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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

TRIAL BY JURY
FEBRUARY 28, 1990
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H & M Court Reporting
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Anchorage, Alaska 99501
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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
February 28, 1990
8:36 o'clock a.m.

APPEARANCES:

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FOR PLAINTIFF:

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1 PROCEEDINGS

2 FEBRUARY 28, 1990

3 (Tape: C-3633)

4 (1856)

5 (Jury present)

6 THE CLERK: The Superior Court for the State
7 of Alaska, Third Judicial District the Honorable Karl
8 S. Johnstone presiding is now in session.

9 THE COURT: You may be seated.

10 We'll resume with the cross examination of
11 Captain Beevers, and you're still under oath, sir.

12 ROBERT BEEVERS

13 recalled as a witness in behalf of the State of Alaska,
14 having previously been sworn upon oath, testified as
15 follows:

16 CROSS EXAMINATION OF CAPTAIN BEEVERS, CONTINUED

17 BY MR. MADSON:

18 Q Good morning. Is it Captain or Mr. Beevers?

19 How would people normally address you, sir?

20 A In professional matters "captain".

21 Q By the way, have you ever testified in court
22 before at all?

23 A I've testified in court on -- not in a
24 criminal case, not in front of a jury. I've
25 testified in court on several matters with the

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company business, yes.

Q But not as an expert witness, is that correct?

A No. Not as an expert witness.

Q This is your first time?

A Well, the...

Q By testifying I mean in court, whether it's just the judge or a jury, but to cite facts in a particular case. Have you ever testified in...

A As an expert witness...

Q Yes.

A I've testified in company matters when I was ashore when they hired me independent of my master's duties as a consultant to testify, yes.

Q On behalf of your companies?

A On behalf of the companies, yes.

Q And how many times was that, sir?

A I don't know -- a few. That's...

Q But, this is your first time as a hired consultant in a regular...

A Oh, it has -- yes. In something like this? The first time I've testified as an outside consultant in a court case.

Q Okay. Then Captain Beevers, let me go back to the question of pilotage. We talked about that a little bit yesterday. And let me ask you this,

1 first of all, sir, when you retired it was in
2 1987?

3 A '87, yes.

4 Q Okay. When did you last make a transit of
5 Prince William Sound prior to your retirement?

6 A Just the -- I was on my northbound from Panama
7 when I retired. So, within the month -- it takes
8 about a month for a round trip, so it would have
9 been sometime the first of March.

10 Q And that was your last trip, then, was to...

11 A Yes.

12 Q ...Prince William Sound?

13 A Yes.

14 Q Okay. You were presumably aware of the Coast
15 Guard and its -- call it regulations, or Captain
16 of the Port orders concerning pilotage?

17 A Yes.

18 Q Prior to your retirement, right?

19 A Yes.

20 Q Would you agree, sir, that it's changed since
21 1980?

22 A It's changed somewhere in there. I'm not just
23 sure what the year or date...

24 Q Okay.

25 A ...but it has changed from the -- from what it

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originally was, yes.

Q Would you say from what it originally was required what? A pilot to be on board at Cape Hinchinbrook and go all the way into Port Valdez?

A My understanding is you needed a pilot from Cape Hinchinbrook all the way into the berth, yes.

Q And at some point in time that was changed?

A Not completely. What was changed was exceptions were made for vessels that did not have...

Q Well, what I'm getting at, sir, is...

MR. COLE: I object. He started to explain it. He should be allowed to explain it.

MR. MADSON: He certainly can, but I think we're not communicating...

A Oh. Okay.

MR. MADSON: ...is what I'm trying to get at. I'm not trying to interrupt you, sir.

Q What I was going to ask you was the change in pilotage from Cape Hinchinbrook in to Port Valdez was a state pilot at one time. That was a requirement, was it not?

A Way back, yes.

Q Yeah. Way back.

1 originally was, yes.

2 Q Would you say from what it originally was
3 required what? A pilot to be on board at Cape
4 Hinchinbrook and go all the way into Port Valdez?

5 A My understanding is you needed a pilot from
6 Cape Hinchinbrook all the way into the berth,
7 yes.

8 Q And at some point in time that was changed?

9 A Not completely. What was changed was
10 exceptions were made for vessels that did not
11 have...

12 Q Well, what I'm getting at, sir, is...

13 MR. COLE: I object. He started to explain
14 it. He should be allowed to explain it.

15 MR. MADSON: He certainly can, but I think
16 we're not communicating...

17 A Oh. Okay.

18 MR. MADSON: ...is what I'm trying to get at.
19 I'm not trying to interrupt you, sir.

20 Q What I was going to ask you was the change in
21 pilotage from Cape Hinchinbrook in to Port Valdez
22 was a state pilot at one time. That was a
23 requirement, was it not?

24 A Way back, yes.

25 Q Yeah. Way back.

1 A Before -- as long as I've ran up here federal
2 pilotage could come from Rocky Point inbound.
3 The state pilots always picked 'em up off of
4 Rocky Point.

5 Q Rocky Point was a state pilot's station?

6 A Yes. Before...

7 Q And there came a time when the state pilots no
8 longer when out to Cape Hinchinbrook, correct?

9 A Yes. That was some time earlier, yes.

10 Q And then, you had the federal pilotage
11 indorsement...

12 A Yes.

13 Q ...or, you may not have the federal pilotage
14 indorsement, right? And certain changes were
15 made in that regard?

16 A Yes.

17 Q On that point, then, first of all, the Coast
18 Guard said, well, for daylight passages you
19 didn't need pilotage and -- or, if you didn't
20 have a pilotage indorsement, then, with certain
21 other restrictions, you could still transit
22 Prince William Sound, right?

23 A Yes.

24 Q Then, in 1986 -- did you know Captain McCall,
25 by the way? While you were going in and out of

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there?

A No. I...

Q Were you aware of the Captain of the Port order in 1986 that he issued which basically eliminated the day time requirement that said visibility was a criteria?

A Yes.

Q Did you ever see a notice to mariners, or the actual Captain of the Port order, itself?

A No. I didn't.

Q It was just kind of word of mouth is how you heard about it?

A I really can't recall now just how I heard about it, but I don't recall ever seeing a notice to mariners on it, no.

Q When a Captain of the Port order is issued would you not assume, or believe that the way to get the notice out to somebody would be by written notice to all the captains?

A It may well have been sent out and at this time I don't remember, but I don't recall ever getting a written notice, no.

Q In your evaluation of the materials you looked at an examined before testifying here in court, did you also look at what's known as the ALAMAR

1 letter, that is a letter that was sent to the
2 Exxon people from their shipping agent in Valdez?
3 A The -- I saw a note...
4 Q Yeah.
5 A ...basically a note, I think it was, but I saw
6 something -- a message from ALAMAR, yes.
7 MR. MADSON: Excuse me, Your Honor, let me see
8 -- make sure we're talking about the same thing. If I
9 could approach the clerk. I think it's Exhibit B --
10 Defendant's Exhibit B.
11 (Side conversation)
12 Q (Captain Beevers by Mr. Madson:) Okay.
13 Captain, let me hand you Exhibit B and ask you if
14 that's the note that you did look at?
15 A I don't remember. It seemed to me that I
16 looked at a -- something that was written, you
17 know, a written note. I don't remember...
18 Q Do you know who the note was from, or who it
19 went to?
20 A No. I -- I do -- do know that it was
21 something from ALAMAR, now just who I don't know.
22 I remember looking at -- just where I got that at
23 that point I don't know.
24 Now, in regards to this I haven't read this
25 through. May I take the time to read this?

1 Q Oh, certainly.

2 A Okay.

3 Q I was just trying to make sure that's the one
4 you were talking about. Apparently it isn't.

5 (Pause)

6 (2208)

7 A I don't recall ever seeing this. I seen a
8 note about it and I called the Coast Guard in
9 Valdez right after the grounding when I first
10 came up and talked to who I assume was Commander
11 McCall, if I remember right. And we went over
12 this. He went over all this information and it
13 still -- in my understanding of what he had to
14 say was that -- is the same as this, but what
15 this means is that the pilotage that is -- if you
16 have pilotage, it's the same as always. If you
17 do not have pilotage, you follow -- you comply
18 with this and you can come into the Bligh Reef
19 area and pick up the state pilot at Bligh Reef.

20 Q Would you agree, sir, that that letter is at
21 least somewhat ambiguous as to what changes were
22 made?

23 A Seems straight forward to me. However, I --
24 you know, I -- I'm not an attorney and I'm
25 looking at it more from a shipward point of view.

1 It seems pretty straight forward. Maybe to an
2 attorney, or maybe to someone that's uninvolved
3 in the maritime industry it may be some
4 confusion.

5 Q But do you believe anybody involved in the
6 maritime industry would find that straight
7 forward and easy to understand -- no question
8 that there's no policy changes, or waivers of
9 pilotage indorsements?

10 A I didn't get that from it, no.

11 Q No question about there was any difference
12 between sailing under registry and sailing coast-
13 wise?

14 A It doesn't mention that, I don't believe,
15 here. I'd have to reread it, but I didn't see
16 anything off hand about that, no.

17 Q Assume you got this, sir, and at the same time
18 you also knew that the Coast Guard was in the
19 process of changing the regulations involving --
20 or, not it's regulation -- it isn't a regulation,
21 is it? It's a Captain of the Port order...

22 A Uh-huh (affirmative).

23 Q ...right?

24 Captain of the Port order -- involving
25 pilotage indorsement. And you knew the Coast

1 Guard was trying to -- or was in the process of
2 eliminating that. Did you know that at the time?

3 A I knew there was...

4 MR. COLE: I'd object...

5 A I knew they were...

6 THE COURT: Just a second on this. Don't
7 answer the question, please, when there's an objection.
8 Wait 'til we resolve it.

9 MR. COLE: I object to that not being in the
10 evidence (indiscernible - bad recording). Irrelevant.

11 MR. MADSON: Your Honor, I think -- as an
12 expert witness I think I'm entitled to examine him to
13 see if he would change his mind or his opinion based on
14 facts and circumstances he may be aware of and may have
15 -- very well have been aware of at the time.

16 THE COURT: Objection sustained.

17 Q (Captain Beevers by Mr. Madson:) Now you
18 had --- you said you talked to Captain McCall
19 about the contents of this letter?

20 A I believe that's who I talked to, because when
21 I first came up and this came up about, well,
22 they no longer require a pilot, I didn't -- I'd
23 never heard that, so I called the Coast Guard and
24 asked if I could talk to someone that could
25 explain it. And if my memory is correct, they

1 transferred me to Commander McCall. And he went
2 over this over the phone with me, and in effect
3 what he said is...

4 Q Well, I'm not asking what he said.

5 A Yeah. Okay. Yeah.

6 Q But, what I'm saying to you, sir, and asking
7 you is at the time you had this conversation
8 you'd already been hired by the state, right?

9 A Yes.

10 Q You were under contract with them at the time?

11 A Yes.

12 Q And this was an issue they asked you to
13 examine, right?

14 A I don't recall they asked me to. Soon as I
15 saw there was a question in it...

16 Q Well...

17 A ...I called the Coast Guard through to check
18 on it, yes.

19 Q Under the scope of the assignment that was
20 given to you...

21 A yes.

22 Q ...you knew certain things you had to look
23 for...

24 A Yes.

25 Q ...or should look for, right?

1 A Uh-huh (affirmative).

2 Q Possible defenses that Captain Hazelwood might
3 have, right? Such as whether pilotage was an
4 issue, or not?

5 A I don't know if we got in that depth -- if
6 that was under my scope. My -- the scope of my
7 employment was more advising them on how ships
8 operate and how -- what's expected of people on
9 the ship, what -- what the ship would do and
10 various documents on the ship. As far as Captain
11 Hazelwood's defense, I don't think that I really
12 got too much into that.

13 Q Well, as far as what should or should not be
14 done on that ship...

15 A Yes.

16 Q ...was one of the things you were looking at,
17 right?

18 A Yes. Yes.

19 Q And you reached this conclusion regarding this
20 letter after you were contracted by the State of
21 Alaska and hired by them?

22 A Yes.

23 Q Now are you aware, or did you examine any
24 particular state statutes regarding pilots --
25 pilotage -- when one is necessary and things like

1 this?

2 A I don't -- I think years past I have and I
3 think that -- but I don't remember anything about
4 the state -- well, I saw one sheet of paper and
5 this may...

6 Q Let me ask you -- this is, by the way,
7 Defendant's Exhibit S, I ask you this -- only
8 referring to this particular statute here.

9 A Oh.

10 Q Have you seen that before?

11 A I think I've seen this before. I don't know
12 just when, though. So, that's...

13 Q Well, was that recently or some years ago?

14 A Oh, I'm sure it would be back some. I
15 don't...

16 Q Would you read that, please?

17 MR. COLE: Objection.

18 A Let me go over...

19 MR. COLE: Read it out loud?

20 MR. MADSON: Yes. It's in evidence.

21 MR. COLE: Objection.

22 THE COURT: Is it in evidence?

23 MR. MADSON: Yes. It has been admitted.

24 THE COURT: What's the exhibit number?

25 MR. MADSON: S.

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THE COURT: Is there a tag on it?

A S.

THE COURT: Go ahead and read it out loud.

(2569)

A Okay. "Certain licensed pilots required for oil tankers. Any oil tanker whether enrolled, or registered of 50,000 deadweight ton or greater shall, when navigating in state waters and beyond Alaska pilot stations either 1, employ a pilot licensed by the state under this chapter, or 2 is utilize a federally licensed pilot whose duty has been on that tanker throughout that specific voyage. And the pilot required in (A) of this section shall control the vessel during all docking operations."

Q According to that state statute, then, when does a pilot have to -- when is he required to control the vessel?

A The state pilot is required to control the vessel during all docking operations.

Q Now it says -- referred to an (A) of this...

A That's (A).

Q Okay. What does -- (A) includes full -- either a state pilot or a federal -- a federally indorsed pilot, does it not?

1 A Let's see. (A). Shall...
2 According to this, yes.
3 Q Okay. And by control, that means actually
4 being in physical control or giving the orders
5 when docking?
6 A Yeah. That -- yes. To me that would mean
7 that, yes.
8 Q Safe to say, sir, that that state law does not
9 require a captain to be on the bridge at any
10 given time, does it?
11 A It says the pilot required in (A) of this
12 section shall control the vessel during all
13 docking operations...
14 Q Okay.
15 A ...according to the law.
16 Q Excuse me. Except for docking operations?
17 A It says it shall employ a pilot.
18 Q It says master, too, does it not? Company or
19 master?
20 A Doesn't say anything about a master here.
21 Q Well, read on down a little further.
22 A Oh. Okay. Down further, here, it...
23 (Pause)
24 Q Let me just ask you...
25 A Read this out loud, or...

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1 Q Isn't it true that this law merely really says
2 is that a large tanker, such as the Exxon Valdez
3 shall either have a state pilot or a federally
4 licensed pilot whose duty station has been on
5 board throughout that period of time -- that
6 transit, right? That's what is...

7 A That's what it says, yes.

8 Q ...required. Then it goes on to say either
9 one of those two shall -- must control the vessel
10 during docking operations?

11 A Uh-huh (affirmative).

12 Q And it doesn't refer to, or make any
13 requirements as to when a master should be on a
14 bridge?

15 A I'm -- I don't know any...

16 Q I'm only asking you to read it...

17 A Yeah.

18 Q If you can't answer, sir, I don't want to...

19 A Yeah. No. I...

20 Q ...I'm not trying to force you to...

21 A I can read it...

22 Q ...say something.

23 A ...and that's what it says here, yes.

24 Q Now, let me ask you a few questions about --
25 well, the operation of a vessel you went into

1 some time yesterday and the day before and I
2 don't want to go into that again at the same
3 length, but generally, would you say that the --
4 the master of a vessel, when he's on duty usually
5 assumes the direction and control of a vessel?
6 A By direction and control you're talking about
7 conning on the bridge?
8 Q I don't know. I...
9 A Okay.
10 Q Does that mean he's necessarily conning, or
11 can he direct and control without conning?
12 A For the navigation of a vessel, the way it is
13 always done on a ship is there's a definite
14 person in charge of the navigation of the vessel
15 at any one time, in other words, during the
16 direct conning of the vessel, putting positions
17 down, et cetera.
18 Now, if -- a master doesn't necessarily have
19 to be at the con all the time, no.
20 Q right.
21 A What they have to do is have an exchange, so
22 that when you're at sea if a master leaves a
23 bridge and the watch officer has accepted the
24 con, then the watch officer will do the conning
25 with the, of course, obligation to call the

1 master at any time. And then, if the master
2 comes up to the bridge he will re -- take over
3 the con when he sees fit.

4 But, in close waters where pilotage is
5 required, they're normally -- you don't leave a
6 man without pilotage at the con.

7 Q Well, you went into that a lot yesterday.
8 But, first of all, did you review Captain Murphy,
9 the pilot's testimony in this trial?

10 A No. I haven't yet. No.

11 Q So you don't know what he said about -- in his
12 opinion these were not dangerous waters -- Valdez
13 Arm?

14 A I didn't know that he'd said that, no.

15 Q Would you agree with that?

16 A That's a -- a matter of, you know -- of
17 opinion. I -- under normal circumstances any
18 place where these tankers operate is not
19 dangerous. When you get into unusual
20 circumstances is when you...

21 Q My question is would you agree with it, or
22 not, sir?

23 A Whether Valdez Arm is...

24 Q Yeah, Valdez Arm is dangerous waters?

25 A Not in normal circumstances, no.

1 Q Now, getting back to my earlier question on
2 direction and control. Assume the master has the
3 con but leaves the area. Say he goes in the
4 chartroom, but doesn't turn over the con to the
5 watch officer, he still has direction and control
6 according to what you're saying?

7 A Yes.

8 Q Okay. Suppose he goes into the bathroom.
9 He's there for 15 minutes.

10 A Normal procedure, if you're gonna be...

11 Q I didn't ask you normal procedure, sir. I
12 just asked if you can -- if he...

13 MR. COLE: I object to...

14 Q ...still has...

15 MR. COLE: ...Mr. Madson arguing with the
16 witness. If he's gonna ask a question, allow him to
17 answer the question.

18 THE COURT: Mr. Madson, I think he was
19 responding to your question, and, so, you can let him
20 answer that question.

21 Q (Captain Beevers by Mr. Madson:) Can you --
22 let me rephrase it with (indiscernible -
23 unclear). Can you respond to the question
24 without talking about normal procedure, or is
25 that necessary in your explanation?

1 A I don't think it's a yes or no answer. No.
2 No. I think I need to tell you what my answer
3 is.
4 Q Then, if the master goes into the bathroom and
5 he's there 15 minutes, but doesn't say anything
6 to the watch officer that you have the con, my
7 question is, who has direction and control?
8 A The -- master went in the -- well, that's --
9 like I say, this -- that if a watch mate is up
10 there and there's a problem he's obviously gonna
11 say something to the master, or do something even
12 though, because it's -- the vessel's been left
13 unattended. If a master's -- has the con and has
14 to step in the bathroom for 15 minutes, he's
15 certainly going to say to the watch officer,
16 "Keep an eye on things. I've got to step back
17 here and use the bathroom."
18 Q Uh-huh (affirmative).
19 A You know, that's...
20 Q I mean, that's kind of common sense...
21 A Yeah. Sure.
22 Q ...wouldn't you agree? He's gonna say, "Yeah.
23 I'm gonna be gone for a while. Keep it on this
24 course, or you know, keep it steady, or something
25 like that"?

1 A Yes.

2 Q And, presumably -- well, you're familiar with
3 the chart of the area of the Exxon Valdez bridge?
4 Or, not the chart but...

5 A The layout...

6 Q The diagram of the layout?

7 A Yes.

8 Q Okay. The -- there is a bathroom up there,
9 right?

10 A Yes.

11 Q And it presumably would take maybe 15 seconds
12 or so if the master were in there and there was
13 an emergency and he had to come out?

14 A Well, it'd be less than that, but, yes. You
15 could rush right out of there, you know,
16 depending.

17 Q I don't want to speculate too much...

18 A No. But...

19 Q 10 seconds...

20 A He...

21 Q ...would you give me that?

22 A He could rush right out if there's a problem,
23 yes.

24 Q Okay. You know where the captain's quarters
25 are on the Exxon Valdez with respect to the

1 bridge?

2 A Yes.

3 Q Would you disagree with the opinions that have
4 been related here that it's -- he could be there
5 in 10 or 15 seconds?

6 A I think I walked it from the -- his office up
7 to the bridge in 12 seconds. If I'm not
8 mistaken, that's...

9 Q And you were walking, right?

10 A Yes.

11 Q So you don't disagree with that at all?

12 A It's in that -- yes. Depending on the person,
13 it would vary a little, but...

14 Q And if the master went down below, didn't turn
15 the con over to the watch officer, but said keep
16 it on a particular course, and goes down below,
17 "Call me if you need me, I'll be right down
18 below", has he turned over this direction and
19 control, or is this another one of those iffy
20 situations?

21 A The -- the way I've always understood it, if
22 you leave the bridge area, you -- you're turning
23 -- you have to turn the con over to leave the
24 bridge area. I -- a person that's operating the
25 vessel -- navigating the vessel has to be in the

1 bridge area as far as -- the way I understand it.
2 Q Now, how 'bout the way Mr. Cousins understood
3 it? You -- you reviewed his testimony, did you
4 not? Do you recall his testimony to the effect
5 that he did not understand that -- and believe
6 that he had the con, but that Captain Hazelwood
7 still was the con and had the con and was giving
8 direction and control.
9 A Well...
10 MR. COLE: Judge, I object to that. I don't
11 believe that that was his testimony.
12 MR. MADSON: I believe it was.
13 THE COURT: Well, I don't recall and you can
14 ask him in the form of an opinion, but asking him
15 what...
16 MR. MADSON: Okay.
17 THE COURT: Asking him what Mr. Cousins said
18 -- if he believes what Mr. Cousins was correct is not a
19 proper question of this witness.
20
21 Q (Captain Beevers by Mr. Madson:) Well,
22 assuming the -- in any situation the watch
23 officer said, "My understanding was the captain
24 still had direction and control and did not turn
25 the con over to me"?

1 A Any -- any time -- it's my understanding that
2 any time you'd leave the bridge you would turn
3 the con over to a watch mate. I mean, that's --
4 that's normal procedure, tradition, and the watch
5 mate would call the captain if he needed help.
6 But, as far as the -- the watch officer would
7 accept the con if the captain left the bridge and
8 -- and told him -- if he -- there's an exchange
9 of whose controlling this always done. And if
10 it's not done, it always leaves a cloudy...
11 Q Well, if...
12 A ...point.
13 Q ...the watch officer, again, were to say...
14 A Uh-huh (affirmative).
15 Q ... "I -- I didn't have any misunderstandings.
16 I knew what I was supposed to do. He was right
17 down below. He was still giving me the direction
18 of -- directions and orders and I was simply
19 carrying them out as if he was standing right on
20 the bridge."
21 A From -- from my understanding of the way ships
22 operate the -- whoever -- the mate on watch would
23 have the con. The captain, if he went below,
24 would not have the con.
25 Q What rule, regulation or statute requires

1 this? Is there any...

2 A No. There, again, I'm not -- I haven't delved
3 into the law that...

4 Q Okay.

5 A ...and we don't at sea. But this is my
6 understanding that this is the way it's done
7 and...

8 Q It's fair...

9 A ...my understanding that it's standard
10 practice in the industry.

11 Q Fair to say you don't know of any, is that
12 right? Any laws or regulations that specifically
13 relate to this...

14 A No. I don't.

15 Q ...and say particularly in detail when or when
16 the master must turn over the con, or leave the
17 bridge, or anything like this, right?

18 A No. I don't -- I don't -- you know, I'm --
19 I'm not an attorney so I don't study all this. I
20 just -- my fear and -- is what I'm basing this on
21 is what I've seen in tradition and standard
22 practice in the industry is the con is always
23 left with the officer on the bridge.

24 Q But, certainly, sir, with -- as a tanker
25 captain of years experience, you know that there

1 are numerous Coast Guard regulations governing
2 activities of not only oil tankers, but all
3 kinds...

4 A Yes.

5 Q ...kinds of vessels...

6 A Yes.

7 Q ...correct?

8 Now, let me ask you something else. Is it
9 true that in a -- certain traditions seem to
10 carry over for years and years, and maybe the one
11 people long remember is the captain standing at
12 the wheel -- or next to the wheel when a guy's
13 steering it -- you know, old sailboats, for
14 instance.

15 A Uh-huh (affirmative). Yeah.

16 Q Is that somewhat true today? In other words,
17 that tradition still carry on that the captain
18 doesn't manually, physically steer the vessel?

19 A No. You don't -- neither the master, nor the
20 watch officer manually steers the vessel. You
21 have a seaman that turns the wheel under your --
22 under your direction.

23 Q Is there any reason for that other than just
24 tradition?

25 A Yes. There is a reason for that because when

1 you're navigating a vessel you need to take
2 bearings, you need to watch the radar, you need
3 to answer the VHF phone, you need to plot
4 positions. There's numerous duties that the
5 watch officer is doing. So, he's -- has to have
6 the freedom to move from bridge wing to bridge
7 wing, chartroom, bridge areas as a look out and
8 navigating areas. So, you can not be left at the
9 wheel. That's why you have a helmsman.

10 Q Sir, you've -- the watch officer would have
11 other duties other than just steering...

12 A Oh, sure. That's...

13 Q ...right?

14 A His -- the only part of the steering that's
15 his duty is to see that it's -- is to give the
16 orders and see that it's done right.

17 (3330)

18 Q See that it's carried out?

19 A Yes.

20 Q If the watch officers were to say 10 degrees
21 right rudder, he should make sure that order's
22 carried out?

23 A That's correct.

24 Q So, it's true then, the captain or officer
25 never phys -- has actual physical control of a

1 vessel such as the Exxon Valdez? By physical, I
2 mean that he is physically turning the wheel,
3 maneuvering the...

4 A I won't say never, because...

5 Q Okay.

6 A ...occasionally one of 'em may step up to --
7 to make a course change out of preference, or --
8 or maybe the helmsman is -- has been sent to
9 clean the windows or something. It's -- it's not
10 -- never is a pretty strong statement, but under
11 a general rule, the master nor the watch officer
12 steers the vessel or changes course physically.
13 They direct it to be done.

14 Q Now, for instance in the rare situation if the
15 -- say the master were to become mentally
16 incapacitated...

17 A Okay.

18 Q ...the watch officer could disregard his order
19 if it was an obvious one that would place the
20 vessel in danger, isn't that true?

21 A That -- you're bordering on something that
22 would have to be such an extreme case that such
23 -- the -- the penalties are so severe for not
24 following a master's orders that I...

25 Q What are they?

1 A Imprisonment, loss of license, you could -- if
2 you -- if you refused a -- you could be chained
3 up at -- aboard.

4 Q How 'bout keel hauling? They still have that?

5 A No. They don't have that, but a lot of old --
6 a lot of things, and so it would be very hard for
7 a third mate, say, or second mate, or even a
8 chief mate to say, "Ah, the old man's not acting
9 right today, I'll take over the ship." This just
10 isn't done.

11 Q That's kind of mutiny, right?

12 A Yes.

13 Q But, what -- I'm talking extremes certainly
14 and...

15 A Yeah.

16 Q But let's suppose the captain came on and he
17 said I want you to set this vessel course at 245
18 and there's -- there's an obvious cliff, or rock
19 right in front of you and you know that this
20 vessel could not possibly turn and avoid that
21 rock once it's set on that course. In that
22 extreme example wouldn't you say that the watch
23 officer...

24 A Would do something, yes.

25 Q ...would do something?

1 A Yes. Yes.

2 Q You also testified yesterday about, I think,
3 crew size and I think you got a little bit into
4 demanning -- or the term was demanning, or
5 something like that, right?

6 A Uh-huh (affirmative). Something of that sort.

7 Q I believe you said that in recent years the
8 crews on the tankers have been reduced in size?

9 A That's correct.

10 Q How does a reduction in crews come about?

11 A That's -- the Coast Guard sets the minimum
12 standard that -- the minimum required personnel.
13 And this comes about from input from the various
14 interested parties which usually ends up as the
15 companies that are involved in trying to reduce
16 their crews, various other agencies and various
17 other things that want to keep more people on the
18 ship. And it's discussed and kicked around a
19 while and the Coast Guard, then, decides to set
20 the manning scales and that's it. That's the way
21 it's done.

22 Q It -- it sounds like it's a kind of a contest
23 between economics on the part of the ship owner
24 and safety on the...

25 A Uh-huh (affirmative).

1 Q ...part of the Coast Guard, is that correct?

2 A Yes.

3 Q And in between there some balance is struck?

4 A Well, not lately, but hopefully that's the way
5 it goes, yes.

6 Q You'd -- did this occur when you were still a
7 captain, sir?

8 A Yes. We -- we were -- from the time I started
9 to sea, they've been continually reducing the
10 crews.

11 Q And did you feel that this effected the safety
12 of your vessel, or vessels?

13 A From -- at the start, no, because we had, you
14 know, ships changed. Originally when I started
15 we were usually the normal merchant crew in the
16 40s. In fact, the first ship I was on was 65,
17 but they've reduced down and reduced down and it
18 reached a point that about 30 people on an
19 average tanker -- from that point on down I felt
20 that they were taking too many people off the
21 ship.

22 Q Reduced from 30 to what?

23 A Well, the last one I was on had 24 and now
24 they're down below that on most of 'em, so.

25 Q And that means everybody has to work harder

1 and longer hours...

2 A That's...

3 Q ...more fatigue?

4 A That's correct. There's more stress. There's
5 more -- more chance of having a problem due to
6 being short of crews. It just continually more
7 of a problem, yes.

8 Q And, I think you also said, for instance, the
9 chief mate is the captain's right hand man,
10 right?

11 A Yes.

12 Q He normally is in charge of the cargo loading?

13 A Yes.

14 Q Normally that is a -- a competent -- usually
15 it's a competent person, is it not?

16 A You certainly hope so, yes.

17 Q Yeah. Well, for instance on the Exxon Valdez
18 in the material you reviewed you became somewhat
19 familiar with Mr. Kunkel?

20 A From reading about him, yes. I've...

21 Q He had a...

22 A I've never seen him or met the man, but, yes.

23 Q Just from reading about him, there's nothing
24 in there that would lead you to believe that he
25 was not a good first officer?

1 A Not that I could see, no.

2 Q In fact, he had a master's license, did he

3 not?

4 A Yes. I believe he did.

5 Q And he would normally take charge of the cargo

6 loading -- have people working for him?

7 A Yes. I -- I think he -- he would probably lay

8 out a plan on how he wanted to do it and how he

9 was going to do it, probably discuss it with the

10 captain and make sure that that met with his

11 approval, and then, use the second and third mate

12 and crew members to carry this out, yes.

13 Q And normally the captain, the master doesn't

14 have to be there every minute to see that the

15 first mate is carrying out the -- his duties

16 properly?

17 A No.

18 Q And the chief mate, in turn, can assign duties

19 to other officers, or able bodied seamen to see

20 that these things are carried out. He doesn't

21 have to be there every second to watch them?

22 A Sometimes. That -- that's the way it's

23 supposed to work, yes.

24 Q The way it's supposed to work.

25 A On any, you know, from the step -- from the

1 master on down, there's -- sometimes there's
2 failures in there that you do have to watch 'em,
3 but basically that's the way it works, yes.

4 Q By the way, do you know how many crew members
5 the Exxon Valdez had on the la -- that voyage?

6 A I believe 19. Is that...

7 Q And at one time, according to what you said it
8 would have been 30?

9 A Yes, sir. Of course, now, they've done some
10 automation since then, but that's -- that's --
11 there's certainly -- that was the smallest crew
12 on a tanker that I've seen, yes.

13 Q And you said that when this crew was there --
14 when you came on board the ship, you couldn't --
15 maybe like the old days pick and choose who you
16 wanted to be on your vessel, right?

17 A No, no. You -- you -- the way it goes now is
18 that you have the people on board. How you --
19 the only option you have is -- well, I don't know
20 with Exxon what option you have, but on -- on
21 ships I was on the option you had is refusing a
22 crew member when he come aboard and sending him
23 back. And this -- this entails, of course, since
24 the ships I were on had unions this involved
25 company union negotiations and labor relations,

1 you know, all of this. And it -- it can be done,
2 but it's certainly -- through the years it's
3 gotten to the point where it's harder to do this.
4 But it still can be done.

5 Q Would you agree that because of the demanning,
6 the unions may be more aggressive as far as any
7 captain refusing to have somebody -- a union
8 member on board the vessel, it would file a
9 grievance, or things like this that were done?

10 A I don't know if they're any more, but this --
11 they do try to -- you know, try to force every -
12 - whoever they send to you on to the vessel, yes.

13 Q And I think you just said you don't know what
14 could be done in the case of Exxon?

15 A I don't know what their company policy was on
16 manning, no.

17 Q So, you don't know what a master working for
18 Exxon -- what his options were or what they were
19 not as far as who he got to sail with and what he
20 could do?

21 A I know what he could do legally, but I don't
22 know what the company would approve of, no.
23 That's a...

24 Q One example you gave in your direct testimony
25 was, for instance, if someone was known to you as

1 a master to be very poor in steering, or
2 incapable, or incompetent at steering, you could
3 say, well, I'm not gonna have you steer this
4 vessel, right?

5 A That's correct.

6 Q You could put 'im on a look out?

7 A Yes.

8 Q Look -- the ABs usually alternate between look
9 out and steering the vessel, or...

10 A Yes. They -- yeah.

11 Q ...don't they?

12 A Yes.

13 Q Of course, you would have to have some
14 knowledge of that particular individual such that
15 it would raise this level of concern to the point
16 where you would say, "Gee, I just can't leave
17 this guy at the wheel." Right?

18 A If, to make it -- yeah. To make that decision
19 whether you wanted him on the wheel or not, you
20 would have to have knowledge of his steering,
21 yes.

22 Q Uh-huh (affirmative). On the other hand, if
23 you had seen him steer before and he seemed to be
24 -- follow orders competently and quickly enough,
25 you'd leave him at the wheel?

1 A If I'd seen him before and had confidence in
2 his ability, yes. I would.

3 Q And even if he were not competent at the
4 wheel, you've made him a look out -- a look out
5 is a rather necessary person on a ship, too,
6 isn't it?

7 A That's correct.

8 Q And if he's not competent to be -- to steer a
9 vessel, he may or may not be competent as a look
10 out?

11 A That's true. The -- but it could work either
12 way. A person that's a good helmsman might be a
13 poor look out, or vice versa, but the look out is
14 something that you have a back up with the radar,
15 you have a back up with your watch mate. And the
16 helmsman is a man that's directly -- of the two,
17 I would prefer to have a man that could steer
18 rather -- I'd rather have a poor look out and a
19 good helmsman in a close situation than the other
20 way around.

21 Q The same time he...

22 A I'd rather have both of 'em good, but...

23 Q A look out could be out there and he has to
24 look for navigation aids, lights, possible other
25 vessels to avoid collisions, all these things,

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right?

A Yes. Yeah.

Q Now, by the way did you in your -- in the access to the materials that you had that were given to you by the state did you review anything regarding Mr. Kagan?

A I read his...

Q His statements?

A ...his statements.

Q Uh-huh (affirmative).

A And as far as -- I've read what other people said about him. Whatever was in there that referred to Mr. Kagan, I read about it, yes.

(4100)

Q But you didn't read or review or listen to any of the testimony in this trial concerning his abilities or lack of it as a person to steer -- who couldn't steer?

A I don't remember reading anything about him, no.

Q And, of course, you don't know, then, what Captain Hazelwood really knew, or did not know about Mr. Kagan?

A I know what I'd read in the reports that the chief mate had made a comment about Kagan's

1 ability. And I believe one other officer made a
2 comment about his ability.

3 Q Do you recall reading in there about what
4 Captain Hazelwood's response was? That he had
5 seen him steer in the...

6 A Yes.

7 Q ...before and he did okay?

8 A Yes.

9 Q Now, is there a difference between steering
10 and carrying out simple order commands?

11 A The -- there's a difference 'cause the order
12 -- the order -- you mean the commands on the
13 wheel?

14 Q Yeah. I'm...

15 A They basically go together. But a person can
16 certainly comply with a 10 degree right rudder
17 instruction when he can't steer very well.

18 Q Okay. Just -- just so we understand...

19 A Yeah.

20 Q ...what the difference is, if you're the
21 master on a ship and there's a helmsman at the
22 wheel, you could say to him come about to a
23 course of 270 and hold it steady, or something
24 like that.

25 A Well, I mean, I'd be a little more precise,

1 but yes. You can...

2 Q The -- what you...

3 A You can do that. And if you do that, you
4 would expect him to be able to put the rudder on,
5 have the ship swing to the course that you'd
6 given him, have him check the swing of the
7 vessel, steady up on that course, yes. And
8 that's -- almost any able seaman should be able
9 to do this.

10 (Tape: C-3646)

11 Q Yeah. That's not very difficult, is it?

12 A No.

13 Q But it takes a little skill and practice?

14 A It takes -- it's something that you -- a rank
15 beginner wouldn't do it. It's something that a
16 person with experience and practice get -- they
17 get to do quite well, yes.

18 Q And to do that, I mean, the skill and practice
19 comes about because when you turn the wheel, the
20 ship's heading turns, but you have to correct the
21 -- the turn before it gets to the compass point.
22 Your...

23 A Yeah. What -- what you do is what - what we
24 call you check the swing by putting if -- if
25 you're swinging right, you would put left wheel

1 on it to check the vessel's swing and you -- the
2 trick to being a good helmsman is determining
3 when to put the counter rudder on to stop the
4 swing so that you stop on your heading and aren't
5 continually trying to correct to get to the
6 correct course.

7 Q Yeah.

8 A And it...

9 Q You used the term "counter rudder", that's
10 turning the rudder back in the opposite
11 direction...

12 A Yeah.

13 Q ...to check the swing?

14 A Uh-huh (affirmative). Yeah. Check the swing,
15 sure.

16 Q So, if a person was learning to steer, or had
17 trouble with it, he could sometimes do what's
18 called chasing the compass...

19 A They can do almost...

20 Q Go one way, go the other way...

21 A ...almost anything. Yes. Yeah. That's the
22 common failure is to -- to go the wrong way, yes.

23 Q On the other hand, as a master of a vessel,
24 you could give the helmsman an order like 10
25 degrees right rudder, right?

1 A You could, yes.

2 Q And that's a real simple order, is it not?

3 A That's right.

4 Q About as simple an order as you can give to a
5 helmsman?

6 A Yes.

7 Q He has to know what? Two things? He has to
8 know right from left?

9 A Uh-huh (affirmative). And he has to be able
10 to read the 10.

11 Q And he has to read 10. Okay.
12 And there's something right in front of him
13 that says when it's on 10?

14 A Right.

15 Q And there's -- and you said the duty of the
16 watch officer would be -- after that order is
17 given -- to make sure it was carried out?

18 A That's correct.

19 Q And to make sure it's carried out, you have
20 the number of assets such as rudder indicators?

21 A Yes. On that particular vessel you have a
22 rudder angle indicator on the forward bulkhead.
23 You have one overhead that you can see from about
24 any direction in the wheelhouse and you have a
25 rudder angle indicator on each bridge wing, you

1 have an indicator right on the steering station.
2 So...

3 Q So, virtually any place you're -- you're at,
4 there on the bridge, you could easily determine
5 whether the rudder is turned or not?

6 A Yes.

7 Q Now, sir, I want to get into what I think you
8 determined were judgment calls, which -- on the
9 part of Captain Hazelwood that you said were
10 examples of bad judgment.

11 For instance, when you were asked questions by
12 Mr. Cole about returning to the ship late, you
13 recall that?

14 A Yes.

15 Q Okay. Did you know from your investigation
16 that the sailing board was changed?

17 A Yes. I did. It had been moved ahead two
18 hours, I believe, from what it was -- had been
19 originally set.

20 Q Originally it was set for what time?

21 A 2200, I believe.

22 Q What was that?

23 A 2200? Is that right?

24 Q Would that be 10 o'clock?

25 A 10 p.m. Yes.

1 Q And it was moved up to...

2 A To 8 p.m., yeah.

3 Q Now, a -- a tanker is not like a bus or a
4 plane, or something. It doesn't have a printed
5 schedule...

6 A No.

7 Q ...that leaves at 12:38 a.m. every day?

8 A No, no. No.

9 Q All right. When it's loaded, you go, right?

10 A Pretty much, yes. That's...

11 Q Excuse me one second. It's dry in here. Do
12 you want some water, by the way?

13 A No. That's fine.

14 Q So, it isn't critical whether a tanker leaves
15 at an exact time, or not?

16 A It's not -- it's not like a bus schedule, or a
17 train schedule, but everybody wants to leave as
18 soon as possible and they want to leave as soon
19 as they're loaded and when the, you know, and
20 when the board's posted. You wouldn't post the
21 board for 8 o'clock and then hang around 'til
22 11:00 before you decided to leave unless there
23 was a reason.

24 Q Well, that reason could be, "Yeah. I want to
25 weight and get more ice -- update on ice reports

1 if I can...

2 A That you could do. That would be a reason,
3 yes. Any, you know, any legitimate business
4 reason is no -- there's -- you -- you could
5 change it then, but normally you try to sail on
6 your sailing time.

7 Q The master decides when that's going to be,
8 right?

9 A Yes.

10 Q He has the discretion to...

11 A He has to -- in -- a lot of times, you'll let
12 your chief mate set the sailing board because he
13 knows when he's gonna finish cargo, but the
14 master can certainly change that at any time he
15 wants to.

16 Q And you said that because he came back -- and
17 you said late -- he needed -- he had less time to
18 review such things like ice reports, right?

19 A Yeah. By late, this is what I meant. He was
20 there before the ship sailed, naturally, but
21 there's certain obligations and jobs that a
22 master has, and one of them is determining if
23 it's safe to sail and if it -- if he wants to
24 sail, if his crew is all back, this is, you know,
25 various things of that sort.

1 Q Uh-huh (affirmative).

2 A And that he should be there to do that.

3 Q So, he normally -- I mean, in the normal
4 situation he wouldn't run around and say, "Oh, my
5 God, we got to leave in five minutes and I got
6 all this stuff to do," and just kind of dash
7 through it?

8 A Not in a normal...

9 Q He could take his time and make sure that he
10 evaluated the situation, considered all the
11 options and leave when he's ready, even though it
12 might be not 10 o'clock, or 8 o'clock, but 8:30
13 or 9:00.

14 A Whenever -- whenever he's ready, yes.

15 Q And how long would you say it takes to review
16 an ice report?

17 A Just a few -- a minute or two.

18 Q What if the ice report fairly -- is fairly --
19 scattered small pieces of ice, but had to divert,
20 or something like that and it's four hours old?
21 Is this something you know, think about, and say,
22 "Well, we may have ice, we may not," right?

23 (258)

24 A Yeah. I don't think that I said that he had
25 to spend any time on it, it's just -- and I

1 mentioned the ice report in my other testimony it
2 was that it was just one of the things to
3 consider before he sailed. What I was referring
4 to about being rushed at that time was not the
5 time to read the ice report, but the fact that he
6 already had the pilot -- ordered him on board.
7 The tug boats were in the area. The line
8 handling crew from the terminal was ready to let
9 him go. Everything had been set in process to
10 undock at that time. And that's what I was
11 referring to.

12 Q Okay. So, he came on board, reviewed ice
13 reports, determined everything was ready to go,
14 discussed the situation with the pilot and they
15 proceeded to undock, right?

16 A Yes.

17 Q Did you review the undocking process?

18 A Yes.

19 Q Any criticism of the undocking process?

20 A No. Certainly not.

21 Q Did he handle that competently in your opinion
22 Captain Hazelwood, that is?

23 A Yeah. It seemed to go fine, yes.

24 Q Didn't seem rushed?

25 A Didn't to me, no.

1 Q And, of course, you've already indicated that
2 Captain Murphy in your opinion was a good,
3 competent pilot?

4 A Yes.

5 Q Did you know or have any knowledge of Captain
6 Hazelwood's relationship with Captain Murphy such
7 that -- whether he would know, or should know how
8 good a pilot he is or not.

9 MR. COLE: Objection. Speculation.

10 MR. MADSON: I only asked, Your Honor, if he
11 knows from the material he reviewed.

12 THE COURT: Just -- just answer yes or no to
13 that, and then, you can tell us how you know this if
14 you do know.

15 A Could you repeat the question?

16 Q (Captain Beevers by Mr. Madson:) Did you,
17 from the material that you examined -- all the
18 material, reach any conclusions as to whether
19 Captain Hazelwood knew the competence of Captain
20 Murphy as a pilot?

21 A No. I didn't reach any conclusions, no.

22 (320)

23 Q Did you review any such material?

24 A Yes.

25 Q But, you didn't review any conclusions?

1 A I didn't come to a conclusion...

2 Q Oh, excuse me...

3 A Other...

4 Q That's what I meant.

5 A The other -- well, I -- about whether -- I
6 came to the conclusion that Captain Hazelwood
7 knew Murphy. That's all. That's -- what he
8 thought about Captain Murphy I didn't -- that's
9 for Captain Hazelwood to decide, not me.

10 Q That's one of those other judgment calls...

11 A That's right.

12 Q ...right?

13 A Uh-huh (affirmative).

14 Q And you -- I'm getting to the point now where
15 the transit through the Narrows, after the
16 undocking process was completed, and the tugs
17 have left and the ship is now under the -- under
18 pilot Captain Murphy -- explain exactly what the
19 pilot does? Let me -- maybe I can make it
20 faster.

21 The pilot basically tells the helmsman set
22 course at such and such, doesn't he, and speed?

23 A However he chooses to do it, yes. But,
24 basically, they -- they -- he sets the speed and
25 course of the vessel, yes.

1 Q You've had Captain Murphy as a pilot before,
2 right?

3 A Yes.

4 Q Is it fair to say that he generally has a
5 track that he follows? Pretty close?

6 A Yes. They follow the -- as closely as they
7 can the track laid -- determined by the Coast
8 Guard that's best to go through the Narrows.

9 Q So, from -- give an example, for instance,
10 what Murphy would say after you're ready to get
11 up speed and head on out -- set course at what,
12 what he say?

13 A When you get away from the dock you normally
14 swing out around 3 -- well, from that dock,
15 around 300 or so and get out to where you can --
16 when you're clear you're on a course of 270,
17 normally, 268 -- 270, depending on where you end
18 up when you pull away from the dock and head out
19 toward the Narrows.

20 Q And you reach a point where the course change
21 has to be made, right?

22 A Yes. And it -- eventually they end up coming
23 around, they're about 225 -- 224, there again,
24 depending on where they -- the vessel is.

25 Q And, of course, the -- your also plotting

1 fixes as you go along?

2 A The watch mate would do that. Usually Captain
3 Murphy has went in and out of their -- the pilots
4 have went in and out enough that they -- they
5 normally have in their range and bearings
6 positions in their head that they -- they don't
7 actually go and plot. It's up to each individual
8 ship to have -- if they decide to have the watch
9 -- you should have the watch mate plot so that
10 the vessel would know where they're at, but
11 that's not something that the pilot would do.
12 That would be something the watch officer would
13 take care of.

14 Q Do pilots, such as Murphy, in your opinion do
15 this so routinely they can almost do it with
16 their eyes closed? Isn't that...

17 A No. I wouldn't -- not with their eyes closed.
18 They do it...

19 Q I said almost.

20 A ...routinely and they...

21 Q Yeah.

22 A ...you know, they do it competently and they
23 do it so often that they -- they're more familiar
24 with the area. That's why you use a pilot. So,
25 they don't go in and plot and just determine,

1 "Well, I'm...." They know in there head that --
2 where they're at. However, it's still -- the
3 ship still -- for their own benefit plots the
4 positions.

5 Q Is plotting required by the Coast Guard -- the
6 VTS system in that area?

7 A They -- in that area they -- they do their own
8 plotting with their own radar, and it's not --
9 not required specifically. The only thing I -- I
10 know of is -- with the Coast Guard is that's
11 something that they consider in -- in a casualty,
12 is how often you've piloted. But...

13 Q And when you leave and you -- I think you said
14 you go along a course of 270 and eventually you
15 change the course to...

16 A Roughly 225 to enter the Narrows, yes.

17 Q If you didn't make that course change, you
18 would run into rocks on the other side of Valdez
19 Port, would you not?

20 A You could do -- you could do that, depend --
21 yes.

22 Q Yeah. So, you have to change your course
23 to...

24 A Yes.

25 Q ...avoid...

1 A Uh-huh (affirmative).
2 Q ...you know, shores, rocks...
3 A Uh-huh (affirmative).
4 Q ...whatever?
5 A Yes.
6 Q You reviewed all the material on the Exxon
7 Valdez situation and the circumstances
8 surrounding its leaving on the 23rd...
9 A Uh-huh (affirmative). Yes.
10 Q ...right?
11 You knew, for instance, that the third mate
12 was on -- on the bridge at that time?
13 A The -- the chief mate was on the bridge on
14 undocking, and then, the third mate came up at
15 some time during the transit between the dock and
16 the Narrows, I believe is where he -- relieved
17 Mr. Kunkel.
18 Q Uh-huh (affirmative).
19 Cousins relieved Kunkel?
20 A Yes.
21 Q Yes. And, so, you knew Cousins was there from
22 your review?
23 A Uh-huh (affirmative).
24 Q And you knew he was licensed as a second mate,
25 right?

1 A Yes.

2 Q You obviously didn't know Mr. Cousins

3 personally?

4 A No.

5 Q You've never sailed with him?

6 A Never sailed with him. Never met him. As far

7 as I know, I've never seen him.

8 Q And you've certainly never had any -- you were

9 never in a position to personally evaluate his

10 performance, or lack of it?

11 A No.

12 Q Do you know what Mr. -- Captain Hazelwood knew

13 about Mr. Cousins from your review of the

14 materials?

15 A Not really. I -- I know that he seemed to

16 think that...

17 MR. COLE: Objection, Your Honor.

18 A I don't believe that...

19 THE COURT: Just a minute.

20 MR. COLE: Calls for hearsay.

21 MR. MADSON: Hearsay? Well, that's all he's

22 testified to.

23 THE COURT: Based on his review of the

24 materials I'll let him answer that.

25 A Could you repeat that?

1 Q From your reviewing the materials did you
2 reach any conclusions even, you know, other than
3 sheer speculation, about Captain Hazelwood's
4 experience with Mr. Cousins, and what he thought
5 of him as a competent mate?

6 A I don't remember anything saying what Captain
7 Hazelwood thought, no. I remember Mr. Kunkel
8 saying that he'd give him high marks on his
9 cargo, but I don't recall specifically reading
10 anything that Mr. -- or, that Captain Hazelwood
11 had said about him.

12 Q Did you review Captain Hazelwood's statement
13 to Mr. Delozier and...

14 A Yes. I did. If it was mentioned in there I
15 -- I don't recall at this point.

16 Q You don't recall the testimony that he said
17 he'd sailed with him twice before and he was a
18 very competent mate?

19 (560)

20 MR. COLE: Objection.

21 THE COURT: Just a minute.

22 A I...

23 THE COURT: Just a minute.

24 MR. COLE: I object to the form of the
25 question. It means -- if he's gonna impeach him, or if

1 he's using it to refresh his recollection?

2 MR. MADSON: Refresh his recollection, Your
3 Honor.

4 THE COURT: I think it's a proper question.
5 He's referring to a statement that's in evidence, Mr.
6 Cole.

7 A At this point I can't specifically remember.
8 I remember reading the -- that and that's -- but
9 I don't remember that -- there was any -- that
10 Captain Hazelwood felt strongly one way or the
11 other about Mr. Cousins. I don't -- and it
12 didn't -- if he complimented him, I failed to
13 notice it. If he criticized him I failed to
14 notice it, so...

15 Q (Captain Beevers by Mr. Madson:) Well,
16 wouldn't you agree, sir, that that might be
17 rather important in evaluating what actions
18 Captain Hazelwood took or didn't take, and his
19 knowledge of Mr. Cousins and what he could do and
20 what he couldn't do?

21 A I'm sure he did evaluate him. And I'm sure
22 that he made a decision and having Mr. Cousins as
23 third mate up on -- through the Narrows would be
24 -- I didn't find any fault with that. I found
25 fault with Captain Hazelwood leaving, doing --

1 not being up there during the Narrows.

2 Q My question, though, was is he a competent
3 watch officer to be up there in the bridge?

4 A Oh, sure. I suppose he was, yes.

5 Q Well, do you suppose he was, or do you have an
6 opinion as to...

7 A I have -- I don't have an opinion, because --
8 on whether Mr. Cousins was competent to be on the
9 bridge during the passage of the Narrows.

10 Q How 'bout the person at the wheel? Do you
11 recall who that was going through the Narrows?

12 A That -- Mr....

13 Q Radtke.

14 A ...Radtke.

15 Q Do you know if he was just an AB, or actually
16 had a license?

17 A He had a third mate's license, I believe, but
18 he was sailing as AB.

19 Q Is that an indication to you, sir, that he was
20 a very competent -- would be a more competent
21 person than an AB?

22 A Not necessarily. That's a -- an indication
23 that he had a third mate's license and was
24 sailing as AB.

25 Q It have required him to have more experience,

1 didn't it?

2 A No. Not necessarily. If he -- if he -- some
3 of the ABs have 10 or 15 years experience. And
4 some of the ABs have as little as one year
5 experience. And you -- you could -- you could
6 have a third mate's license and still not have a
7 lot of experience as AB. But, I didn't see
8 anything to determine that Mr. Radtke was
9 competent or incompetent at all in what I read.

10 Q Well, correct me if I'm wrong, Mr. Beevers --
11 or Captain Beevers, but isn't there some kind of
12 scheme to this licensing thing...

13 A Oh, yes.

14 Q ...by the Coast Guard?

15 A You'd be past -- he passed the third mate's
16 test. So, I assume that he had sailed AB long
17 enough to have enough time, or else he went to
18 one of the maritime academies and he passed the
19 test.

20 But, the test merely tests you in certain
21 things that you'd need to do. That doesn't mean
22 that you can do 'em very well, or that you can't
23 do 'em very well. That means you've passed the
24 test, showing that you -- you have an idea how to
25 do it.

1 Q Well, I guess when somebody passes the
2 master's exam that doesn't mean you're a good
3 master, or a poor one, you've just...
4 A That's basically, yes.
5 Q In any event, let's see, on the outgoing
6 passage through the Narrows, then, you have the
7 pilot, Captain Murphy, who's done it many, many
8 times...
9 A Yes.
10 Q ...conning the vessel?
11 A Uh-huh (affirmative).
12 Q You have a watch officer who has a second
13 mate's license?
14 A That's right.
15 Q You have a helmsman that has a third mate's
16 license, even though he's not...
17 A He's an...
18 Q ...proceeding...
19 A Yes.
20 Q ...as a...
21 A You...
22 Q ...an officer.
23 A Yeah. In -- on the ship's structure, you
24 can't use his third mate's license. He's an AB.
25 He signed on as an AB. That's -- that's his job.

1 Q I understand that, but he...
2 A Yeah. Yeah.
3 Q ...still is more -- I hate to -- I don't want
4 to get in a nit picky argument...
5 A Yeah.
6 Q ...about if he's more qualified, or not, but
7 he has passed an additional test...
8 A Certainly.
9 Q ...right?
10 A And that's, you know, I'd be glad to see a
11 third mate -- well, I'm not glad to see it
12 because that means that the industry's in a bad
13 way, but I -- I certainly wouldn't object to an
14 AB being a third mate. I would -- I would think
15 he would -- would have a -- you know, be trying
16 to get ahead and be a -- be ambitious and be
17 trying to do a good job and I'd be happy with
18 that, but I -- I can't say from what I read that
19 that made him any more competent as an AB.
20 Q No, but to -- to have the incentive to become
21 an officer...
22 A Uh-huh (affirmative).
23 Q ...from an AB, you generally want to know more
24 about navigation and charts and things like this,
25 right?

1 A Oh, yes. Sure.

2 Q If you're in the particular area of Prince
3 William Sound, you would naturally, and again, I
4 say normally, want to be familiar with the area,
5 navigational hazards and things...

6 A Uh-huh (affirmative).

7 Q ...like this?

8 A Yeah. I would think that that would -- that
9 would certainly be a -- a credit to him. It'd be
10 a plus just from reading, but I -- I, you know,
11 that doesn't mean that he's still a good AB. I
12 have no -- I have nothing to base a decision on
13 his ability as an AB.

14 Q I presume you would agree that Captain
15 Hazelwood would be in a better position than you
16 to evaluate his...

17 A Certainly. Yeah.

18 Q ...performance?

19 A Uh-huh (affirmative).

20 Q Now, the VTC, the Vessel Control Center...

21 A Uh-huh (affirmative).

22 Q ...while you're going through the Narrows --
23 the number of times you've done that, you know
24 you're on radar there?

25 A Oh, yes. Yes.

1 Q Have you ever gone off course and had them get
2 on the radio and correct you?
3 A Not in the Narrows.
4 Q Where'd that happen?
5 A Okay. I had a -- a conversation with them off
6 -- I'm inbound off of Bligh Reef area years back
7 when they first started where the -- the Valdez
8 traffic called and said that I was out -- out of
9 the traffic lane and I was in the separation
10 zone.
11 Q Were you?
12 A No. They -- at the time they said, you know,
13 you better alter your course to starboard, or
14 something. I said I'll check my position first.
15 And I checked and I was in the traffic lane. By
16 the time I finished checking they come back and
17 says, we made an erroneous plot. Disregard that.
18 And that was -- so, at that time they had radar
19 monitoring at least out to the Bligh Reef area.
20 Q You said at that time, when was this, sir?
21 A That was in '78/79. Somewhere in there.
22 Q What about '86/87?
23 A I didn't -- at that time, when I was still
24 sailing I assume they still had radar.
25 Q So, you assumed if you got off course the

1 Coast Guard was gonna let you know like they did
2 in that particular instance?

3 A They did in that case, but I didn't -- I
4 assume they were watching. Whether they were --
5 and I never relied on the Coast Guard to tell me
6 where I was at out there, but I -- I assumed they
7 were monitoring that, yes.

8 Q So, you didn't rely on 'em as a navigational
9 tool, but certainly you knew they were watching
10 you if something unusual happened they -- they
11 certainly may contact you?

12 A That's right. Definitely.

13 Q And certainly there's no question in your mind
14 that they -- you were being monitored going
15 through -- when you were going through Valdez...

16 A Yes.

17 Q ...Narrows?

18 A Yes.

19 Q There's a speed limit there, I think you said?

20 A Six knots, yes.

21 Q Yes. Coming in unloaded, there's no speed
22 limit?

23 A I think it's 12 knots inbound, but you go
24 through at maneuvering speed and that's in that
25 range, but I -- outbound, I definitely know it's

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six knots.

Q So, 12 knots is, you say, maneuvering speed and that is apparently safe speed to...

A In that particular...

Q ...pass through the Narrows?

A In that particular area in ballast, yes.

Q You can make maneuvers quick enough at 12 knots to avoid any hazards, such as Middle Rock, things like this?

A Yes.

Q Now, you said that you would be on the bridge, or always are on the bridge going through the Narrows?

A Yes.

Q Let's assume you were in this situation on March 23rd and you've got the con with Captain Murphy. You've got Cousins, second mate acting as third. You have a helmsman who is a third mate acting as an AB...

A Uh-huh (affirmative).

Q And is there also a look out?

A Yes. There'd be a look out on the -- on the bow.

Q On the bow?

A Uh-huh (affirmative).

1 Q So you have all these people...

2 A Uh-huh (affirmative).

3 Q And their -- their job is to safely navigate
4 that vessel through the Narrows, right?

5 A Uh-huh (affirmative).

6 Q Everyone's duty is the same, is it not?

7 A Their duties are not the same, but their goal
8 is the same, to safely navigate the vessel
9 through that, yes.

10 Q I stand corrected.

11 A Yeah.

12 Q Their duties might be different in one of
13 'em's plotting a fix and one of 'em's looking
14 out...

15 A Uh-huh (affirmative). Yes.

16 Q ...but, the whole aim and purpose is to make
17 sure you don't hit anything.

18 A That's right.

19 Q Seems like enough people to do that, doesn't
20 it?

21 A They're short one.

22 Q You still want that -- you say they have to
23 have that...

24 A The master.

25 Q ...extra pair of eyes?

1 A You have to -- in a situation like that, yes,
2 you need the master on the bridge. That's --
3 that's by every standard that I know of in the
4 maritime industry, yes.

5 Q What written standard is it?

6 A That -- that I don't know. I know that that's
7 certainly one of the things in a drowning, or in
8 a collision, or it's -- in a marine casualty,
9 that's one of the -- certainly one of the first
10 things that the Coast Guard and all the courts
11 will want to determine is was the master on the
12 bridge, and that's -- that's one of the things
13 that they take into account...

14 Q By taking an account...

15 A ...in evaluating this. Yes.

16 Q Would you agree, sir, it would also depend on
17 the situation?

18 A Oh, yes. If you're out in the middle of -- if
19 you're out in the middle of the ocean, or off the
20 coast there's certainly reasons not to -- not to
21 be on the bridge, but in a situation where a
22 minute's delay in maneuvering the vessel, the
23 master should be on the bridge. And that's
24 traditionally been his -- his duties.

25 Q Traditionally been his duty, but...

1 A Yeah.

2 Q ...in this particular instance it was a

3 routine transit, right?

4 A Oh, yes. It's -- that's a...

5 Q Nobody made any errors whatsoever?

6 A No. That's -- that's right. It went just

7 find without him there, but at...

8 Q This transit had absolutely nothing to do with

9 the grounding, did it? Going through the

10 Narrows?

11 A The transit -- the only thing it had to do

12 with the grounding is they -- they got out, but

13 it had nothing to do with the grounding, no.

14 Basically, it was a routine, normal transit that

15 went just fine.

16 Q They didn't come close to hitting anything?

17 A No.

18 Q There was no substantial risk that the vessel

19 was gonna be run aground based on what you saw

20 and evaluated?

21 (1000)

22 A No more risk than you normally have. I mean,

23 any time you're moving a vessel that large in a

24 narrow channel there's a risk. That's why we

25 take so many precautions, but there was nothing

1 undue, or nothing unusual about that transit, no.

2 Q And, of course, there's almost -- there's a

3 certain risk in almost everything we do, is there

4 not?

5 A Certainly.

6 Q You flew up here in a plane. There's a risk

7 in that?

8 A That's right.

9 Q You assume the pilot and copilot -- they know

10 what they're doing. And mechanics knew, you

11 know, didn't make a mistake?

12 A Yes. As a -- as a passenger, you have to,

13 yes.

14 Q But you had a -- I would ask the question --

15 routine flight?

16 A Yes.

17 Q So, while there may be a risk involved in

18 going through Valdez Narrows and that risk, you

19 say would be increased if Captain Hazelwood

20 wasn't on the bridge, you can't give us any

21 opinion on that degree of risk?

22 A Oh, you mean, 10...

23 Q Yeah.

24 A ...percent -- 2 percent?

25 Q 5 percent, 4 percent?

1 A No. No. No. That's -- that would be...

2 Q Sheer speculation...

3 A Uh-huh (affirmative).

4 Q ...right?

5 Now I want to ask you questions about the

6 captain being back on the bridge when he came

7 back. You evaluated the materials with regard to

8 that, right? Is it correct that the captain from

9 what you learned was back on the bridge at 10:52

10 p.m. at about Potato Point?

11 A There -- there seemed -- that's one of the

12 things that -- it do - it really makes no

13 difference what time he come back...

14 Q My -- my question was, was that what...

15 A I didn't determine that that was the time that

16 he come back, no. I -- from everything I read

17 there seemed to be some confusion. So, I -- I

18 didn't make a determination of the exact time he

19 came back to the bridge. I -- I know for a fact

20 he was on the bridge before Captain Murphy left,

21 but what time before that I -- I don't think --

22 don't think that I ever reached a conclusion.

23 Q Well, you didn't review any of the material

24 from the trial, then?

25 A No.

1 Q The witnesses who testified?
2 A No.
3 Q Assuming there was testi...
4 A I -- I read Mr. Cousins' but, I -- I don't
5 know for a -- I didn't make a conclusion on that.
6 It didn't really at that point his time back on
7 the bridge didn't -- wasn't that -- he'd missed
8 coming through the Narrows is what I concluded
9 was bad. The rest of it, he was up there before
10 Captain Murphy left so I didn't see what -- what
11 difference it made what time he came up, exactly.
12 Q Well, let me ask you if it made any difference
13 and you said that coming back on late, before the
14 pilot gets off, he has to discuss things with the
15 pilot, right?
16 A As far as -- as far -- yes. He needed to be
17 up to discuss things with Captain Murphy and I
18 assumed that...
19 Q Assume he did that?
20 A He must have discussed whatever -- that's --
21 that's part of his duties. If -- if Captain
22 Murphy was there and he -- Captain Murphy was
23 there, if Captain Hazelwood came up, I'm sure
24 they discussed the change over of the con, yes.
25 Q How long would that normally take in your

1 experience?

2 A That would just take a matter of a minute or
3 two that -- the critical thing about the time is
4 that once the con has been changed, Captain
5 Murphy, then, has to go down and disembark, which
6 is a matter of four -- five minutes. Just a
7 matter of timing that he should relieve him in
8 time to be down to the boat when the -- when the
9 boat is there and the -- they're -- the ship's in
10 position to change the -- let the pilot off.

11 Q Well, was there any delay in the pilot leaving
12 as far as you determined?

13 A Not -- not that I know of, no.

14 Q Assuming that the testimony at the trial
15 showed the captain to be back on the bridge at
16 10:52 and the pilot was off at 11:24, that by my
17 math, which may not be right...

18 A That's...

19 Q ...is 32 minutes. Would that be correct?

20 A If -- if he was up there, yes.

21 Q Yeah.

22 A That's -- that's sufficient time.

23 Q Okay.

24 A And I -- from what I read, I -- I didn't --
25 didn't determine that he was back that early, but

1 that's -- I'm sure at this time we'll -- nobody's
2 clocking people in and out. I'm sure we'll not
3 know.

4 Q Would it have helped if you'd been sitting in
5 the court and listening to the testimony of
6 various witnesses to get these times down, when
7 you -- before you reached these opinions and
8 conclusions?

9 A If -- if I'd have heard the times and realized
10 that they were completely different from what I
11 read, I would -- I would assume that maybe there
12 was some confusion either on the first time, or
13 on their second time. I wouldn't be able to
14 determine which time was correct.

15 Q Well, let's suppose...

16 A You know. I mean, I don't understand the...

17 Q Well, the question is when would you ever
18 change your mind, sir? When would you ever think
19 that maybe I made a mistake here. Maybe he got
20 off earlier. Maybe there was enough time.

21 A I'm not saying that -- maybe -- it seemed to
22 me the way -- the information I had at first is
23 that they had to call the captain twice to get
24 him to come up to the bridge.

25 Q And that was the only information...

1 A And the -- just exactly what the time is when
2 he got up there, I don't know. But, if they had
3 to call him -- they had to call him a second time
4 to get him up there, then he's kind of crowding
5 the time, and this is rushing things.

6 Q You said "if". That's, again, assuming
7 something. You're making an assumption that
8 that's correct?

9 A Okay.

10 Q Okay. I'm asking you to assume that there was
11 one call and he was up at Potato Point -- off
12 Potato Point at 10:52 p.m. Would this change
13 your opinion or conclusion at all, if that is
14 correct?

15 A If that is correct and -- yes. That would
16 change my opinion. Yes.

17 Q And what would your opinion be changed to?

18 A My opinion on -- on the -- I'd assume that he
19 had been up there in time to relieve Captain
20 Murphy.

21 Q The, you reviewed the letting go of the pilot
22 and what happened there...

23 A Uh-huh (affirmative).

24 Q ...right?

25 No criticism of that, I take it?

1 A It seemed to go all right. Yes.

2 Q Uh-huh (affirmative). Now the LPU, load

3 program up. You said that was on, from your

4 review of the materials, at 11:52 p.m.?

5 A I believe that's the -- that's the time, yes.

6 Q Yeah. I...

7 A I mean, I believe, so, yes. That's...

8 Q I'm not trying to pin you down on something.

9 If you disagree with me, please do so.

10 A Yeah.

11 Q I'm just reviewing my notes, okay?

12 A Yeah.

13 Q So, assuming that was on at 11:52, load

14 program up is when you put this on a computer to

15 make the engine start speeding up...

16 A Yes.

17 Q Right.

18 A Uh-huh (affirmative).

19 Q How long does it take to get up to that speed?

20 Sea speed?

21 A From the information I've received, I'd -- it

22 seems to me about 40 minutes is what -- somewhere

23 in that...

24 Q So, it's a...

25 A It's a considerable time, yes.

1 Q It's a slow, gradual build up, right?
2 A Yes. Uh-huh (affirmative).
3 Q It isn't like just taking the throttle and
4 just jamming her up?
5 A No. No.
6 Q Can you take that load program off at any
7 time? Can you just push a button and...
8 A Yes. You can.
9 Q ...it's off.
10 Q Yes.
11 Q So, if you decide you want to go slower, or
12 change your speed, you can just push a button and
13 take it off?
14 A Yes. But you can't -- what you can't take off
15 is the excess speed that you've built up. I
16 mean, you're -- your ship is still moving faster
17 than maneuvering speed, even though you've
18 brought this throttle back, yes.
19 Q It will slow down?
20 A Oh, yes. Yes.
21 Q It isn't like you've got brakes, like a car?
22 A No. It eventually will slow down, sure.
23 Yeah.
24 THE COURT: Mr. Madson, I have a matter at
25 10:00 I need to take up in my office. And I need to

1 prepare for it. So...

2 MR. MADSON: Oh. That's fine...

3 THE COURT: ...if you don't mind, I'd like to
4 take a break a little earlier than usual.

5 MR. MADSON: ...Your Honor, we can take a
6 break now if you want, sure. I was just -- in fact, I
7 was gonna request one, myself, so thanks.

8 THE COURT: All right. Good. Remember my
9 instructions, ladies and gentlemen not to discuss the
10 matter among yourselves, or with any other person, nor
11 to form or express any opinions.

12 THE CLERK: Please rise. This court stands in
13 recess subject to call.

14 (1339)

15 (Off record - 9:51 a.m.)

16 (On record - 10:09 a.m.)

17 (Jury present)

18 THE CLERK: This court now resumes its
19 session.

20 Q (Captain Beevers by Mr. Madson:) Captain
21 Beevers, I'd like to take a moment or two and
22 review your testimony and opinions regarding
23 Captain Hazelwood's decision to go around, or
24 avoid ice. Do you recall testifying on that
25 subject, sir?

1 A Yes. Uh-huh (affirmative).

2 Q If I understand your testimony correctly,
3 please let me know if I'm wrong, but you see the
4 chart right next to you, there...

5 A Yes.

6 Q ...where you described where the ice was and
7 the route Captain Hazelwood took?

8 Would you agree that he could have gone around
9 or -- you believed the best course of action
10 would be to come closer to the ice, check it out
11 and perhaps slow down and maneuver through it?

12 A I didn't say that was necessarily the best. I
13 said that would have been the first thing that I
14 would have looked at to do.

15 There's four -- you know, I said there was
16 four things that he could do. One, of course, is
17 stay at the dock. Two was to come up and look
18 and check the ice out, and I have found at times
19 that that was the best route to take. And I've
20 done that.

21 The third choice, of course, is to go on
22 around the ice, assuming there's enough sea room.

23 The fourth course is to determine that you
24 didn't want to do this, to start around and
25 determine that you didn't have enough sea room,

1 and then, maneuver back through the ice as best
2 you could at that point.

3 Q And, of course, you're looking at it be review
4 of certain test -- certain of the materials that
5 were given to you?

6 A Yes.

7 Q And you did not have the luxury of being there
8 at the time and looking through the radar and
9 things like this?

10 A That's right. Yes.

11 MR. MADSON: By the way, let me -- I'd like to
12 get this marked, if I could.

13 (Side conference)

14 MR. MADSON: Your Honor, I would like the
15 court to examine the statute, which is 46 USC, United
16 States Code 738 (C) and ask the court to take judicial
17 notice.

18 THE COURT: Do you need to review this?

19 MR. COLE: No. I've read it.

20 THE COURT: Any objection?

21 MR. COLE: My objection is to relevance.

22 THE COURT: The objection's overruled and the
23 court will take judicial notice of that section 46 USC
24 738 (C).

25 And, Mr. Madson, this was the statute that was

1 in effect March 23/24, 1989?

2 MR. MADSON: Near as I can determine. I have
3 not found any evidence that it's been altered, or
4 appealed, or any -- and I checked the pocket part, Your
5 Honor, of the supplement. There didn't appear to be
6 any changes.

7 Of course, Your Honor, I crossed out the --
8 what I thought was the irrelevant part. I'm only
9 asking the court to take judicial notice of A and not
10 B. Just so you understand that. I don't think that
11 applies.

12 THE COURT: Your request is 738 C(a) and...
13 the court will take judicial notice of that section.

14 Q (Captain Beevers by Mr. Madson:) Captain
15 Beevers, I want to hand you now what's been
16 marked and -- as Defendant's Exhibit AC and ask
17 you if you're familiar with the federal statute?

18 A Yes. I'm familiar with that.

19 Q How did you become familiar with that, sir?

20 A You -- you just showed it to me.

21 Q Well, no...

22 A This is...

23 Q Before that?

24 A Okay. Before that, the -- this is -- I have
25 never specifically read that, but, yes. I know

1 the law is that you're either maneuver at a
2 moderate speed or avoid ice, if possible.

3 Q Okay. The -- the law, then, is that "The
4 master of every vessel of the United State when
5 ice is reported at or near his...

6 A Yes.

7 Q "...shall proceed at a moderate speed, or
8 alter his course...

9 A Uh-huh (affirmative).

10 Q "...so as to go well clear of the danger
11 zone."

12 Right?

13 A Yes.

14 Q Now, that statute doesn't say when you
15 encounter ice contact Captain Beevers and check
16 and see what he'd do, does it?

17 MR. COLE: Objection. Argumentative. Form of
18 the question.

19 THE COURT: Yeah. You can get to your point
20 with a non-argumentative question. Sustained.

21 Q (Captain Beevers by Mr. Madson:) The statute
22 gives -- the United States Congress gives the
23 master of a vessel the clear option to do either
24 one, does it not?

25 A Yes.

1 Q And in doing that -- in going well clear of
2 the danger zone, that master can look at the
3 situation and evaluate it at the time and decide
4 on the course of action which will take him well
5 clear of a danger zone?

6 A Yes. You have to -- but any time you're
7 navigating a vessel, you not only have the ice
8 danger, you have the danger of shoal water. You
9 have the danger of adjoining land that you have
10 to consider. That's...

11 Q You've got to decide your own -- your options,
12 right?

13 A That's one of the options. Yes.

14 Q You decide how close it's safe to go to
15 certain rocks or shoals. On the other hand, you
16 decide how safe it's to go to the ice?

17 A That's right.

18 Q And I think your -- you said your criticism of
19 Captain Hazelwood's judgment was that he
20 apparently he went too far from the ice when he
21 made his maneuvers?

22 A My -- my basic criticism is I thought he made
23 his decision too early without really evaluating
24 it carefully. And, then, when he did make his
25 decision -- or, when his decision was made at --I

1 still don't nec -- I'm not gonna say that that
2 was the wrong decision. I wasn't there, but when
3 he -- his errors in going around the ice was the
4 fact that when he started increasing his speed
5 before he was completely around the ice, put the
6 vessel on automatic steering and left the bridge.

7 I have no -- I mean, he may have made -- as
8 far as the ice went that night, that may have
9 been the correct decision. I just -- I merely
10 give four choices that he had and which one I
11 would have looked at first.

12 Q Okay. So, that was -- if we can put it in a
13 nutshell, that was simply your personal
14 preference and other masters may do things...

15 A Oh, yes.

16 Q ...the opposite.

17 A Yes.

18 Q And, in fact, sir, you -- in your evaluation
19 of materials prior to testifying here today
20 looked and examined the course of the ARCO
21 Juneau, did you not?

22 A Yes.

23 MR. COLE: Objection. I object. Can we
24 approach the bench?

25 THE COURT: All right.

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(1685)

(Whispered bench conference as follows:)

MR. COLE: My objection is is this evidence hasn't come in.

THE COURT: What evidence is that?

MR. COLE: The course recorders of the ARCO Juneau and the Texaco (indiscernible - whispering). And that's what Mr. Madson's questions go to. The course (indiscernible - whispering) two vessels that were -- earlier that day (indiscernible - whispering).

THE COURT: The rules don't require it to have to be in evidence to be -- base -- to give an opinion. He can give his opinion on facts that are not necessarily in evidence if he's asking -- testing his opinion based on what information he had. I think he's entitled to explore everything he has.

MR. COLE: Okay.

(End of whispered bench conference.)

(1717)

Q (Captain Beevers by Mr. Madson:) Captain Beevers, where did you examine the chart and other materials relating to the ARCO Juneau?

A In Anchorage here at the District Attorney's Office?

Q It was material Mr. Cole had provided you to

1 look at?

2 A Yes.

3 Q And when was that done?

4 A Fairly recently, here. Within -- what the
5 last couple of weeks? Last week?

6 Q When did the ARCO Juneau depart Valdez? Do
7 you recall?

8 A At this point I don't remember that date, no.
9 They -- see. I do, too. The Juneau -- the
10 Juneau was the last vessel. Excuse me. I had
11 the two mixed up.

12 The Juneau was the vessel -- ARCO Juneau was
13 the vessel before the Valdez.

14 Q The one immediately before the...

15 A Four hours.

16 Q ...Exxon Valdez?

17 A Yeah. I had the two mixed up. Okay.

18 Q How 'bout the Brooklyn?

19 A That was some time previous to that. Whether
20 it was the same day or -- or a day before, I
21 don't remember. It was...

22 Q Was it -- okay. Sorry.

23 A It was previous to the ARCO Juneau.

24 Q Do you know if it was the next vessel? In
25 other words, the Brooklyn, the ARCO Juneau, and

1 then, the Exxon Valdez in that order?

2 A That could be correct. I can't say. I know
3 the Juneau was before the -- the Valdez. Whether
4 -- whether there was a ship between the other two
5 I don't remember at this point, but it was in the
6 same time.

7 Q Do you recall, sir, what the course of the
8 ARCO Juneau was when it went out -- and that --
9 by "course" I mean, the vicinity of Bligh Reef,
10 what the vessel did when it encountered ice?

11 A Yes. They went around -- went around the ice.

12 Q Could you just show the jury, basically,
13 the...

14 A They...

15 Q ...the course they took?

16 A They came -- they came down and dropped the
17 pilot off. Let me get my -- get around where I
18 can -- this thing glares and it's hard to see.
19 They came down and then crossed over and came
20 down around the ice and clear of Bligh Reef.

21 Q How close did they get to Bligh Reef?

22 A According to my calculations they were close
23 to eight tenths off. According to theirs they
24 were about five tenths, or six tenths of a mile
25 off of the buoy. And so...

1 Q According to their...

2 A According to their plots that they laid down

3 on...

4 Q Ah...

5 A Go ahead.

6 Q Would it refresh your recollection to look at

7 a copy of that particular plot, sir?

8 A That -- it would. I don't really need to, but

9 I -- 'cause I know how close they -- they laid

10 out their course. When I laid it out it was a

11 little further off than that, but that's -- that

12 was, you know, was with sketchy information.

13 Q So, if you don't need to look at that

14 that's...

15 A No. I know where they went so go ahead.

16 Q What speed was the ARCO Juneau...

17 A The ARCO -- the ARCO Juneau was going full sea

18 speed at that point.

19 Q What was that, sir?

20 A 16 knots.

21 Q 16 knots. And you recall what his course was

22 coming from the separation zone in the lane where

23 it altered to avoid the ice -- what -- what

24 course do you have?

25 A At this point I don't. I'd have to look at

1 his course recorder to see that, so...

2 (Pause)

3 MR. MADSON: Perhaps I should get this marked

4 just so the record doesn't...

5 Q (Captain Beevers by Mr. Madson:) I'd like to

6 show you the chart here, sir, and ask you if you

7 can examine that to refresh your recollection.

8 A There's no -- oh, here it is. Okay.

9 Q Now, I realize that you'd have to estimate,

10 you know, his course, but as best you can.

11 A Okay. This is Knight -- at this point right

12 here, he's going -- let's see, 180. He's

13 probably going 175, maybe, I'd guess.

14 Q Well, when you say at this point...

15 A Between...

16 Q ...would you explain to the jury what that

17 means?

18 A Yeah. I'm looking at two fixes here. The one

19 that's in the northbound lane at 1903 and another

20 one that's at 1908. And I would say at that

21 point he's probably steering close to 175.

22 1905 that may be. It's hard to read his

23 writing there.

24 Q Maybe this one would illustrate it better if

25 you could, maybe (indiscernible - rustling

1 papers) and this is Plaintiff's Exhibit 122.

2 A Okay. He started up here off of 1903 is
3 somewhere see Note A sign here. What have we got
4 here? Well, it's -- into the red sector.

5 Okay. Right about in here somewhere he came
6 -- came out of this and came -- came south at 175
7 down to a point just short of here, and then
8 turned and came down.

9 Q Turned -- turned to the...

10 A Turned right.

11 Q ...what direction?

12 A To starboard.

13 Q To the right?

14 A Yes. To the right.

15 Q And he was traveling at what speed when he was
16 in the area before he made his turns?

17 A I remember calculating that he averaged around
18 16 knots through there.

19 Q And the Exxon Valdez in the same area was
20 12.4?

21 A About 12 knots. Yes. The -- I'm not -- when
22 I reviewed this it was -- I didn't say that I
23 approved of what they did, by the way. That's...

24 Q Okay.

25 A You know, that's...

1 Q We'll get to that in a minute. But, anyway,
2 16 knots and he comes within, I think you said,
3 according to his calculations five tenths, or six
4 tenths of a mile off Bligh Reef?
5 A Yes. Something like that.
6 Q Would you agree, sir, that this appears to be
7 an accurate copy of the chart that you examined
8 in the District Attorney's Office?
9 A Yes. Yes. That...
10 MR. MADSON: Then I would ask that this be
11 admitted as an exhibit, Your Honor.
12 THE COURT: AD. Any objection?
13 MR. COLE: No. I don't object to that.
14 EXHIBIT AD ADMITTED
15 THE COURT: AD is admitted.
16 Q And Captain Murphy, I think you volunteered
17 something there when I was asking you to show the
18 plot of that vessel. You said you didn't approve
19 of what was done, right?
20 A That's right.
21 Q Would you consider the captain, or master's
22 actions reckless, for what he did there? I mean,
23 again, he's 16 knots, full speed, sea speed,
24 makes a turn half a mile from Bligh Reef?
25 A Yes. I would.

1 Q Do you know if he was prosecuted, or not?
2 A I don't believe he was and I don't know of any
3 intention to. I don't -- that's...
4 Q What about -- you said you also examined
5 material relating to the ship vessel known as the
6 Brooklyn?
7 A Brooklyn. Yes.
8 Q Can you explain -- can you remember the course
9 that that vessel took?
10 A I don't remember the exact course. Generally,
11 they came down and -- and came the same way,
12 except they -- they stayed a little out in here
13 and turned. They -- I don't believe they ever
14 got over -- they didn't get over behind Bligh
15 Reef area. They stayed this side of it as they
16 come down. I'd have to look at it, but they --
17 the Brooklyn was...
18 Q Well, maybe we can...
19 A Yeah. If you can let me see the chart I can
20 probably work better from that. It's hard to
21 remember exactly when...
22 (Pause)
23 (2180)
24 MR. MADSON: Excuse me one second. We have to
25 have this marked, too, for the record.

1 Q (Captain Beevers by Mr. Madson:) I'm handing
2 you Exhibit AE. I'm sorry. I forgot to show Mr.
3 Cole.

4 (Pause)

5 Q (Captain Beevers by Mr. Madson:) I'm handing
6 you, again, sir, Exhibit AE and ask you whether
7 that refreshes your recollection?

8 A Yes.

9 Q Could you show the jury approximately the
10 course of the Brooklyn when it left and went
11 around the ice?

12 A Okay. Yeah. It -- it came over and it was in
13 the inbound lane off from -- by the time it got
14 down here off from Busby. And then, it slowly
15 went out of the lane in a direction like this and
16 was out -- out of the lane at this point, and
17 then, at Bligh Reef it came back -- came back
18 across.

19 Q How close did it get to Bligh Reef?

20 A I'd have to -- I'd have to -- there's no...

21 Q No scale on that?

22 A No. I would say -- I don't remember now. Six
23 tenths of a mile? Something of that sort if I'm
24 not mistaken, six or seven tenths.

25 But, the -- the thing that's better about the

1 Brooklyn is that they took frequent fixes. They
2 were on maneuvering speed and they had the
3 captain on the bridge.

4 Q Did either of those vessels actually lay down
5 track lines? You said he took fixes, but they
6 didn't prepare a track line, did they?

7 A I see a track line on this. I don't know if
8 that was laid down before or after.

9 Q What about the ARCO Juneau?

10 A I don't believe they laid down a track line,
11 no.

12 Q Then, sir, another matter. Did you examine
13 the licenses of the master's of the -- either of
14 those two vessels?

15 A I -- no. I didn't examine their license. I
16 know that the master on the Brooklyn did not have
17 Prince William Pilotage, that the state pilot
18 brought him down off from Bligh Reef.

19 Q So, the pilot got off at Bligh Reef?

20 A Somewhere down in that area, yes. I'm...

21 Q How 'bout off of Busby?

22 A Off from Busby? Okay. That...

23 Q Okay. Let's show the jury where those two
24 are. Show the jury first of all where Rocky
25 Point is on there?

1 A Okay. Let me get this pointer out so they can
2 see. Rocky Point is right here.

3 Q That's the normal pilot station, right?

4 A Yes. And Busby Island is right here.

5 Q And where's Bligh Reef?

6 A Bligh Reef is right here.

7 Q So, the pilot -- the pilot got off at Busby
8 Island, then the master did not have federal
9 pilotage indorsement at that point 'til he --
10 goin' around Bligh Reef, right?

11 A No. He -- he didn't. He did not have
12 pilotage. He was going -- acting under this
13 letter, I believe that the Coast Guard had.

14 Q Are you sure of that?

15 (233)

16 A I'm not sure -- how can I be sure that -- I
17 assume that's what he was operating under.

18 Q That's what I'm asking you...

19 A Yeah.

20 Q ...if you're assuming, or if you're sure?

21 A Be -- because -- yeah. That's -- the standard
22 practice is that if they don't have pilotage they
23 operate under the...

24 Q But you have no way of knowing whether he
25 contacted -- the master contacted the Coast Guard

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1 and said I am now operating without pilotage and
2 I'm check, check, check, right?

3 A I have no way of knowing that, no. I -- part
4 of the -- part of the program when they leave the
5 dock is that they advise the -- the Coast Guard
6 if there's pilotage aboard and at that point the
7 Coast Guard would -- if -- when they say no, I
8 would assume the Coast Guard would come in and
9 say, well, this is how we want you to do it and
10 that's -- that's the way it -- the standard is in
11 the industry at that point.

12 Q And wouldn't it make more sense for the pilot
13 to get off at Rocky Point, the pilot station,
14 rather than stay on 'til Busby Island?

15 A They -- normally when they don't have
16 pilotage, they come down -- being I always had a
17 pilot I never -- had a license, I never had to
18 worry about it, but I assumed from my reading
19 that they'd get off somewhere down around Bligh
20 Reef.

21 Q Well, when you say...

22 A I don't know.

23 Q ...somewhere around Bligh Reef, would that
24 include, in your opinion, Busby Island?

25 A When I say Bligh Reef that -- I would assume

1 around Bligh Reef. I -- if they're getting off
2 at Busby Island, I didn't know that.

3 Q Well, in this case you knew that?

4 A Yeah.

5 Q Right?

6 A Uh-huh (affirmative).

7 Q So...

8 A But that...

9 Q ...the pilot stayed on past what you believe
10 to be the normal pilot station at Rocky Point,
11 proceeded farther south, to Busby Island and got
12 off there.

13 A Uh-huh (affirmative).

14 Q The master did not have federal license
15 indorsement?

16 A Right.

17 Q And then, from that point to Bligh Reef buoy,
18 he was operating without a state pilot and
19 without his indorsement, right?

20 A That's correct.

21 Q And you don't know whether he contacted the
22 Coast Guard and go this waiver, or not?

23 A The -- the normal practice is that it's done.
24 I don't know that it was done, no.

25 Q Now, getting to the chart there, which I think

1 is Exhibit 122, that -- you've identified as the
2 track line, or the course of the Exxon Valdez?

3 A Yes.

4 Q When you compare that track line, or that
5 decision to go around the ice with either the
6 Brooklyn or the ARCO Juneau, is there a
7 substantive difference in avoiding ice by any of
8 these vessels? I say substantial.

9 A I wouldn't say there's substantial difference
10 between the Brooklyn and the Juneau, no. Because
11 the Brooklyn is never steering with or coming
12 behind the buoy. They're steering this side of
13 the buoy all the time.

14 And the ARCO Juneau and the Exxon Valdez both
15 were steering over into an area that increases
16 the -- increases the risk and increases the
17 chance of grounding.

18 (2490)

19 Q If I understand you correctly, you're saying
20 that the intent of the master and the -- or the
21 third mate on the Exxon Valdez was to actually
22 enter the red sector to make the turn?

23 A No. I say they're heading that way, which...

24 Q Yeah.

25 A ...means that it takes more care. If you're

1 -- any time you're maneuvering to head to a -- to
2 an area where that if you don't do something
3 positive, you're increasing the -- the risk.
4 Q Well, you're increasing the risk any time
5 you're heading toward any object there...
6 A That's right.
7 Q ...right?
8 A Yeah. But -- but, I -- as I said before, I
9 have no, you know, that was one of his decisions
10 to make to come this way. The -- the main fault
11 I have in that is that the captain left the
12 bridge before all this was completed.
13 Q Okay.
14 A That's...
15 Q So, you're not really being critical about his
16 decision to go around the ice in the manner that
17 he did?
18 A If -- if he had sea room, this is -- this is
19 certainly a legitimate maneuver to make, yes.
20 Q If I understand correctly, you said you didn't
21 examine the license of the master of the -- of
22 the Exxon -- of the ARCO Juneau, is that right?
23 A How I got my information that he isn't
24 licensed, and how I got my information that the
25 Brooklyn was unlicensed is from conversations

1 with someone the DA -- District Attorney's Office
2 that had contacted 'em. I'm not just sure...

3 Q Do you recall who the master of the Exxon --
4 or the -- excuse me, the ARCO Juneau was?

5 A I didn't look at his name, no.

6 Q Greg Knowlton doesn't ring any bells?

7 A Knowlton. Yes. Okay. Now I remember. I
8 didn't remember it. No. I'm, you know, I wasn't
9 concerned with his name. Fact I -- maybe I even
10 have seen his license. I don't remember at the
11 time, but I...

12 Q Okay. Let me -- let me have this marked.

13 (Pause)

14 Q Let me hand you, sir, Defendants Exhibit AF
15 and ask you if you can examine that and if it
16 refreshes your recollection of having seen it
17 before?

18 A Well, it's hard -- there again, it --
19 everything is the same except the name on this is
20 most people. But, this -- okay. Yes.

21 Q Yes, what?

22 A That this -- I have seen this before?

23 Q When did you see it, sir?

24 A I believe that -- I believe this was part of
25 information on the ARCO Juneau that we got, yes.

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I -- I just...

Q You said we got. You got that through the State?

A Through the District Attorney's Office, yes.

Q Now what does that purport to be, sir?

A That's Mr. Knowlton's -- Captain Knowlton's master's license. It includes his radar observer and his pilotage.

Q What does the pilotage indorsement say?

MR. COLE: Objection to hearsay?

MR. MADSON: Hearsay?

THE COURT: Don't answer the question.

MR. MADSON: Well, Your Honor, this is material he's reviewed that was provided to him by the -- by the State. If they have a serious objection as to the authenticity of this, maybe that's it. I don't know, but this witness has been testifying about nothing but hearsay. He has no first hand knowledge.

THE COURT: Objection sustained.

MR. MADSON: On hearsay grounds, Your Honor?

THE COURT: Yes, sir.

MR. MADSON: May I approach the bench, sir?

THE COURT: No, sir. Just because objections on hearsay haven't been made doesn't mean they couldn't have been made. Now, the objection's hearsay and

1 unless you can show me an exception, Mr. Madson, it is
2 hearsay.

3 MR. MADSON: The exception, Your Honor, is
4 this is an expert witness who is entitled to and does
5 rely upon hearsay, and, in fact, all his testimony has
6 been based on hearsay, including this very copy.

7 THE COURT: There's no question that experts
8 can base their opinions on hearsay, and if you're
9 asking 'em an opinion that's okay. but the
10 admissibility of a document that is hearsay will be
11 prohibited.

12 Q (Captain Beevers by Mr. Madson:) Now, sir,
13 reviewing that, do you have an opinion as to the
14 license that -- the federal license pilot
15 indorsement Captain Knowlton had? What's his
16 indorsement say?

17 A This is...

18 MR. COLE: Objection to hearsay.

19 Q (Captain Beevers by Mr. Madson:) Well, do you
20 have an objection as to whether he -- let me say
21 this, Your Honor. Do you have an opinion, sir,
22 based on this obviously hearsay document as to
23 whether or not Captain Knowlton had the
24 appropriate federal indorsement for the Prince
25 William Sound area between Busby and Bligh Reef?

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Busby Island and Bligh Reef?

A He has the appropriate pilotage from Hinchinbrook up to Busby Island.

Q But not to Bligh -- I mean, not to -- to Busby Island, but not to the -- excuse me. Not up to Rocky Point?

A Not up to Rocky Point.

Q And Rocky Point is the state pilot station?

A That's my -- the pilot boat is at Rocky Point and the my license reads to Rocky Point and that -- yes. And his doesn't.

Q And Knowlton's only goes to Busby?

A Uh-huh (affirmative).

Q Do you know whether or not the pilot was on board during the transit between Rocky Point and Busby Island?

A That I don't know.

Q Did you review any of materials at all on that?

A I looked -- what I looked at was the -- I think they sent the license. I think they sent the course recorder. And I don't recall -- Bell Book, maybe they sent. I'm not sure.

Q Well...

A It's...

1 Q From the...

2 A It's been quite a while back and I've been
3 reviewing a lot of things I went over, so it's
4 hard to say exactly, but they had pretty --
5 pretty skimpy information to start with on it.

6 Q From all the materials you reviewed could you
7 determine whether -- where the pilot got off?

8 MR. COLE: Objection as to hearsay?

9 MR. MADSON: I'm just askin' him if he could
10 reach that conclusion, not what it is?

11 THE COURT: Counsel, approach the bench,
12 please.

13 (2819)

14 (Whispered bench conference as follows:)

15 You're getting into a collateral area
16 (indiscernible - whispering) authority under
17 evidence rule 611, Mr. Madson. You're gonna have
18 to get back on track here pretty soon. This is
19 an unnecessary consumption of time to start
20 getting into the ARCO Juneau with this witness
21 and where the pilot got off and on in that case.

22 Now, I'm gonna let you go a little longer, but
23 I'm gonna exercise some authority...

24 MR. MADSON: He's just...

25 THE COURT: The objection as to hearsay is

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overruled this time.

(End of whispered bench conference.)

(2850)

Q (Captain Beevers by Mr. Madson:) Captain Beevers, if -- and I say if -- or, assuming the state pilot got off at Rocky Point and the ship was under the command, direction and control of the captain, then, who did not have indorsement between Rocky Point and Busby Island...

A Uh-huh (affirmative).

Q ...he would, then, be in non-compliance with...

A Unless he'd reported that to the Coast Guard and they'd started this non-pilotage program to run it between Rocky Point and Busby Island, yes.

Q Uh-huh (affirmative). And you don't know whether that was done or not?

A No. I -- I have no information on that one way or the other.

Q Now, getting to the course of the Exxon Valdez as it -- you reviewed all the materials. The course change was made as it came under the arm -- proceeding out of the arm and proceeded on a course that eventually took it on a -- I think a course of 180, right?

1 A 180, yes. Uh-huh (affirmative).

2 Q You reviewed materials that indicated that

3 Captain Hazelwood had a conversation with Gregory

4 Cousins?

5 A Yes.

6 Q And you do not know whether Captain Hazelwood

7 knew of Gregory Cousins' competence or not?

8 A No. I -- I don't...

9 MR. COLE: Hearsay and speculation.

10 A The...

11 THE COURT: Objection overruled. You may

12 answer the question.

13 A The only thing I know is that they'd been on

14 the ship together a short time and the -- Captain

15 Hazelwood, obviously let him stay on the ship,

16 and obviously let him stand a watch, so he must

17 have -- must have thought he was reasonably

18 competent, yes.

19 Q And you heard none of the testimony regarding

20 his competence that was testified to in this

21 trial -- his, Gregory Cousins', that is?

22 A I...

23 Q Any testimony that was in this trial up to

24 today -- I think you said consisted only of

25 testimony of Mr. Kunkel...

1 A Yes. The only -- the only testimony that I've
2 read has been Kunkel -- Mr. Kunkel and Mr.
3 Cousins.

4 Q From Mr. Cousins' testimony did you reach a
5 conclusion that Mr. Cousin's felt comfortable and
6 competent to carry out a maneuver off of Busby
7 Island?

8 A Mr. Cousins stated that he did, yes.

9 Q And that was a -- let's -- that's -- a course
10 of 180 is due south, is it not?

11 A Yes.

12 Q When the -- someone comes abeam of something,
13 what -- what does abeam mean? Could you tell the
14 jury?

15 A Okay. Abeam is -- is at a 90 degree angle off
16 from your course. So, in this instance it's easy
17 because he was heading due south. When Busby
18 Island light was abeam, it would be heading due
19 east. That's -- the abeam is 90 degrees from
20 your course.

21 Q And from the course that you've examined, and
22 you have no reason to be -- believe that's
23 inaccurate...

24 A No.

25 Q ...you said, I think, it was easy to determine

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when you're abeam of something?

A That's correct.

Q When you have something like a light at Busby Island, that makes it easy, does it not?

A That's what you're -- that's what you use for -- as your prominent points and it -- a light -- a light house is an especially good thing to take a bearing off from, yes.

Q How 'bout taking a fix? Does that take any substantial period of time?

A To take -- take a fix on a light is a matter of seconds. You take your -- wait 'til the light's abeam. You take your range off. Take your bearing -- take your range and that's it.

Q Any competent, or reasonably competent third mate should be able to do that, right?

A That's correct.

Q Certainly anybody who's passed the test for a second mate license, would, again, be competent to carry out that maneuver?

A Should be competent beyond that, yes.

Q And did you read Gregory Cousins' testimony regarding his knowledge of both Busby Island Light and Bligh Reef?

A Yes.

1 Q That he knew where they were?
2 A Yes.
3 Q He knew the area he was in?
4 A Yes.
5 Q And was familiar with it, 'cause he'd sailed
6 there a number of times before?
7 A Yes.
8 Q So, when Captain Hazelwood said look at the
9 radar, here's the ice, here's the maneuver we'd
10 like to make, go down to Busby Island on this
11 course, and then, take a fix. And then, maneuver
12 around the ice. That's essentially what he told
13 him, right?
14 A Yes.
15 Q In other words, make a right turn to go around
16 the outside edge of the ice, right?
17 A That's what he told him, yes.
18 Q Do you think those orders, or that command was
19 easily understood?
20 A I think the language of it is understood, yes.
21 I don't think the -- what it entailed may have
22 not been understood by Mr. Cousins, but I think
23 the language of what to do in the mechanics of it
24 he well understood.
25 Q You don't know whether or not Mr. Cousins

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understood that he was to go abeam of Busby Island...

A Oh, I'm sure he...

Q ...90 degrees...

A ...I'm sure he understand that, yes.

Q And simply turn the vessel to the right?

A I'm sure he understood that part of it, yes.

Q And that is a simply maneuver, is it not?

A Yes. It is.

Q And at that time is one mile directly east of Busby -- west of Busby Island?

A According to his fix...

Q Approximately?

A ...yes. Yes.

Q And certainly not heading towards Busby Island?

A He's at that point heading down behind Bligh Reef, yes.

Q And how far from Bligh Reef would you say it is from that point -- that is, off -- abeam of Busby Island to Bligh Reef?

A Two and a half to three miles. Somewhere in there. I'd have to measure that.

Q And would you consider that enough sea room to make a turn with a vessel that's capable of

1 making the turn in six tenths of a mile?
2 A They had enough room at that time to -- to
3 make a turn, yes.
4 Q Did you evaluate the testimony and the
5 materials given you and reach any conclusions or
6 determinations as to at what point the turn, if
7 made, would have cleared Bligh Reef?
8 (3209)
9 A I did. And I think about a minute and a half
10 is what I determined would be -- they would miss
11 it. I -- I think that's -- that's not allowing a
12 safety, you know, in a 10 degree turn, that --
13 that would miss it fairly, you know, easy. Any
14 further than that, if you missed it, it would be
15 so close that you couldn't say definitely.
16 What I -- what I -- I didn't feel that was a
17 safe turn at that point.
18 Q Wait a minute. Let's go back. You said in
19 a...
20 A In a minute and half...
21 Q ...minute and a half after midnight?
22 A Yes. If they -- if they made the turn the
23 could have probably cleared Bligh Reef.
24 Q So, it's 12:01.5...
25 A Or something like that, yes.

1 Q Roughly that?

2 A Yes. Yeah. And I mean, this could be a
3 little each way. That's...

4 Q How 'bout up to two minutes after -- 30
5 seconds later?

6 A I think some people figured that. That would
7 be close, yes. I'd, you know, but this is...

8 Q It wouldn't be an intended maneuver to get
9 that close, but you could still make it?

10 A I'd have to recheck everything to see, but
11 yeah, some -- some people I have talked to that
12 have said two minutes. I think I -- my original
13 figuring was a minute and a half, so that's --
14 that's still -- yes. Both of those -- let's
15 assume two minutes, you could make it, yeah.

16 Q And if the turn was made, or supposedly had
17 been made at 11:56, certainly that gave it a lot
18 of room, did it not?

19 A It would have -- it would have given it enough
20 to be adequate turn -- be sa -- adequate safety,
21 yes.

22 Q And that would be consistent with Mr. Cousins'
23 instructions and his intent, would it not, that
24 as soon as he got a fix off of Busby Island, and
25 assume that was at 11:5 -- or, yeah. 11:55.

1 A If everything would have went perfect, he got
2 his fix, made his turn, yes. We wouldn't be here
3 today.

4 Q It took only seconds to make the fix?

5 A Uh-huh (affirmative).

6 Q So, it -- a minute at the longest after he got
7 his fix and he knew he was right abeam of Busby
8 Island?

9 A Yeah. At a minute you should, he's -- yes.
10 That would be adequate time to take the fix, plot
11 it and come back and make -- in fact, what you'd
12 normally do is you would -- on a situation like
13 that you would set your range to the distance
14 you're going to be off. When you're abeam you
15 would take your bearing, when you're abeam, order
16 the course change, go in and plot, keeping an eye
17 on it, come back out. So, it's -- even quicker
18 than a minute, probably would be the normal.

19 Q And then, he would give the helmsman an order
20 to turn the vessel?

21 A Uh-huh (affirmative).

22 Q He could either do that by saying come to
23 course 245, or something like that?

24 A He could. He could either order right ten
25 degrees rudder, or right to 245, or some such --

1 whatever their practice on that vessel was, yes.

2 Q And you know from your review of the materials
3 that Mr. Cousins stated that he told the helmsman
4 10 degrees right rudder?

5 A He state he said -- did that, yes.

6 Q I guess the problem is if -- as you pointed
7 out, you don't know if that order was carried out
8 or not?

9 A Well, we -- we really don't know if the order
10 was given, we don't know if the order was carried
11 out. We don't know if they could do it, because,
12 you know, there's an uncertainty in that point as
13 to just what happened.

14 Q Okay. You recall Mr. Cousins testimony that
15 he called the captain and said we're starting --
16 starting maneuver, making my turn?

17 A Yes.

18 Q Would that give you any more reason to believe
19 that the order had been given, if he called the
20 captain and said...

21 A At that point I would. Now, that was -- that
22 was further down the -- a few minutes later, I
23 believe, in the time order it was -- he didn't --
24 he -- anyway, that would let you assume that the
25 order had been given, yes.

1 Q Well, do you believe there was one telephone
2 call made between Cousins and Captain Hazelwood,
3 or more than one?

4 A There was -- let's see. The call was made --
5 I think it was later than Mr. Cousins thinks, is
6 what I -- if there was more than one -- if there
7 wasn't more than one call, then the call was
8 later than when Mr. Cousins thinks he made it.

9 Q Mr. Cousins believed he made it about 11:57,
10 isn't that correct?

11 (3461)

12 A I believe that's -- somewhere in there is when
13 he stated it, but when you...

14 Q Those -- pardon me?

15 A No. Go ahead.

16 Q Oh. Okay. So, assuming Mr. Cousins testified
17 and said I believe I made this call 11:57...

18 A Uh-huh (affirmative).

19 Q ...and I told the captain, I've started to
20 make the turn, that would give the captain, would
21 it not, reason to believe that the danger --
22 whatever danger existed had certainly been
23 lessened, because the ship is now beginning to
24 turn away in the direction that he wanted it to
25 go?

1 A Yeah. I -- yes. It -- if you were down below
2 and you got a call from your watch officer saying
3 he'd altered course, you would expect that he
4 had, yes.

5 Q And if you believe your watch officer was
6 reasonably competent to carry out what is
7 acknowledged to be a rather simple turn, that
8 would lessen your anxiety, or fear that something
9 might happen, would it not?

10 A In normal circumstances, yes.

11 Q Do you recall Mr. Cousins' testimony that he
12 looked up later -- at some point later and
13 noticed the vessel was only at -- the rudder
14 angle, rather, was only at six or seven degrees?

15 A Yes.

16 Q Told Mr. Kagan to give it more rudder, right?

17 A Yes.

18 Q And eventually, there wasn't enough rudder and
19 it went aground?

20 A Uh-huh (affirmative).

21 Q Now, the -- do you recall a second call where
22 he -- when I say second call between Mr. Cousins
23 and Captain Hazelwood where he said we're in
24 trouble, and then they were aground?

25 A We're aground. Yes.

1 Q Now, I want to go back to something I
2 overlooked. Before we get to the grounding here,
3 you also mentioned the use of the autopilot. You
4 thought that that was bad judgment to put the
5 autopilot on at around 11:52, or something like
6 that, right?

7 A Yes.

8 Q Okay. How long was that autopilot on from all
9 the evidence that you have that you've examined?
10 How long was it on?

11 A That -- that is another thing that's -- that
12 autopilot was put on, the -- and it's -- I was
13 not able to determine that it was ever taken off
14 until just before the hard right, or -- before
15 the big swing. And the course recorder --
16 there's nothing -- the fact that they couldn't
17 change course, the fact that -- it indicates that
18 there's some confusion there. I'm -- I don't
19 accept the fact that immediately upon Captain
20 Hazelwood's leaving the bridge that he put it on
21 hand steering. I'm not -- I'm not -- I don't see
22 anything there to -- to convince us that that
23 happened.

24 Q What about the testimony of Mr. Kagan and Mr.
25 Cousins that said we both went over at the same

1 time and Mr. Cousins said I pushed the button
2 and...

3 A Well...

4 Q ...turned it off?

5 A Okay. But it's -- if they had of actually put
6 10 degrees rudder on, or even if they'd have put
7 six or seven degrees rudder on, there would be an
8 indication on that course recorder that their --
9 something happened, and there wasn't. So, that's
10 an indication to me that possibly they didn't
11 take it off from auto. I can't say definitely
12 that they left it on, but the fact that there
13 wasn't a movement of the vessel between 56 or 57
14 and 002 indicates that they weren't getting any
15 rudder.

16 Q What reason would they have to say we...

17 A I have no idea. I mean, that's -- this is a
18 confusing point. Any time you're, you know,
19 looking back after months trying to figure it
20 out, this is one of the things that there's no
21 exact answer to.

22 Q If it's on autopilot you turn the wheel, you
23 know immediately that you've got turning, or
24 within seconds, right?

25 A Not -- there's no rudder, yes.

1 Q Yeah.

2 A Yeah.

3 Q And both individuals who were on the bridge
4 say it was turned off, right?

5 A Yes.

6 Q And if no order was given at that time, or if
7 it wasn't carried out, there's no way of knowing
8 that as opposed to whether the autopilot was on?

9 A No. No, it's -- but there was definitely some
10 reason that that vessel didn't turn and there's
11 -- was nothing, you know, in our checking on the
12 vessel we could find nothing wrong with the
13 steering gear, so...

14 Q And there's no law, regulation or even Exxon
15 policy that governs the use of the autopilot at
16 that particular time?

17 A I don't -- don't know of a law that you --
18 regulating it, no.

19 Q Again, that's a judgment call on the part of a
20 captain?

21 (3765)

22 A That's a matter of safety, yes.

23 (Pause)

24 Q Now, getting back to -- and I'm sorry if I'm
25 jumping around here, but, getting back to the

1 events that occurred on the bridge, when Mr.
2 Cousins is there and Mr. Kagan is there, Mr.
3 Kagan relieved Mr. Radtke, right?

4 A I believe he -- Claar, is that...

5 Q Claar, excuse me.

6 A Yeah.

7 Q He relieved him at the helm?

8 A Uh-huh (affirmative).

9 Q And Mr. Claar went out as look out?

10 A No. Mr. Claar...

11 Q He went down below, excuse me.

12 A ...went below at that time and...

13 Q And Maureen Jones was the look out?

14 A Yes.

15 Q On the bridgeway?

16 A Uh-huh (affirmative).

17 Q And she reported the lights -- the Bligh Reef
18 light to...

19 A Yes.

20 Q ...Mr. Cousins?

21 And Mr. Cousins, from his testimony said he
22 checked to see if, in fact, they were in the red
23 sector, did he not?

24 A He did in the courtroom, here, yes. It wasn't
25 in his original statements, but he did testify to

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that in court.

Q In any event, you don't know what Captain Hazelwood knew or did not know about Mr. Kagan -- about his abilities?

A I -- I think that there'd been enough, with the comments made with his other officers and things that he would have certainly had some reason to suspect his abilities, yes.

Q Abilities to steer, right?

A Yes.

Q Now, that doesn't necessarily mean that it's the same inability to make a right turn at 10 degrees?

A Well, that's part of steering, but that -- his -- he should have had the ability. Or, I would assume he would have the ability to do that, yes. But his overall steering would certainly -- Captain Hazelwood had enough information to be suspect of his overall steering ability.

Q Turning -- turning a vessel is certainly simpler, by turning just the wheel 10 degrees, is simpler than steering. We've all -- you've agreed to that.

A Well, it's part of steering, but it is simpler, yes.

1 Q Uh-huh (affirmative).

2 And, certainly one in a position of a master,
3 in Captain Hazelwood's case, could reasonably
4 rely on the obvious that Mr. Cousins would look
5 at up at a rudder angle to see if, in fact, Mr.
6 Kagan carried out his order?

7 A That's part of the -- his duties, part of --
8 and you would assume that he would do that.

9 Q Then, in order to disregard a risk that the
10 vessel's gonna go aground at this point, is it
11 fair to say that Captain Hazelwood would have to
12 assume that both Kagan and Cousins, or one of
13 them is not gonna carry out the order -- make the
14 turn? Both of them, actually?

15 A Yeah. One of the other, yes. Or both, yes.
16 Some combination, there. I'd have to...

17 Q Okay. Turning to the grounding, itself, then,
18 sir, I believe you said that in your opinion it
19 occurred at about -- and, again, I'm guessing,
20 was it 12:07? Approximately?

21 A Yeah. 0007, yes.

22 Q It could have been -- you could be off a
23 little...

24 A Yes. I definitely could be off a little each
25 way. Anyone else could be. That's not something

1 that, you know, you could...

2 Q Why can't we be exact on that? Or, why can't

3 you be exact on it?

4 A Why can't I -- yeah. Maybe someone else can.

5 Yeah. I can't be exact on that, because I -- at

6 the time that I made that determination I was

7 making it off from the position of the ship, the

8 estimated speed of the ship, the course recorder,

9 and everyone's statements. And I made out a --

10 very similar to this. I laid the whole course

11 out and figured the time all out as closely as I

12 could. And assuming that their fixes were pretty

13 close to accurate and all -- and I determined the

14 007. Now, it could have been 006, 008, but it's

15 -- I didn't have the capabilities at that time to

16 determine it any closer.

17 Q I assume you have to start at either the

18 beginning or the end and work...

19 A Yes.

20 Q ...in one direction or the other?

21 A I worked it both ways and we're, you know, to

22 figure it out and I just made a determination

23 that nearer the minute 0007 the vessel grounded.

24 Q What -- what leeway would you give it -- plus

25 or minus...

1 A Oh, I would say a minute either way, probably
2 be pretty close.

3 Q 12:08, it could be...

4 A Yeah. It could -- maybe could be two minutes
5 each, but it was -- I would think within a minute
6 of that.

7 (4154)

8 Q Now, sir, you testified about your ground --
9 previous grounding experience?

10 A Yes.

11 Q And said that on the occasion where you were
12 apparently a mate and were hung up -- was this in
13 Venezuela?

14 A Is that the one? Yes. Okay. Yes.

15 Q Were you on the con at the time?

16 A No. I was down on -- on deck, supervising the
17 securing of the vessel for sea.

18 Q And in any event you said the -- there were
19 soundings that were taken at that time?

20 A Yes. I was instructed by the master to
21 immediately start taking soundings and report
22 back to him with the information that I gathered.

23 Q Well, you -- I think you said that -- am I
24 wrong? This is not the time the bow of the ship
25 was in the bank?

1 A Yeah. This was in -- Lake Maracaibo is where
2 we ran into the edge of the channel and ran into
3 the mud in the lake -- edge of the channel.

4 Q Well, did you have anything ahead of you to
5 indicate that you were in shallow water, such as
6 a shore, or something like that, or...

7 A Well, at the time we had a channel -- it was a
8 buoy channel, and they had improperly put a
9 couple of buoys and turned us -- we were -- it
10 was night time, so we -- I don't even know how
11 far off the shore we were at the time. I wasn't
12 involved in maneuvering.

13 But, how we -- we knew we'd ran aground
14 because up on the bow, because we were going
15 ahead. And how we determined just -- we, you
16 know, how badly we had grounded, how much -- how
17 far into the mud we'd actually pushed was
18 determined by taking these soundings to determine
19 where we had enough water then for the rest of
20 the vessel to be floating. And were -- how much
21 water we had around the stern. We went around
22 the entire ship and sounded at intervals and
23 recorded that...

24 A How big a ship was that
25 (Tape: 3647)

1 (000)

2 A That was 600 and some foot long; considerably

3 smaller than the Exxon Valdez.

4 Q Considerably smaller?

5 A Yes.

6 Q How many crew did you have available?

7 A We had, on that particular ship, in the 30s.

8 Probably 35 or 6.

9 Q And the Exxon Valdez had 19?

10 A That's right.

11 Q Was this a dredge channel or just a natural

12 channel?

13 A Now, this was a dredge channel and it had

14 nearly -- either the buoys had been relocated --

15 a buoy been relocated in the wrong spot or had

16 been drug over for some reason or another and

17 caused the master trying to follow out the

18 channel to determine to make a course change to

19 stay between the buoys and he run aground.

20 Q Now, when you say a "dredge channel" that

21 means somebody came in there and actually...

22 A Yes.

23 Q ...took out material to make the water deeper?

24 A Uh-huh (affirmative).

25 Q And on the sides it's shallow?

1 A Shallow, yes.

2 Q And it's kinda like a ditch he ought to stay
3 in, right?

4 A Yes. I mean, that's kind of a broad thing,
5 but that's what it is.

6 Q So when you knew your bow was in shallow
7 water, didn't you have a pretty good idea that
8 there's deeper water behind you?

9 A Well, it would depend on which way the ship
10 turned. It's just a matter of -- at the time the
11 -- it would depend on how far you ran out of the
12 channel. These things aren't cut off and, you
13 know, straight down or anything. It would depend
14 on how far you were out of the channel or out of
15 where you wanted to be before you actually ran
16 aground. How the bottom sloped. There's any
17 number of things to determine and find out.

18 Q Well, if you are proceeding in a forward
19 direction and stopped because you ran aground...

20 A Yeah, you would assume you'd have deeper water
21 behind you if your vessel hadn't swung, yes.

22 Q Deeper behind and shallow in front?

23 A I mean, that's an assumption, but you would --
24 that would depend again on how far through the
25 mud you travelled before you came to a stop or

1 across the bottom.

2 Q Is this rather muddy water or is it relatively
3 clear?

4 A Oh, down there?

5 Q Yes.

6 A It was in the middle of the night, but
7 basically...

8 Q Oh, I'm sorry, it was dark. Okay.

9 A Basically Maracaibo is pretty murky looking
10 water, yes.

11 Q Now, a mud bottom versus a rocky bottom can --
12 I mean, there's a substantial difference, is
13 there not in the two?

14 A Oh, yes.

15 Q First of all, in the way you might decide to
16 get off of your position when you're stuck,
17 right?

18 A Well, normally on -- running a big ship
19 aground in mud you can assume that you probably
20 aren't going to do too much damage to it. And
21 that's -- you know, when you run aground on rock
22 with a vessel -- a large vessel, you're going to
23 have to assume you've done some damage.

24 Q Okay. But by making soundings on a mud bottom
25 it's rather level compared to many rocky bottoms,

1 is that fair to say?

2 A As a usual rule, yes, there's less definition
3 there, yes.

4 Q In other words, you make soundings in your
5 situation -- you could get soundings that could
6 show a considerable difference suddenly because
7 it's been dredged, right?

8 A It would -- it's not like that -- no, it's not
9 a matter of digging a channel and it goes
10 straight down. When you dredge something that's
11 mud out -- it slowly -- you've got a ditched
12 effect instead of straight down.

13 Q Okay.

14 A And I don't remember the soundings now, but I
15 would assume there was a gradual increase as we
16 got back to the stern.

17 Q At the very least it would show a gradual
18 increase in water depth in one direction as
19 opposed to the other?

20 A Yes, right. Yes.

21 Q Now, on a rock bottom that may or may not be
22 true, right?

23 A On a rock bottom you can have deep -- yeah,
24 you can have a lot more ups and downs, there's no
25 question about that.

1 Q And those ups and downs could vary in a short
2 distance can they not?
3 A Yes.
4 Q You might be hung up on just a pinnacle, and
5 it could be deep all the way around, for
6 instance?
7 A You could be. But that's something you want
8 to determine by your soundings.
9 Q Well, looking at the situation of the Exxon
10 Valdez at shortly after midnight. I think you
11 said the weather was very dark, from what you
12 determined.
13 A Uh-huh (affirmative).
14 Q Overcast. No moon. Little light, right?
15 A Earlier there had been a little drizzle and --
16 don't remember, and that I assume it was still
17 dark. Yes, I'll go along that line.
18 Q And you have a ship that's almost 1,100 feet
19 long?
20 A Yes.
21 Q You've got a crew of only 19?
22 A That's right.
23 Q You've got oil coming out from the port --
24 starboard side, rather?
25 A Yes.

1 Q Captain Hazelwood certainly knew that. He was
2 informed of that immediately. He looked out; and
3 the bridge light's on; the wing light's on.
4 A Yeah.
5 Q And go out and look and you could smell it,
6 right?
7 A Uh-huh (affirmative).
8 Q Now, with regard to soundings at this time,
9 when he got a report from Mr. Kunkel, you knew
10 what cargo holds or tanks had been holed or
11 ruptured, right?
12 A Yes.
13 Q Knew those are on the starboard side, right?
14 A Uh-huh (affirmative).
15 Q Knew it wasn't leaking oil on the port side,
16 right?
17 A Yes.
18 Q There's no oil that ever leaked on that side?
19 A (No audible response.)
20 Q Would it be fair to assume, then, if you have
21 this knowledge -- you got oil coming up on your
22 right or starboard side and no oil on the left
23 side. That you're in deeper water on the left
24 side than on the right?
25 A What you could assume from that is that your

1 holed on starboard side and so you probably hit
2 harder on that side. You couldn't assume that
3 you were floating free on the port side. You
4 could assume maybe you were touching the bottom
5 or laying on the bottom. You could assume that -
6 - you know, there's any number of things, but you
7 would definitely know that you hit harder on the
8 starboard side, yes.

9 Q And yet there's no damage on the port side?

10 A Right.

11 Q No report of damage on the...

12 A That's right. Yes. So you obviously have not
13 hit as hard, or you had not run into a shallow
14 rock on the port side, and possibly you're
15 floating free. That would be an assumption you
16 could make, yes.

17 Q You could make that assumption, right?

18 A Yes.

19 Q Now, if one fathometer is working, and that
20 has a transducer at the stern, and that's telling
21 you you've got deep water at the stern, that
22 tells you something else, doesn't it?

23 A Yes. But you're -- that's not going to be --
24 you could get a reading right out on the rail on
25 the stern and you would be further out than any

1 fathometer because of the counter and the -- if
2 there was a fathometer on the stern and if it was
3 working, yes.

4 Q Well, did you determine whether one was on
5 there and whether it was working or not?

6 A When I asked on the ship about the fathometers
7 they said, well, of course, it's not working
8 because we've grounded. So we didn't try it
9 because the ship's officers told us that -- you
10 know, we assumed that they had tried it and they
11 knew what they were talking about.

12 Q Well, did you know or determine whether there
13 were two fathometers?

14 A That I didn't. No. I just asked 'em about it
15 and they said, "Well, you know, we grounded and
16 the bottom is..." -- to this day I have no idea
17 if they had two fathometer transducers or not.

18 Q If you had sat through the testimony of this
19 case, or reviewed the testimony of this case, is
20 it fair to say you could have learned something
21 to the contrary?

22 A Correct.

23 Q There were two fathometers and one was
24 working.

25 A That could be. I don't know at this point,

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no.

Q And, again, carrying that assumption out, if it was on the stern, that would at least tell you what the depth of water was under that particular point, right?

A Yes.

Q That would be one more piece of information the captain would have at his -- available to him as to what he could do?

A Uh-huh (affirmative).

Q And if there was sufficient water there to show that he did not have potential damage to his rudder or to his propeller, he could maneuver the engine?

A Yes. Later on once he gets to that -- the point of being ready to start, yes.

Q Now, you were critical of Captain Hazelwood's decision after the grounding, for instance, of not taking soundings, correct?

A That's one of the faults I found, yes.

Q Have you ever taken soundings -- have you ever gone aground when you were around rock in the middle of the night?

A No.

Q Let's assume, sir, that soundings were going

1 to be taken, and you send somebody out on the
2 starboard side where oil is coming rapidly --
3 crude oil. How do you take soundings?
4 A You wouldn't when it's flooding out like that.
5 Most of the -- this is the -- you take all the
6 other soundings you could take and you would --
7 if you were gonna sound the starboard side you
8 would have to wait until the oil quit rushing
9 out, which was...
10 Q It would take some time, right?
11 A I think that someone's figured out about an
12 hour -- or less than an hour; 20, 30 minutes or
13 so, most of the oil was out. But I -- yeah, I
14 wouldn't expect a person to go out there with oil
15 flooding out and bubbling up and be able to take
16 soundings on that side. I would expect them to
17 be able to take soundings around the bow and the
18 port side on the stern.
19 Q So you would take some soundings but not all?
20 A Yes. So that would merely mean that you are
21 going to delay starting the engine and do
22 whatever you want to do until you had a full
23 picture.
24 Q Would you agree or disagree with the fact that
25 you can determine -- at least get some

1 information to how you were hung up by using the
2 rudder?

3 A That would be pretty -- I've looked that over
4 and thought about that. I don't know that you
5 could get -- the information you would get is
6 that you're free on your bow and stern to swing.
7 Now, which direction you would want to try to get
8 this ship to swing, I don't see where you would
9 gain anything by that.

10 Q You would gain something if you were hung up,
11 say, in the center of the ship and it could
12 pivot. You could move the bow in either
13 direction, could you not. That tells something,
14 doesn't it?

15 A It would tell you you could move. But without
16 knowing exactly where you're at; without knowing
17 the ground was like around, you wouldn't know
18 which way you wanted to pivot the ship. And a
19 ship aground is not something you want to be
20 maneuvering around in that manner in order to
21 determine anything. The more you move the vessel
22 the more damage you're going to cause to the
23 vessel. If you are going to move it you need to
24 know what your goal is; what the risk of doing
25 that is, and use the minimum that you have to to

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accomplish this.

Q Okay. Fair enough. Now, if you are trying to determine just how you are hung up, and what your situation is. You say you couldn't learn anything from the rudder -- making rudder maneuvers, right?

A Just by itself. You would already know your -- if you're taking soundings, you would know whether your rudder is free or not. If you have to -- if you want to turn the rudder to see if the rudder moves, you could do that without any damage if you weren't using the engine. If you're using your engine to move ahead, you're risking the possibility of actually moving the ship ahead and doing more damage to everything after the aft. And so you would have to make a little more determination than I think was made at that time, yes.

Q The ship never moved one inch forward, did it, after the grounding? Not even an inch.

A Well, I won't say that. It undoubtedly moved some in every direction because of the heading change. And I don't believe that you could make that many headings changes without having some movement. Now, I don't think they made any major

1 moving, but it would be amazing to me that after
2 changing the heading, and running it full ahead
3 that you didn't move an inch, or two inches, or
4 six inches, or a foot. I mean, this is -- we're
5 not talking about any significant moves after he
6 ran aground, but I'm that there is...

7 Q Did you review Mr. Greiner's -- any of his
8 reports or work that he did on this?

9 A Not really. We talked about it, but I didn't
10 sit down and...

11 Q Did he show you where he thought the vessel
12 was basically hung up?

13 A Yes. I know where -- I've seen pictures, and
14 seen this...

15 THE COURT: Excuse me just a minute. Let's
16 just wait until these people clear out. In fact, why
17 don't we just take a break while this is happening.

18 Don't discuss this matter among yourselves or
19 with any other person. Don't form or express any
20 opinions, ladies and gentlemen.

21 THE CLERK: Please rise. This court stands in
22 recess subject to call.

23 (Off record - 11:15 a.m.)

24 (On record - 11:33 a.m.)

25 (Jury present)

1 THE COURT: Will counsel approach the bench,
2 please.
3 (502)
4 (Whispered bench conference as follows:)
5 THE COURT: I don't know if you had a chance
6 to look outside, but we've had a pretty good cloud
7 coming in with ash. I just talked to Weather Service;
8 they reported heavy ash about 15 miles south. The
9 airport is now closed. I'm thinking, before it gets so
10 bad that people can't drive or there's a problem with
11 the engine or something like that on the vehicles and
12 filters, to let the jury go today before it gets any
13 worse. Is that going to create a problem?
14 MR. MADSON: That's a call you've got to make,
15 Judge.
16 THE COURT: I wanted to know if it's going to
17 create any problem. I know it's a call I -- I'll
18 balance it against inconvenience here.
19 MR. COLE: I think it might be a good idea.
20 THE COURT: Okay.
21 (End of whispered bench conference)
22 (546)
23 THE COURT: I've discussed this with counsel
24 and they have no objections. And based on my telephone
25 call to the Weather Service and finding out that the

1 airport has just been closed, apparently that's all
2 hearsay. I don't know if it's reliable or not. But
3 looking out the window, it's getting darker and darker.
4 Counsel has agreed with my suggestion that we let you
5 folks go home early.

6 I don't know what the ash problem is going to
7 do to the driving conditions. It might make it
8 difficult with bad visibility, so I'm going to let you
9 guys go home early today.

10 Plan on being here tomorrow at 8:15 a.m.,
11 unless you hear differently from us. If it looks to me
12 like it's going to be terrible tomorrow, we will take
13 steps to notify you. But assume that you will be here
14 tomorrow. So just take steps to be here tomorrow at
15 8:15.

16 In the meantime, keep in mind my standard
17 instructions about media, and also not to discuss this
18 case among yourselves or with any other person, or form
19 or express any opinions.

20 I'm letting you go because I'm a little
21 concerned about visibility on the highway and what the
22 ash can do to vehicles. I don't want you to get in
23 trouble. So you are excused now and please be safe,
24 and I'll see you tomorrow.

25 (Jury not present)

1 THE COURT: Mr. Cole, did you need to take a
2 matter up?

3 MR. COLE: Well, I just wanted to let the
4 court know that we may now be calling two more
5 witnesses. That would be the two tanker people. They
6 know about them. We've had conversations.

7 MR. MADSON: Yes, the witnesses aren't a
8 surprise, Your Honor. The only concern I have is we're
9 trying to gear up for Monday, and, gosh, I hope we can
10 still make that.

11 THE COURT: Well, we'll shoot for it. We'll
12 have Thursday and Friday...

13 MR. COLE: I didn't expect this to...

14 THE COURT: ...and I think these last two
15 witnesses have both taken a little longer than anybody
16 anticipated, so I don't know if we'll be ready for you
17 on Monday or not. But we'll plan on going on Friday
18 now, and I think we still only have half days for the
19 remaining two days this week, and our schedule next
20 week will be the same, 8:30 until 1:30, because I have
21 2:30 and 3:30 hearings.

22 Is there anything else I can do for counsel?

23 MR. MADSON: No.

24 THE COURT: Okay. We'll see you tomorrow
25 morning.

1 THE CLERK: Please rise. Court stands in
2 recess subject to call.

3 (653)

4 (Off record - 11:33 a.m.)

5 ***CONTINUED***
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