY:

Q Sir, how long have you worked for the Department of Environmental Conservation?

A Oh, since approximately August of '77.

Q And can you just briefly explain your career with DEC?

A I was hired to, at the time of the tanker inspection program, put together that program. Dealt with the tankers and the terminal oil pollution and other duties since that time.

Q During that period of time, how often were you working out of the Valdez office?

A I've always worked out of the Valdez office.

Q And you currently work out of the Valdez office?

A That's correct.

Q Going specifically to March of 1989, what were your specific duties with DEC at that time period?

A I was still the environmental engineer. Also assigned duties as district engineer and district manager.

Q What sort of things did you do?

1 A Reviewed contingency plans. Dealt with oil
2 spills, drinking water, waste water, solid waste.
3 All the programs that the department administers.

4 Q As part of that last area, did you run tests
5 on water and that sort of thing?

6 A We took samples and sent the samples to a
7 certified lab, depending on the nature of the
8 sample.

9 Q Okay. Going specifically to the morning of
10 March the 24th of last year, did you receive a
11 phone call early that morning?

12 A Yes, I did.

13 Q And who was the phone call from?
14 (1630)

15 A Approximately at 1:00 a.m., give or take a few
16 minutes, the operation control center at the
17 terminal phoned me and notified me that the Exxon
18 Valdez had run aground in Valdez Arm.

19 Q What did you do then?

20 A Since they didn't have really much
21 information, I immediately called the Coast Guard
22 and talked to Captain McCall.

23 Q And so you spoke to Captain McCall over the
24 phone?

25 A That's correct.

1 Q Did you advise him what you intended to do?

2 A We discussed the situation and what plan of
3 action we would take. He advised me that he
4 would be sending a boat and asked me if I wanted
5 to go, and my reply was in the affirmative and
6 told him I'd be down at the station as soon as I
7 could get there.

8 Q Do you remember approximately what time it was
9 that you got down to the station?

10 A No. It was probably around 2:00. I had made
11 a call to my supervisor first and then go to the
12 office and pick up equipment and make some more
13 phone calls and then go to the Coast Guard
14 station.

15 Q What sort of equipment did you pick up at the
16 office?

17 A Video camera, 35 mm camera, tape recorder,
18 some field notes -- the type books.

19 Q And I take it you eventually then took a pilot
20 boat out to the Exxon Valdez.

21 A That's correct.

22 Q Who all was with you on the pilot boat, if you
23 recall?

24 A There were two crew people on board and the
25 executive officer of the Coast Guard, Mr.

1 Falkenstein, and Mark Delozier and myself.

2 Q Okay. When you say two crew people, you mean
3 crew from the pilot boat?

4 A Yes.

5 Q And at some point out to the Exxon Valdez, did
6 you begin taking a film?

7 A Yes, I did.

8 Q And after you had boarded Exxon Valdez did you
9 continue taking the film?

10 A Periodically, yes.

11 Q All right. And have you had an opportunity to
12 review a copy of the film that you took that
13 night and early morning?

14 A Yes, I have.

15 MS. HENRY: May I approach the clerk, Your
16 Honor?

17 THE COURT: Yes.

18 Q (Mr. Lawn by Ms. Henry:) I'm showing you
19 what's been marked as Plaintiff's Exhibit 94 for
20 identification. Do you recognize that exhibit,
21 sir?

22 A This is marked a duplicate or a dub (ph) of
23 the film that I took.

24 Q And did we review this actual copy in my
25 office last week?

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1 A Yes.

2 Q After reviewing that copy, is that copy an
3 accurate representation of what you filmed that
4 night and early morning?

5 A To my recollection.

6 Q And the sound on that copy, is that your voice
7 speaking?

8 A Yes.

9 Q What is the purpose of you speaking on the
10 tape?

11 A Well, when we take video tape, we talk and
12 describe what it is we're seein' and it's mental
13 note taking and it's with the best information we
14 have at the time.

15 Q All right. And on the video tape in the
16 corner there appears to be a date and time
17 imprinted on the film. Is the date and time
18 accurate?

19 A Within a few minutes, yes.

20 Q The date's accurate, but the time may be off a
21 couple minutes?

22 A Yes. Might be off a...

23 MS. HENRY: Your Honor, at this time the state
24 would move into evidence Plaintiff's Exhibit 94.

25 MR. MADSON: Your Honor, I have no objection

1 to the playing of the tape and the admission of the
2 tape, however, I do object to the narration or any
3 sound that's on, the voices, because this is hearsay.
4 I think it's objectionable on that basis.

5 MS. HENRY: Your Honor, most of the narration
6 on the tape is Mr. Lawn identifying what we're seeing
7 on the tape, which is something that could be done when
8 we're showing still photographs. There are two
9 exceptions.

10 Mr. Lawn indicates at one point the tanks that
11 are holed, which is information he got from the Coast
12 Guard through the chief mate and one time he indicates
13 the amount of oil that has been lost. He got that from
14 the same information.

15 That information has already been testified to
16 by Chief Mate Kunkel and so I would request that we'd
17 be able to play the tape in its entirety with the voice
18 over because those are the only hearsay exceptions.

19 MR. MADSON: Well, I think the easy solution
20 to this, Your Honor, is just leave the sound off and he
21 can certainly explain what's happening at the time that
22 the tape is going.

23 But to allow testimony, hearsay testimony,
24 that remains locked forever on a piece of tape that
25 becomes part of an exhibit, I think, would be

1 erroneous. I think that is clearly hearsay. But he
2 can testify as to what he did; what he saw, certainly.

3 THE COURT: Counsel, approach the bench.

4 (1867)

5 (Whispered bench conference.)

6 THE COURT: The fact that something's already
7 been testified to doesn't give it an exception to the
8 hearsay rule, as you're well aware of. That's an
9 objection which I'll sustain, since it's been made as
10 to those holes and the other matters that don't concern
11 what he's viewing.

12 What he's viewing, it seems to me, Mr. Madson,
13 that, if we go along with your proposal, then we would
14 have to stop the tape every three to four minutes to
15 ask questions.

16 MR. MADSON: Well, if we just have him do --
17 yeah, I think that would be great. If we could stop at
18 any time and he could explain it.

19 THE COURT: And will he be explaining exactly
20 what he would be explaining as he did on the tape?

21 MS. HENRY: Yes, sir. He'll say, you're
22 seeing Naked Island. You seeing...

23 THE COURT: How long is the tape?

24 MS. HENRY: The tape is 26 minutes, but I was
25 only going to play about 15 to 20 minutes of it.

1 THE COURT: Are you prepared or in a position
2 you can turn the volume down when he starts talking
3 about things that I've determined for him to say or
4 there's no exception to? So far you have not given me
5 an exception.

6 MS. HENRY: There's no exception. It's just
7 that (indiscernible - whispering) be prejudicial
8 because it's already been heard.

9 THE COURT: It may or may not be, but it's an
10 objection that has been made.

11 MS. HENRY: I'm not prepared because, you
12 know, I'm not sure I know, you know, it happened twice,
13 but I can't tell you exactly when it happened.

14 THE COURT: Tell me again, what is that he's
15 going to say about the tank and the holes in it?

16 MS. HENRY: He's going to say something like
17 ...(indiscernible - coughing). And at one point he
18 says that, so far in talking, 15,000 -- of oil. He
19 says that a couple of times. It's when he's showing
20 where the tank is.

21 THE COURT: Okay. And the rest of it is just
22 pointing out to a buoy or pointing out to the reef or
23 an island. He's pointing out things.

24 MS. HENRY: Yeah.

25 THE COURT: Okay. Okay, step back. Thanks.

1 (1970)

2 THE COURT: Mr. Madson, have you had access to
3 this tape?

4 MR. MADSON: I think I saw it on Connie Chung.

5 THE COURT: Have you had access to this tape?

6 MR. MADSON: Yes. We've had access to it,
7 Your Honor.

8 THE COURT: Okay.

9 MR. MADSON: Probably not this copy, but I'm
10 sure we have had access to a similar tape. Let's put
11 it that way.

12 THE COURT: Have you had access to what's
13 depicted on this tape?

14 MR. MADSON: I would say yes, Your Honor.

15 THE COURT: Okay. All right.

16 (Pause.)

17 THE COURT: How long have you had access to
18 it, Mr. Madson?

19 MR. MADSON: I think since last week; last
20 Thursday.

21 THE COURT: Is that right, Mr. Cole?

22 MS. HENRY: Your Honor, I know that, just in
23 events of caution, I made another copy and gave it to
24 them last Thursday. They have had the notes of Officer
25 Lawn, which indicate what he says on the video for

1 quite a while; I'd say at least a month.

2 THE COURT: Okay. Mr. Madson, is there any
3 dispute as to what the witness is going to point out,
4 when he points out, for example, Naked Island? Is
5 there a genuine dispute that he's pointing out Naked
6 Island or a buoy or something of that nature?

7 MR. MADSON: No. No. Not at all.

8 THE COURT: Okay. I'm going to let the tape
9 in with the words on the tape. It seems to me that
10 you've had adequate time to prepare to meet this. And,
11 if there's no genuine dispute as to what the words are,
12 it appears to me, the general purpose of the rules and
13 the interest of justice, would best be served by the
14 admission of the tape and the accompanying words into
15 evidence.

16 So, under the general catch all and exceptions
17 under 803(23), I'm going to admit it in. I will give
18 you an opportunity to cross examine the witness while
19 he's here today on such statements he made on tape.

20 What is the exhibit?

21 MS. HENRY: Ninety-four.

22 (2120)

23 THE COURT: It is admitted and the words will
24 be played.

25 EXHIBIT 94 ADMITTED

1 MS. HENRY: Thank you.

2 Q (Mr. Lawn by Ms. Henry:) Before I play it,
3 Mr. Lawn, on the tape you refer to numbers every
4 once in a while. You'll say number 5 or number 4
5 as you're pointing out something.
6 What are you referring to?

7 A I'm referring to the approximate location of
8 certain tanks.

9 Q So, tank number 5...

10 A Tank number 3, 4, 5.

11 Q Also, during part of the video you show the
12 Exxon Baton Rouge and it appears that it's
13 deballasting.
14 Can you explain that?

15 A Yes. The Exxon Baton Rouge was going to be
16 the primary ship for lightering purposes. We had
17 to make that ship as light as possible, so the
18 Coast Guard and I had made a decision that we'd
19 give the ship permission to deballast. It's to
20 deballast, to get lighter, so it can come up
21 along side and take more oil off the Valdez.

22 Q So, ordinarily, they're not allowed to
23 deballast...

24 A That's correct.

25 Q ...deballast into the Prince William Sound?

1 A That's correct

2 Q But in this case you permitted them to do

3 that?

4 A Yes.

5 MS. HENRY: At this time I'd ask to be able to

6 play the tape now.

7 THE COURT: All right. If you want to move it

8 up a little closer, you can do so. I'd like to be able

9 to see it also. And, Mr. Madsen, you're welcome to sit

10 over there, if you like.

11 MS. HENRY: Do you want me to move it?

12 THE COURT: Just slightly. Just a little more

13 towards me. Closer to the jury, if you want.

14 A Should I be in a position to see it?

15 MS. HENRY: Pardon?

16 A Should I be in a position to see it too?

17 MS. HENRY: (Indiscernible - away from mike.)

18 THE COURT: Do you want Mr. Lawn to be able to

19 see it also?

20 MS. HENRY: Yes.

21 THE COURT: Okay. You can step over here if

22 you want to. You can stand over here. Won't be

23 anybody's way, I don't think.

24 (2227)

25 (Video tape played.)

1 (2895)

2 Q (Mr. Lawn by Ms. Henry:) Sir, is it fair to
3 say that the tape continues with you doing more
4 panoramic throughout the rest of the day?

5 A That's correct.

6 Q And you indicated there towards the end that
7 the Exxon Baton Rouge had to deballast and you
8 talked about her draft. Is that correct?

9 A That's correct.

10 Q Were soundings made to make sure that, if she
11 came close to the Exxon Valdez, she would not
12 ground?

13 A Yes. We originally thought that the water was
14 deeper on the starboard side. But the Coast
15 Guard have the pilot boat do soundings on the
16 port side and it was determined that there was
17 more water on the port side.

18 Q Do you know approximately when that was that
19 the pilot boat did those soundings?

20 A I think it was probably right about the time
21 the tape ends or a little time after.

22 Q So, late morning sometime?

23 A Yes.

24 Q Now, even after the Exxon Baton Rouge
25 deballast the dirty ballast and the soundings

1 were made, she was not permitted to come up along
2 side the Exxon Valdez for quite a while. Is that
3 correct?

4 A That's correct. Early on, the primary concern
5 that we had was trying to get the rest of the
6 remaining oil off of the Exxon Valdez because, if
7 it lost about twenty percent of its cargo, we
8 were concerned about the other eighty percent.
9 And as time went on, there became increasing
10 concern about the stability of the vessel.

11 And we, the Coast Guard primarily, decided not
12 to have a ship come along side until analysis
13 could be made and an unloading plan developed.
14 My recollection, some of that information had to
15 be generated or assisted with computer help from
16 Houston.

17 Q So they didn't use solely the computer on the
18 Exxon Valdez?

19 A Oh, I believe it was used. But, as I recall,
20 there was not a great level of comfort in the
21 numbers they were getting out of the on-board
22 computer. And so they asked for help from
23 Houston.

24 (3046)

25 MR. MADSON: Your Honor, excuse me. I'm going

1 to object to the hearsay he's testifying to here. Way
2 beyond his knowledge or expertise certainly.

3 THE COURT: They asked for help and the other
4 is hearsay. Ms. Henry, is there any exception you can
5 find to this?

6 MS. HENRY: Let me rephrase the question, Your
7 Honor.

8 THE COURT: Okay. Disregard the last answer,
9 ladies and gentlemen.

10 Q (Mr. Lawn by Ms. Henry:) Based upon your
11 information, the Exxon Baton Rouge then did not
12 come close to the Exxon Valdez and begin the
13 lightering process for quite a while. Is that
14 correct?

15 A That's correct.

16 Q Also, you can't really see it on the tape, but
17 in the dark portion of this, you made the comment
18 about the ice that you're going through in the
19 pilot boat at 3:30 in the morning as you're
20 approaching the Exxon Valdez. Is that correct?

21 A Yes, well, it was about 3:18. My impression
22 before I went out there was there was a lot of
23 ice and I had been told that the Exxon Valdez had
24 diverted out of the tanker lanes to stay out of
25 the ice.

1 When we were in a small boat, in the
2 neighborhood of 20 or so feet long, maybe
3 slightly larger, we came up on a large piece of
4 ice. Relative to the size of the boat, it was a
5 big deal.

6 And as daylight broke and as I panned around
7 there was very little ice in the vicinity of the
8 Exxon Valdez. Most of the ice that would have
9 been a problem was a lot further to the west in
10 the outbound tanker lanes.

11 Q Okay. But going specifically to that time
12 that you're approaching the Exxon Valdez, when
13 it's dark, were you able to see very much ice?

14 A I saw one piece of ice.

15 Q But it was dark. Is that correct?

16 A That's correct.

17 Q Thank you, sir. That's all the questions I
18 have.

19 (3150)

20 CROSS EXAMINATION OF MR. LAWN

21 BY MR. MADSON:

22 Q Good morning, Mr. Lawn. Let me ask you,
23 again, what your function was in Valdez at the
24 time of the grounding on the 24th?

25 A As I said earlier, since joining the

1 department, I have been an environmental engineer
2 and had other duties which included supervision
3 of the office and district engineer functions.

4 Q Did you have any authority over the Coast
5 Guard or the operation of the port or the VTS
6 system at all?

7 A No.

8 Q Were you aware of the problems that tanker
9 captains were having regarding the increased ice
10 calving from Columbia Glacier and the need to
11 divert around the ice?

12 A I was aware that that was one option. The
13 other option was to slow down when going through
14 the ice.

15 Q You're aware of the options then, right?

16 A Those are the options as I know them.

17 Q Did you ever discuss with Captain McCall,
18 commander of the port, the need perhaps to shut
19 down the port, for say, night time transits?

20 A I don't believe I ever had that conversation
21 with him.

22 Q When you went out there in the boat with Mr.,
23 I think, it was Delozier and Falkenstein, the two
24 Coast Guard investigators, right?

25 A Correct.

1 Q You arrived out there about 3:30 a.m.?
2 A In that neighborhood, yes.
3 Q And you indicated on the tape and again here
4 today that you said you saw some ice, at least
5 one or two pieces, in the vicinity of the Exxon
6 Valdez before you got there?
7 A One piece, as I recall.
8 Q And, of course, it was dark at this time,
9 right?
10 A That's correct.
11 Q You don't know what the condition of the ice
12 was to the north of the Exxon Valdez or
13 northwest, let's say, at that time in the dark?
14 A Just the area that we had come through because
15 we had approached the Valdez from the north.
16 Q Do you know, sir, from your knowledge, whether
17 or not the ice position will change with respect
18 to incoming or outgoing tides?
19 A I don't know that answer.
20 Q Have you been out there at all before on the
21 nature of your business, in the course of your
22 business, in that area?
23 A Yes. For the preceding years, in past times
24 we've done a lot of aerial surveillance and
25 looked at ice, also.

1 Q For what period of time?

2 A That was several years before that, when we
3 were doing about weekly aerial surveillance.

4 Q For the purpose of determining how much ice
5 there was?

6 A No. We were out there just watching the
7 tankers; looking for pollution; landing on
8 beaches and taking samples of oil that were --
9 but as we did that, we had occasion to see --
10 note where the ice was.

11 Q When you arrived out there, from the tape it
12 appears that the seas were calm and there was no
13 wind or very little wind, right?

14 A That's correct.

15 Q The oil seemed to be staying in the vicinity
16 of the Exxon Valdez rather than being dispersed
17 rapidly by wind and waves.

18 A It was, at the time, it appeared to be going
19 around the ship, as I mentioned on the tape, and
20 moving to the south. But at a slow rate.

21 Q Were you there, obviously, as a representative
22 of the state Department of Environmental
23 Conservation, but did you have any power or
24 authority over what was to be done next as far as
25 preventing additional oil release or clean up or

1 anything like that?

2 A Well, that's a pretty broad question. The
3 answer to part of it is yes. The answer to part
4 of it is no.

5 Q Which part is yes?

6 A Oil spill clean up.

7 Q By clean up, did that, for instance, include
8 use of dispersants or burning or anything like
9 that? Could you make that decision, is what, I
10 guess, I'm...

11 MS. HENRY: Objection. Irrelevant and beyond
12 the scope of direct.

13 MR. MADSON: Your Honor, could we approach the
14 bench a second?

15 THE COURT: All right.

16 (3400)

17 (Whispered bench conference as follows:)

18 MR. MADSON: It's my belief that the state is
19 going to show the cost of the clean up, as part of the
20 damages, in other words what Exxon had to pay
21 (indiscernible - whispering). But, I think if that's
22 the situation, but long -- I won't ask the question.
23 But if that's part of the tapes, then I think I would
24 like to go in and show there's other factors involved
25 as far as any additional costs of clean up

1 (indiscernible - whispering).

2 THE COURT: I don't know if you will be able
3 to do that or not, but certainly that's not the scope
4 of this direct testimony that's been given. He may
5 have to call this witness back. I'm going to sustain
6 the objection.

7 (End of whispered bench conference.)

8 (3468)

9 THE COURT: Objection sustained.

10 Q (Mr. Lawn by Mr. Madson:) Mr. Lawn, when you
11 got on board the Exxon Valdez, did you see the
12 captain at all?

13 A Yes, I did.

14 Q Where was that, sir?

15 A He was on the bridge up near the windows, the
16 forward portion of the bridge on the port side.

17 Q Did you have a conversation with him?

18 A I spoke very briefly. Identified myself and
19 then dealt with the chief mate.

20 Q Is it true, sir, you did not smell any
21 alcoholic beverages about his breath or person at
22 that time?

23 A That's correct.

24 Q Is it also true, you did not notice any signs
25 of impairment at all at that hour? At that time?

1 A It was difficult to make that determination in
2 the brief conversation.

3 Q My question then is, you did not then see any
4 signs of impairment. Whether it be difficult or
5 not.

6 A No.

7 Q Didn't see any.

8 A Right. That's correct.

9 Q Did you see him again, later on?

10 A Yes.

11 Q What time was that?

12 A I saw him periodically throughout the next
13 several hours.

14 Q When you say periodically, what was he doing?
15 Walking down a passageway or on the bridge or...

16 A Sometimes he was on the bridge standing
17 looking forward. Once I passed him in the
18 stairway from the bridge down to the next level.

19 Q You mean, he was coming down as you were going
20 up?

21 A No. I was going down as he was coming up.

22 Q Oh, okay. On either of these occasions, isn't
23 it correct that you did not observe any signs of
24 impairment? That is, his motor coordination,
25 ability to walk, or anything like that.

1 A Not that I recall.

2 Q Did you smell any smell that you associated
3 with alcoholic beverages at a later time now?

4 A Yes. At the time that we passed in the
5 stairwell, I noticed a smell similar to alcohol.

6 Q And what time was this?

7 A I would say it was mid-morning.

8 Q Can we narrow it down any more than that?

9 A Between 9:00 and 11:00.

10 Q Okay. You believed it was like a beer smell?
11 Is that what you thought it was?

12 A It resembled beer, stale beer.

13 Q And that was the only thing that you saw or
14 observed that would give you some indication that
15 Captain Hazelwood may have consumed an alcoholic
16 beverage?

17 A That was the only time that I was close enough
18 to him to make any determination about that.

19 Q When you say close enough, you were, by smell,
20 is that what you're talking about?

21 A Yes.

22 Q Okay. But you were close enough to see the
23 way he walked, the way he moved, things like
24 this, the way he stood?

25 A My focus was on the oil pollution and dealing

1 with the chief mate and I really had very little
2 contact and very little opportunity to observe
3 Captain Hazelwood.

4 Q All right. I agree. But, considering the
5 limited opportunity you had, you didn't observe
6 anything that would indicate signs of impairment.

7 A That's correct.

8 Q You also indicated that there was some concern
9 over the stability of the ship by the Coast
10 Guard. Correct?

11 A That's what they told me, yes.

12 (3690)

13 Q On the tape you mentioned, at least twice,
14 that the Exxon Valdez was hard aground.

15 A That's correct.

16 Q During the time that you were there until,
17 well, were you there when the vessel was actually
18 removed from the reef? Taken from the reef?

19 A Not on board the vessel. I was in a
20 helicopter.

21 Q When was this? When was it actually taken off
22 the reef?

23 A I don't recall the date, but it was several
24 days later.

25 Q Also, during the day light hours when you were

1 taping, was that day the 24th, when you made this
2 tape?

3 A Yes.

4 Q After it got light, Right?

5 A Correct.

6 Q During that taping at all, during that time,
7 was there any Alyeska equipment around at all
8 starting to clean up or anything like that
9 preventing additional spill?

10 (3750)

11 MS. HENRY: Objection. Irrelevant and beyond
12 the scope.

13 THE COURT: Don't answer the question.

14 It sounds like the same inquiry you were
15 making before. Is there additional reasons for this
16 and, if there are, you can approach the bench and tell
17 me? If there are not, I'll make the same ruling.

18 MR. MADSON: Only what was on the tape, Your
19 Honor. I'm just asking questions about what he taped
20 and what was there and what wasn't.

21 THE COURT: Okay. Objection sustained.

22 Q (Mr. Lawn by Mr. Madson:) Now, you also
23 indicated that the Exxon Baton Rouge had to dump
24 its oily ballast in order to lighten the draft or
25 shorten the draft so it could come up along side.

1 Right?

2 A That's correct.

3 Q You said it took some time before they could
4 do that because there was some concern about the
5 stability of the ship and the water was deeper on
6 one side than the other. Right?

7 A That's correct.

8 Q Is it also true that there were no fenders, in
9 other words, to put between the two vessels, so
10 that caused additional delay?

11 A At that time there were no fenders. Not --
12 there was never a discussion in my presence that
13 that was a problem for delay.

14 Q But there were no fenders?

15 A At that time.

16 Q Were fenders eventually used to put between
17 the two vessels?

18 A Yes, they were.

19 Q Do you know where they came from?

20 A Yes.

21 Q Where?

22 A Alyeska.

23 Q Do you know -- from the port, Valdez Port?

24 A That's correct.

25 Q Do you know when they came on board?

1 (3860)

2 MS. HENRY: Objection, again, Your Honor.
3 Beyond the scope and irrelevant.

4 MR. MADSON: I think this is very relevant,
5 Your Honor. He's talking about the delay in getting
6 the Baton Rouge along side the Exxon Valdez and I think
7 I can go into facts of why it was a delay. And if
8 that's one of them. And if it isn't, it isn't. But I
9 think I can ask him questions about it.

10 THE COURT: No, I don't think it goes beyond
11 the scope. You opened that up with how long it took to
12 get there. Objection overruled.

13 Q (Mr. Lawn by Mr. Madson:) Did you notice at
14 what time the fenders came on board?

15 A I believe it was early afternoon.

16 Q Of the 24th?

17 A That's correct.

18 Q Now, fenders, for those who may not be
19 acquainted with the term, are kind of absorbent
20 cushions, if you will, to put between two boats
21 so they don't bang together?

22 A That is correct.

23 Q A dock and a vessel; things like this.

24 A (No audible response.)

25 Q Now, when you said the vessel was eventually

1 taken off the reef, that was some two or three
2 days later?

3 A On several days later.

4 Q Several days later, okay. And you're unsure
5 of just how many, I take it?

6 A Yes. I haven't reviewed that portion of my
7 notes.

8 Q Isn't it true, sir, they had to or they did
9 pump out all the remaining oil, 80% of the oil,
10 which was the cargo of the Exxon Valdez, before
11 the vessel was moved from the reef?

12 A That's correct. As much as they were able to
13 get out at that time.

14 Q This certainly would make the draft less. In
15 other words, a ship would not be as low in the
16 water, correct? By taking the cargo out.

17 A It depends on how you unload it. The
18 information I have is, as they pumped oil out,
19 they pumped water in to keep the ship stable.

20 Q But did they move it off with tugs or under
21 its own power? Do you know?

22 A I believe it was with tugs.

23 Q And I take it, sir, you don't have any
24 expertise in this area? I mean, removing vessels
25 from reefs or tug boats or things like this.

1 A Very little.

2 Q So I take it, you don't know or can't form an
3 opinion as to whether the vessel was even capable
4 of being removed from the reef under its own
5 power or needing the assistance of tugs?

6 A That's a broad question.

7 Q Well, if you can't answer it, just...

8 A Well, there's several answers that you can
9 give depending on which portion of the question
10 you're referring to.

11 Q My question to you , sir, is do you think you
12 have enough expertise and knowledge as to form an
13 opinion on this, first of all?

14 A It was capable for the ship to put itself in a
15 position so that it could raise off the rock.
16 Whether it was able to move under its own power
17 or with tug escort, that is another matter.

18 Q Okay. So you know it could raise itself by
19 pumping or lightening its cargo, right?

20 A That's correct.

21 Q But whether even that would cause the vessel
22 to be able to move by itself, you can't answer or
23 you don't know?

24 A It would move by just the fact that it was
25 light and floating around in the water.

1 Q Yes, but that would depend on the tide, how
2 hard its ground and the power available and a
3 number of other factors, correct?

4 A Yes.

5 Q I believe that's all I have. Thank you.

6 (4093)

7 REDIRECT EXAMINATION OF MR. LAWN

8 BY MS. HENRY:

9 Q What was the delay in lightering the Exxon
10 Valdez of its cargo onto the Exxon Baton Rouge?

11 A Well, there were a lot of factors that went
12 into the delay process. Part of that was the
13 concern that the people that were going to move
14 the cargo weren't happy with the numbers the
15 computers were giving them. Also, that the
16 vessel had quit leaking for the most part around
17 9:30 in the morning.

18 Q Were the availability or lack of availability
19 of the fenders a cause of the delay in your
20 opinion?

21 A To my recollection, no. It was never
22 discussed as being a major concern.

23 Q When you initially had contact with Captain
24 Hazelwood on the bridge, was there any particular
25 reason that you were unable to smell alcohol on

1 his breath?

2 A Well, I was probably ten feet away from him.

3 Q Thank you, sir.

4 (4173)

5 RECROSS EXAMINATION OF MR. LAWN

6 BY MR. MADSON:

7 Q Well, Mr. Lawn, when you say it was never
8 discussed with you or in your presence, the delay
9 in getting the Exxon Baton Rouge along side, that
10 wasn't something that or was it something that
11 you were involved with with the Coast Guard as to
12 how to get it there and what to do, or was that
13 strictly a Coast Guard operation?

14 A There were discussions. The function that --
15 when we went on board the ship, the Coast Guard
16 dealt with the marine casualty. I dealt with the
17 oil pollution and the minimization of oil
18 pollution.

19 So, one of the ways that you deal in an oil
20 spill is you stop the leak or you prevent further
21 leakage. So, in that context it was discussed
22 about lightering the Exxon Valdez and what vessel
23 you would use and when that would occur.

24 Q But no Coast Guard person, Mr. Falkenstein,
25 McCall, or Delozier, came to you and said words

1 to the effect, gee, we ought to delay here
2 because we got to get fenders from Valdez?

3 (Tape: C-3627)

4 (0001)

5 MS. HENRY: Objection. Hearsay.

6 THE COURT: Pardon me?

7 MS. HENRY: Hearsay.

8 MR. MADSON: I just asked if any such
9 discussion occurred, Your Honor.

10 THE COURT: Sustained.

11 Q (Mr. Lawn by Mr. Madson:) Well, you testified
12 there were no discussions in your presence
13 earlier, sir. That any such conversation
14 occurred, correct?

15 A That's my recollection.

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

17 MS. HENRY: I have no further questions, Your
18 Honor.

19 THE COURT: May the witness be excused from
20 participation?

21 MR. MADSON: I have no objection. Well, just
22 one second, Your Honor. I'd request that he remain
23 under subpoena although we have no reason for him to
24 stay here.

25 THE COURT: All right. Then I'll leave it up

1 to you. He'll still be under subpoena. I'll leave it
2 up to you to notify tomorrow when and if you need him,
3 and attend to such witness expenses that are necessary.

4 MR. MADSON: That will be fine. Thank you.

5 THE COURT: You're excused for the day then,
6 at least. He will notify you, if and when he needs
7 you.

8 (0070)

9 (Witness steps down.)

10 MR. COLE: Your Honor, at this time the state
11 would call Captain Deppe.

12 THE CLERK: Sir, you should find a microphone.
13 I think it's fallen down. Thin wire. Could you attach
14 that to your tie or the collar of your jacket and
15 remain standing.

16 (0105)

17 (Oath administered.)

18 A I do.

19 WILLIAM JAMES DEPPE

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

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

24 A My name is William James Deppe. And my last
25 name is D-e-p-p-e.

1 THE CLERK: T-t-e?
2 A No. P as in Peter.
3 THE CLERK: And your current mailing address,
4 sir?
5 A 2536 Via Verde, Walnut Creek, California.
6 THE CLERK: And your current occupation?
7 A Ship crew coordinator.
8 THE CLERK: Thank you.
9 THE COURT: All right.
10 DIRECT EXAMINATION OF CAPTAIN DEPPE
11 BY MR. COLE:
12 Q Captain Deppe, how long have you worked in the
13 maritime industry?
14 A Since 1972.
15 Q What licenses do you hold?
16 A A master's license; unlimited tonnage.
17 Q And when did you obtain that?
18 A I believe in 1980.
19 Q Would you tell the jury how long you've worked
20 for Exxon Shipping Company?
21 A Since 1972; September of 1972.
22 Q What positions have you held? At some point
23 you were assigned to the shore or contingency.
24 Is there a distinction between people that work
25 for Exxon Shipping that work as a captain and

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people that work on shore?

A No. Right now I'm on a temporary shore assignment for Exxon. And I went to work in September of 1987 in our west coast office as port captain on a temporary basis and it was a two year assignment, which has been stretched into a third year now and I'm still there. At a different title now. I'm a ship crew coordinator at present.

Q Would you explain to the jury what your responsibilities are then with your shore assignment? Present.

A Presently. Okay. As a ship crew coordinator, there's three ships that I am in charge of, you might say. The direct line of relationship is that there's an operations manager and I report to him and the captains and chief engineers on those three ships report to me.

Q And prior to your temporary port assignment, what were your responsibility in that position?

A As port captain, I was more like a professional. I had no line assignment or responsibilities. With the captains, it's more like an advisor type position.

Q For who?

1 A For the fleet manager.

2 Q What's a fleet manager?

3 A Well, a fleet manager, prior to our recent
4 reorganization, the fleet manager was Harvey
5 Borgen. And we had an office on the west coast,
6 West Coast Office. And he was the manager of the
7 west coast office and he had the captains and
8 chief engineers on the west coast reported to
9 him.

10 Q So that would be the captains and chief
11 engineers that were involved in west coast trade?

12 A Right.

13 Q That would primarily be between Valdez and
14 where?

15 A Valdez and Panama or the west coast ports.

16 Q Let me ask you this, what was an Exxon
17 Shipping Company's policy on alcohol possession
18 on board their tankers?

19 A Alcohol was forbidden to be on board our
20 vessels.

21 Q And what about its use? Did you have a policy
22 on alcohol use on board the vessels?

23 A Alcohol use was forbidden also. Except for
24 holiday meals, three times a year, which, I
25 believe that policy changed in 1988 also.

1 Q Okay. Did the alcohol that you're talking
2 about is wine that was served at holidays.

3 A Right.

4 Q How were employees informed of these policies?

5 A We've had so many policy changes lately in
6 drug and alcohol, it's kind of confusing. But we
7 would talk about it at conferences and there
8 would be letters that would go out to the fleet
9 at different times that would announce different
10 changes or different laws that were in effect, as
11 they did change.

12 Q Were these policies, that you've just
13 discussed, applicable to masters as well as crew
14 members?

15 A Yes.

16 Q Were there any requirements that these be
17 posted, these requirements be posted on the
18 tanker itself?

19 A There are a list of posted offenses that were
20 required to be posted. And there were reasons
21 for disciplinary action if you violated any of
22 those offenses.

23 Q Was your alcohol policy one of those...
24 (0295)

25 MR. CHALOS: Your Honor, I've permitted Mr.

1 Cole to go ahead with leading questions, but I think
2 now he's started every question to be a leading
3 question, so I object.

4 MR. COLE: I'll rephrase the question, Your
5 Honor.

6 THE COURT: Okay.

7 Q (Captain Deppe by Mr. Cole:) Where were these
8 notices posted on the vessel?

9 A Various places.

10 Q Were there toxicology kits that were placed on
11 the tankers, the Exxon Shipping Company tankers
12 at some point?

13 A Yes. I believe in 1988, the fall of 1988 or
14 early 1989, we placed toxicology kits on all the
15 vessels?

16 Q Why were these placed on the tankers?

17 A There was some new Coast Guard laws that had
18 just come into effect which required, I believe,
19 if my recollection is right, that required, if
20 certain events occurred, that a test would have
21 to be taken by the individuals involved in that
22 event.

23 Q Who was expected to administer those tests if
24 that occurred?

25 MR. CHALOS: Your Honor, I object. No

1 foundation. Mr. Cole hasn't established when the rules
2 went into affect; when the tox kits were required to be
3 on board; and, what role the various people on the ship
4 had to play.

5 THE COURT: Objection as to foundation
6 sustained, Mr. Cole.

7 Q (Captain Deppe by Mr. Cole:) Where you talked
8 about certain that would have to be tested, who
9 were those people that would have to be tested?

10 MR. CHALOS: Again, Your Honor, objection. No
11 foundation.

12 THE COURT: Sustained.

13 Q Captain Deppe by Mr. Cole:) Was information
14 regarding these toxicology kits made available to
15 tanker captains?

16 A I don't recall.

17 Q Would you give the jury an idea of how many
18 trips you've sailed on as master of an Exxon
19 tanker?

20 (0385)

21 MR. CHALOS: Objection, Your Honor.
22 Relevancy.

23 THE COURT: Can you tie it up with some
24 further questioning?

25 MR. COLE: (No audible response.)

1 THE COURT: Go ahead. Objection overruled.

2 A (Captain Deppe by Mr. Cole:) That's like
3 asking how many times you drove to work last
4 year.

5 Q Just give us a ball park figure.

6 A Oh, I'm guessing several hundred.

7 Q Did you attend any kind of a maritime school?

8 A Yes.

9 Q Which one did you attend?

10 A New York State Maritime.

11 Q And did you attend that with any other crew
12 members of the Exxon Valdez?

13 A The chief engineer was a classmate of mine.
14 Captain Hazelwood was there two years before I
15 graduated. I don't think there was anyone else
16 there that I can recall.

17 Q Are you aware of any Coast Guard officials in
18 Valdez that also went to that maritime school?

19 MR. CHALOS: Your Honor, I object as to
20 relevancy of this.

21 THE COURT: I'm going to give Mr. Cole a
22 little latitude here to tie it up, assuming he's going
23 to. Objection overruled.

24 A As far as I know, Commander McCall was a
25 graduate of Fort Schuyler also.

1 Q That's Commander McCall, the captain of the
2 port in Valdez at the time of the grounding?
3 A That's correct.
4 Q Was he a member there when you were there?
5 A He graduated with the class of '69. I was the
6 class of '70.
7 Q And that was a four-year school?
8 A Yes.
9 Q Now, were you required as a master to go to
10 the Port of Valdez at any time?
11 A I've been up there several times as master.
12 Q Did you have pilotage endorsement when you
13 travelled?
14 A No. I did not.
15 Q How did you travel from Hinchinbrook into the
16 pilot station when you travelled as a tanker
17 captain?
18 (0500)
19 MR. CHALOS: Objection, Your Honor.
20 MR. COLE: Well, let me rephrase that.
21 Q (Captain Deppe by Mr. Cole:) If you didn't
22 have pilotage endorsement, were there other crew
23 members on board that did?
24 A There were several trips that the chief mate
25 had pilotage and there were several trips when

1 there was no one on board with pilotage.

2 Q And when no one on board had pilotage, where

3 were you required to pick up the pilot?

4 A My understanding of the rules was that, when

5 we didn't have pilotage, that we were required to

6 pick up the pilot in the Bligh Reef vicinity?

7 Q Is that what happened on those occasions?

8 A Yes.

9 Q I'd like to ask you some questions about Exxon

10 procedure.

11 What would a tanker captain do if he was in

12 Valdez and was captain of a tanker vessel that :

13 was late and he felt it was unsafe to proceed out

14 past the narrows?

15 MR. CHALOS: Your Honor, I object. No

16 foundation.

17 THE COURT: Mr. Cole, you're going to have to

18 tie this up to make it relevant and the foundation's

19 where you do that, so I'm going to sustain the

20 objection.

21 Q (Captain Deppe by Mr. Cole:) Well, are you

22 aware of the Exxon policy for what tanker

23 captains should do in case they feel that it is

24 dangerous to proceed out through Valdez?

25 (0550)

1 MR. CHALOS: Your Honor, I'm going to object.
2 There hasn't been established that a policy existed.
3 That's the basis of my foundation objection.

4 MR. COLE: And that's why I just asked that
5 question.

6 MR. CHALOS: I think the way it was phrased,
7 it implied that there was a policy.

8 THE COURT: Why don't you lay the predicate?

9 Q (Captain Deppe by Mr. Cole:) Are you aware of
10 a Exxon policy concerning what a tanker captain
11 would do if he felt it was dangerous to proceed
12 outside the narrows?

13 A A policy is a formal written thing that
14 usually hold true in almost all cases. There's
15 no policy, but there's been verbal communication
16 to the captains in our fleet that, any time they
17 feel that it's unsafe to proceed, that they've
18 got the authority not to and there won't be any
19 pressure put on them to proceed. And it's not
20 only Valdez, but it's any port that we go to.

21 Q Who would make the ultimate decision on
22 whether or not a tanker would proceed out of
23 Valdez?

24 (0590)

25 MR. CHALOS: Objection, Your Honor.

1 Foundation, again.

2 THE COURT: Mr. Cole?

3 MR. COLE: I don't see how I have not laid a
4 foundation to discuss this.

5 THE COURT: When are you talking about? Are
6 you talking about 1989? You talking about 1979? When
7 are you talking about, Mr. Cole? Let's lay a
8 foundation to these questions.

9 Q (Captain Deppe by Mr. Cole:) I'd like to go
10 to the time period of 1989. If a tanker captain
11 had wanted to, felt there was a danger, who would
12 make the ultimate decision? Would he make the
13 ultimate decision on whether the tanker would
14 proceed or would Exxon Shipping Company?

15 MR. CHALOS: Your Honor, I hate to keep
16 interrupting here, but there really is no foundation.
17 What kind of dangerous situation are we talking about?
18 Are we talking about a ship overladen? Are we talking
19 about weather conditions? Are we talking about ice
20 conditions? Are we talking about wind and seas outside
21 of Hinchinbrook? That's the basis of my objection.

22 THE COURT: Mr. Cole, do you want to respond
23 to the objection?

24 MR. COLE: No.

25 THE COURT: I'm going to sustain the

1 objection. I need you to narrow this down to have some
2 meaning.

3 Q (Captain Deppe by Mr. Cole:) Would ice be
4 considered, ice across the traffic lanes, be
5 considered the type of hazard that might cause a
6 tanker captain to not leave the Port of Valdez?

7 A There's many things that could cause that and
8 I imagine ice would be one of them, yes.

9 Q And in 1989, if a tanker captain felt that by
10 proceeding out through the narrows and
11 encountering a large amount of ice would endanger
12 the tanker, the safety of the tanker and the
13 crew, who would make the ultimate decision on
14 whether or not that tanker proceeded out of
15 Valdez?

16 A It would be the master.

17 Q Are you aware of any situations where Exxon
18 Shipping Company tankers remained in Valdez
19 because of hazardous conditions outside the arm?
20 When I say hazardous conditions: bad weather or
21 ice or any thing like that.

22 A I heard of times that people have stayed in...
23 MR. CHALOS: Your Honor, it's going to be
24 hearsay.

25 THE COURT: Objection overruled.

1 Q (Captain Deppe by Mr. Cole:) Go ahead.

2 A I've heard of cases where people have turned
3 their vessels around and not sailed because of
4 bad weather. I've not heard of anyone stay in
5 port for ice.

6 (0710)

7 Q Would you explain to the jury what type of
8 paper work a tanker captain is required to fill
9 out on a voyage from Valdez to San Francisco?

10 A There's payroll type information; crew
11 information. There's a whole myriad of
12 administrative type things that we were
13 responsible for. Communications to and from the
14 office. There's evaluations of personnel.
15 Requisitions for stores. An awful lot of -- a
16 lot of administrative type details that have to
17 be taken care of.

18 Q And it's the master of a ship that has to fill
19 that out. Is he told when, a particular time,
20 this paper work has to be filled out? When he
21 has to fill it out?

22 A There's a few things that are more critical.
23 Some of the communications things are critical
24 and they have to be sent in relatively timely
25 fashion. Most of the other stuff can be done

1 when you can schedule it into your day.

2 Q Were you called out to the Exxon Valdez on
3 March 24th, 1989?

4 A Yes.

5 Q When were you asked to come to Valdez?

6 A I got a call in the morning. I think it was
7 around 8:00 o'clock in the morning or so and told
8 to get to an airport as quickly as I could and
9 fly up to Alaska.

10 Q Where did you fly from?

11 A Oakland, California.

12 Q When did you arrive on the tanker that
13 evening?

14 A I believe it was between 9:00 and 10:00
15 o'clock. I'm not positive.

16 Q What was your purpose of going aboard the
17 tanker that evening?

18 A There were some questions about the whole
19 accident that were going to require Captain
20 Hazelwood to be ashore to get answers for. So, I
21 was sent to relieve Captain Hazelwood on the
22 vessel.

23 Q When did you relieve Captain Hazelwood on the
24 vessel?

25 A I believe he left around min-night, but,

1 again, I'm not sure about the time.

2 Q How long have you known Captain Hazelwood?

3 A Twenty-two years.

4 MR. COLE: Your Honor, may I approach the

5 clerk?

6 THE COURT: Yes.

7 (Pause)

8 Q (Captain Deppe by Mr. Cole:) What information

9 was -- did you ask for information about the

10 stability of the vessel when you came on board

11 that evening?

12 A I talked to the chief mate about that and I

13 also contacted our naval architect in Houston and

14 talked to him about it.

15 Q I'm showing you what's been marked for

16 identification as Plaintiff's Exhibit 95. Do you

17 recognize that?

18 A Yes..

19 Q What is that?

20 (0845)

21 A Several days after the Exxon Baton Rouge was

22 along side of us and we were getting ready to

23 undock the Exxon Baton Rouge, there were some

24 concerns about how much water there was on the

25 Exxon Baton Rouge side of the Exxon Valdez. And

1 this is just soundings that were taken off of the
2 Baton Rouge to make sure they could get away
3 without going aground.

4 Q And is that a fair and accurate copy of the
5 document that you remember seeing?

6 A Yeah, I think it is.

7 MR. COLE: I would move for the admission of
8 what has been identified as Plaintiff's Exhibit 95.

9 MR. MADSON: No objection, Your Honor.

10 THE COURT: Admitted.

11 EXHIBIT 95 ADMITTED

12 Q (Captain Deppe by Mr. Cole:) Were you
13 concerned about the stability of the Exxon Valdez
14 that evening when you came aboard?

15 A No. I think we were in a stable condition. I
16 was concerned that the condition could
17 deteriorate if any further damage occurred to the
18 vessel. But I felt that the ship was stable the
19 way we were at the moment.

20 Q Were you prepared at that time to take any
21 action if the ship began to deteriorate?

22 A The only action we could have taken was to
23 save lives as best we could and prepare people to
24 get off the vessel. But most of the steps that
25 -- the ship was prepared when I got there for

1 those eventualities. I didn't have to do
2 anything immediately when I got on board.

3 Q But if something had happened, would you have
4 been the one to give the order?

5 A Yes.

6 Q Based on the -- you didn't take any action as
7 far as attempting to move the ship then while you
8 were on board?

9 A I was there for two weeks and towards the end
10 of the two weeks, there was a lot of action that
11 was taken preparing to for the salvage operation.

12 Q But prior to the salvage operation, you didn't
13 attempt to remove the vessel from the reef by
14 yourself?

15 A No.

16 Q Did you walk out on the deck that evening when
17 you got on the Exxon Valdez?

18 A Yes.

19 Q Would you describe for the jury what you heard
20 while you were walking out on the deck?

21 A Occasionally, as, through the whole two weeks
22 that we were there, on the main deck level you
23 could feel steel working. And occasionally there
24 would be a very loud bang that would make the
25 whole ship shake. And it would be -- we were

1 assuming that it was a piece of steel that was
2 letting go down in the lower part of the vessel.
3 And that was, at times, very trying for the whole
4 crew and the people out there working; not
5 knowing what was occurring down below.

6 Q Were these noises things that you could hear
7 clearly?

8 A Occasionally you could hear one of them, but,
9 generally, it was you could feel them more than
10 hear them. There would be a vibration through
11 the vessel.

12 Q Where was the tanker hung up? Was it at mid-
13 ship or towards the bow or towards the stern?

14 (985)

15 A At first, we really didn't know where it was
16 hung up exactly. There was some conflicting
17 divers' reports that came in. They didn't get
18 very good information at first. Later on we
19 found out, as we got more, as we got better
20 information, that it was hung up on the starboard
21 side by tanks number 2 and 3, I believe.

22 Q Did you have indications that it was hung up
23 on the stern?

24 MR. CHALOS: Objection, Your Honor. At what
25 point in time?

1 MR. COLE: At any of this time.

2 A (Captain Deppe by Mr. Cole:) No. There was
3 the -- the initial divers' reports didn't say
4 anything about it being hung up on the stern. We
5 just knew it was towards the mid-ship's area that
6 it was hung up.

7 Q Captain Deppe, had you ever been involved in
8 groundings while you were the captain or on the
9 bridge while you'd been a tanker captain? While
10 you worked on a tanker?

11 A Well, excluding the Valdez, I was involved in
12 a grounding case on the Exxon Houston where I
13 came to the vessel after it was aground. Once
14 again, when it was in Hawaii.

15 When I was a second mate, the Exxon Chester
16 went aground off of Florida and I was on board
17 then.

18 In the Mississippi River, I've been aground
19 several times.

20 Q What is at the bottom of the Mississippi
21 River?

22 A Mud.

23 Q The two times, would you describe for the jury
24 the two times that you were aground on the
25 Mississippi River? What happened?

1 (1070)

2 MR. CHALOS: Your Honor, I object. There's no
3 relevancy. Mr. Cole has already made the point that
4 the bottoms were different, so it wouldn't be relevant
5 to this particular case.

6 THE COURT: Mr. Cole?

7 MR. COLE: Mr. Glowacki testified about this.
8 He says that vessels, when astern, I'm going to show, I
9 believe that Captain Deppe is going to say, that's not
10 the only way people got off of groundings in the mud.
11 And I think that his explanation will be relevant to
12 this case.

13 MR. CHALOS: Your Honor, getting off a strand
14 in mud and getting off a strand when you're hard
15 aground on rock, I think, are two different procedures.
16 And unless he can establish that foundation, I would
17 object.

18 THE COURT: I'll let the jury sort through
19 that. I'm going to over rule the objection.

20 Q (Captain Deppe by Mr. Cole:) Would you
21 explain the two occasions that you stuck in the
22 mud in the Mississippi River and what happened?

23 (1090)

24 A Well, at one time I was third mate and the
25 ship was coming down-bound loaded and we hit a

1 mud shoal, you might say, and the ship just
2 turned around automatically and we were headed
3 back up the river. Turned around again and came
4 down and made it over it the second time. And
5 there was no stopping.

6 Another time we stopped and we weren't, well,
7 the vessel did stop. And by applying more engine
8 power and using the rudder, we wiggled kind of
9 over the soft spot and made it up through the...

10 Q Would you describe it as a motion like this
11 going forward?

12 A Well, I wouldn't say that. The heading of the
13 ship changed slightly and we managed to get
14 through.

15 Q Did you have to use the command astern,
16 throttle command astern, to get off?

17 A In the Mississippi River going astern could be
18 pretty dangerous. You've got -- if you ended up
19 astern way in a high river, you'd have very
20 little control over the vessel and you could end
21 up in a more dangerous situation. So, the
22 preferred procedure in a place like the river is
23 to go ahead if you can, if you're not really hard
24 aground.

25 MR. COLE: I need an exhibit.

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(Pause.)

Q Captain Deppe, you might want to just stand up and make sure that you can see that real well.

A Okay.

Q Do you recognize that chart?

A Yes.

Q Have you used that chart before in your travels in and out of Valdez?

A Yes.

Q Captain Deppe, I'd like to give you a hypothetical.

I would like you to assume that you are the captain of the Exxon Valdez. That's it's March 23, 1989. And that it is 11:30. You are fully laden with drafts of approximately 56 feet on the Exxon Valdez. You personally have pilotage endorsement for the Prince William Sound and you are the only person aboard that tanker that has this pilotage endorsement.

You have dropped off the pilot at Rocky Point. Let's say it's 20 minutes early. So, it's 11:45.

You have placed the tanker on full ahead 20 minutes prior after the pilot has been left off, dropped off, the bridge. You have changed your course heading from 219 to 180 degrees and then

1 or to 200 and then to 180 and are proceeding
2 directly towards Bligh Reef.

3 So you are proceeding here and you change to
4 180 degrees going right there past Busby. On 180
5 degrees, your course will take you within one
6 mile of Busby Island.

7 I would like you to assume that you have made
8 these course corrections to avoid ice that is
9 drawn in as that is. Now, it's not a solid
10 sheet, but it's ice that you have chosen to get
11 around. Would you, your vessel -- you've also
12 pushed down the load up program to sea speed.

13 Would you describe for the jury, if you were
14 right here heading on 180 degrees with Busby
15 Island off to your left, with this ice here, and
16 with Bligh Island right here, and your vessel is
17 travelling right here, where you are physically
18 on this vessel? Where would you be?

19 (1300)

20 MR. CHALOS: Your Honor, I'm going to object
21 to this line of questioning. I think it's irrelevant
22 as to what Captain Deppe would have done and there
23 hasn't been a foundation laid as to whether Captain
24 Deppe ever sailed through ice. So, what he would have
25 done in a hypothetical without that background, is

1 irrelevant and certainly not probative of anything.

2 THE COURT: Objection over ruled.

3 Q (Captain Deppe by Mr. Cole:) Let me ask
4 again.

5 Captain Deppe, you are right here. And this
6 is in front of you. Where are you physically on
7 this vessel?

8 A There's many, many circumstances which would
9 have to come into play for me to make decisions
10 of where I would be on the vessel at any one
11 time.

12 If, the way you laid it out to me right here,
13 if I have to answer that question, I would say
14 I'd probably be on the bridge.

15 Q You are abeam of Busby Island. You are 1.1
16 mile off and the situation has not changed. You
17 are still heading 180 degrees. Where would you
18 be physically on this vessel?

19 MR. CHALOS: Same objection, Your Honor.

20 THE COURT: Same ruling. Over ruled.

21 A In this hypothetical situation you're putting
22 in, I would most likely be on the bridge.

23 Q Your vessel is now starting to make a right
24 turn, starboard side. And you are going to
25 attempt to shoot this .9 mile gap between the

1 leading edge of the ice and Bligh Reef. Where
2 would you be on that vessel?
3 MR. CHALOS: Objection, Your Honor. Same as
4 before.
5 THE COURT: Over ruled.
6 A I would be on the bridge.
7 Q You are now abeam of the .9 mile area that
8 you've been attempting to shoot. Where would you
9 be on that vessel?
10 A Same answer. On the bridge.
11 MR. COLE: I have nothing further, Your Honor.
12 THE COURT: Let's take our break at this time,
13 Mr. Chalos.
14 Remember my instructions, ladies and
15 gentlemen, not to discuss this matter among yourselves
16 or with any other person and to form or express any
17 opinion. We'll call you back to court.
18 THE CLERK: Please rise. This court stands in
19 recess, subject to call.
20 (Off record - 10:05 a.m.)
21 (1397)
22 (On record - 10:21 a.m.)
23 THE CLERK: The court now resumes its session.
24 (Jury present.)
25 1400)

1 CROSS EXAMINATION OF CAPTAIN DEPPE

2 BY MR. CHALOS:

3 Q Good morning, Captain Deppe. On direct
4 examination you stated that you're the ship group
5 coordinator for Exxon at the present time?

6 A I'm one of four at present.

7 Q That's a shore side position?

8 A Yes.

9 Q Management position?

10 A Coordinator level, but I'm not considered a
11 manager. But I guess you'd call it a management
12 position.

13 Q You acted as Exxon's representative in front
14 of the National Transportation Safety Board did
15 you not?

16 A Yes.

17 Q You were there for the hearings and you did
18 the questioning on behalf of Exxon?

19 A Yes.

20 Q And you're also involved with the NTSB
21 investigation of the grounding, are you not, on
22 behalf of Exxon?

23 A Yes.

24 MR. COLE: Objection. Relevance.

25 THE COURT: The answer came in.

1 MR. COLE: I object to this line of
2 questioning. Relevancy.

3 MR. CHALOS: Well, Your Honor, it goes to the
4 possible bias.

5 THE COURT: Do you plan on following it up
6 this line of inquiry about his participation NTSB?

7 MR. CHALOS: No. It was just for that
8 purpose.

9 THE COURT: Okay. Let's go on.

10 Q (Captain Deppe by Mr. Chalos:) Captain Deppe,
11 you've been called by the state, have you not, to
12 testify against Captain Hazelwood?

13 A Yes.

14 Q You haven't been to Prince William Sound, as I
15 understood your testimony, since 1987 other than
16 the time you came on board after the grounding.
17 Is that correct?

18 A That's correct.

19 Q I'd like to turn now, for a second, to Exxon's
20 alcohol policy. Did I understand you correctly
21 that the policy changed and evolved many times in
22 the past?

23 A The federal laws have changed dramatically
24 over the last few years, which has caused the
25 communications to the fleet to be more involved

1 and to try to get these new rules out to them.
2 Exxon's policy has basically been the same,
3 which has been a prohibition against alcohol or
4 drunkenness on board the vessels for quite a few
5 years.

6 Q But it has been Exxon's policy in the past to
7 permit mousey (ph) beer on board, has it not?

8 A Yeah. Moussy beer. That's correct.

9 Q Moussy. I'm sorry. And it also had been
10 Exxon's policy to permit wine, I think you said,
11 with holiday meals?

12 A That's correct.

13 Q Now, you're not aware of any Coast Guard
14 regulations that prohibits the use of alcohol on
15 board or the possession of alcohol on board
16 vessels, are you?

17 A No. None that prohibit possession. No.

18 Q Mr. Cole asked you about some toxicology kits.
19 Do you recall that?

20 A Yes.

21 Q You are aware, are you not, that the
22 toxicology kits were not required to be on board
23 the vessels, commercial vessels, until December
24 1989?

25 A I believe that's correct.

1 Q You spoke about the trips that you made up to
2 Valdez. How many trips did you make where you
3 did not have someone with pilotage on board?
4 A I believe there might have been two.
5 Q It's true, is it not, that you've never sailed
6 through ice in Prince William Sound?
7 A I believe there were two trips that we left
8 that there was ice present in the lanes.
9 Q When you were the captain?
10 A Yes.
11 Q In those instances, was the ice sufficient
12 enough to cause you to deviate out of the lanes?
13 A One time we deviated into the separation area.
14 Q You mentioned, in response to Mr. Cole's
15 question, that Exxon does not exert pressure on
16 its masters to sail if they deem it inadvisable.
17 Is that correct?
18 A That's correct.
19 Q Would you agree that, even though the pressure
20 may not be overt, that there is a certain subtle
21 pressure on the masters to sail?
22 A I think anyone who goes to sea for a living
23 has a can-do type feeling about themselves and
24 they try to solve problems and put the pressure
25 upon themselves to sail or to accomplish what

1 they're there to do, is move the ship from point
2 A to point B. So, I believe there's a pressure
3 that's internal more than external.

4 Q Well, I take it that Exxon doesn't discourage
5 that kind of thinking?

6 A They don't discourage it or encourage it.

7 Q Captain Deppe, just turning back to ice for a
8 second. It's true, is it not, that even though
9 you might have some reports of ice, it's not
10 until you get down near the ice that you can
11 really tell what the consistency is, the make up,
12 the extent, and so on? Am I correct in that
13 regard?

14 (1670)

15 A That's correct.

16 Q So, by that time you've already sailed.

17 A That's correct.

18 Q Now, in those two times that you encountered
19 ice, was that in the day time?

20 A Yes.

21 Q The answer's yes?

22 A Yes.

23 Q I'd like to ask you about when you arrived on
24 the vessel on that Friday evening, the 24th of
25 March.

1 A Okay.

2 Q Did you come up originally as a representative
3 of the company rather than as a relief master for
4 Captain Hazelwood?

5 A Yes. When I left home that day, it was just
6 as representative of the company.

7 Q So you weren't coming up for the express
8 purpose of relieving Captain Hazelwood?

9 A No.

10 Q That was done because Captain Hazelwood was
11 needed ashore at some point?

12 A That was done, to the best of my knowledge,
13 because there were some questions that had to be
14 answered ashore and they needed someone out there
15 to take his place.

16 Q With the lawyers?

17 A (No audible response.)

18 Q And the NTSB? Is that what you understood?

19 A Well, the NTSB wasn't there at the time and I
20 wasn't privy to those decisions. I was just told
21 where to go.

22 Q Captain Deppe, when you came on board the
23 ship, she was hard aground at that point, was she
24 not?

25 A Yes.

1 Q And she was stable, I think you said?

2 A Yes.

3 Q And all precautions had been taken to make
4 sure that the safety of the ship and the crew
5 were taken care of?

6 A As far as I could tell, yes.

7 Q You mentioned that certain things had been
8 done by the time you got on board to insure the
9 safety of the crew. Can you tell us what those
10 things were?

11 (1757)

12 A I know that the life boats had been put into
13 the ready position by the embarkation decks. I
14 believe that the whole crew there had just been
15 told of the situation and that they weren't in
16 any immediate danger but to be prepared for the
17 worst eventualities. But...

18 Q Were the fire monitors prepared and ready to
19 go?

20 A I don't recall.

21 Q Captain, when you came on board, were the
22 pressure vacuum valves open or closed?

23 A They don't open or -- you can't open or close
24 them. They lift by pressure and they were in
25 normal position. There had been nothing done to

1 them, as far as I can recall.

2 Q In other words, they had lifted up?

3 A Well, they lift by pressure and they reset
4 again, once the pressure's relieved. I believe
5 that the system was in its normal operating
6 positions when I got there.

7 There's only several pressure vacuum valves on
8 the main line. Each tank does not have one.
9 And, as far as I know, that nothing had been to
10 those two pressure vacuum valves.

11 Q If one wanted to secure the valves so they
12 didn't open up as a result of pressure, what
13 could be done?

14 A You could -- there's an isolation valve on
15 each one of the tanks on the inert gas main that
16 you could close the isolation valve. Or you
17 could artificially put some extra weight on top
18 of the valve so it wouldn't lift under the normal
19 pressure it would lift at. Or you could probably
20 tie a plastic bag over it or something like that
21 which would keep it from lifting at its normal
22 pressures.

23 Q What condition were the inert gas gauge set
24 when you came on board?

25 A I believe they were open.

1 Q Would you explain to the jury what the inert
2 gas system does and what the open gauge means?

3 (1864)

4 A The inert gas -- every tanker that carries
5 crude oil now a days has a inert gas system on
6 board. When you pump out the crude oil, you
7 displace the atmosphere in the tank with inert
8 gas, which doesn't have a -- it's got a very low
9 oxygen level in it.

10 So, when the tanker is empty, the tank is full
11 of inert gas and it can explode, theoretically.

12 Each tank has got -- well, this inert gas
13 system, it's got a main that runs down the length
14 of the deck. It's like an artery, big artery, in
15 your body. And then it's got a bunch of feeder
16 lines that come off of the main. Each one of
17 these feeder lines goes to an individual tank.

18 These valves that Mr. Chalos mentioned are
19 valves that isolate each individual tank from the
20 main of the inert gas system. And, if you had to
21 go in a tank to do some work on it or you wanted
22 to isolate a tank for any reason, you could close
23 one of these valves, and that would isolate that
24 one tank from the rest of the inert gas system.

25 Q Captain, if one wanted to make this ship more

1 buoyant, one of the procedures that you would use
2 would that be to close down the pressure vacuum
3 valves and the inert gas system?

4 A It wouldn't make it more buoyant. It would
5 keep the buoyancy that you had at the time or
6 some of the buoyancy you had at the time you
7 closed them. You wouldn't become more buoyant,
8 but you wouldn't lose any buoyancy.

9 Q Conversely, if you left them open, if oil was
10 coming out of the ship, that oil would be
11 displaced by water, would it not?

12 A If you left them open, the level of product in
13 the tank would increase and decrease as the tides
14 rose and fell.

15 Q Right. So, as the tide came in, there was a
16 rising tide, as the tide in, the water would
17 displace the oil going out, would it not?

18 A No. There'd just become more water in the
19 tank and the oil would be on top of the water so
20 you'd end up with more water, as in high tide.
21 And you'd have less water at low tide.

22 Q And the net affect of that would be to make
23 the ship heavier, would it not?

24 A The net affect you'd get from that is that the
25 ship's position would stay the same. It would

1 not float. It would stay were it was. Instead
2 of floating, as -- as the level of the water came
3 up, the ship would stay in the exact relative
4 position to the ground rather than to the water.

5 Q That's by keeping the valves -- I understand
6 what you're saying. That's by keeping the valves
7 open. Whereas, if you close the valves and close
8 the inert gas system, it would have the affect of
9 keeping the buoyancy and lifting the ship up. Am
10 I correct?

11 A If you would -- that's exactly how we
12 refloated the vessel when we salvaged it. We
13 sealed up the whole deck of the vessel and closed
14 up the inert gas system and pressurized some
15 tanks, increased the pressure a little bit in
16 there, and didn't allow the water to come into
17 the tanks as the tide came up. And by doing that
18 the vessel refloated by itself at high tide.

19 (2040)

20 Q In any event, when you got on the ship,
21 Captain Hazelwood had the valves completely open,
22 not closed.

23 A I believe they were, yes.

24 MR. CHALOS: Your Honor, may I approach the
25 witness, please?

1 THE COURT: Yes, sir.

2 Q (Captain Deppe by Mr. Chalos:) I'd like to
3 show you what has been marked in evidence as
4 Exhibit 95, which are the soundings that were
5 taken several days after the Baton Rouge got
6 along side?

7 A Yes.

8 Q Do you know what the state of the tide was at
9 the time?

10 A No.

11 Q I'd like you to focus your attention on the
12 soundings aft of the Valdez, Exxon Valdez. Do
13 you see those?

14 A Yes.

15 Q Those were all fairly large soundings. In
16 other words there was plenty of water after the
17 ship. Am I correct?

18 A Yes.

19 Q Certainly there was more water behind the ship
20 than the draft of the ship, was it not?

21 A It appears to be, yes.

22 Q Captain, did you have an opportunity to review
23 the charts of this vessel when you got on board?

24 A I looked at where we were. I didn't really
25 look into the accident or ask any questions about

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positions.

Q No. You understood my question. Did you identify the position that the vessel was in when she ran aground?

A I looked at the chart and saw where we were charted to be, yes.

Q Did you take bearings in the following days, ranges and bearings, to ascertain your position?

A We made sure that we kept a very close watch on where we were to make sure that we didn't move.

Q It's true, is it not, that the ship had not moved from the original grounding position? On the basis of what bearings and ranges you took.

(2146)

A The only time the vessel moved was, I believe it was the Sunday night of Easter Sunder or Saturday night. I can't remember which. But the wind picked up to 70 knots and we started to pivot on the point where we were grounded. But, as far as we could tell, we never actually moved from that point. We pivoted a little bit.

Q All right. When you say you pivoted, you pivoted sort of side-to-side?

A The ship changed heading about 10 degrees

1 before we had a tug boat start pushing on us and
2 to check the movement. And, since the tug boat
3 pushed, we stopped the movement and we basically
4 stayed status quo from that point on.

5 Q But you didn't move forward at all?

6 A As far as I know, the ship didn't move at all
7 the whole time I was there.

8 Q Now, I'd like to ask you a little bit about
9 the working of the vessel as a result of tide and
10 wind changes.

11 Aside from this pivoting that you got, was the
12 vessel working when the tide was coming in and
13 out?

14 A At each change of tide we would -- at high
15 tide the vessel would take on about a 4 to 6
16 degree list to starboard. And at low tide we
17 stayed pretty much even keeled or maybe a degree
18 to starboard. And that -- the ship worked at
19 each tide in that manner. It listed to starboard
20 as high tide approached.

21 Q When the ship worked, was some of the metal
22 along the turn of the bilge being washed away or
23 ground down?

24 A Would you like me to draw a picture of what...

25 Q Yeah. Would you mind?

1 (Pause - witness drawing.)
2 Q Let me get out of your way.
3 (2250)
4 A First, if you looked at...
5 Q You have to come...
6 A Okay.
7 Q Back off...
8 A Okay.
9 Q Go ahead and draw.
10 A I'm not a very good artist, so you're going to
11 have to bear with me on this. But...(pause)...
12 all these tanks right here were damaged for the
13 most part. All these tanks were damaged and they
14 had free communication with the water.
15 So, if you looked at side view of the ship and
16 these are the port side tanks here, these are the
17 center tanks, and these are the starboard
18 tanks,...
19 Q We're looking from the aft forward.
20 A Aft forward
21 Q All right. Go ahead.
22 A These tanks here were damaged. These tanks
23 were not damaged. And these tanks pretty much
24 had their buoyancy that they would have under
25 normal conditions. These tanks had no buoyancy

1 so, as the tide came in or went out, the water
2 level in these tanks changed and the oil level
3 changed as the tide came in.

4 But the ship was aground over here, basically
5 in this area right here, let's say. And, as the
6 tide came in, that's the water level outside, as
7 the tide rose, this tank kept its buoyancy.

8 So, this tank would float up and it would
9 force the ship over towards the starboard side.
10 It would stay on this rock right here.

11 But as the ship came over to the starboard
12 side, what was happening to -- was reported by
13 the divers that this turn of the bilge right here
14 started to flatten out. As the days progressed,
15 it started to get flatter like this and the metal
16 over here was starting to break and it was being
17 compressed in that zone.

18 (2357)

19 So, as the ship listed to starboard, it was
20 putting pressure, the rocks were putting
21 pressure, on that part and causing it to flatten
22 out.

23 Q At this point in time, I take it the oil in
24 that tank had gone out or was there still oil in
25 that tank?

1 A No. What we had done -- if this was the --
2 when we got there, there might have been oil up
3 to this level here and there was water down in,
4 well, there was water down at the very bottom.

5 We had submerged pumps into the oil from the
6 top and the pumps were pumping oil through the
7 top. And as the pumps were pumping oil out,
8 water would take its place, so that the level of
9 liquid in the tanks stayed the same, but the oil
10 level interface, or the oil level, became
11 smaller. And the interface between the oil and
12 water came closer to the deck all the time.

13 Q Okay.

14 MR. CHALOS: Your Honor, I would like to make
15 this chart for identification and then offer it into
16 evidence.

17 THE COURT: Any objection?

18 MR. COLE: No.

19 THE CLERK: It's P, Your Honor.

20 THE COURT: P. It will be P.

21 MR. CHALOS: I offer P into evidence, Your
22 Honor.

23 THE COURT: Okay. It will be admitted and you
24 could put the sticker on at a later time.

25 EXHIBIT P ADMITTED

1 Q (Captain Deppe by Mr. Chalos:) Captain, you
2 said, when you came on board, you didn't know
3 where the ship was hung up and you couldn't tell
4 from standing on the bridge whether she was hung
5 up forward or aft. Is that correct?

6 A No. No. I couldn't tell where it was
7 aground.

8 Q And it was only after several conflicting
9 reports that you got from the divers that it was
10 finally ascertained that the vessel was hung up
11 forward?

12 A The going assumption was that it was hung up
13 somewhere forward of the engine room. But the
14 conflicting reports caused some confusion at
15 first. Whether it was more towards the mid-
16 ship's point or not.

17 At first we thought we were aground more
18 towards the mid-ships of the ship rather than the
19 starboard side.

20 Q When you say forward of the engine room,
21 you're talking about anywhere from here up
22 forward. Is that right?

23 A That's correct?

24 Q Did the Sunday storm, in your opinion, cause
25 any more damage to the vessel, the bottom of the

1 vessel?

2 A If it was, it was insignificant. I don't
3 think there was anything major that occurred from
4 that storm.

5 Q Captain, I'd like to ask you about your
6 experiences of being aground in the Mississippi.
7 I think you told us in both instances that you
8 were aground you were the third mate or second
9 mate?

10 A I've been aground there as captain, but we've
11 never stopped. Just -- we've...

12 Q Just went right over the...

13 A ...we've kept going.

14 Q ...the mud.

15 A Yeah.

16 Q Would you agree that being aground in mud is
17 different than being hard aground on rocks?

18 A Yes.

19 Q And would you also agree that the strategy for
20 extricating yourself from being aground in mud as
21 opposed to extricating yourself from being
22 aground on rock would be different?

23 A I think the strategy for any grounding is
24 different.

25 Q Depends on the situation.

1 A Exactly.

2 Q Depends on the circumstances.

3 A That's correct.

4 Q Captain, I'd like to give you a hypothetical
5 now.

6 If you were on a ship like the Exxon Valdez
7 travel at a 11.75 knots, laden down to 57 feet,
8 and your vessel was stopped, dead stopped from
9 11.75 knots to hard aground in about 500 feet,
10 would you say that that was a hard grounding?

11 A Yes.

12 Q And if you were the master of that ship, and
13 I'd like to give you some more information. You
14 know you just stopped within the distance of 500
15 feet from 11.75 knots. Your chief mate comes
16 up...

17 (2600)

18 MR. COLE: Your Honor, I object to the
19 reference of 500 feet. There's been no testimony of
20 500 feet.

21 MR. CHALOS: Your Honor, I think the testimony
22 has been that there was one grounding. There was some
23 rumbling. It lasted 10 to 15 seconds and then it came
24 to a...

25 THE COURT: I think he's talking about the 500

1 feet of water. Is that what you're talking about?

2 MR. COLE: Well, I didn't know what he was
3 referring to.

4 MR. CHALOS: No. I'm talking about the length
5 because we know how far the damage was, which was about
6 500 feet. And there's been evidence of that.

7 THE COURT: I'm going to let the questions be
8 asked so far, subject to further objection.

9 Q (Captain Deppe by Mr. Chalos:) Captain, the
10 vessel's hard aground at this point. Your chief
11 mate comes up and tells you that the vessel is
12 stable. He's run some stability calculations and
13 she's stable.

14 You also know that the tide is coming in on
15 you. In about an hour and a half or so it's
16 going to reach high tide.

17 If you wanted to get this ship off the strand,
18 what would you do with respect to your pressure
19 vacuum valves and your IG system, your inert gas
20 system?

21 A To salvage a vessel one of the strategies you
22 can use is to secure the inert gas system to keep
23 the pressure in the tanks and to give you more
24 buoyancy.

25 Q By securing, you mean you close down the

1 valves and you close down, you tie down, the
2 pressure vacuum valves, is that right?

3 A You secure all -- you secure all the openings
4 into the tanks of the vessel so that none of the
5 atmosphere in those tanks can escape. That's one
6 of the strategies you could use to give you more
7 buoyancy.

8 Q Now, you know at this point in time that you
9 came in to the grounding from deep water because
10 you were sailing in deep water. What would you
11 do with your engine at that point if you wanted
12 to try and get off the strand?

13 A In a hypothetical case, there's two things you
14 can do with your engine. You can either go ahead
15 or astern. And whatever works, I would use.

16 Q And how about if you go ahead and you don't
17 come off of the strand, would you go in reverse?

18 A If I was trying to get off, I would go both
19 ways.

20 Q And, if you were trying to secure the vessel
21 onto the reef knowing that the tide was coming
22 in, would you only go ahead?

23 A Depending on the circumstances, I might go
24 either way. Depending on where I was aground and
25 where the reef was. But I would think, if I was

1 aground on the forward part of the vessel and I
2 knew there was shallower water there, I would
3 probably go ahead if I was going to try to stay
4 where I was.

5 (2710)

6 Q And you'd keep you inert gas valves and your
7 pressure vacuum valves open, would you not?

8 A Yes.

9 Q Captain, I'd like to give you one more
10 hypothetical.

11 Would you agree that a 10 degree right rudder
12 command is a simple command?

13 A Yes.

14 Q Would you expect your mates to be able to
15 carry out that command without too much trouble?

16 A Yes.

17 Q Now, assume for the moment that you're abeam
18 of Busby Island light at 11:55 p.m. You're doing
19 11.75 knots and you've got 57 foot of draft on
20 the vessel.

21 Incidentally, you are familiar with the handling
22 characteristics of the Exxon Valdez, are you not?

23 A I was familiar with the Exxon Long Beach.

24 Q Which is a sister ship?

25 A Sister ship.

1 Q You would expect them to behave in the same
2 way?

3 A Yes.

4 Q Under similar conditions?

5 A Yes.

6 Q Okay. Back to my hypothetical. Your abeam of
7 Busby. About a mile off. You're traveling at
8 11.75 knots and you've got 57 foot of draft.

9 If the plan was to place 10 degrees of right
10 rudder on the vessel at that point, would you
11 expect her to miss Bligh Reef?

12 A Yes.

13 Q Now that would be true if the 10 degrees right
14 rudder was put on 11:56 as opposed to 11:55,
15 right? Isn't that correct? Just a minute later.

16 (2831)

17 A In that area, I would expect it to miss Bligh
18 Reef, yes.

19 Q Captain, I have no further questions. Thank
20 you.

21 (2876)

22 REDIRECT EXAMINATION OF CAPTAIN DEPPE

23 BY MR. COLE:

24 Q Captain Deppe, how would you be able to tell
25 whether or not your vessel was going to miss

1 Bligh Reef if you were not on the bridge but
2 rather you were in your cabin?

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

5 THE COURT: Objection overruled.

6 MR. CHALOS: Are we using the same assumption,
7 Your Honor, that I...

8 Q (Captain Deppe by Mr. Cole:) The same
9 assumptions that Mr. Chalos just gave you. How
10 would you be able to tell whether or not you were
11 actually going to miss Bligh Reef if you were in
12 your cabin and not on the bridge?

13 A One of the responsibilities the master has on
14 board a vessel is to delegate a lot of
15 responsibilities to other people. There's a lot
16 of actions that take place on board a ship that
17 other people take with my authority with me not
18 being present.

19 And, if I had an officer who I have confidence
20 in to carry out a command or to perform some
21 maneuvers when I'm not there, I would assume, and
22 I'd have to assume, because I can't be there 24
23 hours a days, that the actions he takes are going
24 to be safe actions.

25 And, if I was in my cabin and a person went to

1 do a maneuver and he was ordered to do that
2 maneuver, I would have to assume he would carry
3 that out correctly.

4 Q How would you be able to tell whether or not
5 you were going to hit Bligh Reef?

6 MR. CHALOS: Your Honor,...

7 Q I want you to assume, I want you to be able to
8 tell the jury, how would you be able to tell that
9 it was not going to?

10 MR. CHALOS: Your Honor, I believe the
11 question's argumentative. This is Mr. Cole's witness.
12 I think he answered the question. Mr. Cole's trying to
13 get a different answer.

14 MR. COLE: Judge, I'm just asking him a
15 question and he did not respond to the answer, so I
16 asked it again.

17 He said, I asked him personally how he would
18 be able to tell it? He said something to the affect,
19 that I would assume. I want to know what it is in the
20 chart room that allows him to assume.

21 THE COURT: All right, Captain, you can answer
22 the question.

23 A (Captain Deppe by Mr. Cole:) Any time I'm not
24 on the bridge, there's no way that I can tell if
25 any action taken is going to have the required or

1 have the desired affect.

2 Q Are there any rudder angle indicators in the
3 captain's office?

4 A No.

5 Q Is there any gyro repeaters in the captain's
6 office?

7 A No.

8 Q Now, in the hypothetical Mr. Chalos gave with
9 this situation, ice confronting you like that, is
10 that the kind of situation that you would intrust
11 to a mate and leave the bridge?

12 (3064)

13 MR. CHALOS: Objection, Your Honor.

14 THE COURT: Did you have grounds for your
15 objection?

16 MR. CHALOS: Yes. It's a foundational
17 objection, Your Honor.

18 THE COURT: No. I think the foundation has
19 been laid throughout the questioning. I think
20 everybody knows what the foundation is now. Objection
21 overruled.

22 A (Captain Deppe by Mr. Cole:) Repeat the
23 question, please.

24 Q Is the situation that Mr. Chalos discussed the
25 right term and is that the kind of situation

1 where you would leave the bridge with the con in
2 the third mate?

3 (3089)

4 MR. CHALOS: I object now, Your Honor, on the
5 basis of relevance.

6 THE COURT: Objection overruled.

7 A Under the circumstances the way they've been
8 described to me, that night I probably would have
9 been on the bridge. I would not have left the
10 third mate by himself.

11 Q Now, Captain Deppe, you answered Mr. Chalos's
12 question about whether or not the Exxon Valdez
13 would have hit Bligh Reef.

14 I'd like to show you another diagram here.
15 I'm showing you what's been marked for
16 identification -- we can do it from this one
17 right here.

18 Looking at the same diagram, do you see the 38
19 55 fathom marker right there?

20 A Yes.

21 Q If the Exxon Valdez was traveling according to
22 Mr. Chalos's hypothetical of 11.75 knots with 57
23 foot drafts and it was heading at a heading of
24 180 degree, would it have made Bligh Reef if it
25 turned 10 degrees at that point?

1 A How far is that position from Bligh Reef?

2 Q Well, I think we have a divider. I'll let you
3 check that.

4 (Pause.)

5 MR. CHALOS: Your Honor, may I approach the
6 chart?

7 (Pause.)

8 (Side conversation)

9 THE COURT: Mr. Chalos, would you...

10 MR. CHALOS: Yes?

11 THE COURT: If you can avoid standing between
12 the jury.

13 (Pause.)

14 A At that point, if right ten was put on, it's
15 -- we don't have any maneuvering information for
16 those kinds of course changes or angles with
17 those drafts. I'm not sure whether -- I think it
18 would make it, but I don't know whether I would
19 give that command. I think I would probably use
20 more rudder than right ten at that point myself.
21 But I think there's a -- I can't say for sure
22 whether it would make it or not, but I think it
23 would.

24 Q Okay. Do you remember testifying in front of
25 the NTSB?

1 A Yes.

2 Q And do you remember being asked the question I
3 just put to you in the NTSB hearing?

4 A I was asked some...

5 MR. CHALOS: You got a cite for that?

6 A ...hypothetical A, B's or C's.

7 Q And point B...

8 MR. CHALOS: Your Honor, may we approach the
9 bench?

10 THE COURT: All right.

11 (3315)

12 (Whispered bench conference.)

13 (3387)

14 Q (Captain Deppe by Mr. Cole:) The 38 55 fathom
15 mark is how far from Bligh Reef?

16 A About a mile and a half.

17 Q Now, as far as the pressure vacuum valves and
18 the IG system that you've talked about with Mr.
19 Chalos, would you have known whether or not those
20 were sealed off at any time earlier or not?

21 A No, I wouldn't.

22 Q In your experience as a captain in the limited
23 number of times you encountered ice, you talked
24 about the fact that it's difficult to tell the
25 extent of the ice until you get right up on it.

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Is that correct?

A That's correct.

Q Is an ice hazard that you should exercise more caution and prudence in approaching...

MR. CHALOS: Objection.

Q ...and...

MR. CHALOS: Sorry. Go ahead.

Q ...does it call for a greater exercise of caution by a master approaching ice?

MR. CHALOS: Objection, Your Honor. No foundation. As opposed to what?

MR. COLE: Normal operating procedure. Without any, I said.

A Could you repeat the question again?

Q Does encountering ice cause a greater responsibility on the part of a master than if you do not encounter it in the traffic lanes?

MR. CHALOS: Objection, Your Honor. Foundation. Relevance.

THE COURT: Overruled.

(3530)

A The responsibility of a master is to take every situation that he encounters and make the decisions that are required based upon those circumstances.

1 If there was ice present or ice not present,
2 you might handle things differently with ice
3 present than not present, or if it's windy or if
4 it's cold or if it's fresh water versus salt
5 water or if it's shallow water or if it's shoal
6 water.

7 There's a lot of circumstance that come into
8 play almost every time you do something. And any
9 one of those things cause you to handle things
10 differently and think of things differently.

11 So ice would require me to do things
12 differently than no ice, yes. It would be
13 different circumstances.

14 Q I would like you to look at what's been marked
15 Plaintiff's Exhibit 29. Do you recognize that
16 photograph?

17 A It looks like a reproduction of the chart from
18 the Exxon Valdez.

19 Q Would you describe for the jury, if I hold it
20 up, where you understood the Exxon Valdez to be
21 aground when you arrived on the vessel?

22 A Just about that 004 area.

23 Q No. Actually, can you -- would you point to
24 it and tell the jury where you understood it to
25 be.

1 A Well, I don't know exactly, the exact spot
2 that I thought it to be. We had it marked on the
3 chart, and, if that's the mark that was on the
4 chart when I arrived, that's where...

5 Q Which mark is it?

6 A I really don't know.

7 Q You don't remember or you don't know?

8 A I don't know.

9 Q You indicated that, during the next couple of
10 days that you were afraid of the vessel moving,
11 after the first couple days when you came on the
12 vessel. Do you remember talking about that?

13 A We were, yes, we were concerned that, if we
14 had changed the balance of cargo or changed the
15 buoyancy of the vessel, that the vessel could
16 move or if an unusually high tide or the wind
17 changed, some how it could slide off the perch
18 that it's on and end up into deep water which
19 could have been disastrous.

20 Q Why could that have been disastrous?

21 A Well, the initial reports we had from our
22 naval architects were that, with the types of
23 damage that the bottom had sustained, he wasn't
24 sure whether the vessel would capsize or not if
25 we were not perched on the rock.

1 Q Was that information consistent with the
2 information you received from the chief mate when
3 you came on board?

4 A Yes it was.

5 Q Now, you talked with Mr. Chalos about the
6 damage and where the ship was holed. Was the
7 discussion as to where it was holed related to
8 whether it was holed at the aft or astern or
9 whether it was holed in the center or on the
10 starboard side?

11 A I don't understand the question.

12 Q Where...

13 MR. CHALOS: Objection, Your Honor.

14 Q ...was your concern? Where was the
15 misunderstanding as to where this vessel was
16 actually holed?

17 A No. There was no misunderstanding about --
18 oh, I'm sorry.

19 MR. CHALOS: Yes. My objection was Mr. Cole's
20 mischaracterizing the witness's testimony.

21 THE COURT: I'm going to let the question
22 stand if you can answer that.

23 (3840)

24 A There was no question about where the vessel
25 was holed. We knew where we had holes in the

1 vessel. It was where the vessel was aground.

2 Q Okay. I misspoke.

3 What was the concern about where it was
4 grounded?

5 A The concern was that, if it was grounded in
6 the center part of the vessel here, which was
7 some of the initial reports, that as the buoyancy
8 from this, the port side, as vessel came up on
9 the port side, it might some how slide off that
10 point, if it wasn't grounded real firmly right
11 there. But that was proved to be a wrong report
12 in the beginning.

13 Q Was there ever any evidence that this vessel
14 was ground astern?

15 A None that I know of.

16 Q And the only controversy was whether it was
17 grounded in the center or on the starboard side?

18 A That's correct.

19 (3940)

20 Q You talked about different strategies for
21 extracting yourself from mud and extracting
22 yourself from rock. Does Exxon Company have a
23 policy or a strategy for a master extracting his
24 vessel from rock once it's grounded?

25 A No. There's no policy on that.

1 Q Mr. Chalos gave you a hypothetical about
2 travelling at 11.75 knots and coming to a stop at
3 500 feet. I'd like to extend that hypothetical
4 just a second.

5 I'd like you to assume that you're the captain
6 of the Exxon Valdez and you left the bridge while
7 you were in the area of Bligh Reef. And while
8 you were away, the vessel was grounded on Bligh
9 Reef.

10 What information would you want to know before
11 attempting to remove that vessel from the reef?

12 A The most important information would be what:
13 damage has occurred to the vessel from the
14 grounding. What kind of stability I would expect
15 from the vessel. And, whether I might do further
16 damage to the vessel if I tried to get it off and
17 create a bigger problem.

18 My biggest concern would be for the safety of
19 the crew on board the vessel. That would be my
20 number one concern.

21 Q What would you do to insure the safety of the
22 crew on the vessel?

23 A It depends on the circumstances. There's been
24 cases where the whole crew stayed on board and
25 there's been cases where the crew's been

1 evacuated.

2 I would say, generally, as long as you're in a
3 stable condition, the crew of the vessel would
4 stay on board.

5 Q If you were told the following, what would you
6 do?

7 The engine room is intact and there's no
8 damage. There is no damage to the engine or the
9 propeller and the engine can be run at your
10 command. The pump room has been checked and is
11 not breached. The double bottom in the pump room
12 has been sounded and there's no trouble.

13 You receive a call from your chief mate who is
14 in the cargo control room and he tells you that
15 the center cargo tanks 1, 2, 3, 4, and 5 have
16 been damaged and oil cannot be accounted for in
17 these tanks. He tells you that the starboard
18 cargo tanks 1, 3, and 5 have been damaged and oil
19 cannot be accounted for in these tanks. He tells
20 you that starboard tanks 2 and 4 have been
21 breached and there is some liquid in them. Those
22 are your ballast tanks. And he tells you he
23 cannot account for between 100,000 and 115
24 barrels of oil.

25 What does this tell you about the extent of

1 the damage that's been done to your ship?

2 A That we've got a lot of cargo tanks that have
3 been breached.

4 Q What does that tell you about the stability of
5 your ship?

6 A I'd have to have more information and a
7 computer to figure that out.

8 Q Why type of computer would figure that out for
9 you?

10 A I don't know if the load master that's on
11 board the tanker is able to compute those kinds
12 of calculations for not. I know that our naval
13 architects used a shore based computer to do
14 their calculations on the stability. I'm not
15 quite sure whether our computer on board could
16 handle that or not.

17 (Tape: C-3628)

18 (0000)

19 Q Would that be something you'd want to know
20 before you made any attempts to take a vessel off
21 a reef?

22 A Depending on the circumstances, I would say
23 yes.

24 Q How about how the vessel is sitting on the
25 reef? Would that be a concern to you?

1 A There's all kinds of things would be concern
2 to me.

3 Q How about the vessel sitting on the reef? How
4 it's sitting on the reef. Would that be one of
5 the concerns you would have?

6 A Yes.

7 Q How would you determine that?
8 (0050)

9 A You can sometimes determine it by the list of
10 the vessel, the trim of the vessel, the way the
11 vessel would move with rudder applied to it one
12 direction or the other, and by sending divers
13 down, by getting soundings around...

14 Q How do you take soundings?

15 A Just drop a line over the side with a weight
16 on it.

17 Q Could a crew member do that?

18 A Yes.

19 Q How would he do that?

20 A He would take a line. Put it over the side of
21 the vessel and measure the depth of the water.

22 Q And would he do it in one spot or how many
23 times would you do that?

24 A Depending on the circumstances, it could be
25 many times, just one spot.

1 Q Would that be information that you'd want to
2 know before making a decision as to whether or
3 not to remove a tanker from a reef?
4 A It's possible.
5 Q Now, I'd like you to assume that five minutes
6 later your chief mate comes up to the bridge and
7 presents you with a print out from the Ocean
8 Motions program.
9 MR. CHALOS: Objection, Your Honor. The
10 evidence isn't five minutes later.
11 Q Several minutes later.
12 MR. CHALOS: Objection, again, Your Honor.
13 The evidence was a half hour to 50 minutes later.
14 THE COURT: Mr. Cole, is this the...
15 MR. COLE: First time.
16 THE COURT: The first time? So, you still
17 have the same objection?
18 MR. CHALOS: As I recall the evidence, Your
19 Honor, the chief mate came up at 12:30. He gave the
20 information that the vessel was stable and then he said
21 he came up between 1:00 and 1:20 and said the vessel
22 wasn't stable. So that's 30 to 50 minutes.
23 MR. COLE: I'm just talking about the first
24 time that he came to the bridge.
25 (0090)

1 THE COURT: Well, in order to make this
2 meaningful, you're going to have to give us a
3 foundation that's somewhat similar to the scenario
4 that's been testified to and make it clear enough to
5 the witness so the jury can be assisted in some way by
6 your questions.

7 Q (Captain Deppe by Mr. Cole:) Five minutes
8 after your chief mate has told you, the
9 information I just described to you, and about
10 12:30 in the morning he comes up to the bridge
11 and presents you with printout from the Ocean
12 Motions.

13 And he tells you he inputted that the vessel
14 was grounded. That the vessel had drafts of 50
15 feet and that it had been holed in the center.
16 That he's put in the ullages that he'd been
17 provided and run the program and the results are
18 that the stability meets GM (ph) marginally, but
19 that the stress is not within limits. The stress
20 then.

21 MR. CHALOS: Your Honor, I object to some of
22 his characterization of the chief mate's testimony.

23 The chief mate said the GM was exceed by 100%.
24 That's not marginally.

25 THE COURT: I don't remember the term

1 marginally being used, Mr. Cole. But maybe you can
2 just use the exact testimony, if you're going to ask
3 this type of hypothetical question based on the
4 evidence.

5 MR. COLE: I'll just say that he exceeded GM.

6 THE COURT: All right.

7 Q (Captain Deppe by Mr. Cole:) Would you
8 attempt to remove this vessel from the reef given
9 this information?

10 A It's hard to say what I would have done that
11 night. I wasn't there and it's very difficult to
12 say what I would have done; if I had all the
13 information and been involved in the whole
14 situation. The little bit of information you're
15 giving me there doesn't give me enough to make a
16 decision what I'd do.

17 Q Let's say you decide to remove the vessel at
18 12:38 that evening and you start up the engines.
19 And by 12:51 you're at full ahead.

20 At around 1:00 o'clock a.m. your chief mate
21 comes in and tells you he has rerun the same
22 Ocean Motions computer program. That he has not
23 been able to program in the grounded mode, but
24 rather has assumed only that the program -- run
25 the program assuming that the vessel is

1 completely in tact. No damage, no grounding.

2 THE COURT: Objection, Your Honor. The last
3 statement, in tact, doesn't mean no holes, no
4 grounding. That's a mischaracterization.

5 MR. COLE: The computer program he ran assumed
6 that the vessel was intact and that's what Mr. Kunkel
7 testified to.

8 MR. CHALOS: I have no problem with that. I
9 just have a problem with the explanation of what in
10 tact means.

11 THE COURT: Okay. In tact, leave out the no
12 holes, no grounding, because I believe that's what the
13 testimony was.

14 Q (Captain Deppe by Mr. Cole:) That the vessel
15 had not met the required stability requirements
16 GM and that the vessel did meet the stress
17 requirements. And that the chief mate advised
18 you at that time that you should not leave the
19 area. That you should stay where you are.

20 What would you do at that point?

21 A Could you repeat the question again?

22 Q You want me to tell you all the hypotheticals
23 or...

24 A No, no. Do just the question.

25 Q The engine is running full ahead, at this

1 point, and you're giving rudder commands left and
2 right and you are provided with this information
3 by the chief mate at 1:00 o'clock.

4 What would you do at this point?

5 A It's very difficult for me to say what I would
6 do not having been there. I probably, if I had
7 advice from people telling me that the vessel is
8 unstable and I was trying to extricate it from
9 the reef, I would stop the extracting from the
10 reef. If that's the assumption we're making.

11 Q Thank you. I have no further questions.

12 (0250)

13 RE-CROSS EXAMINATION OF CAPTAIN DEPPE

14 BY MR. CHALOS:

15 Q Captain Deppe, in response to Mr. Cole's
16 question about what you might have done if you
17 were on the bridge off of Busby Island light,
18 seen the ice and so on and so forth, you say you
19 probably would have stayed on the bridge.

20 I take it you're saying that in hind-sight now
21 knowing what's happened. Am I correct?

22 A Well, I believe I would have been on the
23 bridge for the transit out of Prince William
24 Sound. That's generally how I would handle my
25 operation out there.

1 Q You don't know though what was in Captain
2 Hazelwood's mind on that particular night, do
3 you?
4 A No, I don't.
5 Q You don't know what he was looking at on his
6 radar screen. What he was looking at in terms of
7 the ice condition.
8 A That's correct.
9 Q And certainly you don't know what his
10 experience with his mate's ability was, do you?
11 A No, I don't.
12 Q And certainly the simplicity of the command :
13 that one would give would play a role in what the
14 captain would do at any time, would it not?
15 A The complexity of an order would sometimes
16 require a captain to be present. And if there
17 was a simple order, maybe it would not. Yeah.
18 That's correct.
19 Q Now, you said in response to Mr. Cole's
20 question that there are no rudder indicators in
21 your stateroom or your office. But certainly
22 there are telephones, aren't there?
23 A Yes.
24 Q And it's a standing order of captains on these
25 ships to their mates on watch that, if you have

1 and doubts at all, if you in any way feel
2 uncomfortable, give me a call. Isn't that
3 correct?

4 A That's general practice. Yes.

5 Q And you were on the Long Beach, which is the
6 sister ship. Your room was just one deck down.
7 Am I correct?

8 A That's correct.

9 Q If you had to get back up to the bridge, you
10 could do it in 10-15 seconds, could you not?

11 A Less than that.

12 Q Now, Captain, have you ever given anybody an
13 order, any of your mates an order, to turn at a
14 particular fathom mark in Prince William Sound?

15 A No.

16 Q It's true, is it not, that mariners don't
17 navigate and make turns on the basis of fathom
18 markings?

19 A That's not the general way we do things. No.

20 Q And certainly not in an area where you
21 navigational aids all over the place.

22 A No.

23 Q In response to Mr. Cole's question about ice,
24 you said that you wouldn't know the ice condition
25 until you were right on top of them. You don't

1 mean that, do you? What you're talking about
2 is...

3 MR. COLE: Objection. Argumentative.

4 THE COURT: Maybe you can rephrase that.

5 MR. CHALOS: I'll rephrase it.

6 Q When we talked about seeing the ice conditions
7 first hand, you weren't talking about being on
8 top of the ice, were you?

9 (0374)

10 A Well, what I mean about being on top of it was
11 that you had already taken departure from the
12 dock and you were transitting the sound. And
13 within -- unless you had gotten past a vessel
14 that had been through that area just recently,
15 you probably wouldn't -- during the day time you
16 might see it quite a ways, but, if it was night
17 time, on radar, might be just six or seven miles
18 you might be able to see some of the ice.

19 Q Now, turning to another subject. You said
20 that when you spoke with a naval architect
21 several days after you got on board, at that
22 particular time they still weren't sure if the
23 vessel had come off the reef whether she would
24 capsize. Isn't that right?

25 A His advice to me was that it's a possibility

1 that it could and to keep the vessel where it
2 was. Not to change any of the drafts or the trim
3 of the vessel or the list conditions of the
4 vessel.

5 (0430)

6 He didn't tell me what the chances were that
7 we'd capsize. He just said, we're in a
8 precarious position and not be change things, if
9 we could avoid it.

10 Q And this information came to you after the
11 naval architect had done a lot of fancy computer
12 analysis and divers had been down below and they
13 ascertained the situation, ascertained the
14 damage. And he still gave you that advice after
15 all that.

16 A The initial advice came the first few hours I
17 was on board and it never changed the whole time
18 I was there.

19 Q Was there a naval architect on board when you
20 first got on?

21 A No.

22 Q So, the advice from the naval architect came
23 later?

24 A We called them on a satellite telephone
25 several, well, within about an hour after I

1 boarded the vessel.

2 Q Now, Mr. Cole gave you a hypothetical about
3 what you would do with certain information from
4 the chief mate and knowing the fact that you had
5 holed several tanks, and you got stability
6 information from the chief mate at that
7 particular time.

8 And he concluded by saying all that
9 information would lead you to conclude that you
10 stay on the reef. Do you remember that?

11 A Yes.

12 Q Now, if that's true, all that information
13 would lead you to conclude that you stay on the
14 reef, you wouldn't go astern, would you? If your
15 purpose was to stay on the reef, you wouldn't run
16 your engines astern.

17 A That's correct.

18 Q In response to another question from Mr. Cole,
19 you said that, in trying to ascertain what your
20 position was on the reef, you might use the
21 rudder to try and see how the ship laid. Is that
22 correct?

23 A In a general sense. That's one way you might
24 be able to tell where the vessel was aground. I
25 wasn't using it for this particular case.

1 Q But the use of the rudder after a grounding to
2 ascertain how you're aground is a common
3 practice, is it not?

4 A I don't have that much experience in
5 groundings, but that's one way that I would use
6 to ascertain our position.

7 Q Now, Mr. Cole, in his hypothetical, said the
8 engines were put at full ahead. There is a
9 difference, is there not, between full ahead
10 maneuvering speed and full ahead sea speed?

11 A Yes.

12 Q Captain, if your purpose was to keep the
13 vessel on the reef and you knew the tide was
14 coming in on you which would have the affect of
15 lifting your vessel up; if your chief mate told
16 yo at some particular point in time that your
17 stability was marginal and you wanted to make
18 sure you stay on the reef, would you continue
19 doing whatever maneuvers you had been doing up
20 until that time to insure that the vessel stayed
21 where it was?

22 A It depends upon the circumstances of the case.
23 There could be many things I would do. If what I
24 was doing was successful at the time, I might
25 continue doing that or do nothing. I don't know.

1 Q If you were running your engines ahead for the
2 purpose of stabilizing the vessel and making sure
3 that she stayed on the reef, would you continue
4 running those engines until you felt comfortable
5 and assured that you were on the reef?

6 A That's possible.

7 Q I have no further questions. Thank you.

8 MR. COLE: Two.

9 (0564)

10 REDIRECT EXAMINATION OF CAPTAIN DEPPE

11 BY MR. COLE:

12 Q You talked about how using the rudder to see-
13 how a ship laid if it was grounded. Do you
14 remember talking about that?

15 A Yes.

16 Q What speed would you place the vessel on in
17 order to test it?

18 A I'd have to have a whole lot of circumstances
19 and I said that would be one of the ways that I
20 could tell, possibly, how the vessel was
21 grounded. By seeing whether it would turn or
22 where the vessel turned or whether it could turn
23 at all. But that's -- I'm not saying I would do
24 that every time I was on a ship that was
25 grounded.

1 Q But to do that, you could put it on dead slow
2 ahead, if you wanted to?

3 MR. CHALOS: Objection, Your Honor. Leading.

4 A I could put it on any speed, yes.

5 Q I'd like you to explain how running a vessel
6 full ahead on a rising tide will keep it on a
7 rock.

8 MR. CHALOS: Your Honor, I think there's been
9 a distinction made between full ahead and maneuvering
10 and full a head sea speed. Now, I don't know what Mr.
11 Cole means when he says full ahead.

12 MR. COLE: Full ahead maneuvering speed.

13 A In any circumstances, the minimum speed that
14 you could effectively perform the maneuver would
15 be the speed I would use. Not being there, I
16 don't know what the minimum speed I would have
17 used under the circumstances.

18 Q Here's your tanker bottom. And you've got a
19 rock that's sticking up, and let's say that that
20 is two feet. Okay? And you've got a rising tide
21 that's going to go up three feet.

22 How does going ahead, full ahead, keep you on
23 that rock?

24 (0671)

25 MR. CHALOS: Your Honor, I object. Unless

1 this is simply a hypothetical because there hasn't been
2 any evidence of two feet of the rock or three feet of
3 the tide.

4 MR. COLE: It's simply a hypothetical.

5 A If you're just talking about a generic ship
6 that is sitting on a rock right there, there's so
7 many circumstances that come into play and we'd
8 have to lay out the whole scenario: where we
9 were; what draft we were; what trim we were;
10 what...

11 Q Well, let's say that this tanker was going to
12 rise three feet with the tide. How would going
13 full ahead keep you on that rock if the rock only
14 went up two feet into your hole?

15 A If I was on a generic ship and it was going to
16 float free from this position right there and I
17 didn't want to float free and I wanted to stay
18 there, I would probably just drop my anchors and
19 not use the engine.

20 MR. COLE: Nothing further, Your Honor.

21 THE COURT: Any further need for this witness?

22 MR. CHALOS: Nothing from me, Your Honor.

23 THE COURT: Okay. You're excused from further
24 participation.

25 (Witness excused.)

1 We'll take another break about this time.
2 Ladies and gentlemen, remember my instructions not to
3 discuss the matter the matter or form or express an
4 opinion.
5 THE CLERK: Please rise. This court stands in
6 recess subject to call.
7 (Off record - 11:29 a.m.)
8 (0715)
9 (On record - 11:55 a.m.)
10 THE CLERK: This court now resumes its
11 session.
12 (Jury present.)
13 THE COURT: The plaintiff's next witness, Mr.
14 Cole.
15 MR. COLE: Yes. At this time the state would
16 call Stan Andresen, Your Honor.
17 Mr. Andresen, if you'd step up here and attach
18 the microphone to your jacket. Remain standing for the
19 clerk.
20 THE CLERK: I think it might have fallen down.
21 THE COURT: On the inside so the microphone's
22 on the outside of your lapel. No. Let's just do it on
23 the other side or on the inside of your lapel, either
24 way, so the microphone will be upright. There we go,
25 thanks.

1 THE CLERK: Sir, if you'd raise your right
2 hand, please.

3 (0760)

4 (Oath administered.)

5 A I do.

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

9 THE CLERK: Sir, would you please state your
10 full name and spell your last name.

11 A Stanley Paul Andresen, A-n-d-r-e-s-e-n.

12 THE CLERK: And your current mailing address;
13 sir?

14 A 240 Shady Lane, Vallejo, California.

15 THE CLERK: Spell the town, please.

16 A V-a-l-l-e-j-o.

17 THE CLERK: And your current occupation, sir?

18 A Marine service engineer.

19 THE CLERK: Thank you.

20 MR. COLE: Thank you, Your Honor.

21 (0778)

22 DIRECT EXAMINATION OF MR. ANDRESEN

23 BY MR. COLE:

24 Q Mr. Andresen, is it Andreesen (ph) or Andrasen
25 (ph)?

1 A Andresen (ph).
2 Q Who do you work for?
3 A Sperry Marine, Incorporated.
4 Q And how long have you worked for them?
5 A It will be eleven years in a couple a days.
6 Q And what does your job entail? What do you do
7 for Sperry Marine?
8 A As a marine services engineer, I'm responsible
9 to service and install products manufactured by
10 my company.
11 Q And does Sperry Marine manufacture products
12 for tankers?
13 A Yes, we do.
14 Q Can you give the jury an idea of the type of
15 instruments that Sperry Marine manufactures?
16 A We manufacture steering control systems, ship
17 radars, doppler sonars, speed logs, satellite
18 communications, doppler docking systems.
19 Q Are you ever asked to go out and repair or
20 evaluate the working condition of Sperry Marine
21 instruments in the course of your employment?
22 A Yes.
23 Q Would you tell the jury is that a large
24 percentage of your job or how would you divide --
25 how much of your time do you spend doing that?

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1 A I would say a good 80% of my time is spent in
2 service.

3 Q Have you had the opportunity to look at the
4 steering unit that's aboard the Exxon Valdez?

5 A Yes, I have.

6 Q How did that occur?

7 A In April of last year, I was called by my
8 managers in my company and told to go to the
9 Exxon Valdez and inspect the equipment.

10 Q Would you explain to the jury the type of
11 steering unit that is aboard the Exxon Valdez or
12 was aboard the Exxon Valdez in March of 1989?

13 A It's a Sperry SRP-2000 ship control system.

14 Q You're looking at an exhibit. Would you just
15 read the number on the back of that exhibit?

16 A This one down in the corner?

17 Q Yes.

18 A Exhibit number 40.

19 Q Right. And is that a photograph of the
20 steering unit that you're talking about?

21 A Yes, it is.

22 Q Now, I'm showing you what's been marked for
23 identification as Plaintiff's Exhibit 97. Do you
24 recognize that diagram?

25 A Yes. This is a diagram out of our operator's

1 manual.

2 Q It has several words that are written with
3 arrows. Do those words and arrows accurately
4 represent the different types of things that are
5 available on this control steering unit?

6 A Yes, it is.

7 MR. COLE: I would move for the admission of
8 what's been identified as Plaintiff's Exhibit 97.

9 MR. CHALOS: No objection.

10 THE COURT: Admitted.

11 (0929)

12 EXHIBIT 97 ADMITTED

13 Q Would you explain for the jury what the alarm
14 mode is?

15 A Well, the alarm module...

16 Q Module. I'm sorry. Go ahead.

17 A ...is this part and it's located on this part of
18 the console. And...

19 Q Let's have you identify this first.
20 Plaintiff's Exhibit 99. Do you recognize that?

21 A Yes.

22 Q What's that?

23 A That is the alarm module.

24 MR. COLE: I would move for the admission of
25 what's been identified as Plaintiff's Exhibit 99.

1 MR. CHALOS: No objection.
2 THE COURT: Admitted.
3 EXHIBIT 99 ADMITTED
4 MR. CHALOS: Was that 99?
5 MR. COLE: 99.
6 MR. CHALOS: What was the previous one that --
7 I may have missed that.
8 A 97.
9 MR. COLE: 97.
10 MR. CHALOS: Okay.
11 Q (Mr. Andresen by Mr. Cole:) Would you explain
12 what that alarm module is?
13 A That's alarm in heading module and the bottom
14 portion is the alarm portion of the module. The
15 upper portion is a heading indicator. What we
16 use as a backup reference.
17 Q Okay. The heading display, is that tied into
18 the master gyro?
19 A Yes, it is.
20 Q And what heading does that register?
21 A It registers the heading of the master gyro.
22 Q Which is the way, the direction, the vessel is
23 pointed?
24 A Right.
25 Q And what's this right here above the heading

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display?

A On the top portion of the heading display is a rate of turn indicator. As the ship is turning, the arrows, which are liquid crystal displays, light up in correspondence with the rate of turn.

Q Now, going then to the next area, which is the CRT display. Do you recognize what's been marked for identification as Plaintiff's Exhibit 98?

A Yes, I do.

Q And what is that?

A This is a representation of one of the modes or one of the pages of display on the CRT.

MR. COLE: I would move for the admission of what's previously been identified as Plaintiff's Exhibit 98.

MR. CHALOS: No objection.

THE COURT: Admitted.

EXHIBIT 98 ADMITTED

Q Now, would you explain to the jury with this what the top heading in degrees indicator tells someone who's looking at it?

A The top is a representation of a portion of a gyro card and the center of it indicates the heading that the ship is on. As the ship turns, the numbers move across the presentation in the

1 direction of the turn.

2 Q How about the heading rate and degrees
3 indicator?

4 A The middle presentation, middle bar, is a
5 heading rate in degrees per second and is
6 labelled here in tenths of a degree per second.
7 And the indicator on the bottom of it will move
8 in correspondence with the heading rate, the turn
9 rate, of the ship.

10 Q Of the actual turn rate of the ship.

11 A Yes.

12 Q And what's the top one?

13 A The top one in turn rate mode would indicate
14 the ordered turn rate.

15 Q Would that be something that you would program
16 in, for instance?

17 A That would be an operator controlled function.

18 Q If you wanted to have a ship turn at a certain
19 rate when it's on gyro.

20 A In one of the auto-pilot modes, the turn rate
21 mode, you would set this for the particular turn
22 rate that you want.

23 Q And the final one, the rudder angle in
24 degrees?

25 A That's rudder angle in degrees. And it is a

1 rudder angle indicator. The bottom one, the
2 bottom indicator, indicates what the position of
3 the rudder is and follows the rudder as it moves.
4 The top one indicates what has been ordered,
5 either by the auto-pilot or the helm.

6 Q Now, you talk about the top one and the
7 bottom. Those are markers on the screen,...

8 A Yes.

9 Q ...is that correct?

10 A Yes.

11 Q Now, why would, and what you ordered, the top
12 one, that would be what you turn on the wheel?

13 A Yes.

14 Q Why would these not always be the same, one
15 right on top of the other?

16 A The top one moves, if you're in the helm mode
17 of steering, the top one moves with the helm.

18 Q With the steering wheel.

19 A With the steering wheel. The bottom one moves
20 with the rudder. The steering wheel, depending
21 on how fast it's turned, determines how fast this
22 top one moves. And it can move much faster than
23 the rudder.

24 Q So the steering wheel moves first and then...

25 A Then the rudder follows.

1 Q And it takes a certain amount of time for the
2 rudder to actually catch up with where the
3 steering...

4 A Yes.

5 Q Okay. Now, I'd like you to look at what's
6 been noted here as the status module. I'm
7 showing you Plaintiff's Exhibit 101. Do you
8 recognize that?

9 A Yes, I do.

10 Q What's that?

11 A It's the status module.

12 MR. COLE: I'd move for the admission of
13 Plaintiff's Exhibit 101.

14 MR. CHALOS: No objection.

15 (1200)

16 THE COURT: Admitted.

17 EXHIBIT 101 ADMITTED

18 Q Would you explain to the jury what is on this
19 exhibit?

20 A The top portion of the status module contains
21 status indicators for the system operation:
22 control power, pump on, auto-pilot, helm,
23 emergency, remote enable and remote on. And the
24 rows of circles here are indicator lights that
25 correspond to rudder control units in the

1 steering gear room.

2 And four are shown here for a possibility of
3 four systems. Typically, only two are used, so
4 only two sets of lights would be used on the
5 system.

6 Q On the Exxon Valdez, were there only two
7 systems?

8 A Yes. There's only two.

9 Q When you turned on the power to this unit,
10 would lights light up on the control power?

11 A Yes. Control power, if it's available, would
12 be lit up here and here.

13 Q And how about the pump on, would that always
14 be on also?

15 A It only comes on for the pump that's selected.

16 Q So you have two different systems that you
17 could use, is that correct?

18 A Yes.

19 Q For steering?

20 A Yes.

21 Q One of them would be a backup to the other
22 one?

23 A Right.

24 Q Okay. Now, what are these two buttons here?

25 A This button is the helm button. You'd push

1 this button to put control on the wheel, on the
2 steering wheel.

3 Q Control on the wheel. Tell the jury what that
4 means.

5 A The steering wheel right here. We call it the
6 helm module. And pushing that helm button puts
7 control of the rudder on this wheel. As the
8 wheel's turned, the rudder follows the wheel.

9 Q Let's talk about that for minute. How does
10 the wheel, turning the wheel, actually turn the
11 rudder?

12 A Connected...

13 Q On that vessel.

14 A Connected to this wheel on the inside of the
15 helm module is a transmitter. That transmits an
16 electronic signal back to the rudder control
17 unit.

18 Q Where is the rudder control unit?

19 A In the steering gear room.

20 Q Which is at the bottom of the vessel?

21 A No. In the steering gear room on the back
22 end.

23 Q Okay.

24 A The rudder control unit develops electronic
25 signals that go to another box which converts

1 those signals to drive a pump control on the main
2 steering gear hydraulics. And then that pump
3 controls oil flow to the rams which position the
4 rudder.

5 Q Now, if you turned 10 degrees, what happens
6 then?

7 A As...

8 Q And let's say 10 degrees starboard. You're in
9 helm.

10 A If you turn in the helm mode, you turn the
11 wheel to 10 degrees, the marker on the display
12 here would move over to 10 degrees. The
13 electronics take over. Make the pump go on
14 stroke, positioning the rudder to 10 degrees.
15 The rudder would follow up and move to 10
16 degrees.

17 Q Would you tell the jury what it means to have
18 a rudder at 10 degrees. What's the measure
19 there?

20 A The actual position, angle, of the rudder off
21 of amid ships to either port or starboard, right
22 or left.

23 Q So zero would be pointing directly back?

24 A Yes.

25 Q Aft.

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A Yes.

Q And 10 degrees right rudder would be one way.
Ten degrees...

A To the right.

Q Okay. Well, what happens if you turn 10 degrees and you let go of the wheel? Will it drift back?

(1376)

A No. Once you position the wheel to 10 degrees and let go of it, it stays there until it's physically moved to another position.

Q So it's not the same as a car when you make a turn at a corner?

A No.

Q And if you set 10 degrees right rudder, starboard, and walk away from the vessel, what will happen?

A Well, the rudder, assumably, would go to 10 degrees and stay there until another order was given.

Q Now, finally, oh, we were at the last part of this. Would you explain what the emergency steering is there?

A The emergency steering is a toggle switch which overrides the helm and takes direct control

1 of the pump, so to speak, driving...

2 Q These are the port or the starboard pumps?

3 A Either the port or starboard, whichever one is
4 in control. And bypasses the rudder control unit
5 electronics and takes direct control. As long as
6 you push the button, it puts the pump on stroke
7 and moves the pump in a certain direction;
8 labelled left here, right here.

9 When you let go of the toggle switch it
10 springs back to zero and then the rudder stops.

11 Q So, would it be fair to say that that is like
12 a second backup system then? Steering.

13 A Yes.

14 Q You've got whatever pump is on, your
15 starboard. And if the starboard's on, then you
16 have your port pump as a backup. But you also
17 have an emergency system steering.

18 A Yes. And this is available on both pumps.

19 (1469)

20 Q Okay. Now, showing you what's been marked for
21 identification as Plaintiff's Exhibit 100. Do
22 you recognize that?

23 A Yes. This is the key pad.

24 Q And you point for the jury where the key pad
25 is.

1 Q The key pad is located directly underneath the
2 CRT.

3 Q And what is this for?

4 A This is for operator controlled functions.
5 This side of it selects the three different auto-
6 pilot functions. This side over here controls
7 the cursor on the CRT to change functions and
8 values of operator selectable functions.

9 Q So it's fair to say most of that stuff is just
10 designed for the automatic-pilot mode or the gyro
11 mode.

12 A Yes.

13 Q How much would you have to turn the wheel to
14 turn it to a heading to the rudder at 20 degrees?

15 A To put the rudder on 20 degrees takes about
16 one full turn of the wheel.

17 Q And how much would you have to turn it to turn
18 it to 10 degrees?

19 A About a half a turn.

20 Q And 5 degrees?

21 A A quarter of a turn.

22 Q When an order from the helm is given to turn
23 the vessel, how long does it take for the rudder
24 to respond?

25 (1530)

1 A The initial movement, in about one second.
2 And then the rate of rudder movement after that
3 is roughly 2.8 degrees per second.
4 Q Do you have a way that you test that?
5 A Well, there's a typical method of testing is
6 to run it from hard over one direction, 35
7 degrees one direction, to passing 30 in the other
8 direction. And we time that.
9 Q And you time it. What happens when you get to
10 a hard right rudder or a hard right or a hard
11 left? Well, first of all, how many degrees does
12 that allow the vessel to turn?
13 A You mean, how many degrees does the rudder
14 turn?
15 Q Degrees the rudder turn, yes.
16 A It turns to 35 degrees.
17 Q And what happens when you get to 35 degrees?
18 A The rudder stops.
19 Q How about the wheel?
20 A The wheel stops physically at about 35.
21 Q Now, I'd like to ask you some questions about
22 the helm mode. What does the helm mode allow the
23 operator to do?
24 A To use the wheel to position the rudder.
25 Q Is there an alarm that signals that the rudder

1 is not following the order given when you're in
2 helm mode?

3 A In the helm mode, if the rudder does not
4 follow the order, there's an alarm, on the Exxon
5 Valdez, there's an alarm on the bulkhead behind
6 the helmsman that will ring if the rudder does
7 not agree with the order.

8 Q How long does it, I mean, when does that
9 happen? Does it happen 15 seconds if no
10 agreement or 20 seconds?

11 A No, no. It's much quicker than that. It's,
12 depending on the error, it's almost
13 instantaneous.

14 Q How do you place the tanker in helm mode when
15 you start it up?

16 A When...

17 Q You might need to turn that a little bit more
18 so the people can see that.

19 A If the operator has selected a pump, the
20 motion to put it in the helm mode is just by
21 pushing that button.

22 Q How can you tell from what information is in
23 front of you that it's in helm mode?

24 A On the status indicators you would have your
25 control power on, a pump on indicator, and then a

1 helm indicator. On the...

2 Q Would it be on both sides or just one side?

3 A It would be on both side -- the helm

4 indication would be on both sides. The pump on

5 indications would be -- the pump control power

6 would be on both sides. Pump on would be on the

7 side that's selected.

8 Q But the fact that it's in helm would be on

9 each side?

10 A That would be shown on both sides.

11 Q And where else would it be shown that this was

12 on helm?

13 A On the CRT display, when you push the helm

14 button, it automatically puts up an instruction

15 page. Has an indication here that would say helm

16 mode. And present steering mode shown here would

17 say helm. And there would be instructions

18 telling them how to use the helm.

19 Q Now, is there a way to dim the lights so that

20 you can't see that?

21 A You have dimmers available to dim the status,

22 the CRT and the general illumination on the

23 control unit. And you could dim -- I suppose you

24 could dim them all the way out.

25 Q How do you place, if you're in helm, how would

1 you place the tanker in gyro?

2 (1750)

3 A To go into gyro mode you would press one of
4 the three auto-pilot modes. Press the button
5 here. Select the course that you want by using
6 the arrows. The course would be displayed up
7 here. When you achieve the course that you want
8 with the arrows, you press the accept button.

9 Q What if you had steadied up on a position and
10 you wanted to place it in gyro, how would you do
11 that?

12 A You'd simply press gyro and accept.

13 Q How would you be able to tell that the tanker
14 is using the gyro mode then?

15 A When you press the gyro button, there's a
16 little status indicator on that button that
17 lights up. The gyro mode would be displayed here
18 with instructions on how to use it. Present
19 steering mode would indicate gyro. On the status
20 panel you would have your control power, your
21 pump on indicator, and the auto-pilot would be
22 lit on both sides.

23 Q What happens when you try and steer the vessel
24 while using the steering wheel while in gyro?

25 A Nothing. The wheel has no affect.

1 Q Why is that?

2 A The helm mode of steering is completely
3 isolated from the system when you're in gyro
4 mode.

5 Q So it's, the wheel is up; just disconnected?

6 A Electrically, it's disconnected.

7 Q Would there be any indication to someone
8 trying to steer that nothing was happening.

9 A You turn the wheel and the rudder would not
10 follow the wheel.

11 Q How would you place the tanker back into helm?

12 A Simply pressing the helm button.

13 Q Would you tell the jury where on this steering
14 unit there are rate of turn indicators?

15 (1846)

16 A There are two rate of turn indicators. The
17 one in the center of the CRT display and also on
18 your heading display on the alarm and heading
19 module along the top of the display.

20 Q And how many heading indicators do you have in
21 that console?

22 A Two. The top bar on the CRT and also the
23 heading display on the alarm and heading unit.

24 Q I want to go back for a minute. When you were
25 on gyro, you talked about the different areas

1 that you would notice that you were on gyro and
2 you pointed out the gyro button there on the
3 function panel.

4 A Yes.

5 Q And you also pointed out several places on the
6 CRT board, the television screen type area.

7 A Right.

8 Q Could those be dimmed down also?

9 A The status lights on the gyro panel can be
10 dimmed down and the CRT can be dimmed down
11 separately.

12 Q And could you completely take off or remove
13 from the CRT the bottom language down there that
14 talks about the gyro mode and the rest of that
15 information?

16 A By pressing the page button twice, the
17 instructions down here disappear to clean up the
18 screen.

19 Q And then how would you be able to tell that
20 the vessel was on gyro if you did that?

21 A It tells you that the gyro mode of steering
22 and also the order indication up here.

23 (1970)

24 Q Now, when you came aboard, did you come aboard
25 on April 14th, 1989 the Exxon Valdez?

1 A Yes, I did.

2 Q Why did you come aboard that day?

3 A To inspect the operation of the SRP-2000.

4 Q What did you inspect while you were aboard
5 that day?

6 A We tested the SRP-2000 in all modes, all
7 control modes, of steering.

8 Q Were there any problems with the SRP-2000 when
9 you checked it that day?

10 A None.

11 MR. COLE: I have nothing further. Oh, could
12 I just ask one question? I'm sorry.

13 THE COURT: Well, I'll let you do it this
14 time.

15 Q I'm showing you what's been marked for
16 identification as Plaintiff's Exhibit 96. Do you
17 recognize that?

18 A Yes. It's part of the operating manual.

19 Q For what?

20 A For the SRP-2000.

21 Q And does that accompany the SRP-2000 when it's
22 installed?

23 A Normally, yes.

24 MR. COLE: I'm would move for the admission of
25 Plaintiff's Exhibit 96.

1 MR. MADSEN: Your Honor, I guess I'd object
2 because we got a big huge manual here and I have no
3 idea what possible relevance this thing has to why
4 we're here. But I just don't see the relevance of the
5 full operating manual.

6 THE COURT: Objection overruled.

7 EXHIBIT 96 ADMITTED

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

9 THE COURT: Mr. Purden indicated number 100.
10 Did you...

11 MR. COLE: I thought it was 96.

12 THE COURT: Is 100 on the table? Number 100.

13 MR. CHALOS: I had something -- oh, that one.
14 Okay that's 100.

15 MR. COLE: Oh, that would be the function
16 indicator.

17 Q (Mr. Andresen by Mr. Cole:) Is that a true
18 and accurate representation?

19 THE COURT: I didn't mean to give you a clue;
20 I thought you had already identified it.

21 MR. COLE: I just wanted to move it's
22 admittance.

23 THE COURT: Any objection to 100?

24 MR. CHALOS: No.

25 THE COURT: 100 is admitted.

1 EXHIBIT 100 ADMITTED

2 (2056)

3 CROSS EXAMINATION OF MR. ANDRESEN

4 BY MR. MADSON:

5 Q Mr. Andresen?

6 A Right.

7 Q You've explained to the jury a number of
8 details about the steering console on the Exxon
9 Valdez. Is that whole unit which you called or
10 described as the SRP-2000, what is that?

11 A SRP-2000 that's the whole steering console.

12 Q Your company manufactures these for tankers
13 other than Exxon Company, I presume.

14 A Yes.

15 Q How many of them are in existence?

16 A Oh, roughly, 150-200.

17 Q And your job is to install and repair, if
18 necessary, these units?

19 A Yes.

20 Q Does that take you around the country, around
21 the world or anything like that?

22 A Yes.

23 Q So you are very familiar with them, right?

24 A Yes, I am.

25 Q Do you have anything to do with the design of

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these units?

A No. I had nothing to do with the design.

Q Would you say, sir, though that from your experience with them, they are designed for an operator that, in other words, they are simple enough for an operator to use them?

A Yes, they are.

Q You don't need an advanced college degree or something to push a button on the panel there, right?

A I would expect not, no.

Q Now, you talked a lot about the two systems; the helm mode and the gyro mode. Those are the two systems you're talking about other than the four that you said the unit is capable of?

A Yes.

Q What are the other two?

A Well, there's the emergency mode. The emergency mode and also a remote mode.

The emergency mode is a simple toggle switch that, when you push it, the rudder moves.

Q What situations would arise where somebody would want to use that emergency mode?

A If the auto-pilot failed or if the helm itself failed for any reason, they would always go to

1 the emergency steering. They would always have
2 that available to them.

3 Q Need I presume the helmsman or the ship's
4 officer would know that something is wrong? I
5 mean, how would you know the helm mode failed,
6 for instance?

7 A Well, if you -- on the Exxon Valdez, with the
8 steering failure alarm, if they position the
9 wheel and the rudder does not follow up, the
10 steering failure alarm will go off and let them
11 know. There's also various indicators on the
12 alarm and heading module that may alarm for any
13 given failures.

14 Q All these alarms and all this information is
15 designed, is it not, to give the operator some
16 feedback as to more or less what is going on;
17 tell him what function he is doing and what the
18 ship is doing. This sort of thing?

19 A Yes.

20 (2220)

21 Q Now, you mentioned the gyro rate of turn
22 indicator. What exactly is that? Let's assume,
23 again, let me back up.

24 When you talk about gyro mode, that's
25 automatic pilot, is it not?

1 A Yes, it is.

2 Q Let's see as simple as we can. Let's say,
3 when it's off automatic pilot, that means the
4 ship will stay on a certain course without the
5 helmsman having to turn the wheel. Is that
6 correct?

7 A Yes. The computer controls the course.

8 Q If the tide is coming in, let's say, abeam of
9 the ship, it will still correct for that?

10 A Yes, it will.

11 Q Currents?

12 A Yes. Depending on the operator selectable
13 functions of the auto-pilot controls.

14 Q What do you mean by that?

15 A There is, in the gyro mode, there's a weather
16 adjust function on the bottom of the page that
17 the operator can select different values to
18 control a tighter course or control a little bit
19 looser course to minimize wear on the steering
20 gear.

21 Q This requires some advance information, does
22 it not, about tides, winds, currents. Things
23 like this?

24 A Yes.

25 Q Weather, all kinds of weather conditions?

1 A Yes.

2 Q And you more or less program it in to this?

3 Is that correct?

4 A Yes.

5 Q Now you said, regardless if it's on the helm

6 mode or the gyro or automatic pilot mode, if the

7 wheel is turned, there some indication on the

8 console that tells you the rudder is turning?

9 A Yes.

10 Q And what, again, is that, sir?

11 A On the rudder angle indicator, the bottom

12 display, the...

13 Q When you say display, that's?

14 A The bottom bar graph.

15 Q That's on the screen.

16 A On the screen, yes.

17 Q I think you called it CT...

18 A CRT.

19 Q CRT. Correct. That's like a computer screen,

20 right?

21 A Yes. It has a marker on the bottom of the

22 graph that moves with the rudder.

23 Q Now, do you have other rudder indicators

24 available that would still show the rudder angle

25 if it's on auto-pilot as opposed to the helm mode

1 that are separate and apart from that? I mean on
2 the vessel?

3 A Yes, there are.

4 Q What are those?

5 A There's a three-faced rudder angle indicator
6 on a console directly above, directly above and
7 slightly to the right of the steering console and
8 on a console above the windows there's another
9 rudder angle indicator.

10 Q Let's see. I can't find what I'm looking for,
11 but I guess I won't need it.

12 Is that the kind of a round unit that's right
13 overhead?

14 A Yes.

15 Q Easily visible from the bridge of the ship?

16 A Yes.

17 Q How about on the bridge wings themselves? Are
18 there other indicators out there?

19 A There are two indicators on the bridge wings
20 outside the doors.

21 Q And just so we understand from your testimony,
22 sir, regardless if it was on auto-pilot or helm,
23 the rudder indicators should reflect what the
24 rudder is doing?

25 A Yes.

1 Q Now, so the two different modes, the helm and
2 model or gyro mode, you indicated it's quite
3 simple to go from one to another, right?
4 A Yes, it is.
5 Q If you're on auto-pilot and you want to go
6 helm, you push a button.
7 A Yes.
8 Q Does the display that's down below go away
9 from the screen?
10 A No. The display on the screen just changes to
11 reflect the change in modes. It changes from, if
12 your in auto-pilot, it changes to a helm mode.
13 Q Okay. Now, right. I can see it from here,
14 but maybe the jury can't. What does that top
15 line say there?
16 A Well, for this representation, this top line
17 here says gyro mode.
18 Q Okay. You push the button, assuming it's in
19 gyro mode. Somebody comes along, pushes the
20 button and says I want to go to helm mode. What
21 change is there?
22 A This display changes and this says helm mode.
23 Then there's some instructions for the use of the
24 helm mode that tell you to steer by the wheel.
25 And then present steering mode says helm below

1 that.

2 Q And if you turn the wheel then, the wheel will

3 stay in that position. In other words, you turn

4 it half a turn. Take your hands off. Now, we're

5 in helm mode. And it stays there.

6 A Yes.

7 Q It doesn't center itself?

8 A No, it doesn't.

9 Q On the other hand, if you're in the gyro or

10 auto mode, you turn the wheel, nothing happens.

11 A Turn the wheel the rudder does not follow the

12 wheel.

13 Q Does the feel of the wheel remain the same in

14 both?

15 A Yes, it does.

16 Q In other words, you can't tell when you're in

17 gyro because it spins easier or something like

18 that?

19 A No.

20 Q Again, this system is designed to be as, let's

21 say, as simple as possible. In other words, to

22 give you the information in a very simple manner.

23 A Yes, it is.

24 Q And you should go from one to the other in a

25 very simple manner, by pushing a button.

1 A Yes.

2 (2521)

3 Q You testified about the response that the
4 rudder would have in response to a wheel turn. I
5 think you said, if you turn the wheel, let's say
6 10 degrees right, it takes about a second for the
7 rudder to actually get to 10 degrees?

8 A No, no. It starts to move, the initial
9 movement, starts in the first second. And then
10 it moves at a rate of about 2.8 degrees per
11 second. So the time to get to 10 degrees would
12 be roughly three seconds or little bit more.

13 Q Say a minimum of three seconds, maximum of
14 four seconds. Something like that?

15 A Yes, something like that.

16 Q But it's fairly rapid response, right?

17 A Yes.

18 Q Are you familiar, sir, with the
19 characteristics Exxon Valdez and how it does turn
20 under different conditions; of load and things
21 like this?

22 A Some what.

23 Q Let me ask you a more or less hypothetical
24 question.

25 Assuming it's the Exxon Valdez and you are at

1 11.75 knots and about a 57 foot draft, it's
2 laden, and you put a 10 degree right rudder turn
3 on there. Do you know what the angle turn it
4 would take? In other words, say, how many
5 degrees per minute for this ship turn?

6 A I can't answer that.

7 Q Now, another thing you said which confused me
8 a little bit and that's when you said that if
9 the, you're in helm mode now, if the wheel is
10 turned and the rudder then does not respond, an
11 alarm goes off.

12 A Yes.

13 Q Let's say you turn 5 degrees. The rudder goes
14 5 degrees. Then no alarm will go off.

15 A No.

16 Q You do 10 degrees. No alarm will go off. As
17 long as the rudder goes 10 degrees.

18 A As long as the rudder is following normally.

19 Q That's simply a way, is it not, to indicate to
20 somebody that, your rudder, there's something
21 wrong with your steering because the rudder isn't
22 working right?

23 A Yes.

24 Q What about if you, let's say, you went to 10
25 degrees and came back again. In other words, put

1 counter rudder on it. That wouldn't make any
2 affect, would it?

3 A As long as the rudder is following normally,
4 it won't alarm.

5 (2659)

6 Q Is only to make sure the rudder is following.

7 A Yes.

8 Q In other words, it has nothing to do with an
9 order that's given. In other words, if somebody
10 says turn 10 degrees right rudder, no alarm goes
11 off if the helmsman doesn't move the wheel to 10
12 degrees right rudder.

13 A No.

14 Q I believe that's all I have. Thank you.

15 MR. COLE: No questions.

16 THE COURT: Your excused, sir.

17 (2659)

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MR. COLE: The next witness will be Karl
21 Groth.

22 THE CLERK: Sir, you should find a microphone.
23 I think it may have fallen down on the ground. It's
24 going to be a wire coming off of that box right there.
25 That's it. If you could attach that to your tie,

1 probably would be best, and remain standing. Raise
2 your right hand.

3 (Oath administered.)

4 A I do.

6 KARL WILLIAM GROTH

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

9 THE CLERK: Sir, would you please state your
10 full name and spell your last name.

11 A My name is Karl William Groth, G-r-o-t-h.

12 THE CLERK: Carl with a "C"?

13 Q With a "K".

14 THE CLERK: And your current mailing address?

15 A 4723 132 Place South East, Snohomish,
16 Washington.

17 THE CLERK: And current occupation?

18 A Marine service engineer.

19 THE CLERK: Thank you.

20 (2754)

21 DIRECT EXAMINATION OF MR. GROTH

22 BY MR. COLE:

23 Q Mr. Groth, who do you work for?

24 A I work for Sperry Marine.

25 Q How long have you worked for them?

1 A Almost 12 years now.

2 Q What are your responsibilities for them?

3 A Repair, service and installation of the
4 equipments that we manufacture.

5 Q Were you asked on June 21st, 1989 to go out
6 and check the steering console on the Exxon
7 Valdez?

8 A Yes, I was.

9 Q What did you do while you were out on the
10 Exxon Valdez that day?

11 A I'm sorry.

12 Q What did you test when you were out on the
13 Exxon Valdez?

14 A I tested the steering gear, steering controls,
15 and all modes of operation.

16 Q Did you test to see how long it took to go
17 from a hard right to a hard left?

18 A Yes, I did.

19 Q Would you describe for the jury what that test
20 entailed and what the results were?

21 A The test entails bringing the rudder hard in
22 one direction, or to the stop in one direction,
23 which is at 35 degrees. Spinning the wheel
24 rapidly and starting a stop watch and stopping
25 the stop watch when it crosses the 30 degree mark

1 on the other side of zero.

2 Q So that would be a total of a 65 degree shift?

3 A Yes.

4 Q And did you do that on this particular

5 occasion?

6 A Yes, I did.

7 Q And what was the time that it took?

8 A As I remember, the starboard was about twenty-

9 seven and a half seconds, 27 seconds, and the

10 port system, I believe, was around 26 seconds.

11 Q And these consoles, is there a way to change

12 the tension of the wheel at all?

13 A Yes, there is.

14 Q And would you be able to describe was this an

15 easy, a normal, or a heavy tension on the

16 steering wheel?

17 A My recollection was that it was very easy.

18 Q Did you find anything wrong with the steering

19 mechanism of the Exxon Valdez that day?

20 A No, nothing at all.

21 Q I have no further questions.

22 CROSS EXAMINATION OF MR. GROTH

23 BY MR. CHALOS:

24 Q Just a few questions, Mr. Groth. When you

25 went out to the vessel, where was she?

1 A She was at Naked Island.

2 Q Was she in a light condition?

3 A I don't know. She had been there for some
4 time, but I can't say that she was necessarily in
5 a light condition.

6 Q In any event, she wasn't loaded by the time
7 you got out there?

8 A She did not appear to be, no.

9 Q And then when you tested the rudder and the
10 steering gear, the vessel was not moving was it?

11 A No, sir, it was not.

12 MR. CHALOS: No further questions, Your Honor.

13 THE COURT: Mr. Cole?

14 REDIRECT EXAMINATION OF MR. GROTH

15 BY MR. COLE:

16 Q Do you have to be running the vessel to be
17 able to test the steering mechanism?

18 A It would depend upon what test, but, no, not
19 necessarily.

20 MR. COLE: I have nothing further.

21 THE COURT: All right. You can step down.

22 May the witness be excused?

23 MR. CHALOS: Yes, Your Honor.

24 MR. COLE: This witness may, it is my
25 understanding, is the next one they would like to

1 remain under subpoena, but he may go.

2 MR. CHALOS: You mean Mr. Andresen...

3 THE COURT: You mean the preceding one?

4 MR. CHALOS: No.

5 THE COURT: The next one or the preceding one?

6 MR. CHALOS: No, the preceding one, Mr.
7 Andresen, but we no longer need him. We just wanted
8 him to stand by when this witness testified.

9 THE COURT: So, he's excused from further
10 participation?

11 MR. CHALOS: Yes, Your Honor.

12 THE COURT: Okay, he's free to go.

13 (2958)

14 (Witnesses excused.)

15 THE COURT: You can call your next witness.

16 MR. COLE: At this time we would call Captain
17 Stalzer.

18 THE CLERK: Sir, you'll find a microphone
19 right on the top of that picture there. Attach that to
20 your tie and remain standing and raise your right hand,
21 please.

22 (Oath administered.)

23 A I do.

24 MICHAEL A. STALZER

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

1 first duly sworn upon oath, testified as follows:
2 THE CLERK: Sir, would you please state your
3 full name, and then spell your last name?
4 A Michael Anthony Stalzer. S-t-a-l-z-e-r.
5 THE CLERK: And your current mailing address?
6 A 3 Garden Court, Conroe, Texas 77304.
7 THE CLERK: What was the name of the town?
8 A Conroe, C-o-n-r-o-e.
9 THE CLERK: And your current occupation?
10 A I'm a captain with the Exxon Shipping Company.
11 THE COURT: If you'd try to speak up -- you
12 seem like you have soft voice, we might hear you
13 better, and we'll turn the mike on, too.
14 You may inquire, Mr. Cole.
15 DIRECT EXAMINATION OF MR. STALZER
16 BY MR. COLE:
17 Q Capt. Stalzer, would you like some water?
18 A Yes, please.
19 Q Capt. Stalzer, how long have you been in the
20 maritime industry?
21 A I entered the United State Merchant Marine
22 Academy in 1969.
23 Q And where is that located?
24 A That's located in New York.
25 Q What positions -- what licenses have you

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1 acquired since you graduated, I assume, from that
2 academy?

3 A Yes, I did. Upon graduation I received a
4 third mate's license, ocean, any tonnage; a third
5 assistant engineer's license, steam and diesel
6 any horsepower; and a third class radio
7 operator's license.

8 In 1975 I received my second mate's ocean
9 license and open oceans, any tonnage.

10 In 1977 my chief mate's license, upon oceans,
11 any tonnage.

12 In 1979 my master's license upon oceans, any
13 tonnage.

14 In 1980 I received my Prince William Sound
15 Pilotage from Cape Hinchinbrook to Rocky Point,
16 60,000 gross tons.

17 And in 1981 Prince William Sound Pilotage Cape
18 Hinchinbrook to Rocky Point, unlimited tonnage.

19 In 1988 I received a general radio telephone
20 operator's license.

21 I think that's all the licenses that have to
22 do with the maritime industry.

23 Q Did you go through any special training while
24 you were acquiring each of those licenses?

25 A Other than the training -- the formal training

1 received at the United States Merchant Marine
2 Academy I trained on my own. I believe I used
3 the Seaman's Church Institute study material and
4 other publications that were available for the
5 upgrade. For my upgrade of my Prince Williams
6 Sound Pilotage from 60,000 gross tons to
7 unlimited I attended a Marine Safety National's
8 simulator training.

9 Q What's that Marine National's Simulator
10 training?

11 A That's a company that's in New York that
12 provides simulator training. It's a computer
13 simulation.

14 Q When did you begin working for Exxon Shipping
15 Company?

16 A In July of 1973.

17 Q And have you worked with them continuously
18 since then?

19 A Yes. I have.

20 Q You indicated that you got your master's
21 license in 1979, is that correct?

22 A That's correct.

23 Q Did you sail immediately as a master on tanker
24 ships with this license?

25 A No. I was promoted to master and sailed for

1 the first time as master in 1981.

2 Q What was it about becoming a master that made
3 it attractive for you to seek out this license?

4 A Well, after going through the United States
5 Merchant Marine Academy jobs were somewhat
6 limited in 1973 when I graduated and I had few
7 options. One of the options was third mate with
8 Exxon Company. And I selected that option, so I
9 worked my way through the ranks to achieve a
10 master.

11 Q What is -- why did you pick oil tankers -- a
12 tanker like the Exxon Shipping Company? You
13 could have picked others?

14 A Well, not really in 1973. The maritime
15 industry was tight. Jobs were not -- were
16 somewhat scarce. I had an offer from the Exxon
17 Shipping Company as third mate, an offer from the
18 Army Corps of Engineers and an offer from the
19 University of Michigan for graduate study work.
20 And I selected Exxon Shipping Company.

21 Q Well, what was it about becoming a master that
22 made you get that license? You could have
23 stopped at third mate, or second mate, or a chief
24 mate's license. Is there anything about that
25 particular position?

1 A No. I was trying to achieve all that I could
2 achieve and that is the chain of command, or --
3 and the career path for an ocean going licensed
4 deck officer.

5 Q Would you give the jury an idea of how many
6 different tankers you've been a master on while
7 working for Exxon Shipping Company?

8 A In 1981 I was master of the Exxon Baton Rouge
9 for approximately one month and two trips.

10 I was then transferred to the Exxon Benicia,
11 and remained as master of the Exxon Benicia until
12 1986 at which time I was assigned to Hull 438,
13 which was to become the Exxon Valdez down in
14 NESCO, and the Hull 439, which was the Exxon Long
15 Beach under construction.

16 In March of 1987 I sailed on the Exxon Valdez
17 as master for the first time and I remained
18 assigned there. I had two other instances where
19 I sailed on other Exxon ships.

20 In December 1986 there was a -- there was a
21 need for a master to take the Exxon Houston for
22 one trip, which I left San Diego and went up and
23 did that.

24 And, following the grounding I was on the
25 Valdez and was taken off the Valdez.

1 I did another fill-in job on the Exxon Baytown
2 in May of 1989.

3 Q Well, you were with Exxon Shipping Company did
4 you receive any special training in the area of
5 navigation or handling vessels?

6 A Yes. Prior to being promoted to being master
7 I was sent to Port Ravelle (ph) Marine Research
8 and Training Facility in Grenoble, France for --
9 that's a school for ship masters.

10 The only other training or discussion of
11 navigation took place through some of the
12 masters' conferences. Occasionally a
13 professional topic would come up between the
14 years of 1981 and 1990.

15 Q Would you explain to the jury what the ship
16 simulator courses that you've done -- what's the
17 purpose of those?

18 A The purpose is to teach principles concerning
19 ship handling. In Grenoble, France these are
20 scale models of vessels that we ride in so that
21 their performance is identical to the performance
22 of a normal ship, except that their response is
23 faster, because the size is reduced. So, we --
24 they taught the principles like ship handling
25 characteristics. That's what the primary purpose

1 of that school was.

2 The simulator, then -- the size simulator was
3 a similar type situation. Other than that, at
4 the masters conference those were just
5 discussions of the corporate policy and how they
6 intended us to carry those out.

7 Q What were these masters' conferences that
8 you've talked about?

9 A These are master's -- master or officer
10 conference. They have been generally held
11 yearly, but not always yearly, since the early
12 80s through 1990.

13 Q In any of these conferences was the topic of
14 alcohol use or possession or detection discussed?

15 A I believe it was, yes.

16 Q Did you receive any formal training in alcohol
17 detection as a master?

18 A I recently received some formal training.

19 Q Prior to 1989?

20 A In October of '89, yes.

21 Q But it was after. Prior to March of 1989?

22 A The -- as I recall, in 1985 at one of these
23 masters' conference they had a drug and alcohol
24 discussion presentation of about a half an hour
25 or so. And that was primarily to -- how to

1 detect the use of drugs or alcohol in
2 individuals.

3 Q These master conferences, were they required
4 attendance by Exxon Shipping Company for all
5 masters?

6 A Some of them were, yes.

7 Q Do you remember of that particular one where
8 you were given the drug and alcohol course --
9 whether that was one of those that was required?

10 A I don't recall.

11 Q At some points prior to March of 1989
12 toxicology kits were placed on the Exxon Valdez.
13 Do you remember that?

14 A I don't believe I was there when they were
15 placed on board, no. But, yes. They were on
16 board.

17 Q Were you made aware that they had been placed
18 on board?

19 A Yes. I was.

20 Q What was your understanding of the reason for
21 that?

22 A My understanding was that in late 1988 the
23 regulations were changing and employers were
24 required to be able to have test kits available
25 for cross testing.

1 Q Would you tell the jury what responsibilities
2 a tanker captain has when he is in command of a
3 vessel? What are his general responsibilities?
4 A His general responsibilities are that he's
5 responsible for the safety of the crew, the ship,
6 the cargo and for the protection of the
7 environment.
8 Q What risks are involved with being a tanker
9 captain?
10 A I'm not exactly sure I understand your
11 question.
12 Q Are there any risks to the crew, the ship, and
13 the cargo that are inherent in the job of being a
14 tanker captain?
15 A I don't know if they're inherent in the job.
16 You have the same risks as any other ship master
17 operating a vessel.
18 (Pause)
19 Q I'm showing you what's been marked for
20 identification as Plaintiff's Exhibit 13. Would
21 you take a look and page through that and see if
22 you recognize that.
23 A Yes. I think I recognize it.
24 Q What is that?
25 A Well, there are several documents here. One

1 is the secure initiative guidelines. There's a
2 copy of the drug and alcohol policy of Exxon
3 Shipping company. It appears to be one that was
4 in effect in March of 1989. There's some
5 guidelines by Exxon Shipping Company for masters.

6 Q Does that appear -- do you recognize that as
7 being present on your ship -- that document or a
8 copy of that document being aboard your ship?

9 A As I recall copies of this document, it's on
10 the ship, or were on the ship the last time I was
11 there.

12 MR. COLE: I would move for the admission of:
13 what's been identified as Plaintiff's Exhibit 13?

14 MR. MADSON: I object, Your Honor. I don't
15 know about all of it, but at least the first page here
16 seems to refer to ships that are sailing to and from
17 the United States to foreign ports and it has to do
18 with customs initiative agreement. I don't think
19 that's relevant to anything we're doing here today.

20 It's all attached as one document here, Your
21 Honor, and that's -- but there seem to be two separate
22 things, Exxon shipping policy regarding alcohol, and
23 the other one on search guidelines to and from foreign
24 ships -- or, ports, rather. So, maybe the one I don't
25 have an objection to and the other I do. If we can

1 separate 'em.

2 THE COURT: Mr. Cole, what about the first
3 one?

4 MR. COLE: The first one just goes to the
5 policy of searching rooms for drugs and illegal
6 substances.

7 MR. MADSON: Well, again, Your Honor, this
8 thing seems to say relation to the United States
9 Customs Sea Carrier Initiative Agreement. "Regularly
10 search vessels for illegal drugs prior to departure to,
11 and in route to United States."

12 I think we were in the United States at all
13 times here. I don't think there's any relevance to
14 foreign travel, here. That's irrelevant.

15 EXHIBIT 13 ADMITTED

16 THE COURT: Objection overruled. It's
17 admitted.

18 Q (Capt. Stalzer by Mr. Cole:) Capt. Stalzer,
19 I've placed in front of you a document. Do you
20 recognize that document?

21 A It appears to be a copy of the Bridge and
22 Organization manual.

23 Q I'd like to ask you a few questions about that
24 Bridge Manual.

25 THE COURT: Is there an exhibit number on

1 that?

2 MR. COLE: I'm sorry, Your Honor.

3 Q (Capt. Stalzer by Mr. Cole:) Would you read
4 the exhibit number on the back of that?

5 A Exhibit 14.

6 (Tape: C-3629)

7 (3)

8 Q That Bridge Manual, or a copy thereof, was
9 that required to be kept on the bridge of the
10 Exxon Valdez?

11 A I believe there was a copy located on the
12 bridge of the Exxon Valdez.

13 Q What is the purpose of having a Bridge Manual
14 aboard an oil tanker, or in this case the Exxon
15 Valdez?

16 A Do you want specifically what it states in
17 here, the purpose, or generally?

18 Q Or your understanding, if it's different.

19 A Well, the purpose is to assist the master and
20 deck officers in planning for the safe passage of
21 their vessel.

22 Q And is that how -- what you understood the
23 purpose of it -- your own personal opinion as to
24 the purpose of that Bridge Manual?

25 A Yes. It is.

1 Q On page 1 it talks about the navigational
2 policy. Would you explain to the jury what is
3 meant by the first paragraph there?

4 MR. MADSON: Well, just a minute, Your Honor.
5 I think I'll object to his interpretation of what it
6 means. I think what it means speaks for itself, the
7 document. Have him read it.

8 THE COURT: All right.

9 Q (Capt. Stalzer by Mr. Cole:) Would you read
10 what the first sentence says as to what is the
11 navigational policy for Exxon Shipping Policy?

12 A The first sentence of that policy as stated in
13 this manual says, "The prime objective when
14 navigating company vessels is the safety of
15 personnel, vessel and cargo."

16 Q And what does it go on to say, then, after
17 that?

18 A The second sentence, "Speed and economy, while
19 important, are secondary to safety
20 considerations."

21 Q Was that your understanding that safety was
22 first when you were the captain of the Exxon
23 Valdez?

24 A My understanding of the policy, yes. That's
25 correct. Safety was first.

1 Q Who is responsible for the safe navigation of
2 an Exxon tanker ship?

3 A The master is responsible. Each watch officer
4 will share in that responsibility when they're
5 assigned on watch.

6 Q What navigational responsibilities does a
7 master have toward making sure that watch
8 officers are aware of their duties and their
9 responsibilities?

10 A As stated in the manual -- I'll have to find
11 it.

12 Q If I could direct your attention page 5, the
13 first sentence on 2.1.4.

14 A That states that the master should establish
15 the bridge organization as prescribed in Section
16 8 of this manual, and ensure that all watch
17 officers are aware of their duties and
18 responsibilities.

19 Q Section 8 deals with the different types of
20 watch commands that are set out in this Bridge
21 Manual.

22 A Section 8 is the bridge organization, yes.

23 Q Are there any times when a master is required
24 to be on the bridge?

25 A I believe the manual states that there is.

1 Q Would you read for the jury when those times
2 are?

3 (Pause)

4 A Section 2.1.5 states, "Within the limitations
5 outlined in paragraph 2.1.5(h) below, the master
6 must be on the bridge whenever conditions present
7 a potential threat to the vessel, such as (a)
8 passing in the vicinity of shoals, rocks, or
9 other hazards which represent any threat to
10 navigation; (b) restricted visibility; (c) high
11 traffic density; (d) heavy weather; (e)
12 entering/leaving port; (f) docking/undocking; (g)
13 shifting ship within a harbor area, including dry
14 dock shifting; and (h) while the master remains
15 responsible at all times conditions will arise
16 which require the master to spend prolonged
17 periods on the bridge, possibly reducing his
18 alertness and efficiency. In such circumstances
19 that master should consider delegating
20 navigational time responsibilities to the senior
21 officer to allow sufficient time for adequate
22 rest.

23 Q Could ice be considered a hazard which
24 represents a threat to the safety of a vessel the
25 size of the Exxon Valdez?

1 A If it's in sufficient quantity and size and
2 around the vicinity of the vessel, it could.

3 Q Are there times when a master should require
4 that a vessel's position be plotted more often to
5 ensure the exact location of that vessel?

6 A I'm not sure what you mean more often than
7 what? While out at sea?

8 Q Yeah. When you're out at sea.

9 A Different situations require a different
10 frequency for plotting fixes, yes.

11 Q Why is that?

12 A Because you would like to know, and depending
13 on the circumstance and where the vessel is,
14 accurate position to determine where you're gonna
15 proceed to. You know, you're determining
16 positions as they go along.

17 (Pause)

18 Q Why is the additional -- I'll retract that.
19 What is the required procedure in the Exxon
20 manual as far as what the manning requirements
21 for the pilot on board -- the manning
22 requirements on the bridge with a pilot on board?

23 A I'd have to look them up. Do you...

24 Q I can direct your attention to page 37-41 of
25 the manual.

1 A 6.2.1 is the manning requirements with a pilot
2 on board, which states, "Environmental and
3 traffic condition anticipated during pilotage
4 should be identified as early as possible in
5 assisting the master in determining the
6 appropriate watch type to be set. In all
7 circumstances a careful check of the vessel's
8 position, course and speed must be maintained.
9 "Additionally, plotting the targets on the
10 radar should be considered to satisfy a legal
11 precedent. The officer of the watch must not
12 hesitate to inform the master or the pilot,
13 whenever he has any doubts about the safe
14 navigation of the vessel."
15 Q If the vessel had a pilot on board and was
16 traveling through an area designated as watch B,
17 which we will get into, would the pilot be
18 considered one of the people?
19 MR. MADSON: Your Honor, I'll object. It's a
20 leading question.
21 MR. COLE: I'll rephrase it.
22 Q (Capt. Stalzer by Mr. Cole:) Would you
23 explain to the jury what the four different types
24 of watch conditions are that are set out in the
25 Bridge Manual?

1 A Generally, or...

2 Q Generally.

3 A ...specifically?

4 Generally, there are four types of watch
5 conditions for -- that we use in Exxon Shipping
6 Company which we use as guidelines for
7 determining how many people to have on the
8 bridge, depending on their locations about the
9 vessel.

10 Q Would you set out just briefly what each one
11 entails, the distinction between A, B, C and D?

12 A Watch condition A is to be used in situations
13 such as open water with clear visibility, or in
14 restricted waters with clear visibility, little
15 or no traffic.

16 Watch condition A requires that the watch
17 officer be present on the bridge and that there's
18 a seaman readily available in the close vicinity
19 of the navigation bridge.

20 Q Seaman being an able-bodied seaman?

21 A Yes. That's correct.

22 Q And the watch officer meaning any mate?

23 A That's correct. Either a third mate or a
24 second -- a licensed deck officer.

25 Q And it only has to have one person available -

1 - one mate on the bridge?

2 A That's, as stated by watch condition A,
3 correct.

4 Q What type of areas are we talking about for
5 watch A? Give the jury an example of what a
6 watch A system would be?

7 A Oh, as stated in the manual, "open waters with
8 clear visibility." That would be, for example,
9 out at sea.

10 Q How about watch B?

11 A Watch type B is used in situations such as
12 open waters with restricted visibility, or when
13 entering or leaving port with a reduced
14 visibility, or in restricted waters with
15 restricted visibility with little or no traffic.

16 The personnel that are required there are two
17 persons on the bridge with a look out posted.
18 And the helmsman needs to be stationed in the
19 bridge at the wheel ready to take over.

20 Q Two persons on the bridge -- two licensed
21 persons?

22 A That's correct.

23 Q Does it indicate...

24 A Two officers.

25 Q ...whether one of them should be a senior deck

1 officer or the master?

2 A Normally the officer complement is the master
3 and one watch officer.

4 Q Now, how about watch C?

5 A Watch type C is used in situations such as
6 restricted waters with clear visibility, or high
7 density -- and high density traffic, or when
8 entering or leaving port with clear visibility,
9 regardless of traffic.

10 Q Could you give the bridge standing
11 requirements for that?

12 A The personnel required are two officers on the
13 bridge with a look out posted, and again, the
14 helmsman needs to be stationed where that he can
15 engage manual control.

16 Q What are the master's responsibilities on that
17 watch?

18 A He's the master, or the senior deck officer
19 would be in charge of the watch, coordinate and
20 overall supervise the navigation of the vessel.

21 Q What would the watch officer's
22 responsibilities be?

23 A Well, generally, he would be in charge of the
24 navigation and communication.

25 Q When you say navigation, does that mean

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plotting positions?

A That's correct. He -- his -- in that situation his -- the way I use him, is he will plot positions, and that will help me navigate the vessel and confirm my own assessment of the vessel's position. But, the watch officer is the one that generally plots the position.

Q During a maneuver in a watch type C situation, who watches over the rudder direction, or the heading of the tanker?

A In watch type C it is the responsibility of the helmsman to watch over that and assume of the watch officer to check that the commands are carried out properly and the heading is being maintained. And the master will also -- will check on that. If there's a pilot on board, he would check to make sure that the heading is maintained and that the rudder angle commands are followed.

Q If a pilot was on board and you entered a watch type C situation, would the pilot be considered one of the two people that are required -- one of the two licensed people that were required under the Bridge Manual, or would he be a separate person?

1 A I would not consider him as part of this watch
2 type C, no.

3 Q I'd like to ask you some questions about the
4 Exxon Valdez.

5 When was the Exxon Valdez completed? When was
6 it built? When was it done being built?

7 A Well, it was delivered in December of 1986 and
8 was built in the years prior to that.

9 Q Do you have any idea how much it cost to build
10 that vessel?

11 A I think it cost about 150 million dollars.
12 (548)

13 Q And what was your involvement in the
14 construction of the vessel? Any?

15 A Yes. I was assigned out in San Diego for the
16 first time in October of 1986 for sea trials for
17 Hull 438 to become the Exxon Valdez. So, I
18 participated in the final check out of equipment
19 and the structural checks on both the Exxon
20 Valdez and some of the equipment on the Exxon
21 Long Beach.

22 Q How did the Exxon Valdez compare with other
23 tanker vessels that you had been the master on
24 previously?

25 A Pardon me?

1 Q How did it compare with other tanker vessels
2 that you had been the master on previously?

3 A The design was similar to the design of the
4 Exxon Venetia, however the construction was done
5 a little differently. NESCO built it in a module
6 type construction, as I understand it.

7 Q How about the navigational equipment? Was it
8 superior, or inferior to equipment you'd had on
9 other vessels?

10 A I don't know that it was superior or inferior.
11 It was our standard amount of equipment that we
12 supply with all of our Exxon vessels as far as
13 I'm aware.

14 Q Would you give the jury an idea of the length
15 of this vessel?

16 A It's approximately 987 feet long.

17 Q And the -- the width, or the breadth?

18 A It's about 166 feet wide.

19 Q What is the common draft marks when it's
20 laden? Are they...

21 A Fully loaded...

22 Q ...completely...

23 A Fully loaded down to the marks, she'll draw
24 about 64-1/2 feet.

25 Q And unladen?

1 A Well, ballast condition will vary, depending
2 on circumstances and the weather that you're in,
3 but the mean draft would be about 35 feet.

4 Q How much oil in terms of barrels could the
5 Exxon Valdez transport?

6 A 98 percent of tank capacity is approximately
7 1,485,000 barrels.

8 Q The cargo tanks -- there were five cargo tanks
9 on the Exxon Valdez. Is that correct?

10 A Five tanks across, correct.

11 Q Could you give the jury an idea of where the
12 oil would have been loaded, fully laden? Do you
13 recognize that picture there?

14 A Well, there appears to be six tanks across
15 there, not five.

16 Q Okay. Is there a tank behind the fifth cargo
17 tank? The slop tank?

18 A It's -- it's separate from five wings,
19 however, but in the space where five wings would
20 normally be, and the tanks are five across.

21 Q Okay. Well, just disregard the sixth one
22 there. The other five cargo -- are those
23 similar to the structure of the cargo carrying
24 capacity of the Exxon Valdez?

25 A Generally, yes.

1 Q And there's a port, a center, and a starboard
2 tank?

3 A Correct, and designated.

4 Q Would you identify for the jury which ones, if
5 it was fully laden, would be ballast tanks?

6 A Want me to...

7 Q Yes. Just put a B there.

8 (Pause)

9 A The fore peak would be a ballast tank.
10 If this is the five tanks across, the slop
11 tank's back here. Two and four wings are ballast
12 tanks. If you're looking at the four ply section
13 of the ship.

14 Q And the rear? The aft section? Is there a
15 ballast tank in the aft section?

16 A Yes. There's engine room wing tanks off the
17 engine room. This is the engine room below the
18 house, and the after peak is a ballast tank.

19 Q Thank you.

20 What's the purpose of ballast tanks?

21 A When the vessel is -- has no cargo in her, she
22 would ride very high, and without ballast in her
23 tanks, the propeller would not be properly
24 carried. There's some international regulations
25 that the U. S. is a party too, so we carry

1 ballast to keep her loaded and trimmed and
2 stable.

3 Q I'm going to show you a diagram and ask you to
4 explain the -- can you see that?

5 A No.

6 Q How about that?

7 A Yes. I can see that.

8 (Side conversation)

9 Q And just setting aside this area in the gyro
10 room, can you explain to the jury -- do you
11 recognize this diagram, first?

12 A It looks -- it looks like the diagram of the
13 Exxon Valdez.

14 Q The instruments that are in front of you on
15 the front bulkhead, would you explain what each
16 one of those are and how it works?

17 A Starting on the right you have the wind speed
18 and wind direction. And it's linked electrically
19 up to a weather vane with a little propeller on
20 it that gives you the speed.

21 This is a rate of turn indicator, and it's
22 linked to the gyros and will indicate a rate of
23 turn increase per minute.

24 This is a depth sounder. It -- it has scales
25 for feeder fathoms, and will show you the depth

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beneath the hull.

This is the doppler speed log, which give you speed through the water.

You have a engine tachometer, which will display the number of rpms that the engine is operating at.

You have a rudder angle indicator, which will indicate to the helmsman, the watch officer, the master, the pilot, anybody else there, that the angle that the rudder actually is at.

These two pieces -- this piece and this piece go together. They're part of the docking doppler.

Q What's a doppler?

A Well, it sends out a pulse. And there's a return from that pulse. And from that they determine the speed.

Now, that particular instrument can lock on either through the water, similar to the Sperry unit here. This is a Amitek (ph) unit. Or, it can receive the pulse from the bottom, in which case it's a bottom lock, and it gives you speed over the ground, as opposed to speed through the water.

And the last one here is a gyro repeater.

1 Q And that gyro repeater, it tells you the
2 heading of the vessel?

3 A It tells you the heading that the vessel is
4 on, correct?

5 Q And does it have a rate of turn indicator on
6 it, also?

7 A Yes. It does. These little dots here are
8 rate of turn. And if you're turning the right,
9 they rotate to the right. And if you're turning
10 to the left, the dots appear to rotate to the
11 left.

12 Q Would you explain the two radars that are
13 there. What type are those?

14 A Well, they're Raytheon radars. This one is a
15 10 centimeter and this one is a three centimeter.

16 Q And what's the difference between a 10
17 centimeter radar and a three centimeter radar?

18 A Well, it has to do with the pulse length.

19 Q And the 10 centimeter radar that you have
20 pointed to, is there something that's attached to
21 that?

22 A Yes. The arc, or the collision avoidance is
23 attached to the 10 centimeter radar.

24 Q And how does that work?

25 A Oh, it -- there's a lot of buttons on it that

1 you can lock in and you can acquire targets, and
2 it will give you information about those targets.
3 Q Does it have an alarm on it?
4 A It has several alarms on it.
5 Q Do any of the rudder angle indicators, are any
6 of them digital?
7 A I don't -- I'd have to go through each piece
8 of it. I don't recall if there's a digital
9 rudder angle indicator.
10 Q There's a rudder angle indicator on the front
11 bulkhead, right? Correct?
12 A Correct. Right there.
13 Q And there was one up on the ceiling?
14 A There's one mounted on the ceiling.
15 Q Say, in the area...
16 A Right there, in fact. Yeah. That's in the
17 area of 22, yes.
18 Q And, then, there was a rudder angle indicator
19 in the steering counsel?
20 A That's correct. On the SRP-2000, on the video
21 display unit, there's a rudder angle indicator.
22 Q None of those were digital?
23 A No. I don't believe so.
24 Q Now, in the chart room, would you explain how
25 the Loran and Nat-sav (ph) units were used to

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1 help aid you in navigation?

2 A This represents Exxon Valdez briefs. They
3 were located here next to, or on the chart table.
4 And they are electronic means of navigation. And
5 they provide a latitude and longitude readouts,
6 based on the electronic radio waves they receive.

7 Q Would you use those in Prince William Sound?

8 A I like to use all the information that's
9 available to me whenever I navigate. And those
10 could be used in Prince William Sound, yes.

11 Q I'd like to turn to the engine control. When
12 you were the captain of the Exxon Valdez, where
13 was the throttle controlled from? The bridge, or
14 the engine room?

15 A Normally it would be controlled from the
16 bridge.

17 Q And would you tell the jury what settings you
18 had available on the throttle for -- at your
19 disposal when you were going ahead?

20 A On the telegraph you have...

21 Q Yes.

22 A ...a stop position, a dead slow ahead
23 position, a slow ahead, a half ahead and a full
24 ahead.

25 Q And you also had a sea speed available to you

1 through a load up program, a computer loading up
2 process?

3 A Yes. Those were the maneuvering ahead speeds.
4 And then, you can load up the program to sea
5 speed, yes.

6 Q How do you do that?

7 A Well, there's a pre-selector. I think this is
8 it here on this diagram, that you would turn.
9 It's a dial that represents percent from about 70
10 percent up to 100 percent. 100 percent being
11 full sea speed, 70 percent being full ahead
12 maneuvering. And you would rotate that to what
13 speed you want to select. And on this panel push
14 the load program up, and it would take to load
15 from full ahead maneuvering to full sea speed
16 approximately 45 minutes.

17 Q And if you had to come down from full ahead
18 sea speed load up program, back to full
19 maneuvering speed, how long would that take?

20 A Well, there are several ways of controlling
21 the engine and reducing speed. One would be to
22 load program down. That would also take 45
23 minutes. However, you could what we call fine
24 set down. There are two other buttons here, fine
25 set up and fine set down on this panel here that

1 does in about 120 seconds what the load program
2 does in 45 minutes. That is change the fuel rack
3 on the engine, either increase it or decrease it.

4 Or, when reducing speed, if you move the
5 telegraph -- that's this instrument here -- the
6 engine will immediately reduce to whatever you
7 are calling for on the telegraph.

8 Q Now, that would be an emergency type procedure
9 if you had to turn it off in a hurry, is that
10 correct?

11 A We prefer -- my personal preference, because I
12 have an engineering background and that's the way
13 I prefer to operate would be to use load program
14 whenever time permits. At any time it doesn't
15 permit, it'd be the next choice for me to use the
16 telegraph.

17 THE COURT: Mr. Cole, I can't see the clock
18 from here. Are we about 1:30?

19 MR. COLE: It's 1:30.

20 THE COURT: Okay. That means we're going to
21 be finished for the day. We'll see you back tomorrow
22 morning at 8:15 in the jury room and we'll resume this
23 trial at 8:30 a.m.

24 Don't discuss the case among yourselves, or
25 with any other person. Don't form or express any

1 opinions. Remember my cautionary instructions on media
2 exposure. We'll see you tomorrow. Be safe.

3 Anything new to take up?

4 (1254)

5 MR. COLE: One thing, very quickly.

6 THE COURT: Okay. I'll let the jury go then
7 we'll take it up.

8 (Pause.)

9 (Jury not present.)

10 THE COURT: Would you close the door for me,
11 please?

12 Yes, sir?

13 MR. COLE: Just one quick matter, Your Honor.
14 We have agreed on this to stipulate to the admittance
15 of Plaintiff's Exhibit 32. I wanted to bring it up
16 outside the presence the jury and make sure there was
17 no problems.

18 THE COURT: Okay. Is that correct, Mr.
19 Madson?

20 MR. MADSON: That is correct, Your Honor. We
21 did so stipulate.

22 THE COURT: Okay. You can offer it for
23 stipulation in front of the jury whenever you get
24 around to it.

25 MR. COLE: Thank you. Then I have nothing

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else.

THE COURT: Anything for counsel before we go?

MR. MADSON: No.

THE COURT: If you have anything to take up tomorrow, let's take it up at 8:15. I'll be here early.

Let's stand in recess.

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

(Off record - 1:31 p.m.)

CONTINUED