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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
MARCH 12, 1990
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VOLUME 37

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H & M Court Reporting
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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
March 12, 1989

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EXHIBIT INDEX

EXHIBIT

DESCRIPTION

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No exhibits admitted

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1 PROCEEDINGS

2 MARCH 12, 1990

3 (C-3667)

4 (2229)

5 THE CLERK: The Superior Court with the
6 Honorable Karl S. Johnstone residing is now in session.

7 THE COURT: You may be seated. Recall your
8 witness so we can resume, Mr. Chalos.

9 Captain, you are still under oath.

10 MS. HENRY: May I proceed, Your Honor.

11 THE COURT: proceed.

12 SHIRAS MICHAEL WALKER

13 recalled as a witness, having previously been sworn
14 upon oath, testified as follows:

15 CROSS EXAMINATION OF CAPTAIN WALKER, CONTINUED

16 BY MS. HENRY:

17 Q Good morning, Captain Walker.

18 A Good morning.

19 Q How are you this morning?

20 A Fine.

21 Q I guess when we left off last Friday you were
22 telling us the one time that you left the bridge
23 while your tanker was in Prince William Sound, is
24 that right?

25 A That's right.

1 Q Now, at that time you did leave the bridge
2 because you were pretty tired, is that right?
3 A No, not because I was pretty tired, but
4 because I went down to get a weather report.
5 Q So before you left the bridge you left some
6 instructions with the mate on watch about what
7 you wanted him to do, is that correct?
8 A Yes, I did.
9 Q And, in fact, I believe you said last Friday
10 that you drew a box and said, "I don't want you
11 to leave or go outside of this particular box.",
12 is that correct?
13 A Yes, I did.
14 Q Did you actually draw a box on a navigational
15 chart?
16 A Yes, I did.
17 Q Sir, the chart that's next to you there --
18 that is basically a chart of part of the Gulf of
19 Alaska and Prince William Sound, is that right?
20 A That's correct.
21 Q And for the record, it's been marked as
22 Plaintiff's Exhibit 25. Sir, if you would, and
23 you must have already anticipated, you grabbed
24 the pen there -- can you mark on here
25 approximately, as best as you remember, the box

1 that you marked on the navigational chart when
2 you are awatch on the...

3 A Okay. It's approximately right in here.

4 Q You can go ahead and use the pen.

5 A Oh, okay. It's somewhere right in here.

6 Q Now essentially what you told them was that
7 they should stay in this area and not go outside
8 of it?

9 A Yes.

10 Q Did you expect them to, what, just turn, and
11 then turn and then turn; keep going around?

12 A No. What I done was I stopped the vessel and
13 she was just drifting in this area here. So they
14 just watched how she was drifting, and as she got
15 towards the edge of the box just turn the rudder
16 and kick her and bring her back the other way.

17 Q Did you have the engines off?

18 A The engines were always available for the
19 mates, yes.

20 Q All right. But it wasn't going like dead slow
21 ahead or anything?

22 A No, they were stopped.

23 Q They were stopped?

24 A Uh-huh (affirmative).

25 Q You did not anchor, did you?

1 A No. They tried to get me to anchor up in here
2 but the wind was blowing too hard.
3 Q And so you didn't want to anchor here either
4 because...
5 A Well, I can't anchor there I don't have enough
6 chain.
7 Q Okay. So it's pretty deep in this area?
8 A Very deep.
9 Q Can you give us any idea what -- how big this
10 is, as far as distances? And give me the
11 protractor, if you can just estimate.
12 A Oh, I guess five by five. Five miles by five
13 miles.
14 Q Five miles, by five miles, by five miles?
15 A Uh-huh (affirmative).
16 Q You can go ahead and resume your seat.
17 Now you said that you went down to get a
18 weather report. Did you also take a nap?
19 A I laid down. Well you have to understand that
20 the weather reports only come about every four to
21 six hours. So there was another two hours to go.
22 So there was no sense on me staying on the
23 bridge. I had already given my instructions. So
24 I went down and laid down, yes.
25 Q And you had intended that the person giving

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you the weather report would wake you up then?

A I instructed him to do that, yes.

Q Now, the person that you instructed on the bridge with respect to this box, what watch officers were they?

A It was a third officer.

Q The third mate?

A Yes, ma'am.

Q Were there any other watch officers on the bridge at the time?

A No.

(Pause)

Q Showing you what's been marked as Plaintiff's Exhibit 174 for identification. Do you recognize that exhibit?

A Yes, I do.

Q And what is that?

A That's my resume.

Q Now, I think you said last Friday that you wrote that resume yourself, is that right?

A Yes, ma'am.

Q And what is the date on the resume? When did you write it?

A 26th August 1989.

Q And when did you send it to Mr. Chalos?

1 A That day.

2 Q By Panofax or something?

3 A Yes, he asked me to do that.

4 Q He asked you to do that. When was it that you
5 were actually hired by Mr. Chalos, approximately?

6 A It was when we went to San Diego. About the
7 first week in September.

8 Q Okay. So you already sent your resume to him
9 the last part of August and then you went to San
10 Diego and that's when things got burned up?

11 A Yes, ma'am.

12 Q Now, as far as you know, I received a copy of
13 that last Thursday evening, is that correct?

14 A I haven't the slightest idea when you got it.

15 Q Do you remember when I asked you for a CV or a
16 resume? One of the first questions I asked you
17 that night, if you had a CV?

18 A Oh, right. Okay. I slid it across the desk.
19 Yes. Okay.

20 Q Did you ever do a report in this particular
21 case?

22 A No.

23 Q I think on the resume it says that you
24 currently reside in Jacksonville?

25 A Yes, ma'am.

1 Q During the time that you were at sea,
2 particularly on the Valdez to Panama runs, where
3 was your home?

4 A It was in Merit Island, Florida.

5 Q All right.

6 MS. HENRY: Your Honor, at this time the state
7 would move into evidence Plaintiff's Exhibit 174.

8 MR. CHALOS: I object, Your Honor. It's
9 irrelevant. He's testified as to his qualifications.

10 MS. HENRY: Your Honor, the relevancy goes to
11 the final paragraph, and that paragraph goes to
12 interest and bias in this case.

13 THE COURT: The objection as to relevance is
14 overruled.

15 MR. CHALOS: Well then I would object as to
16 hearsay, Your Honor.

17 THE COURT: Make all your objections at once,
18 Mr. Chalos, in the future so we don't have to do it
19 piecemeal. May I see the document, please. (Pause)
20 Referring to the last paragraph of the third page?

21 MS. HENRY: Yes, Your Honor.

22 THE COURT: The summary paragraph?

23 MS. HENRY: Yes, Your Honor.

24 THE COURT: The objection is hearsay. Do you
25 want to be heard on that?

1 MS. HENRY: Yes, Your Honor. It's for purpose
2 of impeachment for interest and bias.
3 THE COURT: You can ask him questions, but
4 until there's a reason to show an inconsistency, the
5 document will not come in.
6 Q (Captain Walker by Ms. Henry:) Sir, on the
7 last paragraph of your resume you refer to
8 yourself in the third person, is that correct?
9 A Yes, ma'am.
10 Q And specifically in the last paragraph of the
11 resume you state that "he", referring to you, has
12 a spotless record with the Coast Guard, and to
13 the best of his knowledge, is held in high esteem
14 by all vessel owner [owners], is that correct?
15 A Yes. Owners.
16 Q Owners. And you specifically added Exxon, is
17 that right?
18 A Yes, ma'am.
19 Q Okay. Now, as you stated about the first part
20 of your testimony on direct last Friday, you were
21 hired to critique Captain Hazelwood's performance
22 from the time he reboarded the vessel in Valdez
23 until the actual grounding itself, is that right?
24 A That's right.
25 Q And in doing so, I assume you took into

1 account various statements by witnesses,
2 including trial testimony by certain witnesses?

3 A Yes, ma'am.

4 Q Going specifically to trial testimony, what
5 witnesses did you -- whose testimony did you
6 read?

7 A Kunkel, Kagan, Cousins and about half of
8 Beevers.

9 Q All right. Half of Beevers -- Captain
10 Beevers, all of Kagan's?

11 A Yes, ma'am.

12 Q And that was the trial testimony as opposed to
13 anything else?

14 A I believe I did that.

15 Q All right. I assume, also, during your
16 critique of Captain Hazelwood's performance, you
17 also looked at various documents in this case, is
18 that correct?

19 A Yes, I have.

20 Q And I assume you also took into account your
21 own experiences as a tanker captain?

22 A Yes, ma'am.

23 Q Now, this would include not only your
24 experiences in Prince William Sound, but just
25 generally your experiences as a captain of very

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large oil tankers, is that right?

A Yes, ma'am.

Q Now, I assume that after you have been on a tanker for a period of time you tend to get to know the particular tanker well, is that right?

A That's correct.

Q The way she handles?

A Yes, ma'am.

Q Maybe some oddities with the particular tanker?

A You should.

Q Problems with the engine?

A Yes, ma'am.

Q And just maybe generally the way she moves through the water and the way she turns, is that right?

A Yes, ma'am.

Q In fact, probably after a while you could tell, say, if you are in the cabin or in the messhall, if she starts making a turn or slows down, is that right?

MR. CHALOS: I object, Your Honor. No foundation for that question. At what speed, what...

THE COURT: Objection overruled. The witness is qualified to give his opinion on those things.

1 Q After a while you have such a feel for it that
2 you can tell if she's starting to turn or slowing
3 down, is that right?

4 A Exactly what the counsel said there. You
5 really have no feel under a certain speed if a
6 vessel is going to make a turn. Now, at high
7 speed, of course, if a man puts a few degrees of
8 rudder on you're going to feel it. But, also,
9 even if he doesn't put the rudder on,
10 occasionally the ship will shudder and it will
11 feel like it's -- if you are sitting in the
12 captain's cabin you'll think it's turning
13 precisely because of that.

14 I had -- on the Baybridge I...

15 Q All right. Well, let's assume that the vessel
16 is going 11.75 knots and a 10 degree right rudder
17 is ordered and executed. You would feel that,
18 wouldn't you?

19 A It depends on what ship I was on.

20 Q Let's assume you were on the Exxon Valdez or
21 one similar to the Exxon Valdez?

22 A I have no idea about that. I have never been
23 on the Exxon Valdez underway.

24 Q All right. Let's assume you're on any of the
25 tankers that you were captain of and transitting

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Prince William Sound.

A Ma'am, if I was on the Atlantic, that ship vibrated all the time. There was no way that you could tell -- it just vibrated all the time. You could put anything you want on there and you wouldn't know it.

Q Okay. So you're saying that you know a tanker very well but you would not be able to tell that it's making a turn of 10 degrees right rudder going 11.75 knots, is that right?

(2812)

MR. CHALOS: Objection, Your Honor, that's not what the witness said. The specific question was, "on the Exxon Valdez".

Q On the Exxon Valdez, isn't it true that if it is going 11.75 knots and a 10 degree right rudder is ordered and executed, you would be able to tell?

A I've never been on the Exxon Valdez underway. I can't give...

Q You are familiar with the Exxon Valdez and how she works, are you not?

A In a drydock setting, yes.

Q Are you familiar with any other vessels that are similar to the Exxon Valdez?

1 A None of the vessels I sailed on were remotely
2 similar to the Exxon Valdez.

3 Q Yet you have been called in as an expert in
4 this case to criticize Captain Hazelwood's
5 performance on the Exxon Valdez, which apparently
6 you know nothing about, is that correct?

7 MR. CHALOS: Your Honor, I don't think he's
8 been called to criticize Captain Hazelwood. He's been
9 called to critique.

10 THE COURT: Rephrase your question. It's
11 argumentative the way you phrased it.

12 Q So is it true that you have been called as an
13 expert to critique Captain Hazelwood's
14 performance on the Exxon Valdez when you have no
15 idea how the Exxon Valdez works, is that right?

16 A I don't get the general drift. Captains work
17 the same; different ship, different long-wise,
18 ma'am.

19 Q Don't you think the performance of a captain
20 depends on a ship?

21 A To a small degree.

22 Q Now when you were asked to critique Captain
23 Hazelwood's performance, you were not asked to go
24 to what he was doing before he reboarded the
25 Exxon Valdez, is that right?

1 A That's correct.

2 Q During the time that you transitted in and out

3 of Valdez and Prince William Sound, how many

4 times did you go ashore for any length of time in

5 Valdez?

6 A Very seldom.

7 Q Would you go ashore maybe to conduct some

8 business?

9 A Yes. Usually ALAMAR would bring me to the

10 agent's office and bring me right back. Maybe I

11 would stop for a haircut, that's all.

12 Q But that would be it?

13 A Yes, ma'am.

14 Q Now, specifically regarding Captain

15 Hazelwood's activities in Valdez, the testimony

16 has been that he was seen having at least two

17 drinks in the Pipeline Club early on the

18 afternoon of March 23rd. That he was later seen

19 in the same club having at least two more drinks

20 with his chief engineer and later his radio

21 officer. And that he had at least one more drink

22 at the Valdez Club. And, according to Captain

23 Hazelwood, he had two Moussy beers in his office

24 or cabin before the undocking began.

25 Given those facts, do you have an opinion with

1 respect to his having at least five drinks prior
2 to reboarding the Exxon Valdez to navigate the
3 vessel out of Valdez?

4 MR. CHALOS: Your Honor, I object to the
5 mischaracterization of the evidence. There has been a
6 dispute as to whether the captain was in the Pipeline
7 Club at the time that Ms. Delozier put him there.
8 Another witness had him someplace else.

9 MS. HENRY: Your Honor, I think I'm permitted
10 to summarize the evidence as its come in.

11 THE COURT: Objection overruled.

12 Q (Captain Walker by Ms. Henry:) Do you have an
13 opinion?

14 A No, I have no opinion.

15 Q It doesn't matter either way?

16 A Ma'am, the test that he passed was the two
17 gate guards that I was sitting in the audience
18 when...

19 Q I'm asking you if you have an opinion, not
20 what the Alyeska guards' opinion was. Do you
21 have an opinion or not?

22 A The man was not impaired according to all the
23 testimony that I've read, and that's my decision.
24 If he's not impaired, I have no problem with it.

25 Q So there's no problem with having five drinks

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before you start navigating the vessel, is that right?

A If he is not impaired, I see no problem, ma'am.

Q And you're basing that on people's suggestive observations of Captain Hazelwood, is that correct?

A Yes, ma'am.

Q Now, you are aware, of course, that what Captain Hazelwood did, is a violation of the Coast Guard regs about not drinking four hours prior to reboarding for purposes of navigating a vessel, is that correct?

A Ma'am, even I didn't know about the four hour rule until this case came up. The Coast Guard operates in a vacuum.

Q So you don't bother to check the Coast Guard regs covering your performance?

A There is no publication that is published and that I would normally read, ma'am.

Q You don't bother to see what the Coast Guard regs that cover your performance are?

A I do not subscribe to the Federal Register, and that's where they publish all their data.

Q Of course, it's in the law library and it's in

1 the public library, isn't it?

2 A I don't go to the law library every day,
3 ma'am.

4 Q So you just don't care what the regs are, is
5 that right?

6 A I do care what the regs are.

7 MR. CHALOS: Objection, Your Honor.

8 THE COURT: Objection overruled.

9 Q You don't care what the regs are. You didn't
10 even bother to check, did you?

11 A I don't go to the public law library every
12 day, it's not my habit, ma'am.

13 Q Now you are also aware that what Captain
14 Hazelwood did was a violation of Exxon policy,
15 are you not?

16 A I don't know what Exxon policy is.

17 Q You have never been a master of a ship that
18 belonged to Exxon?

19 A No.

20 Q Or that was chartered to Exxon?

21 A It was chartered to Exxon, yes.

22 Q And when you mastered a ship that was
23 chartered to Exxon you weren't aware of what the
24 Exxon policy was?

25 A No, I was not.

1 Q Let's move on to just prior to undocking. On
2 direct examination you were asked your opinion of
3 Captain Hazelwood returning to the Exxon Valdez
4 45 minutes prior to undocking. If the evidence
5 were to show that, in fact, it was only 30
6 minutes prior to the first undocking procedures
7 beginning, does that change your opinion any?
8 A Not at all.
9 Q Now, assuming for a moment that except
10 possibly for a containment boom, the Exxon Valdez
11 was, in fact, waiting for Captain Hazelwood so it
12 could depart. The tugs were in place, Captain
13 Murphy was ready to go, the agent was waiting to
14 get paperwork from Captain Hazelwood.
15 Given these facts, since everyone was simply
16 waiting for Captain Hazelwood to return, do you
17 see anything wrong with his waiting until 8:30 to
18 return?
19 A Not at all.
20 Q Now, in your experience the sailing board
21 quite often changes depending on how quickly or
22 how slowly the loading is going, is that right?
23 A Not quite often I wouldn't say. I wouldn't
24 characterize it as change it ever hour.
25 Q Well, change it every trip maybe?

1 A Well, obviously you don't sail the same time
2 every trip.

3 Q And it's very easy to find out if the time on
4 the sailing board has changed, isn't it?

5 A You could call the Alyeska gate.

6 Q Or you could call ALAMAR or the agent?

7 A If they have been informed, which I would
8 assume they had, yes.

9 Q All right. Now let's go ahead to after the
10 undocking and the transit through the Narrows
11 itself. You testified that you saw nothing wrong
12 with Captain Hazelwood leaving the bridge for
13 more than an hour while his vessel was
14 transitting through the Narrows, is that right?

15 A That's right.

16 Q And one of the reasons that you gave for this
17 opinion was that Captain Murphy, in your opinion,
18 is a very capable pilot, is that right?

19 A That's correct.

20 Q Now, one of the reasons that local pilots are
21 required in certain areas such as the Narrows is
22 because they know the area quite well, is that
23 correct?

24 A That's correct.

25 Q And although they may know the area quite

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well, they don't necessarily know the vessel that well, do they?

A Captain Murphy obviously knew the Exxon Valdez fairly well.

Q Although they know the area quite well, they do not necessarily know the vessel quite well, yes, or, no?

MR. CHALOS: Your Honor, I object. I think the witness answered the question. I think Ms. Henry is talking general and the witness answered specifically.

THE COURT: The witness didn't answer the question.

MR. CHALOS: Well, then, she's asking generally. I would object. No foundation.

THE COURT: Objection overruled.

Q (Captain Walker by Ms. Henry:) Isn't that true, sir?

A In what respect? Obviously he wouldn't know where the staple gun is, but the ship is going to handle the same way.

Q All ships handle the same way?

A No, all ships do not handle the same way. But it's a pilot's job...

Q If a person...

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A ...he makes one turn...

Q Please answer my question, sir. The person who knows the vessel the best is the master, isn't that true?

A I would hope so.

Q The reason that you thought it was okay for okay for Captain Hazelwood was -- I think you said, the only problem that might come up would be possibly engine failure or steering failure, is that right?

A That's correct.

Q All right. Now, in transitting through the Narrows, your vessel comes as close to one-quarter mile to shore, does it not?

A I would have to go back and review the chart - the optimum track line.

Q If you need the protractor or whatever this is...

A No, I can eyeball it.

Q At one point at least it comes within a quarter of a mile from shore, is that right?

A That's correct.

Q And isn't it true that either one of the problems you mentioned, engine failure or steering failure puts the vessel at risk of

1 hitting the rock and spilling oil when you are
2 within a quarter mile of shore, isn't that right?
3 A That's not correct.
4 Q Isn't it true that you criticized Captain
5 Knowlton's maneuver because he got so close to
6 the rock, and as you...
7 A Ma'am, I don't think you understood what I
8 said.
9 Q Let me finish the question.
10 A I said that is not correct.
11 Q Let me finish the question.
12 THE COURT: Captain Walker, let the question
13 be asked, and then if you could answer it, try your
14 best answer.
15 Q One of your criticisms of Captain Knowlton's
16 maneuver around the ice was that he was so close
17 to the shore that if the steering went he would
18 have hit the reef? That was one of your
19 criticisms of Captain Knowlton's maneuver, isn't
20 that right?
21 A That's correct.
22 Q Isn't it true that other problems could occur
23 while transitting the Narrows besides steering
24 failure or engine failure, such as a helmsman
25 making a wrong turn?

1 A You mean putting the rudder over the wrong
2 way?
3 Q That's right.
4 A That's correct.
5 Q And, in fact, that's another one of the
6 criticisms that you have for Captain Knowlton's
7 maneuvers, is that correct?
8 A That's correct.
9 Q And if a helmsman makes the wrong rudder --
10 rudder order, did you say?
11 A Rudder order.
12 Q That would not give the captain or whoever is
13 navigating the vessel, very much room to recover,
14 is that right, in that small area?
15 A In this instance he has plenty of room to
16 recover.
17 Q Within a quarter mile?
18 A Oh, long before a quarter mile.
19 Q But that was a criticism that you had of
20 Captain Knowlton, who was also within less than a
21 half mile of shore, that if the rudder order had
22 been incorrectly conceded it wouldn't have -- and
23 I quote you now, given him a whole hell of a lot
24 of room to recover, is that right?
25 A But there is a big difference...

1 Q Is that right? Is that what your criticism
2 was of Mr. Knowlton?
3 A Yes, ma'am.
4 Q Now you are currently a pilot on St. John's
5 River in Florida, is that right?
6 (3490)
7 A That's correct.
8 Q by the way, is that mud or sand, or both?
9 A Sand, mud and rock.
10 Q And as you are piloting boats through that
11 river, you don't pilot them from down in the
12 messhall, do you?
13 A No, I don't.
14 Q And you don't pilot them from the captain's
15 quarters, do you?
16 A No, I don't.
17 Q And you don't pilot from the pumproom, do you?
18 A No, I don't.
19 Q You do it from the bridge, don't you?
20 A That's correct.
21 Q While transitting through the Valdez Narrows
22 you would not expect the state pilot to pilot the
23 vessel from anywhere but on the bridge, would
24 you?
25 A No, I wouldn't.

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1 Q If I were to tell you that other tanker
2 captains -- for instance, Captain Beevers and
3 Captain Stalzer said that the master should be on
4 the bridge no matter how competent the state
5 pilot is during the transit through the Narrows,
6 you would agree with him, wouldn't you?

7 A Repeat that question now?

8 Q If I were to tell you that other tanker
9 captains, including Captain Beevers and Captain
10 Stalzer said that the master should be on the
11 bridge in transitting the Narrows even though the
12 pilot is competent. You would agree with them,
13 wouldn't you?

14 A That's their opinion.

15 Q You would disagree with their opinion, is that
16 correct?

17 A That's correct.

18 Q Now you stated that you were under the
19 impression that the watch standers at the VTC
20 were monitoring your progress -- I think you said
21 as far as 18 miles south of Bligh Reef, is that
22 right?

23 A 18 miles south of Potato Point.

24 Q Of Potato Point. Which puts you someplace
25 south of Bligh Reef?

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A Yes, ma'am.

Q In fact, I think you said during the early years they would often call on the radio, and, as you put it, nitpick at the pilot for not staying in the optimum lane?

A Ma'am, if I remember right, they were proceeding against some of the pilots' licenses because they were 100 feet off the track.

Q Isn't it true that in the early years the watch standers would often call on the radio, and as you put it, nitpick at the pilots for not staying in the optimum lanes, yes, or, no?

A That's correct.

Q Now, when you say that you assumed that the watch standers were monitoring you, you also have to assume that they can see you, is that right?

A See me on radar you mean?

Q Yes.

A Yes.

Q And there are various thing that affect one's ability to see something on radar, is that correct?

A That's correct.

Q For instance, if there is any weather interference, such as snow squawls between the

1 vessel and their radar site, it might be very
2 difficult, if not impossible to see you, is that
3 right?

4 A That's correct.

5 Q And is it also true that the farther away you
6 are the more difficult it is to see you?

7 A That's correct.

8 Q All right. Now the bottom line, then, sir, is
9 that you would not depend on the watch standers
10 at the VTC as a second pair of eyes guiding you
11 through hazardous areas, would you?

12 A Absolutely -- well, it depends. What are you
13 saying? Am I going to rely on them to navigate
14 my vessel from the shore? Absolutely not.
15 Am I going to rely on them to me monitoring me
16 when they are supposed to be monitoring me? Yes.

17 Q My question was, you would not depend on the
18 watch standers as the VTC as a second pair of
19 eyes guiding you -- not monitoring you -- guiding
20 you through hazardous areas, would you?

21 A No.

22 Q Okay. Let's talk about the autopilot for a
23 minute. You testified that you saw nothing wrong
24 with Captain Hazelwood putting the helm on
25 autopilot in Prince William Sound, is that right?

1 A That's correct.

2 Q Although you personally would not do that,
3 would you?

4 A No.

5 Q But it's okay for Captain Hazelwood to do it?

6 A If he wants to do it, he's master of the ship,
7 not me.

8 Q You also gave an opinion that putting it on
9 autopilot when Captain Hazelwood did, played no
10 role in the grounding itself, is that right?

11 A Yes.

12 Q All right. Now, that was based upon an
13 assumption that Mr. Chalos gave you that the
14 autopilot was only on for three minutes.

15 (3798)

16 MR. CHALOS: Objection, Your Honor. I was
17 talking about the evidence in this case and not an
18 assumption.

19 MS. HENRY: I'll withdraw the question.

20 Q That was based upon Mr. Chalos' view of the
21 evidence in this case, is that correct?

22 A That's the parameters he gave me, yes.

23 Q All right. Well, assuming that the evidence
24 actually showed that the autopilot was put on
25 right after they steadied on a course of 180,

1 shortly after 11:40. And that it wasn't taken
2 off until some time after Captain Hazelwood left
3 the bridge, after 11:53. Which would be a little
4 more than 10 minutes. Would it still be your
5 opinion that it had nothing to do with the
6 grounding?

7 MR. CHALOS: Your Honor, I object to Ms. Henry
8 characterizing her scenario as the evidence. I think
9 the evidence is clear that the autopilot was put on at
10 2350, 11:50, and taken off at 11:53.

11 If Ms. Henry wants to give a scenario of the
12 gyro being on at 11:40, that's fine. But I object to
13 her characterization that that's evidence.

14 MS. HENRY: Your Honor, I'm referring to Mr.
15 Claar's testimony.

16 THE COURT: Objection overruled.

17 Q Now, assuming that the Exxon Valdez did not
18 begin its turn -- its right rudder turn until
19 12:01 -- one minute after midnight. And assume
20 that it did not begin its turn because the
21 autopilot was still on for some reason. And
22 assume that as a result of the fact that it did
23 not begin its turn until 12:01, it hit the reef.
24 Then the autopilot would have played a role in
25 the grounding, wouldn't it have?

1 A If the autopilot was on when they tried to
2 make that turn, he could have made the turn on
3 autopilot. I don't see the problem there.
4 Q You're saying that if it's on autopilot it
5 could have made the turn?
6 A Absolutely. That would have been a better turn
7 than what they made.
8 Q Without disengaging the autopilot?
9 A Without disengaging the autopilot.
10 Q Are you familiar with the autopilot system on
11 the Exxon Valdez?
12 A I am familiar with it, yes.
13 Q And in your opinion, if you keep the autopilot
14 on, after it's steadied up on a course heading of
15 180, you do not have to take the autopilot off
16 and it will still turn?
17 A Yes, ma'am. All you have to do is program in
18 what heading you want to put on it. It will
19 automatically come to that head.
20 Q Well, you have to do something then. You
21 can't just order the helmsman to turn?
22 A The helmsman does it, I don't do it.
23 Q If you gave the helmsman an order "10 degrees
24 right rudder", and the autopilot was still on,
25 and the helmsman turned the helm, the vessel

1 would not turn, would it?

2 A That's correct.

3 Q And if that is the case in this situation,
4 that it did not turn until Cousins realized the
5 autopilot was on, and turned it off at 12:01;
6 and because of that right turn it hit the reef;
7 The autopilot would have played a role in the
8 grounding, correct?

9 A If the scenario you are setting up is true or
10 is -- I wouldn't say "true". How would I put it.
11 In your scenario, that the man on the wheel did
12 not know it was in automatic pilot and turned the
13 wheel, nothing would happen; the ship would have
14 kept going.

15 Q And the autopilot would have been a factor in
16 the grounding, correct?

17 MR. CHALOS: Your Honor. I'm going to object.
18 There is a lack of foundation as to what rudder was
19 used subsequent to the 12:01 and a half, as Ms. Henry
20 is talking about.

21 THE COURT: Objection overruled.

22 Q The autopilot would have played a part in the
23 grounding, correct?

24 A That's correct.

25 Q All right. Now, there was some testimony --

1 or, you made some comments with regard to Captain
2 Hazelwood putting the engine into load program
3 up. And, in fact, I think your comment was that
4 you were surprised he hadn't done it earlier, is
5 that right?

6 A That's right.

7 Q All right. Now isn't it true that in a vessel
8 like the Exxon Valdez it responds to -- it turns
9 better at slower speeds?

10 A It will make a turn slower -- the rate of turn
11 will be slower, but the turning -- the actual
12 radius of the turn will be smaller.

13 Q In fact, I think the way you put it is it
14 makes tighter turns than at higher speeds, is
15 that right?

16 A That's correct.

17 Q And isn't it true that the slower that you go
18 the more time you have to make course changes if
19 something goes wrong, correct?

20 A That's correct.

21 Q In fact, in this case, if they had been going
22 past the speed they were going, then instead --
23 (pause) -- have you seen this before?

24 A Yes, I have.

25 Q So you recognize that this is the tracking

1 that was done -- the approximate times as to the
2 position of the vessel up to the grounding, is
3 that correct?

4 A That's correct.

5 Q And so you are familiar -- right here is one
6 and a half minutes after midnight, which is just
7 before it began its turn, is that right?

8 (Tape: C-3668)

9 (003)

10 A That's right.

11 Q All right. So, if you had been going half the
12 speed, then -- let's see. The time it started
13 his turn until I believe the testimony is the
14 grounding was not at eight and a half minutes
15 after, but about 11 after. Is that correct?

16 A I don't really know exactly the time. A
17 minute or two wouldn't make much difference.

18 Q All right. Well, let's assume that if you
19 were going half the speed for from 1-1/2 minutes
20 after 'til 8-1/2 minutes after is seven minutes.
21 Is that right?

22 A Uh-huh (affirmative).

23 Q So, if you were going half the speed, then,
24 you would have only been here at 8-1/2 minutes
25 after. Is that right?

1 A That's correct.

2 Q And you might have been able to miss the reef,
3 is that correct?

4 A Depends on whether or not they were watching.

5 Q If they were going...

6 A You know, we could go backwards down this
7 place too, you know. Sooner or later we have
8 to...

9 Q Excuse me.

10 A ...complete this voyage.

11 Q Just answer my question. Don't make speeches,
12 all right? Do you understand?

13 MR. CHALOS: Your Honor, I don't think there's
14 a need for that kind of reprimand of the witness.

15 THE COURT: Maybe if you can just answer the
16 questions that are addressed to you, not volunteer
17 anything. Mr. Chalos will have an opportunity to do
18 some redirect if there's anything you can clear up you
19 can do it then.

20 A Okay. I think -- I thought that she was
21 trying to misrepresent something there.

22 THE COURT: I don't -- think that there was
23 room for dispute on both of those, so rephrase that.

24 Q (Captain Walker by Ms. Henry:) Sir, assuming
25 that the rudder order was given at 11:55, then

1 Mr. Cousins would have had at least 12 minutes
2 instead of only 6-1/2 minutes to realize the turn
3 wasn't occurring if they had been going half the
4 speed, is that correct?

5 A That's correct.

6 Q And given the maneuver that you're aware of
7 occurring from 12:01-1/2 'til 12:08-1/2 or 12:10,
8 isn't it true that you, personally, would not
9 have done this maneuver at 11 to 12 knots?

10 A If I'd load programmed up a lot earlier we'd
11 have been at probably 15 or 16 knots.

12 Q And at the time you were trying to make this
13 maneuver you would have slowed down and not gone
14 11 to 12 knots, isn't that correct?

15 A I never said that. No. I don't see any
16 reason to slow down.

17 Q You, in fact, would be going faster, is that
18 right?

19 A Yes. Ma'am.

20 Q And you found that Captain Knowlton going as
21 fast as 16 knots was acting reckless, is that
22 right?

23 A Captain Knowlton's course was different than
24 my -- than the course that this vessel took.

25 Q Captain Knowlton only got...

1 A There's a big difference.

2 Q ...within a half a mile of the rocks, didn't

3 he?

4 A Yes, ma'am.

5 Q The Exxon Valdez got right on top of those,

6 didn't it?

7 A Only because of a misdirection.

8 Q The Exxon Valdez got right on top of it,

9 didn't it?

10 A Yes, ma'am.

11 Q There is a difference, then, isn't there?

12 A It depends on how far you want to take this.

13 Q Now, let's go to specific hazardous situations

14 that you have encountered in your experience, and

15 that tanker captains have encountered.

16 As a tanker captain, safety is your main

17 concern, isn't it?

18 A Yes, ma'am.

19 Q And that would include concerns for the safety

20 of your crew?

21 A My crew came first, my ship came second and my

22 cargo came third.

23 Q So, safety would include concern for the

24 safety of your crew, correct?

25 A Yes, ma'am.

1 Q And it would include safety of your vessel?
2 A Yes, ma'am.
3 Q And it would include safety of your cargo, is
4 that right?
5 A Yes, ma'am.
6 Q And it would also include concern for the
7 protection of the environment, is that right?
8 A Yes, ma'am.
9 Q In fact, one of the tanker captains biggest
10 fears is that his vessel will either ground, or
11 perhaps collide with another vessel with the risk
12 that it will cause the loss of life, or the loss
13 of cargo. Is that right?
14 A That's correct.
15 Q So, when an oil tanker is going through a
16 particularly hazardous area extra care should be
17 taken, correct?
18 A Yes, ma'am.
19 Q Potentially hazardous situations would include
20 traveling very close to shoals, rocks, or reefs,
21 is that right?
22 A It depends on the course, ma'am.
23 Q Potentially hazardous situations would occur
24 traveling close to shoals, rocks and reefs, is
25 that right?

1 A I don't -- I don't agree with you right there.
2 Q It's not a potential hazard to be very close
3 to shoals, rocks, or reefs?
4 A No.
5 Q Potentially hazardous situations would include
6 traveling or transiting in very bad, or heavy
7 weather, is that right?
8 A Come back with that.
9 Q Potentially hazardous situations would include
10 traveling through very bad, or very heavy
11 weather.
12 A Yes, ma'am. Uh-huh (affirmative).
13 Q Potentially hazardous situations include
14 traveling with highly restricted visibility, is
15 that correct?
16 A Yes, ma'am.
17 Q Potentially hazardous situations include
18 traveling in high density traffic areas, is that
19 correct?
20 A Yes, ma'am.
21 Q And potentially hazardous situations include
22 traveling near or through ice, is that correct?
23 A Yes, ma'am.
24 Q Now, speaking of ice, you faced, I think you
25 said conditions approximately three times in

1 which you either had to go through ice or
2 maneuver around it...

3 A Uh-huh (affirmative).

4 Q ...in Prince William Sound. Is that right?

5 A That's right.

6 Q And I think you said that twice you maneuvered
7 around it and once you went through it?

8 A Yes, ma'am.

9 Q Now, the one time that you went through it you
10 had to slow down, didn't you?

11 A Yes, ma'am.

12 Q Do you remember how slow you had to go?

13 A I put it on about a half bell.

14 Q Pardon?

15 A A half bell. About eight, nine knots.

16 Q And the time that you actually went through
17 the ice, you did not hit any ice, did you?

18 A No.

19 Q And that was because as you got closer, the
20 ice -- you realized that it was -- the bergs, or
21 the bits were a lot farther apart than you first
22 realized. Is that right?

23 A Right. We passed 'em off at about 50 feet.

24 Q 50 feet off each side?

25 A Right.

1 Q Now, if you faced ice thick conditions again,
2 such as those you faced in Prince William Sound
3 would you go around it if you could, rather than
4 through it?
5 A Yes, ma'am.
6 Q And is that because going through it really
7 can be a pain?
8 A It's -- I think it would be safer to go around
9 it than through it.
10 Q Okay. Do you remember telling me the night
11 that I talked to you that going through the ice
12 is really a pain?
13 A Yeah.
14 Q Now, the two times that you maneuvered around
15 the ice, was the ice in both lanes? And if you
16 had need to split 'em from one instance to
17 another, go ahead.
18 A It's very far back. I mean, you're talkin'
19 seven years back. And if I remember it was
20 pretty extensive ice that I passed.
21 Q Both times that you maneuvered around the ice,
22 did you have to go completely out of the TSS?
23 A Oh, yes. Yes. Uh-huh (affirmative).
24 Q So, completely out of the northbound lane?
25 A Right.

1 Q Now, when you started these maneuvers the
2 first thing, obviously, you do is move from the
3 southbound lane to the separation lane, is that
4 correct?

5 A Well, that's where you're gonna pass through.
6 That would be the first thing you pass through.

7 Q And then, into the northbound lanes, is that
8 right?

9 A That's right. Uh-huh (affirmative).

10 Q And you're supposed to notify the VTC when you
11 go into the northbound lanes, is that correct?

12 A Whenever you are starting a maneuver across
13 the lanes, you'd tell 'em that -- what you're
14 doing.

15 Q So, I assume you did?

16 A Yes, ma'am. Uh-huh (affirmative).

17 Q Additionally, when you leave the lanes
18 entirely on the other side of the northbound
19 lane, you're required to notify the VTC once
20 again, is that correct?

21 A I believe so, Uh-huh (affirmative).

22 Q Now, you saw nothing wrong with the fact that
23 Captain Hazelwood failed to tell the VTC that he
24 was going out of the lanes entirely, is that
25 correct?

1 A You have to give 'em a -- I think a five or a
2 10 minute call before you do it. And then, just
3 acknowledge that you've crossed them.

4 Q You see nothing wrong with the fact that
5 Captain Hazelwood failed to notify the VTC that
6 he was about to, or had left the TSS entirely, is
7 that right?

8 (320)

9 MR. CHALOS: Your Honor, I object. That's a
10 mischaracterization of the evidence. I think the
11 evidence is clear that he called the VTC twice to tell
12 'em he was making his maneuvers.

13 THE COURT: Objection overruled.

14 Q (Captain Walker by Ms. Henry:) Sir, you
15 listened to the tapes of Captain Hazelwood
16 notifying the VTC, is that right?

17 A No.

18 Q All right. If I were to tell you that the
19 first time he called the VTC about this he said -
20 - he advised that, in fact, he was going to have
21 to go into the northbound lane because of the
22 ice.

23 All right. That's fine. That's what you're
24 supposed to do, is that...

25 A Okay.

1 Q ...right? Is that right?

2 A Yes.

3 Q The second time that he called he did not tell

4 them that he was leaving the TSS entirely,

5 although he was required to do so. You see

6 nothing wrong with that, is that correct?

7 A I guess a little minor foul up...

8 Q Minor foul up?

9 A Yeah. Uh-huh (affirmative).

10 Q All the time -- the three times, I guess, that

11 you encountered ice in Prince William Sound and

12 either went through it or around it, you were on

13 the bridge all three times, is that correct?

14 A Yes, ma'am.

15 Q And that's because you want to be cautious or

16 safe when you're doing a maneuver like that, is

17 that correct.

18 A I love to pilot. If I could be on the bridge

19 to maneuver I was always Johnny on the spot. I

20 didn't care where we were.

21 Q So, you didn't care about safety you just

22 liked to be on the bridge?

23 A I loved it.

24 Q You did not care about safety, you just

25 liked...

1 A Well, that came...

2 Q ...to be on the bridge?

3 A ...came with me being on the bridge.

4 Q All right. So, safety was a concern, is that
5 correct?

6 A Safety is always a concern.

7 Q And, in fact, a vessel like this is probably
8 in the safest hands when you're on the bridge,
9 isn't that right?

10 A I would -- I should hope so.

11 Q Okay. Let's move to pilotage for a moment.
12 I think you said that sometime in '79 is when
13 you obtained your pilotage indorsement?

14 A Yes, ma'am.

15 Q And I think part of the requirement was you
16 had to transit the Narrows at least six times?

17 A You had to transit the traffic separa -- I
18 mean, from Hinchinbrook to Rocky Point six times.

19 Q And you had done that?

20 A Yes.

21 Q The year before?

22 A Yes.

23 Q Or, two years before, actually, I think?

24 A Well, starting in '77. I think the trips
25 added up to trips by the -- at least six trips by

1 the time I got the indorsement.

2 Q And the other part of the requirements to get
3 a pilotage indorsement for Prince William Sound
4 was to take some sort of a written test?

5 A Yes.

6 Q And I think you referred to that written test
7 as mate's work?

8 A Yes, ma'am.

9 Q And that test was basically trying to identify
10 reefs and navigational aids in the area?

11 A You had about six navigation aids, I believe,
12 at the time. And you had to draw the courses in
13 there and they had the reefs and everything
14 already on the chart. All you had to do was put
15 the names on them.

16 Q And some navigational aids?

17 A And place the navigational aids on the chart
18 at their specific locations.

19 Q So, the reefs were on the chart, you had to
20 name the reefs, but you had to actually place
21 where the navigational aids...

22 A Right.

23 Q ...were on the chart?

24 Now, prior to you actually getting your
25 pilotage indorsement for Prince William Sound I think

1 the six times that you went into the Narrows without
2 indorsement you picked the pilot up once at Cape
3 Hinchinbrook and the other five times somewhere around
4 Busby, depending...

5 A No. I picked 'em all up at Hinchinbrook, all
6 the time.

7 Q You picked all the pilots up at Hinchinbrook
8 all the time?

9 A Yes, ma'am.

10 Q All right. You didn't tell us last Friday
11 that that -- sometimes the pilots didn't want to
12 be picked up before Busby?

13 A No.

14 Q You didn't say that?

15 A No, ma'am. I told you I dropped them off on
16 the outbound side.

17 Q Oh. I'm -- excuse me. So, going in, you
18 always picked 'em up at Hinchinbrook?

19 A The reason for that is...

20 Q Going in you always picked 'em up at
21 Hinchinbrook?

22 A Yes, ma'am.

23 Q Coming out, once you dropped 'em at
24 Hinchinbrook, the other time you dropped 'em at
25 Busby?

1 A Yes, ma'am.

2 Q All right. That, of course, was a violation
3 of the regs at the time, is that correct?

4 A Yes, ma'am.

5 Q Showing you what's been marked as Defendant's
6 Exhibit B and -- which has also been admitted.
7 Do you recognize that exhibit?

8 A Yes, ma'am.

9 Q And what is that exhibit?

10 A That's the Bob Art's memo.

11 Q That's Bob Art's memo?

12 A Yes, ma'am.

13 Q Now, when you were transiting through the
14 Narrows, -- well, back up a minute. What's the
15 date on that memo?

16 A I think '86 -- September 19th, 1986.

17 Q So, fair to say that when you were transiting
18 through the Narrows that letter hadn't even
19 existed yet? Am I right?

20 A That's right. Uh-huh (affirmative).

21 Q When is the first time you saw that letter?

22 A About September last year.

23 Q Of '89?

24 A Yes, ma'am.

25 Q And is that when Mr. Chalos showed it to you,

1 or...

2 A Yes.

3 Q ...sent it to you?

4 A Sent it to me.

5 Q All right. And reviewed that letter, and then
6 gave an opinion based upon that letter, is that
7 correct?

8 A Yes, ma'am.

9 Q After looking at that letter did you check
10 with anyone from the Coast Guard to see if Bob
11 Art's interpretation of the regulation or the
12 modification to the regulations was even
13 accurate?

14 A Along with this letter he sent me the Captain
15 of the Port Order, so I had 'em right there to
16 compare.

17 Q Did you have the previous Captain of the Port
18 Orders?

19 A The one that this was based on.

20 Q All right. Did you have any of the other
21 Captain of the Port Order -- the earlier Captain
22 of the Port Orders that were purported to be
23 modified?

24 A I don't understand what you -- I -- the only
25 Captain of the Port Order that I know of is the

1 one that he sent me that this was, you know,
2 taken from.

3 Q You didn't have the other Captain of the Port
4 Orders that the Captain of the Port Orders you
5 were sent purported to modify, did you?

6 A I still don't know what you're talkin' about.
7 The only one I had was where he -- he came out
8 and I believe he waived the pilotage...

9 Q Right. You're referring to a Captain of the
10 Port Order that Mr. Chalos apparently sent you
11 with that, is that right?

12 A Yes, ma'am. Uh-huh (affirmative).

13 Q And you did not bother to check with anyone
14 from the Coast Guard to see if this letter
15 interpreting the Captain of the Port Order and
16 interpreting and interpreting the regs was
17 accurate, did you?

18 A Well, it was obvious when you had 'em right
19 next to each other...

20 Q You didn't bother to check with the Coast
21 Guard, did you?

22 A I never checked with the Coast Guard on
23 something that small.

24 Q Now, assuming that the letter is even
25 accurate...

1 A This -- Bob Art's letter, you're referring to?
2 Q Yeah. Uh-huh (affirmative). As far as his
3 interpretation of the...
4 A Uh-huh (affirmative).
5 Q ...Captain of the Port order, and the
6 regulations, the letter only changes some of the
7 requirements for non-pilotage vessels. It does
8 not change the requirements for pilotage vessels,
9 is that correct?
10 A I disagree.
11 Q You disagree with the fact that that letter is
12 limited to non-pilotage vessels?
13 A This -- this letter is for everybody.
14 Q It is not limited to non-pilotage vessels?
15 A No. Uh-uh (negative).
16 Q Sir, why don't you go ahead and read the first
17 sentence out loud?
18 A "Effective September 1, 1986 the U. S. Coast
19 Guard requirement for daylight passage in Prince
20 William Sound for vessels without pilotage has
21 been waived."
22 Q Vessels without pilotage means non-pilotage
23 vessels, is that correct?
24 A That's correct.
25 Q Now read the second sentence.

1 A "All non-pilotage vessels will be able to
2 transit from Cape Hinchinbrook to the pilot's
3 station at all hours as long as visibility
4 remains at two miles or greater."

5 Q That sentence begins "All non-pilotage
6 vessels", is that correct?

7 A That's correct.

8 Q That sentence does not contain the phrase
9 "piloted vessels", does it?

10 A It doesn't have to.

11 Q Well your opinion is still that purports to
12 change the regulations with respect to pilotage
13 vessels, as well?

14 A Yes, ma'am.

15 Q In spite of the clear language in the first
16 two sentences of the letter. Is that correct?

17 A Yes, ma'am.

18 Q All right. Let's move on to Captain Hazelwood
19 leaving the bridge after the pilot had
20 disembarked. Specifically, let's go to
21 approximately 11:52 on the evening of March the
22 23rd, 1989.

23 At this point in time Captain Hazelwood had
24 put the helm on autopilot, is that right? I'm
25 not saying at that time, but it was -- by that

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time it was on?

A I believe he had taken it off by that time.
Not him, but Mr. Cousins had taken it off.

Q All right. Are you aware that the testimony
is that Mr. Cousins didn't take it off until
after Captain Hazelwood left the bridge?

A Okay. I'm -- I stand corrected on that.

Q And assuming that he left the bridge at about
11:53, I'm talkin' a minute before he left the
bridge, okay?

A Okay.

Q So, a minute before he left the bridge he had
already put -- Captain Hazelwood had already put
the helm on autopilot, okay?

A All right. Uh-huh (affirmative).

Q He had already put the engine on load program
up to sea speed.

A Uh-huh (affirmative).

Q And he had put the vessel on a course of 180
degrees, is that correct?

A That's correct.

Q And that course of 180 degrees, he was heading
straight for Bligh Reef, is that right?

A Not directly.

Q Assuming you don't turn it's gonna hit some

1 rock in that area, is that right?

2 A It's headed more -- almost between Bligh Reef
3 and Reef Island.

4 Q And you think if it was headed that way it
5 wouldn't have hit any rocks?

6 A It probably would have gone aground somewhere
7 on -- probably on Reef Island, I would assume.

8 Q It would have gone aground somewhere, anyway,
9 is that right?

10 A Well, on your way to Hinchinbrook you're gonna
11 go aground.

12 Q Assuming it had gone straight?

13 A Yes. Uh-huh (affirmative).

14 Q So, he had the vessel on a course of 180
15 heading for some rocks, is that correct?

16 A Any course you head in that whole place,
17 you're heading for rocks.

18 Q He had the vessel on a course of 180 heading
19 straight for some rocks around Bligh Reef,
20 correct?

21 A Yes, ma'am.

22 Q He also knew that the Exxon Valdez would come
23 approximately one mile or less of Busby Island
24 Light on one side given that course, is that
25 right?

1 A That's correct.

2 Q And he also knew that he would come within one

3 mile or less of ice on the other side?

4 A At that point in time I -- he probably knew

5 that it'd be about a mile.

6 Q He also knew that at 11:52 a turn would have

7 to be made within a matter of minutes, is that

8 correct?

9 A Yes, ma'am.

10 Q In fact, plan was abeam of Busby...

11 A Uh-huh (affirmative).

12 Q ...which occurred at 11:55?

13 A Right.

14 Q So, at 11:52 he knew within a matter of

15 minutes a turn was gonna have to be made, is that

16 right?

17 A Yes, ma'am.

18 Q And yet, you see nothing with Captain

19 Hazelwood leaving the bridge at that point?

20 A No.

21 Q Let's also add the fact that Captain Hazelwood

22 left the bridge in the hands of a helmsman, Mr.

23 Kagan, who his chief -- who Captain Hazelwood's

24 chief mate and second mate and Captain Stalzer

25 had all told him had problems steering. Does

1 that added fact concern you at all?

2 A He's gonna use a rudder order. There's a big
3 difference between steering and using a rudder.

4 Q Does the fact that he left the helm -- or, the
5 bridge, in the hands of a helmsman who had
6 problems steering doesn't concern you at all?

7 A Not really.

8 Q In fact, to you a helmsman is just a body
9 anyway, is that right?

10 A That's correct. Just another piece of the
11 machine.

12 Q Now, you made some comments -- excuse me.
13 Another piece of machine? Is that what you
14 called it?

15 A Yes, ma'am. I've -- in my pilotage career
16 we've -- I've guided people that didn't even
17 speak English.

18 Q So, he's just another piece of machinery, is
19 that right?

20 A He's just there as I give him the order and he
21 moves the wheel. That's all.

22 Q Now, you said that in your opinion the
23 instructions that Captain Hazelwood gave just
24 prior to leaving the bridge were "proper
25 instructions", and I think at another point you

1 called them "legal instructions"?

2 A Right. He gave a legal order, a lawful order.

3 Q As opposed to something that would violate the

4 regulations?

5 A Well, an unlawful order would be one that

6 would put the ship in -- you know, when you get

7 abeam of Busby Island put her hard left. That's

8 an unlawful...

9 Q All right, now...

10 A ...order.

11 Q Is your -- so, your opinion is that he gave

12 him proper instructions, sufficient instructions?

13 A Yes, ma'am.

14 Q Now, isn't it true that the proper, legal,

15 sufficient instructions that Captain Hazelwood

16 gave to Mr. Cousins were, first of all, he

17 pointed at the radar -- we'll assume, probably he

18 pointed abeam of Busby -- and told Mr. Cousins to

19 turn when abeam of Busby. And told Mr. Cousins

20 to call him, Captain Hazelwood when he began to

21 make the turn. Is that correct?

22 A Yes, ma'am.

23 Q That's all the instructions that he gave him?

24 A I think he gave him a little bit more, didn't

25 he.

1 Q Well, did Captain Hazelwood even refer to a
2 navigational chart when he gave these
3 instructions?

4 A I think he told him to come back into the
5 traffic separation scheme when he came abeam of
6 Busby Island.

7 Q In fact, what he said was, "When you come
8 abeam of Busby Island begin to turn back into the
9 lanes", is that right?

10 A Yes, ma'am.

11 Q All right. Did Captain Hazelwood look at a
12 navigational chart when he was giving Mr. Cousins
13 these instructions to your knowledge?

14 A Not that I know of.

15 Q Did Captain Hazelwood even show him on the
16 chart where he wanted to start the turn?

17 A He showed him on the radar.

18 Q He did not show him on the chart, did he?

19 A No.

20 Q Did Captain Hazelwood draw a track line on the
21 chart, or even bother to mark the beginning of
22 the turn on any kind of navigational chart for
23 Mr. Cousins?

24 A Not that I know of.

25 Q Captain Hazelwood also couldn't tell Mr.

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Cousins the specific heading to take for this turn, did he?

A He left it at his discretion.

Q Captain Hazelwood did not give Mr. Cousins a rate of turn, did he?

A No.

Q Captain Hazelwood did not give Mr. Cousins a position or a time at which he should stop the turn?

A No. He did not.

Q Captain Hazelwood did not wait around for two more minutes to make sure that the turn was executed, did he?

A No. He did not.

Q All right. Let's go back to your box.

(Pause)

Now, when you left instructions for your -- was it third mate?

A I believe it was the third mate. It's been almost 10 years since then.

Q Okay. One of the...

A One of the mates, yeah.

Q When you left instructions for that watch officer you didn't simply point to the radar, did you?

1 A No.

2 Q You gave much more specific instructions, did
3 you not?

4 A Yes, ma'am.

5 Q But, in your view it's okay for Captain
6 Hazelwood to simply point at the radar, tell him
7 to turn when abeam of Busby and just head back
8 into the lanes?

9 A Well, ma'am, I couldn't mark that on a radar
10 scope.

11 Q That's right. You couldn't, could you?

12 A No. Uh-uh (negative).

13 (1005)

14 Q Now, one of the things that you said on Friday
15 was that you felt it was a good idea for Captain
16 Hazelwood to have a check on Mr. Cousins. And
17 you referred to the check as being telling him,
18 "Call me when you begin to turn", is that right?

19 A Yes, ma'am.

20 Q All right. This means that when Cousins --
21 Mr. Cousins did, in fact, call Captain Hazelwood
22 and tell him that he was making the turn, Captain
23 Hazelwood could be assured that his order was
24 being carried out, is that right?

25 A Yes, ma'am.

1 Q However, isn't it true that in this case when
2 Mr. Cousins did call him and tell him that he'd
3 begun to make the turn that wasn't true? The
4 order had not, in fact, been carried out?
5 A That's correct.
6 Q And, of course, Captain Hazelwood wasn't on
7 the bridge to realize that the order had not been
8 carried out, was he?
9 A That's correct.
10 Q All right. And do you recall that in addition
11 to telling Captain Hazelwood that he had begun
12 the turn, Cousins also told Captain Hazelwood
13 that, "We might get into the bottom edge of the
14 ice."
15 A Yes.
16 MR. CHALOS: Your Honor, I object. If Ms.
17 Henry's gonna read testimony, then I demand that she
18 reads the whole answer in that regard.
19 THE COURT: Ms. Henry.
20 MS. HENRY: Your Honor, I'm quoting from Mr.
21 Cousins testimony at this trial at page 138.
22 Q (Captain Walker by Ms. Henry:) Mr. Cousins --
23 excuse me. "There was a short conversation, but
24 I told him it looked like we may get into the
25 bottom edge of the ice. And he (referring to

1 Captain Hazelwood) responded by saying, 'Is it
2 going to be - does it look like it's going to be
3 a real problem?' I said, 'No. I don't think
4 that it will, that my intent was to just ease it
5 around the corner.'"

6 Now, if you had been -- assuming that you had
7 left the bridge in the first place, and you had
8 been given this information that they might --
9 that you might get into the bottom edge of ice,
10 you would have immediately returned to the
11 bridge, wouldn't you?

12 A If he -- I'm trying to figure out how to
13 phrase this. When he said he was going to --
14 possibly going to skirt the bottom edge of the
15 ice, Captain Hazelwood said is it going to be a
16 problem? The mate had said, "Yes," I would have
17 been there immediately.

18 Q All right, well, Captain -- Mr. Cousins did
19 not say skirt the ice. He said, "...get into the
20 bottom edge of the ice."

21 A Right. Okay. I stand...

22 Q Now...

23 A ...corrected.

24 Q Would you have gone up to the bridge
25 immediately if you had gone below earlier?

1 A If I had done exactly what Captain Hazelwood
2 and asked him, "Is it going to be a problem?"
3 All he had to do was say, "Yes," and I would have
4 been there. He said, "No."
5 Q Going through ice can be hazardous, can it
6 not?
7 A It can.
8 Q And every time you went through ice you were
9 on the bridge, weren't you?
10 A Yes, ma'am. The third mate told him he was
11 not going to go through the ice...
12 Q All right. Sir, again, please stop making
13 speeches. Just answer my question. Do you
14 understand that?
15 A Yes, ma'am.
16 Q Do you have any problem with that?
17 A Yes. I do.
18 Q All right. Well, unfortunately you're gonna
19 have to follow the rules in this courtroom, okay?
20 A Yes, ma'am.
21 Q Let's get to the grounding for a moment.
22 You've never, personally, grounded a vessel
23 yourself, have you?
24 A No. I have not.
25 Q Is it fair to assume that if you, Captain

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1 Walker had been on the bridge of the Exxon Valdez
2 March 23rd and March 24th -- if you had been on
3 the bridge the whole time it probably wouldn't
4 have grounded?

5 A I would hope so.

6 Q Now, you testified on Friday that you felt
7 Captain Hazelwood took proper actions by calling
8 the Coast Guard to report the spill, is that
9 right?

10 A Yes...

11 MR. CHALOS: Your Honor, I object. There was
12 a whole series of things that Captain Hazelwood did.
13 The question was were those proper, not just one thing.

14 THE COURT: Objection overruled.

15 Q (Captain Walker by Ms. Henry:) You said last
16 Friday that in your opinion Captain Hazelwood
17 took proper action by calling the Coast Guard to
18 report the spill, is that correct?

19 A Yes, ma'am.

20 Q But, of course, he's required to do that,
21 isn't he?

22 A He doesn't have to, but he's required to.

23 Q He doesn't have to obey the law, but he
24 should, is that right?

25 A Well, they -- they put a little incentive in

1 there so that you will do it. And that's the
2 immunity that...

3 Q He doesn't have to...

4 A He could hide it. He could try to hide this.

5 Q Certainly hide it, but we'd eventually figure
6 it out, wouldn't we?

7 A Oh, yes.

8 Q So, it's okay to violate the law, but you
9 really shouldn't?

10 A No. I'm not saying that.

11 Q In this case, because he did obey at least one
12 of the regulations that the Coast Guard had set
13 out, you find his action proper, is that correct?

14 A Yes, ma'am.

15 Q Now, you are aware, aren't you -- let's get
16 back to the violations for a moment.

17 You also view other Coast Guard regulations,
18 such as the regulations regarding pilotage as a
19 joke, don't you?

20 A Yes, ma'am. Pilotage in -- in this case, in
21 Prince William Sound.

22 Q You review -- you view certain Coast Guard
23 regulations as a joke, don't you? Yes, or no?

24 MR. CHALOS: Objection, Your Honor. No basis
25 for that question. No foundation.

1 THE COURT: Counsel approach the bench,
2 please.

3 (1253)

4 (Whispered bench conference as follows:)

5 THE COURT: I take it this is based on an
6 interview you had with this witness and are you
7 prepared to support his -- if he says "No," what are
8 you gonna do about it.

9 MS. HENRY: (Indiscernible - bad recording).

10 THE COURT: The objection's overruled. Go
11 ahead. Wait. I'm sorry.

12 MR. CHALOS: Ms. Henry's taking it out of
13 context. (Indiscernible - bad recording).

14 THE COURT: You can explain that on redirect.
15 Your objection's overruled.

16 (End of whispered bench conference.)

17 (1279)

18 THE COURT: Objection overruled.

19 Q (Captain Walker by Ms. Henry:) You,
20 personally, viewed certain Coast Guard
21 regulations, particularly the pilotage
22 regulations of Prince William Sound as a joke,
23 didn't you?

24 MR. CHALOS: Your Honor, now I object. Their
25 was no discussion of other Coast Guard regulations.

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THE COURT: You can ask the question.
Objection overruled.

Q (Captain Walker by Ms. Henry:) As a joke, didn't you? Yes, or no?

A Could you repeat the question now?

Q You, personally view the Coast Guard regulations, specifically the pilotage regulation for Prince William Sound as a joke, don't you?

A The pilotage regulations in Prince William Sound were a joke.

Q Yes, or no. They were a joke, is that right?

A Yes, ma'am.

Q In your opinion?

A Yes, ma'am.

Q And in addition to violating a regulation by not reporting an oil spill, you don't see any problem violating Prince William Sound pilotage indorsement regulations, either, do you?

MR. CHALOS: Your Honor, that's not the testimony in this case.

Ms. Henry's been standing here for an hour and half testifying with a question mark on the end. I think that's improper. And the witness can testify for what he -- she just said.

THE COURT: This is cross examination, Mr.

1 Chalos. She can do that. Objection overruled.

2 Q (Captain Walker by Ms. Henry:) Is that
3 correct?

4 A Come back with that one now, 'cause there was
5 two of 'em in there.

6 Q All right. In your view, although it might
7 not be wise, you have no problem with someone
8 violating the Coast Guard regulation regarding
9 reporting oil spills?

10 A I do have a problem with that.

11 Q All right. I thought just a few minutes ago
12 that you indicated when I asked you -- well, it's
13 the law. You have to do it. You said, "Well,
14 it's a good idea to, but you don't have to report
15 it?"

16 A Yeah, but I think you're taking me out of
17 context.

18 Q You said earlier that you don't have to report
19 an oil spill even though it's the law?

20 A It's the law, you better report it.

21 Q But, you don't have to?

22 A Of course you don't have to. But, you better.

23 Q And, you also don't have to in your opinion
24 follow or obey the pilotage indorse -- or the
25 pilotage regulations, either?

1 A Ma'am, I always obey the pilotage regulations.
2 Q But, in your view, you don't have to?
3 A They were -- they were overlay -- an overkill,
4 let's put it that way.
5 Q And so, because you feel it's overkill, you
6 feel that you don't necessarily have to obey
7 them, is that correct?
8 A I always obeyed...
9 Q I know you always obeyed them. But, in your
10 view you don't have to obey them, is that right?
11 A I always obey the regulations, ma'am.
12 Q In fact, didn't you tell me last Thursday
13 night that it's not a violation unless you get
14 caught?
15 A Of what?
16 Q Of the Prince William Sound regulations --
17 pilotage regulations?
18 A That's correct.
19 Q Now, you stated that you always obey the
20 pilotage regulations. By dropping the pilot off
21 at Busby when you did not have Prince William
22 Sound pilotage indorsement, you violated the
23 pilotage regulations, yes or no?
24 A That's like, did you stop beating your wife.
25 It's hard to answer with a yes or no.

1 Q The regulations did not allow you...

2 A I had a...

3 Q ...to drop the pilot at Busby, did they, when

4 you did not have pilotage indorsement, yes or no?

5 A I had a valid reason to drop him off where I

6 did.

7 Q You did not obey the regulations, did you?

8 A I did not.

9 Q Going back to Captain Hazelwood's proper

10 action in reporting the oil spill, are you aware

11 that he didn't even report it until 15 minutes

12 after the grounding?

13 A Yes, ma'am.

14 Q All right. Let's go to what happened after

15 the grounding.

16 THE COURT: Excuse me. Counsel, approach the

17 bench, please.

18 Mr. Madson.

19 (1473)

20 (Whispered bench conference as follows:)

21 THE COURT: Next time you (indiscernible -

22 unclear) your hand like that I'm going to advise you in

23 front of the jury so be careful. Okay?

24 (End of bench conference.)

25 (1480)

1 Q (Captain Walker by Ms. Henry:) Let's go again
2 now to after the grounding. One of the areas
3 that you discussed with Mr. Chalos on Friday was
4 the efforts to wake up the crew, is that right?
5 A Yes, ma'am.
6 Q All right. Now, for a situation where -- I'm
7 awful dry, are you? Do you want some water?
8 A No, ma'am.
9 Q Okay. In a situation when you have just hit a
10 reef, you know that you have hulled at least 10
11 of your tanks, you know that you have lost at
12 least 12 percent of your cargo, which is 100 to
13 115,000 barrels of crude oil, you don't know if
14 you're gonna be coming off the reef or not, and
15 if you do, whether you'll capsize, and you don't
16 know that if you remain on the reef whether
17 you'll break up. Don't you think given those
18 facts that it is important that your crew is
19 aware of those dangers and prepared for it?
20 A That -- that's a judgment call there.
21 Q You're not saying...
22 A There's a tradeoff.
23 Q Okay. So, given all of these dangers and all
24 these risks and all these possibilities, you
25 don't think it's necessarily, given the

1 circumstances, important that your crew is aware
2 of the danger?

3 A The crew -- I think he did tell them about the
4 danger. That she was aground.

5 Q My question is you've hit a reef and hulled
6 some tanks, you've lost 12 percent of your cargo,
7 if you get off the reef you might capsize. If
8 you stay on the reef you might break up. Don't
9 you think it is important that your crew is aware
10 of that danger?

11 A If you want to get 'em aware you might cause a
12 panic on board, ma'am, by telling 'em...

13 Q I'm not asking how you make them aware. I'm
14 just asking you don't think it's important that
15 they be made aware?

16 A That they are aware that the ship is aground,
17 yes, ma'am.

18 Q Don't you think it important that they be
19 aware of the potential risks?

20 A Well, when you're aground there's always a
21 potential risk.

22 Q So, it's important that they be aware of those
23 risks, is that correct?

24 A Sure. He's not gonna go down and tell exactly
25 every risk. He's just...

1 Q Don't you feel that it's important for the
2 crew to be aware of the danger they're in?
3 A Yes. That's important to be aware.
4 Q And don't you think it's important that the
5 crew be prepared for what might happen?
6 A Yes. They should be prepared.
7 Q They can't be aware of the danger if they
8 sleep through it, can they?
9 A No. They can't.
10 Q And they can't be prepared for it if they
11 aren't told exactly what's going on and are told
12 to stay in their rooms, can they?
13 A I don't think they were ever told to stay in
14 their rooms.
15 Q You deny that they were told to stay in their
16 rooms -- stand by in their rooms?
17 A I don't remember that testimony, no.
18 Q Now, on Friday you talked a little bit -- and
19 we've talked a little bit today about Captain
20 Knowlton and his maneuver on the ARCO-Juneau to
21 get around the ice. And I believe last Friday
22 you said that the maneuver, or the course that he
23 chose to get around the ice was a very risky
24 maneuver, is that correct?
25 A Yes, ma'am.

1 Q Referring to Plaintiff's Exhibit 122, which
2 has been previously identified as a track line
3 that Mr. Curt Greiner reconstructed of the travel
4 of the Exxon Valdez, also including the red
5 sector, and including the approximate place of
6 grounding.

7 Assuming that the Exxon Valdez is within the
8 red sector, you would consider that a risky
9 maneuver, is that correct?

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

12 THE COURT: Objection overruled. She can ask
13 this witness that question.

14 Q (Captain Walker by Ms. Henry:) If it's just
15 below the line of the red sector, you would
16 consider that risky, wouldn't you?

17 A If he waited that long to make that turn,
18 that's a risky maneuver.

19 Q If you're right here within the red sector,
20 that's very risky, is it not?

21 A Oh, yes.

22 Q And what does the red sector mean?

23 A It means the danger area.

24 Q All right. So, if you're anywhere within the
25 red sector, you're in a danger area?

1 A It -- the red sector's to alert you that there
2 is danger in -- in that area.

3 Q And it's pretty risky to be in the red sector,
4 is it not?

5 A You bet.

6 Q Very risky, wouldn't you say?

7 A I would think so, sure.

8 Q Now, you said earlier that in your opinion
9 Captain Hazelwood gave very clear instructions to
10 Mr. Cousins, is that right?

11 A Yes, ma'am.

12 Q And you said that in your opinion the orders
13 or the instructions were very easy to execute.
14 Is that correct?

15 A Yes, ma'am.

16 Q How many rudder angle indicators did you say
17 one can see while standing on the bridge?

18 A Approximately two of 'em. And if you stand in
19 a certain spot, you can see three.

20 Q All right. Now, the one that's on the
21 overhead, can you basically see that from almost
22 any position on the bridge?

23 A Yes, ma'am. Uh-huh (affirmative).

24 Q And, then there's one on the...

25 A On the forward bulkhead.

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Q Forward bulk. And you can see that from most positions on the bridge?

A Yes, ma'am.

Q And where is the third one?

A The third one would be on a steering stand.

Q All right, so you'd have to be rather close to that to see that one, is that right?

A Yes, ma'am.

Q And then there's two of them on each wing?

A Yes, ma'am.

Q Now, isn't it true that what you are saying is that if Greg Cousins had followed Captain Hazelwood's easy instructions, clear instructions, and if he had watched, or checked one of the rudder angle indicators to make sure that his rudder order was being obeyed, the Exxon Valdez would not have gotten into that risky area, would it?

A Yes, ma'am.

Q And if Mr. Cousins had followed Captain Hazelwood's instructions, and checked one of the rudder angle indicators to make sure his rudder order was being obeyed, the Exxon Valdez would not have hit Bligh Reef, would it?

A No.

1 Q So, what you are saying is that because Mr.
2 Cousins did not follow the instructions, or did
3 not make sure that his orders were being obeyed,
4 the grounding is Cousins' fault?

5 A Yes, ma'am.

6 Q And based upon your testimony from last week,
7 in your opinion, Captain Hazelwood is not at
8 fault at all?

9 A No, ma'am.

10 Q All right. Now...

11 (Pause)

12 (1905)

13 Okay, sir, I'm showing you what's been marked
14 as Plaintiff's Exhibit 26. This, again, is a
15 portion of a navigational chart for Prince
16 William -- or, a navigational chart for a portion
17 of Prince William Sound, is that right?

18 A That's right.

19 Q And if I were to tell you that when Mr.
20 Cousins testified in this case he drew this green
21 line to indicate the edge -- edges, at least, of
22 the ice as he saw it. This little green line
23 just indicates from the edge of the ice to the
24 reef. But, the rest of the green indicates the
25 edge of the ice, okay?

1 A (No audible response.)
2 Q Now, excuse me. Let's assume for a moment
3 that you are the captain of the Exxon Valdez and
4 it's late evening, March 23rd, 1989. It's dark,
5 but the visibility is still a couple of miles.
6 And, you were told by one of your mates on watch
7 that there does appear from the radar to be ice
8 involved in the traffic lanes -- northbound and
9 southbound -- and you decide that you're going to
10 maneuver through the ice...
11 A Through the ice...
12 Q ...for some reason.
13 A ...at night.
14 Q Yeah. Just assume for this hypothetical that
15 you're going to maneuver through the ice. Okay?
16 If you are going to maneuver through the ice,
17 you're gonna slow down, aren't you?
18 A Yes, ma'am.
19 Q All right. And let's assume that you get
20 right to the leading edge of the ice. You would
21 be on the bridge at that point, would you not?
22 A Yes, ma'am.
23 Q And let's assume that you are in the middle of
24 it, dodging icebergs, you'd be on the bridge,
25 would you not?

1 A Yes, ma'am.

2 Q And let's assume you're getting close to the
3 end, but you're not completely through it, you'd
4 be on the bridge, wouldn't you?

5 A Yes, ma'am.

6 Q All right. Well, let's assume the same facts.
7 First, you're the captain of the Exxon Valdez;
8 second, it's late evening, March 23rd; third,
9 it's dark but visibility is a couple of miles;
10 and fourth, you're advised of the ice.

11 Let's add to those facts that you've --
12 instead of decide to go through it, decided to
13 maneuver around the ice. Let's also assume that
14 you're going 11.75 knots, but you have started
15 the load program up, which eventually will get
16 you to sea speed in about 40 minutes, is that
17 right?

18 A Yes, ma'am.

19 Q Okay. And you put in load program up, because
20 I think as you said Friday, you're not being paid
21 to lollygag around...

22 A Right.

23 Q Is that right? Okay.

24 Assume, also, that you're on a course heading
25 of 180 degrees. Assume that you are on autopilot

1 at the time you make this decision. Assume
2 that...

3 A Where at -- can I -- where am I when I make
4 this decision that you're addressing?

5 Q Why don't you wait? I've got a bunch of facts
6 here. Okay.

7 A All right.

8 Q Assume that the look out is on the bridge
9 wing, rather than on the bow, because it's so
10 dark. Assume your draft is 56 feet. Assume
11 you're carrying 1.2 million barrels of crude oil.
12 And assume you're navigating a vessel worth 150
13 million dollars.

14 Okay? Those are the assumed facts. Do you
15 understand all the assumed facts. I can go over
16 them again, if you like.

17 A Yeah. Let's go over it one more time.

18 Q Okay. You're the captain of the Exxon Valdez.
19 It's evening -- late evening March 23rd, dark,
20 but visibility is some miles. Ice in both lanes.
21 You've decided to maneuver around the ice.
22 You're going 11.75 knots, but load program up has
23 started.

24 You are on a course heading of 180 degrees.
25 You are on autopilot. The look out is on the

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bridge wing, rather than the bow, because it's so dark. Your draft is 56 feet. You're carrying 1.2 million barrels of crude oil and you're navigating a vessel worth 150 million dollars.

Okay. You understand those...

A Right.

Q ...facts. Any question about those assumed facts?

A No.

Q Is there anything else that you feel that you need to know? Any other facts that you need to assume?

A At this point, no.

Q Now, all right. Assume one more fact. That is, that you're about two tenths of a mile north of where you're going to be one mile abeam of Busby. So, you're up a little bit farther north. All right. Assume you're in that position.

In that position, given all the facts that I've given you, you would be on the bridge, wouldn't you?

A Yes, ma'am.

Q And assuming you are now abeam, about to make a turn, you would be on the bridge, would you not?

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A If I hadn't instructed the mate, I would be on the bridge.

Q You would be on the bridge, is that correct...

A Yes, ma'am.

Q ...during this maneuver?

A Yes, ma'am.

Q But, assume for some reason the turn was not executed and you are in the red sector. You would be on the bridge, wouldn't you?

A Yes, ma'am.

Q And assume that you're further into the red sector, but now, a turn is finally being made. You would be on the bridge, wouldn't you?

A Yes, ma'am.

Q And just before it hit Bligh Reef, you would be on the bridge, wouldn't you?

A Yes, ma'am.

Q All right. Now, another thing that you testified about on Friday was your opinion with respect to what Captain Hazelwood was doing after he restarted the engines, is that correct?

A What's that?

Q You gave some opinions as to what Captain Hazelwood did after the grounding, is that correct?

1 A Yes, ma'am.

2 Q All right. Once the Exxon Valdez was, in
3 fact, grounded, and after Captain Hazelwood
4 returned to the bridge. And after he shut down
5 the engines, he eventually decided to restart the
6 engines, is that correct?

7 A Yes, ma'am.

8 Q And in your opinion after restarting the
9 engines -- in your opinion, he was trying to stay
10 on the reef, is that correct?

11 A Yes, ma'am.

12 Q And that opinion that he was trying to stay on
13 the reef is based upon the fact that he was using
14 the engine fully forward, and the fact that the
15 tide was rising, is that correct?

16 A Yes, ma'am.

17 Q And you really don't know what his purpose was
18 in turning the rudder back and forth, do you?

19 A Well, I've since found out. But at the time I
20 testified I didn't know his purpose.

21 Q And, in fact, when you talked to me about it,
22 you said you couldn't figure out why he was doing
23 that?

24 A Right. I wasn't there. So, I don't.

25 Q Yeah. So, that wasn't a factor in your

1 decision that he was getting on the reef?

2 A No.

3 Q It was going ahead and the tide coming in?

4 A Right.

5 Q All right. Now, let's assume that Captain
6 Hazelwood had all the information -- at the time
7 he decided to restart the engines Captain
8 Hazelwood had all the information that you know
9 he had, including information from Mr. Kunkel.
10 Let's also assume that he did not know that he
11 could not get off the reef. And let's assume
12 that he decided he wanted to try to get off the
13 reef anyway. And he decided that he would try to
14 get off the reef by going forward, rather than
15 astern.

16 In your opinion, that would have been the
17 wrong thing to do, is that right?

18 A Yes, ma'am.

19 Q In fact, Captain Hazelwood could have caused
20 more damage to his vessel by doing that, couldn't
21 he?

22 A Yes, ma'am.

23 Q And, assuming that he had been able to get off
24 the reef, and assuming that it did not cap --
25 the vessel did not capsize, you would not have

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wanted to be floating around in that vessel in the condition it was in, would you?

A I have no problem with that.

Q You have no problem with it floating...

A I would -- best be on there when it's intact, but I have no problem with that thing floating around the way it was.

Q All right. So, you -- you recall telling me that you wouldn't want to be -- you, personally, would not want to be floating around Prince William Sound in a vessel in that condition, is that correct?

A Nobody would want to be that way.

Q All right.

THE COURT: Ms. Henry, we've been going about an hour and a half and you're not -- it doesn't sound like you're just about done, so why don't we take our break now?

MS. HENRY: That's fine. Thank you.

THE COURT: Don't discuss the matter, ladies and gentlemen, among yourselves, or with any other person. Do not form or express any opinions. We'll call you back after our...

THE CLERK: Please rise. Court stands in recess subject to call.

1 (2409)

2 (Off record - 10:05 a.m.)

3 (On record - 10:20 a.m.)

4 (Jury present)

5 THE COURT: You may resume.

6 Q (Captain Walker by Ms. Henry:) Sir, do you
7 know that most of the federal regulations,
8 including Coast Guard regulations are in books
9 that are called the CFR?

10 A Yes, ma'am.

11 Q I'm showing you what's been admitted as -- and
12 marked as Plaintiff's Exhibit 56, and admitted,
13 which one of the earlier witnesses testified were
14 -- showed us some books that were on a bookshelf
15 on the Exxon Valdez. Do you see any of the CFRs
16 on that bookshelf?

17 A Yes, ma'am.

18 Q Now, I believe on direct you stated that you
19 are charging \$500 a day for your services. Is
20 that right?

21 A Yes, ma'am.

22 Q And that includes the time you spent in San
23 Diego?

24 A Yes, ma'am.

25 Q And the time you spent reviewing documents and

1 transcripts?
2 A Yes, ma'am.
3 Q And, also, the time that you spend up here in
4 Anchorage?
5 A Yes, ma'am.
6 Q Have you actually billed Mr. Chalos, yet?
7 A No. I haven't.
8 Q Do you know approximately how much your total
9 expenses are going to -- your charges and
10 expenses are going to be?
11 A Including today it'll be about \$6500.
12 Q And does that include expenses, or is that
13 just...
14 A No. The expenses were paid. They were
15 already paid out.
16 Q All right. So, the \$6500 is just your fee?
17 A That's profit, yes, ma'am.
18 Q And then, he's also paying your expenses, is
19 that correct?
20 A Yes, ma'am.
21 Q On top of the \$6500?
22 A I don't even see the expenses.
23 Q Now, I'm trying to find where I stopped at the
24 break.
25 All right. We were talking before the break

1 about your opinion that Captain Hazelwood was
2 trying to stay on the reef, instead of getting
3 off the reef.

4 If, in your opinion, Captain Hazelwood had
5 really wanted to try to get off the reef, I
6 believe you stated that he would have ordered the
7 engines full astern, or backwards, right?

8 A Yes, ma'am.

9 Q And I think that's because -- I think you
10 testified on Friday that's because, "He would
11 have known he had come from deep water to shallow
12 water by going forward." Is that correct?

13 A Yes, ma'am.

14 Q That's assuming that that's how the Exxon
15 Valdez actually grounded, going from deep water
16 forward to shallow water...

17 A Yes, ma'am.

18 Q ...is that correct? Sort of like a nose into
19 the grounding?

20 A Yes, ma'am.

21 Q Now, assuming, however, that the grounding in
22 this case occurred with the bow not going exactly
23 straight forward, but starting a turn when it
24 grounded, okay?

25 A Yes, ma'am.

1 Q And assume that it wasn't, in fact, grounded
2 on the bow, but rather midships, and more towards
3 the starboard side, okay?
4 A Yes, ma'am.
5 Q Additionally, assume that the charts -- once
6 he got a fix of his position at the grounding,
7 the charts showed -- the charts that he had
8 available showed that there was only five fathoms
9 behind him, okay?
10 And, finally, assume that Captain Hazelwood
11 thought he was hung up on the stern.
12 In that situation, it would not make much
13 sense to go astern, would it?
14 A Not -- I don't know what you're driving at.
15 Q Assuming that he is hung up astern, and that
16 he knows he's only got five fathoms behind him,
17 it wouldn't make much sense to go backwards,
18 would it?
19 A No.
20 Q 'Cause he'd do more damage, wouldn't he?
21 A Probably.
22 Q Create more risk, wouldn't he?
23 A Yes, ma'am.
24 Q Now, assuming that you were on the bridge, not
25 Captain Hazelwood, and you wanted to stay on the

1 reef, isn't it true that you would have either,
2 one, done nothing -- is that one of the
3 alternatives?

4 A That's one of the options.

5 Q Or, with the tide coming in, you might have
6 gone ahead a little and maybe done a slight
7 rudder turn, is that correct?

8 A I don't know about the rudder, but I would
9 have come ahead on the engines.

10 Q All right. So, you would have gone -- with
11 the tide coming in you would -- you might have
12 gone ahead a bit?

13 A Yes, ma'am.

14 Q And if you did go ahead a bit, you would have
15 gone slow or half ahead, is that correct?

16 A That -- I would have gone ahead. I don't know
17 what I would have done. Probably slow, or half.

18 Q You would not have gone full ahead, would you?

19 A I could have. I don't see any reason why I
20 wouldn't, but I...

21 Q All right.

22 A I don't think I would have.

23 Q You don't think you would have?

24 A No.

25 Q Do you think you probably would have gone

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slow, or half ahead...

A Yeah.

Q ...is that right?

All right. I'd like to go back to your opinion just for a moment that Captain Hazelwood was trying to stay on the reef.

Your opinion ignores what he told other people that night, doesn't it?

A No.

Q It ignores what he told Commander McCall that night, doesn't it?

A No.

Q I'm showing you what's been marked as Court's Exhibit 2, which has been identified as a transcript of radio traffic between the Exxon Valdez and the Coast Guard going specifically to a conversation between Captain Hazelwood and the Captain of the Port, Commander McCall.

I'd like you to read the conversations, including where Captain Hazelwood said and what Commander McCall said in response, starting with Captain McCall identifying himself.

Why don't you go ahead?

A All right. "This is the Captain of the Port, Commander McCall. Good evening. Do you have any

1 more of an estimate as to what your situation at
2 this time, over?"

3 "Not at the moment, Steve. Joe Hazelwood,
4 here, or -- uh, a little problem here with the
5 third mate, but we're working our way off the
6 reef. We've -- uh, the vessel's been hulled and
7 we're ascertaining -- right now we're trying to
8 just get her off the reef, and, uh, we'll get
9 back to you as soon as we can, over."

10 Q Before you continue, and I will let you
11 continued, in that conversation, Captain
12 Hazelwood says, "...we are working our way off
13 the reef," is that correct?

14 A That's correct.

15 Q And he is also saying, "...right now, we're
16 trying to just get her off the reef," is that
17 correct?

18 A That's correct.

19 Q Now, that doesn't mean get her on the reef,
20 does it?

21 A That's correct.

22 Q And it doesn't mean we are working our way to
23 get her on the reef, does it?

24 A That's correct.

25 Q All right. Why don't you continue with

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Captain McCall -- or, Commander McCall's response?

A "Roger on that. Yeah. I've got -- we've got all our plan mechanisms in way to give you what assistance we can. You know, take it slow and easy, and you know I'm telling you the obvious, but take it slow and easy and we're getting help out as fast as we can, and I'd appreciate when you get around, if you can give me a fairly good -- if you can give me an update, whenever, as to the general location where you suspect it might be, and of the stability info, over."

"Okay. We're, uh, pretty good shape right now, stability-wise. We're, uh, just trying to extract her off the, uh, shoal here. And you can probably see me on your radar. And, uh, once we get under way I'll let you know, do another, uh, damage control assessment, over."

Q All right. And, again, I'll let you continue, but before you do, Captain Hazelwood tells Cdr McCall, "We're just trying to extract here off the uh, shoal here," is that correct?

A That's correct.

Q It doesn't say we're trying to put her on the shoal here, does it?

1 A That's correct.

2 Q Why don't you continue with Commander McCall's
3 response?

4 A "Roger. Yeah. And let me know again before
5 you make any drastic attempt to get under way.
6 You make sure you don't start doing any ripping.
7 You've got a rising tide. You've got about
8 another -- about an hour and a half worth of tide
9 in your favor. Once you hit that max, I wouldn't
10 recommend doing much wiggling, over?"

11 "Okay. Yeah. I think it's -- major damage
12 has kind of been done. We kind of rock and
13 rolled over it and, uh, we're just kind of hung
14 up in the stern here. We're just, uh -- we'll
15 drift over it. I'll get back to you. We'll be
16 standing by 1316. Exxon Valdez clear."

17 Q All right. And Captain Hazelwood in that last
18 conversation says, "We're just, uh, we'll drift
19 over it."

20 He's referring to the reef, is that correct?

21 A That's correct.

22 Q And he's not saying we're going to drift on
23 it, does he?

24 A No. He doesn't.

25 Q Your opinion is that Captain Hazelwood was

1 trying to stay on the reef also ignores what he
2 told Trooper Fox, is that correct?
3 A I don't know what he told Trooper Fox.
4 Q Okay. I assume then, Mr. Chalos did not give
5 you a transcript of the defendant's -- of Captain
6 Hazelwood's interview with Mr. Delozier and
7 Trooper Fox, is that right?
8 A That's correct.
9 Q He did not give you a copy of that?
10 A No.
11 Q I'm showing you what's been marked as Court's
12 Exhibit 4 referring to specifically, I believe,
13 page 5. Have you seen those?
14 A Oh, I've seen this paper before?
15 Q Oh, you have?
16 A Yes, ma'am.
17 Q So...
18 A I didn't know who it was, but I'd seen this.
19 Q Oh. I'm sorry. Okay. So, you have read that
20 transcript?
21 A Yes. Uh-huh (affirmative). This page. Just
22 the page.
23 Q Oh, just that one page?
24 A Right.
25 Q Okay. If you look at the front of it, does it

1 indicate at the front that MD is Mark Delozier,
2 MF is Mike -- Trooper Mike Fox, and JH is Joseph
3 Hazelwood?

4 A Yes, ma'am.

5 Q Okay. So, does it appear that it's an
6 interview with Mr. Delozier, Trooper Fox and
7 Captain Hazelwood?

8 A Yes. And somebody else, too. An
9 unidentified...

10 Q An unidentified male? Okay.

11 Going now to page 5 of that interview, why
12 don't you start with Mr. Delozier's question as
13 to what he did when he arrived on the bridge, and
14 then read Captain Hazelwood's response?

15 A Okay. "All right. All right. When you
16 arrived on the bridge did you do anything else at
17 that time?"

18 "Oh, I was -- I tried the rudder and the
19 engines for a few minutes to see if we could
20 extract it from the situation. But, then, I got
21 my faculties about me. I was little upset, of
22 course, but then I thought about it and driving
23 her off might not be the best way to go, because
24 it'd just exacerbate the damage. So, I just
25 stopped the engines."

1 Q All right. So, he tells Mr. Delozier and
2 Trooper Fox that initially he tried the rudder
3 and engines for a few minutes to "...see if we
4 could extract it from the situation." Is that
5 correct?
6 A That's correct.
7 Q And he does not say, "...see if we could put
8 it on the reef," does he?
9 A No. He doesn't.
10 Q Then, he says later on he decides that driving
11 her off is not going to be a good idea, is that
12 correct?
13 A That's correct.
14 (Pause)
15 Q Sir, I'll show you what's been marked as
16 State's Exhibit for Identification 175. I assume
17 you're not familiar with that document, are you?
18 A No. I'm not.
19 Q All right. At the top of that document does
20 it refer to an investigative report?
21 A Yes, ma'am.
22 Q By who?
23 A Jim Stogsdill.
24 Q Okay. And in the first paragraph, if you want
25 to just read that to yourself, you may do that...

1 (3195)

2 MR. CHALOS: Objection on...

3 Q I thought you'd recognize this document.

4 MR. CHALOS: ...hearsay.

5 MS. HENRY: I'm asking him to read it to
6 himself.

7 THE COURT: Did you understand the question
8 before you?

9 MR. CHALOS: No. I didn't. I didn't realize
10 that he was told to read it to himself. I withdraw it.

11 Q (Captain Walker by Ms. Henry:) Does that help
12 you figure out what this document pertains to?

13 A I take it this was on a speaker phone?

14 Q I believe it says so, yes. Well, if he
15 doesn't -- yes. Assume it does.

16 A All these people right here were on one side
17 and Mr. Paul Myers was on the other side?

18 Q Yes. You can assume that.

19 A Okay.

20 Q Now, does that appear to be a summary of a
21 telephonic interview with Mr. Paul Myers?

22 MR. CHALOS: Your Honor, I object. If the
23 witness doesn't recognize this document he shouldn't
24 speculate.

25 THE COURT: Do you recognize the document?

1 A No, sir. I've never seen it before.

2 THE COURT: I don't understand this line of
3 inquiry?

4 MS. HENRY: I'll ask him another question and
5 that'll help Your Honor.

6 THE COURT: One more question.

7 Q (Captain Walker by Ms. Henry:) All right.
8 Now, your opinion that Captain Hazelwood was
9 trying to stay on the reef ignores what Captain
10 Hazelwood told Paul Myers, is that correct?

11 A I don't know. I don't...

12 Q Okay.

13 A All I have is this first paragraph. I don't
14 know what -- who he even -- who Paul Myers is.

15 Q Let's assume that Captain Hazelwood told Mr.
16 Paul Myers, and that Mr. Paul Myers testified in
17 this court, "Hazelwood indicated to me that he
18 thought that he could get the ship off the reef."

19 A When did he indicate that? When did that
20 conversation take place?

21 Q The testimony would be that this conversation
22 took place between 1:30 and 2 a.m. All right?

23 A Okay.

24 Q Now, assuming that Mr. Myers told the truth
25 when he testified that -- in this court --

1 "Hazelwood indicated to me that he thought he
2 could get the ship off the reef," your opinion
3 that Captain Hazelwood was trying to get on the
4 reef does not take into account that comment,
5 does it, to Mr. Myers?

6 A Well, I didn't know of it at the time.

7 Q All right. Well, now you do.

8 A Yes, ma'am, Uh-huh (affirmative).

9 Q Your opinion is still the same, he was trying
10 to get it on the reef, is that correct?

11 A Yes, ma'am.

12 Q So, your opinion ignores the comment he made
13 to Mr. Myers that he thought he could get it off
14 the reef?

15 MR. CHALOS: Your Honor, I object. I think
16 this is a mischaracterization of Mr. Myers' testimony.
17 He gave a long explanation of what he thought Captain
18 Hazelwood was saying. It wasn't just, "I'm trying to
19 get off the reef." He talked about tug boats and
20 salvage, things like that, if I recall the testimony
21 correctly.

22 So, if Ms. Henry's gonna read a portion of his
23 testimony, then I ask that that portion be read in its
24 entirety.

25 THE COURT: I don't believe that's required,

1 Mr. Chalos, (indiscernible - bad recording) question,
2 overruled.
3 Q (Captain Walker by Ms. Henry:) Now that you
4 know what Captain Hazelwood said to Mr. Myers,
5 you still have the opinion that Captain Hazelwood
6 was trying to stay on the reef, is that correct?
7 A I -- let me set the scene straight, now. I
8 assume that Captain Hazelwood is making a
9 telephone conversation to this Mr. Myers at 1:30
10 in the morning on the accident -- on the date of
11 the accident?
12 Q You can assume their conversation occurred. I
13 believe Mr. Myers actually called, but...
14 A Oh...
15 Q ...at any rate. There's a conversation over
16 the...
17 A Over the satellite comm...
18 Q ...Com sat, or whatever, yes.
19 A Okay.
20 Q Between Captain Hazelwood and Mr. Myers?
21 A Uh-huh (affirmative).
22 Q Okay?
23 A At about 1:30 in the morning.
24 Q And assume that Captain Hazelwood said that he
25 thought he could get the ship off the reef. Now,

1 that still doesn't change your opinion that he
2 was trying to keep it on the reef, does it?

3 A No, ma'am.

4 Q Assume that the conversation took place a
5 little bit later in the morning, say after he had
6 stopped the engines. Say about 10 minutes after
7 he had stopped the engines. Does that change
8 your opinion?

9 A No. It doesn't.

10 Q Now, of course, all of this discussion about
11 whether Captain Hazelwood was trying to get on
12 the reef, or trying to get off the reef would be
13 moved if Captain Hazelwood's vessel never struck
14 the reef, is that correct?

15 A That's correct.

16 Q Because, isn't it true that if Captain
17 Hazelwood had been on the bridge, where he was
18 supposed to be on March 23rd and March 24th, the
19 Exxon Valdez would never have hit Bligh Reef,
20 would it?

21 (3490)

22 MR. CHALOS: Objection, Your Honor.
23 Speculation.

24 THE COURT: It's overruled.

25 Q (Captain Walker by Ms. Henry:) It never would

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have hit Bligh Reef, would it?

A Well, ma'am, I disagree with that supposed to be part, but if Captain Hazelwood was on the bridge during those maneuvers, this accident wouldn't have happened.

Q That's all the questions I have, Your Honor.
(3520)

REDIRECT EXAMINATION OF CAPTAIN WALKER

BY MR. CHALOS:

Q Good morning, Captain Walker.

A Good morning.

Q Captain, do the captains of ships such as the Exxon Valdez stand a regular watch?

A No. They don't.

Q They come and go to the bridge as deemed by the circumstances, and in their own discretion, isn't that correct?

A That's correct.

Q I'd like to talk for a minute about the 14 hours that you were off the bridge that time.

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

Q (Captain Walker by Mr. Chalos:) Now, your testimony is that when you left the bridge you left instructions with the third mate as best as

1 you can recall to stay in this particular box?

2 A Yes, ma'am -- yes, sir.

3 Q And at that time, you said the wind was
4 blowin' pretty hard?

5 A Very hard.

6 Q Okay. And you said you drew the box on the
7 chart for him and told him to stay within this
8 particular area.

9 Now, you left for what turned out to be 14
10 hours, right?

11 A Right.

12 Q There had been three watch changes in that 14
13 hours, were there not?

14 A Probably four, I would -- I think he was into
15 -- about more than halfway into his watch...

16 Q Okay.

17 A ...the first one.

18 Q So, you don't know what that mate told the
19 other mate that came up on watch as to what your
20 instructions were?

21 A That's what scares me.

22 Q All right. And, then, you don't know what
23 that particular mate said to the third mate...

24 A Right.

25 Q ...meaning the third person that came up on

1 watch. So, your orders were passed down at least
2 three, possibly four times?
3 A Well, there were only three fellows.
4 Q Okay. At least three times. Okay.
5 Now, if, for instance, the vessel is coming in
6 this direction with the wind blowing, you were
7 down below sleeping, if the mate doesn't make a
8 turn when he's supposed to, you're gonna wind up
9 on Hinchinbrook Island?
10 A That's correct.
11 Q If the mate goes this way, doesn't make the
12 turn as he's supposed to, you're gonna wind up up
13 here at Knowles Head.
14 A That's correct.
15 Q All right. If the mate doesn't turn when he
16 comes in here, you could wind up over here by
17 Eleanor Island.
18 A That's correct.
19 Q The fact of the matter is anything could have
20 happened while you were off the bridge?
21 A That's correct.
22 Q And but for the grace of God, you might be
23 sitting here, right...
24 A You bet.
25 Q ...in the defendant's chair?

1 A Uh-huh (affirmative).
2 Q You were loaded at the time, were you not?
3 Your vessel was loaded?
4 A Fully loaded.
5 Q Now, when you gave the mate the orders that
6 you gave him, and left the bridge, you believed
7 that he was gonna carry them on, did you not?
8 A I did.
9 Q And if you were below and the mate said to
10 you, "Captain, I've just come to the corner of
11 the box. I'm starting my turn to the north," or
12 to the south, depending on which way he was
13 turning, you would believe that he did that would
14 you not?
15 A Yes.
16 MS. HENRY: Objection, calls for facts not in
17 evidence. He did not receive any calls.
18 MR. CHALOS: I'll withdraw the question.
19 THE COURT: Okay. It's just hypothetical
20 question (indiscernible - bad recording).
21 MR. CHALOS: Yes.
22 THE COURT: I'll let you ask it.
23 Q (Captain Walker by Mr. Chalos:) Now, when you
24 told the third mate to make at least four turns
25 into this box...

1 A Well, my intention was for him to just go back
2 and forth. Just turn the vessel 180 degrees and
3 come back.

4 Q Okay. So, he had to make at least two course
5 changes...

6 A Well, depends on how long it took him to get
7 across the box. She was stopped, it was just --
8 the wind was just pushing her.

9 Q Okay. You fully expected that he would carry
10 those orders out, did you not?

11 A Yes.

12 Q And you fully expected the third mate to be
13 capable of turning the vessel around 180 degrees,
14 did you not?

15 A Yes.

16 Q Third mates are qualified to do that by their
17 -- the license that they're issued, are they not?

18 A Surely.

19 Q And the training that they might have?

20 A Sure.

21 Q Now, Mr. -- or, I'm sorry. Ms. Henry said to
22 you that when the captain left the bridge, he was
23 steering course 180 that would bring him towards
24 Bligh Reef.

25 A Okay.

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Q You remember that?

A Uh-huh (affirmative).

Q Okay. When you were coming out of the Port of Valdez, you're steering a course of about 270?

A Uh-huh (affirmative).

Q If you don't make the course change at some point, you're gonna wind up on the other end, right?

A That's correct.

Q You're gonna wind up on the rocks?

A Right.

Q Okay. Similarly, when you're steering down the Valdez Arm...

A Uh-huh (affirmative).

Q ...at course 219, that's the recommended course?

A Right.

Q If you don't change course at some point, you're gonna wind up over here at Naked Island, are you not?

A That's correct.

Q You're gonna wind up on the rocks.

A Right.

Q The point is that every course is gonna take you to land at some point or another.

1 A That's...

2 MS. HENRY: Objection. Leading.

3 A ...correct.

4 Q (Captain Walker by Mr. Chalos:) Unless
5 there's a course change?

6 THE COURT: Objection sustained.

7 MR. CHALOS: I beg your pardon.

8 THE COURT: No more leading questions.

9 MR. CHALOS: Okay.

10 (Pause)

11 Q (Captain Walker by Mr. Chalos:) Now, Captain
12 Walker, you mentioned that under certain
13 circumstances that you stay on the bridge in
14 Prince William Sound, is that correct?

15 A That's correct.

16 Q Is it your preference to stay on the bridge?
17 Is that a personal preference of yours?

18 A You mean -- at what point of time in the
19 transit?

20 Q At any -- well, do you stay on the bridge the
21 entire transit when you were sailing up there?

22 A You mean, from the dock all the way to
23 Hinchinbrook?

24 Q Yes.

25 A No, Uh-uh (negative).

1 Q Have you left the bridge on Prince William
2 Sound?
3 A Yes. I have.
4 Q Is that a practice that was common up there?
5 Captains leaving the bridge?
6 MS. HENRY: Objection. Beyond the scope --
7 foundation.
8 THE COURT: You can lay a foundation...
9 MR. CHALOS: I'll try.
10 THE COURT: ...on your next question.
11 Objection sustained.
12 Q (Captain Walker by Mr. Chalos:) Do you --
13 well, I'll withdraw the question, Your Honor.
14 You, yourself, have left the bridge in Prince
15 William Sound?
16 A While a pilot was on board, yeah. Uh-huh
17 (affirmative).
18 Q Have you left the bridge at other times?
19 A Only that one time that -- for the 14 hours.
20 Q Now, would you -- would you have any
21 hesitation in leaving the bridge if you felt it
22 necessary in Prince William Sound?
23 A No.
24 Q What would be the criterion that you would use
25 before you would leave the bridge?

1 A There'd be a million things that could come up
2 that would require my attention somewhere else.
3 And seeing as how it's in wide open waters, I
4 wouldn't hesitate to leave the mate on watch,
5 "Hey, call me if you need me," and go down and
6 take care of the matter.

7 Q Would you knowledge of a particular third mate
8 play any -- or any mate, play any role in whether
9 you left the bridge or not?

10 A Oh, yeah.

11 Q And if you felt comfortable with the mate,
12 would you leave the bridge...

13 A Sure. Sure.

14 (Pause)

15 Q Now, we spoke a little bit about Mr. Cousins.
16 You've had an opportunity to review his
17 testimony?

18 A Yes. I have.

19 Q And you had the opportunity to review other
20 people's testimony that spoke about Mr. Cousins?

21 A Yes.

22 Q Do you have an opinion as to his
23 qualifications and abilities?

24 A Well, the Coast Guard says he's competent?

25 Q As a second mate?

1 A As a second mate.

2 Mr. Kunkel had called him -- he used some
3 superlative word, or -- I forget the exact word
4 that he used, but he had high praise for him.
5 And, of course, I haven't reviewed any testimony
6 from what Captain Hazelwood thought, personally.

7 Q Mr. Cousins also had experience steering, did
8 he not?

9 A Yes. He did.

10 Q Isn't that what you read?

11 A Yes. Uh-huh (affirmative).

12 Q Do you remember how long he was an AB?

13 A I think somewhere in the neighborhood of about
14 10 years.

15 Q Now, sir, I'd like to speak a little bit about
16 your résumé that was referred to?

17 A Uh-huh (affirmative).

18 Q Did anyone ask you to write anything in
19 particular in that résumé?

20 A No.

21 Q Were you instructed to write the last
22 paragraph that Ms. Henry referred to?

23 A Not at all.

24 Q Okay. You mention Exxon in the last
25 paragraph. Why did you mention Exxon?

1 A Well, because I'd received several
2 commendations from them and I thought that was
3 important on qualifying me as a capable master
4 mariner.

5 Q Now, you didn't work for Exxon as an employee,
6 did you?

7 A No.

8 Q How -- what was your relationship with them?

9 A I worked on a ship that was chartered to Exxon
10 and I -- being either master or chief engineer,
11 they required the company to get pre-approval on
12 who they put on those ships as master and chief
13 engineer. In other words, they wanted a say in
14 the matter. They just didn't want any person to
15 be master or chief engineer.

16 Q When was the last time your vessel was
17 chartered to Exxon...

18 A We were...

19 Q ...when you were on as captain?

20 A Right -- right as soon as I got off. We were
21 still in...

22 Q In 1985?

23 A Right.

24 Q And how long had you been on charter to Exxon
25 as master?

1 A Okay. On the Exxon -- I mean, on the Bay
2 Ridge, we were chartered from '82 to -- we had a
3 three year charter on that one. And, then, on
4 the New York, previous to that, I'd also been on
5 an Exxon charter once before. So, I think that's
6 where they knew me from when they got around to
7 the Bay Ridge, they just pre-approved me.

8 Q Okay. Now, you spoke about how different
9 ships react differently, depending on the load,
10 the type of engine, the speed, the rudder
11 applied, is that correct?

12 (Tape: C-3669)

13 A The same ship will act differently in
14 different trims, you might say.

15 Q Now, as far as the actions of the captain in a
16 particular situation, is there much of a
17 difference with respect to a ship that's let's
18 say 220,000 tons or 250,000 tons and one that's
19 209,000 tons?

20 A No, they're very similar in size. Probably
21 the automation, maybe how much equipment on the
22 bridge he has -- he had far more equipment than
23 we had on our bridge.

24 Q So when you were asked to critique Captain
25 Hazelwood's actions, you're speaking as a master

1 who's been in the area, has been on ships the
2 size of the Exxon Valdez and larger. And you're
3 speaking about what a captain would do, not what
4 his ship might do?

5 A Yes. I've walked several thousand miles in
6 Captain Hazelwood's shoes.

7 Q Just jumping around a little bit, Ms. Henry
8 asked you about the sailing board and she asked
9 you if the captain was off, if he wanted to know
10 the sailing time, all he had to do was call. In
11 your experience, is there any particular reason
12 to call once you know what the sailing time is
13 when you leave the ship?

14 A No. What we do is we post two different
15 kinds of boards. It was my custom to do it and
16 the union required it. But at first you posted
17 an estimated sailing board and that was your best
18 guess when you first got there if we take this
19 amount of time with the ballast and this amount
20 of time with cargo, this is about what time we're
21 going to sail.

22 Eight hours before you sail, you post a
23 permanent board and that one is -- you can sail
24 one hour before that but you never change the
25 board. You leave it at that but the union says

1 that they have to be on board one hour -- the
2 crew has to be on board one hour before sailing
3 and that gives the mate -- in case things don't
4 really go the way he wants to, in fact they go
5 better -- that he has that latitude to sail up to
6 one hour before the sailing board and not have to
7 pay for the crew being stranded if they don't
8 make it back.

9 Q Well, in this particular case, the evidence is
10 when Captain Hazelwood left the ship, the sailing
11 board was at 2200 or at 10 p.m. Did you read
12 anything that would lead you to believe that
13 Captain Hazelwood should have checked to make
14 sure that it wasn't moved up or that he had some
15 indication that the sailing board would be moved
16 up?

17 Q No, no indication.

18 MS. HENRY: Objection, Your Honor. It states
19 facts not in evidence. The sailing board was 9 p.m.,
20 not 10 p.m.

21 THE COURT: Mr. Chalos?

22 MR. CHALOS: Your Honor, I think the testimony
23 was that it was set at 9 o'clock. When Captain
24 Hazelwood got to the agent's office, it had been
25 changed to 10 o'clock and he was told then. I think

1 that's what the testimony has been.
2 THE COURT: I don't recall specifically. I'm
3 going to overrule the objection and the witness can
4 answer.
5 MR. CHALOS: I think he's already answered.
6 THE COURT: I didn't hear the answer.
7 A I don't remember the question.
8 Q (Mr. Walker by Mr. Chalos:) The question was
9 did you read anything that would lead you to
10 believe that Captain Hazelwood knew that the
11 sailing board was moved up to 9 o'clock from 10
12 o'clock?
13 A No.
14 Q Now, I'd like to speak to you a little bit
15 about the maneuvers that the ARCO Juneau made,
16 Captain Knowlton and you stated that you believe
17 that his maneuver was risky. Would you tell us
18 why that was your opinion?
19 A Because he -- I really hate to, you know,
20 pass judgment on some other master's, you know,
21 what he did...
22 Q Why is that?
23 A Well, I don't like to be a Monday morning
24 quarterback, but I...
25 Q Well, using hindsight, why do you believe that

1 Captain Knowlton's maneuver was risky?

2 A Well, he should have approached that reef at a
3 better angle.

4 Q In what way?

5 A Well, when he -- he was headed directly for
6 that reef and he got really too close for comfort
7 for me anyway, before he started his turn. If he
8 would have done like Captain Hazelwood and
9 started further back to line himself up, he would
10 have approached at a much shallower angle and
11 have been in a whole lot better position.

12 Q Well, how much of a course change did Captain
13 Knowlton have to make in order to maneuver around
14 Bligh Reef?

15 A Well, if he was on 175 and he wanted to, say
16 come to 225 or I don't know what course change he
17 made, that would be a 50 degree course change at
18 the very minimum that I see there.

19 Q And what kind of course change did Captain
20 Hazelwood want to make?

21 A Well, I think Captain Hazelwood probably had
22 about...

23 MS. HENRY: Objection. Calls for speculation.

24 THE COURT: He can give his opinion. Just
25 his opinion. It's not based on what he's heard from

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anybody else.

Q In your opinion, how much of a course change would Captain Hazelwood's ship have to make to do what Captain Hazelwood would want?

MS. HENRY: Objection again as to what Captain Hazelwood would want. That's speculation.

MR. CHALOS: Well, I'll rephrase...

THE COURT: You're going to have to rephrase your question. Objection sustained.

Q In your...

MR. CHALOS: I'll withdraw the last question. I'll rephrase it.

Q (Mr. Walker by Mr. Chalos:) In your opinion, what type of course change would the Exxon Valdez have to make in order at Busby -- yes, abeam of Busby in order to get back into the shipping lanes -- into the TSS lanes?

A What type of course change or quantitative -- do you want a quantitative number?

Q Yes.

A Well, he was heading at 180 and just by eye, maybe 220 -- I'll put him on the same course, 225. He only had to make a 45 degree course change.

Q And what would have been the difference

1 between the two?

2 A Well, the difference is Captain Hazelwood
3 would have passed further away from the -- from -
4 - what do you call it? Bligh Reef.

5 Q Now, do you have any opinion as to the speed
6 that Captain Knowlton was doing at the time he
7 made his maneuver?

8 A He was doing 16 knots.

9 Q When you say it was a risky maneuver, what
10 precisely do you mean?

11 A Well, he got right up close. I mean he's
12 staring it in the face before he made that course
13 change. It was -- he didn't leave any sea room.
14 There was no margin -- I wouldn't say no margin
15 for error but the margin for error was -- it was
16 very tight there.

17 Q How do you compare that maneuver with what
18 Captain Hazelwood intended to do?

19 A Well, again, as I said Fri...

20 MS. HENRY: Objection as to the form of the
21 question, what Captain Hazelwood intended to do is
22 speculation.

23 MR. CHALOS: Your Honor, I think we have
24 plenty of evidence as to what Captain Hazelwood's
25 intent was.

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THE COURT: No sir, the objection is sustained. You'll have to rephrase your question.

MR. CHALOS: All right.

Q (Mr. Walker by Mr. Chalos:) How do you compare that maneuver with the maneuver testified to by the third mate Cousins as to what he was instructed to do?

A Well, the third mate was instructed to turn at Busby Island. When he got abeam of Busby Island then come back into the traffic separation scheme and there was -- Captain Hazelwood left him with ample maneuvering room. I think about 2 1/2 miles versus Captain Knowlton's half a mile. I mean it's obvious who had more sea room -- who had more margin for error. Captain Hazelwood had ample room for error.

Q Now, there's been some testimony that the vessel was one mile off Busby Island light at 2355 heading on course 180. Do you have an opinion as to the amount of room between the vessel and Busby Island light?

A One mile.

Q Do you have any opinion as to whether that's sufficient? Insufficient?

A Oh, that's plenty of room.

1 Q Now, you made a distinction or you attempted
2 -- you started to make a distinction but you were
3 cut off -- between the...

4 MS. HENRY: Objection to the
5 characterization, Your Honor. I was only asking the
6 witness to follow the...

7 MR. CHALOS: I'll rephrase it, Your Honor.

8 THE COURT: Thank you.

9 Q You were distinguishing the difference between
10 Captain Knowlton's maneuver around Bligh Reef and
11 the situation as it exists in the Narrows where
12 there's only a quarter of a mile. In your mind,
13 what is that distinction?

14 A I don't understand what you're...

15 Q Well, you said that the situation in the
16 Narrows was not as risky or was not as -- doesn't
17 contain the risk that Captain Knowlton faced when
18 he was maneuvering a half mile from Bligh Reef.
19 Can you explain that?

20 A Yeah. Well, when you're going through the
21 Narrows, you're running parallel to the shore
22 line. That's a big difference than heading
23 perpendicular to the shore line. There's a big
24 -- I mean if you're a half mile off and you're
25 heading for it versus a half a mile off and

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heading alongside it, that's a vast difference.

Q What about the difference in speed?

A Versus -- 6 knots versus 16 knots. That's -- if you add that to that situation, it even exacerbates the whole thing.

Q Also in the Narrows, you're followed by a tug as well, are you not?

MS. HENRY: Objection. Leading.

THE COURT: Mr. Chalos. Sustained.

MR. CHALOS: All right. I'll rephrase it.

Q What other protection does a vessel going through the Narrows have?

A You have an escort tug.

Q Now, in your opinion, having read the testimony in this particular case and listened to the hypotheticals that were given to you, do you have an opinion as to whether Captain Hazelwood's being off the bridge in the Narrows, in any way contributed to the grounding of this vessel?

A None at all.

Q Now, you mentioned you, yourself, leave the bridge when a pilot is on board. Is that right?

A Occasionally, yes.

Q And you did in the area of the Narrows?

A Oh, most certainly. In the time that I ran

1 there, I've left the bridge probably many times.

2 Q I'd like to speak a little bit about the
3 Vessel Traffic Control Center. You said that
4 you wouldn't use them as a second set of eyes to
5 help you navigate. Is that correct?

6 A Right. I wouldn't depend on them, no.

7 Q Would you depend on them to advise you if your
8 vessel was standing into danger?

9 A I would hope -- that was their sole function
10 up there. Again, I can't repeat that more. I
11 mean they spend 70 million bucks to build that
12 place up there and to keep an eye on these ships
13 and boy, they sure messed up here.

14 Q Well, let me ask you this. Did you, when you
15 were sailing up there in 1985, did you have any
16 reason to believe that their radar couldn't reach
17 down as far as Bligh Reef to monitor you?

18 A No, uh-uh (negative).

19 Q Did they ever tell you, I've lost you on the
20 radar, Captain, north of Bligh Reef?

21 A No.

22 Q Now, Ms. Henry asked you to assume the auto
23 pilot on this vessel was on until one minute
24 after midnight. Based on what you have read in
25 the testimony, do you have -- and the exhibits

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that you reviewed, do you have any reason to believe that this auto pilot was on beyond 2353 -- 11:53 p.m.?

A No, I don't.

Q Do you have any reason to believe that it was on at a minute and a half after midnight?

A No, I think she was just talking hypothetically.

Q Now, do you have an opinion as to whether a ten degree right rudder applied at one and a half minutes after midnight would have cleared Bligh Reef?

A It would have cleared Bligh Reef.

Q And you agree with the testimony that we've had so far that it would have cleared it by at least a half mile?

A Yes, sir.

(0490)

Q Ms. Henry asked you -- gave you some hypotheticals about the ship going at half speed -- or going at 6 knots instead of 11.5 knots. Do you have an opinion as to whether -- let me rephrase that. In your opinion, would there be any reason why the vessel should have been travelling at 6 1/2 knots under the circumstances

1 of this particular night?

2 A None at all.

3 Q When you deviated for ice, what speed were you
4 travelling?

5 A At that point, probably -- well, I -- as soon
6 as the pilot got off, I put her on sea speed and
7 my ship picked up speed a lot faster than Captain
8 Hazelwood's did. It didn't take 40 minutes for
9 them to come up to sea speed.

10 Q And I believe you testified on Friday that
11 your maneuver was very similar to the one that
12 the Exxon Valdez was going to make?

13 A That's correct.

14 Q And was making in terms of 180?

15 A Well, it was close enough for this thing.
16 It's a safe way to go. You make your -- when
17 you're coming out and you drop the pilot off, you
18 make your -- am I going to go through the ice or
19 am I going to go around the ice? You make that
20 decision right there.

21 Q Captain Walker, in your opinion, is the area
22 between Rocky Point and Bligh Reef, the whole
23 area, hazardous?

24 A There's plenty of deep water. As long as
25 you don't run it aground, it's not hazardous.

1 Q Do you consider the maneuver that Captain
2 Hazelwood wanted to make to be a hazardous
3 maneuver?
4 A No. Not at all.
5 Q I'd like to speak a little bit about your
6 experience with ice. You said that you went
7 through the ice once?
8 A Yes.
9 Q What time of day was that? In other words,
10 was it daylight or...
11 A Oh, yeah, it was probably about 2 in the
12 afternoon.
13 Q You had daylight?
14 A Oh, yeah.
15 Q And the two times that you went around ice,
16 when did that take place?
17 A At night.
18 Q Would you ever go through ice at night?
19 A No, not if I could avoid it. If I had to, I
20 had to but I never had to.
21 Q In other words, if you were given a choice at
22 night of going through the ice or going around
23 it, which would you choose?
24 A Always around the ice.
25 Q Now, Ms. Henry handed you a copy of -- let's

1 strike that. Let me rephrase it. You were
2 asked about the transmissions Captain Hazelwood
3 made with the VTC regarding his intentions to
4 leave the traffic lanes?

5 A Yes, uh-huh (affirmative).

6 Q And you said you had no problem with those
7 transmissions?

8 A No, if he forgot. It's just a very minor
9 thing.

10 (0618)

11 Q I'd like to show you what's been marked as
12 Court Exhibit 2. (Pause) I would like you to
13 start from here. Would you read the
14 transmission?

15 MS. HENRY: Your Honor, can I have a page and
16 paragraph seven?

17 MR. CHALOS: It's the first page of two. And
18 second page. This one right here.

19 A All the way down to there?

20 Q Yeah, from here down.

21 MS. HENRY: Your Honor, I would object. This
22 is hearsay unless there's impeachment or refreshing
23 recollection. If it's refreshing, he reads it to
24 himself.

25 MR. CHALOS: The tape is in evidence. This

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is just a transcription of the tape.

MS. HENRY: And I believe the witness just said that he forgot something so I believe the purpose of this would be to refresh his recollection rather than reading it out loud.

THE COURT: What are you going to try and do with this?

MR. CHALOS: I want him to read that and then I want to ask him if his opinion is that these transmissions were proper.

THE COURT: As I understand, this has been played in the form of a tape recording to the jury while they had a chance to read that document.

MS. HENRY: That's correct.

THE COURT: Objection overruled.

Q Sir, you can read it.

A Okay. "I was just about to tell you that judging by our radar, I will probably divert from all the TSS and then end up in the inbound lane if there's no conflicting traffic. Over."

"No reported traffic. I've got the Chevron California one hour out and the ARCO Alaska is right behind them, but they're an hour out from Cape Hinchinbrook. How -- on that? Over."

"That will be fine, yeah. We may end up over

1 in the inbound lane, outbound transit. We'll
2 notify you when we leave the TSS and cross over
3 the separation zone. Over."

4 "Roger. That -- will be waiting your call.
5 Traffic out. Okay. Exxon Valdez over.
6 Standing by 13 and 16."

7 "Valdez traffic. Exxon Valdez. WHCB over. "

8 "Valdez traffic over."

9 "Yeah, at the present time, I'm going to alter
10 my course to 200 and reduce speed to about 12
11 knots to wind my way through the ice and Naked
12 Island ETA might be a little out of whack but
13 once we're clear of the ice out of Columbia Bay,
14 we'll give you another shout. Over."

15 "Roger that, sir. Be awaiting your call.
16 Traffic standing by."

17 Q Okay. Now do you have an opinion as to what
18 Captain Hazelwood is telling the VTC with respect
19 to winding his way through the ice?

20 MR. HENRY: Objection. Calls for speculation
21 as to what he may have intended. What he said speaks
22 for itself in the transcript.

23 MR. CHALOS: Let me withdraw the question.

24 Q Captain Walker, in your opinion, did Captain
25 Hazelwood substantially comply with the

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requirements of notifying VTC of his intentions?

A Substantially, yes.

Q And reading that, do you have an opinion as to whether he was telling them that he would be crossing over into the northbound lane and possibly weaving his way out of that northbound lane?

MS. HENRY: Again. Objection. Calls for speculation if he's talking about what Captain Hazelwood was thinking. If he's talking about what he said, this speaks for itself.

THE COURT: Mr. Chalos?

MR. CHALOS: Your Honor, I'm asking his opinion on reading that, how he would interpret that.

THE COURT: Ask your question again.

Q Captain Walker, do you believe that Captain Hazelwood gave -- based on that transmission, gave VTC sufficient information as to what his intentions -- as to his intention to leave the lanes?

MS. HENRY: Same objection, Your Honor.

THE COURT: Objection overruled.

A Yes. Yes.

Q Do you have any -- in your opinion, do you have any problem with the transmission that he

1 made to the VTC?

2 A No, he forgot to tell them when he left, but
3 that's no -- no big deal.

4 Q Ms. Henry asked you about those periods of
5 time when you dropped the pilot off at Busby in
6 the early days before you had the pilotage.

7 A Yes, uh-huh (affirmative).

8 Q And you said that you were in violation of
9 Coast Guard regulations at that time?

10 A I'm thinking about that now and I think I
11 might have misspoke.

12 Q Why do you say that?

13 A Well, without having the VTS manual in front
14 of me, I believe there's a section in the VTS
15 manual that allows the master to use his own
16 discretion in any situation that he deems --
17 where he has to go out -- violate the rules.

18 Q Why did you drop the pilot off at Busby in
19 those early days?

20 A Well, I took him out the first time at Cape
21 Hinchinbrook and I almost killed him. The seas
22 were bad; they had this pilot boat -- it was an
23 excursion boat out there called the Blue -- Blue
24 Moon or the Blue Goose or something like that and
25 she was definitely not to be out in that weather

1 and in that time. She had huge picture windows
2 on it that -- one little wave would have broken
3 and filled her up with water and in my opinion,
4 that boat was a hazard out there. It was
5 dangerous so I never -- after that, I said forget
6 it. Human life is not worth this little easy
7 passage here. I can make this almost with my
8 eyes closed. So I never took him back out there
9 again.

10 And one time, when I was getting my license,
11 I had to ride the ARC -- not the ARCO, but the
12 Gulf Spirit, sister ship to the one that I was
13 on, a 265,000 ton gulf tanker and I think it was
14 with Captain Cunningham, we went all the way out
15 to Hinchinbrook and I got on that thing and I was
16 afraid for my life -- very afraid for my life.

17 Q Now, you said that you considered the passage
18 from Busby down to Hinchinbrook to be an easy
19 passage.

20 A Busby to Hinchinbrook? Sure.

21 Q I'd like to speak to you a little bit about
22 Exhibit B which is the letter rom Alaska
23 Maritime? I'll hand that to you so you can
24 have it in mind. And you testified that having
25 read that letter, you believe that it was

1 intended for everyone, not just for non-pilotage
2 vessels?

3 A That's correct. I don't see where they would
4 hold...

5 Q Let me ask you. What is the basis for that
6 opinion?

7 A That I don't think that they would hold a
8 vessel with pilotage to a higher standard than
9 somebody without pilotage.

10 Q Well, what do you mean by that?

11 A Well, if I'm the captain of the ship, I have
12 pilotage, what they're telling me -- or what
13 you're trying to say is that as long as I have
14 pilotage, I have to stay on the bridge. Why
15 would they require that of me and not of the guy
16 that doesn't have pilotage? If he doesn't have
17 pilotage, the master doesn't have to be on the
18 bridge, but if I have pilotage, I have to be on
19 the bridge and that's -- this is a -- the Coast
20 Guard's got it so screwed up, it's unbelievable.

21 Q Well, let me ask you this. If you're a non-
22 pilotage vessel according to that letter, you're
23 required to have a two-man watch team from where
24 to where?

25 A From Montague to....

1 MS. HENRY: Objection, Your Honor. This is
2 all leading.
3 THE COURT: From where to where? I don't
4 think that's leading.
5 A Well, it says from Montague to Hinchinbrook.
6 Q Where is Montague in relation to Cape
7 Hinchinbrook? Could you point it out?
8 A Montague is right in here from about -- abeam
9 of Montague to right here.
10 Q So for this area down here, which is well
11 south of Bligh Reef, two men are required to be
12 on the bridge. Is that what the letter says?
13 A That's what they're saying, yeah.
14 Q Okay. Now that letter speaks of the pilot
15 station, does it not?
16 A That's true.
17 Q Where is the pilot station in Prince William
18 Sound?
19 A Rocky Point.
20 Q Which is up here?
21 A Yes, sir.
22 Q So how do you interpret that letter in terms
23 of how far someone without pilotage could go with
24 just one man on the bridge?
25 A All the way from Rocky Point to abeam of

1 Montague.

2 Q So someone without pilotage according to that
3 letter could go from Rocky Point down to Montague
4 with one man on the bridge?

5 A Yes.

6 Q Without pilotage?

7 A Without pilotage.

8 Q And that man doesn't have to be the captain?

9 A No.

10 Q Now what you're -- with respect to the
11 pilotage vessels, what was -- what did you say?
12 That that...

13 A Well, they're holding me to a higher standard.
14 I have to stay up there the whole time is what
15 they're doing. That's what they're saying.

16 Q In other words, if you read the letter as
17 suggested by Ms. Henry, someone without pilotage
18 could go to Rocky Point or go from Rocky Point
19 down to Montague with one person on the bridge
20 but if the person who is holding the pilotage
21 endorsement, he would have to stay on the bridge
22 the whole time?

23 A Well, that's the way they're interpreting it.

24 Q Did you find that to be illogical?

25 A Yes, absolutely.

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Q Why?

A It just doesn't make any sense. If -- what they've done is -- to me, they've waived the whole thing. And I think this pilotage and not pilotage is all a bunch of hog wash. If I got this letter, I'd say well, that's the end of it, boys. We operate on non-pilotage.

Q Now, were you aware in 1985, the Coast Guard proposed doing away with pilotage as a matter of statutes?

A Well, they were talking...

MS. HENRY: Objection. Hearsay.

THE COURT: Sustained.

(1040)

Q What was your understanding of the pilotage situation in 1985?

A Well, previous to 1985, and when I first got it...

MS. HENRY: Objection. Irrelevant.

MR. CHALOS: Your Honor, I think it's very relevant in light of this letter.

THE COURT: I don't need an offer of proof. We've already discussed this. Objection sustained. What the Coast Guard may or may not have -- what they did not do is not relevant.

1 Q Captain Walker, Ms. Henry asked you about Mr.
2 Kagan and she indicated to you that there's some
3 information that he had problems steering. In
4 your mind, is there a difference between steering
5 and following a rudder command?

6 A Oh, yes. Surely.

7 Q Could you explain what you mean by that?

8 A Well, a rudder command is a right ten, left
9 ten, hard right, whatever. The quarter master
10 just goes the proper direction and the proper
11 degrees. That's all he has to do is know right
12 from left and the numbers 1 through 35.

13 Q How difficult is a ten degree right rudder
14 command to follow?

15 A Not difficult at all.

16 Q Would you expect any quartermaster -- anyone
17 who's holding an AB's endorsement to be able to
18 carry that out?

19 A Probably anybody above the age of 5 could
20 carry that out.

21 Q Did Mr. Cousins have any alternatives
22 available to him if he felt that Mr. Kagan was
23 not capable of doing the job?

24 A Sure.

25 Q What alternatives did he have?

1 A Oh, he had -- Ms. Maureen Jones was standing
2 about 50 feet away. He could have replaced him
3 any time.

4 Q You read the testimony about Ms. Jones?

5 A I believe so.

6 Q Do you recall whether she held a license?

7 A She had a third mate's license and had sailed
8 as third mate.

9 Q Now, Ms. Henry asked you about the situation
10 where Captain Hazelwood pointed to the radar and
11 told the mate what he wanted done as opposed to
12 going to a chart. Is there any difference
13 between the two in your mind?

14 A No. Now the way he had the radar set up --
15 now, don't forget he's on cardinal points and
16 that's almost exactly like looking at the chart.

17 Q Can you explain what you mean by cardinal
18 points again?

19 A All right. His vessel was situated in such a
20 way that what they were looking at would be
21 almost identical to what he would have seen had
22 they gone to the chart. The presentation was
23 almost identical. He had -- the radar was north
24 up mode; he was on a north/south heading and he
25 was looking very -- just like that, only a radar

1 picture.

2 Q Have you considered discussing course changes
3 at the radar as opposed to the chart to be
4 significant?

5 A No.

6 Q Do you believe that that in any way
7 contributed to this grounding, the fact that they
8 spoke at the radar as opposed to the chart room?

9 A Not at all.

10 Q Do you consider the instruction to be given
11 -- do you have an opinion as to the instructions
12 that were given by Captain Hazelwood to the mate?
13 Were they difficult? Were they easy to follow?

14 A They were very easy to follow.

15 Q And I think your testimony has been had they
16 been followed, they would have missed the reef by
17 a substantial amount. Is that correct?

18 A That's correct.

19 Q Sir, if you tell your mate to call you and
20 advise you when he's carrying out your orders and
21 that mate calls you and tells you that he has,
22 would you rely on what he just told you?

23 A Yes, I would. My -- my -- in fact, every
24 captain tries to pound into his junior officer's
25 sometimes thick skulls to call them when they're

1 in doubt. That's the first thing you learn is
2 call me when you're in doubt. Call me soon.
3 Call me earlier, before, rather than later. I'm
4 going to holler at you for not calling me. I'm
5 not going to holler at you for calling me. Don't
6 ever be afraid to call me in any circumstance.

7 Q Now, there's been some questions as to whether
8 there was a course -- and rather, a gyro repeater
9 or weather indicator in the captain's cabin and
10 of course, the answer is no.

11 A Right.

12 Q But there was a telephone, was there not?

13 A Oh, absolutely. Three of them.

14 Q Is that the instrument that you, as a captain
15 would expect to be used by the mate if he had any
16 questions?

17 A That's the key instrument. Call me if you
18 need me.

19 Q In your opinion, was third mate Cousins
20 qualified to carry out the orders that he had
21 gotten from Captain Hazelwood?

22 A Totally qualified.

23 Q Do you have any doubt as to his ability to be
24 able to do that?

25 MS. HENRY: Objection. Asked and answered.

1 MR. CHALOS: I'll withdraw it.

2 THE COURT: We've gone over that a few times,
3 I think.

4 Q Now, Ms. Henry asked you about the information
5 that Mr. Cousins conveyed to Captain Hazelwood
6 when he made the call to him about the ice and
7 you read into the record what Mr. Cousins said to
8 Captain Hazelwood?

9 A I don't think I read that into the record.

10 Q Well, you read it to yourself?

11 A I don't think I read -- I don't recall that,
12 reading it into the record.

13 Q Let me show you. I think that -- I'm
14 referring to -- my page is 1113 on the
15 transcript. You said there was a short
16 conversation -- well, why don't you read the
17 answer?

18 A "There was a short conversation. I told him
19 it looked like -- it looked like we may get into
20 the bottom edge of the ice. And he responded by
21 saying, is it going to be -- does it look like
22 it's going to be a real problem? I said no, I
23 don't think that it will but my intent was just
24 to ease it around the corner. The conversation
25 went to whether the second mate had arrived on

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the bridge yet."

Q Okay. Now do you consider Captain Hazelwood's questioning of the third mate to be prudent?

A Oh, very much so. If he was going into the ice, Captain Hazelwood wanted to be told about it and I assumed that he would have gone to the bridge, had they...

Q Okay. What did the third mate tell him in your opinion based on...

MS. HENRY: Objection. Calls for speculation if it's what he intended to tell him. If it's what he actually told him, we've already heard it.

MR. CHALOS: I'll withdraw the question.

THE COURT: Thank you.

MR. CHALOS: Make it easier.

Q If you were the captain and you had left instructions with the mate to call you if there was a problem, and the mate called you to tell you about the maneuvering that he was doing and you asked him was there a problem with the ice and he gave you the answer Mr. Cousins gave, would that cause you any concern?

A No, I would assume that everything is going along just fine. He had no -- you know, all he had to do is say, Captain, please come to the

1 bridge. Then this thing would have been
2 avoided.

3 Q If you were down below and the mate told you
4 what he told Captain Hazelwood, would you have
5 rushed up to the bridge?

6 A No. No reason to.

7 Q I'd like to speak a little bit now about
8 Exhibit 122 that contains the red sector. You
9 mentioned to Ms. Henry that you believed if you
10 were inside the red sector that that was risky
11 and I think you said possibly very risky area.

12 A Right.

13 Q Based on the evidence that we have so far, had
14 Captain Hazelwood's orders been carried out,
15 would the vessel find itself in the red sector?

16 A Not at all.

17 Q Even having found itself in the red sector,
18 let's say up here in the edge of the red sector,
19 in your opinion, was there still enough room to
20 make the maneuver that was intended?

21 A More than enough room.

22 Q So just the mere fact that you may be inside
23 the red sector by itself doesn't tell you whether
24 it's a risky area or not?

25 A No.

1 Q It depends upon what you're doing in that
2 particular area?
3 A Right. I mean you could be stopped and
4 drifting. It's not risky then.
5 Q Now, Ms. Henry asked you about the report to
6 Captain Hazelwood made to the Coast Guard to tell
7 them that he was aground and leaking oil. And
8 she said, well, he waited 15 minutes to make that
9 call. Under the circumstances, do you believe
10 that 15 minutes is an unreasonable period of
11 time?
12 MS. HENRY: Objection. Leading.
13 Q Do you have...
14 MR. CHALOS: I'll withdraw it, Your Honor.
15 Q Under the circumstances, do you have an
16 opinion as to the reasonableness or
17 unreasonableness of the 15-minute passing before
18 the call was made?
19 A No, I don't see any -- he could have waited an
20 hour, two hours, three hours. There's nothing
21 the Coast Guard could have done about it anyway.
22 Q Do you consider 15 minutes to be quick?
23 A Yes, it's a very reasonable time.
24 Q Now, when you sailed, were you aware of the
25 immunity provisions for reporting oil spills?

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A Yes, I was.

Q Did you believe that if you reported an oil spill that you would have immunity?

A Yes.

MS. HENRY: Objection. Irrelevant.

THE COURT: Counsel, approach the bench please.

(1465)

(Whispered Bench Conference as follows:)

THE COURT: What are you trying to prove with that kind of question? (Indiscernible) to this jury, what are you trying to prove? I want to hear exactly what element you're trying to show (indiscernible)

MR. CHALOS: Just pointing out that if it's a Coast Guard regulation to report (indiscernible)...

THE COURT: I don't believe that was your intent, Mr. Chalos. Step back. Step back. Step back.

(End of Whispered Bench Conference)

(1488)

THE COURT: Objection sustained. Disregard the last answer and the question of counsel. Remember questions of counsel are not evidence.

(1524)

Q (Mr. Walker by Mr. Chalos:) Captain Walker,

1 I'd like to turn now to the pilotage in Prince
2 William Sound. In response to Ms. Henry's
3 question, you said that you regarded pilotage in
4 Prince William Sound as a joke.

5 A Yes.

6 Q What do you mean by a joke?

7 A Well, I think it was overkill. Maybe joke
8 was a little harsh, but it's overkill.

9 Q In what way?

10 A Okay, number one, the area. Just the
11 geographical area is wide open. There's no real
12 eminent danger in any of this run. In fact, had
13 I been a 900,000 or 90,000 gross ton freighter,
14 wouldn't had to take pilotage. I don't know
15 what the difference is but they want tankers to
16 take pilots and they don't want freighters to.
17 I don't know why they would make the distinction
18 but...

19 Q Are the hazards for freighters the same as
20 tankers in terms of running aground, risking
21 people's lives?

22 A And spilling oil too.

23 Q Okay. Go ahead.

24 A Not as much oil. They carry their fuel oil in
25 the bottom, bunker seats. If they go aground,

1 they're going to still bunker -- bunker fuel.

2 Q All right. Go ahead.

3 A But the area -- the geographical area is very
4 easy, good radar -- good radar, relative good
5 aids to navigation and then on top of this very
6 easy passage, they slap this traffic separation
7 scheme on there which is fine. I wonder why
8 they did it the way they did it with dog legs in
9 the middle of nowhere. I mean if you're going
10 to have it, why not a direct course to Cape
11 Hinchinbrook, but obviously the Coast Guard has
12 its reasons which I could never fathom, but then
13 they slap a separation scheme on it and then they
14 come back with a VTS system on top of that and
15 then, lastly pilotage.

16 So they had four different overlays on here
17 and for one ship a day. I mean it was over --
18 so far overkill, it wasn't even funny.

19 Q Let me show you again plaintiff's Exhibit 25
20 which is the exhibit on which Mr. Cousins drew
21 the area of the ice. And in your experience,
22 was the ice coming out of Columbia Glacier a
23 sheet?

24 A No.

25 Q What would one see in terms of ice that would

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come out of Columbia Glacier?

A Oh, just little clumps here and there, trying to describe it, like a black table where you spill some salt would be a good description of it.

Q And depending upon how much ice there was, you could maneuver through it if you had to?

A If you had to, sure.

Q Without striking it, if you had to?

A Again, depends on the concentration.

Q In other words, what I'm driving at here is if Mr. Cousins said he had to skirt the bottom edge of this thing, when he got up to it, is it your opinion that he could have maneuvered around the ice if he had to?

A Oh, sure. Sure.

Q And in your opinion, he had plenty of room to do that once he got closer?

A I disagree with the accuracy of what he's put on there because he's got the ice extending to within a mile of Busby so what he's telling me that at Busby Island, he was in ice already. And I don't...

Q But the testimony is to the contrary?

A To the contrary. I think he's got that

1 extended a little bit too far to the east in my
2 opinion.

3 Q But in any event, once he gets down to the
4 leading edge, in your opinion, if he had to
5 maneuver, he could have maneuvered?

6 A Sure, if he thought he was going aground, he'd
7 just turn into the ice so it's the least of the
8 hazards there.

9 Q Or call the captain to the bridge.

10 A Automatically. That, without question there.

11 Q Now, I think you mentioned -- I want to make
12 sure we have it, did you say that there are no
13 regulations that require a captain to be on the
14 bridge at any time?

15 A No, there is a place that you have to be on
16 the bridge.

17 Q Where is that?

18 A The Panama Canal. It's mandatory.

19 Q Is it by regulation?

20 A It's mandatory, yes.

21 Q Is there regulation that requires a captain to
22 be on the bridge at any time in Prince William
23 Sound?

24 A No.

25 (1750)

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Q Sir, in your opinion, based on the testimony that you read and the evidence that you reviewed, were the maneuvers that Captain Hazelwood was making and the orders he gave, in your opinion, prudent under the circumstances?

A Yes, they were.

Q Now, does the fact that you, sitting here today, with the benefit of hindsight might have done something different if you found yourself in the same circumstances, does that make Captain Hazelwood's actions imprudent?

A No.

MS. HENRY: Objection. Leading.

THE COURT: Rephrase your question.

Q Sir, do you have an opinion as to whether you might have done something different if you were on the ship that particular night?

A I probably would have done something different, yeah.

Q What would you have done different?

A Well, I don't know -- I didn't know Mr. Cousins so without knowing Mr. Cousins, I would have probably been on the bridge.

Q If you knew Mr. Cousins and you trusted him and felt that he was a capable mate, would you

1 have any hesitation in leaving the bridge?

2 MS. HENRY: Objection. Leading.

3 THE COURT: Objection overruled.

4 Q You can answer.

5 A If I had real good confidence in Mr. Cousins
6 and left him with the instructions that Captain
7 Hazelwood had given him, I would have -- I
8 wouldn't have -- I would have let him have the
9 conn.

10 Q I'm sorry. Could you say that again?

11 A I said with -- with -- with the instructions
12 that Captain Hazelwood gave to Mr. Cousins and
13 with supreme confidence in Mr. Cousins and the
14 fact that he had a telephone right there, I left
15 him with the check and I had other things to do
16 that I considered more important at that time, I
17 would have left the bridge.

18 Q The testimony that you've given here today and
19 the testimony that the other experts gave is
20 based on hindsight. Am I correct?

21 A Oh, yes.

22 Q And any one sitting here, including yourself,
23 saying I think Captain Hazelwood did everything
24 right. Other -- Captain Beevers saying I think
25 everything Captain Hazelwood was doing wrong...

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MS. HENRY: Objection. Mischaracterizes Captain Beevers' testimony.

Q The substance of Captain Beevers' testimony was that...

THE COURT: Objection sustained. Start over again.

MR. CHALOS: All right. Let me start again.

Q The fact that your opinion may differ with Captain Beevers' opinion is based on both of you looking at a situation in hindsight. Is it not?

A That's correct.

Q I'd like to speak a little bit about your opinion with respect to the grounding. You mentioned that in your opinion Captain Hazelwood was trying to keep the vessel on the reef.

A From all -- from all the data that I've got, that's the only thing he could have been doing.

Q Please tell us what data you saw that led you to believe that he was trying to keep it on the reef.

A Well after -- don't forget now, he had a 200 -- probably 250,000 ton tanker dead weight tons. this is actual weight coming in to that reef at 12 knots, slamming up into that reef and that reef physically stopped him. There was -- I

1 don't think there was any way that Captain
2 Hazelwood thought that if he kept going, he was
3 going to ride over that reef, especially right
4 after they hit the reef. They didn't stop the
5 engines from going ahead at 64 rpm for about 12
6 minutes, so if I thought he was going try to get
7 over that reef, I would assume that he would use
8 at least 64 or more rpm to try to do it.

9 Q What rpm was he using in keeping the reef --
10 the vessel on the reef?

11 A 55 rpm.

12 Q He -- what did he have available if he wanted
13 to power this vessel over the reef?

14 A He had 82 rpm.

15 Q In your opinion, if he was trying to power
16 over the reef, would he have used the full power?

17 A Surely.

18 Q Is there anything else that would lead you to
19 conclude that he was trying to stay on the reef?

20 A That was the prudent thing to do. The
21 seamanlike thing to do was to stay there.

22 Q Well, is there anything in Captain Hazelwood's
23 actions that lead you to believe that he was
24 trying to stay on the reef?

25 A Well, his actions speak for themselves.

1 That's what he tried to do. It's obvious. If
2 he tried -- if he wanted to get off, he would
3 either have gone full ahead, full power astern or
4 full power ahead. Why piddle around at 55 rpm?
5 If I want to bring that thing off, I'm not
6 fooling around at 55, especially after I'd been
7 there for 12 minutes at 64.

8 Q Ms. Henry asked you about the five fathom reef
9 that was on the chart?

10 A That's a poor chart. Isn't there a better...

11 Q Let me get a bigger chart of the area.

12 (Pause) I want you to assume that the five
13 fathom log that Ms. Henry referred to was at
14 least a quarter mile, possibly a half a mile
15 behind the ship, based on this particular scale.
16 And Captain Hazelwood could see that on his own
17 chart. Does a quarter a mile or a half a mile of
18 room behind him, in your opinion, leave enough
19 room if he wanted to back up and try to free this
20 vessel?

21 A Yeah, there's enough room there. Whether or
22 not he would want to do it or not...

23 Q If Captain Hazelwood's intention was, in fact,
24 to try and wiggle this ship off, do you think
25 that he at some point would have, in your

1 opinion, at least try to go astern a little bit?

2 A Oh, yeah. Sure. He'd back up and if he
3 wanted to go forward, back up a little, and get
4 her moving and then hit her again forward, but
5 why he would want to try that, I don't know.

6 Q Does the fact that he didn't use one astern
7 bell in the whole time that he was aground
8 indicate to you -- what does that indicate to
9 you?

10 A Well, it indicates to me that he didn't try to
11 get off. He only -- he went up to 55, steady
12 state for what, 40 minutes or so and then stopped
13 the ship. I mean that's not really radical
14 maneuvers, trying to get off a ship -- get a ship
15 off a reef.

16 Q You said that if you had wanted to stay on the
17 reef, you would have used half ahead, I think you
18 said?

19 A Yeah, but again, I couldn't really -- not
20 being in that position, I don't know what i would
21 have used. Probably something slower, I would
22 assume.

23 Q All right. Is there much of a difference
24 between half ahead and 55 rpm under the
25 circumstances?

1 A Just maybe a thousand horsepower, not a whole
2 lot. Not a whole lot.

3 Q Now, you read what Captain Hazelwood was
4 telling the Coast Guard?

5 A Yes.

6 Q And you were saying a lot of things -- one of
7 the things he was saying he was trying to extract
8 the vessel, he was going to get off the reef. He
9 did say that he was also ascertaining, did he
10 not?

11 A Yeah.

12 Q Okay. What leads you to believe, having,
13 Captain Hazelwood having said that to the Coast
14 Guard that he, in fact, was trying to stay on the
15 reef?

16 A You mean the fact that he was telling the
17 Coast Guard one thing and doing another?

18 Q Yeah, he was telling the Coast Guard I'm
19 trying to get off. What makes you believe that
20 he wasn't?

21 A Well, I think that Captain Hazelwood was, at
22 that time -- I think, sub -- before all this
23 stuff, when he first called the Coast Guard, he
24 told them he was hard aground.

25 Q When was that?

1 A I think 26 minutes after midnight. Called
2 the Coast Guard up when he -- I think when he
3 reported it and said we're hard aground and we're
4 going to be here for awhile.

5 Q What does that indicate to you?

6 A He knows that he's not going to move. I
7 think he knew he was not going to move at that
8 point in time. And then after that, he started
9 getting his data in and the tide -- he saw that
10 the tide was going -- was still coming in, a
11 rising tide so I think he thought in his mind the
12 best thing to do to make sure we stay on this
13 thing and not come off is to...

14 MS. HENRY: Objection. The answer calls for
15 speculation. I think he thought in his mind.

16 THE COURT: I'm going to let the witness
17 answer this question. Objection overruled.

18 A I lost my train of thought now.

19 Q Well, we were talking about -- you were
20 talking about the information Captain Hazelwood
21 had...

22 A Oh yeah, okay.

23 Q ...and I was asking you, having said to the
24 Coast Guard what he said, what leads you to
25 believe that he wasn't trying to get off?

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A Right. Well, he's getting this data in; he's looked at his stability; he's looked at the tides; there's still a rising tide and there's a possibility that maybe this thing is going to slide off the reef. He might have just -- you know, like the Volvo commercials, he hit the bulkhead and he's going to bounce back -- bounce off. But I don't think that's -- at that point in time, he was trying to stay on the reef. I don't think he was trying to get off the reef.

Q Well, how do you square what he said to the Coast Guard with what you say he was doing?

A Well, trying to project myself back on -- into this situation here and looking at everything that Captain Hazelwood has done, I see good seamanship, very good seamanship.

Q You're talking now about actions?

A Actions, right.

Q All right. What about his words?

A He was falling apart at that time. I think mentally you can see the crack forming. The enormity of the situation, after 30 or 40 minutes of looking out and seeing what's going on, I think he was cracking at that time.

Q What do you mean by that?

1 A He was coming apart. Mentally, he -- you can
2 see the Coast Guard and the Coast Guard is the
3 -- I don't want to say the enemy but it's not
4 really that way. They caught him with his hand
5 in the cookie jar, more or less and he's telling
6 him, you know, whatever he thinks at that time
7 that that's what they want to hear. You know,
8 we're going to get her off and you know, she's
9 going to float free and you know, the sun's going
10 to rise in the morning and things are going to be
11 better. There's a chicken in every pot; two cars
12 in every garage. This type of thing. He's
13 wishing -- wishful thinking, you might say that
14 this thing is going to float off.

15 Q When you mention on Friday that you had small
16 spills in the past and you described the
17 experience as what? A punch in the stomach?

18 A I think I described them a punch in the
19 stomach. I think this is -- Captain Hazelwood
20 has taken his brains out and gotten beat on by a
21 two by four. It's a -- the crushing pressures
22 that he was on at that time is -- I just wouldn't
23 want to be in his shoes at that point in time. I
24 don't really know how I would react with that.

25 Q Do you see -- did you see in reviewing the

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evidence any inconsistent action after he spoke with the Coast Guard for keeping the vessel on the reef?

A No, he continued -- like I say, brought it up to 55 and it was a steady state and I see no evidence of even an attempt to get off the reef. In fact, at one point, I think he says something about ballasting her down.

Q To the chief mate?

A To the chief mate. So I think to his crew, he's talking reality, but to the Coast Guard, it's a whole different thing. He's telling them what they want to hear.

Q Do you believe at this point in time he's lying to the Coast Guard?

A Well, consciously, I don't think he's thinking he's lying but I think subconsciously that's what he's doing. He's telling them what they want to hear.

Q Do you have any reason to believe that Captain Hazelwood was trying to get this vessel off the reef by going forward?

A Absolutely not. That's rather poor seamanship on his part if he tried it that way.

Q Is there anything, based on what you read, of

1 Captain Hazelwood's actions and order subsequent
2 to the grounding that would lead you to believe
3 that he was using bad seamanship in this
4 situation?

5 A No. No.

6 Q Now, you said that what Captain Hazelwood was
7 telling the Coast Guard would not change your
8 opinion as to the fact that he wasn't trying to
9 get off the reef. Was that on the basis of what
10 you just testified?

11 A Yes.

12 Q With respect to the questions regarding Mr.
13 Myers and what Captain Hazelwood told Mr. Myers,
14 the man from Exxon, I want you to assume that
15 that call was made after the engines of the
16 vessel were shut down and it was made in
17 connection with getting tugs out there to salvage
18 the vessel. Do you have an opinion as to whether
19 that would have been correct under the
20 circumstances?

21 A Well, if he's calling salvors and talking
22 about that -- of getting off the reef in the
23 context of salvaging, I don't see any problem with
24 that.

25 Q Now, Ms. Henry asked you about publications on

1 board the Exxon Valdez, the Code of Federal
2 Regulations. Did you have similar Code of
3 Federal Regulations on board your ship?

4 A Every ship is required to have those on board.

5 Q How often did you go to the Code of Federal
6 Regulations and study the contents?

7 A Oh, every once in a while. If I had a
8 question, I'd refer to them. That's what they
9 were there for is reference books.

10 Q Yeah, but you didn't go to them and read them
11 from cover to cover and memorize what the
12 regulations were, did you?

13 A No. No.

14 Q And you didn't go to them daily and say, let
15 me check Section 160.095 for the heck of it?

16 A No.

17 Q Okay. Did you have on board Coast Pilots?

18 A Yes, we did.

19 Q Is every ship required to have Coast Pilots?

20 A Yes, they are. An updated Coast Pilots.

21 Q In the Coast Pilots that you're familiar with
22 and are kept on board these ships, where is the
23 pilot station for Prince William Sound?

24 MS. HENRY: Objection. Hearsay and beyond the
25 scope of cross examination.

1 THE COURT: I don't know what Coast Pilots is
2 but if he's referring to a document that's not in
3 evidence, it sounds like it might be hearsay.

4 MR. CHALOS: I'll withdraw the question, Your
5 Honor.

6 THE COURT: All right.

7 MR. CHALOS: I have no further questions at
8 this time.

9 THE COURT: We'll take our next break, ladies
10 and gentlemen. Don't discuss the matter among
11 yourselves or with any other person. Don't form or
12 express any opinions.

13 THE CLERK: Please rise. This Court stands
14 in recess...

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

16 (On record - 12:10 p.m.)

17 (Jury Present)

18 THE CLERK: This Court, now in session.

19 THE COURT: Ms. Henry?

20 (2555)

21 RECROSS EXAMINATION OF CAPTAIN WALKER

22 BY MS. HENRY:

23 Q Sir, I believe you just told the jury that in
24 your opinion when Captain Hazelwood was talking
25 to the Coast Guard, reporting the spill and then

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later talking to Commander McCall that he was simply telling the Coast Guard what they -- what he thought they wanted to hear. Is that right?

A Yes, ma'am.

Q And isn't it true that you told the jury in your testimony what that you think Mr. Chalos wants to hear?

A No.

Q Showing you once again, Court Exhibit number 4, that's the interview between Captain Hazelwood and Trooper Fox and Mr. Delozier, is that right?

A Yes, ma'am.

Q Now, does that interview indicate the date and time it took place?

A Right. 1500 on the 24th which is approximately what -- 13 hours after the grounding.

Q All right. About 1 o'clock in the afternoon?

A Yeah.

Q Now, your testimony with respect to the pilotage -- what I think you basically said as far as you're concerned except for visibility, there was no more pilotage anymore as a result of the -- Bob Art's (ph) letter. Is that correct?

A That's correct, ma'am.

1 Q Now that opinion assumes that Mr. Art's letter
2 was a correct and accurate interpretation of the
3 current Coast Guard regulation. Isn't that true?

4 A Well, the current Coast Guard regulations were
5 that the pilotage was enforced. That's what was
6 on the federal register at that time.

7 Q And you're assuming in your opinion that once
8 Bob Art's letter came out, there was basically no
9 more pilotage -- you have to assume that Bob
10 Art's interpretation was correct? Isn't that
11 true?

12 A I would have to look at the letter that the
13 captain of the port put out also. I'd have to
14 refresh my memory on that one.

15 Q All right. So your opinion relies on Mr.
16 Art's letter and the captain of the port
17 attachment that was sent to you?

18 A The letter from Commander McCall, I believe
19 his name is.

20 Q And you're assuming that both of those are
21 accurate. Is that correct?

22 A Yes.

23 Q Now, during direct, you answered one question
24 regarding whether or not you would leave the
25 bridge under certain circumstances by saying that

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if I had other things to do that I considered more important, I would have left the bridge. Is that what you said?

A That's correct.

Q What other things would you have to do that would be more important than your concern for the safety of the crew and the ship and the cargo?

MR. CHALOS: Objection, Your Honor.

Foundation.

THE COURT: I'm....

MR. CHALOS: I can elaborate on that, Your Honor. It assumes that when he leaves the bridge in whatever circumstances, that the ship is in danger or the safety of the ship is in danger without knowing what circumstances we're talking about. The fact that he may have left the bridge doesn't automatically endanger the safety of the vessel or crew.

THE COURT: The question has an argumentative element to it, Ms. Henry. If you can rephrase your question, you might be able to make your point.

Q (Mr. Walker by Ms. Henry:) Assuming that you are in the same position as Captain Hazelwood at 12 -- excuse me 11:53 when he decides to go below and that includes course heading and everything that we've gone through before, what other things

1 would be more important than concern for the
2 safety of the vessel, people on it and its cargo
3 at that point?

4 MR. CHALOS: Same objection, Your Honor.

5 THE COURT: Objection overruled.

6 A At that point in time, safety never overrides
7 anything on a ship.

8 Q Safety is also the highest concern. Isn't
9 that right?

10 A Right.

11 Q You referred to some of the Coast Guard
12 regulations regarding transiting through Prince
13 William Sound which include pilotage and which
14 include the VTC, which includes the TSS as
15 overkill. Is that right?

16 A Yes, ma'am.

17 Q All right. Now, all of these regulations
18 reflect that at least the Coast Guard was
19 concerned about safety. Isn't that true?

20 A That's correct.

21 Q And so basically, you're considering -- you
22 have some conflicts with the Coast Guard
23 regulations because -- or you're being critical
24 of the Coast Guard because they are being too
25 safe? Is that correct?

1 A Can I elaborate on that?

2 Q When you said that you felt the Coast Guard
3 regs were overkill, the ones that you listed --
4 we're just talking about the ones that you
5 listed, your critique then is the Coast Guard is
6 being too safe?

7 A I can't answer that with a yes or no.

8 Q All right. In referring to Prince William
9 Sound on redirect, you said that in your opinion
10 the area is not a hazardous area. Is that right?

11 A That's true.

12 Q And I think you also said on redirect, it's an
13 easy passage through that area. Is that correct?

14 A That's correct.

15 Q In fact, I think you said you could almost do
16 it with your eyes closed?

17 A Yes.

18 Q On Friday, you also referred to the Prince
19 William Sound as a mill pond?

20 A Yes, ma'am.

21 Q And are you serious?

22 A What do you mean?

23 A Do you think that Prince William Sound is like
24 a mill pond?

25 A When it's flat and calm, it's just like a mill

1 pond. That's what I meant.

2 Q You also think that Prince William Sound is
3 just like the middle of the ocean, don't you?

4 A That's correct.

5 Q Now, if you were to hit a charted reef in the
6 middle of the ocean, you'd have to be pretty darn
7 reckless, wouldn't you?

8 A A charted...

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

11 THE COURT: Ms. Henry, will you -- this is
12 not...

13 MS. HENRY: Your Honor, he has compared Prince
14 William Sound where the Exxon Valdez hit a charted reef
15 is like the middle of the ocean.

16 THE COURT: Objection sustained.

17 Q Finally sir, it's true, is it not, that you
18 really hate to pass judgment on other skippers?

19 A I don't feel comfortable doing it, no.

20 Q On redirect you said, I really hate to pass
21 judgment, didn't you?

22 A Sure.

23 MS. HENRY: I have no other questions, Your
24 Honor.

25 MR. CHALOS: No further questions, Your Honor.

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THE COURT: Okay, you're excused. You may call your next witness.

(Witness excused)

(3007)

THE COURT: Call your next witness.

MR. MADSON: Yes, Your Honor. We'll call Thomas Burr at this time.

MR. COLE: Judge, could we approach the bench?

THE COURT: All right.

(3008)

(Whispered bench conference as follows:)

THE COURT: Judge, we have asked for anything relating to (indiscernible - whispering) testifying at the very beginning. Last night we asked Mr. Chalos whether or not Mr. Burr was going to testify and Mr. Hlastala was going to testify, and he said he didn't know, because Mr. Madson was the one that was in charge of that. And Mr. Madson was not in town, so he couldn't tell us whether one or two would testify.

Now, we've never received a report. And the first time I got notice or even a resume, was this afternoon (indiscernible - whispering), when Mr. Madson gave that to me the first time.

Now, Mr. Madson has placed me in a position to cross examine someone and I've never gotten anything

1 from him, and have not been allowed to talk to him
2 prior to him coming in here and testifying.

3 I'm going to have to ask for some type of time
4 to prepare questions.

5 THE COURT: How long do you expect his direct
6 will take, Mr. Madson?

7 MR. MADSON: Maybe an hour, Your Honor.

8 THE COURT: That will solve the problem,
9 because we'll just recess after his direct...

10 MR. COLE: That's fine.

11 MR. MADSON: By the way...

12 THE COURT: That's okay. We don't need to
13 engage in this.

14 (End of whispered bench conference)

15 (3081)

16 (Tape: C-3669)

17 (3008)

18 (Oath administered)

19 A I do.

20 THOMAS R. BURR

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

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

25 A It's Thomas Roger Burr, spelled B-u-r-r.

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THE CLERK: Your current mailing address, sir?

A 4690 IDS Center, Minneapolis, Minnesota,
55402.

THE CLERK: And your current occupation?

A I'm currently employed as a consultant with
Forensic Associates, Incorporated.

DIRECT EXAMINATION OF MR. BURR

BY MR. MADSON:

Q Mr. Burr, why don't you tell us what Forensic
Associates, Incorporated is?

A Yes. Forensic Associates, Incorporated is a
firm in Minneapolis, Minnesota. Our company
provides laboratory testing services and
consultation to attorneys, private corporations,
government agencies. We provide testing of
substances for alcohol and drugs. We provide
consultation services to attorneys, and we
provide management of alcohol and drug testing
programs in corporate types of settings.

Q And you do this for a fee, correct?

A Yes, I do.

Q Would you tell the jury what your fee
arrangement is with regard to your services on
behalf of Captain Hazelwood?

A Yes. Forensic Associates fee arrangement is

1 that we bill for my services \$100.00 per hour for
2 the time that I spend on a particular case. And
3 that includes the time in preparation,
4 consultation, travel, testimony and so on.

5 Q Do you have any idea -- or have you billed
6 anything so far, sir?

7 A I have received a retainer in this case.

8 Q In what amount?

9 A \$1,500.00.

10 Q Do you have any idea or estimate as to what
11 you believe your total fee will be in this case?

12 A Probably \$3,000.00.

13 Q Now, Mr. Burr, let's go back and ask you about
14 your educational background. Could you tell the
15 jury, please, where you went to school and what
16 degrees you may have?

17 A Yes. I attended the University of Minnesota,
18 Duluth. I graduated from the University in 1968.
19 I graduated Magna Cum Laude with a degree in
20 biology and chemistry. I have taken a number of
21 courses in the area of analytical chemistry,
22 instrumentation, toxicology, since that time,
23 although I have no graduate degrees in the are.

24 Q And then have you continued to take courses up
25 until the present time?

1 A Yes, I have.

2 Q Okay. What about work experience, sir. After

3 you finished school where did you become

4 employed?

5 A I became employed for the City of St. Paul,

6 Minnesota in the crime laboratory. Our

7 Laboratory was a city county laboratory. We

8 served the County of Ramsey, which is the capitol

9 of Minnesota. It's a county of about 700,000.

10 Our laboratory did the work for the law

11 enforcement agencies in the county and the

12 medical examiner in the county, also.

13 Q When you say you did the work for the law

14 enforcement agencies, why don't you explain that?

15 What do you mean by that?

16 A Yes. The laboratory was a laboratory that did

17 work in a number of areas, including drug

18 testing, alcohol and drugs and biological

19 samples. Some work in fingerprinting, firearms

20 and tool mark examinations and some other types

21 of work.

22 I specifically worked in the area of

23 toxicology.

24 Q How long did you remain in that field, sir?

25 A I remained with the department for a little

1 over 20 years; almost 21.

2 Q Did you retire?

3 A Yes, I did.

4 Q When was that?

5 A I retired in February of 1989.

6 Q And with regard to your particular field, that
7 is, toxicology, what exactly did you do during
8 this 21 years, if you can put it in that term,
9 with regard to testing for alcohol and what you
10 may or may not have done with regard to its
11 affects on the human body?

12 A Yes. Absolutely. First of all, if I may say,
13 I work with alcohol toxicology, drug toxicology
14 and testing on a regular basis for the entire 21
15 years. Including taking several courses related
16 to alcohol and alcohol toxicology. I studied at
17 the University of Indiana in Bloomington, of
18 course, on drug testing and alcohol toxicology.
19 And I took courses from a manufacturer of a
20 breath testing instrument on the design and
21 theory of that particular instrument. Several
22 instrument courses of analysis. A course on drug
23 testing in biological specimens.

24 As far as what I did, I was -- for about the
25 last 12 years I was with the department, I was

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the chief scientist in the laboratory. By that I mean I did not report to anyone except a police officer, so there was no scientific supervision of my position.

Q What do you mean by reporting to a police officer?

A Yes. I was a senior scientist in a laboratory and that meant I was responsible for the analytical techniques and methods that were used, and I did not have a technical supervisor. There was not another scientist that I reported to. I basically reported to a police lieutenant who was an administrator.

Q What about training of police officers. Do you have any experience in that area?

A Absolutely. I trained police officers in breath testing, specifically from 1968 through 1975. I taught police officers testing of subject with breath samples, with a machine called a "Breathalyzer".

I then, again, over the entire course of my career with the department I taught in the recruit academy and in-service training. And part of the areas that I trained police officers was in the area of alcohol and alcohol testing

1 and drinking and driving law enforcement.

2 Additionally, for about five years, I had an
3 appointment as an adjunct professor of
4 criminalistics at Lakewood Community College.
5 It's in suburban Minneapolis, where I taught law
6 enforcement candidates. These are people who
7 were getting their degree in law enforcement. I
8 taught a course called forensic science.

9 Q Did you do any studies on human beings and
10 alcohol and its affect on the person? That is,
11 by prescribing or giving them certain amounts of
12 alcohol?

13 A Yes, I did. Over the 20 years I probably
14 tested in laboratory testing settings, several
15 hundred subjects. Many of them were conducted
16 during breath test operator training for 1968
17 through 1975. And some of them were conducted in
18 1983 when I was doing testing on a new breath
19 test instrument that was going into use in
20 Minnesota. And then again recently in training,
21 the collecting of urine and breath samples for a
22 corporate contract that we have.

23 Q Is that at the present time, sir?

24 A Yes, that's correct.

25 Q Would you explain that? You said it's a

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contract.

A Yes. We manage an alcohol and drug testing program for North State's Power Company. North State's Power is a large public utility of southern Minnesota. They are required by the Nuclear Regulatory Commission, since they have three nuclear reactors, to have a fitness for duty program, which includes alcohol and drug testing.

Our firm manages that -- Dr. Jensen and myself -- the two of us manage that program. We certify their instruments, we train their operators and so on. And, again, we've just recently conducted some controlled drinking studies with people as part of training operators.

We give people alcohol to drink and take tests of their breath and do other types of testing of these people as part of the training of operators and as part of our own research, also.

Q Does part of that research and training consider the correlation, if any, between a set amount of alcohol? In other words, a percentage of alcohol in a person's blood stream, and your analytical observations of the person as to whether or not he can perform certain physical or

1 mental tasks?

2 MR. COLE: Objection. Lack of foundation.
3 There's been no showing that he did any blood testing.
4 Everything he's testified to is not breath testing.

5 MR. MADSON: Well, okay.

6 Q Is there a relationship, sir, between blood
7 and breath testing?

8 A Oh, absolutely. I was intimately involved
9 with both blood and breath testing over my 21
10 years. I've been dealing -- talking more about
11 the breath testing since that was the -- it was
12 during the breath testing series that I did most
13 of the controlled drinking experiments. I did,
14 however, take many blood samples and compare them
15 to breath samples. I also did blood alcohol
16 testing on a routine basis for 21 years. In many
17 of those cases I also had a chance to correlate
18 people's behavior on certain standardized tests
19 with their alcohol concentration.

20 Q Now, in Minnesota, if I understand correctly,
21 the people who were suspected of, say, operating
22 motor vehicles while intoxicated would be subject
23 to a breath test, is that right?

24 A Yes. Usually a breath test; sometimes a blood
25 test; but more often than not, a breath test.

1 Q Well, would part of your duties be to
2 correlate -- use that number and translate it
3 into a percentage of alcohol to blood by any
4 standard means or formula?
5 A Yes, that's correct. I did that for many
6 years.
7 Q Is there a correlation then, sir, between the
8 two?
9 A Yes, there is. With chemical testing and the
10 way that instruments are designed, there is a
11 good correlation between breath and blood
12 samples. That is, if we take both the breath and
13 a blood at the same time we will get a fairly
14 good correlation between the two.
15 Q Now getting back to my question, then, sir.
16 Did you have occasion in the course of your
17 experience to compare blood alcohol or breath
18 alcohol results with persons that had consumed
19 alcohol so you could make an analytical
20 observation of their ability or lack of it, to do
21 physical or mental tasks?
22 A Yes.
23 Q And how would this be done, if you could just
24 summarize it?
25 A Yes. In two ways. One was controlled in

1 human subject to testing, in which subjects were
2 given alcohol to drink of measured amounts.
3 Their alcohol levels were measured with breath
4 tests and with blood tests, and they were given
5 certain standardized types of tests to perform.
6 Walking heel to toe; touching their nose;
7 reading; adding up numbers; various other types
8 of tests of this sort. And their performance was
9 correlated to their alcohol concentration, and
10 then they would test it over an extended period
11 of time to determine how they burned the alcohol
12 off and the dynamics of the alcohol within their
13 body.

14 Additionally, I viewed, in my career, hundreds
15 of video tapes of people who were subjected to
16 standardized sobriety tests, we call them, which
17 I designed and set up to be used by the
18 department. And I knew their alcohol reading
19 from a chemical test of their blood, or urine, or
20 breath, and was able to correlate that with their
21 performance on these tests.

22 So I've seen literally hundreds of people at
23 all levels of alcohol influence.

24 Q What about police reports and such? That is,
25 observations of the subject?

1 A I've reviewed many, many of those over the
2 years. Probably 1,000 or more.

3 Q And you said you designed certain sobriety
4 tests. Would you explain that, please?

5 A Yes. Part of my job was to work with the
6 scientific aspects of the chemical testing
7 program. And what I did was design some -- I
8 didn't invent the tests. I used tests that were
9 commonly available, and designed a scheme of
10 testing for our police officers and other
11 officers to use in the chemical testing area when
12 they arrested somebody for drinking and driving,
13 or sometimes other types of crimes where alcohol
14 was involved, in which they would be given a set
15 of standardized tests, and they would be recorded
16 on video tape, and they would answer questions
17 and do some other tasks, like, write their name
18 on the board and tell you what time it was, and
19 things like that.

20 Q Okay. I'll ask you, sir, have you ever
21 testified as an expert in any court?

22 A Yes, I have.

23 Q Where was that?

24 A I've testified as an expert witness in this
25 particular area of alcohol and alcohol toxicology

1 and testing in Minnesota, North Dakota, South
2 Dakota, Iowa, Wisconsin, Montana, West Virginia,
3 Pennsylvania, Alabama, Florida and Alaska.

4 Q Then, sir, do you, as part of your present
5 occupation, keep up with the literature in this
6 field?

7 A I keep up with all the literature, I believe.
8 At least all of it that can be found.

9 Q Would you say you're not the only expert in
10 this field?

11 A No, that's correct. There are many experts in
12 this field.

13 Q What were you asked to do with regard to your
14 particular participation in this case?

15 A I was asked by you and the other attorneys in
16 this case to review the particular materials and
17 the results of the tests, and so on, in this case
18 and give some opinions as to their meaning.

19 Q And what about any testimony. Did you read
20 the testimony of any particular individuals?

21 A Yes, I did. I read the testimony of Mr.
22 Prouty.

23 Q Now, sir, do you recall Mr. Prouty's testimony
24 that experts can differ, at least it's a subject
25 of debate, with regard to whether or not

1 retrograde extrapolation is a useful means to
2 determine a person's blood alcohol content at a
3 previous time?
4 A That's correct.
5 Q Do you agree or disagree with that?
6 A I agree that that is a subject of controversy,
7 yes.
8 Q Do you rely on the literature of others and
9 the studies of others in formulating your
10 opinions, and have you done so in this case?
11 A Yes, I do. I consistently rely on these
12 studies of other people, and other scientific
13 studies and treatises to form my opinions in this
14 area.
15 Q Are you familiar, for instance, with a person
16 by the name of A. W. Jones?
17 A Yes, I am.
18 Q Do you know from the studies he has done, what
19 he believes with regard retrograde extrapolation
20 and its usefulness?
21 A Yes, I do.
22 Q And what is that, sir?
23 A He feels that Dr. Jones, in his writings, has
24 said that he feels it is not a very good thing to
25 do scientifically. That it has shortcomings and

1 it should be discouraged.

2 Q Are you familiar with Dr. Curt Dubowski, Sir?

3 A Absolutely.

4 Q Who is he?

5 (Tape: C-3670)

6 (000)

7 A Well, Dr. Dubowski is a -- he's from Oklahoma,
8 and I believe he's a professor of medicine and in
9 charge of the medical and research facilities
10 there in the medical school in Oklahoma. And
11 he's a prolific researcher and author in the area
12 of alcohol and alcohol testing and so on. He's
13 probably written more than anybody else in the
14 area.

15 Q And have you read his material?

16 A I've read, I believe, everything he's written.

17 Q Do you know his opinion with regard to the
18 forensic validity of this kind of retrograde
19 extrapolation?

20 MR. COLE: Objection. Lack of foundation.
21 This person is not an expert in retrograde
22 extrapolation.

23 THE COURT: The question is, do you know this
24 person's opinion on retrograde. The objection is
25 overruled. That objection is overruled.

1 A Yes, I do.

2 Q And what is that, sir?

3 MR. COLE: Objection. Hearsay.

4 THE COURT: Do you want to address that one?

5 MR. MADSON: Your Honor, I think I've
6 established that he's an expert. Experts can rely on
7 hearsay. It's done all the time. That's the purpose
8 of having an expert here, so we don't have to have
9 every single person that writes on the subject. And he
10 has already acknowledged he's read it and he relies on
11 it for his opinions that he's going to state here
12 today.

13 THE COURT: Objection sustained, Mr. Madson.
14 You just can't call a witness and ask him to relate the
15 opinions of others. You can ask him his opinion, and
16 you can ask him what he bases it on, but not on hearsay
17 of others. Objection sustained.

18 Q (Mr. Burr by Mr. Madson:) Do you have an
19 opinion, sir, as to the forensic validity of what
20 is called retrograde extrapolation? And perhaps
21 you can explain what you mean by that term first?

22 A Yes. By "retrograde extrapolation", what we
23 mean is, when we take a test done at one specific
24 period of time, and based on that test try to
25 determine an alcohol concentration -- to put a

1 number to somebody's alcohol concentration at
2 some time prior to that test, going backwards.

3 We have a test now. We want to go backwards
4 and find out what they may have been at some
5 previous time. That's what is referred to as
6 retrograde extrapolation.

7 Q And have you attempted to do this yourself, or
8 been called upon to do it yourself?

9 A Yes, I have been called upon to do that, yes.

10 Q Explain briefly how that's done?

11 A Yes. What is done in that area is that, if we
12 have a test at one specific time -- if we have
13 enough information, or if we had enough
14 information, we could go backwards in time, if we
15 knew everything there was to know in this
16 particular case, and make an estimate of
17 somebody's alcohol concentration at a prior time.

18 We need a whole bunch of information in order
19 to have any hope of arriving at any sort of
20 result that has any validity whatsoever to it.
21 And it's very dubious when it's based on a single
22 chemical test done at one single point in time.

23 Q Well, let me interrupt you. Why would, say,
24 two tests be of more benefit than just one?

25 A Well, two tests would be of more benefit than

1 one because we could perhaps get an idea, if we
2 had two tests that were separated in time by,
3 say, an hour. We could at least get some
4 information as to whether this person was going
5 up or down in their alcohol concentration and
6 perhaps have a better chance of being near the
7 alcohol trend line. But by that I mean -- you
8 know, if you measure alcohol over a period of
9 time, as people drink and burn it off there will
10 be a general trend line. But any test could fall
11 up and down from that line.

12 Q What's the longest period of time you've been
13 called upon to render an opinion as to a person's
14 blood alcohol level or content at a previous time
15 -- previous incident?

16 A Probably two or three hours.

17 Q And I think you said you read Dr. Prouty's
18 testimony with regard to this case?

19 A Yes, I did.

20 Q Do you have an opinion, sir, as to whether or
21 not you agree or disagree with Dr. Prouty in his
22 conclusion that you reached with regard to
23 Captain Hazelwood's estimated blood alcohol
24 content?

25 A I would disagree with it in substance.

1 Q Is your opinion based on the literature that
2 you have studied in the writings of others such
3 as Dr. Dubowski?

4 A Yes.

5 Q Why? Would you explain that, sir? What
6 reliance did you place on that, in your opinion?

7 A I placed my reliance on the study of others.
8 In particular, the fact that many authors have
9 written, and unless we -- since there are so many
10 unknown factors...

11 MR. COLE: Objection. Calls for hearsay.
12 He's going to state what these other people are saying.
13 It calls for hearsay.

14 (Pause)

15 MR. MADSON: Your Honor, I would refer to Rule
16 703. The difference between expert witnesses and lay
17 witnesses' opinions as set forth there, that they can
18 rely on hearsay, which is technically hearsay, but they
19 are writings that are established in the literature by
20 other recognized experts.

21 Certainly they can form opinions based on
22 their own personal observations or the observations and
23 clinical data from others, as well as themselves.

24 MR. COLE: Your Honor, I'm not denying that
25 they can rely on it, but they can't read it into the

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record. That's hearsay.

MR. MADSON: I don't believe he had anything he was reading, Your Honor.

THE COURT: I understand. But was your intention to get from this witness the opinions of other persons in the field on who this witness relied upon?

MR. MADSON: Certainly. Based on their reading and his reliance upon that; his own expertise.

THE COURT: I'll call counsel's attention to 705 (c).

(Pause)

MR. MADSON: Your Honor, my argument is that it certainly does not come within the exclusion under 705 (c) because it is supporting his opinion, and I think it certainly doesn't call for opinions that are for an improper purpose. And it isn't certainly designed to confuse a jury or get away from the main subject here, which is, in fact this extrapolation.

THE COURT: According to (c) the underlying data would be inadmissible into evidence for any purpose, other than to explain or support the expert's opinion here, because it would otherwise be hearsay, and the question is whether or not the jury could use it for a purpose.

1 I don't want you to parade a witness in here
2 just merely for the fact of him reciting what other
3 experts in the field may feel about the subject. I
4 want the witness to testify as to his opinion, and you
5 can support his opinion with data that may not be
6 necessarily admissible, but I'm not going to let it
7 come in as evidence in the form you are asking it to
8 come in at this time.

9 I'm going to sustain the objection at this
10 time, Mr. Madson. If you are asking him for what
11 another author on the subject said about the subject.
12 If that's what you're trying to do.

13 MR. MADSON: I'm asking him what does he base
14 his opinion on, which may, in fact, include others in
15 the field in what they believe, and why. Because
16 they've written on it and studied it. He has relied
17 upon that to formulate his opinion.

18 THE COURT: Let's hear your next question.
19 We'll see.

20 (310)

21 Q (Mr. Burr by Mr. Madson:) Well, I think my
22 question was, Mr. Burr, you haven't -- I think
23 you've already stated you have an opinion with
24 regard to the retrograde extrapolation that was
25 used in this particular case.

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A Yes, I do.

Q And what is that opinion with regard to its forensic validity?

A It's my opinion that it is not a valid thing to do forensically to extrapolate particularly for this period of time in the manner that it was done in this case.

Q And what do you base that opinion on?

A I base that opinion on the work that I have done over 20 some years. I base that opinion on the research and writings of other notable authorities in the field.

MR. MADSON: May I approach the witness, Your Honor. I think we have to draw a diagram. (Pause) There might be one we can use, I'm not sure.

Q Now, Mr. Burr, without going into a long detailed explanation of how alcohol affects people, let's assume that that's been gone into at great length here. Could you just state what two factors -- and explain, if you would very briefly, absorption rate and elimination rate?

A Yes. Absorption rate has to do with when you take the alcohol into your body, how fast it's absorbed into your system. When the alcohol is taken it, it goes into your stomach and the

1 majority of it is absorbed when it passes into
2 the small intestine. This rate is highly
3 variable. It can be absorbed in as sort a period
4 of time, it takes two or three ounces of alcohol.
5 It can be absorbed in as short a period of time
6 as 30 minutes. There is evidence that it can
7 take in some instances up to six hours to be
8 totally absorbed into your system.

9 So that's what we mean by "absorption rate",
10 the time it takes for that alcohol that you drank
11 to actually get into your system, get into your
12 blood.

13 The elimination rate is the rate at which our
14 body gets rid of the alcohol that has been
15 absorbed into the body from the stomach and the
16 intestines and gotten into the blood stream, and
17 our body gets rid of the alcohol over a period of
18 time. So that's basically the elimination phase
19 of alcohol.

20 Q Now, with regard to -- there is something
21 called a Widmark Factor, also. What does that
22 mean?

23 A Yes. The Widmark Factor is named after a
24 Swedish researcher, Dr. Widmark, who was the
25 first scientist to elucidate the idea that if we

1 know a person's body weight and size, and we know
2 their alcohol concentration, that we can then
3 predict how much they would have had to drink to
4 get to that point. Or, conversely, if we have a
5 person, we know their size and weight, and we
6 give them a certain amount to drink, we can
7 predict what their blood alcohol concentration
8 will be.

9 And Widmark's Factor -- and he basically
10 elucidated the factor of what percentage of the
11 body was available for this alcohol to go into.
12 And that was a factor that he came up with. If
13 we take a person of 200 pounds, you know, at what
14 percentage of their body is available for that
15 alcohol to be dissolved, and that's what's
16 normally referred to as the Widmark Factor.

17 Q Now, what are the limits, as you understand
18 them to be, in the elimination factors?

19 A Yes. In the elimination factors the...

20 MR. COLE: Judge, I'm going to object at this
21 point. I think it needs to be clarified whether he's
22 basing this on his own research or the research of
23 other people.

24 THE COURT: Objection overruled. You may
25 continue.

1 A The elimination rates of alcohol -- alcohol
2 can be eliminated from the body with as slow a
3 rate as .008 per hour grams per 100 milliliter's
4 whatever number you want to put on that, .008.
5 And it also can be eliminated at as fast a rate
6 as .035. Those are the extremes that have been
7 reported in the literature.

8 (525)

9 Q What is the more normal or average, if you
10 know, elimination rate?

11 A The average elimination rate is in the area of
12 .018, something approaching that -- somewhere
13 near that.

14 Q Okay. Now I want to ask you a little bit
15 about the elimination rate over time and blood
16 alcohol content. Are you familiar with the
17 standardized or general curve or graph?

18 A Yes.

19 Q I wonder if you could step over to the board
20 and just draw what -- if you can refer to a
21 general trend curve.

22 A An alcohol trend curve is something that we
23 can draw. We're going to call this times zero.
24 And this side we're going to call "alcohol
25 concentration", and this axis we're going to

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call "time".

When someone starts to consume alcohol, assuming that they're starting at zero, they will, for a period of time, while they're drinking and after they quit drinking, and that period of time will vary. They will go up and reach a point. They will basically level off for a while and then they will start on down until they reach zero.

This will be the general trend line of an alcohol dissipation, or an alcohol curve, from the time he started drinking until eventually down here you get rid of all the alcohol. This is a smooth curve. Nobody actually looks like this. I mean, the data doesn't look like this. It doesn't all fall on the line very nicely.

Q Well, could you show, for example, what a realistic or a normal curve would be for, say, any individual? How it really looks.

A Sure. Right. An individual may go like this and they may reach a point -- they may come down a little bit. As they go down they may -- there's periods of time where it may go up, and then the general trend will be down. But there will be periods of time where this person will

1 actually go up and down a little bit. So,
2 although the general trend line is this way, any
3 specific point may or may not be on that trend
4 line.

5 Q Now, that's assuming it's one individual,
6 correct?

7 A This is correct, yes.

8 Q What about a different individual. Would he
9 necessarily follow that same identical trend?

10 A Oh, absolutely not. A different individual
11 under the same circumstances, given the same
12 alcohol to drink and the same -- and under the
13 same identical circumstances, may give you a
14 curve that looks like this (indicating). And
15 then you will drop off over here.

16 Another individual may give you a curve -- he
17 may never get as high. It may be extended way
18 out this way, and they all eventually come
19 together down here as they drop off.

20 But this has to do with how long it takes it
21 to absorb, the difference in the rate it burns
22 off, and so on.

23 Q Maybe you could draw another curve, a bell
24 shaped curve, if you will, on alcohol elimination
25 rates and how the general population fits into

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the extreme.

A Yes. If we just look at alcohol elimination.

Q Maybe you could step back just a little bit and make sure the jury can see you.

A Sure. If we look at that -- what we have out here is that kind of a number. We have a 008 way out at this end, and out at this end we have maybe an 035. With the mid-point of this being -- or, the average burn off rate being something in the neighborhood of .018. Some people use different numbers than that, but they're all very close to that; 15, 16, 17, 18.

Obviously the further away you get from this number the less likely you are to have -- to be dealing with a particular individual. If you measure 100 people there will only be a very few of them, if any, at these particular ends of the curve.

Q Very few would be at the end or extreme, right?

A Very few would be at the end or extremes. I have never seen anybody this high or this low myself.

Q But you said it's been reported in literature?

A It's been reported in the literature, yes.

1 Q Then would it be correct, sir, that a person -
2 - there's no more reason to believe a person
3 would have a .008 as opposed to a .035 unless he
4 was actually tested himself?

5 A Yes, that's correct. The .008 or the .035 are
6 both a rare individual and they're both very
7 unlikely. The most likely is that someone is in
8 this range, a few points either side of .018.
9 That's what's most likely going to happen with
10 any particular individual.

11 Q Okay. You could resume your seat, sir.

12 Now, calling your attention to the testimony
13 of Mr. Prouty in this case. Do you recall the
14 testimony that he related that at about 12:00
15 that in his opinion Captain Hazelwood had a blood
16 alcohol content of .015 or 14?

17 A Yes, I recall that, .14.

18 Q Would you agree with that opinion?

19 A No.

20 Q Why, sir?

21 A For a couple of reasons. Number one, he used
22 a burn off rate of .008, and that's very
23 unlikely. I would find that to be extremely
24 unlikely that anyone would burn off alcohol at
25 that particular rate.

1 Number two, he's going backwards for a long
2 period of time without -- I don't believe that
3 there's too many variables in the equation to go
4 back, even to apply any burn off rate over that
5 period of time is beginning to give you numbers
6 that don't make any sense.

7 Basically because we have one test at a point
8 in time which may not be on the trend line, so we
9 may be starting from a false point to start with.
10 We're using a burn off rate that's ridiculously
11 low.

12 Q Well, let me interrupt. Does that mean you
13 don't know if he's actually declining or not at
14 that...

15 A Absolutely. We don't know from that 06 if
16 that really represents a point at or near the
17 line that he's at or whether he's actually going
18 up at that point in time, or whether he's going
19 down in that point in time. And that if we take
20 tests all around that, they may all be lower or
21 they may all be higher. This may just be at a
22 point that's just a little bit higher or a little
23 bit lower. So we don't even know if we're
24 starting at the right point.

25 We don't know if he's going up. We don't know

1 if he's going down. We don't know anything. We
2 don't know if he's absorbed all the alcohol he's
3 had to drink. At the time he may still have
4 alcohol in his stomach at the time we're going
5 back. So there's just too many unknown variables
6 to do that.

7 Q Do you recall Dr. Prouty's testimony that two
8 tests -- another test in addition to the one,
9 wouldn't really give him any more information or
10 give him any more data that was useful, do you
11 recall that?

12 A Yes.

13 Q Do you agree with that?

14 A No. I think another test would give you more
15 useful data. It would give you an indication
16 whether or not if it was -- say, an hour after
17 the other test would give you a good indication
18 as to whether the person was going up or down.

19 Q And, sir, assuming, for the sake of argument,
20 that Captain Hazelwood had a burn off rate that
21 approached the average. In other words, rather
22 than .008 it was .018 or 15. Do you have an
23 opinion as to whether this would raise his blood
24 alcohol level at the prior time, or keep it the
25 same, or what different it would make?

1 A Based on the kind of calculation that Mr.
2 Prouty did, if he had a .018 alcohol burn off
3 rate he would be considerably higher at the time
4 if we used that sort of back tracking
5 calculation.

6 Q Do you recall his testimony that it would be
7 at least a .20 or .27, something like that?

8 A Yes. We were dealing with about 11 hours at
9 an 18 to the 6. Yeah, it's in that -- about a
10 26.

11 Q And if we projected backwards, and assuming,
12 again, that Captain Hazelwood began consuming
13 alcohol, say, at 4:00 or 4:30 in the afternoon,
14 the 23rd. And had consumed his last drink
15 approximately 7:30 that evening. And then an
16 hour later was seen at the ship. And assuming no
17 other drinking occurred from that time -- from
18 7:30 p.m. until the time he was tested, some 14
19 hours later. If you go back to, say, the 9:00
20 time rather than the midnight time, would that
21 increase or decrease his blood alcohol level?

22 A That would increase it if you were doing that
23 kind of a calculation backwards.

24 Q Did you calculate or do you recall Mr.
25 Prouty's testimony regarding what that estimate

1 would be?

2 A Yes, there was another three hours so that
3 puts it in the range of .31 or something. Right
4 around .30.

5 Q It's safe to say 30 or better?

6 A Yes, right, 30 or better.

7 Q From your experience, sir, and your studies --
8 your personal observations made over the years,
9 you feel you can fairly relate to a person's
10 blood alcohol level over a certain amount to
11 whether or not they are visibly or noticeably
12 intoxicated?

13 A Absolutely.

14 Q What would that figure be, if you have an
15 estimate?

16 A If you know someone's alcohol concentration
17 you can make some general observations about
18 their physical abilities. At levels of .30, 100%
19 of the people are visibly and noticeably
20 intoxicated. At levels about .20, I would say at
21 least 97% of the people are visibly and
22 noticeably intoxicated. At the levels of .15, in
23 that area, it's probably 70% of the people are
24 visibly and noticeably intoxicated.

25 Q When you say "visibly and noticeably" what

1 A Appear to be shots of the same thing -- same
2 area.

3 MR. MADSON: Your Honor, I intend to ask this
4 witness some questions about this ladder. I would
5 submit to the court that I will tie it up later as to
6 when and where it was taken and what it represents,
7 other than a ladder. But I think I want to utilize his
8 expertise and testimony regarding a person who is under
9 the influence and their ability to physically walk on
10 something as...

11 THE COURT: Is there any objection, Mr. Cole?

12 MR. COLE: So long as he ties it up, no
13 objection.

14 Q (Mr. Burr by Mr. Madson:) Particularly, I
15 want to hand you BZ and ask you to look at that.

16 A Yes.

17 Q And ask you, assuming a person had about a .30
18 blood alcohol. Do you have an opinion as to
19 whether he would have difficulty, or noticeable
20 difficulty negotiating this ladder or walkway?

21 A Yes, I do.

22 Q What is that, sir?

23 A It's my opinion that a person with that kind
24 of an alcohol concentration would have a real
25 difficult time negotiating this particular ladder

1 it does -- if you have an opinion, how this
2 figures into the Widmark Formula?

3 A The weight of an individual has to do with how
4 many drinks they have to consume to get to a
5 particular alcohol concentration, so that figures
6 into the Widmark Formula. And it's basically
7 that the average male, for example, has a certain
8 amount of water in their body, which is about
9 .67. Some people fall below the average; people
10 who are particularly obese; people who are real
11 lean and athletic tend to fall above the two-
12 thirds or the .67% water in their body.

13 So that figures in by how much you need to
14 drink to get to a particular alcohol
15 concentration.

16 Q Do you know what Mr. Prouty used, if anything,
17 with regard to the Widmark Factor to come up with
18 his estimate in Captain Hazelwood's case?

19 A yes. I believe from the transcript that he
20 used the lowest number, about .5 or somewhere in
21 that range, for a male.

22 Q What affect, if any, would this have in his
23 ultimate conclusion?

24 A Well, what that would do is that would raise
25 one's alcohol concentration related to the amount

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of alcohol that you consumed. If you use the low end of the spectrum of males or of people versus the average or the high end you will get a higher alcohol concentration based on the same number of drinks.

Q So to use the average Widmark Factor, what would that do; increase or decrease the number of drinks necessary to reach that level?

A That would increase the number of drinks necessary to reach the level and it would decrease your alcohol given the same number drinks if you used the average Widmark Factor.

Q Let me ask you this, sir: assuming a person is 6 feet tall and 170 pounds, and registers a blood alcohol level of, let's say, .25 some three hours after the last drinking has been done, okay. Do you have any idea how many -- just an estimate of how many drinks, let's say, 80 proof vodka, is necessary to reach that level?

A Over a three hour period of time. About 15 -- 14 or 15, one ounce shots of 80 proof vodka.

Q What about to get to a .30, more or less?

A That's another -- of 80 proof, probably 18, 19, something in that amount.

Q Thank you, sir, I don't have any other

1 questions.

2 THE COURT: Mr. Cole, Mr. Madson, would you
3 approach the bench, please?

4 MR. COLE: I didn't hear you.

5 THE COURT: Would you approach the bench,
6 please.

7 (1184)

8 (Whispered bench conference as follows:)

9 (Entire bench conference indiscernible.)

10 (End of whispered bench conference)

11 (1218)

12 MR. MADSON: Your Honor, could we take
13 something up?

14 THE COURT: Yes.

15 We're going to recess a little early today
16 ladies and gentlemen. We'll see you back at 8:15 a.m.
17 tomorrow. I'm going to get a little better handle on
18 how we're progressing as far as the overall length of
19 the trial and I'll report back to you tomorrow
20 sometime.

21 Don't discuss this case among yourselves or
22 with any other person, and do not form or express any
23 opinions concerning the case. These are becoming
24 increasingly more important instructions to you. Don't
25 let anybody talk to you about the case either, just

1 avoid them. And remember my instructions regarding
2 media information, avoid the media sources concerning
3 this case. Be safe and I'll see you tomorrow morning.

4 (Jury not present)

5 Can you give me an estimate of the completion
6 of your case?

7 MR. MADSON: Yes, Your Honor, we were just
8 discussing that. It looks like we have four to five
9 more witness; four for sure, the fifth is undecided.

10 THE COURT: If you have any reports or
11 anything in connection with these witnesses, if they
12 are expert witnesses that Criminal Rule 16 covers, turn
13 them on over to the State.

14 MR. MADSON: Your Honor, I've given them
15 everything, every piece of paper that I have with
16 regard to Mr. Burr, Mr. Hlastala or any other witness
17 that we have.

18 THE COURT: All right. You may step down, Mr.
19 Burr.

20 (Witness steps down.)

21 MR. MADSON: The other thing I wanted to bring
22 up, Your Honor is, we called the inbound tape and the
23 court has tentatively admitted that. Although the
24 State has made a presentation or an offer of proof that
25 they intend to use that to show the difference in the

1 tone of voice or quality of voice in Captain Hazelwood
2 on the inbound portion of the transit of Prince William
3 Sound compared to the outbound, to show, I believe that
4 he -- intend to show that he would be intoxicated.

5 I stated to the court that we had a witness
6 who is available to testify about that tape. Hopefully
7 we are going to use him on Wednesday, and to have a
8 hearing outside the presence of the jury on that issue,
9 as to whether that tape would be liable, recorded
10 properly, that it could be utilized for that particular
11 purpose.

12 And if it's all right -- I guess I'm just
13 telling the court where we're coming from on this, and
14 we probably have three witnesses that could testify on
15 that subject. And they are either in route. I think
16 one of them is here already. And we would like to do
17 that while they're here, establish what we feel is the
18 invalidity of that tape.

19 THE COURT: We'll have to have a hearing on it
20 it sounds like. We'll just have to make time for it
21 some time during the course of the defendant's case.
22 When you get ready and you want to have a hearing on
23 that you let me know and we'll work out some time.

24 MR. MADSON: Okay. Wednesday is what we're
25 tentatively shooting for, just to let the court know

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that.

MR. COLE: Judge, I want to bring up one matter. I think that we should bring it up before Mr. Burr is on cross examination.

My research has shown that Mr. Burr was suspended from the crime lab in St. Paul for a period of time after he improperly distributed a bulletin. He quite during the time he was suspended. And then he brought a lawsuit against -- my understanding is, the Mayor of Bemidji, the police chief, for a letter that was written, that they slandered him. He lost that lawsuit.

I believe that his actions in that case go to his bias toward state governments. At the time he was working as a crime lab person he was also consulting on the side privately for defense attorneys, in violation of the regulations in Minnesota. And I would like to go into that with him on cross.

MR. MADSON: Well, Your Honor, for a person who is really unprepared for cross examination, that's all news to me. I have no idea what he's talking about. And I have to get that information from Mr. Burr before I could even respond.

MR. COLE: I could be here at 8:15 in the morning; we could take it up then.

1 THE COURT: Why don't we do that at 8:15
2 tomorrow morning, and be ready to cite some points and
3 authorities, Mr. Cole. And I agree with Mr. Madson, it
4 seems like you're pretty well prepared after asserting
5 you didn't have anything concerning this witness.

6 Anything we can do now before we recess?

7 MR. COLE: No.

8 THE COURT: We'll stand in recess.

9 THE CLERK: Please rise. This court stands in
10 recess subject to call.

11 (1435)

12 (Off record - 1:12 p.m.)

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