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

STATE OF ALASKA,  
  
Plaintiff,  
  
vs  
  
JOSEPH HAZELWOOD,  
  
Defendant.

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

OMNIBUS HEARING  
NOVEMBER 29, 1989  
PAGES 382 THROUGH 576

VOLUME III

*Original*

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BEFORE THE HONORABLE KARL JOHNSTONE  
Superior Court Judge

Anchorage, Alaska  
November 29, 1989  
9:19 o'clock a.m.

APPEARANCES:

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1 PROCEEDINGS

2 NOVEMBER 29, 1989

3 (Tape: C-3505)

4 (3468)

5 (On record - 9:19)

6 THE COURT: Ready to proceed?

7 MR. LINTON: Yes, sir.

8 BRENT COLE

9 recalled as a witness, having previously been sworn  
10 upon oath, testified as follows:

11 DIRECT EXAMINATION OF MR. COLE, CONTINUED

12 BY MR. LINTON:

13 Q Mr. Cole, has the division of responsibility  
14 within the District Attorney's Office, and the  
15 limited amount of information that you had  
16 gotten, affected your trial preparation?

17 A Yes. There's a lot of unresolved issues that  
18 we have to face within a very short period of  
19 time. Number one is, what we're going to do  
20 about Greg Cousins.

21 Number two, is what we're going to do about  
22 experts. We contacted people about giving  
23 testimony in this trial, but have not sent any  
24 information. I believe Mr. Beevers and Mr.  
25 Greiner have received information packages that

1 we sent. But none of the other people that we  
2 contacted have received any information. And so  
3 we're just kinda sitting back waiting to see what  
4 happens after this hearing before we send off  
5 anything.

6 I would say those are the two major areas that  
7 have limited my preparation for the trial.

8 Well, there's other things, too. There's  
9 contacts with the attorneys representing a number  
10 of these individuals that are witnesses. There's  
11 been problems with my contacts with Mr. Clough  
12 and Exxon. A large amount of our requests from  
13 Exxon got denied because they -- it was explained  
14 to me that the officials in Exxon couldn't  
15 understand why we needed this information, even  
16 though it had already been provided by the NTSB.

17 Q By or to?

18 A To the NTSB. I guess those are the areas that  
19 we've had the most problems.

20 MR. LINTON: No further questions, judge.

21 (3709)

22 CROSS EXAMINATION OF MR. COLE

23 BY MR. FRIEDMAN:

24 Q Mr. Cole, as I understand it, before being  
25 assigned to this case it was ordinarily your

1 practice to read the newspaper, is that right?

2 A Sure.

3 Q Do you have a subscription to either of the  
4 ones in town?

5 A At that time we had a subscription to the  
6 Times. And then I haven't had a subscription  
7 since some time in July.

8 Q Okay. Would you read the Times when you came  
9 home at night, or what was your usual routine as  
10 far as reading the paper?

11 A When? Before I was assigned or after?

12 Q Before you were assigned.

13 A Well, before I was assigned, I really wasn't  
14 reading the paper that much because I wasn't  
15 coming home until late at night. You might pick  
16 it up and glance through it. It was, you know,  
17 go to sleep and get up. I was in trial. I had a  
18 lot of preparation, actually, for this climb that  
19 I was going on. Any free time I had that I  
20 wasn't spending in the trial I was involved in, I  
21 was getting prepared to go on that climb.

22 Q You were aware there was an oil spill?

23 A Sure.

24 Q And how did you become aware of that?

25 A I don't know whether I heard it from somebody

1 else, or whether I heard it on the radio, or read  
2 it in the paper. I assume I heard it from  
3 somebody else. Probably read about it after  
4 that.

5 Q And you were aware that your office or Mr.  
6 Linton, at least, was looking into the  
7 possibility of criminal prosecution?

8 A At some point Mr. Linton left the office while  
9 I was in trial. And I knew that they were  
10 looking into it, yes.

11 Q Okay. I think you told us yesterday that,  
12 also, before you were assigned the case you heard  
13 Mr. Hazelwood's voice on the radio, is that  
14 correct?

15 A Yes.

16 Q Did that sound like a transmission? In other  
17 words, not a -- he wasn't at the radio station,  
18 they were playing a tape of...

19 A I assumed it was a tape.

20 Q And sometime before April 5 Mr. Linton called  
21 you from Valdez asking you to convey a message to  
22 his secretary regarding work on this case?

23 A Yes. That had to do with making sure that she  
24 bought the News, Times, New York Times, and the  
25 Wall Street Journal. He was having -- as he



1 explained to me, the reporters were tracking down  
2 leads faster than he was, and they were getting  
3 reported and he was reading about it.

4 And so he wanted me to pass on a message to  
5 Anita, his secretary, to buy all the papers, clip  
6 out anything that had to do with the Exxon  
7 Valdez, and -- I don't know. I don't know how  
8 they had arranged to send it. Maybe they were  
9 going to read him the stuff. I don't know what  
10 the arrangement was going to be. That was the  
11 reason that he told me wanted that.

12 Q Okay. And at the time he also expressed  
13 frustration at the state's civil lawyers,  
14 referring to how he felt they didn't know how to  
15 put a case together, or something of the kind?

16 A Yes.

17 Q Okay. And he indicated that was making his  
18 job more difficult in terms of what he was trying  
19 to do down there?

20 A I got the feeling he felt it was just part of  
21 his job.

22 Q Okay. Did he give you examples of the sort of  
23 problems he was experiencing?

24 A The biggest examples I remember were of  
25 damages. He kept talking about, you know, we

1           need to get out there and start recording --  
2           video taping the areas before the oil hits it, so  
3           that people will know what it looked like before,  
4           and then after they try and clean it up, what it  
5           looked like afterwards so that there could be  
6           some way to establish damages. I remember him  
7           talking about that.

8           Q           Do you remember him talking about anything  
9           else?

10          A           It seems to me he said something about claims  
11          that he had talked to some divers, and that there  
12          was people saying that the dispersants or  
13          something was cleaning up the oil, but it was, in  
14          fact, just causing it to drop down a couple of  
15          feet. And he wanted those people to be  
16          interviewed. But that's about the extent of it.  
17          I don't remember.

18          Q           Okay.

19          A           That's very vague in my mind.

20          Q           Okay. Did you have any other contacts with  
21          Mr. Linton, or conversations with him regarding  
22          this case between the time you had that phone  
23          call from him and the time Mr. McConnell called  
24          you on the 28th and asked you if you would accept  
25          the case?

1 A No.  
2 (4110)  
3 Q Now, when Mr. McConnell -- did he talk to you  
4 in person, Mr. McConnell?  
5 A Yes.  
6 Q Called you at his office?  
7 A Uh-huh (affirmative).  
8 Q Did he tell you why he wanted you as opposed  
9 to anyone else to try the case?  
10 A No. I still don't know why.  
11 Q Did he tell you that you weren't to read the  
12 papers or listen to the radio?  
13 A Yes.  
14 Q Did he tell you why?  
15 A He had to. I mean, I -- I can't specifically  
16 remember it, but I would have not accepted it  
17 without knowing why.  
18 Q Did he lay down any other rules for you in  
19 terms of how you were to conduct the case, other  
20 than that you weren't to read the papers and  
21 listen to the radio?  
22 A In that meeting? I don't think so. It wasn't  
23 that long a meeting.  
24 Q Let's focus, then, on, let's say, the first  
25 week or two after you took the case. Were you

1 given any reasons by anyone as to why any  
2 restrictions that were put on you, other than  
3 reading the paper and listening to the radio.  
4 A Well, it was because of the immunity statute.  
5 Q Who told you that?  
6 A I assume Mr. McConnell or Larry Weeks.  
7 Q Okay. And what were you told?  
8 (Tape: C-3506)  
9 (000)  
10 A We were told that during the course of Mr.  
11 Linton's investigation, he had somehow come  
12 across a statute. Whether he had been in contact  
13 with the U. S. Attorney, or for some reason, and  
14 we were told he's tainted.  
15 Q "He", meaning Mr. Linton?  
16 A Mr. Linton. The investigators were tainted.  
17 All of the people that he had been working with  
18 down there. And that we had to start a new  
19 investigation, and that what would happen is that  
20 we would be receiving screened information from  
21 Mr. Linton, and that it would be our job, based  
22 on the information provided to us, to take it to  
23 grand jury, and if necessary, take it to trial.  
24 Q Was it your understanding that the screened  
25 information from Mr. Linton would be information

1 from the new investigation, or that he would  
2 screen the old information to determine what you  
3 could see?

4 A My understanding, he was going to screen the  
5 old information and determine what we could see.

6 Q And what was your understanding about what you  
7 could do with that old information that the  
8 tainted Mr. Linton had reviewed?

9 A That we could use it.

10 Q Okay. Now, what was your understanding as to  
11 what you could do in your own investigation,  
12 other than look at what Mr. Linton had given you?

13 A Well, my understanding is that we could use  
14 the information that we received to branch out  
15 and try and find other information that supported  
16 whether or not charges should be brought.

17 Q And could you go anywhere with that?

18 A No.

19 Q In other words...

20 A We were told specifically not to contact any  
21 of the troopers that had been involved in the  
22 initial investigation.

23 Q Okay. Other than that, could you go anywhere  
24 with the old information?

25 A When you say "anywhere", what do you mean?

1 Q Well, let me give you an example. As you  
2 understood it, would it be permissible for Mr.  
3 Stogsdill, the new investigator, to contact  
4 people who had been on the ship in response to  
5 the first radio call?  
6 A No.  
7 Q Okay. Is there a memo or anything in which  
8 the guidelines for this investigation were laid  
9 out? Was it all done orally?  
10 A I don't remember seeing any.  
11 Q There are indication in Mr. Stogsdill's notes  
12 that he met with you, Mr. McConnell and Ms. Henry  
13 on the 29th of April. That would be five, six  
14 days before the grand jury, something like that.  
15 A I think it's the day after I got assigned.  
16 Q You recall that meeting?  
17 A You're going to have to fill me in on what was  
18 said?  
19 Q I was hoping you could fill us in.  
20 A The 29th. Is that a Saturday?  
21 Q I don't know.  
22 A I think it's a Saturday.  
23 Q You recall a Saturday meeting early on in the  
24 investi -- your involvement in the case?  
25 A Well, as I remember I was told about my

1 involvement in the case on the 28th, a Friday  
2 night. On a Saturday the four of us met and went  
3 out and flew from -- we left Anchorage; flew to  
4 Valdez; flew over Bligh Reef; flew over the Exxon  
5 Valdez; tracked the oil all the way around; came  
6 up by Homer; landed in -- no, we landed in Homer;  
7 came back. That's what we did on the 29th.

8 Q Okay. Let me ask you this, was the phrase  
9 "Chinese Wall" ever used in reference to the  
10 rules and regulations that were going to govern  
11 the conduct?

12 A Yes.

13 Q And what was your understanding as to what was  
14 meant by that?

15 A That was an expression that Mr. Weeks used.  
16 And my understanding is, we were to be kept  
17 isolated.

18 Q From the people who had tainted information?

19 A That's correct.

20 (270)

21 Q Can you tell us what your understanding of Mr.  
22 McConnell's role was and has been in this  
23 litigation?

24 A Mr. McConnell has been one of our supporters  
25 in some of our conversations with the people in

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Juneau in our office.

Q What do you mean by that?

A He tried to stay on our side when we had arguments.

Q Are these the arguments you were referring about yesterday, as to what you were going to be allowed access to?

A Yes. Strategies, things like that.

He has also okayed -- for instance, we have to get an okay to spend money on experts. Really, his role hasn't been that great, other than he -- when we have meetings he's there. He's been kept abreast of what we're doing.

Q Do you know whether he has access to the tainted information?

A My understanding is that he did not, but I'm not sure about that.

Q What about Mr. Weeks. What's your understanding as to his involvement in the investigation or the prosecution?

A Mr. Weeks is our boss. That's about all I know.

Q What does that mean in practical terms, as far as this...

A That means his decisions go.



1 Q Has he been making decisions in this case that  
2 you're aware of?

3 A Well, he's passed along decisions about  
4 charging.

5 Q Let's start with that. What decisions has he  
6 passed along regarding charges?

7 A That we were not allowed to indict to Greg  
8 Cousins.

9 Q Okay. Has Mr. Weeks passed along any other  
10 charging decisions that you're aware of?

11 A We worked with him a little bit on the  
12 language of the indictment; how it would be  
13 worded.

14 Q Was Mr. Weeks a supporter of actually seeking  
15 an indictment for second degree -- or, criminal  
16 mischief in the second degree?

17 A As I remember, yes.

18 Q Did...

19 A Do you mean -- wait a minute. Let me qualify  
20 that. As to who?

21 Q As to Captain Hazelwood.

22 A Yes.

23 Q And I take it he was opposed to indicting Greg  
24 Cousins?

25 A That's right.

1 Q Did he tell you why?

2 A Yeah.

3 Q What did he say?

4 A We were told that the Attorney General said,  
5 "No."

6 Q Did he give you any reasons as to why they  
7 decided not to?

8 A The reasons that we were told were that they  
9 felt that Mr. Cousins could help them out in  
10 their civil case, and they didn't want to make  
11 him an enemy in their civil case.

12 Q Okay.

13 A There was other things. There was -- he  
14 constantly referred to not wanting to go down the  
15 line, but wanting to go up the line. That was  
16 another reason that he gave.

17 He felt that the facts didn't support Greg  
18 Cousins being indicted.

19 Q Did -- Mr. Weeks, of course, gave you, or Ms.  
20 Henry, the names of the witnesses that he felt  
21 should be called at grand jury?

22 A I really wasn't involved with that part. Ms.  
23 Henry -- you have to remember, I came in, I  
24 think, right before the first scheduled grand  
25 jury. I was still reading reports, trying to

1 figure out what was going on.

2 I had been isolated. There was tons of  
3 notebooks set out in front of us. So I just  
4 concentrated on trying to catch up and figure out  
5 what was going on.

6 Q I think you told us yesterday that you did  
7 help Mr. Henry kind of prepare for questioning  
8 witnesses who were presented in grand jury?

9 A That's part two. The grand jury happened --  
10 it was, like, five days, as I remember. The  
11 first two happened right around May 1 and May 2,  
12 I think. The second two happened around May 17  
13 and May 18, as I remember.

14 I was not -- I can't remember any involvement  
15 in the first two days. However, the second two,  
16 when the crew members were called in, I helped  
17 her on that.

18 Q Did you know at the time you were -- while the  
19 grand jury was going on, part one or part two,  
20 how Ms. Henry had found these witnesses to call,  
21 or arrived at these witnesses as the ones to  
22 call?

23 A Yes. Well, I don't know about the first part,  
24 but the way it was coming is, we would have  
25 meetings in Mr. McConnell's office over the

1 telephone with Mr. Weeks and Mr. Guaneli. They  
2 would say -- I remember -- at least for the  
3 second part, we told them -- we talked about who  
4 we planned on calling. I really can't remember  
5 the first part of the grand jury.

6 Q Right. Okay. At any rate, as to the second  
7 part, there would be the conference calls where -  
8 - what, it would be the four of you; Weeks,  
9 Guaneli, you, and Mary Anne Henry?

10 A And Mr. McConnell.

11 Q All right. Five of you.

12 A It was always in his office. 95% of the time  
13 they were in his office.

14 Q And the discussion would focus on who would be  
15 called?

16 A It ranged -- we discussed a lot of things.  
17 Strategies, charging, conversations with other  
18 attorneys, what information, the NTSB, things  
19 like that.

20 Q So it sounds like it covered the gambit of  
21 issues that a prosecutor would consider in  
22 prosecuting a major case, is that a fair...

23 A Sure. It was a very technical complex -- they  
24 were looking at it from one way, we were looking  
25 at it from another, and that's how it went. We

1           talked about a lot of things.

2           Q           Okay. Is it -- I don't want to put words in  
3           your mouth, but this may be a shorter way to get  
4           there. Is it fair to say that Mr. Weeks and Mr.  
5           Guaneli were intimately involved in the decision-  
6           making process on the sorts of things you just  
7           mentioned?

8           A           As far as charging?

9           Q           Well, you broadened the scope out to strategy,  
10          and I forget the various other things that you  
11          mentioned.

12          A           Well, they were involved in things like the  
13          NTSB decision. That we would not be allowed to  
14          attend the NTSB or to contact the attorney, Bob  
15          Maynard, I believe his name was. They were  
16          involved in the decision on the indictment.

17          Q           Meaning Captain Hazelwood's indictment?

18          A           That's correct. As to -- I can't really tell  
19          you as to whether they were involved -- I assumed  
20          that they were involved as to the witnesses that  
21          were questioned in the first one. As to the  
22          witnesses that were called in the second part,  
23          the one on the 17th and 18th, we were pretty much  
24          limited by the crew members that Exxon brought  
25          up, or that the NTSB subpoenaed and that Exxon

1 brought up for the hearings, and any other  
2 witnesses that we felt we needed to fill in gaps.  
3 I don't think that they were that involved in  
4 that.

5 Q How about after the grand jury, have they been  
6 involved in anything of significance since that  
7 time?

8 (Pause)

9 A Our meetings almost came to an end, as I  
10 remember, shortly after that. The only decision  
11 that they were involved in -- they continued to  
12 be involved in that I remember was what was going  
13 to happen with Greg Cousins and my efforts to try  
14 and get the NTSB hearings.

15 Q Were there people on the DA's staff who felt  
16 that Greg Cousins should be indicted?

17 A Oh, yes.

18 (587)

19 Q When was the decision final -- or, let me step  
20 back for a second. Were there people in the DA's  
21 office that felt that prosecuting Mr. Cousins  
22 would have an affect on the Hazelwood prosecution  
23 as well?

24 A Uh-huh (affirmative).

25 Q That's a, yes?

1 A Yes. I'm sorry.

2 Q And when was the decision finalized as to  
3 whether or not Mr. Cousins would be indicted?

4 A I want to say that it was on -- as I remember,  
5 the hearings were on the -- the grand jury was on  
6 the 17th and the 18th, which was a Wednesday and  
7 a Thursday. The following Tuesday we met again.  
8 The decision that -- not to indict Greg Cousins  
9 was made on Wednesday afternoon or Thursday  
10 afternoon. That's when we were told.

11 I mean, up to that point we had been -- there  
12 had been discussions on those days. We were told  
13 that that was not going to -- that that was the  
14 way it was going to be.

15 Q Okay. Now, you were at the very end of the  
16 grand jury, weren't you, where Mr. McConnell came  
17 in and read a statement to the grand jury?

18 A That's right.

19 Q And the thrust of that statement was an  
20 explanation as to why Mr. Cousins wasn't being  
21 indicted?

22 A Well, it really didn't give a reason, but they  
23 just asked him not to.

24 Q Not to consider indicting Mr. Cousins and  
25 anyone else, I think they say...

1 A Something like that.

2 MR. FRIEDMAN: Your Honor, for your

3 information, that's found at page 493 of the Grand jury

4 transcript.

5 Q What was the purpose of that statement, as you

6 understood it?

7 A It's because Mary Anne Henry wouldn't do it.

8 Q Wouldn't?

9 A Wouldn't read the statement -- or, wouldn't

10 read a statement to the grand jury.

11 Q Because she disagreed with that decision?

12 A That's right.

13 Q And so Mr. McConnell came in and read the

14 statement?

15 A Yes.

16 Q And that statement was prepared by Mr. Weeks,

17 is that correct?

18 A My feelings are that, yes, Mr. Weeks -- it was

19 either Mr. Weeks and Mr. McConnell or Mr. Weeks.

20 I seem to remember it was Mr. Weeks.

21 Q Can you give me how the players lined up on

22 the Cousins decision. Who favored indicting him,

23 and who opposed it?

24 A I favored it.

25 MR. LINTON: May we approach the bench, Your



1 Honor.

2 THE COURT: This is going to be picked up on  
3 all audio media. It's hooked into the audio. Can we  
4 turn the media off?

5 THE CLERK: (Indiscernible - away from mike).

6 THE COURT: Leave the microphone over here.

7 (748)

8 (Whispered bench conference as follows:)

9 (Entire bench conference indiscernible -  
10 microphone moved away from speakers.)

11 (End of whispered bench conference)

12 (1020)

13 Q (Mr. Cole by Mr. Friedman:) I'm hoping you'll  
14 remember my last question.

15 A How did we line up.

16 Q How did you line up?

17 A I was in favor of indicting Greg Cousins.

18 Mary Anne Henry was in favor of indicting Greg  
19 Cousins. The investigator, Jim Stogsdill was in  
20 favor in favor of indicting Greg Cousins. Dwayne  
21 McConnell, as I remember, was in favor. Larry  
22 Weeks was against it. Dean Guaneli was against  
23 it.

24 Q Okay. Did either Mr. Weeks or Mr. Guaneli  
25 indicate that they had interviewed Mr. Cousins or



1           went: do we indict both of them? Do we indict  
2           both of them? Do we indict both of them? No, we  
3           only indict Captain Hazelwood.

4           Q           (Mr. Cole by Mr. Friedman:) And the decision,  
5           no, we only indict Captain Hazelwood was made  
6           before the grand jury started, or while the  
7           grand...

8           A           After.

9           Q           After the grand jury started.

10          A           After -- as I remember now, it was on Thursday  
11          afternoon, was the final decision. After the  
12          second day of grand jury. On the 18th, I  
13          believe.

14          Q           So it was within a few days of that date that  
15          you believed the conversation between Mr. Weeks  
16          and Mr. Richmond took place?

17          A           Yes, that was my feelings.

18          Q           I may have asked you this, and if I did, I  
19          apologize. Did Mr. Weeks give any indication as  
20          to whether he was aware of what we had been  
21          shorthand characterizing as "tainted  
22          information"? The information you didn't have  
23          access to?

24          A           No.

25          Q           You didn't give any indication one way or the

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other.

A My understanding -- I understood it that he was not tainted. Now, I'm not sure about that.

Q How did you get that understanding?

A Because he talked to us. Nobody talked to us unless they were untainted.

Q Okay. Well, Mr. Linton talked to you, and he was tainted?

A Not about the case.

Q He wasn't in any of these conferences with Mr. McConnell and Mr. Weeks, and so on?

A He was in -- I remember one -- again, we -- it was within the last month or two when we brought up again whether or not to turn over the -- screen the NTSB stuff and turn it over. He was involved in that conversation. I really can't remember any others. I'm not -- I just can't remember.

Q Yes, I'm just...

A He may have been there. But the general rule was, it was Mary Anne, Dwayne, myself, Dean and Larry.

Q We'll have a chance to talk to Mr. Stogsdill, and I'll just represent to you that he indicates that there was a meeting on April 26. Well, you

1           weren't involved at that point, were you?

2           A           No.

3           (1280)

4           Q           Okay. (Pause) So your impression was, then,  
5           that Mr. Weeks was on your side of the Chinese  
6           Wall, in other words?

7           A           My impression is, yes, that he was on our side  
8           of the Chinese wall. He was involved in some of  
9           the decision making.

10           Maybe I didn't -- I think I should clarify one  
11           thing. A lot of their conversations were: "How  
12           are you guys doing? Tell me what you've done  
13           today? What's been going on? How are things  
14           been going?" That was a lot of it. And then we  
15           would sit down and we would -- I mean, that would  
16           probably occupy a large part of the  
17           conversations.

18           He wanted to know what stages things were  
19           going at. So these meetings that we had  
20           periodically were not him giving us orders or  
21           telling us to do this or that. A lot of it was,  
22           "Tell us what went on today." Particularly at  
23           the grand jury. He wanted to know how the  
24           testimony had come out. How Mary Anne felt about  
25           it, and things like that.

1           So if I gave you the impression that our  
2           conversations were strictly him telling us  
3           something, that's not correct. It was -- a large  
4           -- most of the time was, "What's going on? Tell  
5           me how you're doing."

6           Q           And your impression, as I said, is that he was  
7           on your side of the wall? He didn't have access  
8           to the tainted information?

9           A           I guess I just assumed that. I don't remember  
10          him specifically saying, "I'm untainted."

11          Q           Right.

12          A           But I just assumed that.

13          Q           Did the same go for Mr. Guaneli?

14          A           My assumption, again. Same category.

15          Q           Okay. Now, I had asked you earlier what  
16          involvement they had, Mr. Guaneli and Mr. Weeks,  
17          in the case. And you -- I guess I just asked you  
18          about Mr. Weeks. And you said he was the boss  
19          and he made the decisions. And we've talked  
20          about the charging decisions.

21                    Were there other decisions in regard to this  
22          case that Mr. Weeks made?

23          A           Not letting us look at the NTSB stuff. Made  
24          suggestions on the charging language itself of  
25          the indictment. And, also, how it would be --

1 the number of charges. How that would be taken  
2 care of. That's about it.

3 Q What about some of the issues that have come  
4 up since the grand jury indictment?

5 A Oh, change of venue.

6 Q For example, change of venue?

7 A Change of venue, I got his okay to non-oppose  
8 the motion to change it out of Valdez. That was  
9 a -- you know, I just said, "It seems to me,  
10 Larry, that this is just -- we don't want to do  
11 that. And he said he agreed."

12 Q Okay.

13 A So that's when I filed that motion. How about  
14 -- anything else -- the motions that I answered  
15 for you?

16 Q That's correct.

17 A No, he wasn't involved with that at all.

18 Q Have you discussed your trial strategy with  
19 him, in terms of what you're hoping to do?

20 A No, not really.

21 Q What's your understanding of Mr. Guaneli's  
22 involvement?

23 A Mr. Guaneli's involvement was, he was an  
24 assistant to Mr. Weeks. He helped us a lot in  
25 contacting Exxon. He worked with the Exxon

1 attorneys in Juneau in getting information sent.

2 Q Okay.

3 A And he was another person that we threw ideas  
4 off of.

5 Q Was Mr. Weeks one of those people you throw  
6 ideas off of, also? Again, looking at Trooper  
7 Stogsdill's notes, it appears that there were...

8 A He was part of the conversations, and the  
9 couple things that we talked about as decision  
10 making, his opinion was always asked.

11 (1480)

12 Q With regard to Mr. Guaneli, why -- I guess I'm  
13 not familiar with the hierarchy in the Department  
14 of Law. How does Mr. Weeks relate to Mr.  
15 Guaneli?

16 A I don't really understand it either. All I  
17 know is, he seems to help on special cases.

18 Q Okay. Do you know if Mr. Guaneli has any  
19 special contact with the governor, or is...

20 A No, I don't have any idea what he does, to  
21 tell you the truth.

22 Q Other than being involved in these kind of  
23 brainstorming strategy sessions, and helping to  
24 get documents from Exxon, are you aware of Mr.  
25 Guaneli being involved in any other way in this



1 case?

2 A Not that I'm aware of.

3 Q Okay. And we talked about Mr. McConnell. Did  
4 he have any role, other than kind of supporting  
5 you when these splits would develop in approving  
6 financial expenditures?

7 A Well, he didn't always support us.

8 Q I understand.

9 A But generally he was a person that his  
10 opinion, kinda like Mr. Guaneli's, was taken into  
11 account in the decision making process. Yeah,  
12 sometimes when I would get frustrated I would go  
13 in and talk to 'em.

14 Q And, again, you felt he was on your side of  
15 the wall?

16 A I assumed that he was on our side of the wall.

17 Q When documents would be requested from Exxon  
18 who screened them to make sure that they weren't  
19 including tainted information?

20 A My understanding was, Mr. Linton did.

21 Q So he saw whatever documents Mr. Guaneli  
22 obtained before you saw them?

23 A Yes.

24 Q Now, when you first became involved in the  
25 case, you said you went and sat down with Mr.

1           Beevers and had him explain to you what a map is?

2       A           I had been on the ocean twice in my life.

3       Q           Right.

4       A           I had no idea what was going on.

5       Q           In addition to kind of orienting you to the

6                    sea, did he also orient you to the facts of this

7                    case in terms of how he...

8       A           No, that was through my reading of the reports

9                    that we had received up to that point.

10      Q           But you had questions about certain things you

11                   had read in the reports?

12      A           Right.

13      Q           I guess what I'm saying is, you also focused

14                   specifically on this case in your conversations

15                   with Mr. Beevers, not just on how the world of

16                   the sea works?

17      A           That's correct.

18      Q           And you were aware that Mr. Beevers had a

19                   potential taint, or that you had to be careful

20                   what you could talk with him about?

21      A           My understanding is, he had been told that we

22                   -- not to talk about certain things with us. And

23                   that was my understanding.

24      Q           You don't know what those things were, of

25                   course?

1 A No.

2 Q So you don't know whether he followed that  
3 order or not?

4 A I assumed he did. I had no reason not to  
5 believe that he did.

6 Q But you're not in a position to judge either?

7 A No, because I don't know.

8 Q When you met with Mr. Beevers, did the two of  
9 you talk about what might have caused the  
10 accident?

11 A We talked about the number of incidents of  
12 error that the -- the number of things that the  
13 captain had done wrong.

14 Q And what you're looking at is ultimately the  
15 question of causation, or what led to this  
16 problem -- this accident?

17 A Yeah.

18 Q And he gave you his views and you gave him  
19 your views, and you had -- I mean, is it fair to  
20 say it was another one of these kind of  
21 brainstorming -- kicking ideas around, kicking  
22 facts around, that all lawyers go through when  
23 they talk with each other, or with experts?

24 A Yeah, it was like, "I don't understand, why  
25 would anybody put a ship in autopilot in this

1 area? Why don't they turn the throttle down when  
2 they got all this ice in front of them?" I  
3 didn't understand things like that.  
4 He said, "Can't find a reason for that." You  
5 know, things like that.  
6 Q Okay. Well, you told us yesterday that you  
7 and Ms. Henry and Trooper Stogsdill spent a lot  
8 of time trying to figure out those sort of  
9 questions?  
10 A That's right.  
11 Q Answer those sort of questions. But when you  
12 did get the case, you did have some significant  
13 investigatory leads which helped you focus the  
14 investigation, didn't you?  
15 A I don't know what you mean.  
16 Q Well, for example, you knew an argument could  
17 be made that alcohol had played a role in the  
18 accident.  
19 A There were interviews in there that indicated  
20 that Mr. Hazelwood had been drinking that day.  
21 Q In addition, you knew that Mr. Linton had  
22 filed a criminal information charging driving  
23 while intoxicated?  
24 A I knew that had been filed.  
25 Q So...

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A I wasn't aware of what the contents of the information were.

Q The probably case statement?

A Right.

Q But you knew someone felt there was probable cause to believe...

A Well, that's been a real concern in our office.

Q In what way?

A The evidence that I have in front of me is that Captain Hazelwood had several drinks. Saw a lot of evidence that indicated that people didn't believe he was intoxicated.

Q There was a lot of evidence to that effect, wasn't there?

A Yes. And I kept saying, "Don't you think maybe we ought to drop this DWI? We don't have that much evidence. Why focus on this when we have a much better case in the criminal mischief?" That was a discussion that we had several times.

Q And when you say "we", who are we talking about now?

A Larry Weeks, Dwayne McConnell, Mary Anne Henry, myself.

1 Q And what was the answer to that question?

2 A Well, we felt that there were strategy reasons

3 behind. We felt that was -- obviously there are

4 two different parts to the DWI statute. Driving

5 with a blood alcohol level of .10. And driving

6 while under the influence of an intoxicating

7 liquor.

8 We had nothing to support the second part, but

9 we...

10 Q You mean the first part?

11 A Yeah, the first part. We had a lot of

12 unexplained actions that could easily be

13 explained by someone who is under the influence

14 of alcohol. And so for that reason we decided

15 that -- you know, that's one of the things that

16 came up.

17 Q Okay. And was that another one of those

18 issues that Mr. Weeks had input into, Mr.

19 Guaneli, Mr. McConnell?

20 A Yes.

21 Q Can you identify a decision maker on that

22 issue? Who said, "Let's keep it in?"

23 A I think we all agreed to keep it in.

24 Q That was the consensus?

25 A (No audible response.)

1 Q Well, back to my question, then. That was a  
2 significant investigatory lead. That is, that  
3 alcohol sometimes played a role in this --  
4 somehow played a role in this accident, is that  
5 right?

6 A Significant. I guess if you want to  
7 characterize it as that.

8 Q I don't mean to play word games, I just -- I  
9 understand that you're saying...

10 A It's a factor that we took into consideration,  
11 yes.

12 Q And it would help explain some of these  
13 otherwise, in your view, unexplained  
14 circumstances?

15 A Yes. From the fact -- from the information  
16 that I had in front of me, yes.

17 Q And this alcohol lead, if we want to call it  
18 that, you don't know where that originated from,  
19 do you, in terms of where facts supporting that  
20 kind of theory first came to light?

21 A No.

22 Q But you were given reports of witness who said  
23 they had seen him drinking?

24 A Specifically Ms. Caples and Mr. Murphy. And  
25 then the testimony of his fellow shipmates, Mr.

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Glowacki and Mr. Roberson.

Q But you don't know how the original investigators may have -- why they may have decided to ask those witnesses these kinds of questions?

A No.

Q But you have the results that were in that area, in the sense of, you have these witness interviews -- referred to that?

A Just their interviews.

MR. LINTON: The record ought to be careful in that regard. Which statements by Mr. Glowacki is he referring to?

THE COURT: All right, Mr. Cole.

A I was under the impression that both statements talked about Mr. Glowacki talking about Mr. Hazelwood drinking before.

MR. LINTON: Excuse me. How many -- there may be a better way to say this -- or, reflect -- how many he knows about, and what the source of the ones he knows about are.

A The two I know about are the FBI and the state trooper statements.

Q Let me ask you this question, Mr. Cole: no matter how many interviews there are of Mr.



1 Glowacki, where he's questioned about alcohol,  
2 you don't know whether those same questions were  
3 asked in interviews you don't have?

4 A No. I don't know what was asked in the  
5 interviews I don't have.

6 Q And for all you know, these questions could  
7 have been asked on the other side of the Chinese  
8 Wall and then simply thrown over the wall and  
9 given to you?

10 A I don't know about that.

11 Q In your affidavit you said something to the  
12 effect that you haven't been furnished with any  
13 information regarding blood tests or blood  
14 alcohol tests, is that correct?

15 A Results of blood alcohol tests.

16 Q Okay. You do know that a test was taken?

17 A Yeah.

18 Q How do you know that?

19 A Well, I know it because of when I was in  
20 chambers with...

21 Q Oh, what you recounted yesterday?

22 A Right.

23 Q Back to this issue of investigatory leads, you  
24 also knew when you got involved in the case, or  
25 shortly after you got involved in the case, that

1 the captain wasn't on the bridge at the time of  
2 the grounding, didn't you?

3 A That was contained in the statements that we  
4 had, yes.

5 Q And you don't know how the investigators may  
6 have first discovered that, do you?

7 A No.

8 Q Also at the time, or shortly after you got the  
9 case, you became aware that an argument could be  
10 made that the third mate was not qualified to be  
11 in command of the ship in those waters, is that  
12 right?

13 A The third mate?

14 Q Cousins?

15 A Yes.

16 Q And you don't know how that was first  
17 discovered, or how the authorities first began  
18 investigating that lead?

19 A (No audible response.)

20 Q No?

21 A No. I'm sorry.

22 Q Finally, you had the investigatory lead that  
23 there was evidence indicating the captain had  
24 tried to get the ship off the reef?

25 A Yes.

1 Q And you don't know how that was first  
2 developed?

3 A No. That was from Mr. Kagan's statement to  
4 the troopers and Ms. Jones' statement to the  
5 troopers. I think it was Ms. Jones, actually.  
6 I'm not sure whether Mr. Kagan remembered that or  
7 not. I know it was in Ms. Jones though.

8 Q But how that information first came to the  
9 attention of the investigators, you're not aware  
10 of?

11 A No.

12 Q All right. Now, those are three fairly  
13 important significant leads as to avenues to  
14 pursue for prosecution, aren't they, in your  
15 view?

16 A The alcohol. Him not being present on the  
17 bridge and...

18 Q Attempt to get it off the reef.

19 A Attempt to get it off the reef. In part,  
20 yeah, I would say that.

21 Q In other words, you weren't just working with  
22 a blank slate casting about for where to start,  
23 you were given some solid leads as to where to  
24 start?

25 A We were given police reports; we read them; we

1           interpreted them; we made our decision based on  
2           those, yes.

3           Q           Can you tell us what Joe LeBeau -- am I  
4           pronouncing his name right?

5           A           LeBeau.

6           Q           What Joe LeBeau's role in the prosecution and  
7           investigation has been since you've been  
8           involved?

9           A           I've had a couple contacts with Mr. LeBeau.  
10          One of them I went to -- the first one, as I  
11          remember, is I went to Valdez; got a search  
12          warrant for the Exxon Valdez, and his testimony  
13          about the damage that had been done to Prince  
14          William Sound was used in securing that search  
15          warrant.

16          I then spoke to him one time over the phone  
17          when the trial date was set in October, and he  
18          called me up and said that he was planning to be  
19          on vacation during that time. I told him that I  
20          didn't think the trial was going to go then and  
21          that I wanted to know if he had any other lead  
22          problems.

23          Q           Just for the record, who is Joe Lebeau? What  
24          is his position?

25          A           He works for the Department of Environmental

1 Conservation, I believe -- DEC.

2 Q Does he have investigatory duties?

3 A Yes. I believe so. I really don't know what  
4 his job was at DEC.

5 Q Were you aware that he was on the ship shortly  
6 after the grounding, say, within a day or two  
7 after the grounding, and conducted some  
8 investigations?

9 A I believe I was. I think I was told that.

10 Q Okay. Were you told why it was okay for you  
11 to talk to a state investigator who was on the  
12 scene shortly after the grounding, that is, Joe  
13 LeBeau, but it wasn't all right to talk to state  
14 of Alaska troopers who were on the scene at the  
15 same time?

16 A Well, I had talked to him for the purpose of  
17 getting this search warrant, and to get the  
18 search warrant we had to prove probable cause to  
19 believe that Mr. Hazelwood had committed a crime  
20 -- the crime we alleged he committed was criminal  
21 mischief in the second degree. One of the  
22 elements of that was that more than \$100,000.00  
23 damage had been done to the Prince William Sound  
24 as a result of the grounding of the Exxon Valdez,  
25 and that was what he was going to talk about, and

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that's what I talked to him about.

Q I guess my question is, my understanding from your testimony, as well as Ms. Henry's is that this rule was laid down that when you two got involved in the case you were not to talk to the state troopers who had investigated the case in the early stages in the first couple weeks. Was it ever explained to you that you can't talk to state trooper investigators, but you could talk to other investigators who work for the state, who were involved in the same period of time and in the same incident?

A Well, I mean, I talked -- I did talk with Trooper Fox one time, but that was when I was in Valdez, and I was in his office. And I was doing some investigation with Sergeant Stogsdill. But our conversation was: "What's going on?", and "Tell me about who's hunting out here." It was in the summer time. "Let's go hunting."

Q You didn't talk about the case?

A We didn't talk about the case.

Q Right.

A And in the same light -- the only thing I talked about with Joe LeBeau was the damage that had been done to Prince William Sound. And

1           that's -- I mean, my understanding was, that was  
2           okay.

3           Q           Okay. So you could have talked to Trooper Fox  
4           under your understanding about damage to the  
5           Sound, or you could have talked to Burk or  
6           McGhee?

7           A           We were told specifically not to talk about  
8           anything on the Exxon Valdez with those troopers.  
9           And I -- it was never explained to me what the  
10          difference was.

11          Q           Okay. Fair enough. Were you told whether you  
12          could talk to any of the other investigators --  
13          NTSB investigators, Coast Guard investigators,  
14          FBI investigators, other people who were on the  
15          scene in the first couple weeks who conducted  
16          investigations similar to those conducted by the  
17          Troopers?

18          A           I don't remember anything being mentioned on  
19          that.

20          Q           Your understanding was that you could talk to  
21          those people?

22          A           No, my understanding was, we couldn't talk to  
23          them. The FBI people that had been initially  
24          involved.

25          Q           The ones who had given you the reports or the

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statements?

A Right. And I can't tell you why I couldn't talk to them, that was just my understanding.

Q Okay. How about the Coast Guard people -- the investigators. What was your understanding as to whether you could talk to them?

A I can't tell you why, but my understanding is -- I know we talked -- I didn't talk personally with Mr. Delozier, but I know we contacted him about a meeting that he had -- or, where we had seen him talking with Mr. Chalos and Mr. Russo in Fletcher's Bar. And we contacted him wanting to know what he had been talking to them about. We couldn't figure out what interest he and the admiral, or whoever, who was talking with him had -- talking with the two attorneys for Joseph Hazelwood, specifically when it was our understanding they were going to have to make a judgment, or somebody was going to have to come in and make a judgment about whether Mr. Hazelwood's license was going to be taken away. And we were kinda interested to see what they were talking about, yeah.

That's all I remember about -- I don't remember anybody saying, "Don't go talk to



1 Delozier."

2 Q Okay. How about anybody saying, "Don't go  
3 talk to NTSB investigators."?

4 A We were told specifically not to talk with  
5 anybody having to do with the NTSB. Not to be  
6 near it.

7 Q What about the FBI?

8 A We had contact with Don Steele, who we  
9 understood to be an untainted FBI agent under the  
10 U. S. Government's definition of "taint"?

11 Q What's their definition?

12 A I don't know.

13 Q Okay. So you don't know whether he's tainted  
14 under your definition?

15 A No.

16 THE COURT: Mr. Cole, when you say "we", are  
17 you referring to those of you on one side of the wall?

18 A Yes. Mary Anne Henry, and Jim Stogsdill and  
19 myself, and to a lesser extent, Sam Adams. But  
20 those -- we were the three that were involved in  
21 that.

22 THE COURT: Mr. Friedman, it's 10:30. I think  
23 we'll take a brief recess.

24 THE CLERK: Please rise. This court stands in  
25 recess subject to call.

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(Off record - 10:30 a.m.)

(On record - 10:56 a.m.)

(2715)

THE COURT: Close that door, Scott. Go ahead.

MR. FRIEDMAN: Thank you, Your Honor.

Q (Mr. Cole by Mr. Friedman:) Mr. Cole, Mr. Madson has wanted me to ask you some questions here for a couple hours.

Just briefly, you didn't have access to the NTSB transcript?

A Never had access to it.

Q You understood that Mr. Linton had a copy?

A He's gotten a copy, yes.

Q If you had been given a copy of the NTSB transcript prior to grand jury, and if that had contained exculpatory evidence, would you have presented that exculpatory evidence to the grand jury?

A If I had it?

Q If you had it.

A I think we're under guidelines under Frank v State to present what is deemed to be exculpatory evidence to the grand jury.

Q Now, you told us yesterday about a meeting you had with two Justice Department lawyers and --

1 was there an agent there as well?

2 A He was either -- when we first walked in, I  
3 don't know if he was there, but he came in in the  
4 course of our meeting.

5 Q Okay. And which agent was that?

6 A Don Steele.

7 Q All right. And so we have those three people  
8 from the federal government. Anyone else from  
9 the federal government?

10 A No.

11 Q And who from the state side?

12 A Mary Anne Henry and myself.

13 Q What was the purpose of the meeting?

14 A They called us to talk about -- they wanted to  
15 know what we were going to do with Greg Cousins.  
16 And they wanted to know -- it seems to me, what  
17 evidence we had about Mr. Hazelwood's  
18 intoxication. That was what they communicated  
19 over the phone.

20 Q All right. And where did you meet them?

21 A In their building by the Arco Building. They  
22 have an office building over there, on 7th or  
23 someplace.

24 Q Now, was this before or after grand jury?

25 A This is before. Yeah. I'm not sure, but I

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think it was before.

Q Do you have any memos or documents that would refer to that meeting that would help you pin down the time?

A Yes. I have a memo that -- if I can go get it.

MR. FRIEDMAN: Is that all right, Your Honor?

THE COURT: Sure.

MR. FRIEDMAN: Thank you.

(3040)

(Pause)

A It was May 25, 1989.

Q Would it be all right if I looked at that?

A Sure.

(Pause)

MR. FRIEDMAN: Your Honor, I wonder, if at a break, I could mark this as a -- I'll question Mr. Cole about it.

THE COURT: You can mark it now as an exhibit.

MR. FRIEDMAN: Okay.

THE CLERK: Defendant's B.

(Pause)

Q (Mr. Cole by Mr. Friedman:) Mr. Cole, was this Defendant's Exhibit B the memo you wrote commemorating your meeting with the federal

1 attorneys?

2 A Yes.

3 MR. FRIEDMAN: Your Honor...

4 Q And did you attempt to recount what transpired  
5 at that meeting in that memo?

6 A Uh-huh (affirmative).

7 MR. FRIEDMAN: Your Honor, I'd ask for  
8 admission of Exhibit B.

9 MR. LINTON: No objection.

10 THE COURT: May I see it, please? (Pause)

11 MR. FRIEDMAN: Your Honor, if you wouldn't  
12 mind taking the time to read it now, since it's part of  
13 the record, that would save me a lot of questions of  
14 Mr. Cole.

15 THE COURT: All right. I'll admit B, and you  
16 want me to read it at this point?

17 MR. FRIEDMAN: Or...

18 THE COURT: It will be a part of the record,  
19 since I've admitted it, and I will read it at some  
20 other time, I promise you.

21 MR. FRIEDMAN: Okay. Good enough.

22 Q (Mr. Cole by Mr. Friedman:) Mr. Cole, did Mr.  
23 Linton know about this meeting before it  
24 occurred?

25 A I don't know about that.

1 Q Did you talk with him about it after it  
2 occurred?  
3 A I'm just not sure.  
4 Q You recount in the memo that after talking  
5 with these attorneys you had the impression that  
6 they had information that you didn't have access  
7 to?  
8 A Yes.  
9 Q How did that come about, that you determined  
10 that?  
11 A Well, the first question was, "What are you  
12 going to do with Greg Cousins? Have you read his  
13 statement to the NTSB?"  
14 I said, "We haven't gotten the NTSB."  
15 Q Did they make reference to other facts or  
16 information that you felt you didn't have, or was  
17 it limited to the NTSB issue?  
18 A I don't remember that. I mean, at that point  
19 it became kind of, "Be very careful." You just  
20 tell -- it was mostly us talking. And when I say  
21 "us", I mean Mary Anne Henry and myself.  
22 Q Okay.  
23 MR. FRIEDMAN: Your Honor, could we approach  
24 the bench for a minute?  
25 THE COURT: Scott, have you disconnected the

1 media. Every side bench conference do that unless  
2 otherwise (indiscernible - bad recording) .

3 (3294)

4 (Whispered bench conference as follows:)

5 (Entire bench conference indiscernible -  
6 microphone turned down.)

7 THE COURT: Mr. Richmond, you may be called as  
8 a witness in this case, so I'm going to ask you to step  
9 outside. We've excluded all witness.

10 MR. RICHMOND: All right, Your Honor. You  
11 know, but I better tell you, we have people here in our  
12 office that have been monitoring the activities for  
13 part of the last few days, and you probably ought to  
14 excuse them too, if that's...

15 THE COURT: I have no objection to them  
16 staying if counsel doesn't. If they're going to be a  
17 witness of Mr. Friedman -- anybody besides Mr....

18 MR. FRIEDMAN: No. The only reason I brought  
19 it up, Your Honor -- I frankly don't even care if Mr.  
20 Richmond wants to stay, except that we did invoke the  
21 rule and I felt that I should bring it to the court's  
22 attention.

23 THE COURT: If we invoke the rule at your  
24 request, I think -- Mr. Linton, do you want him to  
25 leave?

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MR. LINTON: Please.

THE COURT: So the rule remains invoked, and you will have to leave.

MR. RICHMOND: All right.

THE COURT: Your staff don't have to leave, they're not going to be witnesses.

MR. RICHMOND: All right. Thank you, judge.

(3420)

Q Did the Justice Department lawyers indicate either explicitly or implicitly, whether they had access to information besides the NTSB information which related to the first, say, 24 hours after the grounding?

A No. I never got that feeling.

Q Did they give you the impression that they did not have that information?

A They -- the only thing I remember is that they did not -- one of the reasons they were asking about intoxication is they did not have the blood test. Other than that I didn't get a feeling that they had anything else that day. But one of the things that I knew that they didn't have was the blood -- a blood test, because they were asking us about, "What evidence do you have of intoxication?"



1 Q Did they tell you that they were a part of a  
2 walled off team like you were?

3 A Yes. That was one of the first questions,  
4 "How do you deal with this type of situation?", I  
5 think.

6 Q Okay. So they were in the same position you  
7 were, although they may have been operating under  
8 different rules?

9 A My understanding, yes, that's correct.

10 Q Okay. Mr. Cole, the -- just so you know the  
11 reason for the question, there is a line of cases  
12 on immunity which say that the state has the  
13 burden of presenting each piece of evidence it  
14 plans to use at trial in convincing the judge  
15 that it's untainted.

16 Accordingly, I would like to ask you to tell  
17 us which pieces of evidence, as things stand now,  
18 you plan to introduce at the trial of the case?

19 MR. LINTON: Judge, that's, in some respects,  
20 not a fair question, because that's part of the purpose  
21 of this hearing, to find out what it is that he gets,  
22 and whether he's entitled to get things that he does  
23 not have -- does not even know the nature -- may not  
24 know the nature of even. And so to say -- to ask him,  
25 do you want to use something you don't even know about

1 at this point, is wholly unfair.

2 MR. FRIEDMAN: I'm going to ask Mr. Linton  
3 about the other stuff, but, clearly, Mr. Cole, as the  
4 trial attorney, has been given a batch of material, and  
5 he knows which of that he would like to present, I  
6 would think.

7 THE COURT: Wouldn't it be better if we -- and  
8 I got to thinking about this after we discussed it last  
9 night. Wouldn't it be better if the court could  
10 determine if, first of all, Captain Hazelwood's  
11 statement, "We've gone hard aground." would give an  
12 independent source for all the evidence. Or, whether  
13 the inevitable discovery doctrine applied, and what cut  
14 off date, if any, would apply, before that kind of a  
15 question would be best answered?

16 MR. FRIEDMAN: I'm perfectly comfortable with  
17 that approach, Your Honor. I think it's whatever  
18 you're most comfortable is what it comes down to, since  
19 you're the one who is going to have to sort of think  
20 your way through this stuff.

21 THE COURT: Well, Mr. Cole has testified he  
22 doesn't know about a lot of the evidence that may come  
23 in, because the entire day of the 24th has been  
24 excluded from his consideration.

25 And if, for example, I did decide an

1 inevitable discovery doctrine applied sometime in the  
2 middle of the 24th, for example, there would be other  
3 evidence that he would then become aware about. And  
4 the evidence that would be necessarily tainted, you  
5 wouldn't have to ask about anyway.

6 MR. FRIEDMAN: All right. I think that makes  
7 sense. I'm not disagreeing at all.

8 THE COURT: I'd rather do it that way, and  
9 then Mr. Cole can be better prepared to answer your  
10 question, too.

11 Okay. I'm going to -- let's just go on and  
12 let's see if we can resolve some of these first issues  
13 first. And I will try to get a decision out, at least  
14 to give you some idea as quickly as I can. There's 16  
15 or 17 motions. I forget how many motions there are.  
16 We're going to have lots to do and we'll have some  
17 intervening days where I could work on this. And I  
18 hope to get a decision out to you before we complete  
19 these two weeks or three weeks of hearings.

20 MR. FRIEDMAN: Okay. I think that makes all  
21 sorts of sense, Your Honor. The only thing that I  
22 would -- I think the record reflects, but just so that  
23 it's clear, our position is that if we do get to the  
24 point where you have said, "Inevitable discovery  
25 applies, here's where the line is.", we may have to

1 duplicate some of what we've done here, because we may  
2 have to work back through. It should be faster, of  
3 course, but...

4 THE COURT: Then we can incorporate to the  
5 extent we can, also.

6 MR. FRIEDMAN: Right. Okay. Fair enough.  
7 Thank you.

8 Your Honor, could I just have a minute to  
9 think about the implications of that. (Pause) Thank  
10 you, Your Honor. I don't have any other questions.

11 REDIRECT EXAMINATION OF MR. COLE

12 BY MR. LINTON:

13 Q I have some questions about the conferences  
14 you participated in with Mary Anne Henry in which  
15 Mr. Weeks and/or Dwayne McConnell were present.

16 Can you describe what typically would happen  
17 at such a meeting, for the judge?

18 A Typically, what would happen is, we would call  
19 Mr. Weeks; get him on the phone; his first  
20 comment would be, "How is it going? Tell me what  
21 you guys have been doing today? What's gone on  
22 since we last talked?"

23 And either myself or Mary Anne Henry would  
24 tell him what we had done up to that point.

25 We would also talk about what we wanted to do.

1 He would offer suggestions. We would tell him  
2 what we thought was the appropriate avenue and he  
3 would offer suggestions. Most of our  
4 conversations dealt with that.

5 Sometimes we would have a check list of things  
6 that we wanted to talk to him about. We would go  
7 through those things. That's about how it  
8 happened.

9 Q Is it typical that assistant district  
10 attorneys talk to the director of criminal  
11 prosecution with the frequency that you talked to  
12 him?

13 A No.

14 Q Why not? Or, excuse me. What was different  
15 about this case that...

16 A Because most of my cases have just not been  
17 things that he wants to talk about. He's got  
18 other interests. This was a case that had a  
19 great deal of publicity; he had taken an active  
20 interest in. It was very complex with the issues  
21 that were presented because of the immunity in  
22 setting up the -- what he called the Chinese  
23 Wall, or making sure that we were untainted.

24 Q Did he convey information to you -- factual  
25 information to you in the course of such

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conversation?

A When you say "factual information", things that had happened on the ship?

Q No. Let me rephrase it. Did he convey information to you about the events about any fact of what happened on March 24, 1989?

A Not that I remember, no.

Q When questions of facts -- that is, questions of -- where was the ship? Who was on the ship? What happened to the ship? How did the ship get there? -- come up, when -- factual questions about that, who was the source of the information in the conversation?

A We were.

Q Who is the "we"?

A That would be Mary Anne Henry and myself, primarily, that I remember.

Q You were asked a question about whether you had talked to, or could talk to both Joe LeBeau and Mark Delozier. With respect to Mr. LeBeau, where did you learn -- how did you learn that he had been on the ship?

(Pause)

A I just -- I really can't remember.

Q Do you know -- when you learned that

1 information, did you know what date he was on the  
2 ship?

3 A I remember him saying that he had been on the  
4 ship when a search warrant had been served. And  
5 that's all I remembered as to when he was on the  
6 ship.

7 Q Do you know what the date of that search  
8 warrant was?

9 A No. I don't think I've seen anything from a  
10 search warrant. I'm not sure. It doesn't come  
11 to mind.

12 Q Did he tell you he was on the ship on any  
13 other date, other than the search warrant date?  
14 The "ship" being the Exxon Valdez.

15 (Tape: C-3507)

16 (000)

17 A He might have, but I don't remember it. No.  
18 I don't remember.

19 Q As to the items that you -- the matters that  
20 you did talk to him about, about damage in the  
21 Sound, what dates did he make the observations  
22 that he testified about?

23 A These were dates well after the 25th. They  
24 were talking about the damage that had occurred.  
25 Well, it had to be after April 28, after I got

1           into the case. So he was -- my understanding  
2           was, he was -- as I remember, he was talking  
3           about the damages that had been caused up to that  
4           point.

5           Q           Did he talk about a specific hatchery?

6           A           It seems to me he talked about -- I want to  
7           say Saw Tooth Hatchery, but I'm not sure.

8           Q           Let me refer to what's been marked as  
9           Plaintiff's Exhibit 2. Let me point to an area  
10          that on the chart is called Sawmill Bay.

11          A           That's the one he referred to.

12          Q           And did he have a chart to show -- show you  
13          where the chart was -- show you where Sawmill Bay  
14          was?

15          A           We had flown over it the second day after I  
16          had gotten in. So when he mentioned Sawmill Bay,  
17          that rang a bell. I knew where it was.

18          Q           And what was he talking about with respect to  
19          Sawmill Bay?

20          A           The cost of -- it seems to me, the cost of  
21          protecting Sawmill Bay from the oil that was  
22          coming. And the -- I want to say the dama -- it  
23          doesn't make sense to me that he would have been  
24          talking about the damage to the non-profit  
25          company, but for some reason that rings a bell.



1 Q Do you know on what date it was that the oil  
2 got that far...

3 A No.

4 Q Was it after March 24, 1989?

5 A (No audible response.)

6 Q Don't remember?

7 A I don't know where the oil was on March 24,  
8 1989.

9 Q Okay. Let's switch, then, to Mr. Delozier.  
10 What was your understanding as to whether you  
11 could talk to Mr. Delozier. First, you knew that  
12 Mary Anne Henry had talked to Mr. Delozier, at  
13 least to the extent of preparing for the grand  
14 jury?

15 A Yes. We had -- I remember now that she had  
16 spoken with him. There had been a problem --  
17 well, obviously, he testified at the grand jury.  
18 And there was documents. And I remember there  
19 being a problem because their attorneys were  
20 saying he couldn't give opinions, or something  
21 like that.

22 I believe our understanding was, we -- my  
23 understanding was, we couldn't talk about  
24 anything that happened the 24th -- that he had  
25 been involved with on the 24th.

1 Q Did you sit in on the conversations you had  
2 with Mr. Delozier?

3 A I don't -- I'm not sure, but I don't think  
4 I've met Mr. Delozier. I'm fairly positive I  
5 have not met him, or talked with him.

6 Q So you are describing your impression of the  
7 relationship that, under the rules, you are  
8 permitted to engage in with respect to talking to  
9 Mr. Delozier?

10 A Yes.

11 Q And would his identification of ship's  
12 documents be consistent with your understanding  
13 of what he could testify about?

14 A I don't know how he got them. Wait a minute.  
15 I did see something in the course of some of the  
16 discovery that said -- it had a federal subpoena  
17 directed to the Exxon Valdez. It was just a  
18 cover page. And it listed, like, the course  
19 recorder, the bell logger, things like that. I  
20 did see that. And as I remember, Mr. Delozier's  
21 was on that.

22 Q And was that among the material that you had  
23 been furnished by me as a result of the screening  
24 process?

25 A Yes, it was.

1 Q What was the date on the subpoena?  
2 A I have...  
3 Q Excuse me. I characterized it as a subpoena.  
4 Was it a subpoena?  
5 A My understanding was -- if I remember right,  
6 it was a subpoena. I don't know what the date on  
7 it was.  
8 Q I'll show you what's been marked as  
9 plaintiff's Exhibit 14. What's Exhibit 14?  
10 A Exhibit 14 is a document that I read. It's a  
11 subpoena from the department of transportation to  
12 the master of the Exxon Valdez dated March 26,  
13 1989, signed by Mark Delozier. And includes a  
14 list of the things that were asked for, which I  
15 remember seeing.  
16 Q That's the document that you remember seeing?  
17 A Yes.  
18 Q Let's talk about Mr. Guaneli for a second.  
19 When you had conversations with -- "you", meaning  
20 you and Ms. Henry -- had conversations with Mr.  
21 Weeks and Mr. Guaneli, or Mr. Guaneli alone, if  
22 there were such times, did he provide you any  
23 factual information as to events that occurred on  
24 March 24, 1989?  
25 A No, not that I was aware of.

1 Q In the course of conversations to which "he",  
2 Mr. Guaneli, was a party, who, if anyone, was the  
3 source of the factual information about the  
4 events on March 24, 1989?

5 A Mary Anne Henry and myself, primarily.

6 Q Now -- and you were the source of information  
7 about the events on March 24?

8 A I don't know what went on on March 24.

9 Q As to the dates other than March 24, who was  
10 the source of information about what had  
11 happened, in these conversations, now, with Mr.  
12 Guaneli?

13 A I believe we were. Mary Anne Henry and  
14 myself.

15 Q Explain what you mean by that?

16 A Well, I can give an example. One of the  
17 things we had a hard time with is Mr. Kagan's  
18 statement to the FBI and Mr. Kagan's statement to  
19 the Troopers. They just didn't make sense.

20 So one of the conversations that we had was,  
21 "Look, is this what Kagan said in the FBI, and  
22 this is what he said in the Trooper interview.  
23 And these are inconsistent, so we're trying to  
24 figure out what's going on up there."

25 And they would say, "Well, in the FBI thing,

1 didn't it say this."

2 And we would say, "Yes. These are the things  
3 that happened, and this is why it's  
4 inconsistent." And then we'd talk about that.  
5 That's the type of situation that I remember.

6 THE COURT: Mr. Linton, Mr. Purden says you're  
7 not being picked up very well, you're wandering away  
8 from the microphone. So you might stay a little  
9 closer.

10 MR. LINTON: Very well, Your Honor.

11 (Pause)

12 Q Were there ever times when either Mr. Weeks  
13 or Mr. Guaneli said something to you like, "If  
14 you had the NTSB hearings you would agree with  
15 our decision, but since you don't have them, we  
16 understand why you might not agree with our  
17 decision."?

18 A No.

19 Q Did they ever indicate, in effect, to you that  
20 they had the National Transportation Safety Board  
21 hearing record that you did not have?

22 A No.

23 Q Is there -- did they ever indicate to you that  
24 they had any information about -- on March 24,  
25 1989, that you didn't have?

1 A No.

2 Q Did they ever indicate to you that the  
3 Attorney General had any information that you  
4 didn't have?

5 A No.

6 MR. LINTON: Nothing further, Your Honor.

7 MR. FRIEDMAN: Nothing further.

8 THE COURT: You're excused for the time being,  
9 Mr. Cole.

10 (Witness excused.)

11 (Pause)

12 THE COURT: Would you call the name of your  
13 next witness?

14 MR. LINTON: I'm sorry, Your Honor. I call  
15 John McGhee.

16 THE CLERK: Would you raise your right hand.  
17 (498)

18 (Oath administered)

19 A I do.

20 JOHN L. MCGHEE

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

23 THE CLERK: Please be seated. Sir, would you  
24 please state your full name, and then spell your last  
25 name?

1 A John L. McGhee, M-c-G-h-e-e.

2 THE CLERK: Your current business mailing  
3 address?

4 A 5700 East Tudor Road, Anchorage, 99507, Alaska  
5 State Troopers.

6 DIRECT EXAMINATION OF TROOPER MCGHEE

7 BY MR. LINTON:

8 Q How long have you been a state trooper?

9 A In March of this year, what was your job with  
10 the Alaska State Troopers?

11 A I was working for the director in Anchorage.

12 Q And by the "director" you mean whom?

13 A Colonel Jent (ph).

14 Q What were your responsibilities with him?

15 A Well, I work on different types of internal,  
16 as well as special type investigations.

17 Q How long had you been doing that kind of work,  
18 that is the directors job in March?

19 A Well, actually working in his office since  
20 January 1st.

21 Q What had you been doing before that?

22 A I was in white collar crime and criminal  
23 investigations.

24 Q How long had you been doing white collar  
25 crime?

1 A I had done that for a little over a year.  
2 Q And in investigations you've...  
3 A Yes.  
4 Q How long in investigations? Longer in  
5 investigations?  
6 A No, I went into investigations when I went  
7 into white collar crime. I was in patrol prior  
8 to that.  
9 Q On March 26th did the colonel call you and  
10 give you some directions to go to Valdez?  
11 A Yes, he called me at my residence and advised  
12 me that he wanted me to go to Valdez basically as  
13 soon as I could get there and take over the  
14 investigation.  
15 Q Did he tell you what he wanted you to  
16 investigate?  
17 A Basically the -- what had occurred;  
18 investigate the grounding and anything that would  
19 be connected with that.  
20 Q When you talked to him did he specify to  
21 investigate a driving while intoxicated charge?  
22 A No. In fact, I don't believe he knew anything  
23 about that.  
24 Q When did you actually arrive in Valdez?  
25 A It would have been the next day, I believe. I



1 can't give you an exact time, but it would have  
2 been around 5:00 o'clock -- 4:30, 5:00 o'clock in  
3 the afternoon.

4 Q And did you describe in general what occurred  
5 -- how long a period of time did you stay in  
6 Valdez?

7 A About three and a half weeks.

8 Q Could you describe in general for the judge  
9 what your role was in the course of that three  
10 and a half weeks that you were there?

11 A Initially I was doing some of the interviews  
12 on the people that we wanted to talk to that had  
13 -- some of which had been set up by Trooper Fox.  
14 And I felt that we needed more personnel than we  
15 had there, so I requested other personnel. And  
16 when they all started coming in, basically I took  
17 more of a -- just being over everybody; making  
18 sure that things went to the right places, that  
19 type of thing.

20 MR. LINTON: Could this be marked as the next  
21 exhibit, please.

22 (Pause)

23 Q I hand you what's been marked as Exhibit 33.  
24 Do you recognize Plaintiff's Exhibit 33?

25 A Well, it's a copy of a supplement that I made



1 that we use to put their names, with all the  
2 information. This primarily was just, again, the  
3 name; the time we talked to them; who talked to  
4 them, that type of information.

5 You would have to go through about 30 pages or  
6 so to get that same information.

7 Q Trooper, could you tell us what you did when  
8 you first got to Valdez?

9 A Well, when I first got there, Trooper Fox,  
10 and, I believe, Joe LeBeau and you were already  
11 involved with an interview with someone. And I  
12 interrupted for a minute just to let Trooper Fox  
13 know I was there, and he advised me at that time  
14 that he had Mr. French coming in for an interview  
15 at 5:00 o'clock, and he asked me if I would go  
16 ahead and take care of that.

17 Q What was your understanding as to who was  
18 being interviewed at that time by Mr. Fox, where  
19 I was present?

20 A I believe it was the pilot of the pilot boat  
21 -- the pilot, Mr. Murphy, I believe it was.

22 Q And who was the gentleman who you interviewed?

23 A Mr. French is the taxi cab driver, or a taxi  
24 cab driver.

25 Q A taxi cab driver who you understood to have

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had what role...

A Briefly, Fox told me that Mr. Fox [French] had taken the people -- one person out to the Arco Independence and three others out to the tanker, Exxon Valdez.

Q Mr. Fox had done that?

A Trooper Fox. He -- Trooper Fox is the one that gave me that information.

Q Mr. Fox drove them?

A French -- Mr. French.

Q Did you conduct other interviews that day?

A Yes, I did. After I completed that interview, and Trooper Fox completed what he was doing, later on that night he had already had set up interviews with four other people.

Q Who else did you talk to?

A I think his name was Mr. McGregor, on the Arco Independence, as he was one of the passengers in the taxi. And...

Q And he was in what connection -- what connection did he have with the Arco Independence?

A I'm trying to remember what he was. He worked on there -- I believe he was the chief steward -- I don't remember what his title was.

1 Q He was a crew member of...

2 A Oh, yes, he was a crew member of the Arco  
3 Independence. And he had returned on the taxi  
4 that Mr. French was driving when these other  
5 three individuals on the tanker Exxon Valdez went  
6 out to the tanker.

7 Q And who else did you talk to besides Mr.  
8 McGregor?

9 A The three security guards that were on duty on  
10 the -- when that taxicab came into the Terminal  
11 area there.

12 Q And if the judge looks he'll see the name --  
13 is it, Shoup, or Sharp?

14 A I'd have to look at my list, but there's three  
15 of them.

16 Q Dudley and Craig?

17 A Dudley and Craig I remember. It's the first  
18 one -- I can't remember if it was Sharp or Shoup  
19 -- whatever it was, but it's on my list.

20 Q And he'll see the times written there?

21 A Yes. They're all one right after the other.

22 Q Did you talk to anybody else that night?

23 A Not that night.

24 Q The next day, tell us what you -- after you --  
25 what time did you finish that night?

1 A Well, it was quite late. It was after 10 or  
2 so, maybe 11:00. Again, all those times  
3 specifically are on my report. Once we completed  
4 -- I would say it was about 11:00 when we  
5 completed those. And then the next morning  
6 Trooper Fox and I went out to the Terminal and  
7 checked the berthing areas 4 and 5. And there  
8 was no ship in 5, but there was in 4, and we had  
9 taken some pictures of those.

10 (874)

11 Q Did you talk to Ms. Patricia Caples on the  
12 28th?

13 A Yes. I believe that was around 12:00, 12:30,  
14 somewhere around that time. That was another  
15 interview that had initially been set up by  
16 Trooper Fox. She came over with her boss, I  
17 believe, Mr. Arts (ph), and an Exxon attorney,  
18 Mr. Daigle (ph), I believe his name was.

19 Q Was Caples was an employee of what  
20 organization?

21 A I'm trying to remember -- it's Alaska Maritime  
22 something agency, if I remember right. Basically  
23 what they did is, they meet the ship and do all  
24 the running type stuff for them and occasionally  
25 pick up the captain, or whatever -- they sort of

1 run around for the ship. They also, when they're  
2 getting ready to leave, go out, and if there's  
3 some paperwork that needs to be checked, or  
4 signed, or whatever, and she takes that back out  
5 to get completed prior to the ship sailing.

6 Q And did she talk to you about whether there  
7 were any signs of intoxication on the captain at  
8 the time the ship departed?

9 A She did make a couple statements as to his  
10 speech, and I believe, somewhat, his demeanor.

11 Q What did you do next in the investigation?

12 A Well, after that -- of course, during this  
13 time I was talking to you. But after that I was  
14 just really trying to get stuff together and get  
15 some more people down there. It took most of  
16 that day. I'm not sure if it was that afternoon  
17 or the next morning we contacted -- or, in fact,  
18 you contacted Exxon, because we wanted to talk to  
19 the people that were on the Exxon Valdez, the  
20 crew members, and we attempted to get something  
21 set up. And initially they were going to bring  
22 the people in so we could talk to them, and then  
23 they decided -- there was a decision made, and  
24 then we went out to the tanker and interviewed  
25 the crew -- or, most of the crew.

1 Q You were under the impression that initially  
2 the interviews were to take place in town?  
3 A Yes, they were supposed to.  
4 Q What date were they to start?  
5 A Well, I would -- I'd say the 29th -- it was  
6 during that day. But we couldn't get that worked  
7 out. And then on the 30th I went out to the  
8 tanker.  
9 Q When you went to the tanker, who did you talk  
10 to?  
11 A I went -- prior to getting out there there was  
12 two Exxon attorneys that went out with us, as  
13 well as Joe LeBeau went with me on the boat out  
14 to the ship. We talked to all but two of the  
15 crew members.  
16 Q Let's talk about that process a little bit.  
17 (Pause) Did you have any way to identify who had  
18 been crewmen, yourself, at the time you went out?  
19 A I'm trying to remember. I believe Mr. Clough,  
20 in fact, on the 29th, brought over a list of the  
21 people that were on the ship.  
22 Q Mr. Clough, you understood to be?  
23 (indiscernible - away from mike)?  
24 A Is an attorney.  
25 Q A lawyer for the Exxon Corporation.



1 I believe for the Exxon (indiscernible - away  
2 from mike)?

3 A Exxon, yes.

4 Q Shipping company. And you had such a list,  
5 then, when you went out?

6 A Yes, I did. Yes, I did.

7 Q How was it mechanically set up once you got  
8 out there? That is, where did you actually  
9 conduct the interviews?

10 A Well, we didn't go on the ship itself. We  
11 were tied up alongside of it. And the members of  
12 the crew came down to the small boat, and I did  
13 the interviews there. Mr. Wood, who is an Exxon  
14 attorney, he was there during all of our  
15 interviews, as was Joe LeBeau.

16 Q Did you have the list to check off those  
17 people who you talked to?

18 A Yes, I did.

19 (Pause)

20 Q I'll show you what's been marked as Exhibit 7.  
21 Is that the list that you had?

22 A Well, I had made a copy of this list.

23 Q (Indiscernible - away from mike).

24 A Right. And this is what I went by.

25 Q And what had your request of Exxon -- in other

1 words, your understanding as to who you were  
2 going to get to talk to?

3 A Well, I was going to get to talk to all the  
4 crew members that were there.

5 Q Did you know who had been on duty, on what  
6 shifts, and...

7 A Well, it was some of the questions I was -- I  
8 knew -- I believe at that time I knew that  
9 certain members were on duty. I didn't know all  
10 of them. In fact, that was some of the questions  
11 that I asked, is what they were doing at the time  
12 the ship went aground.

13 Q Of the people on the list, who did you not get  
14 to talk to?

15 A The master, Mr. Hazelwood, and Cousins.

16 Q What explanation was given to you at that  
17 time?

18 A Well, I'm tryin' to remember. It seems to me  
19 that, in fact, even the attorneys that went out  
20 with us -- I don't know if they even knew they  
21 were there or not. They weren't on the ship at  
22 that time, and I'm not sure that they even knew  
23 about that either right then.

24 Q What time did you get out to the ship that  
25 day?

1 A Gee, I'd have to look. I know we left about  
2 7:00 -- it seems to me I started doing the  
3 interviews at around 2:30 approximately.  
4 Q What time did you get back into Valdez that  
5 night?  
6 A Actually, it was about 10:00 or a little  
7 after.  
8 Q Let me show you a series of documents.  
9 Exhibit 3. (Pause) Exhibit 4, some licenses.  
10 A Yes.  
11 Q Exhibit 5, a course recorder. Exhibit 6, a  
12 tally book. And let me refer to particular pages  
13 in the tally book. (Pause) Particularly a page  
14 that bears an entry, "004 grounded".  
15 A Yes.  
16 Q (Indiscernible - unclear).  
17 A Yes.  
18 Q Exhibit 8, a chart. And Exhibit 9, a document  
19 headed "Deck Log".  
20 When you got to Valdez did you have those  
21 documents available to you to work from to  
22 conduct your investigation?  
23 A No.  
24 Q Did you get them when you went out to the  
25 ship?

1 A I don't remember picking up anything from the  
2 ship, other than the interviews.

3 Q So on the 30th when you conducted the  
4 interviews, you didn't have those documents to  
5 work on to question witnesses with?

6 A No, I did not.

7 (Pause)

8 Q Over the next few days, or during that period  
9 of time, do you remember any discussions about --  
10 among investigators, including me, to the extent  
11 I may have participated in them, about trying to  
12 get documents from the ship?

13 A Well, we had attempted to get documents from  
14 different sources, such as Mr. Delozier at the  
15 Coast Guard. I mean, inquiries have been made  
16 trying to get some of this documentation. I know  
17 we talked about that at different times.

18 Q When is the first time you are aware of any  
19 investigator getting documents from the ship?

20 A I don't have -- I thought it was -- right now  
21 it seems like it was a week and a half or so  
22 after we started getting some documentation.  
23 Like I said, we'd been requesting it, we just  
24 weren't getting it.

25 MR. LINTON: I'd ask that these two documents

1 be marked as the next state's exhibits.

2 Q I hand you two documents which are Exhibits 34  
3 and 35. Do you recognize those, sir?

4 A Yes. I had seen them at the time, yes.

5 Q Do you recognize those as search warrants for  
6 the Exxon Valdez issued by a magistrate on April  
7 1, 1989?

8 A Yes.

9 Q Explain to the judge what the purpose of going  
10 to search the Exxon Valdez on April 1, 1989 was?

11 A Well, we wanted to pick up some documentation  
12 of what had occurred. We knew there were things  
13 out there but we did not have them, as far as the  
14 engine, and so on. There were different things  
15 on the ship that I didn't even know what all they  
16 were. But I knew that we wanted to get them if  
17 we could.

18 Q So as of April 1, 1989 you still did not have  
19 these exhibits here that we talked about?  
20 Exhibit 9, Exhibit 8, Exhibit 6, 5, 4, and 3?

21 A No.

22 Q Let me refer you specifically to -- do you  
23 remember the specific page that bears the entry  
24 004?

25 A Later -- I can't give you the exact date, but,

1                   yeah, later I remember seeing, well, a copy of  
2                   this page, yes.

3           Q            You hadn't seen it before the search?

4           A            I don't remember ever seeing it before the  
5                   search, no.

6           Q            Did you, in fact, execute a search warrant  
7                   throughout the ship?

8           A            I did not. Sergeant Stockard and Investigator  
9                   Grimes, in fact, went out to the ship on the  
10                  search warrants.

11          Q            Trooper, in the course of time that you  
12                   conducted your investigation, did you have a tape  
13                   recording of the transmissions by Captain  
14                   Hazelwood to the Coast Guard, and visa versa on  
15                   March 23, 1989?

16          A            I know we got a log later. I couldn't say for  
17                   sure if I did or didn't, but I'd have to look at  
18                   the evidence specifically. If I did, it was in  
19                   evidence -- it was put into evidence.

20          Q            At any time prior to talking to the crew, did  
21                   you know of any transmission regarding trouble  
22                   with the third mate?

23          A            No, I didn't -- I had no idea of that.

24          Q            Did you know of any transmission about getting  
25                   off the reef?

1 A No. It was my understanding at the time that  
2 they had not -- when they went on the reef they  
3 stopped; that was my understanding at the time.

4 In fact, the crew, after I interviewed them, I  
5 got some different statements as to that, but  
6 prior to that, no.

7 Q What do you mean by, the crew gave you some  
8 different statements as to that?

9 A Well, most of the crew said that once it  
10 happened it stopped, basically. But there were  
11 some that said that the engines, you know -- they  
12 could tell that he tried to get off the reef, or  
13 rock, or whatever.

14 Q Did you -- when you went out to interview  
15 them, did you know about any evidence concerning  
16 use of alcohol?

17 A I knew that what Trooper Fox had told me -- in  
18 fact, his initial call, when the tanker went  
19 aground, was that it was aground and there was  
20 oil -- oil spill. In fact, he didn't even go out  
21 then. He was called later, a couple hours after  
22 that, and then told that -- I can't remember  
23 exactly word-for-word, but I believe it was  
24 something about the captain being drunk, and they  
25 wanted a trooper out there, and that's when he

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went.

Q So you had that information?

A I had that information. I had the information from Trooper Fox that while he was out there he did find what he called -- in fact, I've got one of them in evidence -- a Moussy, which is somewhat of an alcoholic beverage; very small amount.

Q It has some alcohol in it?

A Yes.

(1580)

Q When you spoke to members of the crew did you ask questions about the use of alcohol by anybody?

A I was specific -- I did ask those questions, but it was specifically about the captain, the master.

Q Why would you ask questions about alcohol?

A Well, because it had been brought up to me in more than one interview, other than what Trooper Fox, plus an interview I did, that there was -- possibly that there was alcohol involved here. So as part of my investigation I asked those questions, to either confirm or -- that there was alcohol involved.



1 Q You're speaking of the interview with Ms.  
2 Caples?

3 A Yes.

4 Q And any others?

5 A Well, what Trooper Fox had told me; obviously  
6 what he had been told, and what things that he  
7 was able to see himself. Again, being many hours  
8 later when he saw it.

9 Q Did he report the results of an interview with  
10 Trooper Murphy that was going on when you arrived  
11 the first day?

12 A The interview with Mr. Murphy?

13 Q By Mr. Fox.

14 A Right.

15 Q When you found him busy, you went and  
16 interviewed Mr. French.

17 A He did say something about it, but I didn't  
18 have the actual interview back at that time, so I  
19 didn't check it.

20 Q Would you have asked people about alcohol even  
21 if you hadn't known that?

22 A Oh, yes. I mean, it's just like going out to  
23 an accident -- on a motor vehicle accident.  
24 There's usually some reason why these things  
25 happen, and it's just another facet. You know,

1           it's just like checking their tires or tail  
2           lights, whatever the case may be. It's something  
3           I want to check so I have the answer, not that it  
4           will come out later because I didn't check.  
5           THE COURT: Mr. Linton, we could take a normal  
6           lunch hour today if this would be a good time to break.  
7           MR. LINTON: It's as good as any, judge.  
8           THE COURT: Okay. We'll come back aground  
9           1:15.  
10          THE CLERK: Please rise. This court stands in  
11          recess subject to call.  
12                    (Off record - 12:00 noon)  
13                    (On record - 1:20 p.m.)  
14          (1661)  
15          THE COURT: You may be seated. Would counsel  
16          approach the bench, please?  
17          (1662)  
18                    (Whispered bench conference as follows:)  
19                    (Entire bench conference indiscernible.)  
20                    (End of whispered bench conference)  
21          (1710)  
22          Q           (Trooper McGhee by Mr. Linton:) I show you  
23                    what's been marked as Exhibit 36. Do you  
24                    recognize that?  
25          A           Yes.

1 Q It's a letter or memorandum that you received  
2 and on the basis of which you took some action?  
3 A Yes. I received this from you. It was  
4 talking about contact with a Mr. Kelly Mitchell.  
5 Q When did you receive it?  
6 A I'm trying to remember the exact date. It was  
7 right after -- Julie Grimes and Stockard weren't  
8 there yet. I'm trying to remember if -- it was  
9 about the 29th, I believe. Yeah, March 29 is the  
10 date on the top, also.  
11 Q March 29 is the date on it. There's some  
12 writing in the lower right hand corner.  
13 A I received it at 6:05 p.m. on 3/29.  
14 Q Did you take action based on that?  
15 A Yes. I signed -- I read it and initialed it,  
16 and I had Gale Savage, Paul Burke, and LeBeau and  
17 Trooper Alexander to read it, and I also had  
18 Investigator Grimes and Stockard read it and  
19 initial it.  
20 Q Were those all the investigators that were  
21 involved in the Valdez part of the investigation?  
22 A The only person not there was Trooper Fox, he  
23 was in the office.  
24 MR. LINTON: Move the admission of 36, Your  
25 Honor.

1 THE COURT: What was the number again, please?

2 MR. LINTON: 36.

3 MR. FRIEDMAN: No objection.

4 THE COURT: Any objection?

5 MR. FRIEDMAN: No.

6 EXHIBIT 36 ADMITTED

7 Q (Trooper McGhee by Mr. Linton:) Would you  
8 explain what your understanding of 36 was and  
9 what action you took based on it?

10 A Well, I know that you had asked for a person  
11 to come up to assist you because you didn't know  
12 all the information about the ships and so on and  
13 so forth, and Mr. Kelly Mitchell, he came up and,  
14 I believe, the NTSB or somebody got ahold of him  
15 and because of that you made out the letter and  
16 said that we were not to talk to him, basically,  
17 or receive anything from him.

18 Q And were you to give instructions to the same  
19 effect to other people and make sure they were  
20 aware of that?

21 A Yes. That's why we had them initial it --  
22 read and initial it.

23 Q Did you, in fact, show it to them and talk to  
24 them about it and have them initial it?

25 A Yes, I did.

1 Q To indicate that they understood?  
2 A Yes.  
3 Q Later were there similar instructions with  
4 respect to contact with Mary Anne Henry and Brent  
5 Cole and any investigator working for them?  
6 A Yes.  
7 Q Explain to the judge what you understood about  
8 that?  
9 A Well, this was obviously some time later. I  
10 can't remember the exact date, I didn't write a  
11 letter. But you had called and requested that I  
12 tell the same investigators, basically, that were  
13 on that list, that there was not to be contact  
14 with them, as you were going through all the  
15 paperwork, and were giving it to them to copy --  
16 sent it to them.  
17 Q And did you tell the other investigators those  
18 things?  
19 A Yes, I did.  
20 Q Did you personally follow those instructions?  
21 A Yes.  
22 MR. LINTON: Nothing further, Your Honor.  
23 CROSS EXAMINATION OF TROOPER MCGHEE  
24 BY MR. FRIEDMAN:  
25 Q Trooper McGhee, did you keep any sort of

1 notebook? I know some troopers keep trooper  
2 notebooks relating to their activities on cases.  
3 Did you keep one that would reflect your work on  
4 this case?

5 A No, it's in the report itself.

6 Q Okay. You don't have any other separate  
7 source of notes or anything of the kind?

8 A There was a couple of rough notes that I  
9 destroyed that had a couple of -- you know, like  
10 a word here, a word there, that I destroyed when  
11 I made out the report.

12 Q I need to look at those exhibits for a minute.  
13 (Pause) Trooper McGhee, did Mr. Linton, when he  
14 called you, indicate why he didn't want the  
15 troopers on that list to contact Brent Cole, Mary  
16 Anne Henry or Trooper Stogsdill?

17 A He didn't want us to discuss the case with  
18 them.

19 Q Right.

20 A I mean, obviously, I had talked to Stogsdill  
21 because I have the case report, as far as that's  
22 concerned. And I think I talked to Mary Anne  
23 about getting ahold of Stogsdill to get the rest  
24 of the reports. But I just -- because, at the  
25 time, what we called -- thought that we were

1           tainted, I guess is the word, we were not to talk  
2           to them.

3           Q           Okay. And that was -- my question is: did he  
4           explain to you why you were tainted?

5           A           No, he didn't really go into exactly why we  
6           were tainted. And, in fact, he wasn't sure if we  
7           were, but he was taking and making sure that we  
8           didn't go into certain things, and they didn't  
9           receive information from us.

10          Q           And your understanding was that none of the  
11          troopers on that list, or yourself, were to  
12          discuss the case with those two prosecutors?

13          A           With the others.

14          Q           Did he tell you whether you could or couldn't  
15          discuss the case? And by "you", I mean that  
16          group of troopers. Did he discuss whether you  
17          could discuss the case with other people in the  
18          Department of Law?

19          A           Oh, I know that I talked with -- I think Mr.  
20          Dean Guaneli was there at the time we were doing  
21          the case, and Mr. Linton and -- I don't remember  
22          now whether he said anybody specifically at the  
23          Department of Law or anything like that.

24          Q           Okay. Can you tell me when you became aware  
25          -- first became aware of Mr. Guaneli's

1 involvement in the case?

2 A I would have to say it was a couple days  
3 later.

4 Q After you were...

5 A After I got there. I'm guessing, it would  
6 have been the 29th or 30th; it might have even  
7 been a little bit later. But I had no contact --  
8 I mean, I'd see him, of course; I know him. But  
9 I was contacting Bob Linton.

10 Q What did you understand that Mr. Guaneli was  
11 doing in Valdez?

12 A I wasn't sure exactly what he was doing, but I  
13 wasn't having, you know, contact with him, mine  
14 was to go through Mr. Linton.

15 Q Okay. And back to my earlier question. Did  
16 you receive any instructions as to whether or not  
17 you could discuss the case with other members of  
18 the Department of Law, other than Mr. Cole and  
19 Ms. Henry?

20 A Those were the ones that I remember  
21 specifically.

22 Q You have in front of you -- actually, let me  
23 give you Exhibit 33 first. Exhibit 33 reflects  
24 the witnesses interviewed in the early stages of  
25 the investigation?



1 A Yes.

2 Q And when did you receive word from Mr. Linton  
3 that you were not to talk to Mr. Cole or Ms.  
4 Henry?

5 A Well, that was later. I mean, I was back in  
6 Anchorage.

7 Q Would that have been around mid-April?

8 A I believe it was after mid-April; towards the  
9 end of April, but I'm not exactly sure.

10 Q All right. Is it fair to say that virtually  
11 all of the witnesses on Exhibit 33 were  
12 interviewed by you or other troopers prior to you  
13 being informed that you could not talk to Mr.  
14 Cole or Ms. Henry?

15 A I would say probably almost all of them were  
16 interviewed before that, yes.

17 Q Now, you have in front of you Exhibit C.  
18 Could you tell us what that is?

19 A That's another -- I made up -- because, again,  
20 you would have even more pieces of paper than  
21 this for the evidence that we obtained.

22 Q That's a list of...

23 A It's sort of a -- yes.

24 Q I'm sorry.

25 A It's just brief information off of our

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property list, is what it is.

MR. FRIEDMAN: Your Honor, I'd move for admission of Exhibit C.

MR. LINTON: No objection.

THE COURT: Admitted.

EXHIBIT C ADMITTED

Q (Trooper McGhee by Mr. Friedman:) There are roughly 141 items, assuming the numbering is correct?

A Yes. Right. I think, if you will look back, you will find that there was one double...

Q Okay. Something in the neighborhood of 140.

A But, yes, basically, 140 items.

Q And would it be fair to say that virtually all, if not all of those 140 items, were put into evidence before you received word that you could not talk to Mr. Cole or Ms. Henry?

A Again, there might be a few towards the end, I couldn't say. But almost all of them, I'd say, yes. Yeah, down to about -- I know it was towards the end of April, I believe.

Q I'm not trying to put you on the spot.

A I would say probably about 120 of these items we had prior to that.

Q Okay. You mentioned earlier that you would

1 have interviewed people about the alcohol issue  
2 even if you hadn't met with Mr. Fox and been  
3 informed about it, is that correct?

4 A Well, from the information that I -- yes. Ms.  
5 Caples had brought it up, and I had known when I  
6 interviewed Mr. French, that someone had been  
7 drinking alcohol when they were taking the pizzas  
8 back, and so on. I would have asked anyway, yes.

9 Q Now, when you first arrived in Valdez you had  
10 a meeting with Trooper Fox, is that correct?

11 A Yeah. It was real brief because he was in an  
12 interview, yes.

13 Q And after that meeting you had another meeting  
14 with him?

15 A That's correct.

16 Q And in the course of those two meetings he  
17 briefed you on what he had found to date?

18 A Right.

19 Q And one of the things he briefed you on were  
20 indications that the captain may have been  
21 drinking the day before. The 23rd?

22 A That's correct.

23 Q And that was a significant lead in your....

24 A Well, it was a lead. There was many leads,  
25 but that was one that I wanted to take a look at,

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obviously.

Q In the course of an ordinary traffic accident type investigation, do you ordinarily investigate the possibility of drug usage by the operator of the vehicle?

A It depends on what I see and observations of them at the time. It's much harder as far as drugs than it is alcohol.

Q But that would be something that would be significant and important?

A If I noticed something, yes. I mean, like their eyes are pinpoint, or, you know, dilated. Yeah, there are things to look at.

Q And if you -- and what you want to look at, talking generally in terms of an investigation, is alcohol or drug use by the operator of the car, boat, vessel?

A Well, it would be -- really, it would be anybody. Obviously, I'm looking at -- I haven't focused in yet, but you're looking at what caused the accident, not necessarily is it the person that's drinking is the cause of the accident, needless to say. So, yeah, you're looking at everything, I want to get all the facts first and then make decisions once I obtain those.

1 Q Okay. I guess what I'm getting at is, you  
2 told us that even if you hadn't received the  
3 leads regarding Mr. Fox, or from Mr. Fox  
4 regarding alcohol, that you still would have  
5 asked questions about alcohol usage?

6 A Oh, yes. From the other two interviews that I  
7 did, I would have asked. The fact that the three  
8 interviews with the security people out at  
9 Alyeska Terminal.

10 Q Those were the interviews set up by Mr. Fox?

11 A Yeah. All these -- yes, that's correct.

12 Q Okay. And those interviews set up by Mr. Fox  
13 were designed, in part, to follow up on the leads  
14 he had received on potential alcohol use by the  
15 skipper?

16 A Well, that was a part of it. I mean, what  
17 caused the accident is what we were looking at.

18 Q I understand.

19 A And that's why he got those interviews.

20 Q Would it be fair and safe to say, without  
21 pulling out the interviews, that substantial  
22 portions of those interviews were devoted to  
23 questions regarding alcohol?

24 A You mean about the ones with the security  
25 people?

1 Q Of the security guards.

2 A Oh, yes.

3 Q For example, you participated in an interview  
4 of a Mr. Michael Craig?

5 A Yes, that's correct.

6 Q I'll show it to you just so you could review  
7 it. Would it be fair to say that of a five page  
8 interview, four of them were devoted to questions  
9 about alcohol?

10 (2560)

11 A I wouldn't say four pages; I would say parts  
12 of four pages.

13 Q Okay. The subject first comes up on the  
14 second page...

15 A Towards the bottom I ask about contraband and  
16 stuff. You've got it marked. It makes it a  
17 little bit easier. Yes. And I'm asking the  
18 questions as we go, yes.

19 Q Actually, Mr. Fox, I think -- oh, I'm sorry,  
20 you're right.

21 A Right. And there are questions on each page,  
22 yes.

23 Q And once you establish who the person is, what  
24 his job was, and where he was that night, you  
25 then introduce the subject of alcohol?

1 A Yes.

2 Q Okay. And from then on, that is the theme  
3 that runs through the rest of the unit, isn't it?

4 A It's in there, yes, but obviously he only had  
5 observations of 'em.

6 Q Excuse me?

7 A They had the observations of the person going  
8 through there. They would not know anything  
9 about the accident.

10 Q Which is why you were interviewing him, to  
11 find out whether...

12 A What they had observed.

13 Q Vis a vis, alcohol?

14 A If that was there, yes.

15 Q And that's, in fact, what you questioned  
16 about?

17 A Yes.

18 Q Likewise, the other security interviews are  
19 similar in nature?

20 A I would say -- you know, if I looked at each  
21 one I would say they're probably very similar.

22 Q Right.

23 A And these were interviews Mr. Fox had set up  
24 to explore the lead he had received regarding  
25 potential alcohol use?

1 A Well, you have to ask him exactly what -- that  
2 was not the only thing that he was looking at.

3 Q What else did he ask about in these interviews  
4 of the security guard?

5 A One, who the people were that came through,  
6 and what they were doing and stuff like that. I  
7 mean, I'm the one that did the interview on these  
8 particular people. He had set it up.

9 Q Right.

10 A But it wasn't just for alcohol, no. The time  
11 they came in, so on and so forth.

12 Q And you want to know who came through, because  
13 you're not investigating what people on another  
14 ship were doing, is that right?

15 A Primarily we were looking at the Exxon Valdez  
16 and the crew members on there.

17 Q So you wanted to know who was going through  
18 there so you could show when they went through  
19 and in what condition they were in when they went  
20 through, is that right?

21 A That's what I was checking on, yes.

22 Q Was there anything else you were looking for  
23 from the security guards?

24 A I wasn't specifically looking for anything, it  
25 was just the information that they gave me. And



1 I followed into it once they told me about -- I  
2 was going to explore whatever it was.

3 Q Well, you asked them certain questions which  
4 controlled...

5 A Yes, I did.

6 Q ...the subject of their answers?

7 A Yes.

8 Q You didn't ask them about UFOs?

9 A Didn't seem to have anything to do with this  
10 case.

11 Q Right. But alcohol did seem to have something  
12 to do with this case, didn't it?

13 A Well, I felt that there was something there  
14 because I had been told that by other people, and  
15 that's why I asked the questions.

16 Q Fair enough. I'm not criticizing you for  
17 asking the questions. The point I'm getting at  
18 is, you interviewed these witnesses because you  
19 wanted to find out what information they had  
20 regarding alcohol?

21 A Regarding him.

22 Q Regarding Captain Hazelwood.

23 A And the people that went out through the gate.

24 Q Okay. And the information you were seeking  
25 about Captain Hazelwood from these people was the

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state of his sobriety?

A Yes, that's what I asked him the questions on, yes.

Q What did Mr. Fox tell you about the accident, and about what he had discovered so far when you first -- not when you first met him, but in those first two meetings you had with him when he briefed you on what he had done to date?

A Well, the first one was what Mr. French's involvement was with the case. I didn't get a whole lot there, than he knew that I was there. Afterwards he told me about he observed, and so on, when he went out to the ship.

Q And what did he tell you?

(2770)

A Well, basically it was information of who he had talked to, and there was a part on Mr. Hazelwood as to his contact with him. In fact, he took an interview with him.

Q And what did he tell you about those things?

A As far as the -- I mean, he didn't know whether -- he thought that there was alcohol involved. And, in fact, if I remember exactly -- and you probably should ask him, but he wanted to make sure that there was some sort of test

1 taken -- a blood test, or urine test, or whatever  
2 the case may be, so he could either rule it in or  
3 rule it out, basically. He couldn't say for sure  
4 one way or the other.

5 Q But when you met with him he was bringing you  
6 up to date on what had gone on?

7 A As best he could.

8 Q It's what, a couple days after the grounding  
9 by the time you get down there?

10 A That's correct.

11 Q And he's telling you what investigation he's  
12 done to date, and what he thinks needs to be done  
13 in the future, is that correct?

14 A Well, he just mentioned that he had some  
15 interviews already set up, and I agreed with him,  
16 that they needed to be talked to. And as far as  
17 what we were gonna do in the future at that time,  
18 no. He didn't discuss that.

19 Q Okay. What did he tell you in terms of what  
20 he had found out so far, other than related to  
21 the alcohol issue?

22 A As far as going -- you know, the ship went  
23 aground and some people went out to the ship, and  
24 information on that. I mean, I would have to  
25 look at his paperwork -- on his interviews and

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his own supplement to give you exactly what he said and what he saw, what he observed, what he was told.

Q But you feel confident that, at least in a general way, he briefed you on the information he considered important?

A At that time.

Q Up to date, correct?

A Yes.

Q And as you conducted the interviews of the crew members, the security guards, Ms. Caples, you were interested in determining whether or not Captain Hazelwood had been drinking or was under the influence at the time of the grounding, is that...

A Those were part of the questions I asked, yes.

Q Now, when you interviewed those people, did you ask any one of them whether Greg Cousins was under the influence of alcohol at the time of the accident?

A I don't believe so.

Q Is it fair to say that that's because you had focused to some extent on Captain Hazelwood and the issue of his alcohol usage by that point?

A Yeah, I said I was looking into what it was.

1 I didn't know if there was an alcohol problem or  
2 not. I was looking into it, yes.

3 Q But the focus was on Captain Hazelwood at that  
4 point?

5 A Yes. And nobody has said anything to me at  
6 this time, any problem with Mr. Cousins.

7 Q Trooper Fox indicated, first in one of his  
8 police reports -- let me just see if I could find  
9 that real quickly so I get it right. (Pause)  
10 Mr. Fox indicated in one of his police reports  
11 that when he met with the Coast Guard officers  
12 the night of the grounding they told him that the  
13 captain had alcohol on his breath when they  
14 arrived at about 3:30 and that the third mate was  
15 at the con at the time of the grounding.

16 Mr. Fox -- I think I'm characterizing this  
17 correctly, testified at this hearing, that he  
18 considered that an important -- or, significant  
19 lead or piece of information, and that he passed  
20 that on to you, or believes he passed it on to  
21 you. Is that inconsistent with your memory in  
22 any way?

23 A No, it's not inconsistent.

24 (3085)

25 Q Okay. (Pause) After meeting with Trooper Fox

1                   you then questioned Mr. Roberson, is that  
2                   correct?

3           A           Isn't that the radioman, Roberson?

4           Q           Right. A crew member.

5           A           I didn't talk to him until I went out to the  
6                   ship.

7           Q           Right. I didn't mean -- right -- I didn't...

8           A           But, I was saying, you're out of order here.  
9                   I mean -- yes.

10          Q           What I mean is, chronologically, it happened  
11                   afterwards?

12          A           After I talked to Fox, I did talk to Mr.  
13                   Roberson, that's correct.

14          Q           Likewise, you interviewed the crew members  
15                   after talking to Trooper Fox those first two  
16                   times?

17          A           That's correct.

18          Q           And likewise, you questioned Pat Caples?

19          A           Which, I actually interviewed her before I  
20                   talked to Mr. Roberson.

21          Q           Okay. But it was all after your meeting with  
22                   Trooper Fox, is the point I'm making?

23          A           That is correct.

24          Q           And was the Caples meeting set up by Mr. Fox  
25                   at the time you arrived, or did you ask him to do

1           that? How did that come about?

2           A           No, he had already talked to -- I believe it  
3           was her boss and her and had that set up. I know  
4           they called me the next day, but that was just to  
5           confirm, or something, the time. But as I  
6           remember it, yes, he had that set up.

7           Q           I can't remember. Did you also -- after your  
8           meeting with Fox, and after some of these other  
9           things, also question people on shore? Were you  
10          involved in that, or did the other troopers...

11          A           I did not -- no, I had other troopers doing  
12          that.

13          Q           And the purpose of that was to follow up on  
14          what the captain had been doing that day?

15          A           If he had or had not; what he was doing in  
16          town; where he went; so on and so forth.

17                   (Pause)

18          Q           After you were told not to talk with Brent  
19          Cole or Mary Anne Henry, you said that Mr.  
20          Stogsdill came along -- he was assigned the case  
21          and you had to give him some material?

22          A           No, it was the other way around. He -- I  
23          still have all the paperwork that we have on this  
24          case -- I still have the file on this. More or  
25          less, I used to have the case. He's doin' some

1 investigation on it. I wanted to make sure I had  
2 all the paperwork, at least up to the points that  
3 he had completed it, and he sent it up to me to  
4 put it in with my case.

5 Q Okay. Did he ever ask you for any information  
6 reports, anything of that kind?

7 A Well, he couldn't get my reports. And he had  
8 to get through the DA's office -- I think Mr.  
9 Linton and his attorneys to get anything.

10 Q Okay. So the only contact you had with him  
11 regarding this case is him sending you material?

12 A Right. In fact, I had to call a couple times  
13 because there was a period of time where I didn't  
14 get anything, and I asked him if there was  
15 reports that he was gonna send up to me so I  
16 could include it with my report.

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

18 REDIRECT EXAMINATION OF TROOPER MCGHEE

19 BY MR. LINTON:

20 Q Trooper, did you ever talk to any other  
21 lawyers in the Department of Law after receiving  
22 your instructions not to talk to Mary Anne Henry  
23 or any other investigator working with her?

24 A Well, I know I talked to you, and Dean, I  
25 talked to when he was down there. And I know



1           what you had told me. I don't remember talking  
2           to -- I mean, it's possible, but I don't think  
3           so.

4           Q           How about Larry Weeks?

5           A           On this particular -- well, I did that before.  
6           I mean, he was the one that was your boss, and I  
7           had talked to him, but I also talked to him on a  
8           lot of other cases, so.

9           Q           After you received instructions, did you talk  
10          to Larry Weeks?

11          A           About information about the case?

12          Q           Yes, sir.

13          A           Not as far as direct information. I don't  
14          remember, other than telling him where we were at  
15          at the time, or something like that. Possibly,  
16          and I'm not sure I did.

17          Q           What do you mean by "other than telling him  
18          where we were at the time"?

19          A           What we were doing with the case. I wasn't on  
20          the case anymore. Stogsdill was the one that was  
21          investigating. I just had to report that type of  
22          information. I don't remember saying anything to  
23          him specifically about the case itself.

24          Q           Was there a time when you did talk to him?

25          A           Yeah, early on.

1 Q Explain to the judge what that was about?

2 A That -- well, that was about the case itself.

3 I mean, I don't remember exactly what we talked  
4 about, as a matter of fact, but it had to do with  
5 the case. And I know I had a lot of  
6 conversations with the commissioner and so on as  
7 to media -- you know, PR, all that kind of stuff  
8 which they handled. It was like general  
9 information. I don't remember specifically  
10 getting into odds and ends of the case with him.

11 Q I take it one of the subject matters was media  
12 thing. What was it that -- what occasion was  
13 there for you to talk to Larry Weeks about media  
14 things.

15 A I just can't remember talking to him about the  
16 case specifically. That -- I'm not sure. I'm  
17 just saying I don't know if I talked to him about  
18 the case specifically. If I talked to him it  
19 would have been on that, because I know I had  
20 lots of calls with the commissioner, and the  
21 colonel, and the major, about people that were  
22 callin' in from down south, and so on, and I just  
23 forwarded all of that to the commissioner's  
24 office.

25 And I know that -- it seems like the Attorney

1 General's Office, I talked to once or twice, but  
2 it wasn't specifically on the parts of the case.  
3 You know, what we were doing at that time. I  
4 talked to you. You talked to the Attorney  
5 General's Office.

6 Q Nothing further.

7 (3490)

8 RE CROSS EXAMINATION OF TROOPER MCGHEE

9 BY MR. FRIEDMAN:

10 Q When you were in Valdez you saw Mr. Guaneli  
11 there?

12 A Yes, I did.

13 Q Did you ever see Mr. Weeks there?

14 A I don't remember seeing Mr. Weeks in Valdez.

15 Q Do you know what he looks like? Have you ever  
16 met him?

17 A Oh, yeah, I know Mr. Weeks.

18 Q And am I characterizing your testimony  
19 correctly that you may have talked to someone  
20 from the AG's office, maybe Mr. Weeks, during the  
21 first several weeks of the investigation, but  
22 you're not sure?

23 A Yes.

24 Q And, likewise, after you were told not to talk  
25 to Brent Cole and Mary Anne Henry, you may have

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talked to Larry Weeks or someone from the AG's office about the case, but, again, you're not...

A I don't remember talking to them about that -- I had to talk to them about other cases I'm involved with, but not that case.

Q Okay.

A I don't remember talking to them about it, no.

Q All right. Thank you. I don't have anything further.

THE COURT: You're excused.

(Witness excused)

(3558)

MR. FRIEDMAN: Who's next, Bob?

MR. LINTON: Chris Stockard.

THE COURT: Chris Stockard.

(Pause.)

(3625)

(Oath administered.)

A I do.

CHRISTOPHER STOCKARD

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

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

A Christopher Stockard, S-t-o-c-k-a-r-d.

1 THE CLERK: And your current business mailing  
2 address?

3 A 5700 East Tudor Road, Alaska State Troopers.

4 THE CLERK: And your current occupation?

5 A I'm employed as a sergeant with the Alaska  
6 State Troopers.

7 DIRECT EXAMINATION OF TROOPER STOCKARD

8 BY MR. LINTON:

9 Q How long have you been An Alaska state  
10 trooper?

11 A Just about 14 years now.

12 Q As of March of this year, what was your job  
13 with the Alaska State Troopers?

14 A I'm assigned to the director's office of the  
15 Alaska State Troopers as a staff assistant in  
16 charge of doing staff work and assisting with  
17 special investigations.

18 Q In March of this year, were you told to go to  
19 Valdez to participate in an investigation?

20 A Yes, I was.

21 Q Explain to the judge, who gave you what  
22 instructions when you went.

23 A Well, I received instructions from two people  
24 basically. The first was my immediate supervisor  
25 who is Major McConahee of the troopers. He

1           advised that I had been requested to go to Valdez  
2           and assist Sergeant with the investigation by the  
3           commissioner's office.

4           I also spoke with the commissioner's office  
5           with the deputy commissioner. And from her, I  
6           was told that I was to go down and assist with  
7           the investigation and that thrust was  
8           particularly in the area of preserving all  
9           evidence, whether it be documentary, identifying  
10          witness, any physical evidence that might be  
11          present, so that it could be available for any  
12          future proceeding whether it be criminal or  
13          civil.

14        Q           When you got down there, did you have a  
15           primary area of responsibility?

16        A           My area of responsibility was primarily  
17           coordinating the operations of the other  
18           investigators. I coordinated the control,  
19           copying, and logging of the evidence items that  
20           were brought in by the other investigators.

21           When Sergeant McGhee was not present, I acted  
22           as his substitute in terms of being the  
23           supervisor of the other troopers there. General  
24           coordination activities and filling in whatever  
25           gaps other people needed to have done; what ever

1 small jobs came up.

2 Q Did you do any interviewing?

3 A Yes. I conducted a couple of interviews.

4 Q Are what ever interviews you did reflected on  
5 Exhibit 33? Let me hand it to you.

6 A I believe there's a copy of 33 right here.

7 Q Okay. Good.

8 (Pause.)

9 A Yes, they are. There's one other I was  
10 looking for here.

11 (Pause.)

12 Yes. The three interviews which I directly  
13 participated in are listed.

14 Q And can you tell us who they were and what,  
15 briefly, they had to tell you?

16 A Yes. Number 46 on this exhibit is Marshall  
17 Kendziorek who is a employee of DEC. He  
18 accompanied myself and the rest of the search  
19 warrant team when we served two search warrants,  
20 SW7 and SW8, on the Exxon Valdez.

21 He was employed as a computer expert for DEC  
22 and he was brought along to assist us in  
23 examining the computer files on the Exxon  
24 Valdez's computer. We didn't have the technical  
25 expertise to do that.

1           The second person listed on there that I  
2 interviewed was number 47, which is William  
3 Wallace, who was the captain of the Exxon Valdez  
4 at the time that we served the search warrant on  
5 April 2nd.

6           And the third person is number 49, Margarie L.  
7 Dooley, who is the daughter of one of the DPS  
8 employees' in Valdez, who is a school child who  
9 reported a conversation that another school child  
10 had had with her, one of Mark Delozier's  
11 children.

12 Q           Did you participate in a search of the Exxon  
13 Valdez?

14 A           Yes, I did.

15 Q           When did that occur?

16 A           That occurred on April 2nd.

17 Q           Are the search warrants there in front of you?

18 A           No.

19 Q           Okay. I'm sorry. I thought I had seen those  
20 while I was there by you. Here you are. I show  
21 you 34 and 35. Are they the search warrants that  
22 you had to execute?

23 A           Yes.

24 Q           And the documents described the subject matter  
25 to be searched for as listed on attachments A and



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B?

A Yes.

Q Are attachments A and B there on the documents that you have?

A There is a copy of attachment A, but I don't see a copy of attachment B here.

Q And briefly tell the judge what it was that was on attachment A and I'll show it to him.

A Yes. That's here. Briefly, attachment A lists a number of the operational and engineering documents from the Exxon Valdez and includes some additional materials concerning the actual accident; reports of damage control, damage efforts, salvage efforts, that type of material.

Q At the time you went out, did you or any other investigator, to your knowledge, have exhibits like Exhibit 6? If you can just have a look.

A We had a number of documents at that point. And I can't tell at this point without knowing what this document is labelled in the rest of our evidence if we, in fact, have a copy of it, whether we had it at that time, without referring to those notes.

Q Is that true...

A Sure.

1 Q ...with Exhibit 3 as well? Or can you tell us  
2 whether you had Exhibit 3?  
3 A I'm also uncertain about this, without knowing  
4 the origin or documents and referring to our  
5 records. I personally copied over 7,000  
6 documents and, to pick one individual one, would  
7 be very difficult.  
8 Q You understood yourself to be searching for  
9 what when you went out? The items listed on the  
10 search warrant.  
11 A Well, the items listed on the search warrant  
12 specifically.  
13 Q Did that include course recorders, charts?  
14 A Yes.  
15 Q Did you have those before? Before that time?  
16 A We had some recorders, but it was my  
17 impression, in the conversations that we had with  
18 Captain Greiner prior to going out, that there  
19 were additional recorders on board which we had  
20 seen any recorders from.  
21 Q Did you bring with you what was found in the  
22 course of the search on board the vessel?  
23 A Today, yes, I did.  
24 Q What documents were found on board.  
25 A Yes, what doc -- we didn't bring everything.

1 Q Could you produce them now?

2 A Yes.

3 (Tape: C-3508)

4 (0000)

5 THE COURT: I'd advise that Exhibit 35 is not  
6 in evidence in this case yet. It was a search warrant  
7 with attachment A.

8 MR. LINTON: I'd move Exhibit 35 be admitted.

9 THE COURT: Objection?

10 MR. FRIEDMAN: No objection.

11 THE COURT: Exhibit 35 is admitted.

12 EXHIBIT 35 ADMITTED

13 MR. LINTON: Judge, these are envelopes which  
14 contain documents. I'd request that just the document  
15 and envelop get the same number or the number in sub-  
16 part A so that the record of the date off the evidence  
17 tag is available at some point in the future should  
18 they be necessary for trial as well.

19 THE COURT: I'm not sure I follow you. Why  
20 don't you give me an example of the very first one,  
21 what you'd like to see happen.

22 MR. LINTON: Judge, what I suggest is, one  
23 practice might be to put something on the identifying  
24 tag only on the envelop. One practice might be to  
25 stick it on the document inside, in which case,

1 somebody in the future may not have this to refer to,  
2 that is the envelop to refer to, to recall where and  
3 under what circumstances they received the contents of  
4 the envelop.

5 So, what I'm suggesting is we mark the  
6 envelop, say Exhibit 100, and the document 100A. The  
7 documents inside is 100A, so that the record reflects  
8 that they did travel together. And should a witness in  
9 the future need to refer to something to refresh his  
10 recollection as to when and where, the document, 100A  
11 or A, B, C, D, E, F, G, were taken from the original  
12 envelop.

13 THE COURT: And do some of those envelops  
14 contain multiple documents?

15 MR. LINTON: Yes.

16 THE COURT: That seems to be a cumbersome way  
17 of handling it. If there's only one document in there,  
18 I don't see no problem making it 100 and 100A. But, if  
19 you have 100A through Z,...

20 MR. LINTON: I have no objection to proceed  
21 with one plan whereby just the original envelop be  
22 marked...

23 THE COURT: As long as we just continue to  
24 make sure the documents contained in the envelop are  
25 described when you have the witness testify. I think

1 we'll be able to keep track it. Any problem with that?

2 MR. FRIEDMAN: I have no problem with that,  
3 Your Honor. I'd also be probably willing to stipulate  
4 to whatever point Mr. Linton's trying to prove with  
5 those.

6 What are you trying to prove with all those  
7 documents?

8 MR. LINTON: Trying to prove that, in all  
9 those documents, you'll find none of the documents  
10 which are exhibits 3, 4, 5, 6,...

11 MR. FRIEDMAN: At the next break, Your  
12 Honor...

13 MR. LINTON: ...7, that's all 7.

14 MR. FRIEDMAN: I can go either way, but at the  
15 next break, I'd be willing to just comparing them, Mr.  
16 Linton and I.

17 THE COURT: So that they don't include the  
18 same document.

19 MR. LINTON: That's right. They were not on  
20 board the vessel at the time.

21 THE COURT: Why don't we go ahead and mark the  
22 outer envelop on each one of those documents and maybe  
23 we can work out a stipulation. It's sounds like for  
24 the next break Mr. Purden can mark all these, and you  
25 can just proceed right now with the next...

1 MR. LINTON: Understood.  
2 THE COURT: ...line of inquiry.  
3 (Side conversation - marking exhibits.)  
4 Q (Trooper Stockard by Mr. Linton:) I show you  
5 36.  
6 A Uh-huh (affirmative).  
7 Q Did you read and sign Exhibit 36 indicating  
8 that you understood the instructions thereon?  
9 A Yes, I did.  
10 Q And did you abide by them?  
11 A Yes.  
12 Q Some point later in your investigation, did  
13 you become aware that there were further  
14 instructions that you received as to who you  
15 might talk to about what you had learned in the  
16 course of your investigation?  
17 A Yes.  
18 Q Did you receive instructions that you should  
19 not talk to Mary Anne Henry or Brent Cole or  
20 anyone working as an investigator on their behalf  
21 or in association with them?  
22 A Yes.  
23 Q Did you follow those instructions?  
24 A Yes.  
25 MR. LINTON: Nothing further, Your Honor.

1 MR. FRIEDMAN: I don't have any questions,  
2 Your Honor.

3 THE COURT: Okay. You're excused.

4 (Witness excused.)

5 MR. LINTON: Judge, we couldn't find the  
6 witness I expected to be out there right now. It would  
7 take a minute or two to find him.

8 THE COURT: We'll take a little bright. But,  
9 would counsel come up here for a minute, please?

10 (0310)

11 (Whispered bench conference as follows:)

12 (Entire bench conference indiscernible.)

13 (End of whispered bench conference)

14 (0346)

15 THE COURT: Okay. We'll stand in recess.

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

18 (Off record - 2:12 p.m.)

19 (On record - 2:34 p.m.)

20 THE COURT: Please, will you call your next  
21 witness?

22 MR. LINTON: Judge, just a brief remark. I  
23 have Dr. Propst coming at three o'clock and counsel  
24 conferred and agreed that we may interrupt this  
25 witness.

1 THE COURT: Sure.  
2 MR. LINTON: With the court's approval.  
3 THE COURT: Sure. No problem.  
4 MR. LINTON: Call James Stogsdill.  
5 (346)  
6 (Oath administered)  
7 A I do.  
8 JAMES A. STOGSDILL  
9 called as a witness in behalf of the plaintiff, being  
10 first duly sworn upon oath, testified as follows:  
11 THE CLERK: Would you please state your full  
12 name, and then spell your last name?  
13 A James A. Stogsdill, S-t-o-g-s-d-i-l-l.  
14 THE CLERK: S-t-o-g...  
15 A -s-d-i-l-l.  
16 THE CLERK: And your current business mailing  
17 address?  
18 A 325 Californski Beach Road, Soldotna.  
19 THE CLERK: And your current occupation?  
20 A Alaska State trooper.  
21 DIRECT EXAMINATION OF TROOPER STOGSDILL  
22 BY MR. LINTON:  
23 Q How long have you been an Alaska State  
24 Trooper?  
25 A Eighteen years.



1 Q At some point were you assigned to work with  
2 Mary Anne Henry and Brent Cole of the District  
3 Attorney's Office in Anchorage with regard to  
4 prosecution of anyone associated with the Exxon  
5 Valdez Oil Spill?

6 A Yes, I was.

7 Q When did that happen.

8 A The end of April of this year, April 21st or  
9 26th, something like that.

10 Q How did that come about?

11 A I had called Mary Anne Henry on another matter  
12 and she indicated that she's already had feelers  
13 out for an untainted investigator; someone who  
14 hadn't worked on the case. And asked me if I  
15 would be interested, and I said, yes, I would,  
16 and that I would confer with the director to see  
17 if that was okay with him. And I did that, and  
18 it was okay with him.

19 Q At some point did you learn that the manner in  
20 which the case would proceed would be different  
21 than the average case?

22 A Almost right away.

23 Q When did that happen?

24 A I think I -- I can't remember exactly. It was  
25 within a few days of being assigned that I was at

1 the District Attorney's Office talking with Mary  
2 Anne Henry and yourself and the situation was  
3 explained to me at that time.

4 Q What was your understanding?

5 A My understanding was that the investigation  
6 that has taken place up 'til this point contained  
7 some evidence, statements, other things that had  
8 been labeled as tainted. And that those things  
9 generally derived as a direct result of Captain  
10 Hazelwood reporting an oil spill to the Coast  
11 Guard. And that those things were -- as a result  
12 of that, were going to be unavailable to me for  
13 ever, or at least up until some point. And that  
14 I would be furnished -- the police report would  
15 actually come from -- through you, Mary Anne  
16 Henry, to me for review or action or whatever, as  
17 it was determined to be untainted by whoever was  
18 determining that -- yourself.

19 Q Did you know whether there were members of the  
20 Alaska State Troopers who had previously been  
21 involved in the investigation?

22 A Yes.

23 Q Who did you know that to be?

24 A Sergeant McGhee, Sergeant Stockard,  
25 Investigator Burke, Julie Grimes, Michael Fox,

1 Trooper Alexander, I think. McGhee was -- I  
2 think McGhee was identified to me as the, at  
3 that, lead investigator.

4 Q How was it that you knew about their prior  
5 involvement in the case?

6 A Well, when the grounding and the spill  
7 occurred, I think I was out of town at that time  
8 in Ketchikan, or something. When I got back I  
9 had heard that we had sent the contingent  
10 investigators down to Valdez. I was just  
11 professionally curious as to who that might have  
12 been. So I think I called the colonel and asked.

13 Q Did you understand whether you could have  
14 contact with any of those investigators yourself  
15 personally as you worked with Mary Anne Henry and  
16 Brent Cole?

17 A Well, it was clear that I could not discuss  
18 the things they had done with them.

19 Q Were there things that you could discuss with  
20 them?

21 A Well, the only thing I felt that was  
22 appropriate, you know, based on the conversations  
23 was the administrative things that I might need.  
24 Access to a piece of untainted evidence or  
25 something along those lines. So, generally, that



1 I had hoped, in that regard, to actually  
2 participate in the running of the simulator,  
3 although that was impractical when I was there.

4 Q Explain to the judge what you mean by a  
5 "simulator"?

6 A Well, they had in existence there an actual  
7 tanker simulator. It's a tanker simulator. It  
8 has the bridge of a tanker and they can program  
9 it for various parts of the world, including  
10 Prince William Sound, and they conduct training  
11 there for steering and navigation and the things  
12 you would want to know if you can operate a  
13 tanker. Apparently it's one of the leading  
14 places in the country for that sort of thing.

15 Q So I went there basically to look at it. See  
16 if, at some point it might be useful to us. And  
17 I actually had hoped to have the situation exist  
18 where they could program it for Prince William  
19 Sound and I could actually operate it myself,  
20 just to see how I could do, I guess.

21 But it takes a lot of time for them to do  
22 that, to reprogram it. And at this point -- when  
23 I was there they had it set up for Santa Barbara  
24 Channel or some place, and were conducting some  
25 training classes there. So the only thing I got

1 to do was observe that and actually look at the  
2 device, which is quite large. It's a big thing.

3 (667)

4 Q Anything else in New York?

5 A Drove by Captain Hazelwood's home in  
6 Huntington. That's about it.

7 Q Where did you go next?

8 A I flew from there to Houston to the Exxon  
9 Shipping Company headquarters.

10 Q And your purpose in going there was to do  
11 what?

12 A A lot of things. I had a list of people that  
13 I would have liked to have interviewed there. I  
14 wanted to obtain some personnel files from some  
15 of the crew of the Exxon Valdez. I woulda liked  
16 to have found out where the crew who are still  
17 working, where they are now in case I needed to  
18 get ahold of them for something. Those kinds of  
19 things. But none of that worked out.

20 Q Explain briefly why?

21 A Apparently when I had arrived in Houston the  
22 attorneys for Exxon who were working on the oil  
23 spill had all come to Anchorage on that  
24 particular day. And even though the request for  
25 all the things that I had asked for had been done

1 with Exxon some time prior, and were allegedly to  
2 be made available at that visit, that had not  
3 taken place for some reason. And I received word  
4 from Brent Cole -- I was at the corporate  
5 headquarters -- that I would not be allowed to  
6 interview anyone or look at any documents. And  
7 that those would be, perhaps provided at another  
8 time. So I left and sent to San Diego.

9 Q What did you do in San Diego?

10 A I made arrangements there through -- actually  
11 Brent Cole gave me a hand with that over the  
12 phone to view the Exxon Valdez, which was now at  
13 dry dock at the National Steel and Ship Building  
14 Company. And I went down there on a Sunday  
15 morning and just looked at the damage.

16 Q In the course of your work had you complied  
17 with the instructions under which you were  
18 working?

19 A As far as I know.

20 MR. LINTON: Nothing further, Your Honor.

21 (814)

22 CROSS EXAMINATION OF TROOPER STOGSDILL

23 BY MR. FRIEDMAN:

24 Q Trooper Stogsdill, I take it you had heard  
25 about the oil spill before you had your phone

1 conversation with Mary Anne Henry?

2 A Oh, of course.

3 Q Were you aware that a blood alcohol test had  
4 been performed on Captain Hazelwood?

5 A Yes.

6 Q Were you aware of the result as reported in  
7 the newspaper?

8 A No, sir. No. I do -- as of today, I don't  
9 know the result.

10 Q Do you recall reading any articles reporting  
11 the results?

12 A I don't recall -- well, I guess not, otherwise  
13 I'd know it.

14 Q Okay. I would like to explore a little bit  
15 your understanding of the rules you were under  
16 that applied to you. You were not to discuss  
17 with the troopers who had previously worked on  
18 the case, what they had done?

19 A At all.

20 Q At all.

21 A Could you talk with other state investigators  
22 who had worked on the case regarding what they  
23 had done. The DEC officers, investigators,  
24 people that...

25 Q My understanding in that regard is that our



1 department had -- McGhee and his folks, as a  
2 result of their investigation, had put forth  
3 volumes of documents and papers and those things.  
4 And those things were being screened, of course,  
5 for whether or not I could see them.

6 Until that process was completed I was not to  
7 talk to McGhee or any of his people about those  
8 things that were flowing through. And even on  
9 some of the things that I got, there were whited  
10 out areas, pages missing, that kind of thing. So  
11 it was -- that rule was in place for that  
12 benefit.

13 Now, the other -- I did talk to people like  
14 LeBeau, who is a DEC investigator who we used at  
15 grand jury, and discussed with him things of --  
16 he had photos of the damage of the oil, and birds  
17 and things. And He had actually indicated that  
18 he had been on the ship in the role of a DEC  
19 person. I mean, yeah, I talked to him about some  
20 of the things that he did in his capacity as a  
21 DEC person.

22 And, in fact, he was -- he had -- it was  
23 through some information from him, I think, that  
24 a search warrant issued.

25 Q That's right. Well, let's just talk about the

1 governmental agencies you're aware that had  
2 investigators working on this case? We've got  
3 the Troopers?

4 A Right.

5 Q DEC?

6 A Right.

7 Q Are you aware of any other state agencies?

8 A Not right off the top of my head, I can't.

9 Q Federal agencies, we have the FBI. You were  
10 aware that they were...

11 A Coast Guard first; FBI...

12 Q Right. Okay. The Coast Guard first. FBI?

13 A Correct.

14 Q NTSB?

15 A Correct.

16 Q Was the EPA conducting an investigation that  
17 you're aware of?

18 A I think -- I think the United States Attorneys  
19 who were overseeing investigation being done by  
20 the FBI were actually EPA lawyers.

21 Q Okay.

22 A So I'm not sure that they actually had their  
23 own investigators.

24 Q Now, was it your understanding that with the  
25 exception of the troopers, you could talk to

1 investigators from those other governmental  
2 agencies about what they had done; what  
3 information they had accumulated, and so on.

4 A Well, no. It was also my understanding that  
5 the Coast Guard investigators were also off  
6 limits.

7 Q Okay. Under the same restrictions as the  
8 Troopers?

9 A Yeah. Under the same restrictions, right.  
10 But that was -- and the only other federal  
11 investigators I knew of were the FBI.

12 Q Okay. And you didn't have any restrictions as  
13 to what you could talk to them about?

14 A Well, I didn't talk to them about -- allegedly  
15 the FBI agent who was working with the EPA was  
16 also an untainted person as a federal guideline,  
17 I was to understand. And in some respects I  
18 could have some contact with him, but not in  
19 great detail about the things that he was  
20 actually doing; things he was told, and those  
21 kinds of things. And I did have contact -- Don  
22 Steele was the agent.

23 Q Were you allowed to talk to Mr. Linton about  
24 the case?

25 A Well, no. If there was any talking it was

1 usually him to me about -- you know, you might be  
2 able to expect more reports in a week or a month,  
3 whatever.

4 Q You talked some about what you did to  
5 investigate the case once you became involved.  
6 And I think Mr. Linton asked you the question,  
7 "What did you do to assist Brent Cole and Mary  
8 Anne Henry?"

9 And you said, "Not a whole lot."

10 Would it be fair to characterize even the  
11 material you -- let me start all over. Let's  
12 refer to the police reports other people prepared  
13 that you eventually received as the old  
14 investigation. Would it be fair to say that the  
15 old investigation accumulated more facts directly  
16 related to making a case against Captain  
17 Hazelwood that you were able to obtain?

18 A Well, it's certainly more voluminous. Yes. I  
19 don't think there is any question of that. I  
20 mean, for example, the interviews conducted with  
21 some of the crew members at the time of the  
22 grounding and the spill. Those things -- some of  
23 those statements eventually filter down to me.  
24 And yet, when I might have some questions of  
25 those people, having come into the case at the

1 time I did, they now have three or four attorneys  
2 each and, of course, aren't willing to talk to  
3 the police even one more time than they already  
4 have. And, you know, in most cases.

5 So, I have that restriction. I have that  
6 hurdle, I guess. And so, you know, even though  
7 you go there with the best intentions, yeah. The  
8 old case or the initial case obviously had far  
9 more information in that example than the  
10 information I got.

11 Q Right. The notebook that you brought with  
12 you, could you tell us what that is?

13 A That's the original of what you have there.

14 Q Is that how you ordinarily keep your trooper  
15 notebook?

16 A No. The -- I do this separately simply  
17 because it's this case. I have a trooper  
18 notebook that I use on other cases that I'm  
19 working, but most of the things I've done, or am  
20 involved in, are here.

21 Q Why is there a separate notebook for this  
22 case?

23 A It just seemed easier this time to keep a  
24 separate notebook.

25 Q The last note I have from your notebook is

1 August 27th. Does that mean that's the last time  
2 you did anything on this case?

3 A That's -- is that the San Diego?

4 Q I believe so.

5 A I believe so.

6 Q San Diego, yes.

7 A That was the end of August?

8 Q Right.

9 A Right.

10 Q But you haven't done anything...

11 A Since, essentially.

12 Q Trooper Stogsdill, there was some testimony  
13 this morning about various people who worked on  
14 this prosecution and various meetings that were  
15 held to plan strategy and so on. And I would  
16 like to ask you some questions relating to that  
17 issue.

18 Do you recall having some meetings with Mary  
19 Anne Henry, Dwayne McConnell, in which conference  
20 calls were placed to Juneau regarding the conduct  
21 of this case?

22 A Several.

23 Q Can you relate to us what you recall about  
24 those conversations?

25 A Well, initially, when they took place they

1 concerned the grand jury. When it would begin.  
2 Potential witnesses. Those kinds of things.

3 Q Okay. Let me focus on that for a minute. Did  
4 you work with Mary Anne Henry in preparing for a  
5 grand jury?

6 A To some extent, yeah. She had a number of  
7 witnesses -- not a number, but some witnesses who  
8 she wanted to call that up until the time of the  
9 grand jury no one had spoken to in our cluster.

10 Q In the new investigation?

11 A Right. So -- or at all.

12 Q Okay. Called the pure...

13 A So I made some contacts with -- there was a  
14 DEC fellow who testified at grand jury, I think,  
15 about damage -- the amount of damage that  
16 occurred. Some people from Fish and Game. They  
17 came over to the office the day prior to grand  
18 jury, or the morning of, I guess, maybe. And I  
19 interviewed them. Indicated to Mary Anne Henry  
20 what they might have to say at grand jury that  
21 might be of value. Whether or not they should  
22 even be called.

23 Q Where did you get their names?

24 A Furnished to me by her. Some of whom I think  
25 had come from either Larry Weeks or Dean Guaneli





1 Q And you were privy to -- whenever it happened,  
2 you were privy to that conversation or call?

3 A Well, there were some conference calls that I  
4 wasn't present at. Some of those occurred where  
5 I wasn't there.

6 Q Okay.

7 A But, generally, if a conference call occurred,  
8 I generally indicated it in my notes. But the --  
9 on one of the days prior to grand jury, there was  
10 mention of people who would testify, or who  
11 should testify as to damages and as to fisheries  
12 that were affected, and those things, that had  
13 been contacted prior by someone in Juneau.

14 Q Right.

15 A Now, I don't -- you know, I don't know that --  
16 I can't say that Mary Anne Didn't have those  
17 names several days before this conference call,  
18 but I do recall some mention of those people  
19 during these conference calls before the grand  
20 jury.

21 (1406)

22 Q Okay. Let me be more specific. Do you recall  
23 Mr. Weeks or Mr. Guaneli suggesting to Ms. Henry  
24 in one of these conference calls, "Here are some  
25 witnesses you should consider calling at grand

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jury."?

A Right.

Q That did occur?

A Right. And the names were -- the names of these people that I mentioned were used.

Q Okay. Do you recall Mr. Weeks or Mr. Guaneli also suggesting -- beside the damages witnesses, suggesting the other witnesses, such as Mr. Delozier and Mr. Murphy, and some of the other people who testified?

A I don't know that they suggested those people. It seemed almost certain that -- I mean, my understanding was that it was almost certain that those people would be there anyway, regardless of a suggestion from Mr. Weeks.

Q Why was it certain?

A Well, for one thing, I mean, Mary Anne and I had talked about some of the things that we had gotten that we might be using at grand jury, and one of those things, of course, was documents taken from the ship. And the only person that we knew who had done that allegedly was the Coast Guard investigator.

Q How did you know he had done that?

A (No audible response.)

1 Q Let me just tell you, Mr. Stogsdill, so that  
2 you -- I'm not trying to trick you or make you  
3 say something inconsistent with Ms. Henry. My  
4 recollection of her testimony was that she didn't  
5 know who to call, or she didn't have -- that's  
6 not right.

7 My recollection of her testimony is that she  
8 said Mr. Weeks suggested the weeks of who to call  
9 because she didn't have any police reports or  
10 information that would tell her who to call  
11 before the subpoenas started going out. And it  
12 was only after the subpoenas went out that she  
13 began getting police reports on those people. Is  
14 that consistent with your recollection, or do you  
15 have a different recollection of that?

16 A I caused some subpoenas to be served myself.  
17 You know, I don't -- I can't say what -- you  
18 know, what Mary Anne and Weeks' conversations  
19 were when I wasn't there. But it seemed like --  
20 my understanding from the very beginning, and I  
21 guess I can't identify right now where that came  
22 from, was that the Coast Guard investigator,  
23 whomever that might be -- in this case, Delozier,  
24 was the person who had taken documents from the  
25 ship, and therefore, I mean, it just seemed like

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a known to me from the very beginning.

Q Then the question is: how did you know it?

A I guess I can't tell you right now. You know, unless -- well, I can't really say.

MR. LINTON: This would be a good stopping point. Could I check to see if the 3:00 o'clock witness -- Dr. Propst is one of them.

(Pause)

THE COURT: I think I saw him through the glass back there. We may be calling a witness out of order here.

(Pause)

Trooper, why don't you step down for a while and we'll call you back when we finish with Dr. Propst.

(Witness steps down)

(1629)

THE COURT: Call your next witness.

MR. LINTON: Judge, I call Scott Conner. Let me explain briefly. Scott Conner is a witness who the defense would like for the taint hearing. But he has testimony on -- he and Dr. Propst, together, have testimony on one other motion. There is a motion to suppress blood alcohol. And the motion to suppress blood alcohol is answered by the state saying, no, the state statute may not have been complied with, but

1 procedures were medically appropriate.

2 I propose to have Mr. Scott Conner describe  
3 the procedures by which blood and urine samples --  
4 blood samples and urine samples were taken on board the  
5 Exxon Valdez. To have Dr. Propst listen to his sworn  
6 testimony and the testify as to whether those practices  
7 would render the test results medically valid.

8 And I spoke with Mr. Madson about this  
9 procedure and he indicated preliminarily that he did  
10 not have any objection to that. But I don't  
11 (indiscernible - unclear).

12 THE COURT: Do you think we'll be able to get  
13 this all under our belt today?

14 MR. LINTON: I think it could be quite quick.

15 MR. MADSON: I agree, Your Honor. I think it  
16 would be.

17 THE COURT: Okay, Mr. Madson.

18 Come on up and be sworn, please.

19 THE CLERK: Sir, you'll find a microphone  
20 right over there by the witness stand. If you will go  
21 ahead and attach that and remain standing and raise  
22 your right hand.

23 (Oath administered)

24 A Yes, I do.

25 (1714)

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SCOTT M. CONNER

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

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

A My name is Scott Mark Conner, C-o-n-n-e-r.

THE CLERK: Your current mailing address?

A 3940 East 112, Anchorage, 99516.

THE CLERK: And your current occupation?

A Is Health Services Technician, First Class, United States Coast Guard.

THE COURT: Before you inquire, it seems to me there is going to be some overlapping reasons for this testimony. Not only the blood alcohol, but also the availability of this witness to take a blood test sample at the time. So are you going to cover both areas in your direct?

MR. LINTON: I can do that.

UNIDENTIFIED SPEAKER: I was hoping he was -- we could do it both at the same time, sure.

THE COURT: And if we can get done -- I don't mind sticking around a little later if we have to.

DIRECT EXAMINATION OF MR. CONNER

BY MR. LINTON:

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

1 Guard?

2 A Fourteen years.

3 Q And would you describe for the judge your  
4 educational background and what training you have  
5 in medicine?

6 A I attended the Coast Guard hospital corpsman  
7 school in 1977 at the Coast Guard Academy in New  
8 London, Connecticut, which comprised of 24 weeks  
9 of intensive independent duty and field medic  
10 training.

11 Q At any point have you had experience in  
12 drawing blood for legal purposes, as opposed to  
13 simply medical purposes?

14 A No, sir.

15 Q Were you in Valdez on March 23, 24 -- those  
16 two days, 1989?

17 A Yes, sir.

18 Q Explain why you were there?

19 A I normally go to Valdez once a fiscal quarter  
20 to lend a hand with medical needs down at the  
21 Coast Guard station there. They are without  
22 medical personnel, and I'm the only Coast Guard  
23 medic in the area, and I go down and review  
24 medical contracts, medical records, medical  
25 supplies, do immunizations, make sure the guys

1 are generally in good health, answer any  
2 questions concerning medical insurances, and so  
3 on.

4 Q Where are you normally stationed?

5 A At the Patient Affairs Section, Elmendorf  
6 Hospital at Elmendorf Air Force Base.

7 Q And how many times a year do you go to Valdez?

8 A Four or five, depending on the need to go down  
9 -- the turnover personnel, or if supplies need to  
10 be brought down in bulk in a vehicle, then I'll  
11 drive them down there, whatever is necessary.

12 Q On that particular occasion, when had you gone  
13 to Valdez?

14 A I arrived in Valdez, I believe the 21st.

15 Q When were you scheduled to leave Valdez?

16 A The morning of the 24th, Friday morning.

17 Q Did you have a particular flight you were  
18 scheduled to leave on?

19 A First flight out.

20 Q And do you recall what time of day that was  
21 scheduled for?

22 A I believe that flight left at 9:30.

23 Q That morning -- where did you spend the night,  
24 then, in Valdez?

25 A (No audible response.)



1 Q Well, that's not -- did you spend the night of  
2 March 23, 24 in Valdez?

3 A Yes, I did. The night of the 23rd was spent  
4 at the Westmark Hotel, and I had checked out the  
5 morning of the 24th, and then due to the media to  
6 -- lack of rooms, I was able to find a room at  
7 the Village Inn on the night of the 24th.

8 Q Let me just make sure I understand. On the  
9 night of the 23rd, morning of the 24th, you were  
10 in Valdez?

11 A Yes, sir.

12 Q Did you go to work that day?

13 A Yes, sir, on the 23rd I did.

14 Q Okay.

15 A The 24th I went to the Coast Guard base only  
16 to check out -- grab my briefcase and any papers  
17 I -- files I may have had and get a ride out to  
18 the airport.

19 Q And so on that morning of the 24th you were  
20 going to take the 9:30 flight back to Anchorage?

21 A Yes, sir.

22 Q Did something interrupt your plans?

23 A Yes, sir. On arrival to the airport I was  
24 recalled back to the base by Commander McCall --  
25 the base commander at the Marine Safety Office,

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Valdez.

Q Did he explain why?

A Not at that point. We immediately went back to the base and I was directed to remain outside his office, and I was called in. And he explained to me what their intentions were at that point.

Q What did he tell you he wanted you to do?

A He asked me if I was capable of drawing blood samples.

Q And were you?

A And I assured him that I was. And then he requested that I get the necessary blood taking equipment together for both drug and alcohol screens.

Q Did you have such equipment with you?

A No, sir.

Q Tell the judge what you did to get it?

A First I contacted the Elmendorf Hospital laboratory to make sure -- just to make sure in my mind I knew what I had to get. And I went over to the Valdez Community Hospital and requested the necessary equipment for the blood sampling, which they, in turn, readily gave me.

Q Do you recall what time it was that you got

1 the call from the commander to return to the  
2 station?

3 A It may have been approximately 8:40 a.m.

4 Q And do you recall what time you left -- got to  
5 the hospital to pick up the equipment?

6 A I'm gonna say approximately 9:45 on the way  
7 out to the airport.

8 Q How did you get out to the ship?

9 A I was flown out in an Era Aviation helicopter.

10 Q So from the hospital you went directly to the  
11 airport?

12 A Yes, sir.

13 Q How long was the flight out to the Exxon  
14 Valdez?

15 A I believe approximately 20 minutes.

16 Q What happened when you -- tell the judge what  
17 you did when you got on board?

18 A Well, after we got on board the vessel, I was  
19 directed out to the -- or, escorted up to the  
20 captain's quarters.

21 Q And did you meet someone there?

22 A Yes, CWO Mark Delozier and Lieutenant  
23 Commander Tom Falkenstein were there in the  
24 passageway. And the -- Mr. Delozier brought me  
25 into the captain's quarters. And in the quarters

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was Greg Cousins, Maureen Jones and Robert Kagan -- were in sitting on the couch.

Q What happened next?

A Well, I noticed that there were blood sampling kits already in the room itself -- pre-packaged blood sampling kits. So I looked over the kits to see what use they may be, and they proved to be much better equipped for the situation over what I already had with me. They already had packaging and chain of custody paperwork and tampering seals all located within these kits, along with blood drawing equipment and a urinalysis -- or a urine specimen container.

Q Did you proceed to draw blood samples, and/or urine samples from anybody?

A Not at that point, no, sir.

Q What happened then?

(2120)

A Then Captain Hazelwood was summoned and asked to come in -- into his quarters. And at that point I began -- I got -- the kits were -- I was assembling the kits and getting everything together, and I had decided that I was going to augment the kits with an additional tube of blood from some of the tubes I brought with me --

1           utilize the empty tubes for blood drawn.

2           Q           What happened next?

3           A           I explained what I was doing. I asked Captain  
4           Hazelwood to put his arm up on the desk, and  
5           attached a tourniquet to his arm and cleanse the  
6           area with a Betadine iodine solution, and  
7           explained why it was brown, and why we were not  
8           using alcohol. Drew two tubes -- two grey-topped  
9           tubes that contained sodium fluoride in them --  
10          Vacutainer tubes, and one red topped tube. And  
11          there didn't appear to be any problems at all  
12          with any of the tubes. They all had vacuum,  
13          which demonstrated that they hadn't been tampered  
14          or opened previous.

15          After drawing the tube, I placed the  
16          individuals name and social security number on  
17          the paper label on the tube. Utilizing one of  
18          the tampering -- anti-tampering seals, I sealed  
19          the top of each of the three tubes. The two grey  
20          top and the red top. And, also, using another  
21          seal, I sealed the top of the urine container  
22          with some other seals that I brought.

23          Now, the urine specimens had already been  
24          drawn prior to my -- had already been gathered  
25          prior to my arrival by Mr. Delozier. And inside

1 each of these kits there's a chain of custody  
2 form which I filled out and I had -- I, myself  
3 filled it out. I signed it. Captain Hazelwood  
4 signed it. And Mr. Delozier signed this form as  
5 a witness. And it was placed inside the  
6 styrofoam container with the three tubes of blood  
7 and the urine.

8 And the lid to the container -- styrofoam  
9 container was sealed again with the anti-  
10 tampering seals. And there is a chain of custody  
11 form on the lid of the container, which requested  
12 information as to the date, the time, the event,  
13 the location, the patient's name, and I signed it  
14 and Captain Hazelwood also signed it.

15 Q After you drew a sample from him, did you draw  
16 a sample from anyone else?

17 A Yes. I drew samples from Greg Cousins, and  
18 then Maureen Flowers -- Maureen Jones, and then  
19 Robert Kagan.

20 Q What did you do with the -- you then had a box  
21 for each of them containing the blood and urine  
22 samples?

23 A Yes. They're each in a styrofoam box about  
24 four by seven.

25 Q What did you do with them?

1 A Four by eight. I placed them in the plastic  
2 bag I had with me and I brought those back to the  
3 Marine Safety office -- Coast Guard office in  
4 Valdez. And I sat there for quite a while, until  
5 about 3:00 in the afternoon. And then we drew  
6 the blood samples and gathered the urine specimen  
7 from the vessel traffic watch stander -- the  
8 Coast Guard VTS watch stander, and a urine sample  
9 from the civilian VTS watch stander.

10 And I placed those samples in the bag and we  
11 tried to locate a key to put them in a locked  
12 refrigerator. And we couldn't find the key. The  
13 only person that had the key was one of the guys  
14 that was out on the Coast Guard boat that was  
15 placing the security perimeter around the Exxon  
16 Valdez.

17 I held on to them for about another hour, and  
18 then I put them into the refrigerator down in the  
19 cafeteria, down in the galley. I put them in a  
20 box and put them up on the shelf.

21 Q How long were they there?

22 A They were there from approximately 4:30 in the  
23 afternoon until 8:30 the next morning.

24 Q And what happened -- what was done with them  
25 then?

1 A Then I went back and retrieved them. I  
2 checked them over. None of the seals had been  
3 tampered with. They didn't appear that anybody  
4 had even opened the box. And I took the  
5 specimens with me; went to the airport; boarded  
6 the next Era Aviation flight to Anchorage;  
7 arrived in Anchorage; went to my home; put them  
8 back in the refrigerator; and I called Commander  
9 Morraney (ph), the executive officer at MSO,  
10 Anchorage. And explained to him that I was back  
11 in town and I had these blood and urine samples  
12 from the crew of the Exxon Valdez, and if he  
13 could give me any direct at all what to do with  
14 them.

15 Q And did you get direction, and what did you  
16 do?

17 A Yes. He told me to stand by the phone  
18 approximately a half hour later. He contacted me  
19 and Lieutenant Stock -- Lieutenant Gary Stock  
20 from MSO Anchorage contacted me and directed me  
21 to report to the federal building. To the Coast  
22 Guard office in the federal building within a  
23 half hour, where I did. And at that point the  
24 custody was signed over to Lieutenant Stock where  
25 the last I saw of them, he was packing them in a



1 box for shipment out, via some overnight  
2 express -- I'm not sure which one. And I don't  
3 recall what lab on the west coast they went to.

4 Q What color stoppers were on the tubes?

5 A On two of the tubes were grey colored  
6 stoppers. These are the tubes with the sodium  
7 fluoride in them. And on the other one was a red  
8 stopper. This is a standard clot tube.

9 Q And that was true in each of the four  
10 packages?

11 A Yes.

12 Q Two grey and one red in each of the four  
13 packages?

14 A Yes.

15 MR. LINTON: Nothing further, Your Honor.

16 MR. MADSON: Thank you. Your Honor, it's  
17 difficult for a lawyer to be in court for three days  
18 without -- and keeping his mouth shut, but I'll try to  
19 be brief and get out of here by 3:30.

20 THE COURT: You can take your time. You've  
21 done a good job, too.

22 MR. MADSON: Thank you, Your Honor.

23 CROSS EXAMINATION OF MR. CONNER

24 BY MR. MADSON:

25 Q Corpsman Conner, is that what your title is?

1 Is Corpsman appropriate?

2 A Or petty officer, sir.

3 Q Okay. How about mister.

4 I'm a little confused here in the very

5 beginning of your testimony. You arrived in

6 Valdez on the 21st of March, and you were going

7 to leave on the 24th. Was that a scheduled

8 leave?

9 A Yes, sir.

10 Q You had your tickets in advance, and

11 everything?

12 A Yes, sir.

13 Q What kind of airplane were you flying on?

14 A Era Aviation.

15 Q And they have scheduled flights and arrival

16 times, leaving times?

17 A Yes.

18 Q Did you tell anyone what your schedule was?

19 A They knew -- MSO, Valdez knew. They're the

20 ones that prepared my -- or, funded my travel.

21 Q Where are they located?

22 A In Valdez.

23 Q Who are they? Who were these people?

24 A John Gonzales. He knew that I was leaving.

25 And I went in Friday morning and I was well aware

1 of the situation at hand. I had worked on the  
2 Arco Merchant back in the 70s and was very well  
3 aware of what was going on.

4 Q About what?

5 A The Arco Merchant.

6 Q No, You said Friday morning, or whatever.

7 A Oh! I knew that they had one hell of a mess  
8 going on, sir, and I just bid them a nice day and  
9 I left.

10 Q Well, we're getting ahead of ourselves here a  
11 little bit. Let me just back up briefly.

12 A Oh, okay.

13 Q You were at the Westmark on the 23rd, and you  
14 were going to leave to go back to Anchorage the  
15 next morning, right?

16 A Yes.

17 Q The 24th?

18 A Uh-huh (affirmative).

19 Q And you said that plane was due to depart at  
20 9:30?

21 A 9:30, 9:40. I'm not really sure.

22 Q What time was it when you left the Westmark,  
23 after you checked out and went on your way?

24 A Left the Westmark at maybe 8:00 a.m.

25 Q And you were just going to go by -- stop by

1 the Coast Guard station; pick up a few things and  
2 get your ride out to the airport?  
3 A Yes, sir.  
4 Q And that ride was with whom?  
5 A Coast Guard non-rate duty driver. Somebody  
6 that was just available that had keys to the car.  
7 Q Had this been planned in advance, or you just  
8 assumed somebody would be there at that hour?  
9 A Oh, so. It was no planned, in fact, sir. And  
10 the normal business day begins at 8:00 o'clock  
11 there.  
12 Q So, somebody is going to be there?  
13 A Yes, sir.  
14 Q So you would have been out to the airport by  
15 8:30, thereabouts?  
16 A Yes, sir.  
17 Q And how did -- were you on the way to the  
18 airport where -- when somebody flagged you down  
19 or stopped you?  
20 A We were just ready to pull in the parking lot,  
21 sir, in the Coast Guard truck, with siren and  
22 lights -- flashing lights goin', pulled us over.  
23 And the driver got out and came to the window  
24 and stated that I had been recalled to the base.  
25 Q Did he tell you why?

1 A No, sir. Just that Commander McCall requested  
2 my presence in his office immediately.

3 Q And so when you got back to the base I take it  
4 you talked to Commander McCall and he told you  
5 what the situation was?

6 A Yes, sir.

7 Q And then I think you said, if my notes are  
8 correct, that you did not have any blood sampling  
9 equipment with you?

10 A No, sir.

11 Q So you had to get some -- I think you said you  
12 went to the hospital?

13 A Yes, sir.

14 Q What exactly did you get at the hospital?

15 A I got approximately 10 or 12 sodium fluoride  
16 Vacutainer tubes. I got...

17 Q What kind of a tube is that? Would you  
18 explain that?

19 A It's a blood drawing tube, sir. It has a  
20 rubber stopper on it. And the glass tube has a  
21 vacuum in it. And this inserts into a plastic  
22 holder with a needle that screws in -- a double  
23 ended needle. And the needle is inserted into  
24 the vein, and then the tube is compressed down  
25 over the other end of the needle. And the vacuum

1 draws the blood out of the vein.

2 Q Okay. You said a sodium florite [fluoride]

3 tube?

4 A Sodium fluoride, sir.

5 Q Sodium fluoride. What does that mean?

6 A Sodium fluoride is utilized in evaluation for

7 blood alcohol, because it ceases the metabolism

8 of alcohol in the blood.

9 Q Is that some type of preservative?

10 A That's -- yes, you can use the word

11 "preservative", sir.

12 Q How do you know it's in there?

13 A Because it's a white powder at the bottom of

14 the tube, sir.

15 Q Now, these -- okay, did you check those from

16 the hospital to see if you could see any white

17 powder in them?

18 A Yes, sir.

19 Q Did you actually use any of these in your

20 sampling of any of the members of the crew?

21 A Yes, sir. One for each kit.

22 Q One for each kit?

23 A Yes, sir.

24 Q One of these per each individual?

25 A Yes, sir.

1 Q Let's get that in a minute. But I take it you  
2 got on board about 10:15 something like that?  
3 A Approximately, sir.  
4 Q And went directly to the -- was it the  
5 captain's quarters?  
6 A Yes, sir.  
7 Q And there you saw Cousins, Kagan and Jones?  
8 A Yes, sir.  
9 Q And how long was it before the captain --  
10 Captain Hazelwood appeared?  
11 A I honestly don't know, sir. Five, 10 minutes,  
12 maybe.  
13 Q It's not very long?  
14 A No, sir.  
15 Q You said he was summoned in. Did Mr. Delozier  
16 go to get him?  
17 A Yes, sir. Well, I'm sure the captain was busy  
18 somewhere else on the vessel checking something.  
19 And Mr. Delozier went to tell him that the  
20 corpsman was here.  
21 Q And so you -- the first test you took then was  
22 of Captain Hazelwood, is that correct?  
23 A Yes, sir.  
24 Q At the time you saw him, I take it you were in  
25 close proximity with Captain Hazelwood, a foot or

1 two away?

2 A Yes, sir.

3 Q You did not smell any alcohol on his breath at  
4 that time?

5 A No, sir.

6 Q You didn't see any signs of impairment of  
7 alcohol?

8 A No, sir.

9 Q Then you had -- here is where I guess I'm a  
10 little confused, because I obviously don't have  
11 your experience. You said you used -- drew a  
12 total of three tubes?

13 A Yes, sir.

14 Q Two had grey tops and one had a red top?

15 A Yes, sir.

16 Q Which one was the hospital tube that you  
17 utilized? Was that the red top?

18 A Well, it was one of the grey ones. Sir, the  
19 kits come with one grey top -- the kids that were  
20 there come with one red top...

21 Q Well, let me stop you. The ones that were  
22 there -- the ones that were on board the ship.

23 A Uh-huh (affirmative).

24 Q Okay. Explain what was in the kit, if you  
25 would?



1 A Okay. There was one grey topped tube, one red  
2 topped tube, one urine specimen container, one  
3 chain of custody form, and also a sheet with  
4 self-destructing seals. That's what was in each  
5 -- and all packed within a styrofoam box with a  
6 lid in a cardboard box.

7 Q And these you thought were better than the one  
8 you had -- the ones you had from the hospital, is  
9 that correct?

10 A Not necessarily the tubes, sir. The packaging  
11 was far superior than what I brought with me.

12 Q You mean for chain of custody purposes?

13 A Yes, sir.

14 Q You could put it all back together in one  
15 container?

16 A Right. And to assure that the tubes would not  
17 break in transport.

18 Q Because it's a styrofoam container that's  
19 packaging these items, right?

20 A Yes, sir.

21 Q So you took one grey and one red?

22 A No, sir. Two grey...

23 Q Two greys.

24 A ...and one red from each individual.

25 Q And you don't know which was the hospital one

1 and which was the tube from the kit that was on  
2 board?

3 A Well, yes, sir. The hospital tube was a 7  
4 millimeter tube -- 7 milliliter tube, and the one  
5 in the kit, I believe, was a 15 milliliter tube.  
6 I mean, if you had to hold them up, I could show  
7 you which was which.

8 Q Well, one -- obviously, one's bigger than the  
9 other, right?

10 A Yes, sir. The one in the kit was larger.

11 Q Okay. You're gonna have to pardon me, because  
12 I'm...

13 A That's okay.

14 Q ...really confused on this point.  
15 You took a total of three samples?

16 A Yes, sir.

17 Q Now, you used the two vials, if you will, or  
18 drawing kits, or whatever you want to call  
19 them...

20 A Right.

21 Q ...from the styrofoam container?

22 A Uh-huh (affirmative).

23 Q My question is, I guess, how could you  
24 differentiate between those two and the one from  
25 -- that you received from the hospital. What was

1 the difference, except size?

2 A Oh, no difference, sir, except physical  
3 characteristics. None.

4 Q Did the other tubes from the kit have the  
5 sodium fluoride powder in it?

6 A The one with the grey stopper did, yes, sir.

7 Q What about the one with the red stopper?

8 A The one with the red stopper has nothing in  
9 it. It is simply a silicone coated glass vial.

10 Q So that one would have no type of blood  
11 preservative in it at all?

12 A Correct, sir.

13 Q And you don't know what has been done with  
14 these three samples after they left your custody,  
15 is that correct?

16 A No, sir.

17 THE COURT: The answer is, it is correct?

18 A Yes, it is correct.

19 Q The other area I just wanted to ask you about  
20 a little bit is, you said in your direct  
21 testimony when you got back to -- off the ship  
22 and back to Valdez, you went back to the Coast  
23 Guard station and eventually put these samples in  
24 a refrigerator?

25 A Yes, sir.

1 Q Was that a locked refrigerator?  
2 A No, sir. Not at the time that they were  
3 placed in. It is a locked refrigerator after a  
4 particular hour of the day.  
5 Q Somebody comes in and locks it?  
6 A The cook on duty locks it. I put it right in  
7 alongside the lettuce.  
8 Q Mr. Conner, do you recall making a statement  
9 to an Alaska State Trooper by the name of Grimes?  
10 A Julie Grimes, sir?  
11 Q Julie Grimes.  
12 A I remember speaking with her, yes, sir.  
13 Q Do you remember telling her that with regard  
14 to the samples that you took from Captain  
15 Hazelwood and the other members of the crew, that  
16 you could not find a refrigerator and therefore  
17 you brought them back into your room and put them  
18 on a window sill in order to keep them cool, and  
19 then the next morning you got on a plane and flew  
20 to Anchorage?  
21 A Well, sir, I had them for an awful long time  
22 with me, and, yes, I did carry them back to my  
23 room, and I did go back to the base. I was there  
24 for approximately four and a half, five hours  
25 after I got off the Exxon Valdez. And I went

1 back to get a room. Because of the non-avail --  
2 because of the media attention and the non-  
3 availability of rooms, I placed them in my room  
4 while I was there for a short period of time, and  
5 then I brought them back with me.

6 Q Well, you stayed the night of the 24th, right?

7 A Yes, sir, I did.

8 Q Is this the time period you're talking about,  
9 where you put them on the window sill of the  
10 room?

11 A During the afternoon, sir, for a short...

12 Q Why did you take them out of the refrigerator  
13 and take them with you?

14 A They hadn't gone in the refrigerator at that  
15 point, sir. This was in -- this was in mid-  
16 afternoon that I brought them -- I brought them  
17 with me. I knew I couldn't just put them down,  
18 but nobody knew where to put them, so I kept them  
19 with me. And I knew I couldn't sleep with them.  
20 But I knew -- and I also knew that where I put  
21 them in the galley reefer wasn't the rightest  
22 thing to do -- the most proper thing to do  
23 either.

24 Q Why is that?

25 A Well, because I'm sure that it should have

1           been locked after they were placed in there, and  
2           just like we do with Coast Guard drug testing.  
3           Once they're placed in there...

4           Q           Is there some regulation you are aware of that  
5           requires them to be locked or...

6           A           No, sir. That's -- there's no regulation that  
7           I'm aware of.

8           Q           It is certainly preferable, from your point of  
9           view...

10          A           Yes.

11          Q           ...being involved in chain of custody, to have  
12          them under lock and key at all times, right?

13          A           By all means, sir.

14          Q           So during the time they were on your window  
15          sill -- as long as I understand this correctly --  
16          how long a period of time was that?

17          A           Only about an hour, sir.

18          Q           So apparently, then, this is somewhat  
19          confusing, when you told Trooper Grimes this,  
20          that you brought them to your room and put them  
21          on a window sill and the next morning got on a  
22          plane. You neglected to tell her that in the  
23          intervening time you went to put them in a  
24          refrigerator, is that correct?

25          A           That's possible, sir. That's an awful long...

1 Q So it is your testimony that while they were  
2 on a window sill it was only for an hour or so?  
3 A Yes, sir, maximum period of time.  
4 Q I take it on the window sill you were  
5 attempting to keep it cool?  
6 A Well, yes, sir.  
7 Q As best you could under the circumstances?  
8 A Well, I wasn't overly concerned with keeping  
9 them cool.  
10 Q Why not?  
11 A Although they should stay cool if they're not  
12 dealt with during the course of the day, it's not  
13 my understanding, with the training that I've  
14 gotten, it is not an absolute necessity that they  
15 be kept cool at all times until it has been  
16 determined that they're not going to be run, or  
17 their disposition has not been determined, and  
18 then they should be refrigerated if it's going to  
19 be an additional 24 hours, or so on. That's just  
20 standard operating procedure in the lab.  
21 Q That's from your training and experience,  
22 right?  
23 A Yes, sir.  
24 Q And I take it you certainly never have been  
25 certified or trained or examined by anyone in the

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state of Alaska, Department of Health and Social Services?

A No, sir.

Q Lastly, Mr. Conner, what time did you actually leave Valdez then to return to Anchorage?

A The first Era Aviation flight out in the morning, sir. Approximately 9:30, 9:40.

Q The same plane, only one day later, is that correct?

A Yes, sir.

Q And when did you turn them over to another person, as far as the chain of custody is concerned?

A I believe approximately the noon hour on the 25th.

Q And, I guess, one last time, you haven't seen them since, right?

A No, sir.

Q Now, Mr. Conner, do you recall testifying before the National Safety Transportation Board with regard to this same matter?

A Yes, sir.

Q Do you recall making the statement with regard to the samples -- well, perhaps I can do this. I want to ask you to look at this and just see if



1           this refreshes your recollection. And I would  
2           submit to you, sir, that it is a transcript -- a  
3           copy of the transcript of that hearing.

4           A           I possibly did, sir. I possibly did. I  
5           talked to an awful lot of people that week.

6           MR. LINTON: Excuse me. You say this is the  
7           National Transportation Safety Board hearing?

8           UNIDENTIFIED SPEAKER: Yes. That was where  
9           Mr. Erick (ph) sat in his hotel room with him for a few  
10          hours at the Captain Cook.

11          MR. MADSON: That was the investigator.

12          MR. LINTON: For the record, Your Honor, the  
13          document shown the witness is a statement of Scott  
14          Conner. The initial is J. G. on it. J. G. is Julie  
15          Grimes. This is not a National Transportation Safety  
16          Commission...

17          MR. MADSON: Okay. Well, maybe he gave me the  
18          wrong one. I'll blame my co-counsel for that.

19          THE COURT: Any document can be used to  
20          refresh recollection.

21          MR. LINTON: Just so the record is clear on  
22          documents being shown.

23                   (Pause)

24          Q           (Mr. Conner by Mr. Madson:) Did you recall  
25          testifying at that hearing consistent with your

1 testimony today? Let me just ask you that. That  
2 you had placed the samples in a refrigerator, to  
3 the best of your recollection?

4 A My hearing with the state trooper, sir?

5 Q Yes.

6 A Possibly not.

7 Q Why would you say, possibly not?

8 A Because I think I would have remembered -- my  
9 belief is, she would have had concern that they  
10 were unsecure.

11 Q But it's your testimony today that to the best  
12 of your ability, at the time, you kept these in  
13 your custody at all times as well as you could  
14 under the circumstances?

15 A Well, up until the point that I put them into  
16 the galley refrigerator, sir, yes.

17 Q And that was at what time, again,  
18 approximately?

19 A That was approximately 4:30, 5:00 in the  
20 afternoon.

21 Q And the person who has the key that actually  
22 locks it up comes at what time?

23 A Well, that's the cook. He's there all day.

24 Q I take it he locks it because there's food in  
25 there, and...

1 A Yes, sir. And people get hungry at night.

2 Q Yeah. So whatever time it is, it's...

3 A Usually around 1800 is normal, but nothing was  
4 normal that day.

5 Q I won't even ask you why. Thank you. I don't  
6 have any other questions.

7 THE COURT: Counsel, before you go into this  
8 witness. There's been a supplemental brief on the  
9 defendant's fourth amendment rights, seizing of the  
10 blood. And this witness may have information about  
11 that issue. Such as the conditions under which Captain  
12 Hazelwood gave blood. And do you expect to call this  
13 witness back again to explore that?

14 MR. LINTON: Judge, I saw this Monday I got  
15 something -- some supplemental things that I have not  
16 read yet. The day before yesterday. I wasn't aware,  
17 actually, of those issues.

18 THE COURT: Okay. Well, the brief, initially,  
19 was filed on the basis of probative versus prejudicial  
20 value. And the statutory requirements of how blood was  
21 taken.

22 MR. LINTON: That's what I thought I was  
23 answering.

24 THE COURT: Then there was another brief filed  
25 alleging that it was taken in contravention of the

1 defendant's constitutional rights. That he was -- it  
2 was an involuntary seizure without a warrant.

3 And this witness may have information germane  
4 to that. When he said that Captain Hazelwood was  
5 summoned. I would like to find out how he was summoned  
6 and under what conditions he's observed Captain  
7 Hazelwood brought in.

8 MR. MADSON: May we approach the bench, Your  
9 Honor, on this point.

10 (3695)

11 (Whispered bench conference as follows:)

12 MR. MADSON: Your Honor, if the court would  
13 review the documents or the pleadings -- if you will  
14 see that the state -- we raise the issue of non-  
15 consent. The state did not contest that. So  
16 consequently my reply -- I was under the assumption, I  
17 think correctly so, that that is not an issue that the  
18 state was contesting, so I didn't go into any questions  
19 with this witness about that.

20 MR. LINTON: (Indiscernible - whispering).

21 MR. MADSON: That's because I think Mr. Linton  
22 didn't answer that one.

23 MR. LINTON: I think I answered (indiscernible  
24 - whispering).

25 MR. MADSON: Maybe you did. Someone signed

1 for you, that's right.

2 MR. LINTON: Someone may have signed  
3 (indiscernible - whispering).

4 MR. MADSON: A Michael somebody had signed it.

5 MR. LINTON: (Indiscernible - whispering).

6 THE COURT: (Indiscernible - whispering).

7 MR. MADSON: I guess I just didn't want to --  
8 I didn't know what was going to come up and I thought  
9 we just didn't want to disclose it to everybody.

10 (End of whispered bench conference)

11 (3778)

12 THE COURT: We can argue this the normal way.  
13 But is there something we need to explore today?

14 MR. LINTON: I don't believe so, judge.

15 MR. MADSON: I don't think we have to explore  
16 it at all.

17 THE COURT: Okay. I just want to make sure  
18 that we're not letting a witness go we could utilize  
19 for another purpose today. Okay. Redirect.

20 REDIRECT EXAMINATION OF MR. CONNER

21 BY MR. LINTON:

22 Q Mr. Conner, when you refer to a grey topped  
23 tube, and then at points, a sodium fluoride tube?

24 A Yes, sir.

25 Q Are they the same?

1 A They're one in the same.

2 Q So, the grey topped tube describes this sodium  
3 fluoride tube?

4 A Yes, sir, it's a common term in the lab.

5 MR. LINTON: Nothing further, Your Honor.

6 MR. MADSON: Nothing.

7 THE COURT: All right. You may be excused.  
8 (Witness excused)

9 (3827)

10 MR. LINTON: Mr. Conner may be needed for the  
11 taint portion of the hearing, however, by the defense.  
12 What I would like to do is simply get Dr. Propst on and  
13 off here and then if there is any need or time for  
14 whatever use they might want to put him, perhaps they  
15 could do it while he's here. But I understand the  
16 court's concern that we finish early today.

17 THE COURT: Well, we're not going to be able  
18 to finish early. I'm alert and awake and I thought I  
19 was going to be fading here by 3:30, but it didn't  
20 happen. So I'm ready to proceed.

21 Corpsman Conner, you'll be on call. You're  
22 not leaving town, I take it, for a while.

23 MR. CONNER: No, sir.

24 THE COURT: Okay. Thank you.

25 (Oath administered)

1 A Yes, I do.

2 MICHAEL T. PROPST

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

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

7 A Michael T. Propst, P-r-o-p-s-t.

8 THE CLERK: Your current mailing address,  
9 please.

10 A 4335 Laurel Street in Anchorage.

11 THE CLERK: And your occupation

12 A Physician.

13 MR. LINTON: If there is non-opposition to  
14 expertise, I will proceed directly to the questions.

15 MR. MADSON: I'll stipulate the expertise.

16 THE COURT: All right. You may proceed. We  
17 can dispense with the qualifications.

18 DIRECT EXAMINATION OF DR. PROPST

19 BY MR. LINTON:

20 Q Dr. Propst, were you in the courtroom from the  
21 time Mr. Conner was sworn until he completed his  
22 testimony?

23 A Yes, sir, I was.

24 Q And did you hear his description of the steps  
25 he took to draw blood samples and to package them

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and transmit them to someone who was going to then transfer them further?

A Yes, sir, I did.

Q Do you have an with reasonable medical certainty that you could render as to whether the procedures you heard described would preserve the samples in the way that they might be deemed protested?

A Yes, sir, I do.

Q Could you state what your opinion is, please?

A That the procedures used would lead to a meaningful testing of these samples.

Q Would you indicate the reasons for your opinion briefly?

A The steps followed by Petty Officer Conner were those of a phlebotomy -- routine phlebotomy. The preparation of the arm, the obtaining of the sample, the packaging of the sample, the sealing of the sample, maintenance of the chain of custody, and those kinds of materials were appropriate medically.

Q To what extent would refrigeration affect the -- what the nature of the blood was changed such that it could or could not be meaningfully tested?



1 A Refrigeration is the thing that was nice but  
2 not necessary in this case.

3 Q Explain briefly, please?

4 A The shedding of a blood sample, which is to be  
5 tested for the presence of alcohol, into a tube  
6 containing sodium fluoride. And sodium fluoride  
7 indeed acts as a preservative; stops all activity  
8 -- reactivity. And the alcohol present in that  
9 sample will stay at the same concentration in the  
10 test tube for the next reasonable future.

11 MR. LINTON: Nothing further, Your Honor.

12 CROSS EXAMINATION OF DR. PROPST

13 BY MR. MADSON:

14 Q Dr. Propst, with regard to the sample that Mr.  
15 Conner testified about, that did not contain any  
16 preservative or any sodium fluoride, what affect,  
17 if any, would that have on the subsequent sample  
18 -- or, subsequent testing of that sample?

19 A If that sample had been contaminated with  
20 bacteria. If the contaminating bacteria were  
21 able to produce alcohol, a false alcohol  
22 determination could be possible, theoretically --  
23 hypothetically.

24 Q Would the fact that the sample would stay,  
25 say, in a refrigerator or for any length of time

1           affect its later ability to be tested accurately,  
2           that fact alone?

3           A           Are you speaking, sir, about the grey topped  
4           tubes or the red topped tubes?

5           Q           The red topped tube, I believe it is.

6           A           If the red topped tube is placed into an  
7           environment which enhances bacterial growth, such  
8           as a warm place, and if there had been bacteria  
9           contaminating it, it is more likely to be  
10          contaminated than if the opposite were true and  
11          it were placed in a refrigerator.

12          Q           So lack of refrigeration could have an affect,  
13          at least on the red topped tube, if not the so-  
14          called grey topped tube?

15          A           It would have an affect -- theoretically it  
16          could have an affect on the red topped tube; it  
17          probably wouldn't affect the grey topped tubes at  
18          all.

19          Q           That's because of the sodium fluoride that's  
20          contained in it?

21          A           Yes, sir.

22          Q           That prevents any type of bacteria growth or  
23          something of this nature?

24          A           Yes, sir.

25          Q           Does it do anything else? Does it have any

1 other factor that the sodium fluoride has with  
2 regard to -- as a preservative or anything else?

3 A It inhibits virtually all molecular activity,  
4 including glycolysis. So that any sugars present  
5 in the blood would not be available to bacteria  
6 which can contaminate it, that kind of thing.

7 (Tape C-3509)

8 (000)

9 Q Are you familiar with the standard required by  
10 the state of Alaska for taking blood samples?

11 A In general, yes.

12 Q Pardon me?

13 A In general I am, yes.

14 Q And in general, did the method that you heard  
15 described here today comply with those  
16 requirements?

17 A It did.

18 Q In what respect?

19 A In the identification of the person being  
20 drawn, the drawing procedure, the packaging  
21 procedure; all those seemed appropriate to me.

22 Q You say "appropriate". In other words, it  
23 wouldn't make any difference of how it was done  
24 and by whom it was done, as long as somebody with  
25 Mr. Conner's qualifications did it in the manner

1 in which he performed the -- or, drew this blood  
2 and preserved the samples?  
3 A What I heard described today was quite  
4 medically satisfactory.  
5 Q And who are you employed by now, sir?  
6 A I'm self employed, sir.  
7 Q Do you often contracted with the state of  
8 Alaska to be an expert witness on their behalf?  
9 A I have been an expert witness for many folks,  
10 including the state of Alaska, many times, sir.  
11 Q Is it a substantial -- in other words, working  
12 for the state of Alaska as a witness, as an  
13 expert or otherwise, in your other capacity as a  
14 doctor -- medical doctor or in expert cases  
15 involving alcohol. Is that a substantial amount  
16 of -- a substantial amount of your income?  
17 A No, sir. Less than 2% of my income comes from  
18 witnesses.  
19 Q You've already figured that out?  
20 A Yes, sir. I was asked this question last  
21 week, sir.  
22 Q You must have been expecting a question like  
23 this.  
24 Thank you. I don't have anything else.  
25 \*

1 REDIRECT EXAMINATION OF DR. PROPST

2 BY MR. LINTON:

3 Q What's the difference between a red topped  
4 tube and a grey topped tube, and why do you have  
5 sodium fluoride in one and not in the other.  
6 What affect does that have on what the purpose of  
7 the tubes are?

8 A In general the sodium fluoride tube preserves  
9 the blood, particularly if an alcohol  
10 determination is to be made. One can rely on  
11 that sodium fluoride to preserve the blood  
12 alcohol concentration as it was at the time that  
13 the blood was shed.

14 That's not necessarily true for the red topped  
15 tube. If there were hypothetical contamination  
16 by bacteria, either circulating around in the  
17 blood that had been drawn into the tube, or from  
18 skin contaminates from an inadequate preparation  
19 of the skin, and those bacteria were capable of  
20 producing alcohol. It is hypothetically possible  
21 for alcohol to grow in this test tube which  
22 doesn't have anything in it, except chemically  
23 clean inert glass.

24 Q Subject to that problem, why do you have a red  
25 topped tube in addition to a grey topped tube?

1 A Red topped tubes are useful in analysis for  
2 such things of blood type, and RH, DNA  
3 preparations and those kind things. There are  
4 some chemicals which -- some drugs which can be  
5 tested for in a red topped tube that the sodium  
6 fluoride might interfere with in a grey topped  
7 tube.

8 Q Nothing further.

9 MR. MADSON: Nothing else, Your Honor.

10 THE COURT: So you want to call it a day?

11 MR. LINTON: Yes, sir. We're going to have  
12 Trooper Stogsdill come back now.

13 MR. MADSON: I thought we were going to have  
14 him at 3:30.

15 THE COURT: You can call it a day or you can  
16 bring the trooper back.

17 MR. LINTON: Oh, I'm sorry, I didn't  
18 understand -- I misunderstood you.

19 THE COURT: We can call it a day or we can  
20 proceed. Your choice, gentlemen.

21 MR. FRIEDMAN: My preference would be to call  
22 it a day, Your Honor.

23 MR. LINTON: Sobeit.

24 THE COURT: Okay. We'll do that. Before we  
25 do recess. I may have got bumped off on our little

1 discussion over here, and maybe you could put me back  
2 on. There is been a lot of recent filings, and there  
3 is a lot of paperwork, and I'm behind on the paperwork  
4 because of being involved in the hearing. I thought  
5 that there was an issue that was raised about the blood  
6 alcohol, that it was seized contrary to the defendant's  
7 constitutional rights.

8 Has that been conceded by the defendant? Is  
9 that what you're saying, it was not an issue?

10 MR. MADSON: No, Your Honor. What I think is  
11 not an issue is a lack of consent. We filed an  
12 affidavit by Captain Hazelwood saying very clearly, it  
13 was taken without his consent. The pleadings have now  
14 been closed. The state has opposed that, but they have  
15 not opposed on the basis of consent.

16 MR. LINTON: We based it on the existence of a  
17 regulation which authorizes the Coast Guard.

18 THE COURT: Okay. Your theory is, if that  
19 doesn't -- that theory isn't a viable theory, then you  
20 would concede that the blood could not be used because  
21 of defendant's constitutional rights being evaded?

22 MR. LINTON: That's correct, Your Honor.

23 THE COURT: Okay. We'll see you tomorrow at  
24 8:30.

25 MR. FRIEDMAN: Your Honor, could I ask just a

1 brief question going back to this issue of -- kind of  
2 how far we are going to go in this hearing in  
3 determining evidentiary taint, and so on.

4 Over the noon hour I was thinking about your  
5 suggestion on how to approach that. Again, I think it  
6 makes some sense and I offer this just as a suggestion,  
7 if it would be helpful to the court. In some of the  
8 civil cases I've been involved in towards the end of  
9 the trial or the hearing of a judge tried case, the  
10 parties will present proposed conclusions of law, and  
11 findings of fact.

12 It occurs to me that given the complexity of  
13 this case, that might assist you. If it wouldn't,  
14 that's fine, too.

15 I've just been trying to map out the  
16 implications of what we are doing here and how...

17 THE COURT: It might be of some assistance to  
18 me. I'm not ready to require you to do that just yet.  
19 It may very well be that -- and you call can decide  
20 this -- but you may get to a point where there's been  
21 enough evidence presented that the state is willing to  
22 go, and you're willing to go on the issue of whether  
23 Captain Hazelwood's initial report was an independent  
24 source. That could be a legal decision based on the  
25 facts we have today almost. Then whether or not the



1 spill would have been inevitably discovered, and that  
2 would constitute an independent source.

3           You may get to a point where no further  
4 testimony is needed by the state to establish that.  
5 And rather than get into the taint, the remaining  
6 testimony for the taint, you may want to submit that to  
7 me and you could argue that, and I could take it under  
8 advisement. In the meantime, you could present other  
9 evidence on the other motions, and I would hopefully  
10 get a decision out.

11           I'm working on it right now, based on what you  
12 told me. I've been keeping pretty careful notes and  
13 I've got my law clerk working on it, and I stayed up  
14 most of the night last night working on this. And I  
15 think I could probably have a decision for you early  
16 next week on this -- a written decision. But you'll  
17 have to draw the line on how far you want to go on this  
18 evidence. I'll listen to it all and give you a  
19 decision afterwards. If you think you want a decision  
20 earlier, when you present enough evidence on these  
21 issues, you could stop and go on to something new.

22           MR. FRIEDMAN: Your Honor, just to make our  
23 position clear, particularly since you are thinking  
24 about these issues right now. In our view, at least,  
25 there are really three inevitable discovery issues.

1 The one is the one you alluded to of whether it even  
2 applies.

3 The second one is, when would the vessel have  
4 been inevitably discovered. Which we heard testimony  
5 on.

6 And then the third one, which I think you have  
7 been referring to as the tainted evidence issue, would  
8 be, assuming, does apply and assuming the vessel would  
9 have been inevitably discovered at such and such a  
10 time, then what evidence inevitably would have been  
11 discovered after that.

12 THE COURT: I understand that. And I'm  
13 viewing it, there might be some overlap.

14 MR. FRIEDMAN: Right.

15 THE COURT: And there might be some that but  
16 for Captain Hazelwood's report, would never have come  
17 up.

18 MR. FRIEDMAN: Right.

19 THE COURT: And I'm trying to segregate that  
20 out, too, in my mind. I'm not ready to make any  
21 decision by any means until I hear argument on this,  
22 because I know that will be very helpful in this case.  
23 But whenever you are ready, you let me know, because it  
24 seems to me that the faster the court makes its  
25 decision the better it's going to be fore everybody.

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See you tomorrow.

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

(335)

(Off record - 3:57 p.m.)

\*\*\*CONTINUED\*\*\*