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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.

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

OMNIBUS HEARING  
NOVEMBER 30, 1989  
PAGES 577 THROUGH 823

VOLUME IV

*Original*

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H & M Court Reporting  
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Anchorage, Alaska 99501  
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**ARLIS**  
Alaska Resources  
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Anchorage, Alaska

BEFORE THE HONORABLE KARL JOHNSTONE  
Superior Court Judge

Anchorage, Alaska  
November 30, 1989  
8:37 o'clock a.m.

APPEARANCES:

For Plaintiff:

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NOVEMBER 30, 1989

(Tape: C-3509)

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THE COURT: We will resume with Trooper Stogsdill's testimony at this time.

JAMES STOGSDILL

recalled as a witness in behalf of the plaintiff, having previously been sworn upon oath, testified as follows:

CROSS EXAMINATION OF SERGEANT STOGSDILL, CONTINUED  
BY MR. FRIEDMAN:

Q Trooper Stogsdill, I forget what you told us yesterday about how long you've been with the troopers?

A Nearly 18 years. 17 and three quarters years or something like that.

Q Okay. How much of that time have you been in -- directly involved in investigations, as distinguished from patrol work?

A Since 1981.

Q Okay. Would it be fair to say that ordinarily a discreet event of some sort triggers an investigation, such as a phone call, an accident, a body being discovered, something of that kind?

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STATE OF ALASKA VS. JOSEPH HAZELWOOD  
OMNIBUS HEARING - (11/30/89)

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1 A Sure.

2 Q And then, an investigator takes that discreet  
3 event and tries to develop as much other  
4 information relevant to that as he can.

5 A That's the normal method.

6 Q Okay. That's what I want to do is talk to you  
7 a little bit about the difference between this  
8 case and the normal methods.

9 If -- if we say, for example, that we've got a  
10 discreet event up here, ordinarily, then, the  
11 investigator works out from that as one piece of  
12 evidence leads to another piece of evidence and  
13 hopefully, if things are working right, you're  
14 accumulating more and more facts as you move  
15 along.

16 A That's normally the way investigations are  
17 done.

18 Q Okay. And in this case, though, you came in  
19 in the middle?

20 A Right.

21 Q And you were told you that you couldn't look  
22 at any of this material -- the -- the initial  
23 stuff, if you will?

24 A Right. That the things -- not so much -- not  
25 so much the main event, but a portion of the main

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event was...

Q Right.

A ...was something that I could not be involved with.

Q Some portion up here you were told you couldn't ask about, or pursue at all. And, then, people who had been working in here you couldn't talk to at all. In other words, the initial state trooper...

A Right.

Q ...investigators?

A Right.

Q Now, was it your understanding that you could -- or, it was your understanding that you could talk to other investigators who had worked in this area, other than state troopers, is that correct?

A Sort of.

Q For example, DEC investigators. You could talk to -- about what they had done in this area?

A To some extent.

Q Uh-huh (affirmative).

A But, not -- not in a totality of what they did, but...

Q You still couldn't ask them about things in

1           this area, let's say?

2           A           Right.

3           Q           How would you define this area? The area that

4                       you couldn't talk to anyone about?

5           (487)

6           A           That was -- excuse me. That was the area of,

7                       I guess, definite taint. That was the -- the

8                       things that took place as a direct result of

9                       Captain Hazelwood reporting the oil spill to the

10                      Coast Guard.

11          Q           Okay.

12          A           And -- and that was -- I mean, there was no

13                      question that that was the tainted...

14          Q           Uh-huh (affirmative).

15          A           Be -- as you spread out from there, then there

16                      was, of course, the gray areas in the other

17                      things.

18          Q           Well, how...

19          A           So that that -- that was the definite -- I

20                      mean, no -- that was what I understood to be the

21                      definite taint...

22          Q           Uh-huh (affirmative).

23          A           ...and beyond that, then I would be furnished

24                      with things, of course, that -- that may have

25                      occurred in this upper area that were considered



1 untainted.

2 Q Right.

3 A And so, then, I could look at that and then  
4 proceed if necessary, or if warranted.

5 Q Okay. Now you said this area includes  
6 information or material that came as a direct  
7 result of Captain Hazelwood's initial report.

8 How did you, not knowing his initial report  
9 and not knowing what went on in here, know  
10 whether you were -- how did you define that? How  
11 did you know what came as a direct result and  
12 what didn't when you would talk to, say, a DEC  
13 investigator?

14 A It was difficult. The I get -- the guideline  
15 I used was, essentially was that because of the  
16 -- because of Captain Hazelwood's reporting  
17 certain persons went to the ship, began an  
18 investigation. They took some statements from  
19 the captain and others, did other things that I'm  
20 sort of aware of, but not totally...

21 Q Right.

22 A and, then -- and that initial response --  
23 things that led from that were -- were the  
24 tainted area.

25 Q Okay.

1 A Beyond that, then, as things spread out and  
2 -- and things may have come from independent  
3 people, or some other method, then I was able to  
4 be involved with that.

5 Q Okay. So, just to make sure I understand,  
6 Captain Hazelwood makes his report. There is an  
7 initial response by investigators, which include,  
8 say, Mr. Delozier...

9 A Right.

10 Q You were aware he was one of the initial  
11 responders?

12 A Right.

13 Q Okay. So, the initial responders went out and  
14 you could not talk to them about what their  
15 response had been, what they -- when they went  
16 out, what they did when they got there -- things  
17 of that kind?

18 A Well, I didn't -- I didn't talk to them about  
19 that. The -- what was tainted was what they  
20 learned and...

21 Q Right.

22 A ...and that sort of thing. So, you know, I  
23 think the fact that they went there wasn't...

24 Q Right.

25 A ...is just a fact of life and couldn't -- I

1 don't think it was tainted. But, the -- what  
2 they learned while they were there and -- and the  
3 things they did from what they learned, of  
4 course, was...

5 Q Okay.

6 A ...I -- was considered tainted, I guess.

7 Q Okay. And shifting the focus just a little  
8 bit, here, although you couldn't get the results  
9 -- or, I'm sorry. You couldn't -- you couldn't  
10 ask them what they found here, you were allowed  
11 to get things further downstream that had passed  
12 through Mr. Linton?

13 A Correct.

14 Q The -- what their investigation had led to, if  
15 you will, or however you want to characterize  
16 that?

17 A Right.

18 Q Now, were you allowed to -- I take it you had  
19 read newspapers about the spill before you were  
20 assigned to the case?

21 A Yes.

22 Q Okay. And after you were assigned the case,  
23 were you allowed to read newspapers?

24 A No.

25 Q Were you allowed to talk to people who had

1 read newspapers about it?

2 A Well, I -- that's the rest of America. I  
3 mean, I -- I couldn't talk...

4 Q Right.

5 A I couldn't talk with them about what they had  
6 read, obviously, but...

7 Q Okay.

8 A ...but, you know, I carried on life...

9 Q Uh-huh (affirmative).

10 A ...also.

11 Q Okay. And people knew you were working on  
12 this investigation?

13 A Right.

14 Q Were you allowed to -- well, let me -- let me  
15 go from there.

16 Could you review court records which might  
17 reflect some of that initial information?

18 A Court records?

19 Q For example, did you read the charges against  
20 Captain Hazelwood -- the misdemeanor charges, the  
21 information?

22 A I haven't. I don't -- I'm -- I don't know  
23 that I could have, or not could have, but I  
24 haven't.

25 (692)

1 Q All right. What was your understanding of  
2 Larry Weeks' role in this investigation and  
3 prosecution, based on the totality of your  
4 contacts over this several month period?

5 A It was substantial.

6 Q Okay.

7 A The -- initially, as we were preparing for  
8 grand jury he had a lot of input. That has waned  
9 off, of course, as time has gone by, but...

10 Q Uh-huh (affirmative).

11 A ...initially we talked with him a number of  
12 times.

13 Q And what -- can you characterize his input for  
14 us? What -- what was the focus? I'm not asking  
15 for the exact words, obviously, but just kind of  
16 explain to us what he was doing.

17 A He was basically guiding us along,  
18 essentially. The -- he had some input, as we  
19 spoke of yesterday, initially as to some of the  
20 witnesses at the grand jury. He had some input  
21 into -- well, he had a lot of input into the  
22 grand jury. No question about that. And then...

23 Q How 'bout after the grand jury?

24 A After the grand jury I don't -- I haven't had  
25 much contact with him, so I really -- really

1 don't know what sort of things that -- that he's  
2 done, or had caused to do, but -- so, I -- I  
3 guess the answer is that most of the time that I  
4 was involved in speaking with him, or listening  
5 to conference calls, those things were -- were  
6 directly associated with the grand jury.

7 Q Okay. What about Mr. Guaneli, Dean Guaneli?  
8 What's your understanding of his role?

9 A Mr. Guaneli was -- is, of course, works very  
10 closely with Mr. Weeks.

11 Q Uh-huh (affirmative).

12 A And he -- he was there, generally, at most of  
13 the conference calls. If -- and, in fact, I  
14 think, had been Mr. Guaneli who had spoken with  
15 some of the witnesses that we called at the grand  
16 jury.

17 Q Uh-huh (affirmative).

18 A The Fish and Wild -- Fish and Game people and  
19 those...

20 Q The damages...

21 A Right.

22 Q ...witnesses?

23 A So he had done that. And, of course, that was  
24 re -- the -- those names were relayed to us as  
25 potential witnesses.

1 Q Uh-huh (affirmative).

2 A He -- he was dealing with, I understand,  
3 Exxon, itself, asking for documents and doing the  
4 things that he would do -- do with Exxon.

5 Q Uh-huh (affirmative).

6 A And, then, those things, I guess were coming  
7 through Phil Dexter, and Mr. Linton. And some of  
8 'em we got and some of 'em we didn't. And --  
9 basically...

10 Q All...

11 A Basically, he was hand in hand with Mr. Weeks.

12 Q Okay. Let me just change the subject for a  
13 second. When -- is it the case that all of the  
14 police reports you received first came to Mr.  
15 Linton...

16 A Yes.

17 Q ...as far as you know?

18 A As far as I know they first came -- they first  
19 came through Mr. Linton before I ever saw them.

20 Q And then...

21 A Except for the ones I generated.

22 Q Right. Of course. Right.

23 Is that also true of the Exxon documents? Any  
24 Exxon documents you saw went through Mr. Linton  
25 first?

1 A Far as I know.

2 Q Okay. Are there any documents, other than the  
3 ones generated by yourself, or Mr. Cole, or Ms.  
4 Henry, connected with this case that you dealt  
5 with that didn't first go through Mr. Linton?

6 A Not that I can think of.

7 Q Okay. Ms. Henry and Mr. Cole -- I can't  
8 remember if Ms. Henry talked about it, but for  
9 sure Mr. Cole talked about a split that developed  
10 within the team -- or, within the people involved  
11 in this case, about whether Mr. Cousins should be  
12 indicted or not. You're familiar with what I'm  
13 talking about?

14 A Yes.

15 Q Okay. Can you just briefly give us your  
16 understanding of what the dispute or the  
17 disagreement was about?

18 A Well, it's -- basically, it's pretty simply.  
19 Ms. Henry and Mr. Cole, myself, and some others  
20 felt that the grand jury should also have had the  
21 option of deciding whether or not Gregory Cousins  
22 should have been indicted for any criminal  
23 charge. And Mr. Weeks and others felt that he  
24 should not -- or, that the grand jury should not  
25 have that option.



1 Q And did he tell you why, or did you hear why?  
2 A The -- excuse me. The only time that -- that  
3 I actually heard a reason directly from Mr. Weeks  
4 was that at one conference call he indicated that  
5 he did not want to go down the line of  
6 responsibility, but rather, up.  
7 Q Okay. Where would you go up from Captain  
8 Hazelwood?  
9 A Exxon.  
10 Q Okay. Had the state -- was the state  
11 considering prosecuting Exxon?  
12 A I think there was some -- initially, yes,  
13 there was some talk about conducting an  
14 additional grand jury in regards to criminally  
15 indicting Exxon as a corporation.  
16 Q And you learned those plans were abandoned at  
17 some point?  
18 A Yeah. Basically that talk just died out. I  
19 -- I never heard what decision was made, or why.  
20 Q So, as far as you know, the state hasn't gone  
21 up the line?  
22 A It -- it has not gone up the line as far as I  
23 know.  
24 Q All right. You said that you, Ms. Henry, Mr.  
25 Cole, and some others felt that he -- that the

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grand jury should have the option. Who were the  
some others?

A I think Mr. McConnell -- Dwayne McConnell was  
essentially in agreement, although, if I recall,  
he was less vocal about it than...

Q Uh-huh (affirmative).

A ...than maybe I was, or Mr. Cole, or somebody.

Q Okay.

A But I do feel that -- that he agreed with our  
position.

Q Any others?

A Well, basically those were the only people who  
were involved in those conferences. So...

Q Uh-huh (affirmative).

A ...I really don't know how anybody else might  
have felt.

Q All right. And then, you said Larry Weeks and  
some other felt that they shouldn't have the  
option. And I take it Mr. Guaneli was one of the  
others?

A Well, I would assume so. I never heard -- in  
any of the conferences I never heard Mr. Guaneli  
try and talk Mr. Weeks out of that decision,  
but...

Q Okay.

1 A ...the -- I -- I have to add, though, that the  
2 -- I think the final decision on that matter was  
3 made at a time when I wasn't present.

4 Q Uh-huh (affirmative).

5 A In -- in a meeting at the DA's Office with Mr.  
6 Weeks, personally. But, on the conference calls  
7 that -- he'd indicated that he wasn't -- did not  
8 want Grand Jury to have the option of indicting  
9 Mr. Cousins.

10 Q Okay. Did you know that Captain Hazelwood had  
11 been sued by a former Exxon employee?

12 A Yes. I did.

13 Q How did you know that?

14 A I was given a copy of some interviews that  
15 that person had given to an Exxon attorney on two  
16 different occasions.

17 Q Okay. And who gave you those interviews?

18 A They were -- I don't know. Mary Anne Henry,  
19 or Mr. Linton. Somebody. They filtered through  
20 the process...

21 Q Okay.

22 A ...then I -- I looked at them.

23 Q Uh-huh (affirmative). Okay. I'd like to go  
24 through a few of the pages in your notebook now,  
25 if we could?

1 A Sure.

2 Q I'm hoping yours is in the same order that  
3 mine was given to me. Mine seems to be generally  
4 chronological. Is that...

5 A Hopefully that's how mine is.

6 Q All right. If you turn to the April 24th  
7 entry, that's just a few days after you'd been  
8 assigned the case, isn't that...

9 A Yes. That's correct. Just a few days.  
10 (1030)

11 Q Okay. And on that date you viewed a video  
12 tape...

13 A Right.

14 Q ...that was made of the Exxon Valdez, pursuant  
15 to a search warrant?

16 A Yes. That was my understanding.

17 Q And do you know whether tainted material was  
18 presented to the magistrate in order to obtain  
19 that search warrant?

20 A I -- excuse me. I don't know. I -- I would  
21 assume so, since that was a -- that warrant, I  
22 think, was served on the 2nd of April, which was  
23 in very close proximity to the grounding.

24 Q And do you know who actually filmed that video  
25 tape?

1 A I believe -- well, I'm not sure. I know who  
2 held the camera.

3 Q Okay.

4 A But I think Mr. -- Greiner, who is a expert in  
5 tankers...

6 Q Uh-huh (affirmative).

7 A Was responsible for the filming...

8 Q He was hired by the state to help in the  
9 investigation of the grounding and...

10 A Yeah. He was. Yeah.

11 Q Okay.

12 A And I -- and I think he -- I think he was  
13 responsible for the video.

14 Q Oh. Okay. So, on the 24th, you -- you  
15 reviewed that video?

16 A Yes.

17 Q All right.

18 A It was basically of the wheelhouse of the...

19 Q Uh-huh (affirmative). Okay. Now, on the 25th  
20 of April you met with Joe LeBeau from the DEC?

21 A Right. Joe LeBeau.

22 Q I'm sorry. I keep saying LeBeau. Lebeau.  
23 What was your understanding as to whether or  
24 not he was -- for lack of a better word, a  
25 tainted person?

1 A Well, it was my understanding that Joe Lebeau  
2 had -- had knowledge of tainted information. And  
3 -- and, in fact, had spent a considerable amount  
4 of time at the Exxon Valdez and the surrounding  
5 area as his job would -- would warrant him to do.  
6 Q Did you know whether he went out to the Exxon  
7 Valdez on the day of the grounding?  
8 A I -- I don't know that.  
9 Q On the 26th, the next day, you met with John  
10 McGhee?  
11 A Actually he called -- I talked to him on the  
12 phone, I think.  
13 Q Okay. And he was the trooper who had been in  
14 charge of the investigation prior to you coming  
15 aboard?  
16 A Correct.  
17 THE COURT: It was the next day, the 26th of  
18 April?  
19 MR. FRIEDMAN: Yes, Your Honor.  
20 Q (Sergeant Stogsdill by Mr. Friedman:) And on  
21 that day you also had a conference call to Mr.  
22 Weeks, Mr. Guaneli, Mr. Linton, Ms. Henry?  
23 A Correct.  
24 (1186)  
25 Q On that day you also spoke with Julie Grimes.

1 She's another trooper who, again, just as  
2 shorthand, another tainted trooper?

3 A She was with the original team to go to  
4 Valdez, right.

5 Q Okay. And you asked her to do some things for  
6 you, didn't you?

7 A Yes. I did.

8 Q You asked her to contact some of the divers?

9 A And serve them subpoenas. Right.

10 Q Okay. And so, that's dif -- point 1 there is  
11 different than point 2?

12 A Yeah. Ex -- well, the -- there was -- there  
13 were other subpoenas to be served, but...

14 Q Uh-huh (affirmative).

15 A ...there was also subpoenas for the two divers  
16 that I -- I wanted her to contact.

17 Q Okay.

18 A I was going to talk to them later, so I didn't  
19 want her to do that, but the -- but, basically  
20 find them and give them subpoenas for grand jury.

21 Q Okay. And you wanted her to talk to Mr.  
22 Delozier for you regarding some of the documents  
23 he had seized?

24 A Basically, if he still had them, and at the  
25 same -- she also had a grand jury subpoena for

1 him. And to advise him of -- this was a subpoena  
2 duces tecum, which means bring those documents  
3 with you.

4 Q Okay. And Mr. -- also, you wanted her to  
5 contact Mr. Hayden for you?

6 A Right. Mr. Hayden was one of the names given  
7 to us by either Mr. Guaneli, or Mr. Weeks as a  
8 damage -- a person who could testify as to the  
9 damage in Prince William Sound. And same  
10 situation: find him and give him the subpoena.

11 Q Okay. And then, you also attempted to contact  
12 Captain Beevers?

13 A Right.

14 Q Now he's another expert that was hired by the  
15 state to help investigate the grounding?

16 A Right.

17 Q On the 27th of April, among other things, you  
18 read the statements Mr. Murphy, the pilot?

19 A Right. Ed Murphy and Mrs. Delozier.

20 Q Okay. Do you know how the investigators first  
21 located Mr. Murphy?

22 A How they first located him?

23 Q How they knew he would have information  
24 helpful to the case?

25 A No, I don't.



1 (1260)

2 Q Do you know how they first located Mrs.  
3 Delozier and knew that she had information  
4 helpful to the case?

5 A No.

6 Q Okay. You spoke with Joe LeBeau again on this  
7 day -- from the DEC?

8 A Right.

9 Q On April 30th you met with Captain Beevers,  
10 the person the state had hired to help  
11 investigate the spill...

12 A Right.

13 Q ...is that right?

14 A Right.

15 Q Okay. And how long did that meeting last?

16 A Oh...

17 Q Roughly.

18 A It's hard to say. I think he was there all  
19 day, but -- and we were in and out.

20 Q Uh-huh (affirmative).

21 A He seemed to be around at that period of time  
22 for a day or two, there.

23 Q Okay. And among other things, you asked him  
24 for his opinions on what happened, how this could  
25 have occurred, what his theories were and so on?

1 A Well, the -- I was also aware that Captain  
2 Beevers had -- had already been to the ship...  
3 Q Uh-huh (affirmative).  
4 A ...was my understanding.  
5 Q Another one of the investigators?  
6 A Well, I don't know if he was an investigator,  
7 but he was an expert hired by the state.  
8 Q And he went out to the ship and...  
9 A Right.  
10 Q ...helped them conduct search warrants and...  
11 A Yes. And he had been -- it's my understanding  
12 that he had been explain the -- and I don't know  
13 what detail, but the taint issue. There were  
14 some things that he could not disclose to me and  
15 -- and should I ask them inadvertently, he was to  
16 tell me no. And that -- and that, also, I was  
17 cautioned not to ask him about those things,  
18 so...  
19 Q What things were you cautioned not to ask him?  
20 A Well, the things that he did. Initially, the  
21 people he talked to while he was out there on the  
22 Exxon Valdez, that sort of thing.  
23 And that, basically, I should just be -- I  
24 should concentrate on -- with Captain Beevers on  
25 --on, basically, background information on what

1           it's like to be a tanker driver and...

2           Q           Uh-huh (affirmative).

3           A           ...capt -- or tanker captain.  And -- and  
4           then, his analysis of ship movements and things  
5           of that sort, based on some of the documents that  
6           -- that he had been provided.  And that's -- and  
7           one of the things I was asking him about is that  
8           what sort of documents do you need to make -- to  
9           make some sort of reasonable -- to come up with  
10          some sort of reasonable conclusion as to what may  
11          have happened, or what may have been avoided and  
12          that sort of thing.

13          Q           Uh-huh (affirmative).  And among other things,  
14          you were specifically asking him for his  
15          conclusions and his opinions regarding the Exxon  
16          Valdez incident?

17          A           Well, that was going to happen at some point.  
18          I don't know that he was willing or -- or was  
19          prepared to draw any kind of conclusions...

20          Q           I guess what I'm asking is while he's -- while  
21          he was with you and -- and the prosecutors for  
22          that day, he wasn't giving you a general seminar  
23          on life at sea.  The focus was on what happened  
24          with the Exxon Valdez.  I'm not saying he gave  
25          you a final conclusion, but the -- the focus of

1 the discussion -- the reason he was there was to  
2 try to figure out what caused this incident.

3 Isn't that fair to say?

4 A Oh, no. Yeah. Yeah.

5 Q Okay.

6 A That was his job. And it still is.

7 Q And as you -- and was from the beginning when  
8 he was first hired by the state to look into  
9 this?

10 A I assume so.

11 Q Okay. And as you would talk about the Bell  
12 Log, the Bell Book, the charts, so on, it would  
13 be those particular documents from the Exxon  
14 Valdez?

15 A Right.

16 (1445)

17 Q And what you were hoping he could do was give  
18 an opinion as to what caused this problem?

19 A Right.

20 Q Okay. And in terms of whether he correctly  
21 interpreted what he could talk to you about and  
22 what he couldn't talk to you about, you're not in  
23 a position to tell us that, because you don't  
24 know what instructions he received. Is that  
25 right?

1 A Not -- not only do I -- I do not know exactly  
2 what instructions he received, I also don't --  
3 don't know what he knew.

4 Q Right.

5 A So.

6 Q Got a page here, I guess it's the 5/1/89 entry  
7 for 10:05 in the morning?

8 A Right. Rick Wade.

9 Q Rick Wade. You were aware that Mr. Wade had  
10 gone out to the vessel in the first -- on the  
11 first day?

12 A Yeah. Right when I talked to him I was.

13 Q Okay. And -- and he told you that?

14 A Right.

15 Q And you asked him about what he had done?

16 A Right.

17 Q Okay. On -- a few pages in -- I guess it may  
18 be the same day, up at the top of the page it  
19 says 12:40 p. I guess it is the same day. You  
20 had a long day that day.

21 A Right.

22 Q At 12:40 p.m. call William Woody at NTSB?

23 A Right.

24 Q Who was Mr. Woody?

25 A Well, I didn't talk to him. He was...

1 Q Okay.

2 A Mr. Woody was -- was -- my understanding was  
3 the person in charge of NTSB. I think he is the  
4 shipwreck person at NTSB.

5 Q Okay. And he was involved in the  
6 investigation that was being conducted by the  
7 NTSB?

8 A I didn't know if he was personally involved or  
9 not.

10 Q Okay. Why were you calling him?  
11 (1560)

12 A I wanted a list of the people that they were  
13 calling to NTSB.

14 Q So, you must have know -- I mean, you must  
15 have known he was personally involved, if you're  
16 calling him for the witnesses?

17 A Well, I think -- I'm not sure how I found out  
18 that he was -- it seems like what I did was I  
19 called NTSB here, locally...

20 Q Uh-huh (affirmative).

21 A ...and asked -- told them what I wanted and  
22 asked who to contact in D.C. And they told me  
23 they didn't have that information locally and  
24 that I should call D.C.

25 Q Okay.

1 A So I called D.C. at this nu -- at that phone  
2 number there and the only person available at the  
3 time was the secretary who was answering the  
4 phone, I guess. Told her who I was. Asked her  
5 for a list of people who had been subpoenaed by  
6 NTSB to the NTSB hearings here.

7 Q Uh-huh (affirmative).

8 A And she had that list handy that she was  
9 handing out to, I guess press people, or  
10 somebody. And she gave me the list.

11 Q Okay. And why did you want that list?

12 A Well, because we had a -- a -- we were going  
13 to have some of these people appear at grand  
14 jury. I wanted -- and I wanted to know which  
15 ones were going to be here, anyway. And I --  
16 Mary Anne Henry had made some arrangements with  
17 -- I don't know, Mr. Weeks, or Exxon, or somebody  
18 that -- so our grand jury was split up in several  
19 sections...

20 Q Couple days. Right.

21 A And this section of the grand jury coincided  
22 with the NTSB hearings, because these people were  
23 gonna be here anyway. So.

24 Q You weren't permitted to go to the NTSB  
25 hearings, were you?

1 A I was not.

2 Q Okay. You weren't permitted to talk to people  
3 about what took place at the NTSB hearings, were  
4 you?

5 A I was not.

6 Q You -- on the next page of your notebook it  
7 says, went to Alaska State Troopers -- I assume  
8 that's what AST stands for?

9 A Right.

10 Q "Went to AST to pick up some evidence items  
11 which will be needed for Grand Jury"?

12 A Right.

13 Q How did you know what evidence items to pick  
14 up?

15 A The -- there had been a list of evidence items  
16 that had been seized in numerical order that had  
17 been provided us through Mr. Linton. Mary Anne  
18 Henry had indicated certain items that she wanted  
19 for grand jury...

20 Q Uh-huh (affirmative).

21 A ...on that list. And, of course, they were  
22 all being held out at the evidence area at the  
23 troopers' office. And they had to get from there  
24 to here and I was -- I did that.

25 Q Well, let me make sure I understand the -- the



1 list travelled -- the evidence list traveled from  
2 Mr. Linton to Ms. Henry to you? As far as you  
3 know?

4 A As far as I know.

5 Q In your view is Mr. Linton a tainted, or  
6 untainted person?

7 A Mr. Linton?

8 Q Yes.

9 (1700)

10 A Oh, I'm -- I'm sure he's tainted.

11 Q On 5/2/88...

12 A Uh-huh (affirmative).

13 Q ...at the bottom of the page, you indicate  
14 there was a conference call between yourself, Ms.  
15 Henry, Mr. Cole, Mr. McConnell. And you say, "I  
16 will continue to help if I can."

17 What -- what does that indicate? What was  
18 going on in that conference call that put some  
19 doubt in your mind about whether you could help?

20 A I'm not sure I recall.

21 Q Did there come a time at roughly this point in  
22 the -- in your involvement in the case where you  
23 began to doubt whether you could help or not?

24 A Well, like -- essentially, the -- my position  
25 was very -- I thought was very difficult. First

1 of all, I'd never professed to understand what  
2 taint was in its entirety.

3 Q Uh-huh (affirmative).

4 A I mean, you were -- I understood the basis of  
5 it, you know, but as I attended these conference  
6 calls and listened to the -- the opinions of  
7 lawyers as to taint, and also, realizing that  
8 there was some disagreement between them as to  
9 that...

10 Q Uh-huh (affirmative).

11 A ...and as to the things that could be done, I  
12 was, you know, not being a lawyer myself, I was  
13 sort of like in the dark sometimes.

14 Q Uh-huh (affirmative).

15 A I felt badly about that. I didn't -- but I,  
16 you know I -- I didn't think that -- that what I  
17 was doing was a waste of time, but I thought that  
18 it was so contrary to the way I had done  
19 investigations prior that I guess I was -- I had  
20 some doubts as to whether or not I needed this.  
21 I just -- so, the -- beyond that, I don't know of  
22 anything specific where, you know, I wanted to  
23 say I'm gonna bail out of this if I can...

24 Q Uh-huh (affirmative).

25 A ...or -- and I -- I didn't do that. That's --

1           there were -- I guess I was just in a position of  
2           being a policeman, you know, in a world of -- of  
3           confusing legal term -- conflict...

4           Q           All right.

5           A           ...that I wasn't sure that I wanted to be in  
6           at the time, I guess.

7           Q           I understand.

8                        On 5/8/89 you indicate that you're looking for  
9           a notebook which is described by Joe LeBeau as  
10          having some useful information?

11          A           Right.

12          (1836)

13          Q           Okay. How did you -- can you tell us how you  
14          came to be talking to Mr. LeBeau about that?

15          A           I don't remember the circumstances. It seems  
16          like in --trying to get this correct here. It  
17          seems like in reviewing the documents that --  
18          that I was aware of that had been seized, or  
19          taken from the Exxon Valdez, that we -- we were  
20          searching for some -- to see if we had some  
21          information as to how much oil was being lost at  
22          a certain time...

23          Q           Uh-huh (affirmative).

24          A           ...or how much had gone away by...

25          Q           Right.

1 A ...so many hours afterwards. That sort of  
2 thing.

3 LeBeau had indicated -- I'm not sure if it was  
4 to me or Mary Anne Henry, but it could have been  
5 to both of us who were there, but that he had  
6 seen a notebook on board the Exxon Valdez that  
7 contained, perhaps, that type of information.

8 Q Did he tell you whether he'd seen that in his  
9 initial response out there on the 24th, or  
10 whether he'd seen it at some other time?

11 A I don't recall when he saw it. Basically,  
12 that -- I -- basically, the information was, "I  
13 think that exists. I think I saw it."

14 It was -- but, it was such -- the information  
15 -- I mean, he was sure enough that -- that he  
16 testified for a search warrant.

17 THE COURT: I didn't hear that last part.

18 A He testified for a -- in regards to a search  
19 warrant in front of the magistrate in Valdez to  
20 obtain that.

21 Q Uh-huh (affirmative). Okay. If he had first  
22 seen the notebook when he responded on the 24th,  
23 under the rules as you understood them, would  
24 that, then, be tainted information?

25 A If he had seen the notebook on his first

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response?

Q           And then -- then -- and was now telling you there's a notebook out there that could help you. I understand you're not the architect of these rules and I'm not -- and -- and I'm not sure anyone could have followed these rules, but I'm just trying to see if...

A           I -- if...

Q           ...there was an internally consistent...

A           I understand.

          If -- if Mr. LeBeau went out there immediately, and I'm not sure he did that.

Q           Uh-huh (affirmative).

A           But, if he had done that and had seen the notebook on his initial response as a result of...

Q           Right.

A           ...Captain Hazelwood's call, then, yes. That would have been tainted information.

Q           Okay. 5/10/89 you have a to do list for the day, subpoena on Hazelwood in Anchorage? Did you try to subpoena -- is that -- does that s-u-p?

A           No. That's not -- that was a -- that was a supplement.

Q           Supplement.

1 A That means supplement.

2 Q Okay.

3 A I -- I think that referred to my -- my having  
4 picked up Captain Hazelwood at the airport, or  
5 something.

6 Q All right.

7 A Or -- or going to, or something. I don't  
8 think I did that.

9 Q Okay.

10 A But, I may have. I don't recall.

11 Q All right. And item 3 is supplement on  
12 Hazelwood's statement to NTSB that he would take  
13 the Fifth?

14 A "Supplement on Hazelwood statement"? Right.

15 Q What...

16 A That was information that the -- that the  
17 secretary that I referred to earlier...

18 Q Right.

19 A ...had given me at NTSB. I think I -- when  
20 she gave me the list I asked her why Captain  
21 Hazelwood wasn't appearing.

22 Q Uh-huh (affirmative).

23 A And she said that they had -- there was a  
24 notation on whatever paper she had that he  
25 wouldn't be appearing because that he indicated

1 -- he had indicated, apparently, to NTSB -- or  
2 somebody had...

3 Q Uh-huh (affirmative).

4 A ...that he would not be answering any  
5 questions anyway. So -- he might appear.

6 Q It was okay for you to know who would be  
7 testifying at the NTSB? That didn't violate the  
8 rules?

9 A Well, I don't think it did. Basically it was  
10 just common sense. I knew the crew was gonna be  
11 there and that's what I was interested in was the  
12 crew, not everybody else, essentially.

13 Q Well, I -- again, you didn't know that the  
14 crew was gonna be there. Some of them might have  
15 plead the Fifth as well, isn't that so?

16 A That -- that's true.

17 Q So...

18 A Well, that's why I called, to find out who was  
19 appearing.

20 Q Exactly. So, you -- you were allowed to know  
21 some things about what was going on at the NTSB,  
22 but you weren't allowed to attend?

23 A That's right.

24 Q Okay. And you were allowed to go to the  
25 Captain Cook and -- which is where the NTSB

1           hearings were held -- at the time they were being  
2           held?

3           A           Well, I was -- yeah. I was in there a couple  
4           times.

5           (2088)

6           Q           Yeah. Okay. And you were allowed to make  
7           observations about things outside the conference  
8           room at the NTSB hearing?

9           A           And I did.

10          Q           And you did.

11                    You have a note of calling Carol at the LA  
12          Times. What was that all about?

13          A           Carol's my sister. She's an executive editor  
14          at LA Times.

15          Q           Uh-huh (affirmative).

16          A           He -- she had called me and indicated that  
17          they were have -- they were sending a -- a person  
18          here to cover the NTSB hearings who had done some  
19          investigation already in the past on tanker  
20          safety. And that, should I be interested in  
21          tanker safety things that he might be a person I  
22          could talk to about that.

23          Q           But, you couldn't talk to him about what  
24          happened at the top of that pyramid, could you?  
25          About...



1 A I couldn't talk...

2 Q ...what happened in this case early on?

3 A Right. I couldn't talk to him about what --  
4 first of all, what he heard at the NTSB hearing.

5 Q Uh-huh (affirmative).

6 A And -- 'cause I don't know if he went to the  
7 Exxon Valdez, or not. But, if he did, I couldn't  
8 talk to him about any of those things either.

9 Q Now, how -- how would you handle this on a day  
10 to day level when you were talking to people --  
11 everyone you talked to had tainted information?  
12 Do you read them some sort of...

13 THE COURT: Excuse me just a minute. Mr.  
14 Linton, do you need to stand there?

15 MR. LINTON: Judge, I -- I had a copy of these  
16 notes at one point and I -- and I don't have them with  
17 me and I don't know what they are...

18 THE COURT: Okay. That's good enough to stay  
19 there.

20 MR. MADSON: Your Honor, I've got another copy  
21 he can look at if that...

22 MR. FRIEDMAN: I don't mind him standing  
23 there.

24 MR. LINTON: I'd appreciate it. I mean, then  
25 I can...

1 THE COURT: Yeah. That'd be easier for you to  
2 sit down and write from it.

3 A I can answer your question. I -- no. I  
4 didn't have a -- a warning that I gave them. But  
5 I -- but, when I -- if I thought that I was going  
6 to be in a position where I might hear something  
7 that I shouldn't hear, sometimes I would tell  
8 them that that part of the -- that part of the  
9 investigation I'm not allowed to know.

10 Q (Mr. Stogsdill by Mr. Friedman:) Uh-huh  
11 (affirmative).

12 A If somebody started to say something about  
13 something that somebody else said that I was  
14 relatively clear was tainted information, "Stop.  
15 I can't -- I -- I'm sorry. I can't listen to  
16 that sort of thing, so don't talk about that any  
17 more." So, I -- and I did that a number of times  
18 for various people.

19 Q Is it fair...

20 A And -- I'm sorry.

21 Q I'm sorry. Go ahead.

22 A Or, there were other occasions when, you know,  
23 I had to ask people to turn off the television,  
24 don't talk about that, even to -- even to some  
25 attorneys, "I can't hear that kind of information

1 so please don't mention it anymore."

2 So, basically, that's what I did.

3 Q And when you would say, "I can't hear that  
4 kind of information," it's because you had just  
5 heard some of that kind of information and you  
6 were trying to cut it off at that point?

7 A Well, sometimes -- I mean, you can see the  
8 direction that something's taking. I mean -- and  
9 you can stop it before. But -- but, basically, I  
10 think -- I felt that I was able to stop it before  
11 -- before I -- I heard something that I shouldn't  
12 have, yes.

13 Q Do you think it's fair to say that over the  
14 several months that you were trying to insulate  
15 yourself, but at the same time investigating this  
16 case and talking to probably hundreds of people  
17 about this case, telling some of them, "Stop. I  
18 can't hear that kind of information," that over  
19 the course of that time frame you did hear what  
20 would be considered tainted information?

21 (2267)

22 A Honest -- honestly I don't know how something  
23 like that can be avoided. I mean, it's -- you're  
24 gonna -- I mean, you're gonna hear a few words  
25 about this, a few words about that, you know, in

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-- in just the course of moving about. That's gonna happen.

Q You -- on 5/10/89, the second page, you're making a reference to your sister, Carol, from the LA Times...

A Right.

Q ...getting you a copy of a story regarding a reference -- I'm sorry. Regarding an interview with Greg Cousins.

A Right.

Q Okay. Did she do that for you?

A Right. The -- I think -- I'm not sure who had heard about this. Somebody had told me at the DA's Office, it could -- and I'm not -- I don't really remember who it was -- that a story or something had appeared, that they had heard a story, or there was a reference to a story in an interview of Gregory Cousins by a Florida newspaper.

Q Uh-huh (affirmative).

A And they asked if I would have any way of getting a copy of that.

Q Uh-huh (affirmative).

A I figured my sister was a relatively good source for that. I called her and asked if she

1           could lay her hands on a copy. She -- I think  
2           she even had it already, or got it from Florida,  
3           or something.

4           Anyway, she faxed it up. It was given to Mr.  
5           Linton and he still has it.

6           Q           Okay. You never saw that?

7           A           No.

8           (2370)

9           Q           You -- on 5/11/89 called her back to get the  
10           name of the reporter in Florida who had done that  
11           interview?

12          A           Right. The -- when she had faxed that up the  
13           name had gotten obliterated from the fax part,  
14           apparently. And -- and, then, there was --  
15           somebody brought that to my attention. I -- I  
16           called my sister for the name. And I'm not -- I  
17           don't think she ever -- I don't know that I even  
18           have it today.

19          Q           Okay. Well, I don't need to know the name.  
20           Did she give you the name and did you pass that  
21           on, or...

22          A           No. She didn't know the name either, but the  
23           -- I think she was -- her intentions were at that  
24           time, I think, to fax up another copy. And --  
25           and if she did so I never saw that either.

1 Q Now, was it your understanding that this  
2 article was going to help in some other  
3 investigation that the state was performing --  
4 since you, obviously, couldn't see the article?  
5 What -- what did you understand the purpose of  
6 retrieving this article to be?

7 A Well, I was -- essentially it was statements  
8 made by, I assume -- I assume that an interview  
9 is statements made by Gregory Cousins.

10 Q Uh-huh (affirmative).

11 A The -- there were several reasons for having  
12 that. One is that, hopefully at some time I can  
13 either talk to Gregory Cousins, read his NTSB.  
14 Maybe he would appear at a grand jury in the  
15 future or something. You know, there was --  
16 there seemed to be several reasons for obtaining  
17 it.

18 Q Okay. I thought you said that someone else in  
19 the DA's Office asked you to get it -- some DA  
20 --I -- I guess the impression I had was that it  
21 was a DA other than Brent Cole and Mary Anne  
22 Henry that...

23 A No. I -- I believe it was -- I think it was  
24 one of them.

25 Q Okay.

1 A That -- and basically, that was -- those were  
2 the reasons.

3 Q Uh-huh (affirmative).

4 A Let's get it in case...

5 Q All right.

6 A ...in some time in the future we can use it,  
7 then, until that time Mr. Linton can do with it  
8 as he will.

9 Q Uh-huh (affirmative). Okay.  
10 (Pause)  
11 5/15/89 you have a note that the NTSB hearings  
12 will begin tomorrow.

13 A Right.

14 Q How'd you know that?

15 A I knew that from -- from calling NTSB, and  
16 probably other sources. I -- I mean, that's just  
17 one of those things that you couldn't...

18 Q Couldn't miss?

19 A ...couldn't avoid.

20 Q Uh-huh (affirmative).  
21 (Pause)  
22 Okay. Down at the bottom of the second page  
23 of 5/16/89, apparently you met with Mr. Kagan and  
24 his attorneys -- or attorney?

25 A No. Attorneys.

1 Q Attorneys?  
2 A Right.  
3 Q Okay. Is that correct?  
4 A Many. There were several.  
5 Q Okay.  
6 A Two or three there.  
7 Q And on at least two occasions you had to tell  
8 them not to reveal anything Cousins had said at  
9 the NTSB hearings?  
10 A Yeah. I -- and I made a note of that because  
11 it happened more than once. And it was the...  
12 Q Okay.  
13 A ...it was Mr. -- Mr. alphabet there, whatever  
14 Lautenschlager (ph). Is that his name?  
15 Q Beats name. I don't -- take your word for it.  
16 A Whatever. Anyway, he was -- he had come from  
17 Louisiana, I guess, with Mr. Kagan and on two  
18 occasions he had just -- he had just sat through,  
19 I think, Cousins NTSB testimony. And -- and a  
20 couple times he started to say and Cousins said  
21 this. And we had to tell him twice to -- to not  
22 talk about that.  
23 Q Okay.  
24 A And at the same time, they also indicated  
25 there is -- the Exxon security man turned on the



1 TV set and there was testimony at that -- this  
2 all took place in a -- a community motel room up  
3 at the Captain Cook, there, where all the Exxon  
4 Valdez crew members were present, moving in and  
5 out of the room.

6 Q Right. All right. And later that day at I  
7 guess it's two pages further in, you've got a  
8 note at the middle of the page, "Dick Vail gave  
9 me order of call for NTSB hearing."

10 A Right.

11 Q Dick Vail?

12 A Dick Vail is -- was the West Coast Chief of  
13 Security for Exxon.

14 Q Okay.

15 A And it -- he was essentially in a babysitting  
16 mode for all the crew members there who were  
17 present for the NTSB hearings.

18 Q Okay.

19 A And -- and, basically, this was -- when's --  
20 when are our people testifying so we can slide  
21 our grand jury testimony in there. And he just  
22 gave me the whole list and I wrote it down.

23 Q Okay. A couple pages more there's a note, "At  
24 8:25 p.m. called Bill Rempel?"

25 A Right. Bill Rempel was the -- was the Los

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Angeles Times person who my sister had told me about earlier.

Q Okay. And you did, in fact, meet with him and talk about the case. Is that right?

A I -- I met with him and talked about the -- a little bit about the tanker safety article that he was going to be doing, or had just done.

Q Uh-huh (affirmative).

A I eventually got a copy of that under the same methods. And Mr. Linton has that, too, but they...

Q Uh-huh (affirmative).

A And -- but, basically, it was -- I didn't spend much time at all, only a few minutes talking about that because of the -- I mean, we were at a bar there and it wasn't appropriate.

Q 8/22/89...

A Eight?

Q I'm sorry. 5/22. Looked like an 8. 5/22/89.

A Right.

Q You -- you indicate that the grand jury is finished. Did you sit in on grand jury?

A No, sir.

Q Okay. And you indicate, "Dwayne McConnell then reads prepared statement from Larry Weeks,

1 reference indicting Cousins."

2 How did you know about that?

3 A Well, it was -- I mean, it was all -- it was  
4 common knowledge amongst us up there, myself, Ms.  
5 Henry, and...

6 Q Tell us what that was about?

7 A I don't know the content of it. I...

8 Q What did you know about it, I guess is what  
9 I'm asking? Now, it -- what's Mr. McConnell  
10 doing going into Mary Anne Henry's grand jury and  
11 reading a statement with...

12 A The -- first of all, I wasn't -- I wasn't  
13 present when the decision was made to do that.

14 Q Right.

15 A So, I can -- I can tell you what I was told by  
16 Mary Anne Henry, or Brent Cole.

17 Q That's fine.

18 A Okay. Essentially, Mary Anne Henry, Brent  
19 Cole, myself felt strongly enough about giving  
20 the grand jury the option of indicting Gregory  
21 Cousins that when Mary Anne Henry was asked by  
22 Larry Weeks to advise the grand jury that that  
23 would not be an option, she refused to do that.

24 Q Okay.

25 A And Mr. McConnell, then, acting on Mr. Weeks'

1 instructions, I understand, did so.

2 Q Okay. It sounds like Mr. Weeks was fairly  
3 involved in the decision making process regarding  
4 the charging and conduct at grand jury. Is that  
5 a fair statement?

6 A I -- well, it -- he was -- he was involved a  
7 great deal. Yes. That's a fair statement.

8 Q Okay. On 6/21/89, you're in the Anchorage  
9 DA's Office, is that correct?

10 A Right.

11 Q And you spent another day going over documents  
12 with Beevers, and this time Greiner?

13 A Greiner (ph).

14 Q Greiner.

15 A Both of those are tanker experts.

16 Q Yeah. The ones we've been referring to  
17 earlier this morning...

18 A Right.

19 Q That were hired by the state to help?

20 A Right.

21 (2866)

22 Q Okay. And who's Sperry technician?

23 A I don't recall his name just now. He -- he  
24 was a -- he was a person who we had asked to  
25 come...

1 Q Uh-huh (affirmative).

2 A And -- and he went on the Exxon Valdez with  
3 myself and Brent Cole, Greiner and Beevers.

4 Q Uh-huh (affirmative).

5 A And, basically, his -- we wanted him to look  
6 at the steering autopilot thing on the Exxon  
7 Valdez to, basically, help us understand it, how  
8 it worked...

9 Q Uh-huh (affirmative).

10 A ...and to take a look to see if it was working  
11 properly -- that sort of thing.

12 Q Okay. Is it fair to characterize the time you  
13 spent that day as -- as being, again, another  
14 session which you're trying to put the evidence  
15 together and figure out what happened to cause  
16 the accident?

17 A Oh, yeah. We went over a lot of -- we had all  
18 the course recorders and Bell Logs, and those  
19 things, all at our -- all here as we were talking  
20 about this.

21 (2970)

22 Q 7/7/89?

23 A Uh-huh (affirmative).

24 Q We're now about two months past grand jury?

25 A right.

1 Q At 11 o'clock you had a conference call with  
2 Mr. Weeks, Mary Anne Henry, Sam Adams, and Brent  
3 Cole, is that right?

4 A Correct.

5 Q What was the focus, or purpose of that  
6 conference call?

7 A I'm not sure I remember. I -- I really can't  
8 say.

9 Q Okay. Can you remember any -- what Mr. Weeks'  
10 involvement would have been around this time  
11 period -- now roughly two months after grand  
12 jury?

13 A Excuse me. I -- I don't really know. It -- I  
14 don't recall anything of -- of particular import  
15 occurring at this -- at this time. I -- so, I  
16 guess I'm really not sure. It might have just  
17 been a, "Here's what's happening, Mr. Weeks,"  
18 kind of call. I really can't say. I don't  
19 remember it at all.

20 Q Okay. You indicate that you had an interview  
21 with Don Steele from the FBI?

22 A Well, it wasn't really an interview. I just  
23 -- I tried to keep track of when I called them so  
24 -- so people would know -- so you would know  
25 that, right.

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Q Uh-huh (affirmative).

A So, yeah. I did -- I did talk to Don Steel this morning -- on that day.

Q And he's relating what he's found from interviewing Exxon personnel?

A He had -- I -- basically, I asked him what, you know, I mean, well, I'm not sure what I asked him. He did tell me he'd gone to Houston and that he'd interviewed some folks in the Exxon shipping company, and the things that I have here. And basic -- had gotten some information about Mr. Kagan. Those are the kinds of -- those are the things that -- that were on my list to do when I went to Houston the following month. So...

Q You know what efforts Mr. Steele might have made to see that he didn't get tainted information when dealing with other people? In other words, do you know what his rules were?

A I -- I don't know what -- I don't know exactly what his rules were. I never discussed that with him, but, like -- you know, like I said, I -- yesterday that I was to understand that he was the clean investigator, so to speak, under the Federal rules. So...

1 Q But what that meant in terms of their  
2 information?  
3 A What that meant I didn't know and I didn't ask  
4 and...  
5 Q What was your understanding as to what he was  
6 investigating, who he was trying to make the case  
7 against?  
8 (3110)  
9 A Well, I knew that he was working directly with  
10 the United States attorneys from the  
11 Environmental Protection Agency.  
12 Q Uh-huh (affirmative).  
13 A And essentially my understanding was is that  
14 at some point in time their intentions were to  
15 have a -- some sort of grand jury proceeding --  
16 federal grand jury Proceeding, I guess, Exxon,  
17 itself.  
18 Q Uh-huh (affirmative).  
19 A So, my understanding as far as Mr. Steele's  
20 involvement was that he probably was focusing  
21 on...  
22 Q Different issues.  
23 A ...different issues, and mainly Exxon as a  
24 corporation, where...  
25 Q Uh-huh (affirmative).



1 A ...my area of responsibility was confined to  
2 Captain Hazelwood.

3 Q His area of taint, or what he needed to do to  
4 stay clean might have been quite a bit different  
5 than yours?

6 A I could have been. I don't -- I don't know  
7 what his rules were.

8 Q Okay. 7/12/89 you indicate you talked with  
9 Trooper Alexander.

10 A 7/12.

11 Q 7/12/89, "Travel to Valdez..."

12 A Right.

13 Q "...talked with Trooper Alexander." He's the  
14 trooper stationed in Valdez?

15 A Right.

16 Q He was out of town at the time of the  
17 grounding.

18 A That's...

19 Q Or, you may not know that.

20 A I don't know that.

21 Q At any rate, he was the trooper stationed  
22 there when you went down there on 7/12/89?

23 A Yeah.

24 Q And you asked him whether he'd heard any  
25 rumors, or other information of value to the



1 A Well, I don't know. I -- I see there -- I see  
2 I have written down here that she was a bartender  
3 at the Pipeline Club, but I -- I'm not sure how I  
4 know that.

5 Q What about the Sourdough Barber Shop?

6 A That was a -- that was just an attempt to find  
7 the barber who I had heard had -- had indicated  
8 to others that he had cut Captain Hazelwood's  
9 hair the day before the grounding. And what I  
10 was doing was just -- I was going through the  
11 phone book trying to find the barber shop. And  
12 this was the only one listed. And it wasn't --  
13 it wasn't the barber shop in question.

14 Q Okay. How had you heard that someone -- that  
15 a barber was saying he cut his hair?

16 A I had heard that from -- I think I had heard  
17 that from Don Steele, who told me that Captain --  
18 is it Captain Blaze? The...

19 Q Uh-huh (affirmative).

20 A Is he a captain?

21 Captain Blaze -- excuse me. Captain Blaze,  
22 who lives here in Anchorage had said something  
23 to...

24 Q Anyway, you got it from Don Steele?

25 A I got it from Don Steele. And there was a big

1           rout there. And Steele hadn't -- I asked Steele  
2           if he had looked into it, was there anything to  
3           it. He said he had not. I said, well, then, I  
4           was going to.

5           Q           Okay. Trooper Alexander, by the way, was it  
6           your understanding he was involved in the  
7           investigation in the first several weeks?

8           A           Well, I really didn't know what his  
9           involvement was. It was reasonable to assume,  
10          since he's the only trooper stationed there that  
11          he might -- they probably used him for something.

12          Q           Uh-huh (affirmative). Okay.

13                    Next page indicates you met with Mark  
14          Delozier?

15          A           Right.

16          Q           What was the purpose of that meeting?

17          A           I wanted to fi -- I wanted to find out from  
18          Delozier what the essence of his conversations  
19          were with Captain Hazelwood's attorneys at the  
20          bar at the Captain Cook Hotel.

21          Q           Okay.

22          A           And that -- that was limited to that.

23          Q           You knew that Mr. Delozier was one of the  
24          people who'd gone out there originally in  
25          response to the report?

1 A Certainly. I knew that and I knew -- and I  
2 knew -- I mean -- I mean, he testified at our  
3 grand jury and brought documents. And obviously,  
4 in order to testify about documents, he must have  
5 seized them, or somehow came into possession.  
6 So, I -- I knew that he had some immediate  
7 involvement in the -- and probably he was  
8 consumed with tainted information.

9 The -- at the same time, though, that I -- I  
10 felt I should ask him what went on there.

11 Q Sure. And -- and, basically, you're asking  
12 what went on in a conversation between him and  
13 Mr. Hazelwood's attorneys?

14 A Right.

15 THE COURT: What did he tell you?

16 A He told me that he had -- they had encountered  
17 each other sort of by accident at the bar over  
18 here at the Captain Cook, Fletcher's, or whatever  
19 it is, and that they had -- they had asked about  
20 what the Coast Guard intended to do, or how they  
21 intended to proceed in any action against Captain  
22 Hazelwood's license, and that, would it be  
23 possible to forestall that until after the  
24 criminal charges had been handled in one manner,  
25 or another prior to taking any action, I guess,

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on the license.

Q (Sergeant Stogsdill by Mr. Friedman:) Mr. Delozier also told you that he had the impression from talking to the attorneys that they were going to try to make him look bad in court, based, apparently on the way he handled the investigation...

(3610)

A He said that that was the impression he got. Right. And I don't -- I didn't ask him how he got that impression, or what they said to him.

Q Uh-huh (affirmative).

A I didn't care about that.

Q The next -- two pages over you talk about Don Steele from the FBI?

A Oh, yeah. This is where -- that's where the barber...

Q Okay.

A ...stuff came from.

Q So, the information down below Don Steele's name is information you got from him?

A No. The information down below is another. This is -- is information that came from -- I think from the statement of...

Q Let me just ask you this, did you talk to

1           Blaze, the U. S. Coast Guard person?

2           A           No. I did not.

3           Q           That's all I was trying to find out.

4           A           Oh, okay.

5           Q           Thank you.

6                   (Pause)

7                   7/19/89.

8           A           Uh-huh (affirmative).

9           Q           About two paragraphs down, three, maybe. It

10           says, "Show -- should contact Holly Johnson."

11           A           Holly Johnson.

12           Q           Holly Johnson. Where did that lead come

13           from?

14           A           Actually, I think that came from Exxon.

15           Q           Uh-huh (affirmative).

16           A           I never did talk to Holly Johnson. Basically

17           I was doin' the same thing with -- with Jim

18           Sturdevant (ph) there, who was the Exxon security

19           guy.

20           Q           Uh-huh (affirmative).

21           A           And I asked him if he'd -- you know, if he'd

22           heard anything that he felt that would be worth

23           the -- or, that he heard anything that I could

24           take a look at, or -- and the only thing that

25           he'd -- he'd heard from some secretary in his

1 office...

2 Q Uh-huh (affirmative).

3 A ...that Holly Johnson at the taxi company

4 might know something. But, what I -- when I

5 tried to talk to her she was off -- out fishing,

6 or something.

7 Q Was that something you did at points

8 throughout this investigation, or when you ran

9 into someone who you thought might give you a

10 lead, you would ask them if they knew anything

11 that they thought might be helpful?

12 A Well, you'd do it as a matter of course. I

13 did it as a -- people who are moving around, like

14 -- like Alexander would be, Sturdevant, of

15 course, was -- with Exxon and, you know,

16 sometimes those guys, they hear rumors, or

17 something that may very well at some point down

18 the road pan out, or it may not.

19 But, at the time -- well, you know, it just

20 kind of keeping your ear to the ground sort of thing...

21 Q Sure.

22 A ...you know?

23 Q Sure. And when you would run into people like

24 that, you would ask them all sorts of questions?

25 A Occasionally.



1 Q Okay. Same page indicates that you spoke to  
2 Dan Lawn.  
3 A Dan Lawn, right.  
4 Q And it says that you did a report on that and  
5 I wasn't able to find the report. Do you --  
6 would it take you very long to do that?  
7 A No.  
8 (Pause)  
9 Q I'm sure I have it somewhere, but...  
10 (3700)  
11 THE COURT: Just a minute. Gentlemen, if you  
12 need to talk you can go back to the media room there.  
13 It's silent. But, otherwise I'd ask that you refrain.  
14 (3715)  
15 A I don't see it either here.  
16 (Pause)  
17 Yeah. Here it is.  
18 Q Thank you.  
19 A You're welcome.  
20 Q You understood that Mr. Lawn was one of the  
21 investigators who went out to the scene in  
22 response to Captain Hazelwood's report?  
23 A Well, I don't think I knew that 'til now that  
24 he -- the reason I went over there was I had a  
25 request from Mary Anne Henry.

1 Q Uh-huh (affirmative).

2 A His office was -- is located in the -- the  
3 central court building there in Valdez.

4 Q Uh-huh (affirmative).

5 A And -- and, basically, I went over there at  
6 her request, because there had been apparently  
7 some statements made by other people in DEC  
8 regarding actions to be taken on the oil that was  
9 left behind, apparently, when the Exxon Valdez  
10 left for San Diego. And -- and there was some --  
11 my understanding was that DEC may very well ask  
12 Exxon be prosecuted for the spilling of that oil,  
13 or plankton, or whatever it turned out to be.  
14 And -- and that some -- they were making some  
15 statements about that that she felt were part of  
16 her purview, and that since I was in Valdez, she  
17 had tried to call Dan Lawn about that and he  
18 would -- he either had not called her back, or  
19 something.

20 And -- and so, she asked me to go over and  
21 tell him to basically be quiet about it until  
22 they had decided what to do. And at that time,  
23 then, of course, he -- he indicated to me that he  
24 had -- he had gone out there with Delozier,  
25 initially, and -- and had -- well, all the things

1           that you see here in the notes.

2           Q           Basically, he told you that he was one of the  
3                        initial investigators who responded to...

4           A           Right.

5           Q           ...the report?

6           A           Right.

7           Q           That he went out with Delozier and  
8                        Falkenstein, that they arrived about 3:30 a.m.

9           A           Right.

10          Q           You then described what he did when he got out  
11                       to the vessel, in terms of his investigation?

12          A           Right. Said he spent all the time on the  
13                        bridge and talked to the Chief Mate.

14          Q           Right. And...

15          A           And he had made copies of some notes.

16          Q           He made copies of some notes that the chief  
17                        mate made reference oil tanks which were losing  
18                        oil...

19          A           Right.

20          Q           ...which were full, including times the notes  
21                        were made?

22          A           Right. And that's when I told him that was  
23                        it. I can't hear any -- any of this, and I would  
24                        contact McGhee.

25          Q           He got quite a bit out before you cut him off,

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didn't he?

A Well, it's -- I -- it seems like it, but it real -- I mean, all that kind of spurted out in one whack, there, but the -- I mean, there was no question in my mind that Dan Lawn's not a person I'm supposed to be dealing with.

Q Right.

A And -- and so I told him at that point that -- that I can't handle this and -- for -- for many reasons, and -- and that I would contact Sergeant McGhee, who should come and interview you.

Q Okay.

A But, I think the thing that -- it -- the -- he also indicate -- had indicated a -- and I don't see that I wrote it down here, too, that he had written no report on what he had done there...

Q Uh-huh (affirmative).

A ...which was incredible, I thought. But, that -- that's certainly now warranted somebody who could deal with this information to come and talk to 'im.

Q Uh-huh (affirmative).

A But, I -- and I haven't seen that that occurred, so I don't know that it did, or not.

Q Okay. You wrote a report about what he had

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done, didn't you?

A I tried to write down everything I did so that we would all know...

Q Right. And -- and your report that you wrote up about what Dan Lawn had done in responding, that was given to Mary Anne Henry and Frank Cole?

A As a -- yeah. Right along with all the rest of my things.

Q All right.

A Yeah.

(Pause)

(4211)

Q We're just about done.

A Okay.

Q On 8/2/89, down towards the bottom of the page, there's a name -- I think it's a name, or maybe a place that -- and I couldn't read your writing. It says, "Visit," looks like it starts with an S, maybe.

(Tape: C-3510)

A Oh, that's a name. It's a -- Seitz, I think, is the name. S-e-i-t-z.

Q Who is Seitz?

A He is a person who works for the Marine Center, the Marine training place...

1 Q Okay.

2 A ...in New York.

3 Q Okay.

4 A And -- and there was some -- there was some  
5 initial conversations about -- between him and  
6 Brent Cole regarding working for the state in  
7 this case, but...

8 Q Okay.

9 A ...but he was gone when I got there, and doing  
10 something else, so I never talked to him.

11 Q 8/18/89.

12 A Uh-huh (affirmative).

13 Q Okay. It looks like you called Clough...

14 A Cole.

15 Q Look down below that, I'm sorry.

16 A Oh.

17 Q Towards the middle of the page. C-l-o-u-g-h?

18 A Clough.

19 Q Clough?

20 A I didn't -- I didn't call him.

21 Q Okay. What is -- what does this note refer  
22 to?

23 A This is stuff that -- and it -- most of this  
24 has come from Brent Cole.

25 Q Okay.

1 A It -- it just...

2 Q So, you're writing down what Brent Cole told  
3 you?

4 A Right. I think I'm -- I think I'm out of the  
5 state here.

6 (60)

7 Q Okay. What is it -- what -- what does it  
8 mean, "Beevers' Exxon position on grounding"?

9 A Exxon position on grounding. In a  
10 conversation with Mr. Clough, who is an Exxon  
11 attorney...

12 Q Uh-huh (affirmative).

13 A ...he had indicated to Brent Cole, I think,  
14 what Exxon's position was -- I mean, their  
15 company position on whether or not -- I want to  
16 make sure I'm correct here.

17 Exxon had an official position, apparently, on  
18 whether or not they wanted to keep the Valdez on  
19 the reef, or try and get it off.

20 Q That's all that relates to?

21 A Yeah.

22 Q Okay. Thank you. I don't need to explore  
23 that any more.

24 8/21/89 indicates that you're in New York and  
25 You meet with Raleigh Port, is that...

1 A You're -- yeah. He was -- he had -- he was  
2 there already...

3 Q Uh-huh (affirmative).

4 A ...and -- in fact, he was at the airport when  
5 I arrived.

6 Q Okay. He -- Raleigh Port was the  
7 investigator, a former state trooper hired by the  
8 State of Alaska, or the attorney who was  
9 representing the State of Alaska on the civil  
10 side of the oil spill litigation, is that right?

11 A Right. He -- yeah. His position -- he is the  
12 investigator for the attorney -- yeah, who  
13 represents the state on the civil matter.

14 Q All right. And Mr. Port clearly had access to  
15 tainted information?

16 A Well, I don't know. I -- I assume he did, but  
17 I don't know what kind of information he had.

18 Q And then, did the two of you over the next few  
19 days kind of assist each other, or...

20 A Well, I didn't do anything of his business.  
21 In fact, he didn't do any of his business while I  
22 was there.

23 Q Uh-huh (affirmative).

24 A The -- his -- when I met him at the airport he  
25 asked me if he would mind if he went with me to



1 while I did my things...

2 Q Uh-huh (affirmative).

3 A ...and -- in case that -- he ran across  
4 something that could be of benefit to the civil  
5 case.

6 Q Uh-huh (affirmative).

7 A I told him I didn't care about that. That was  
8 fine and we didn't do anything of -- I wasn't  
9 sure what his business was, frankly, but...

10 Q Right.

11 A ...he had -- he did tell me that he had  
12 planned on being in New York for a long period of  
13 time, three -- three weeks or more. And -- and  
14 that he was -- he could well take out a couple of  
15 days to follow me around.

16 Q Uh-huh (affirmative). And -- and, so,  
17 basically, the two of you did things like go to  
18 the Suffolk County Police Station together, and I  
19 don't know what else you did...

20 A He...

21 Q ...but things along those lines?

22 A Yeah, he's -- yeah. He -- he went with me to  
23 -- to the police department in Suffolk County.  
24 He went with me to the state police headquarters.  
25 He went with me to the Marine Training Facility

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and...

Q Uh-huh (affirmative). Okay.

And, in fact, he helped you get some information where you had to leave town, arrangements were made for him to go back and get some documents for you?

A I asked him if -- I asked him if he would do that. Of course, when he does that, then, that has to get routed through Mr. Linton and I didn't...

Q Right.

A ...I have not seen any results of his return visit.

Q Okay.

A So, I -- I'm not even sure that he did. I haven't talked to him since.

(206)

Q 8/23/89.

A 23?

Q Yeah. Could you just read the first sentence or two? I couldn't really decipher 'em there.

A Is that the -- at the FCIC...

Q Uh-huh (affirmative).

A King's Point New York, "Talked with Gene Guest about the simulator"?

1 Q Right.

2 A "His Coast Guard report and the research  
3 requested by NTSB."

4 Q Uh-huh (affirmative). So, you -- who is Gene  
5 Guest, first of all?

6 A He's the director of that facility there.

7 Q All right. And you were talking to him about  
8 the report he was preparing for the Coast Guard?

9 A Right.

10 Q Mr. Guest have access to tainted information?

11 A I don't know -- I don't know what he had.

12 Q Okay.

13 A The -- that I had -- and the only reason I  
14 brought that up is because I had already read a  
15 rough draft of that.

16 Q Okay. Of the Coast Guard report?

17 A Right. Which had been cycled through its...

18 Q Uh-huh (affirmative).

19 A ...root.

20 Q Okay. And...

21 A And that's when he brought up that the NTSB  
22 had requested a -- some sort of research be done  
23 on -- I -- I take it vessel trajectory, or  
24 something...

25 Q Uh-huh (affirmative).

1 A ...which is -- which they hadn't started in  
2 -- so, they had simply had a request at that  
3 point, I guess.

4 Q Do you have a copy of the Coast Guard report  
5 you received a copy of? You have that today --  
6 with you?

7 A No. Do you mean the rough draft, or the...

8 Q Right. Right.

9 A Okay. Yeah, that was done by the King's Point  
10 facility.

11 Q Right.

12 A For the Coast Guard.

13 Q Uh-huh (affirmative).

14 A No. I don't have it with me.

15 THE COURT: You say that was cycled through --  
16 are you referring to it passed through Mr. Linton --  
17 when you say cycled through?

18 (270)

19 A Right. It came to me in -- in the normal...

20 THE COURT: Okay.

21 A ...pass through -- it passed through Mr.  
22 Linton procedure.

23 Q (Sergeant Stogsdill by Mr. Friedman:) One  
24 final point on Mr. Wade, you've got a...

25 A I'm sorry. On who?

1 Q Mr. Wade -- Rick Wade, the diver?  
2 A Yes.  
3 Q You understood that the chart, or diagram on  
4 -- I'm sorry -- that the diagram Mr. Wade was  
5 giving you was reflecting the extent of the  
6 damage he viewed on the 24th when he went out  
7 there, is that right?  
8 A Well, first of all, I gave him the diagram.  
9 The diagram was mine already.  
10 Q Do you know where it came from?  
11 A Through its cycle.  
12 Q Okay.  
13 A And with -- I -- and I -- I think I asked him  
14 did you draw this?  
15 Q Uh-huh (affirmative).  
16 A And -- and he said yeah, I had.  
17 Q And -- and he indicated that it reflected what  
18 he had seen on the 24th?  
19 A It reflected his assessment of the damage of  
20 the Exxon Valdez. He arrived there on the 24th,  
21 but I -- I don't know if he began to dive  
22 immediately, or if he dove the next day, or...  
23 Q Uh-huh (affirmative).  
24 A ...but, I -- in relative -- relatively  
25 quickly, he -- I'm sure he was underneath looking

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to -- to assess some damage, but...

Q           Okay. Just seeing if this refreshes your memory...

A           And it indicated on the chart the extent of the damages he viewed on the 24th.

Q           "Mr. Ray -- Wade, then was requested to draw on a larger chart the hull of the Exxon Valdez, and indicate on that chart the extent of the damage as he viewed it on the 24th." So, you were -- you were, in essence, asking him to report to you what he had seen on the 24th?

A           Well, no. That's -- what I was asking him was that -- was -- I was interested in the extent of the damage.

Q           As he viewed it on the 24th?

A           I know that that's what that says, but that -- what I asked him -- what I asked him was I wanted - it was the damage that we were interested in...

Q           Uh-huh (affirmative).

A           ...at the grand jury. That -- and if I asked him if it was on the 24th, then I must have, but that...

Q           That's what you wrote at any rate.

A           That's what I wrote.

1 Q All right. Thank you. I don't have any other  
2 questions.

3 A You're welcome.

4 THE COURT: How long will your redirect take?  
5 We can take a break if it's gonna be lengthy.

6 MR. LINTON: I think so. I need to go get  
7 some of the exhibits we referred to in the cross.

8 THE COURT: Take a break.

9 THE CLERK: Please rise. This court stands in  
10 recess subject to call.

11 (377)

12 (Off record - 10:01 a.m.)

13 (On record - 10:42 a.m.)

14 THE COURT: Redirect, Mr. Linton.

15 MR. LINTON: Yes, sir. I'd ask that a set of  
16 the trooper's notes be marked as the next state's  
17 exhibit. That's one copy.

18 MR. FRIEDMAN: Can I get my set back?

19 MR. LINTON: Yes, sir.

20 REDIRECT EXAMINATION OF SERGEANT STOGSDILL

21 BY MR. LINTON:

22 Q Trooper, is Exhibit 46 a set of the notes you  
23 were being cross examined with?

24 A Yes.

25 MR. LINTON: I move the admission of 46, Your

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Honor.

MR. FRIEDMAN: No objection.

EXHIBIT 46 ADMITTED

THE COURT: Admitted.

Q (Sergeant Stogsdill by Mr. Linton:) Trooper, I would like to ask you questions using your notes as a skeleton for the question.

First, you explained that this was -- wasn't your ordinary way of -- of keeping a notebook and what -- what were your reasons for keeping the notebook this way?

A This wasn't an ordinary case. The -- it was easier for me to keep all my notes regarding anything I did, or -- or was involved in one -- one separate source. This isn't the only case I'm working on, so I have -- I have another notebook that the normal trooper notebook that I use as a matter of course, but everything I've done in the -- on this case is here.

Q In the course of the -- the meetings which you attended in which Mr. Weeks participated in, did you hear him tell you factual information that you did not already know from materials that had been furnished in the ordinary course of the -- of the screening process?



1 A I -- I don't think so. He -- he was aware of  
2 our situation of -- of being an untainted person,  
3 so I think he was at least somewhat conscious of  
4 disclosing facts and that sort of thing.

5 Q For example, in discussing Mr. Cousins, and  
6 the charging of Mr. Cousins, did he indicate in  
7 any way that -- to you, that he had information  
8 regarding statements of Mr. Cousins that may --  
9 that you did not know about?

10 A He never talked about any statement Cousins  
11 made. I mean, I don't know about any of Cousins'  
12 statements, so...

13 Q Right. So, you didn't know about any. Did  
14 you hear him say anything about -- information  
15 about what value Mr. Cousins would be because he  
16 made such and such a statement, therefore we  
17 don't want to prosecute him?

18 A No. He never said anything like that.

19 Q How 'bout Mr. Guaneli?

20 A Same situation. He -- he also was -- was  
21 aware of our partic -- our predicament, and I --I  
22 never heard him reveal any -- any facts, or any  
23 contents of any statements, or anything like that  
24 to me.

25 Q When you say that he guided the grand jury

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along, what did you mean?

A Well, basically, we were in a position of -- of walking into a grand jury situation with no information of the -- the things that you had provided were -- were beginning to -- to come in. We were just now looking at those and -- and, frankly, there was -- he needed to help out was my impression of what was going on there.

And he was givi -- I mean, you know, like I testified to before, he was -- he was furnishing some people that he had talked to -- or, he or Mr. Guaneli had talked to, one of the two, who would be helpful in providing information as to damage and that sort of thing. And then, of course, the rest of it was pretty much Mary Anne Henry's decision as to which crew members and that sort of thing she called.

Q So, at the time Mr. Weeks talked to Ms. -- you said he furnished a list of witnesses?

A Not a list, but he said, you know, I mean, like Mr. Hayden from DEC, Mr. Kron from...

Q Let's put aside...

A ...you know...

Q Put aside the damage witnesses -- type witnesses for a second.

1 A Okay. Well, that's about the only -- that's  
2 the only thing -- that's the only time that he, I  
3 think, supplied names was -- I recall was for  
4 those people. The rest of it was -- was crew  
5 members that -- I mean, they're -- that we knew  
6 that we were gonna have to call.

7 Q Okay. Did you ever hear him supply the name  
8 Mr. Fox, that is Michael Fox?

9 A Well, I -- I do know that I -- I mean, I was  
10 present when he said the name Mike -- Michael  
11 Fox, but I don't -- he never said call him to  
12 Grand jury.

13 (600)

14 Q How 'bout the name Mark Delozier? Did you  
15 ever hear him say, "Call him to the grand jury?"

16 A No. I don't -- no. Although he used it --  
17 I'm pretty sure he mentioned his name but -- but  
18 not in that -- but not, "You must call him to  
19 grand jury," that I can recall.

20 Q Did you understand ships documents to be  
21 tainted, or untainted information?

22 A Well, untainted, because we had some of them.

23 Q Okay.

24 A Copies of some of them.

25 Q How were you going to authenticate them at

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grand jury?

A Well, the -- the way we did, through Delozier, who allegedly seized them.

Q Did Trooper Fox testify at grand jury?

A No.

Q Okay. What other kinds of guiding, besides supplying damage witnesses and -- and a list of those witnesses -- did he say anything more than a list -- than designating the witnesses? Did he say, "You need to call this witness in order to testify to 1, 2, 3, 4, and 5. And you need this witness to testify to points 1, 2, 3, 4, and 5?"

A I don't -- no. I don't think he was ever that specific. I mean, he'd -- he did say that these people will have this type of information. They -- obviously we were gonna talk to them before they go to grand jury. We are, not Mr. Weeks in Juneau. So, you know, it'll -- we'll be deciding which points to elicit, but he -- he never went down to the -- I don't think he never -- he -- with me he never went down a list and said this it the five points you need to get from this person. He's...

Q Do you recall whether the listing of witnesses occurred before you had ever received any actual

1 police reports that had been screened, or whether  
2 that listing was after he had you -- you,  
3 meaning, you, Mary Anne Henry, and Brent Cole --  
4 had received those reports?

5 A Well, I don't -- I mean -- I think -- I really  
6 can't say. I mean, it was -- when I came into  
7 the case there was some material was available  
8 already, so...

9 Q The first grand jury session was how many days  
10 away from the time you started?

11 A Four or five.

12 Q The grand jury date was set...

13 A Prior...

14 Q ...at the time you came in to the case?

15 A Yeah. It was.

16 Q Presentation of wit -- evidence was to begin  
17 -- as you understood it?

18 A The -- the -- yeah. As I understood, the date  
19 had been set to begin when I entered the case.

20 Q Was Mr. Weeks simply facilitating the call --  
21 the subpoenaing of witnesses who you ultimately  
22 found to be untainted and presentable to the  
23 grand jury?

24 (714)

25 MR. FRIEDMAN: Objection, Your Honor, leading.

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THE COURT: I think you can do better than that.

Q (Sergeant Stogsdill by Mr. Linton:) What other forms of guidance did Mr. Weeks provide you?

A Nothing comes to mind at the -- right now. There was -- it was all centered at that point in time around the grand jury.

Q Okay. Before the first part of the grand jury presentation -- let's go through your notes and work up to the first part of the presentation of the grand jury proceedings.

April 21st, '89, page 1. First page. "Spoke with Colonel Gent (ph) follow up work on Exxon Valdez oil spill. I will assist District Attorney with any continuing investigation which may be necessary."

A Correct.

Q You got this the day you were assigned. You're saying you spoke with Colonel Gent that day and were assigned that day and that's what that note is to reflect?

A Yeah. That was Friday, or something, I think. And I -- I came on Monday.

Q Okay. April 24th, "View the tape of the

1 search warrant service on Exxon Valdez, which was  
2 conducted 4/2/89 3.4...

3 A Right.

4 Q ...no sound."

5 A Right.

6 Q "Only of wheelhouse chart area and surrounding  
7 waters."

8 A Right.

9 Q "Go through documents which DA has on tape."

10 A Which were available, yeah.

11 Q Those were screened documents?

12 A Right.

13 Q "Read interviews which are available." Those  
14 were screened interviews?

15 A Yes, sir.

16 Q Was there a way for you to tell whether or not  
17 they'd been screened?

18 A Yeah. They had at that point in time -- let's  
19 see, as things were coming from you to Mary Anne  
20 and -- Mary Anne at that time, she was making  
21 copies of them for me, and putting them in a  
22 place where I got stuff, I guess. And, so, when  
23 I -- when I -- if something -- if something was  
24 there, then it was clear to me, then, that that  
25 had cycled through and I could read it.

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MR. LINTON: I'd ask that this be marked  
(indiscernible - unclear.)

Q (Sergeant Stogsdill by Mr. Linton:) Sir, I  
hand you Plaintiff's Exhibit 47. Do you  
recognize that as a statement by Jamie Delozier,  
dated April 4th, 1989, and in it as well a  
statement by -- following a diagram by Ms. -- a  
statement of Lisa Hutes, dated April 7th, 1989?

A Correct.

Q Now, on those documents -- were those  
documents in the form that you would get them?

A Yeah. I would -- I would get copies of  
statements just like this.

Q There's a number on the page, on the bottom.

A Right.

Q So, for the court's reference, this one is  
004377.

A Okay.

Q What did 0 -- did that mean anything to you?

A It was probably -- I just assumed it was a  
DA's discovery number, or something.

Q Do you know whether that meant the document  
had been screened if it had a number on it like  
that?

A I -- I -- that could be. I don't know that.



1 Q Let's go to April 25th and continue reading  
2 the interviews. Are those the screened  
3 interviews?  
4 A Yes.  
5 Q "There's are conference -- Weeks, Guaneli,  
6 Henry, McConnell, myself," on 4/25.  
7 A Right.  
8 Q Do you have any recollection of what that was  
9 about and what was discussed during it?  
10 A It -- I'm almost certain it was about grand  
11 jury, but the -- I didn't, you know, I didn't  
12 keep any notes of any of those things that...  
13 Q In specific...  
14 A I mean, they were always 20, 30 minutes long  
15 sometimes. Sometimes I was in and out.  
16 Q Independent of the document, do you have any  
17 recollection of what was discussed that day?  
18 A Again, I'd have to say that grand jury -- some  
19 aspect of grand jury. Beyond that, I can't say.  
20 Q On April 25th, 1989, then, there's an entry,  
21 meet -- "Meet with Joe LeBeau at DEC, viewed his  
22 video tape of oil spill and speak with him  
23 briefly. Continue with reading of documents."  
24 A Right.  
25 Q Let's talk about what you did with Mr. LeBeau.

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What was portrayed on the video tape that you saw?

A Oil water -- oiled water. I think there were some animals -- oil covered animals.

Q At what location?

A I think there were several locations throughout Prince William Sound.

Q Do you know what the locations were?

A I -- he may have told me then. I don't recall.

Q Were they in and around the vessel, itself, the Exxon Valdez?

A No. I think they were far -- I think they were shoreline -- most of 'em were shoreline photographs.

Q Were they take -- were any taken from the vessel, itself, showing the area around the Valdez, or oil down in the water seen from the deck of the Valdez, or seen from the bridge of the Valdez, the bridge wing of Valdez?

(951)

A No. I think they were all shoreline pictures, but -- as I recall. And there was some -- I think there was some -- somebody collecting oil off a rock, or something, but beyond that, I

1 don't recall what was on that.

2 Q Now, April 26th. You have a notation, "Speak  
3 with John McGhee, referenced later viewing of  
4 some of the evidence in this case."

5 A Right.

6 Q What was your purpose in speaking with John  
7 McGhee that day?

8 A Basically, to find out where it all was, make  
9 sure it was all in Anchorage.

10 Q Where all what was?

11 A All the evidence that he had seized. I -- I  
12 alerted him that some of it might be necessary  
13 for grand jury. And mainly wanted to make sure  
14 that he was available to -- for me to get those  
15 items that were necessary at grand jury and bring  
16 them to you.

17 Q Did there come a time when you got it?

18 A Yes.

19 Q Before grand jury?

20 A Right.

21 Q When you got what you had asked for, was it in  
22 a way that you could look at it and tell what its  
23 nature was at the time you got it?

24 A No. It was in envelopes similar to what you  
25 have there in your box.

1 Q And was it, in fact, in envelopes similar to  
2 Exhibit 37, for example?  
3 A Exactly.  
4 Q With the red trooper tag on 'em?  
5 A Right.  
6 Q And the little sticker, evidence tag number,  
7 item number such and such, seized from, and the  
8 place it was seized -- seized at and just like on  
9 Exhibit 37?  
10 A Just -- just like it.  
11 Q That's the form you got?  
12 A Yes, sir.  
13 Q What did you do with the envelopes once you  
14 got them?  
15 A Brought them to the DA's Office.  
16 Q And then what did you do with them?  
17 A Gave them to you.  
18 Q Why did you do that?  
19 A Because the -- some of the envelopes contained  
20 more than what I might need -- what was  
21 necessary. So, rather than me go through that  
22 and happenstance across some tainted material, I  
23 gave it to you to go through first and take out  
24 the things that I needed.  
25 (1055)

1 Q And -- and at some point later you got back  
2 something from me saying this is okay, or what  
3 you interpreted as saying this is okay?

4 A You went -- yeah. You went through them. You  
5 gave me what was okay. I took the envelopes back  
6 out to the evidence area.

7 Q You got the envelopes back in with everything  
8 back in the envelopes?

9 A Just the way I gave 'em to you is how I got  
10 them back.

11 Q During the transit of the documents back to  
12 the trooper evidence room were they in the -- did  
13 you open them and look at what -- what the  
14 documents were that you had not been given  
15 permission to look at?

16 A I did not.

17 Q You say you reviewed some documents at DAO on  
18 4/26, which were screened, you say, then,  
19 "there's another conference call with Weeks,  
20 Guaneli, Linton, Henry and myself."

21 Do you recall what was discussed there?

22 A grand jury, I'm -- the next thing is I'm  
23 working on subpoenas, so...

24 Q And then you have a list just below that,  
25 "Arrange for some grand jury subpoenas for..."

1 A Right.

2 Q "...French, Caples, Craig, Fox, Murphy,  
3 Delozier, Steve Howard...."

4 Who was he?

5 A He was a diver for Arctic Salvors, who was  
6 also at the Exxon Valdez.

7 Q How did you find his name?

8 A His name was given to Mary Anne Henry by Joe  
9 LeBeau.

10 Q And then there's the name Rick Wade. What's  
11 that name? Where did that name come from?

12 A Rick Wade is a diver, also, in Valdez, who was  
13 also at the ship. And I'm not certain where his  
14 name came from. It could have come from LeBeau,  
15 or -- I -- I had his diagrams. I don't know if  
16 they were marked with his name, or -- or what.  
17 So, I'm not sure how I got that.

18 (1187)

19 Q You had obtained some nautical charts, and  
20 then, "Speak with Julie Grimes, who is going to  
21 Valdez tomorrow. Ask her to contact divers,  
22 serve GJ subpoenas. Talk to Delozier re  
23 documents seized. Contact Hayden DEC."

24 A Uh-huh (affirmative).

25 Q Did -- were you asking here there to obtain

1 information about the events of March 24th, 198--  
2 things that happened in the tainted period to get  
3 her to provide you with such information?

4 A No.

5 Q What were you doing?

6 A I was asking her to give subpoenas to these  
7 people up above and have them appear for grand  
8 jury. I would, then, talk to them at that point,  
9 if possible.

10 Q ON the next page, "Attempt to con -- call  
11 Captain Beevers. Not in."

12 A Yeah. He was...

13 Q ...continue his statements."

14 A Yeah.

15 Q 4/27, "Speak with Major McConahee (ph)  
16 reference flight to Prince William Sound for a  
17 first hand view of oil spill. Okay with him."

18 What were you doing there?

19 A In order to have an airplane -- excuse me. In  
20 order to have an airplane to go and look at the  
21 Prince William Sound, I have to ask permission  
22 for that. He gave it to me.

23 Q Then you say, "At DA...", next entry, "At DAO  
24 read statements Murphy and Mrs. Delozier."

25 A Yes.

1 Q Now, is the statement that you refer to a  
2 statement by Mrs. Delozier a statement which is  
3 Exhibit 47?  
4 A Right. I think we -- there's only this one  
5 statement from her as far as I know.  
6 Q And on page 9 of the statement, which is  
7 marked with the DA identification number 004385,  
8 do you see the name Lisa Hutes?  
9 A Yes.  
10 Q Do you see a question by Paul Burke, an Alaska  
11 State Trooper, "Who's the bartender on duty at  
12 the time? That's something we could probably  
13 find out anyway." And Ms. -- Jamie Delozier  
14 said, "Lisa Hutes."  
15 Right?  
16 A Right.  
17 Q What had -- what had Jamie Delozier seen from  
18 your reading of her statement?  
19 A What had Jamie...  
20 Q Characterize it briefly for us so we  
21 (indiscernible - coughing) tells us what it is  
22 that Jamie Delozier said.  
23 A Oh, basically she said she was in the Pipeline  
24 Club at the same time that Captain Hazelwood and  
25 two of his crew members were.



1 Q On March 23rd, 19...

2 A Right.

3 Q And there in the statement on that particular

4 page she said Lisa Hutes was the bartender at the

5 time?

6 A Right.

7 Q What's the second part of that statement -- of

8 that exhibit, then, is a statement by Lisa

9 Hutes...

10 A Right.

11 Q ...is it not? Interviewed by Paul Burke on

12 what date?

13 A On 4/7/89.

14 Q Now, do you know whether you had the statement

15 of Lisa Hutes then, at the same time you had the

16 statement of Jamie Delozier that you say you were

17 reading on 4/27/89 in your notes, sir?

18 A Do I know if I had it then?

19 Q Yes. Did you have it then?

20 A Well, I -- I don't recall.

21 Q Do you recall every having seen it before?

22 A The Lisa Hutes statement?

23 Q Yes, sir.

24 A I -- I'm sure I have. I've read almo -- I've

25 read everything that's been untainted.

1 Q Okay. Remember on the cross examination this  
2 being asked by defense counsel, "Where did you  
3 get the name Lisa Hutes, further down in your  
4 notes?" Remember we had come across the name  
5 Lisa Hutes?

6 A Right.

7 Q Do you know what the answer to that question  
8 is now?

9 A Well, obviously, from her statement -- from  
10 Delozier's statement.

11 Q Okay. Let's go down to the bottom of -- of  
12 the 4/27/89 page entry, "Speak with Joe LeBeau,  
13 DEC, at DAO reference...." DAO means what?

14 A District Attorney's Office.

15 Q ...reference general job duties." What was  
16 that about?

17 A Just, basically, I asked LeBeau what he does.  
18 What's his -- what does a DEC person do.

19 Q And what'd he tell you?

20 A Watches over the environment.

21 Q Did he tell you any details about what -- what  
22 he had done on -- on any of the days of the  
23 investigation?

24 A No. It was -- it was just that. I just  
25 wanted to know what his responsibilities were.

1 He -- where he fit in into the world of DEC, is  
2 basically what...

3 Q And watching over the environment is -- is  
4 what you know to this day?

5 A Pretty much.

6 Q 4/29/89. "Meeting with Henry, McConnell,  
7 Cole."

8 Do you recall any specifics?

9 (1375)

10 A Yeah. That's -- that's when we flew off to  
11 Valdez.

12 Q Okay. And that's what you did on the 29th?

13 A Yeah.

14 Q So, now, on 4/30/89, then, "Talk with Captain  
15 Beevers at DAO. Go over with him the documents  
16 he will need for analysis and testimony."

17 A Uh-huh (affirmative).

18 Q You list six documents. One is designated the  
19 Bell Log, one is designated the Bell Book, one is  
20 designated Nav Chart, one is designated Course  
21 Chart, one is designated Licenses of Crew, one is  
22 designated Maneuvering Rules.

23 A Uh-huh (affirmative).

24 Q Is Exhibit 3 what you were referring to as the  
25 Bell Log?

1 A Yes.

2 Q Is Exhibit 6 what you were referring to as the  
3 Bell Book?

4 A Yes.

5 Q Is Exhibit 8 what you were referring to as the  
6 Nav Chart?

7 A Yes.

8 Q Is Exhibit 5 the Course Chart?

9 A Right.

10 Q It's actually what we've been referring to it  
11 as the Course Recorder Printout. You refer to it  
12 as the Course Chart there?

13 A I -- yeah. I think that's what -- I think  
14 that's what Beevers called it at that time.

15 Q Called it which?

16 A The Course -- I don't know what he called it.  
17 The -- I wrote down Course Chart.

18 Q Okay.

19 A These are the things that he was gonna need  
20 for his testimony, so.

21 Q And is Exhibit 4 the Licenses of the crew?

22 A Yes.

23 Q What were the Maneuvering Rules?

24 A They were a -- there was a chart, I think,  
25 that showed when -- how far a ship can turn in a

1 certain amount of time, or how long it takes a  
2 ship to turn 180 degrees, and how long a distance  
3 that takes and that sort of thing.

4 Q Was that a document which you'd received in  
5 the screening process?

6 A Yes, sir. I think so.

7 Q 5/1/89. Now this is the first day of grand  
8 jury, 5/1/89?

9 A Believe so.

10 Q "Spoke briefly with Colonel Gent and John  
11 McGhee at AST."

12 A Uh-huh (affirmative).

13 Q Do you recall what the subject matter of that  
14 was?

15 A Well, basically, I think that this was the  
16 period of time when I was gonna pick up the  
17 evidence, perhaps. Maybe this -- this evening.  
18 Something like that. And they were just both  
19 together when I talked with 'em, that's all.

20 Q In any of your conversations with John McGhee,  
21 did you ever obtain any information which you  
22 knew to be tainted?

23 A No. He -- McGhee was well aware of our  
24 positions.

25 Q 8:50 a.m. you talked -- there's an entrance

1 -- entry, "Steve Steward, Martec International...  
2 A Right.  
3 Q "...300 East 5th, Anchorage."  
4 A Right.  
5 Q "Diver/ROV technician, electronics technician,  
6 mainly does video which is generated by  
7 underwater camera from submersible. Has done in  
8 excess of 100 hours of video of hull damage. Has  
9 no film of his own. Turned all over to Exxon."  
10 What is that entry about?  
11 A That's -- Steve Steward was the -- was the  
12 name provided us by LeBeau as having had video  
13 coverage of the damage to the Exxon Valdez. I --  
14 that was the reason that we caused a subpoena to  
15 issue to him for grand jury. And when he  
16 appeared in response to that subpoena he did not  
17 have any video tape, having turned it all over to  
18 Exxon. It was now there property. So, he could  
19 not appear at grand jury with anything.  
20 So, in talking to him, then, of course it was  
21 not necessary for him to testify at grand jury.  
22 Q And none of the evidence -- none of the  
23 evidence that he had in the form of video tape  
24 was presented to the grand jury?  
25 A Right.

1 Q Did you ever get it?  
2 A No. Or, I have not seen it.  
3 Q This 9:20 name John Hillsinger, Apartment AD  
4 -- excuse me. Alaska Department of Fish and Game,  
5 F & G...  
6 A Right.  
7 Q Where'd you get that name?  
8 A I think that was one of the names that Mr.  
9 Guaneli provided.  
10 Q And having gotten the name your entry reflects  
11 a call to him?  
12 A He actually appeared at the DA's Office in  
13 response to a subpoena issued to him and -- for  
14 grand jury.  
15 Q And that's reported notes of your  
16 conversation?  
17 A Right.  
18 Q Now, 10:50 a.m., Rick Wade. Next page --  
19 10...  
20 Excuse me. 10...  
21 A 10:05.  
22 Q ...05 a. "Rick Wade - owner R + R Divers,  
23 Valdez, Alaska."  
24 A Right.  
25 Q You told us that you had some kind of

1 documents before grand jury about something with  
2 respect to the hull of the Exxon Valdez. What  
3 -- what was it that you had?

4 A There was a chart that had on it -- indicated  
5 some damage to the hull of the Exxon Valdez.

6 (1640)

7 MR. LINTON: I'd ask that this be marked as  
8 the next state's exhibit please.

9 THE COURT: This thing has been on my desk for  
10 some time. Is that what this is?

11 MR. LINTON: Yes. It was actually an  
12 attachment to an affidavit I submitted, Your Honor, as  
13 well as a...

14 THE COURT: Is it the same thing as 48?

15 MR. LINTON: Yes.

16 MR. FRIEDMAN: Your Honor, excuse me for a  
17 minute. I wonder if we're not now doing what we said  
18 that we weren't going to do, which is kind of trace  
19 through each piece of evidence to see if it's tainted  
20 or not.

21 THE COURT: We might be, Mr. Friedman, but I  
22 think this is proper response to your cross  
23 examination, which was doing some of that, too, I  
24 think.

25 MR. FRIEDMAN: I think that's right and I



1 guess my point, Your Honor, is I would like the record  
2 to be clear that we have not -- and I don't consider my  
3 cross examination of Trooper Stogsdill to be an attempt  
4 to show how each piece of the state's evidence is  
5 tainted and that -- I don't want to go down that  
6 slippery slope and wind up with somebody saying, "Well,  
7 all of this is...

8 THE COURT: You had a chance and you didn't  
9 take advantage of it?

10 MR. FRIEDMAN: Exactly.

11 THE COURT: No. I don't think that's the  
12 case. You may not have realized to the extent of Mr.  
13 Linton's redirect here, and I'll give you an  
14 opportunity on recross if you want to. I think that  
15 would be a proper time, though, don't you think, on  
16 recross?

17 MR. FRIEDMAN: Well, I guess I understood your  
18 ruling to be that we wouldn't really directly address  
19 what pieces of ultimate evidence were tainted or were  
20 not tainted, and that that would be brought -- that's  
21 how I've kind of structured my examinations of the  
22 witnesses since Mr. Cole.

23 THE COURT: I may have been a little  
24 ambiguous. I was under the impression I said go as far  
25 as you want and when you decide you've had enough, then

1 I'll make my ruling and what's left over to do on taint  
2 we can go ahead. But, I'm not considering you're bound  
3 here at anytime...

4 MR. FRIEDMAN: That's all I'm concerned...

5 THE COURT: You can cross examine this witness  
6 further at any time you want. If you want to do it  
7 after Mr. Linton's redirect, you can. If you don't  
8 want to and you want to wait until after the court  
9 makes a decision on these issues, then we can bring the  
10 trooper back and you can cross examine him then.

11 MR. FRIEDMAN: Okay. That's all I wanted made  
12 clear. Thank you.

13 THE COURT: We're talking about 48 now.

14 (1780)

15 Q (Sergeant Stogsdill by Mr. Linton:) We're  
16 talkin' about 48.

17 A Yes, sir.

18 Q Was -- do you recognize Exhibit 48 as one of  
19 the documents you received?

20 A Yes.

21 Q Do you see a notation on the -- on the upper  
22 right hand corner, "Survey. Afternoon 3/25  
23 morning 3/26"?

24 A Yes.

25 Q Did you talk to Mr. Wade about where that

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entry came from?

A No.

Q So, at the time you talked to him you had a document in front of you which said, 3/25, 3/26 was the date of the survey reflected on the -- on the diagram?

A I assume so. Yes.

Q And when you talked to him what did he say, then, about what he had done?

A I -- I talked to him about the damage. I -- first of all, I asked him if he had generated this chart. Yes. He had.

And, basically, does this represent the damage that you saw? Yes. It does.

Okay. We may require you to -- we may ask you to draw another one a little larger than this for grand jury.

But, basically, that was it.

Q Did he, in fact, draw on for grand jury? Was that...

A Yes, he did.

Q ...another, different grand jury exhibit?

A Right.

Q In your report you mention the date not March 25, or March 26th. You mention the date March

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24th, right?

A I -- I think it was pointed out that I said that -- talked to him about the damage as observed on the 24th. But, as I also stated that the -- it was concerned about the damage, and that's why he was testifying at the grand jury.

(1871)

MR. LINTON: I'd ask that this be marked as the next state's Exhibit, please.

THE COURT: While the clerk is doing that I think we need to explore a little more further. The more I think about this the more I want to avoid having to redo everything. Mr. Friedman, in response to your questions, you got into this document here. You started covering it pretty thoroughly and I was under the impression that you had a reason for covering it and it didn't sound like it had anything to do other than taint. It didn't go to discovery time. It didn't go to the first prong, which was the independent source by Captain Hazelwood. It went to taint, your cross examination.

Now, maybe that had some other reason for it, but that's the way I viewed it and I don't want you to get more than your fair share of bites out of the apple here. I think since we have this witness here, and

1 since you've gone into it (indiscernible - scraping  
2 noise) redirect on it. If you have some (indiscernible  
3 - scraping noise) witness you want to make regarding  
4 taint I think you're gonna have to do it when this  
5 witness is available now, rather than to wait and the  
6 court makes a decision and then come back in and try to  
7 show more taint.

8 MR. FRIEDMAN: Well, could I address that,  
9 Your Honor?

10 The problem that I see is I've got four boxes  
11 of material back here which potentially the state could  
12 want to use at trial. Presumably one portion of it  
13 has been filtered through Mr. Linton. We have the  
14 untainted witnesses testifying about what they've been  
15 allowed to see.

16 In my cross examination of Trooper Stogsdill  
17 was directed at showing that the state's remedy to this  
18 problem is impossible to enforce, that as a practical  
19 matter it can not answer to the problem that is  
20 depicted in our pyramid situation.

21 As I discussed when Mr. Cole was on the stand  
22 my understanding of the legal standard is assuming, for  
23 example, you adopt inevitable discovery or something,  
24 some theory in which they can avoid what I think is  
25 sort of an unavoidable conclusion of the pyramid. And,

1 assuming they can do that, the state, then, still has  
2 the burden of proving each piece of evidence they want  
3 to use at trial is untainted. And we would have to  
4 work each piece back up, for example, to take one  
5 example at random, with Jamie Delozer, Mr. Delozier's  
6 wife. We would then have to say, "Okay. What is she  
7 going to say and where did she come from?" Well,  
8 she came from Mark Delozier, the husband.

9 Trace them, we think back up to the taint, but  
10 depending upon your ruling, presumeably there might be  
11 a way to trace them back to some way that they're not  
12 tainted. My concern is that I don't know what to ask  
13 Mr. Stogsdill about because I don't know what Mr. Cole  
14 will say he wants to introduce at trial. I don't  
15 know...

16 THE COURT: I think you can assume he would  
17 want to introduce Jamie Delozier's statements and her  
18 observations, and now the bartender's observations. I  
19 think you can explore how it was discovered. And then,  
20 what you have left over is the legal argument you'd  
21 like to make on whether or not it would be tainted or  
22 not, depending on what the court ruled on what the  
23 issues we're here to decide.

24 MR. FRIEDMAN: Okay.

25 THE COURT: I think you can explore all the

1 facts on it. The facts don't seem to be too much in  
2 dispute here.

3 MR. FRIEDMAN: Uh-huh (affirmative).

4 THE COURT: And then it's the effect of those  
5 facts on...

6 MR. FRIEDMAN: Okay.

7 THE COURT: So what I would like you to do is  
8 explore factually as much as you need to with this  
9 witness and then you can argue whether or not --  
10 depending on what the court rules, and don't assume  
11 that I'm ruling anything by these remarks...

12 MR. FRIEDMAN: I understand.

13 THE COURT: ...I'm making. But, then you can  
14 argue whether or not that should be -- should come into  
15 the trial because it was tainted even if I adopted  
16 inevitable discovery.

17 MR. FRIEDMAN: Uh-huh (affirmative). Your  
18 Honor, if we work our way through the notebook as I  
19 think that's what Mr. Linton is intending to do, I just  
20 want to make sure I don't lose something here.

21 Trooper Stogsdill has looked at a stack of  
22 police reports now that were actually generated by  
23 these tainted investigators. Mr. Linton has made a  
24 judgment, "This is not tainted, so you can look at it."  
25 But, obviously, the court has to make that judgment.

1           Are you saying that I should question Mr.  
2 Stogsdill about, or in terms of not waiving my rights  
3 here, anything that he has seen that they may want to  
4 use at trial?

5           See, that -- as far as what he's done I feel  
6 comfortable cross examining him about what he's done,  
7 but as to what he's been given in establishing -- then  
8 we're talking about the whole universe of the case  
9 really as defined by Mr. Linton previously.

10           THE COURT: Sounds like we're going pretty  
11 much through what...

12           MR. FRIEDMAN: Oh, no...

13           THE COURT: ...he's done. You're...

14           MR. FRIEDMAN: No. I don't have any problem  
15 questioning Trooper Stogsdill about what he has  
16 actually done, what he has found on his own, but, for  
17 example, the Jamie Delozier interview was not done by  
18 Trooper Stogsdill. It was done by a different trooper,  
19 one of the tainted troopers.

20           And so, my point is he was given a bunch of  
21 material we claim is tainted. In theory I could  
22 question him about what he knows to try to -- well, I  
23 guess as I'm talking I understand what you're saying  
24 that -- I think I understand.

25           As to leads he uncovered from material Mr.



1 Linton gave him, this is my time to question him about  
2 that?

3 THE COURT: Yes.

4 MR. FRIEDMAN: Okay.

5 THE COURT: I said...

6 MR. FRIEDMAN: But that doesn't preclude us  
7 from then talking to, say, Trooper Burke, who may have  
8 interviewed Jamie Delozier, say "Okay, how did you find  
9 Jamie Delozier," and working our way up...

10 THE COURT: No.

11 MR. FRIEDMAN: ...with Jamie.

12 THE COURT: And as I say, a lot of these facts  
13 are not going to be in dispute. I think you can all  
14 agree on how these things occurred. And then you can  
15 argue the effect of that. We don't need to have sworn  
16 testimony on much of this, most of it's not in dispute.

17 MR. FRIEDMAN: Right.

18 THE COURT: And, for example, and please,  
19 don't assume this, because I'm trying to cover all  
20 bases. If I determine that inevitable discovery  
21 applied here, and I have no idea if I'm going to or  
22 not. I'm still researching that question. It might or  
23 might not.

24 And let's just say, for example, I said it  
25 applied at X hour at 10 o'clock in the morning on the

1 24th, just for the sake of argument. There would be  
2 some things that would -- no question under any theory  
3 after that would be available for use in trial. There  
4 would be some things that would be, I think, conceded  
5 by the state to not be available for use at trial and  
6 there's going to be this gray area in between to see  
7 how we search back and if they would have been  
8 discovered any way, or maybe they wouldn't have been  
9 discovered but for Captain Hazelwood's report, those  
10 are the areas that are going to be controverted. I'll  
11 have to make some rulings on.

12 But, if I came up to that decision, just say  
13 for the purpose of argument, 10 o'clock, I intend on if  
14 I do that to set forth some of the things I think that  
15 have been presented in this court that there is no  
16 dispute over. And I would like counsel to be able to  
17 assist me on that. I'm sure you two can agree on  
18 certain things on these things that would and would not  
19 be. Then, the gray areas we can then narrow and focus  
20 down on.

21 MR. LINTON: We've talked about that, Judge,  
22 and we're both in agreement on that score.

23 THE COURT: Let's just proceed then. We'll  
24 see what happens, and if there is a decision along  
25 those lines, then you can assist me on the gray areas

1 and I'll tell you what I thought were not gray, were  
2 not going to come in, or were definitely going to come  
3 in.

4 But, as I say once again, caveat. I have not  
5 made a decision on this area.

6 MR. LINTON: I think I just had a document  
7 numbered.

8 (2280)

9 THE COURT: Did you wish to offer 48?

10 MR. LINTON: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. FRIEDMAN: No objection.

13 EXHIBIT 48 ADMITTED

14 THE COURT: 48's admitted.

15 (Side conversation)

16 Q (Sergeant Stogsdill by Mr. Linton:) Show you  
17 Exhibit 49. Is that -- is that a copy of the  
18 reports that you made in this case?

19 A Yes.

20 Q On cross examination you said you gave those  
21 to Mary Anne Henry and Brent Cole?

22 A These?

23 Q Yes, sir.

24 A Yes.

25 Q Did you mean to say that you gave them to them

1 and you know that they read them, or that you  
2 gave them to them for purposes of forwarding me  
3 -- to me for screening?

4 A I -- I delivered them in envelopes and gave  
5 -- the last batch I just put on...

6 Q Do you have any personal knowledge as to  
7 whether they looked at 'em?

8 A No. I don't.

9 Q Let's go to the page that has the report or  
10 Rick Wade, specifically, on it.

11 A Okay.

12 Q On the report that you have there, is there  
13 any reference to -- you see no reference to March  
14 25th, or 26th, do you?

15 A No.

16 Q Just talk about March 20 -- what Mr. Wade said  
17 on March 24th?

18 A Yeah.

19 Q Do you know -- when you talked with Mr. Wade  
20 did he tell you what day he -- at what time on  
21 March 24th he got out there?

22 A Yeah. It was 5:00 or 6 p.m. on the 24th, he  
23 said.

24 (2400)

25 Q Did he tell you what time he started diving,

1 and actually began making observations which are  
2 contained on the chart 48?

3 A I think he dove all night.

4 Q Did he tell you -- the question is did he tell  
5 you what time he started?

6 A No.

7 Q But your understanding was that he started  
8 sometime in -- that night -- on the night of the  
9 24th?

10 A That's -- yeah. That's my understanding.

11 Q There's then an entry, "Call Dan Dennis,  
12 attorney for Hazelwood."  
13 What is that about?

14 A He wanted some assistance in making sure that  
15 Captain Hazelwood got from the airport to the  
16 hotel and to court without any harassment, or any  
17 danger, or anything.

18 Q 7:05, Jim Hayden. Where did you get the name  
19 Jim Hayden?

20 A I think that was one of Mr. Guaneli's...

21 Q Was one of the damage witnesses?

22 A Right.

23 Q And the next page, then, is damage data that  
24 you got from Mr. Hayden...

25 A Yeah, the next...

1 Q ...M.B. Bartlett arrives. So much per day.  
2 Aurora replaces Bartlett, so much per day?  
3 A Right. All the next several pages.  
4 Q Okay. What's the next page -- what's the top  
5 of the next page then, that doesn't contain...  
6 A 12:40 p.m.  
7 Q 12:40...  
8 A "William Woody, NTSB."  
9 Q "Call William Woody...." What was your  
10 purpose in calling the NTSB?  
11 A I wanted to find out who from the crew was  
12 coming to the NTSB hearings.  
13 Q Why did you want to know that?  
14 A So that we could see who was going to be here  
15 that we were going to have testify at the grand  
16 jury.  
17 Q Did you already at that point have statements  
18 of trooper investigators as to what the crew had  
19 said?  
20 A I think so, yes.  
21 Q Was it your purpose in calling the NTSB to  
22 gain additional information, or investigative  
23 leads?  
24 A No. Who was coming to testify so we could  
25 subpoena them to grand jury.

1 Q Did you, in fact, get any names what persons,  
2 other than crew members, when you talked to the  
3 NTSB?  
4 A No. This is what -- what you see is what they  
5 told me.  
6 Q Maureen Jones, Greg Cousins, Harry Claar,  
7 Kagan, Kunkel, LeCain and Glowacki...  
8 A Right.  
9 Q ...were all crew members as far as you knew?  
10 A Right.  
11 Q Or, not just as far as you know. You'd seen  
12 their statements and you knew them to be crew  
13 members?  
14 A I knew that these people were crew members,  
15 yes.  
16 Q "Tom Kron, 3:07 p."  
17 A He's a F -- F and G, Fish and Game person...  
18 Q A damage witness?  
19 A I'm sorry?  
20 Q A damage witness?  
21 A Yes.  
22 Q Name supplied the same way?  
23 A I think so, yes.  
24 Q Next page, "Went to AST to pick up some  
25 evidence items which will be needed for GJ.

1                   Returned them to DAO for review by Linton who  
2                   screened them and made appropriate copies.  
3                   Confer with Henry for G.J."

4           A           Right.

5           Q           That's what we were talkin' about earlier?

6           A           Exactly.

7           Q           5/2/88, "Return item -- return evidence items  
8                   to McGhee." What's that?

9           A           Those -- the ones I had gotten, I took back.

10          Q           And you have some notes. "First day of G.J."

11          A           Right.

12          Q           "Mark -- Mark Delozier went...." Didn't you  
13                   say that 5/1 was the first day of the grand jury?

14          A           No. I -- that was the day that everyone was  
15                   appearing for interview, I think. Yeah, 'cause  
16                   we didn't -- I wouldn't pick up any of the  
17                   evidentiary things until the night prior to 5/2.

18          Q           I'm sorry. Say that again, please.

19          A           I said I didn't -- I don't know that -- I  
20                   think 5/2 was the first day of grand jury. I  
21                   picked up the evidence the night before so, that  
22                   seems correct.

23          Q           The grand jury -- check the dates here. 5/1.  
24                   (Pause)

25                   MR. LINTON: Judge, could there be a



1 stipulation that the grand jury started on May 1st,  
2 1989?

3 THE COURT: That's fine.

4 MR. LINTON: May 2nd, 1989 was the second day  
5 of grand jury.

6 THE COURT: That's the way I understand it,  
7 too.

8 Q (Sergeant Stogsdill by Mr. Linton:) Entry,  
9 "Mark Delozier, USCG appears at DAO with two  
10 attorneys. He has documents which were listed on  
11 his GJ subpoenas."

12 A Right.

13 Q Did you talk to him anything beyond what he  
14 was there for, that is, the documents that were  
15 to be presented?

16 A I didn't talk to him at all. He arrived with  
17 two attorneys and Mary Anne Henry was in with  
18 them and...

19 Q Okay. When the attorneys are there, you're  
20 not there at this time?

21 A That's a good rule.

22 Q Okay. The next series of entries, "Contact  
23 Colonel Gent," or reference his arrival, "Contact  
24 chief airport police, reference Hazelwood..."

25 A Uh-huh (affirmative).

1 Q ...contact Colonel Gent, again, reference  
2 assistance."

3 That's all about arran -- making arrangements  
4 for...

5 A Just wanted to make sure the Captain got in  
6 the airport to the hotel without any problems.

7 Q "Conference call Henry, Cole, McConnell,  
8 myself. I will continue to help if I can."

9 A Uh-huh (affirmative).

10 Q What did you mean by that?

11 A I would -- just as I explained before, this  
12 was -- this was just a -- a difficult time in  
13 that I didn't really understand taint and all the  
14 -- all the things that surrounded it and -- and,  
15 plus I had some other things that I had to do,  
16 too. But, that's -- and it was one -- it was one  
17 of the reasons I asked for help from another  
18 trooper. But, mainly it was a -- I wasn't able  
19 to be full time on this case and I wanted  
20 everybody to know that. And I wasn't sure I  
21 wanted to be full time on this case. I wanted  
22 everybody to know that.

23 Q 5/3/89. "Compare with Mark Stewart for  
24 Hazelwood's arrival."

25 That's just a security question?

1 A Yeah.

2 Q "Meet Den -- Dennis at DAO, go to airport."

3 A Right.

4 Q Other entries on there simply about the  
5 security arrangements?

6 A Right.

7 Q So -- 5/8/89, "I'm Soldotna." I am -- is  
8 that...

9 A "In."

10 Q "...in Soldotna. Several phone calls to Bud  
11 Dial, all Brent Cole. Mary Anne Henry setting up  
12 for service of search warrant on Exxon Valdez."  
13 Who was Bud Dial?

14 A He's a -- he's a trooper stationed here in  
15 Anchorage who was -- who helped out a little bit  
16 Brent Cole and Mary Anne on times when I was  
17 unavailable for something and another.

18 Q Did he to your knowledge have any prior access  
19 to any of the -- what was regard as tainted  
20 materials?

21 A I don't think so.

22 Q He was not one of the people you were told you  
23 were not to have any contact with?

24 A No. He'd -- before this, he had nothing to do  
25 with this case at all as far as I knew.

1 Q Now you say, "Looking for a notebook which is  
2 described by Joe LeBeau as having some useful  
3 information. Also need photographs of certain  
4 areas of ship."  
5 A Uh-huh (affirmative).  
6 (2895)  
7 Q What did you know about a -- a notebook?  
8 Excuse me. Let's make it more careful. What did  
9 Joe LeBeau tell you, or -- excuse me. What does  
10 this entry refer to? What is this entry about?  
11 A It's about -- it's about a notebook that Joe  
12 LeBeau indicated that he had seen on board the  
13 Exxon Valdez that contained, he thought,  
14 information about the loss of oil.  
15 Q Do you know when he made the observations?  
16 A I do not.  
17 Q Did you -- did he tell you when?  
18 A No -- well, if he did, I don't remember.  
19 Q Okay. And did you ask him?  
20 A I didn't ask him.  
21 Q As a result of that conversation was something  
22 done?  
23 A A search warrant was issued based upon  
24 testimony by Joe LeBeau and Brent Cole, Bud Dial  
25 and others.

1 Q Did you go to the proceedings where the  
2 warrant was issued?  
3 A No, sir.  
4 Q Were you personally present?  
5 A No, sir.  
6 Q Do you know who testified to what at those  
7 procedures?  
8 A I -- no. I know who testified, but I don't  
9 know who -- as to what.  
10 Q And do you know who testified from seeing the  
11 face of the warrant when you...  
12 A Face of the warrant.  
13 Q ...went out later to help execute it?  
14 A No. I didn't even go out to help execute it.  
15 Q You just -- just saw the face of the warrant?  
16 A Right. I was in Ketchikan, or something, I  
17 think. Or had to go to Ketchikan.  
18 Q 5/10/89. "In Anchorage at DAO, Bud Dial was  
19 also there to do list for the day. S-u-p on  
20 Hazelwood in Anchorage."  
21 A Supplement.  
22 Q What was that about?  
23 A Just his -- the fact that we were asked to  
24 make sure he got from the airport to the hotel  
25 without any problems.

1 Q Is that -- when you put SUP what action does  
2 that reflect on your part?  
3 A It means I'm gonna write something in a police  
4 report about that.  
5 Q Is it in the reports that you have in front of  
6 you?  
7 A I think so, yes.  
8 Q Point it out, please?  
9 A Yeah. I don't see it right here where it  
10 should be, but -- here.  
11 Q An entry saying, "5/3/89 8:30...  
12 A Right.  
13 Q ...a.m."  
14 A Right.  
15 Q That's what you're referring to there on --  
16 on...  
17 A Yeah.  
18 Q ...5/10?  
19 A On this day -- on the 10th, I'm gonna write  
20 about this on which I took notes up here.  
21 Q Then you say, "Call Carol, LA Times."  
22 A Right.  
23 Q What was your purpose in calling her?  
24 A I think she had called me first. I was just  
25 gonna call her back.

1 Q And you're returning her call?

2 A Yeah. There -- she -- I remember -- there was  
3 a message there from her to call, so...

4 Q Did you -- did the message indicate that --  
5 what the subject matter she was calling you about  
6 was?

7 A I don't recall.

8 Q Did you call her in order to conduct -- when  
9 you called her back did you think you were  
10 conducting further investigation in the case?

11 A Yeah. I thought so, because well, generally,  
12 my sister would never call me at -- when I'm  
13 working or in...

14 Q Okay.

15 A So, I -- I figured it had something to do with  
16 the Exxon Valdez in some respect. I think she  
17 had tried my home office, first, or something,  
18 and they told her I was working on the case here,  
19 or something.

20 Q What happened when you called her?

21 A She told me about the -- Mr. Bill Rempel from  
22 the LA Times who was going to be here in  
23 Anchorage during the NTSB hearings. And that he  
24 had done some research on west coast vessel  
25 safety and age of vessels and those kinds of

1 things and -- and that should I find it useful,  
2 he would have that kind of information, having  
3 just finished, or was in the process of doing  
4 that sort of research. She gave me his name.

5 Q Did you speak to him?

6 A Yes. Later.

7 Q Later, but not as of that day?

8 A No. I didn't speak to him at all until he was  
9 here.

10 Q Before he arrived here did you have any other  
11 communications with your sister about Mr. Rempel,  
12 or information that might come from him?

13 A Well, he'd -- I don't remember if it was right  
14 then that she was -- she indicated that he was  
15 either working on an article, or had just  
16 finished an article regarding tanker traffic, and  
17 I asked her to see that whenever it was --  
18 whether it was just now done, or whether it was  
19 going to be done soon -- to please send a copy of  
20 that to me.

21 Q Did you get such a copy?

22 A Yes.

23 Q What did you do with it when you got it?

24 A Gave it to you.

25 Q Have you seen it since?



1 A Oh, just looked at it yesterday just to make  
2 sure you had it, but that's all.

3 Q But, before you looked at it yesterday in  
4 order to prepare for the -- or, whenever, in  
5 order to prepare for the hearing, you had not  
6 seen it again as having been screened...

7 A No. I...

8 Q ...material?

9 A ...didn't. No -- it has not come to me as a  
10 screened item.

11 Q I'll show you Exhibit 50, is that -- that the  
12 same Exhibit that you received by panafax from  
13 your sister, and that you turned over to me?

14 A Yes.

15 MR. LINTON: I'd move 50, Your Honor.

16 MR. FRIEDMAN: No objection.

17 EXHIBIT 50 ADMITTED

18 THE COURT: Admitted.

19 Q (Sergeant Stogsdill by Mr. Linton:) Next  
20 entry, "Supplemental in Hazelwood statement to  
21 NTSB. He will take the Fifth."

22 Where did you learn that? Or, that -- what  
23 does that entry reflect?

24 A That -- I'm telling myself maybe I should  
25 write something about what I was told by the NTSB

1 about why Captain Hazelwood would not appear  
2 there.

3 Q Why did you think you ought to write down that  
4 particular fact? You couldn't use that in  
5 evidence, could you?

6 A Well, I'm not sure why I thought I should  
7 write it down. I did not -- in a police report.

8 Q But you wrote it down in your notes?

9 A Yeah.

10 Q "Find ARCO Alaska and Chevron California."

11 A Uh-huh (affirmative).

12 Q Who asked about that? What was that about?

13 A I think I -- I think I was -- that was some of  
14 my work. The -- these were ships that were  
15 either northbound, or one of them, I think, was  
16 southbound at the time -- near the grounding of  
17 the Exxon Valdez. And I wanted to contact the  
18 captains of those ships to see if they had any  
19 information.

20 Q And you had -- as part of the grand jury  
21 presentation, you had a grand jury Exhibit 37,  
22 which had the tape recording of at least part of  
23 the communications between the Coast Guard  
24 station and Captain Hazelwood on board the Exxon  
25 Valdez.

1 A Right.

2 Q And when he asked permission to move it to a  
3 different lane, he was told whether there was any  
4 incoming traffic which he would go against,  
5 what...

6 A Right.

7 Q Did you hear that transmission at Grand -- did  
8 you listen to that grand jury exhibit?

9 A I didn't listen to the tape. I read the  
10 transcript of the -- it's a one page...

11 Q That went along with the tape? And what were  
12 the ships identified in that portion of the  
13 tran...

14 A The Chevron California.

15 Q And the ARCO Alaska. So, having your memory  
16 refreshed by that, what were you doing then, when  
17 you...

18 A The -- again, finding them...

19 Q Following up that lead.

20 A Yeah. Correct.

21 Q Then, below that, "ARCO Long Beach, Bob Smith.  
22 Tom Morris, Captain at time on ARCO Alaska."  
23 What -- what was that about?

24 A Tom Morris was the captain on the ARCO Alaska  
25 at the time of the grounding. That's there

1 office number in Santa Rosa, I think. But, he  
2 was off the ship and Jim Gray was the captain on  
3 this very day that I was calling.

4 Q "Chevron USA 563-5260," was part of that  
5 process? On the next page.

6 A Yeah. That's the local number for Chevron,  
7 USA. I was just trying to find where their --  
8 some -- or, trying to get some phone numbers from  
9 them about where I could find out where their --  
10 all their ships were located and that sort of  
11 thing.

12 Q Then there's an entry, "Call Carol at LA  
13 Times. She will get copy of story referenced  
14 interview with Greg Cousins from Florida  
15 Newspaper and faxed it up."

16 What's that about?

17 A The -- somebody had told me that there was in  
18 existence an interview of Greg Cousins, which had  
19 been con -- done by a newspaper person in  
20 Florida. I was asked to see if I could get a  
21 copy of that. Called my sister. I figured she  
22 could do it. She did it and faxed it here.

23 Q Did you receive it?

24 A It came in the fax machine. I gave it to you,  
25 just like I did the other one and I haven't seen

1           it since.

2           MR. LINTON: Let this be marked as the next  
3 state's Exhibit, please.

4           (3550)

5           Q           (Sergeant Stogsdill by Mr. Linton:) Since you  
6 gave it to me have you seen it?

7           A           No, sir.

8           (Pause)

9           Q           Is Exhibit 51 that newspaper article?

10          A           Yes.

11          MR. LINTON: Move the ex -- the admission of  
12 51, Your Honor.

13          MR. FRIEDMAN: No objection.

14                       EXHIBIT 51 ADMITTED

15          THE COURT: It's admitted.

16          MR. FRIEDMAN: Was that 50, or 51?

17          MR. LINTON: 51.

18          MR. FRIEDMAN: Thank you.

19          Q           (Sergeant Stogsdill by Mr. Linton:) Then  
20 there's some entries, "Chevron -- Chevron  
21 California, Eric Doe."

22                       What's that about?

23          A           It says I'm continuing to inquire as to  
24 whereabouts of Eric -- of the captains of the  
25 Chevron California and the ARCO Alaska from the

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Chevron and ARCO offices.

Q And the next entry is to Tom -- Captain Tom Morris is about the same thing?

A That is actually -- I was able to contact Captain Tom Morris at this point at that phone number and talk to him briefly.

Q On the next page there's a little line -- does that mean that the first four lines down are about -- are the continuation of the previous notes with Captain Tom Morris?

A The -- yeah. Those -- that's a continuation.

Q There's then an entry, "ARCO Juneau."

A Right.

Q Where did you fi -- what was that about?

A I called the 1-800 number listed there and listened to a recording that tells me that the ARCO Juneau will be in San Francisco at 11 p.m. on Wednesday at the TASCOC dock.

Q Okay. Where did you know -- what did you know about the ARCO Juneau? Why were you trying to find out about the ARCO Juneau?

A It, also, was in the Prince William Sound generally around the time of the grounding.

Q 5/11/89, "In Soldotna. Called Cole and Henry re case. Call Carol reference name of reporter

1 in Florida."

2 First as to the Hen -- Cole, Henry call, do  
3 you remember what that was about?

4 A No. I don't.

5 Q Then, you say, "Call Carol reference name of  
6 reporter in Florida."

7 A Uh-huh (affirmative).

8 Q At that point had you turned over the article  
9 to me for screening?

10 A Yes. The -- the article came on a fax this --  
11 just within an hour after I'd asked her for it.  
12 Relatively quickly.

13 Q And...

14 A And I was told that this time I'm in Soldotna,  
15 somebody said the name of the -- the reporter was  
16 cut off and would I inquire.

17 Q Cut off on the article?

18 A Cut off of the fax. It didn't turn out, or  
19 something, on the fax -- in the fax copy, or --  
20 but, I don't know 'cause I hadn't looked at it to  
21 see what the reporters name was.

22 Q So, what was the purpose of your call, then?

23 A To ask my sister what the name of the reporter  
24 was who had interviewed Gregory Cousins in  
25 Florida.

1 Q You ever get it?  
2 A No.  
3 Q And there's some reference to a "Call to Mary  
4 Anne Henry about a call from Mr. Kagan's  
5 attorney, a Mr. Lautenschlager (ph)."  
6 A Right.  
7 Q That you understood to be a person you could  
8 talk about and talk to -- that is, Mr. Kagan?  
9 A Yes.  
10 Q Or a lawyer working with him?  
11 A Yes.  
12 (384)  
13 Q Then there's a notation, "Henry finally got  
14 some USCG statements. May subpoena them to G.J."  
15 What is that about?  
16 A This is just her telling me that finally --  
17 she had finally gotten some statements through  
18 you, apparently, that -- to -- from the Coast  
19 Guard, or some statements the Coast Guard had  
20 done and she was gonna make some decision about  
21 whether to subpoena somebody to grand jury, or  
22 something.  
23 Q 5/12/89, "Call from LA Times. Bill Rempel  
24 will cover the NTSB hearings for them."  
25 Is there anything else to it than just that?



1 A No. There was just a -- I can't even remember  
2 who called. The -- I -- probably my sister.

3 Q "Meet with Mary...." 5/14/89, "Meet with Mary  
4 Anne to read newly received FBI reports and  
5 statements."

6 Those were statements of the crew?

7 A These are statements of the crew taken by the  
8 FBI, or, actually, they're summaries of  
9 statements of the crew taken by the FBI. And  
10 they had -- they had now transferred into our  
11 hands from you.

12 Q 5/15/89, "Anchorage DAO, NTSB hearings begin  
13 tomorrow."

14 Was there a purpose in your being in Anchorage  
15 then -- as of 5/15/89? You'd been in Soldotna...

16 A Well, Grand -- we were having grand jury this  
17 week.

18 THE COURT: grand jury for another matter?

19 A No. For this same case -- this was a split --  
20 our grand jury was split up into -- I think three  
21 sessions. The first one was -- would be the 1st  
22 and 2nd, and now this is the second session where  
23 the crew members are gonna testify.

24 MR. LINTON: I think, like 5/1 was the first  
25 day of grand jury. 5/2 was the second day of grand

1 jury. 5/3 was the third day of grand jury. 5/17 was  
2 the next period of grand jury. And, then, 5/22 was the  
3 last...

4 THE COURT: I was aware of the 17th. I didn't  
5 know the 15th. I understand now.

6 Q (Sergeant Stogsdill by Mr. Linton:) What was  
7 your purpose in coming back to Anchorage then?  
8 Coming to Anchorage -- not back to Anchorage.  
9 Coming to Anchorage?

10 A To -- to help with the grand jury.

11 Q What -- what was there for you to do at grand  
12 jury?

13 A Well, I served -- served subpoenas on the crew  
14 members. In addition, I wanted to talk to the --  
15 to them, if they'd allow that...

16 Q Before they testified at grand jury?

17 A Yeah. Exactly.

18 Q Can you tell the judge what arrangements you  
19 made to -- to do that?

20 A Well, you mean to talk to them, or serve them,  
21 or both?

22 Q Both, please.

23 A The -- I talked with the Exxon security guy  
24 who was in -- who was in charge of the security  
25 for the west coast here. His name is Dick Vail.

1 He was here babysitting the crew members in a  
2 certain blocked off area of the Captain Cook.  
3 And...

4 Q Where were the NTSB hearings held?

5 A At the Captain Cook.

6 Q The same place the crew members were staying?

7 A Yes.

8 And I called him on the phone, told him I  
9 needed to come over and -- and serve subpoenas  
10 for our grand jury, and at the same -- and  
11 hopefully, make some arrangements to talk with  
12 the crew members, either then, or another time.

13 He would -- he told me he'd call me back and  
14 let me know when that would happen. He did and  
15 -- and indicated that sometime after 6:30 on this  
16 day, the 15th, I could come there and he would  
17 make the crew members I needed to serve with  
18 subpoenas available for me to do that. And I  
19 could make arrangements with them to, hopefully  
20 for interviews, or whatever the case may be.

21 That was -- that's what I did on the 15th.

22 Q And so, let's go through the entries, then, to  
23 see whether there's anything additional there.

24 (4135)

25 "Supplements from Dial."

1                   What were they about?

2     A             What pa -- where are you at?

3     Q             Top 5/15/89, "Anchorage DAO." And then, the  
4                   next line.

5     A             I think those were the supplements he had  
6                   written on the -- when he had gone out to the  
7                   Exxon Valdez on a search warrant that he was on.

8     Q             What were they about?

9     A             Just that I -- I went out there. I looked for  
10                  the -- the book. I couldn't find it. Took some  
11                  pictures.

12    Q             Couldn't find the book?

13    A             Right.

14    Q             Took some pictures of the Exxon...

15    A             Exxon Valdez, which was on the search warrant.  
16                  And I think those were what -- I think those were  
17                  the supplements that he'd written at this time.

18    Q             And then, Dick Vail was the head of...

19    A             Head of Exxon Security.

20    Q             Right. "Called Kagan's attorney. He will  
21                  call back after he's talked with Kagan."

22    A             Right.

23    Q             "Dick Vail called. He'll arrange me to make  
24                  -- serve subpoenas and talk with crew."

25    A             Right.

1 Q 6:30, you're at the Captain Cook?  
2 A Right.  
3 Q With Brent -- with Mr. Cole.  
4 A Brent Cole is there, Paul Deagle, an Exxon  
5 attorney is there.  
6 Q And then you have a series of times, "6:35  
7 LeCain. 6:40 Radtke. 6:42 Kagan. 6:45 Claar.  
8 6:50 Kunkel. 6:55 Jones. 7 p.m. left hotel with  
9 Cole."  
10 (Tape: C-3511)  
11 A Right.  
12 Q That's just you serving the subpoenas?  
13 A Right.  
14 Q 5/16/89, you return the subpoenas?  
15 A Right.  
16 Q "1:40, Maureen Jones." She's a crew member?  
17 A Right. As I served the subpoenas I asked that  
18 they contact me the next day and we would make  
19 arrangements that I would deliver to them copies  
20 of the statements taken from them by state  
21 troopers and FBI agents. And, then, at that time  
22 we could go over those statements with me to --  
23 for any additions, or deletions, or -- and then,  
24 give -- and afford me an opportunity to ask these  
25 folks some questions.

1           And at 1:40 p.m. Maureen Jones appeared at the  
2           DA's Office with her husband. I brought her into  
3           an empty office there. Brent Cole and I, both,  
4           sat down. I handed her copies of the statements  
5           that she gave to Sergeant McGhee and a summary of  
6           the statement she'd given to the FBI. And it --  
7           was gonna ask her a few questions and she said,  
8           "I'm sorry. I have an attorney. He told me not  
9           to talk to you. And have a nice day."

10          Q           And she left?

11          A           Right.

12          Q           "2:40." What's that about?

13          A           Well, it -- I mean, now I'm over at the hotel  
14           Captain Cook. I mean that most of the day has  
15           gone by and I've only heard from Maureen Jones  
16           out of a whole crew. So, rather than wait for  
17           them to contact me, I'm going back over there to  
18           see what I can do.

19                    I went back to the Captain Cook with Brent  
20                    Cole and got a hold of Kagan. Then...

21          Q           There's an entry, "Kagan indicates that on  
22           page 5 of AST statement should read 10 and 20  
23           degree angle - hard over."

24          A           Right.

25          Q           What -- what are those -- what is that about?

1 (79)

2 A In reading the statement that I gave him on  
3 page 5 of that -- of the state trooper statement  
4 he indicated that there was an error. And that  
5 this is what the error should be. 10 20 degree  
6 angle, and then hard over. And -- referring to  
7 those were the -- the commands that he was given.

8 Q Did he tell you what rudder angle might  
9 correspond to -- what actual angle in degrees  
10 would correspond to hard over?

11 A Did Kagan tell me that?

12 Q Yes, sir.

13 A No.

14 Q And the balance of that page is what Mr. Kagan  
15 told you?

16 A Also, on page 5, yeah. He indicated that the  
17 mate took it off gyro, not him. So, they both  
18 reached for it at the same time.

19 Q The next page is Kagan says, Kagan indicated,  
20 Kagan's attorney indicated...

21 A Right. Right. Right.

22 Q "Kagan indicates page 2 of the FBI statement  
23 ... 3:05, ended with Kagan."

24 A Right.

25 Q Next entry's, "Paul Radtke. His attorney

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says..."

A Paul Radtke's attorney was there and said yeah. You can deliver the statements to him. No. You can't have any conversation. And he's in the shower. He'll be in in a little bit.

Q Then there's a note -- I think you told us about earlier?

A Right.

Q "While with Kagan on at least two occasions had to tell his attorney not to reveal to us anything Cousins had said at NTSB. Also, Dick Vail turned on TV set and we had him turn it off and he did."

A Right.

Q "3:10 p.m., Harry Claar." What's that about?

A Harry Claar's a crew member. He came to this room where we were. Gave him statements. He indicated that he already read the trooper one and -- and he stood there and read the FBI one. And he said that on page 3 of the FBI report that it should reflect that the captains do leave the bridge, occasionally, for brief periods of time.

Q "3:15 Radtke..."

A Paul Radtke appears.

Q Another interview with a crew member.



1 A ,Right.

2 Q "3:27. Lloyd LeCain." That was a...

3 A Same...

4 Q ...12 minute interview, then, with Mr. Radtke?

5 A Right.

6 Q "3:27. Lloyd LeCain shown statements. Reads  
7 them."  
8 That's just an interview with a crew member?

9 A Right.

10 Q "Shown portion of -- shown photo of portion of  
11 ship. Says Kunkel could explain it better than  
12 he."  
13 What were you showing him?

14 (175)

15 A Actually, I think it was Mr. Cole had a  
16 photograph, or somethin' that -- that might have  
17 been -- that might be used in grand jury and I  
18 can't recall. I think it was of the cargo  
19 control thing -- cargo control room, but I don't  
20 -- I don't recall exactly what it was.

21 LeCain looked at is and said that Kunkel could  
22 explain it better than he could.

23 Q 3:33. Kunkel says he won't talk to you.

24 A Right.

25 Q He was a crew member.

1 A He was.

2 Q "3:50. Jerzy Glowacki."

3 A Just gotten in town just then. He just walked  
4 into the hotel. And I gave him both his sub --  
5 both subpoenas for the grand jury and a trial  
6 subpoena, and his FBI statements.

7 (210)

8 Q You then have entries of the conversation with  
9 Dick Vail in which you have Tuesday, Wednesday,  
10 Thursday, Friday, Saturday, going on to the next  
11 page...

12 A Right.

13 Q ...with a list of witnesses?

14 A Right.

15 Q What was the purpose in getting the list of  
16 witnesses?

17 A The main purpose was is that the -- to see  
18 when these people were going to testify so we  
19 could, then -- they were gonna testify at NTSB  
20 first, and then we were gonna bring 'em to grand  
21 jury. And the schedule was to -- so that we  
22 would have some basis of information so that  
23 we're not trying to schedule somebody for grand  
24 jury at the same time they're trying to testify  
25 at NTSB.

1           And Vail gave me a copy of the list that he  
2           had and I wrote the information down.

3           Q           Did the list have some names on it that you  
4           hadn't seen before?

5           A           Yes.

6           Q           Have you gone to interview any of the people  
7           whose names you hadn't seen before?

8           A           No.

9           Q           "4:03. LeCain reappears. Has found another  
10          error."

11          And you talked to him about that?

12          A           Right.

13          Q           "Glowacki calls. Speaks with Brent Cole."

14          A           Right.

15          Q           Talking about problems with his statement.

16          A           Right.

17          Q           "8:25. Called Bill Rempel. Will meet him in  
18          lobby of Captain Cook."

19          A           Right.

20          Q           8:25 p.m., that is, then?

21          A           Right.

22          Q           Is that the reporter who'd come up from Los  
23          Angeles?

24          A           Well, I think he's actually lives in San  
25          Francisco.

1 Q Excuse me.

2 And then there's an entry, "8:40 in Fletcher's  
3 bar."

4 A Right.

5 Q Explain to the judge, first, what was your  
6 purpose in meeting with Bill Rempel?

7 A My purpose in meeting Bill Rempel was because  
8 the -- he's the person my sister had indicated to  
9 me had done some research on tanker safety. And  
10 he might be a worthwhile person to confer with in  
11 that regard. And -- plus, she was -- she knew  
12 him, and it was a friend of my sister's  
13 apparently.

14 So, I called him. He knew who I was right  
15 away. And I asked him, you know, he to -- he  
16 suggested I meet him in the lobby. I did that.

17 We went into the bar and as I explained  
18 before.

19 Q You went in the bar. What was your purpose in  
20 talking to him?

21 A I just that -- to see if he had some -- if I  
22 -- in fact, I would be interested in some of the  
23 information he had done, or some of the research  
24 he had done on tanker safety.

25 Q And you talked to him about that subject

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matter?

A Right.

Q Did he tell you anything about the event...

A Well, briefly. Not very much. He'd -- only the fact -- the only thing we talked about tanker safety is that he had done the research and he either had written an article, or was in the process of writing an article on tanker research. And especially some of the ships that were in the Alaska trade here. And, so, it seemed like it was something I might want.

Q Did he convey any information to you about the events of March 24th, 1989?

A No. He did not.

Q There's, then, a notation -- the rest of the notat -- none of the notation that you wrote that day, however, has anything to do with what you learned from Bill Rempel, did it?

A No.

Q And would you describe for us -- well, tell us what you saw that caused you to enter the notation here.

A When I walked into the bar I saw Mark Delozier and another Coast Guardsman in uniform sitting at a -- at a table with Captain Hazelwood's

1 attorneys. And there was -- there was a couple  
2 of women there, too, I think.

3 Q Uni -- in fact, you say, "There is also there  
4 a secretary from NTSB, Washington D.C."

5 A I didn't know who either of the two women  
6 were. But Mr. Rempel knew that one of them was  
7 from the NTSB, and that the other one was a  
8 reporter.

9 I asked him if he knew who those two women  
10 were and he -- he knew that -- he knew that  
11 information. One was from NTSB and one was a  
12 reporter.

13 Q What was your purpose in writing -- making  
14 notes on that?

15 (378)

16 A Basically, I didn't think that -- well,  
17 actually, kind of -- I was irritated with the  
18 situation a little bit.

19 Q Explain what you mean.

20 A Mark Delozier, who is supposed to be a -- or,  
21 is, in fact, an investigator with the Coast  
22 Guard, and who is a first responder to a major  
23 incident such as this appears at our grand jury  
24 with two attorneys and generally gives the flavor  
25 of being uncooperative. And then, I -- only to

1 see him a week or so later in a bar with Captain  
2 Hazelwood's attorneys, I felt was a position not  
3 appropriate for him to be in.

4 Q And so you made a notation about your  
5 observation?

6 A Yes.

7 Q And that's why later you went and talked to  
8 Mark Delozier when you were down in Valdez...

9 A Right.

10 Q ...to find out what he had talked about at  
11 that meeting?

12 A Yes.

13 (400)

14 THE COURT: It might be a good time to break  
15 for lunch. We'll take a lunch break until 1:30 today.  
16 It's about 1:15 now.

17 MR. FRIEDMAN: Your Honor?

18 THE COURT: Yes, go ahead.

19 MR. FRIEDMAN: Mr. Linton and I have agreed  
20 that the issue regarding Mr. Weeks and Mr. McConnell  
21 might appropriately be addressed to you today at some  
22 point if...

23 THE COURT: Whatever you want. You just pick  
24 a time. I understand Mr. Linton is going to oppose  
25 meeting with those individuals, both Guaneli and Weeks,

1 is that correct? Is that who you're looking for?

2 MR. FRIEDMAN: I think Mr. Guaneli is coming.  
3 The issue is McConnell and Weeks.

4 THE COURT: Oh, McConnell and Weeks.

5 MR. LINTON: Right. Mr. Guaneli's outside  
6 waiting now.

7 THE COURT: Okay. Do you have any authority  
8 to assist me with?

9 MR. LINTON: Just the cases on what  
10 constitutes an improper use of immunized testimony  
11 cited in my memorandum, distinguishing the McDaniel  
12 (ph) case and setting forth the cases there that  
13 express the theories of what constitutes danger.

14 THE COURT: Okay. I'll let you argue those  
15 points when we get back.

16 MR. FRIEDMAN: As you probably know, we've set  
17 out our position in our initial brief talking about  
18 evidentiary versus non-evidentiary.

19 THE COURT: We can take that up, if you want  
20 to, at that end of the day, or we can take it when we  
21 come back, or whenever you feel it appropriate. I plan  
22 on going until 4:30 p.m. today.

23 MR. FRIEDMAN: Your Honor, my preference would  
24 be to take it up when we get back so that it's before  
25 Mr. Guaneli testifies, since...



1 THE COURT: All right. And he'll be called  
2 later today if we have time?

3 MR. FRIEDMAN: Yes, sir.

4 THE COURT: All right. I think we're starting  
5 to slow down a little bit now, are we, or are we still  
6 on track?

7 MR. LINTON: Hit a snag, but I don't think  
8 it's going to...

9 THE COURT: Do I need to set aside another  
10 week? I mean, I can do that now if you think two is  
11 not going to be enough. At such time as you think  
12 we're not going to have enough time, let me know so I  
13 can call off a trial.

14 MR. LINTON: Yes, sir.

15 THE COURT: We're in recess.

16 (500)

17 (Off record - 12:09 p.m.)

18 (On record - 1:39 p.m.)

19 THE COURT: You may be seated.

20 Is this the time we want to deal with calling  
21 of the other witnesses?

22 Okay. You want to call the, so why don't you  
23 tell me why?

24 MR. FRIEDMAN: All right. Your Honor, I  
25 gather from Mr. Linton's comments that his objection is

1 based upon a line of cases that say non-evidentiary  
2 uses of immunized testimony are permissible. And we've  
3 cited the cases that say that's not true, just as an  
4 example, there's McDaniel, which dismissed an indicted  
5 because a U. S. Attorney had read immunized testimony  
6 before presenting the case to the Grand Jury. We cited  
7 several other cases to the same effect to the court.

8 Even the cases that don't hold that, in fact,  
9 the line of cases that Mr. Linton has cited recognize  
10 that, and I'll quote, "Each step of the investigative  
11 chain by which the evidence presented was obtained must  
12 be documented and accounted for."

13 THE COURT: Which case did you cite that from?

14 MR. FRIEDMAN: That was United States versus  
15 Hampton, Your Honor. It's cited on page 10 of our  
16 brief.

17 Basically I have three arguments that I want  
18 to make today on this issue. The first is that you  
19 should adopt the cases that say non-evidentiary uses  
20 are prohibited.

21 A case that we did not cite in the brief which  
22 supports that conclusion is Portash (ph) v New Jersey,  
23 which I believe we have cited in our by brief, which is  
24 a strong indication of how the supreme court would view  
25 uses which might be permissible in another context, but

1 in the immunity context, they're taking the hard line.

2 So, our first argument is you ought to accept  
3 our legal position.

4 If you're not in a position to resolve that  
5 issue today, then we should be allowed to make our  
6 record at least so that we don't have to redo this at  
7 some other time.

8 The final point I would like to make is even  
9 if you adopt the state's view of the law, that is, only  
10 evidentiary uses are prohibited, it's come out in the  
11 testimony thus far in the hearing that Mr. Weeks, I  
12 think the language was "guided" the Grand Jury process.  
13 Ms. Henry testified that Mr. Weeks is the one who  
14 provided her with the names of the people to call at  
15 Grand Jury because she didn't even have police reports  
16 at the time the subpoenas were issued. That's one of  
17 the steps in the investigative process as this case was  
18 put together.

19 Mr. Weeks, who had -- I'm assuming. I have no  
20 way of knowing what Mr. Weeks knew, but I think it's a  
21 fair assumption that the head of the state Criminal  
22 Division knew about the report, what was said, and what  
23 the response was by the investigators in the next few  
24 hours.

25 If we assume that he knows that material, and

1 he's feeding the pure team information as to which  
2 witnesses to call at Grand Jury, that runs directly  
3 contrary to even the cases the state has cited on  
4 evidentiary use.

5 So, I guess just to recap, we think our legal  
6 position is right. If you can't decide, we'd like to  
7 be able to make a record so that you've got a good  
8 record on which to decide. And, thirdly, even if you  
9 decide against us, clearly all signs are pointing to  
10 Mr. Weeks. All factual signs are pointing to him as  
11 being a key player in how this immunity issue was  
12 handled. And not allowing us to explore what he did is  
13 going to leave a big gap.

14 THE COURT: All right. Mr. Linton.

15 MR. FRIEDMAN: Your Honor, I didn't say it,  
16 but I think generally everything I said regarding Mr.  
17 Weeks applies to Mr. McConnell. Obviously, the factual  
18 shadings are different for each of them, but I think  
19 that the arguments remain the same.

20 (Pause)

21 (699)

22 MR. LINTON: Let me make an offer and then  
23 explain why that it is I think the evidence would show  
24 this, and then argue why Mr. Weeks shouldn't be called  
25 to give such testimony on the basis of McDaniel type

1 analysis.

2 If I might approach the easel, Your Honor?

3 Let's assume that his testimony is that Bob  
4 Linton is sent to Valdez. He starts gathering evidence  
5 like the evidence that is in the trooper reports on all  
6 the crew on the 30th, people trying to get records from  
7 the Coast Guard and not getting all the records, not  
8 getting records from the Coast Guard.

9 And, while he is there he, Bob Linton, is  
10 learning about things that are contained in the  
11 information which is the charging document in the case,  
12 learning the facts and the information.

13 And, as part of the process of keeping someone  
14 at the political level of government advised Bob Linton  
15 conveys all of the facts in the information to Larry  
16 Weeks.

17 During this time period people are studying  
18 the question of immunity. Some sense that that's a  
19 provision of law that applies and they're trying to  
20 figure out how it applies and how...

21 THE COURT: During which time period are you  
22 offering this to occur from? When did it start?

23 MR. LINTON: 3/26/90.

24 Information -- I don't have a date on the  
25 information being filed.

1 MR. FRIEDMAN: I can get it.  
2 THE COURT: March 31st.  
3 MR. LINTON: Larry Weeks knows all of the  
4 facts in the information. In roughly mid-April Larry  
5 Weeks and the people at his direction decide that the  
6 way to handle the immunity situation is to create two  
7 teams. So, immunity now needs two teams. So, Weeks  
8 decides to set up two teams, or concurs in that  
9 process.  
10 The decision is made to file felony charges.  
11 Weeks has the information in the information, but the  
12 knew team who we've got making the decision has only  
13 the what we'll call "untainted info". Weeks has  
14 tainted info. The team that's going to make the  
15 presentation has untainted info.  
16 THE COURT: Now, does your offer include Mr.  
17 Weeks telling the untainted team to review certain  
18 evidence and make a decision on whether it should be  
19 presented for charges?  
20 MR. LINTON: No.  
21 THE COURT: Or, is that decision made by Mr.  
22 Weeks, that it's going to be charged.  
23 MR. LINTON: I don't know the answer to that,  
24 Your Honor.  
25 (Pause)

1           Next would be the decision to present to the  
2 Grand Jury is a better way to say it. And date set  
3 5/1/89.

4           Untainted team doesn't have any information at  
5 all at that point. No police reports.

6           To assist in setting up Grand Jury, Weeks has  
7 this information, gives a list of witnesses to be  
8 subpoenaed, but doesn't convey any of the substance of  
9 testimony to the people who are to be called.

10          Henry subpoenas the witnesses based on the  
11 list, but determines the substance of any testimony  
12 only from reports that then come in through the  
13 screening process.

14          (Pause)

15          Assuming that that were the testimony would  
16 that be the proper to call Mr. McConnell and/or Mr.  
17 Weeks into court?

18          First, on the present state of the record  
19 those people who have talked to him -- I recall asking  
20 the questions of Stogsdill and Cole. I don't recall  
21 whether I asked the question of Mary Anne Henry  
22 expressly, did you get factual information from Larry  
23 Weeks. I think the answer was no on all scores. Larry  
24 Weeks and Dean Guaneli in the course of any of your  
25 conversations.

1           They were the ones who had the information,  
2 Larry Weeks having participated in the decision to set  
3 up these teams was going to be careful not to destroy  
4 the purpose for which they were set up.

5           But, even putting that aside, the most extreme  
6 case of what constitutes an impermissible use of  
7 immunized case, the McDaniel's case was not decided in  
8 this circuit. It was decided in another circuit. It  
9 was decided in a context where they spoke of focusing  
10 the investigation, deciding to initiate prosecution,  
11 refusing to plea bargain, interpreting evidence,  
12 planning cross examination, and otherwise generally  
13 planning trial strategy was found to be impermissible,  
14 even though the 8th Circuit's backed away from that.

15           I say that this is distinguishable, even from  
16 McDaniels, in this sense, Your Honor. When confronted  
17 with this type of situation it is appropriate that  
18 someone at the political level of the government decide  
19 just the question of appropriation of resources. Is it  
20 appropriate to put two, or four, or six lawyers into a  
21 matter. They have to weigh that against not only the  
22 other demands of the office, but the political context  
23 in which that matter has arisen. Those people are put  
24 in positions of authority like that to make judgments  
25 on behalf of the people. And if those judgments are



1 incorrect, then they must answer for them politically.

2 I say that that's the level we're getting to  
3 here. And that at that level I say you're beyond the  
4 McDaniels. Even the most liberal principal of what  
5 constitutes an impermissible use, and it's for that  
6 reason that -- and in the absence of any indication  
7 that any factual information was conveyed by Mr.  
8 McConnell, or Mr. Weeks, that they should not be  
9 required to appear and testify.

10 Let me indicate one other thing. There is a  
11 witness who the state agrees should testify. That's  
12 Mr. Dean Guaneli. Mr. Dean Guaneli is actually an  
13 assistant of Mr. Larry Weeks. He is an assistant  
14 attorney general in the office of the Director of  
15 Criminal Prosecutions, Larry Weeks' office. There are  
16 a few lawyers there. Some work on corrections matters  
17 for the most part, just those matters. But, then,  
18 there are two lawyers, Dean Guaneli being one of them,  
19 who work on whatever host of problems, sometimes  
20 legislative, sometimes big cases that require continued  
21 watching from the stand point of the chief prosecutor.  
22 And these people, Otto and Guaneli are available to do  
23 that for them.

24 Normally being staff of such a person we might  
25 have the same objection to Mr. Guaneli. In this

1 particular instance, however, Mr. Guaneli was not only  
2 doing that kind of work in Juneau, but was sent to  
3 Valdez when I left to continue to do, primarily the  
4 work of making sure the troopers followed through on  
5 things that had been started during the period of time  
6 that I was there.

7 But, while normally he would fall into such a  
8 position, because he was physically in Valdez we are  
9 agreeing that he appear and testify.

10 In short, given the fact that this is a  
11 political level of decision making, given the fact that  
12 there is at this junction no testimony that any factual  
13 information was conveyed, we think that this is beyond  
14 even the most liberal extension of the use of immunity  
15 doctrine, and it's not appropriate to have those two  
16 people appear in the absence of some more definite  
17 showing that their activity was improper.

18 (1193)

19 MR. FRIEDMAN: Your Honor, if I understand Mr.  
20 Linton's argument correctly, he's in essence saying  
21 that Mr. Weeks wore two hats, that for his political  
22 hat he needed to know the tainted information, but that  
23 that didn't effect what he did with regard to what he  
24 did with regard to his other hat, which was I think in  
25 Mr. Stogsdill's words, "guiding the Grand Jury".

1           That's precisely what Castiger (ph) and all  
2 the cases since have prohibited. The people who have  
3 that information, the immunized testimony, can not use  
4 it against somebody. The testimony thus far is that  
5 Mr. Weeks played a major role in making the decision to  
6 charge, in formulating the charging language, which  
7 obviously has factual content. And that, presumably,  
8 well, it has obviously factual content. And, thirdly,  
9 in deciding, even if you accept this proffer as the way  
10 it all came down, in telling his subordinates these are  
11 the witnesses you will need to call for Grand Jury,  
12 that is the classic focusing of the investigation.

13           THE COURT: Even if those witnesses have been  
14 screened? Even if that information has been screened  
15 and the witnesses would otherwise be available for  
16 testimony or evidentiary uses?

17           MR. FRIEDMAN: Well, that gets into this whole  
18 other question of -- Your Honor, that really does  
19 highlight an important issue here, which we haven't  
20 directly addressed. And you can look at any immunity  
21 case in the books, because I feel confident I must have  
22 looked at almost all of them by now. You will not see  
23 a situation where a tainted person has been set up to  
24 screen what untainted people will be allowed to see.  
25 The whole premise of this remedy is a false premise.

1 That is, that a tainted person can sit at the controls  
2 and, just as an example, and we'll bring this out with  
3 Mr. Stogsdill when we get to it later this afternoon.

4 Mr. Linton gave him this Coast Guard report  
5 -- not Coast Guard, but the analysis, the computer  
6 simulated analysis, the draft report. I haven't  
7 counted up the number of times. The report is based  
8 upon the initial interviews done by the Coast Guard,  
9 which the state concedes are tainted. And references  
10 to those interviews are all through this report. And  
11 the idea that someone who is tainted, himself, can  
12 control the prosecution is precisely what all the cases  
13 prohibit. I think...

14 THE COURT: Do they address that directly?  
15 Where this "Chinese wall" is erected with the  
16 assistance of a tainted person who screens the  
17 materials thrown over the fence, is there any case that  
18 addresses that on point? I didn't see one.

19 MR. FRIEDMAN: No. That's my point...

20 THE COURT: So, the same argument made by Mr.  
21 Linton, no case addresses it.

22 MR. FRIEDMAN: Let me show you why, Your  
23 Honor. I think that that's at the heart of this whole  
24 problem.

25 Going back to the diagram I drew you earlier,

1 ordinarily you're down here and they've decided to give  
2 someone immunity. And what they have to do is they  
3 just have to keep what these five people know from  
4 spreading out into the rest of the world. They are  
5 containing this information from going out here.

6 What Mr. Linton is trying to do is keep  
7 information from the entire rest of the world from  
8 going in. Mr. Stogsdill, I think, illustrated it where  
9 he said it was -- I forget his exact words, but  
10 impossible to keep...

11 THE COURT: Well, is that what you're saying  
12 is that it's impossible.

13 MR. FRIEDMAN: It is impossible.

14 THE COURT: So, nobody could do that. And in  
15 order to do it the best way possible, I suppose  
16 somebody tainted would have to do it, and that would be  
17 aware of the issue and all of the information before  
18 there'd be any chance of doing it.

19 MR. FRIEDMAN: That's correct.

20 THE COURT: So, you're arguing for the  
21 functional equivalent of transactional immunity, aren't  
22 you?

23 MR. FRIEDMAN: No. No.

24 (Pause)

25 If this statute were applied, let's assume

1 that a tanker went aground today. Pilot boats travel  
2 with the tankers. The government would virtually  
3 simultaneously learn what the pilot boat saw at the  
4 time, probably even before the captain called in the  
5 pilot boats would see the oil spill. The response  
6 would get on.

7 The other situation you see this kind of case  
8 arising in is where, say, a factory is polluting a  
9 river and the EPA is investigating. They know someone  
10 upstream is polluting, and they're working their way  
11 up. They have their independent investigation going  
12 already when they receive a call. They've got their  
13 independent investigation. They receive an immunized  
14 call, they keep it separate. There's no transactional  
15 immunity. The person who gives the call can still be  
16 prosecuted.

17 I guess the answer is yes, to your question...

18 THE COURT: Right. What starts it is the  
19 report.

20 MR. FRIEDMAN: Under the facts of this case...

21 THE COURT: That's what I thought you were  
22 trying to say.

23 MR. FRIEDMAN: All right. That is correct.

24 I suppose we could spin out some kind of  
25 situation where the entire situation is started by a

1 call, but somehow, something totally out of the blue,  
2 midway through the investigation comes in and they keep  
3 it separate and then it's clean and it's pure and they  
4 can do it.

5 I'm not saying it could never be done. Under  
6 the facts of this case it does amount to an impossible  
7 task.

8 So, the issue at hand, what we're talking  
9 about is what did they do here and how effective was  
10 it. And if you don't, or you're not willing to go as  
11 far as -- obviously, if you agree with our position, we  
12 can stop at some point and say as a matter of law we  
13 don't need to do this hearing any more.

14 But, if you're not willing to go that far at  
15 this point in time, what I've been trying to illustrate  
16 through Trooper Stogsdill and Mr. Linton is the  
17 impossibility of what they're trying to do. Because,  
18 if it is impossible, it's not their fault, but it's not  
19 Captain Hazelwood's fault either. And, if it is  
20 impossible, then he's entitled to his immunity, and  
21 that should be the end of it.

22 THE COURT: Let's not get into the broader  
23 question quite so soon. We're dealing with non-  
24 evidentiary use of information that could not otherwise  
25 be used. At least we're assuming for this question it

1 could not be used in the trial, or a derivative of  
2 that.

3 And it sounds to me like you're suggesting  
4 that -- well, first of all, is the remedy here, if I  
5 were to determine that non-evidentiary use is  
6 impermissible...

7 MR. FRIEDMAN: Uh-huh (affirmative).

8 THE COURT: ...and that Mr. Weeks made a non-  
9 evidentiary use of information that Captain Hazelwood  
10 was given immunity for. What is the remedy? Isn't the  
11 remedy the same as if I rule transactional immunity?

12 MR. FRIEDMAN: If you rule that...

13 THE COURT: Oh, I see.

14 MR. FRIEDMAN: Let me just restate it to make  
15 sure I understand. If you rule non-evidentiary use is  
16 not permissible?

17 THE COURT: Right. If I rule that?

18 MR. FRIEDMAN: And you rule that he did make  
19 such use?

20 THE COURT: Right.

21 MR. FRIEDMAN: The remedy under the facts here  
22 is dismissal of the indictment, and the state could  
23 still, I guess in theory, try again.

24 Now, we'd be back to who they're going to  
25 find...



1 THE COURT: Somebody's going to have to make a  
2 charging decision that knows nothing about the facts of  
3 the case, then, is that what you're saying?

4 MR. FRIEDMAN: I guess I'm not comfortable  
5 solving the problem for the state. I can point out the  
6 problems and show why what they did isn't right. I'm  
7 not sure it's an impossible problem, but I'm not sure  
8 I've got the answer. I wouldn't feel very comfortable  
9 telling them how to prosecute my client.

10 THE COURT: Well, in United States v Barker,  
11 which is as case you haven't cited, but the state  
12 did...

13 MR. FRIEDMAN: Uh-huh (affirmative).

14 THE COURT: An 8th Circuit case that occurred  
15 after McDaniels, they recognized impossible burdens.

16 MR. FRIEDMAN: Uh-huh (affirmative).

17 THE COURT: And we're dealing with a use,  
18 derivative use and Castiger...

19 MR. FRIEDMAN: Right.

20 THE COURT: And I assume that they were  
21 dealing with it in those cases, too. Not  
22 transactional, or they wouldn't be...

23 MR. FRIEDMAN: That's right.

24 THE COURT: ...dealing with this issue.

25 MR. FRIEDMAN: Right.

1 THE COURT: So, there is some lip service  
2 given to impossible burdens, and it sounds to me what  
3 you're suggesting is an impossible burden.

4 (1670)

5 MR. FRIEDMAN: What they're saying in Barker  
6 and in McDaniel is they're saying as a matter of law,  
7 given that factual situation, that is, if I can just  
8 use this one more time.

9 I'm not sure I'm familiar with Barker, itself,  
10 but I'm aware of some of the court feeling  
11 uncomfortable with McDaniel. And, what they're saying  
12 is McDaniel could be read to say that once you give a  
13 witness immunity, if anyone in the office has access to  
14 the material, if somebody heard a passing reference to  
15 a taint, that that's alone enough. And some of the  
16 lower courts took some pretty extreme positions  
17 interpreting McDaniel and cases like it to say, you  
18 know, if anyone's ever -- for example, if somebody  
19 heard that an alcohol test had been done, that would be  
20 enough to throw the whole thing out, even if they  
21 hadn't used that information in any way, et cetera, et  
22 cetera.

23 I'm not suggesting that kind of impossible  
24 burden as a legal standard. What we're confronted with  
25 is not a difficulty of why, Your Honor, but a

1 difficulty of fact.

2 Under the facts of this case it may be  
3 impossible to prosecute Joe Hazelwood. But, that's not  
4 the state's fault, or their problem. And maybe it's a  
5 problem with the law as it applies to this situation,  
6 in the sense that congress ought to change the way the  
7 statute's worded, or something of the kind.

8 But, I'm not suggesting an impossible legal  
9 standard. I'm suggesting the Castiger standard.  
10 You're not to make any use of it. If you remember, in  
11 Castiger, one of the things Mr. Castiger was saying is  
12 that he was saying he was afraid that -- well, I'll  
13 just paraphrase it.

14 What he was saying was that he was afraid that  
15 just because the prosecution had this information they  
16 could make use of it in ways that would contribute to  
17 his conviction. And Castiger said, no, that's  
18 impermissible. And they said he's assuming that this  
19 standard is unenforceable, that it not be used to focus  
20 the investigation, provide investigatory leads, or used  
21 in any way to contribute to his conviction. He's  
22 assuming it's a nonenforceable standard. We think it  
23 is an enforceable standard, said the supreme court, and  
24 we're gonna prohibit any use, et cetera, et cetera, and  
25 they went on.

1           The point is, the standard was adopted by the  
2 supreme court. And implicit in all these immunity  
3 cases is that there are going to be situations where  
4 people can't be prosecuted. It is impossible to  
5 prosecute Castiger, let's say. Or, it's impossible to  
6 prosecute Hazelwood.

7           That's what immunity is all about. We assume  
8 somebody did something wrong. We assume for some legal  
9 reason they're entitled to immunity. And, then, the  
10 only question is is there a practical way for the state  
11 to prosecute them. And all of these immunity cases  
12 struggle with that issue.

13           In some cases the courts find, "Yes. Under  
14 the facts of this case it's impossible to prosecute  
15 him." In other situations the courts say, "No. Under  
16 the facts of this situation, it is possible to  
17 prosecute him."

18           And, I guess the bottom line of our position,  
19 Your Honor, is that on the facts of this case it's  
20 impossible for the state to prosecute. You put your  
21 finger on that part of it.

22           Your Honor, I don't mean to belabor it. Just  
23 as to Mr. Weeks, at this point we don't know what Mr.  
24 Weeks would say. And I'm not doubting Mr. Linton at  
25 all, but he clearly doesn't know everything that Mr.

1 Weeks could say about the issues involved here. And  
2 I'm not in a position to make an offer of proof, other  
3 than what we've just heard. So, the safer course, if  
4 you will, seems to be to have him testify, and sort out  
5 what it means.

6 I guess I haven't heard any objection based  
7 upon any evidentiary rule, I suppose other than  
8 relevance. But, I think the prior testimony has  
9 demonstrated the relevance.

10 THE COURT: Okay. Well, it seems to me,  
11 counsel, if the court decides that inevitable discovery  
12 would constitute an independent source for much of the  
13 information, and Mr. Weeks were to testify, that he  
14 would have made the same strategic decisions, he would  
15 have engaged in the same strategy and decisions that he  
16 did based solely on the independent source information,  
17 the non-taint information, that would not be a  
18 impermissible non-evidentiary use.

19 And, if I were to rule that non-evidentiary  
20 use is prohibited, and I'm not willing to rule that it  
21 is, or is not, at this time. I don't know what Mr.  
22 Weeks is going to say. I know that there are some  
23 cases that seem to cite McDaniels non-evidentiary use  
24 standard in varying ways. They sometimes talk in terms  
25 of an unfair use, or giving an unfair advantage. And

1 Barker talks about the government getting access to the  
2 information at a very early stage, which I imagine has  
3 some unfair articulation.

4 I'm not sure that McDaniel's stands for the  
5 proposition that all non-evidentiary use is  
6 impermissible based on the cases that came after it.

7 And, so, I would like to hear what uses, if  
8 any, he made, and be able to come to some conclusion of  
9 whether or not it was a permissible, or impermissible  
10 use. And, I would say that the cases I've read seem to  
11 talk in terms of impermissible use as based on  
12 unfairness, or exploitation, if you will, something  
13 that sounds an unfairness. And perhaps that's the way  
14 I'm going to come down on it. I don't know. But, I'll  
15 need to hear Mr. Weeks' testimony just to get a better  
16 context.

17 So, I'm going to require you to produce him at  
18 some time that's convenient and, well, it can be  
19 inconvenient, to everybody, including the participants  
20 here in court.

21 MR. LINTON: And Mr. McConnell as well?

22 THE COURT: And Mr. McConnell as well. Yes,  
23 same goes for Mr. McConnell.

24 Are we ready now for the witness to resume?

25 MR. LINTON: Yes, sir.

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(Pause)

(2075)

Q (Sergeant Stogsdill by Mr. Linton:) I think we were on May 17th. We had just finished -- we were just finished the note on page 4 -- 8:40 p.m. in Fletcher's Bar.

A Right.

Q Now on May 17th, you have a notation, "grand jury witnesses Hazen, Suzumoto, Glowacki, LeCain, Radtke. 1, 2, 3, 4, 5."

What is that about?

A That was pretty much the order that Mary Anne wanted to do the witnesses on that day. At -- it's not a complete list, either. So, there were other witnesses to follow Radtke, but that was pretty much the order that she wanted to do them in and...

Q What was your job that day?

A Basically, just hang out in case she needed something.

(2130)

Q The next entry is 5/22/89.

A 5/22?

Q I think. Is that...

A Oh. I'm sorry. Yes.

1 Q "In Anchorage DAO. Finished up grand jury.  
2 Will phone testimony from Captain Beevers.  
3 Dwayne McConnell then reads prepared statement  
4 from Larry Weeks reference indicating...  
5 A Indicting.  
6 Q Excuse me. "...indicting Cousins. At 11 a.m.  
7 grand jury delivered true bill against  
8 Hazelwood."  
9 A Correct.  
10 Q Now, that takes us through, then, the return  
11 of the true bill of indictment?  
12 A Yes.  
13 Q At this point you haven't talked to the FBI?  
14 Right?  
15 A That's correct.  
16 Q You haven't talked to any investigators from  
17 the Coast Guard? Mark Delozier for the grand  
18 jury purposes, but...  
19 A No. I didn't even talk with him at that  
20 point.  
21 Q Okay.  
22 A Right. I didn't -- I have not.  
23 Q You talked with Mr. LeBeau about some book.  
24 A Right.  
25 Q Okay. But you don't know when he saw the



1 book.

2 A I don't.

3 Q But you talked to that DEC investigator. Any  
4 other DEC investigators?

5 A No.

6 Q Any other investigators from any other  
7 agencies?

8 A Other agencies?

9 Q I guess John McGhee, you'd talked to...

10 A Right.

11 Q We know about that -- what happened there.

12 A No.

13 Q Okay. Let's go, then, and see if we can move  
14 through the next part of this, then, to -- see if  
15 we can find some other investigators you talked  
16 with.

17 Here's -- on 5/31, "Joe LeBeau, DEC had  
18 brought some..., " oh, "...McGhee's...." You're  
19 talkin' about...

20 A Right. McGhee...

21 Q "...supplement to cover sample oil."  
22 What's that about?

23 A LeBeau had brought with him to grand jury a  
24 sample of the oil that he had picked up from the  
25 beach, or some place. And that -- and he,

1           actually, that was a grand jury exhibit, I guess,  
2           that he showed the grand jurors. That -- that  
3           was, then, turned over to us. And McGhee is  
4           requesting from me a -- some written explanation  
5           as to how that came into his position.

6           Q           Okay. He wants something in paper...

7           A           Right. He wants something on -- in writing of  
8           a police report on why he now has a can of oil as  
9           evidence.

10          Q           Okay. Let's move through 6/11. No contact  
11          with anybody else.

12                   6/12. 6/13. 6/20. You'd taken a trip out to  
13          the Exxon Valdez?

14          A           Right. On the 20th.

15          Q           Okay. This isn't the search warrant day now?

16          A           No. This was a pre-arranged with Exxon for us  
17          -- myself and Brent Cole, this -- Mr. Beevers,  
18          Mr. Greiner, the Sperry technician to go to the  
19          ship and do some things.

20          Q           Okay.

21                   6/21 documents. 6/27.

22          (2300)

23                   6/27. "Write memo to Brent Cole reference  
24          further investigation into this matter."

25                   What did you write to him about?

1 A Basically, that was at his request just to  
2 kind of give him an idea of some of the things  
3 that I thought might -- we might do and that sort  
4 of thing.

5 Q What did you tell him that you thought you  
6 might do at that point?

7 A This was the initial -- my initial thoughts to  
8 Cole about going to New York, Houston, and San  
9 Diego.

10 Q Okay.

11 A And -- and doing those things there -- the  
12 things we might need from those places and that  
13 sort of thing.

14 Q Okay. 7/7/89 you were asked about Don Steele,  
15 FBI. The bottom of 7/7/89 page.

16 (Pause)

17 What did you learn from Don Steele?

18 A I learned that he had been to Houston, had  
19 talked to Exxon shipping officials regarding  
20 Kagan -- Mr. Kagan. And that he'd talked to,  
21 apparently some union representative, a person  
22 who had trained Mr. Kagan, several people.

23 And these were the things that I later  
24 included on my list to do myself when I was in  
25 Houston.

1 Q Because Don Steele told you they were such  
2 things?  
3 A Right. I mean, not -- not because he told me,  
4 but I mean, obviously, there was a little bit of  
5 insight here that I was gonna try and follow up  
6 on it.  
7 Q At the time you talked to Don Steel, did you  
8 know -- you said you understood him to be  
9 untainted, but you also said you didn't  
10 understand under what rules the federal  
11 government was proceeding.  
12 A Right. In order to -- and I still don't.  
13 Q So, you didn't know of your own accord whether  
14 he was a tainted, or untainted person. You just  
15 were going on the word of whoever told you that?  
16 A Right.  
17 Q Did you have any specific information that  
18 indicated that he was tainted?  
19 A That he was tainted?  
20 Q Right. Any -- any specific information which  
21 really led you to believe he was tainted?  
22 A No.  
23 Q As you sit here today you recognize the  
24 possibility that he was, don't you?  
25 A Yes.

1 Q Did you realize that possibility at the time?  
2 A Well, I didn't -- I -- I was given -- I mean,  
3 I was given statements of crew members for which  
4 he was an active participant that were untainted.  
5 And I guess I just carried that over into that  
6 he's -- if he can do that, then, that'd be  
7 untainted, and he's probably untainted now.  
8 Q Without knowing what he had done in between?  
9 A Right.  
10 Q Which sitting here today, you realize could  
11 have exposed him to tainted materials?  
12 A Yes. Yeah. He could have been exposed to  
13 tainted material and I wouldn't know of it.  
14 Q And it could be from what you know today that  
15 that tainted material could have resulted in his  
16 going to Houston and making the interviews which  
17 he was conveying to you?  
18 (2500)  
19 A I -- is -- from what I know, that -- that  
20 could be true.  
21 Q In fact, you have no information one way or  
22 the other, but that's a...  
23 A Right.  
24 Q ...that's a possibility out there?  
25 A It could -- it could be, yes.

1 Q As a result of your investigation that you  
2 engaged in when you went to Houston, yourself,  
3 what evidence did you gather?  
4 A I -- Houston was zero for anything. To be --  
5 when I got there, they -- like I said before, all  
6 their attorneys had come here. And word was sent  
7 back to me in Houston that I -- I would not be  
8 allowed to talk to anyone, nor view any  
9 documents.  
10 Q Okay.  
11 A So, I left Houston exactly as I got there.  
12 Q Okay. Let's go on to the next such contact  
13 with...  
14 (Pause)  
15 7/12. Mr. Alex -- Trooper Alexander?  
16 A Uh-huh (affirmative).  
17 Q Trooper Alexander was on your list of tainted  
18 people, wasn't he?  
19 A Yes.  
20 Q So, you knew when...  
21 A Well...  
22 Q ...you talked to him that there was at least a  
23 danger -- a risk that he might convey such  
24 information to you. Excuse me, sitting here  
25 today you know that there was such a risk, didn't

1           you?

2           A           The -- when I asked him if he'd heard any

3           rumors or...

4           Q           Yeah.

5           A           ...did I realize that there was a risk that he

6           could convey?

7           Q           Well, let me put it this way.

8           A           Oh.

9           Q           Sitting here today you realize there's a risk

10          that when you asked him to convey information to

11          you, "Have you heard any rumors," that that might

12          include things that he learned during an

13          impermissible tainted period?

14          A           I -- yeah, I guess that risk existed, but...

15          Q           Did you realize it at the time?

16          A           Well, I -- apparently not. It was just an

17          innocent question to Alexander if he'd heard any

18          new rumors, or anything. But, -- and I guess I

19          wasn't thinking about, "Well, he's gonna give me

20          a whole raft of tainted information." I mean, I

21          -- I thought he was gonna answer the question

22          which -- which is what he did.

23          Q           When you say rumors, what -- what were you

24          trying to describe to him...

25          A           Well, fir -- well, you know, Alexander's the

1 local trooper there and -- and he has a tendency  
2 in that position to move about town and people  
3 will tell him things that, you know, I heard the  
4 other day from this guy -- about this and that  
5 and -- and, basically, I was asking him if in his  
6 normal duties, had he picked any of those things  
7 up that -- that he would want to relay to me.  
8 And his answer was no. He hadn't heard anything.

9 (2660)

10 Q What's -- what is -- is there any pattern, or  
11 practice as to how long rumors like that are  
12 picked up by an investigator and held in his head  
13 and how long he remembers them and when he  
14 conveys them?

15 A Oh, probably it -- it -- I guess I, you know,  
16 if I hear a rumor or something, I might remember  
17 it for a few days, or, you know. If -- if it  
18 doesn't concern me, maybe not very long, you  
19 know. If it -- if it does concern me, if it's  
20 something I worked out, or something I might be  
21 -- remember it longer, but...

22 Q And Trooper Alexander had worked on the case,  
23 right?

24 A Yes.

25 Q So, he would appreciate the importance of



1 anything he'd heard. If it had been something  
2 that occurred, he presumably would have written  
3 it down?

4 A I would have thought so, yes.

5 Q Unless it was real recent and he hadn't had a  
6 chance to do it?

7 A Right.

8 Q At any rate, what did you get as a result of  
9 talking to him?

10 A To Alexander?

11 Q Yes. What evidence did you get as a result of  
12 that conversation?

13 A Nothing. His answer was no.

14 Q Okay. Then, on the next line you have Lisa  
15 Hutes, and you talked about Lisa Hutes, where you  
16 got the name Lisa Hutes.

17 A Right.

18 Q Next. And the Mark Delozier conversation,  
19 you've told us about why you talked to Mark  
20 Delozier...

21 A Right.

22 Q This is the Mark Delozier conversation that  
23 you asked him why he was having that  
24 conversation?

25 A Right.

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(2743)

Q All right. You told us about that.

Don Steele, again, then. "Don Steele, FBI, Blades, USCG."

What did you learn from them on -- what does that refer to that you had...

A That's -- that's Don Steele telling me that -- about the rumor about the barber shop, and the liquor store thing, or whatever that was. He -- it was -- it was Steele's impression that that had originated somehow with Blades -- that rumor had. And Steele had not followed up on it, not -- hadn't made any inquiries and I was going to.

Q And when you followed up on it, did you gain any leads?

A No. Other than -- other than the fact that it was...

Q That there was nothing there to be found?

A Right.

Q 7/19/89, "Dan Lawn."

(Pause)

Would you explain your reasons for going to Valdez?

A For going to Valdez?

Q Yes, on -- on the day that this -- what caused

1           you to be in Valdez on the date that this  
2           conversation with Dan Lawn occurred?

3           A           Well, to -- to essentially work on this case.

4           Q           And what was your occasion for being in the  
5           -- did your conversation with him occur inside  
6           the Alaska Department of Environmental  
7           Conversation Office?

8           A           Right. His office.

9           Q           Why did you go there?

10          A           At Mary Anne Henry's request.

11          Q           What had she requested that you do?

12          A           To speak to Dan Lawn and, basically, advise  
13          him to get in touch with Mary Anne Henry because  
14          either he, or somebody else from ADEC was making  
15          statements about a future prosecution of Exxon,  
16          or somebody regarding the oil left behind when  
17          the -- when the Exxon Valdez left Naked Island  
18          for -- or left Outside Bay for...

19          Q           San Diego?

20          A           ...San Diego.

21          Q           Okay. What do you mean by the oil that the  
22          Exxon Valdez left behind?

23          A           Or, whatever it left behind. Apparently there  
24          was a sheen of some kind left behind as the ship  
25          moved from Outside Bay away to San Diego. There

1 was something left behind on the water. The...

2 Q That was your understanding from talking to  
3 Mary Anne Henry?

4 A Right.

5 Q And...

6 A And that had been reported to her, allegedly,  
7 I -- I guess by DEC. And there was some  
8 discussion about future charges against Exxon, or  
9 somebody for this, yet, another spill at...

10 Q What did she tell you about what you were  
11 supposed to do? Just get in touch with him?

12 (2930)

13 A She told me to get a hold of Dan Lawn, make  
14 sure that before he makes any statements  
15 regarding decisions that Mary Anne Henry should  
16 make, regarding prosecutions, that he call her  
17 first. That sort of thing.

18 As she was un -- she had been unable to get a  
19 hold of him over the phone after numerous  
20 attempts, apparently. And since I was gonna be  
21 there anyway, she asked me to go and speak to him  
22 about that.

23 Q And it was while you were there doing that  
24 that he gave you the information which you  
25 testified to earlier...

1 A He gave me this information here.

2 Q .....which is set forth on the bottom of that

3 page?

4 A Right.

5 Q You wrote a report on that?

6 A Yes, sir.

7 Q And do you know whether that information got

8 to Mary Anne Henry, or Brent Cole?

9 A This information?

10 Q Yes, sir.

11 A I -- I do not. It was part of the delivered

12 reports. And I don't know if they've read this,

13 or not.

14 Q Then we get to, I think, 8/2 is the next area

15 you were questioned on. That was the Coast

16 Guard...

17 A 8/2?

18 Q Right. You're in New York.

19 A No. I'm not in New York. I'm...

20 Q I'm sorry.

21 A This is a...

22 Q The reference to Mr. Seitz that you were

23 questioned about on cross examination?

24 A Right.

25 Q Isn't Seitz in New York?

1 A Seitz is in New York, right.

2 Q He works at the academy?

3 A At the Marine Academy and there was -- Mr.

4 Cole, Brent Cole was considering hiring Mr. Seitz

5 in some capacity as an expert in this case. And

6 he had had some preliminary discussions with him

7 and wanted me to just talk to him briefly while I

8 was there, if he, in fact, was available, which

9 he was not.

10 Q So, this 8/2 entry is a conversation with --

11 with Brent Cole?

12 A Right. And -- and at one point John Clough

13 was there also.

14 Q So, the references on those pages to in New

15 York and then, the next page...

16 A This is bas -- yeah. This is basically Brent

17 Cole and I talking about what I'm going to do in

18 New York, Houston and San Diego on these pages.

19 And it's -- also, there -- an earlier. John

20 Clough is there from Exxon. And Mr. Cole gave

21 him a list of things that we would like to have

22 from Exxon, some of which were to be made

23 available to me in Houston.

24 Q There is, for example, reference to a "Myer.

25 Phone call to him from Hazelwood."

1 A Right.

2 Q Did you ever get in touch with him?

3 A No.

4 Q Continue on, then, to 8/21. You say, "En  
5 route New York, call Marine Academy. No answer."

6 A Yes.

7 Q Now at some point in the course of talking  
8 about the Marine -- oh. I'm over at the next...  
9 (Pause)  
10 8/23 -- hold on for a second. Let me just  
11 catch up to 8/23.  
12 All right. 8/23.

13 A Okay.

14 Q At MCI COARS King's Point?

15 A Correct.

16 Q The -- there's a reference to -- well, just  
17 -- no. Let's read that out loud so I can make  
18 sure I'm on track. King's Point, New York.  
19 "Talked with Gene Guest about the simulator, his  
20 Coast Guard report and the research requested by  
21 NTSB. Final draft of Coast Guard report should  
22 be finished next week. He is doing trajectory  
23 calculations for NTSB, i. e., what would the ship  
24 do with a 10 degree rudder, 20 degree rudder, and  
25 30 degree hard over rudder from the Busby light.

1 That is supposed to be done by August 30th.  
2 Simulator is in operation at this point but was  
3 able to view the exercise in progress. Simulator  
4 was not used for either the NTSB, or Coast Guard  
5 Reports, although the computer portion was used.  
6 Depart for Houston."

7 A Right.

8 Q Now, there's reference there to a Coast Guard  
9 report.

10 A Uh-huh (affirmative). Yeah, a report for the  
11 Coast Guard done by MCI.

12 MR. LINTON: Could this be marked as the next  
13 state's exhibit?

14 (Pause)

15 This is exhibit (indiscernible - away from  
16 mike) that's an envelope with a memorandum from me and  
17 some documents inside. That's Exhibit (indiscernible -  
18 away from mike.)

19 Q (Sergeant Stogsdill by Mr. Linton:) I'll show  
20 you what's been marked as Plaintiff's Exhibit 52.  
21 I show you only the front page of it. Looking  
22 only at the front page, do you recognize it, sir?

23 A No.

24 Q Do you need to look at more?

25 A I -- I don't -- I don't recall what the front



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page...

Q All right.

A ...said.

THE COURT: Are you trying to avoid taint, is that what you're trying to do by this?

MR. LINTON: Yes.

THE COURT: Why don't you just ask him if he's ever seen the Coast Guard report before?

A What I saw -- I'm sorry.

THE COURT: Go ahead. I think we all know what you're talking about.

Q Did you see the Coast Guard report before?

(3420)

A I -- right. I saw the rough draft of the report prepared for the Coast Guard prepared by the Marine Academy.

Q After screening, or before screening?

A After screening.

Q Do you know what was taken from it, if anything, before you saw it?

A I don't know if it was in its entirety. There were a number of pages and I read them.

Q Do you remember whether there were any blank pages on those pages that you read?

A Could have been. I don't recall.

1 THE COURT: Mr. Linton, now is 52 the one  
2 that's not been screened? That's the one that may  
3 contain information you don't want the witness to look  
4 at?

5 MR. LINTON: Exactly, Your Honor.

6 THE COURT: And the one that's in your  
7 envelope is going to be one that you gave him?

8 MR. LINTON: It's going to be the pages which  
9 are different?

10 THE COURT: Okay.

11 MR. LINTON: No. Those are the pages which  
12 are different, in here.

13 (Side conversation)

14 MR. LINTON: Judge, without showing it to the  
15 witness any more, I'll hand 52 two back to the clerk.

16 THE COURT: Mr. Linton, just so we can  
17 understand, you would testify that 52 is the one that  
18 you got, and 52 with some pages that were changed, that  
19 are represented by 53 are what the witness got?

20 (Pause)

21 MR. LINTON: I'd like to have a sticker put on  
22 a single page of the contents of Exhibit 53, and show  
23 that one page to the witness, which will be marked as  
24 Exhibit 54 to the witness.

25 It's coming from the screened material packet.

1 THE COURT: This seems relatively cumbersome.  
2 Is there any way we can short circuit this? Mr.  
3 Friedman, is there any dispute about how this was done  
4 by Mr. Linton?

5 MR. FRIEDMAN: No. I don't think so. I was  
6 just checking that myself, Your Honor.

7 It looks to me like he took out all references  
8 to statements by Mr. Cousins and Mr. Hazelwood.

9 Q (Sergeant Stogsdill by Mr. Linton:) Let me  
10 show you just the single page marked Exhibit 54.  
11 Do you recall the chart that you got, which is  
12 designated page 54 as having the blocks out of it  
13 that you see there? That is, on page 54, is page  
14 008595 of the District Attorney's Office numbers.  
15 Do you recall whether the chart you saw which was  
16 attached to the report had the -- the blocks --  
17 the big blank areas that you see in it?

18 A I -- you -- I guess, I, you know, I don't even  
19 recall seeing the chart.

20 Q Okay.

21 A So.

22 THE COURT: Is there going to be any problem  
23 with admitting these documents, 52, 53 and 54?

24 MR. FRIEDMAN: No, Your Honor.

25 EXHIBIT 52, 53 & 54 ADMITTED

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THE COURT: Okay. They're admitted.

Q (Sergeant Stogsdill by Mr. Linton:) Now, you also saw that -- that the -- while you were there at King's Point that the -- also learned that someone was doing trajectory calculations for the NTSB. Did you ever receive the results of any such report?

A No.

Q Have you derived any evidence from that?

A No.

Q The rudder angles, 10 degrees -- 20 degrees and 35 degrees, or hard over, had you heard those before?

A From Kagan.

Q Pardon?

A From Kagan.

Q You had gotten those rudder angles from Kagan before?

A Right.

Q Back when you were at the Captain Cook Hotel?

A Right.

Q So, the rudder angle information that you did learn -- even though you didn't learn any -- any reports of any tests, the rudder angle information was information you already had?

1 A This -- right. Mr. Guest is telling me what  
2 his request was from the NTSB. "Give us a  
3 trajectory on a 10, 20 and a hard over."

4 Q "Houston on 8/24." And got nothing there.  
5 (Indiscernible - away from mike) San Diego.

6 And with respect to Mr. Beevers, you told us  
7 that he could tell you some things about having  
8 been on the ship? On the Exxon Valdez when he  
9 executed the search warrant, I believe.

10 A Well, I don't think -- no. I don't think I  
11 said that. I think I knew that he was -- I think  
12 I knew that he was -- I think I knew that he had  
13 been on the ship prior to my ever meeting him.  
14 And that he had been -- I'm sure, on many  
15 occasions, fully cautioned as to taint.

16 Q On the second occasion when you actually went  
17 out with him again?

18 A I -- I don't know if it was his second  
19 occasion, or not, but I...

20 Q Okay.

21 A I went out with him one time in June.

22 Q All right. And what did the two of you do  
23 that time in June when you went out?

24 A Well, we -- Mr. Beevers pretty much hung out  
25 with Mr. Greiner and the two of them did things

1 that is -- would -- would benefit their analysis  
2 and their later reports, and that sort of thing.  
3 So, I was -- I was pretty much an observer at  
4 that point, and not interfering with what they  
5 were doing, but...

6 Q But you got to see the Exxon Valdez, yourself?

7 A Oh, yes.

8 Q And that was -- that was a visit which was not  
9 subject to any search...

10 A No. That...

11 Q ...regarding any search warrant, but...

12 A No. That -- we spent some time arranging that  
13 with Exxon that myself and Brent Cole and these  
14 others be allowed to go on board the ship before  
15 it left Outside Bay for San Diego.

16 Q Nothing further, Your Honor.

17 MR. FRIEDMAN: Your -- Your Honor, I just have  
18 a couple questions and we could let him go.

19 THE COURT: Okay.

20 (4056)

21 RECROSS EXAMINATION OF SERGEANT STOGSDILL

22 BY MR. FRIEDMAN:

23 Q They say in the Army, you're never supposed to  
24 volunteer anything...

25 A I'm learning this.

1 Q ...I wonder if this holds true for state  
2 troopers as well.

3 A It won't happen again. I'll tell you that.

4 Q I actually just have one topic to ask you  
5 about, which is that letter from -- or, the  
6 article you received from, I guess, your sister  
7 regarding the Cousins interview?

8 A Right.

9 Q Which is -- well, at any rate -- oh, yes.  
10 Exhibit 51. There's a sticker to the front of  
11 that that says Brent wants to know -- I guess I'd  
12 better get it out.

13 A There.

14 Q "Brent said to find out whether he's supposed  
15 to see this."

16 I take it that you didn't -- that you didn't  
17 put that sticker on there?

18 A No. That's -- I don't know who the -- who  
19 wrote that.

20 Q It wasn't clear to me. Did you ever have this  
21 article in your hands?

22 A Yeah. It came off the fax machine with my  
23 name on it, and then, I gave it to -- I think I  
24 gave it -- I might have given it to Mary Anne to  
25 deliver to to Bob, or some -- or, to Mr. Linton,

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or somebody.

Q Okay. Good enough. Thank you. I don't have any other questions.

THE COURT: Did you read it?

A No, sir.

MR. LINTON: Nothing further, Your Honor.

THE COURT: We'll take a break.

Before we do, I wanted to give you some information so you can assist us all. Where you want oral argument on your motions, and there's a number of motions, maybe you could tomorrow submit a list of the order in which you'd like to hear these, and give them to the state as well, so we can start our preparation as well.

We'll stand in recess.

(Tape: C-3512)

MR. FRIEDMAN: Your Honor, we don't need to be on the record. I just wondered if you could give me the Barker cite?

MR. LINTON: I have it, Your Honor. I can give it to him.

THE COURT: Off record.

(010)

(Off record - 2:51 p.m.)

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



1 THE COURT: All right. You can call your next  
2 witness.

3 MR. LINTON: Call Mr. James Heston, Your  
4 Honor.

5 THE CLERK: Sir, if you'd please raise your  
6 right hand.

7 (Oath administered.)

8 A I do.

9 JAMES M. HESTON

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

12 THE CLERK: Be seated, please.

13 Sir, would you please state your full name and  
14 then spell your last name?

15 A James Maynard Heston. H-e-s-t-o-n.

16 THE CLERK: And your current mailing address?

17 A Post office box 331, Valdez, Alaska.

18 THE CLERK: And your current occupation?

19 A I'm self employed as a commercial fisherman  
20 and a charter boat operator.

21 THE CLERK: Thank you.

22 THE COURT: All right.

23 DIRECT EXAMINATION OF MR. HESTON

24 BY MR. LINTON:

25 Q Your mailing address is in Valdez, sir?

1 A Yes, it is.

2 Q Where do you physically live?

3 A I physically live in Ellamar.

4 Q There's a diagram off to your left marked  
5 Plaintiff's Exhibit 1. Do you recognize the area  
6 portrayed on that diagram?

7 A Yes. I'm familiar with this chart.

8 Q And could you draw an X on the location of  
9 your home on that chart? Would you put your  
10 initials by it so that we know to which that  
11 refers.

12 MR. LINTON: For the record, Your Honor,  
13 that's a red X that sits just to the northwest of the  
14 writing, Ellamar, E-l-l-a-m-a-r. And it looks like  
15 it's at the mouth of Gladhaugh Creek, or close to it.

16 A Gladhaugh Creek, yes.

17 Q (Mr. Heston by Mr. Linton:) Gladhaugh Creek  
18 is how far from your house?

19 A 30 feet.

20 Q Okay. Did you live there on March 23rd and  
21 24th, 1989?

22 A Yes, I did.

23 Q Where does your house sit? Well, did you keep  
24 a boat there?

25 A Yes. I have a -- my charter boat anchored

1 out, and a skiff on a line in front of the house.

2 Q Where is your home with respect to the boat?

3 A The boat is farther around this point of land,  
4 and kind of in this other bay where the big  
5 boat's moored.

6 Q How far from your house?

7 A 500 yards.

8 Q Do you keep a skiff as well?

9 A Yeah. I have a skiff in front of the house.

10 Q And how far away from your house is the skiff?

11 A 100 yards, 70 yards.

12 Q Do you have a practice as to what time you get  
13 up each day?

14 A I generally get up around 7:00 or 8:00. As a  
15 rule I get up that time.

16 Q Do you have some practice as to whether you go  
17 down to your boat?

18 A Yes. As a general boat I go down to the beach  
19 and look, see if the skiff's still there okay and  
20 check. I have to come down to the beach and walk  
21 down the beach to kind of look around the dock to  
22 see if the other boat is still moored up.

23 Q And is there any practice as to what time of  
24 day you do that?

25 A Early in the morning, generally first thing.

1 Q What hour would that be?

2 A From 7:00 to 9:00, depending on when I would

3 get up. Generally 7 o'clock, 8 o'clock.

4 Q From your house are you able to see to the

5 west at all?

6 A Not very well. It's heavily treed and thick

7 with brush. And, so, I can just see the

8 immediate 100 feet of water from the beach.

9 Q From the position of your skiff on the beach

10 near your house, can you see to the west?

11 A Yes.

12 Q Tell the judge what you can see to the west?

13 A I can see an area. Well, right from the beach

14 I can see an area in this line of position, and

15 about to the edge of Busby Island. So, about

16 like this.

17 Q One line of position goes on the north side of

18 Busby Island, and the other roughly through the

19 W-e-s-t in West Bay?

20 A Right.

21 Q So, it goes from the position of your house

22 -- the line of position runs from the position in

23 your house through the west written on West Bay

24 on Bligh Island?

25 A Correct.

1 Q On March 24th, 1989 did you get up and go down  
2 to the beach?

3 A I did, but the reason I did -- the main reason  
4 I did is because of the news broadcast I had seen  
5 which said that a tanker had gone aground on  
6 Busby Island.

7 Q What time did you get up?

8 A I got up probably 7:30.

9 Q What time did you get down to the beach to see  
10 that?

11 A I'm not sure, but it was probably 8 o'clock.  
12 As soon as I heard the broadcast I put on my  
13 clothes and my boots and went down to the beach.

14 Q Did you call anybody? Telephone, contact  
15 anybody?

16 A I went out to my skiff, and before I got to  
17 the skiff, as soon as I got to the beach I looked  
18 through the gap and saw the tanker on Reef  
19 Island, not knowing it was there because the  
20 newscast said Busby Island.

21 So, then I got in my skiff and started to go  
22 out to my boat to make a marine operator call to  
23 the Alyeska emergency response phone number and  
24 to tell them that I was here and on scene, or  
25 could be on scene quite soon, and that I could

1 assist in oil spill recovery in towing booms and  
2 whatever.

3 Q How did you know that you could call that  
4 telephone number to convey that information and  
5 tell them you were available?

6 A Because the previous November the Thompson  
7 Pass had an oil spill in the Port of Valdez, and  
8 my boat was there and they hired us to tow booms  
9 in and work to clean up that oil spill, and my  
10 boat was still rigged to do that from that  
11 operation.

12 Q So, you had kept the number of the Emergency  
13 Response Center from the previous occasion?

14 A Right. Right.

15 Q Did you actually go out and look at the Exxon  
16 Valdez that day?

17 A Yes, we did. I first went to my neighbor's.  
18 I saw him out at his boat.

19 Q What's his name?

20 A Dave Lindenaugh.

21 And so, I went to his boat and we called that  
22 number. And, basically, all we got at that  
23 number was the guard. They weren't transferring  
24 the calls through to the people in charge,  
25 because apparently they were getting lots of

1 calls and they were trying to get everything  
2 organized.

3 And so, I told the guy at the guard that  
4 there's two boats here and we're heading out and  
5 we're going there right now. We're going to be  
6 there.

7 Q And where did you go?

8 A We went out -- I don't know if I went through  
9 the gap. I don't think I did.

10 Q Explain what you mean by the gap?

11 A The gap is between Busby and Bligh Island.  
12 And it's shallow, and lots of rocks and you have  
13 to know the way to go through there. I go  
14 through in the skiff pretty easily, but I'm sure  
15 I went around, because what happened after I  
16 talked to Dave and we got a hold of the Alyeska  
17 people, that I came back to the house and got my  
18 wife and son and took them out to the boat, and  
19 then we went out around Busby and came around  
20 this way, and basically stayed right around in  
21 this area by Reef Island.

22 Q When you were on the beach how were you able  
23 to see the Exxon Valdez from the position on the  
24 beach?

25 A I could see the stern of the Exxon Valdez.

1 Q Where was it with respect to Bligh Island and  
2 Busby Island?

3 A It's about 2-1/2. I mean, it was right where  
4 this X is, and that would put it 2-1/2 miles from  
5 Busby Light, and approximately a mile from Reef  
6 Island.

7 Q From the point where you were observing it  
8 would you show the line of sight that you had  
9 that enabled you to see the Exxon Valdez when you  
10 were down at the skiff?

11 A Oh. From my house on the beach, and right  
12 here on the beach the line of sight is right  
13 through this area here.

14 Q And is the area that it goes through the area  
15 you refer to as "the Gap"?

16 A That's correct.

17 Q And is that the gap between Busby Island and  
18 Blight Island?

19 A Correct.

20 Q When you got out to the area of the Exxon  
21 Valdez how close did you get to it?

22 A I would say 300 yards, probably, at the  
23 closest.

24 Q Did you see or sense any oil?

25 A We could smell the odor from the oil, and I



1           could see oil around the ship. I could see it.  
2           There was other vessels out there, the pilot boat  
3           and the tug and a quite a few other boats from  
4           the village, but we were staying away from the  
5           oil. We didn't want to get our boats oiled. And  
6           so we were basically staying a little east of the  
7           area, but we could see that there was oil around  
8           and that the odor was quite strong.

9           And the pilot boat, I know the people in the  
10          pilot boat and he called me and suggested that I  
11          don't come much closer because I will get my boat  
12          oiled.

13         Q           When you saw the Exxon Valdez, where it was,  
14                      did you know whether that's where a tanker should  
15                      be or should not have been had you not heard the  
16                      radio broadcast before and saw it for the first  
17                      time, would you have recognized that as a place  
18                      where the Exxon Valdez should have been or should  
19                      not have been?

20         A           When I saw it first, at the beach, when I  
21                      first came out of the house and got down to the  
22                      beach I saw it through the gap and I knew  
23                      immediately that it should not be there.

24         Q           Explain to the judge how you knew that?

25         A           Well, I worked for 2-1/2 years on the pilot

1 boat, and worked there putting pilots aboard the  
2 tankers coming in and leaving. And I know the  
3 routes they take. And we've seen the lights from  
4 the tankers coming and going, and the pilot's  
5 boats, and so we would, even if it was night time  
6 and I saw -- I would just see the stern lights  
7 and no running lights, steady like that, I would  
8 sense something was wrong, or figure that a  
9 vessel's anchored up over there, which would be  
10 peculiar to me, too. It's not that good of an  
11 anchorage area.

12 Q Would you show the judge what waters you  
13 worked in as you worked on the pilot boat using  
14 the chart to the extent it may help you.

15 A Well, the pilot boat anchors up in this little  
16 bay here at Rocky Point and we would board the  
17 tankers about a mile, half mile to a mile north  
18 of Busby Island and take them off a mile and a  
19 quarter abeam align from Rocky Point and mile and  
20 a quarter from this shore, the west shore.

21 And sometimes we'd have to go out and put  
22 pilots aboard and take them off out by Bligh Reef  
23 Buoy if they didn't have a Prince William Sound  
24 Indorsement.

25 Q In the course of your two, or -- was it two or

1 2-1/2 did you say?

2 A 2-1/2.

3 Q How many times did you do that over that space  
4 of time?

5 A Well, I worked two weeks on and two weeks off  
6 and I think...

7 Q You can just give us the figures. We can do  
8 the math later?

9 A Okay. 40 a shift. 40 vessels a shift, and  
10 that's twice to each vessel, so 80. 80 times in  
11 a two week period for 2-1/2 years.

12 Q Nothing further, Your Honor.

13 (495)

14 CROSS EXAMINATION OF MR. HESTON

15 BY MR. FRIEDMAN:

16 Q Mr. Heston, my name's Rick Friedman and I just  
17 have a few questions for you...

18 A Okay.

19 Q ...this afternoon.

20 As I understand it you were up about 8 o'clock  
21 watching the news when you first became aware of  
22 the spill?

23 A Yes, correct.

24 Q So, somebody else had reported it before you  
25 saw the Exxon Valdez?

1 A That's correct.

2 Q And I take it you hadn't been down to the  
3 beach yet?

4 A Not yet, no.

5 Q And you couldn't see the tanker from your  
6 house?

7 A No. I couldn't.

8 Q Okay. Do you have any rough idea, given that  
9 you were up at 8 o'clock watching the news, if it  
10 hadn't been reported on the news how long do you  
11 think it would have been before you'd gone down  
12 to the beach and seen the tanker?

13 A An hour at the most?

14 Q Thank you. I don't have any other questions.  
15 MR. LINTON: Nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Heston. You may be  
17 excused.

18 (580)

19 THE COURT: Call the next witness, please.  
20 MR. LINTON: Call Paul Burke, Your Honor.  
21 (Oath administered.)

22 A I do.

23 PAUL M. BURKE  
24 called as a witness in behalf of plaintiff, being first  
25 duly sworn upon oath, testified as follows:

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

3 A My name is Paul M. Burke, B-u-r-k-e.

4 THE CLERK: And your current business mailing  
5 address?

6 A It's 453 South Valley Way in Palmer. 99645.

7 THE CLERK: And your current occupation.

8 A I'm an investigator with the State Troopers.

9 DIRECT EXAMINATION OF TROOPER BURKE

10 BY MR. LINTON:

11 Q How long have you done that kind of work?

12 A Since January of 1981, about nine years.

13 Q Are you one of the troopers who went to Valdez  
14 shortly after March 24th, 1989 to work on the  
15 investigation involving the Exxon Valdez?

16 A Yes, sir. I was.

17 Q What date did you arrive?

18 A March 28th.

19 Q After you got there did you conduct a series  
20 of interviews?

21 A I did.

22 (Side conversation)

23 (Pause)

24 Q (Trooper Burke by Mr. Linton:) Hand you  
25 what's been marked as Exhibit 33. Would you



1 Exhibit 36?

2 A Yes, I do recognize it.

3 Q And, is it a document you saw, read, and  
4 signed to indicate that you'd done that?

5 A Yes, sir. My initials are next to my name,  
6 Investigator Paul Burke.

7 Q Sometime later did you become aware of further  
8 instructions that you received as to whom you  
9 might talk to about the investigation?

10 A Who I might talk to regarding it, yes.

11 Q Tell the judge what your further instructions  
12 were?

13 A My instructions were not to have any contact  
14 with another investigator with our department,  
15 that would be Mr. Stogsdill, to another district  
16 attorney, and her name escapes me right now.  
17 It's a female district attorney. I'd know it if  
18 I heard it. And there was another investigator  
19 for I believe the AG's office. I believe his  
20 name is Cole.

21 Q And you weren't supposed to have any contact  
22 with him either?

23 A No. And I did not.

24 Q Has any of the following people contacted you  
25 to ask you any information about the case: Mary

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Anne Henry, Brent Cole, Trooper James Stogsdill?

A No.

Q At some point in your conduct of the investigation did you receive -- well, at some point upon your arrival in Valdez did you become aware that there was a process ongoing to try to locate the ship's documents?

A Yes.

Q Did you go along on April 2nd, 1989 to execute a search warrant, which was in part to look for such documents, search warrant on the Exxon Valdez, specifically?

A I do not recall going onto the Exxon Valdez specifically on a search warrant.

Q You didn't go along when the search warrant was executed?

A If I knew who might have been along on that search warrant I might recall that, but I don't specifically recall going on a search warrant on a vessel.

Q At some point did you receive such documents from Mark Delozier?

A Yes, I did.

Q What date did that occur?

A That would have been on the 5th of April,



1 1989.

2 Q Do you have the documents you received from  
3 him with you now?

4 A Yes, I do.

5 Q What did you do with them after you got them  
6 from Mark Delozier?

7 A I gave them to Sergeant Chris Sockard (ph),  
8 who was responsible for evidentiary items, and I  
9 gave them to him. He logged them into our  
10 evidence that we had going at the time. Then  
11 they were transported to Anchorage.

12 Q And is that where you got the documents? That  
13 is, from Anchorage, to bring...

14 A Today. Yes, I got them from our evidence  
15 room.

16 Q Would you produce those please?

17 A Yes. They're in my folder. May I be excused  
18 for a second.

19 (Pause)

20 MR. LINTON: Let's have both envelopes be  
21 marked the next state's Exhibits.

22 (Side conversation)

23 Q (Trooper Burke by Mr. Linton:) And are the  
24 documents you received from Mark Delozier inside  
25 those two envelopes which now have been marked as

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Exhibits 55 and 56?

A Yes. I looked at these prior to coming in here. They're the same documents.

MR. LINTON: I'd move their admission, Your Honor.

MR. FRIEDMAN: No objection.

EXHIBITS 55 & 56 ADMITTED

THE COURT: They're admitted.

MR. LINTON: No further questions, Your Honor.

MR. FRIEDMAN: Your Honor, I don't have any questions for Trooper Burke unless you feel that I should open the Stogsdill door with respect -- in other words, Mr. Linton has listed some interviews that were conducted by Trooper Burke. I can set about establishing whether pieces of information in each interview were tainted or not, and address all of that now.

I'm not sure that's going to be particularly helpful to the court in sort of the big picture, and would prefer to do that some other time, but...

MR. LINTON: I'm willing to agree that that right is not waived.

THE COURT: All right.

MR. FRIEDMAN: Thank you. I don't have any questions.

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THE COURT: You're excused.

A Thank you, sir.

Would you like these left here?

THE COURT: Yes. They're in evidence now.  
We'll take care of them.

(Side conversation)

THE COURT: Mr. Friedman, we're still on the  
record and we can't turn microphones off just every  
time we see you start talking...

MR. FRIEDMAN: We're aware of that, Your  
Honor.

THE COURT: Okay. I just want to caution you  
that if it's picked up here then it's picked up by the  
media as well.

MR. FRIEDMAN: I understand, thank you.

(Pause)

(Side conversation)

(1000)

(Oath administered)

A I do.

JOSEPH P. LeBEAU

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

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

1 A My name is Joseph Paul LeBeau. My last name  
2 is spelled L-e-B-e-a-u.

3 THE CLERK: Your current mailing address, sir?

4 A P. O. Box 871064, Wasilla, in care of the  
5 Alaska Department of Environmental Conservation.

6 THE CLERK: And your current occupation, sir?

7 A I am employed by the state of Alaska,  
8 Department of Environmental Conservation as and  
9 environmental field officer.

10 DIRECT EXAMINATION OF MR. LeBEAU

11 BY MR. LINTON:

12 Q Could you tell us what an environmental field  
13 officer does?

14 A Well, the environmental field officer performs  
15 a myriad of tasks. But -- ranging from air  
16 pollution investigations to solid waste. There  
17 would be oil pollution of water and waste water  
18 disposal systems, regulation of dumps,  
19 inspections, typically. Monitoring safe drinking  
20 water supplies. A myriad of tasks.

21 Q Did you work in that -- how long have you done  
22 that?

23 A I've been employed by the Department of  
24 Environmental Conservation since July 1, 1976  
25 until January of '79. I went to work, again, for

1 the department in March of '79. I've been  
2 employed in that capacity since that time.

3 Q Did you go to the Exxon -- were you called to  
4 go to the Exxon Valdez on March 24?

5 A Yes, I was.

6 Q What time did you get called to go there?

7 A I believe I was called at approximately 1:30  
8 in the morning.

9 Q And where were you at the time you received  
10 the call?

11 A I was home in bed between -- in the -- near  
12 Palmer, Alaska.

13 Q How did you get to Valdez, Alaska?

14 A I drove a state pickup truck from Wasilla to  
15 Valdez.

16 Q How long did that take?

17 A I departed Wasilla at 4:30 in the morning and  
18 arrived in Valdez, I believe, at 9:10 in the  
19 morning.

20 Q Did you get on board the tanker itself that  
21 day?

22 A Yes, I did.

23 Q When did you get on board?

24 A I believe I got on board the vessel at 11:30  
25 in the morning, approximately.

1 Q How long were you on board the vessel on that  
2 stay?

3 A I believe I was on until 1800 the following  
4 day.

5 Q Sometime during that day did you see someone  
6 or -- did you see Rick Wade or people employed by  
7 Rick Wade, or people employed by Rick Wade in or  
8 around the Exxon Valdez?

9 A I don't recall specifically seeing Rick Wade  
10 on the 24th. I remember hearing the radioed  
11 conversations that he was in the vicinity and on  
12 the vessel.

13 Q You heard -- what time was it that you heard  
14 such thing?

15 A As I recall, it was -- I'd have to refer to my  
16 notes. Could I do that? (Pause) The earliest  
17 note that I made was approximately 9:00 in the  
18 evening on March 24.

19 Q What is the reference that you -- what is it  
20 that you're looking to to refresh your  
21 recollection?

22 A This is a report that I sent -- dated April  
23 26, 1989 that I sent to Bob Linton.

24 Q What entries...

25 A And this would be on page two of six, and it

1 would be in the third paragraph from the bottom.

2 Q What does it say?

3 A "Divers (Rick Wade's company), were preparing  
4 to inspect the ship's damage and were in the  
5 water at approximately 2100."

6 Q When did you leave the Exxon Valdez?

7 A I believe I left the Exxon Valdez at 1800 on  
8 March 25. Now, I'm sorry. There was a period  
9 where I left the Exxon Valdez about 1630 until  
10 about 1730, 1750, in that neighborhood, on March  
11 24 to go flying and to observe an aerial -- a  
12 drop of dispersant from a helicopter, then I  
13 returned to the vessel.

14 Q During the space of time that you were on  
15 board the vessel -- strike that, let me start  
16 again.

17 At some later point in time did you tell an  
18 investigator named James Stogsdill of the  
19 existence of a notebook that he might want to  
20 look for?

21 A Yes, I did.

22 Q Did you see that notebook in the course of  
23 this day on board the vessel? That is, on the  
24 24th or 25th?

25 A I don't believe I saw the notebook during this

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occurrence.

Q When did you see it?

A I saw the notebook on -- I have to refer to another report here, but I believe it was on April 17 and April 19.

Q And it was on...

A It was on April 17 and 19 that I saw that notebook.

Q Explain to the judge how you happened to be in a position to see that notebook?

A As I recall, we were in the cargo control room on the vessel.

Q Who is "we"?

A Myself and Laurie Telfer (ph), who is another employee of the department. And we were on the -- we had gone to the Exxon Valdez because we had a report that there was oil being discharged once again from the vessel.

We were in the cargo control room and met with Mr. Kunkel. I saw Mr. Kunkel had a notebook titled "Notes - Exxon Valdez".

Q And where was the vessel physically located then as of the time you saw...

A The vessel was located at Naked Island.

Q Did it move from its position aground on Bligh



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Reef?

A That's correct.

Q Did you testify before the grand jury?

A Yes, I did.

Q Before you testified before the grand jury did you receive a briefing as to what you could talk about and what you couldn't talk about?

A Yes, I received a briefing from yourself.

Q Tell the judge what you could talk about and what you couldn't talk about?

A Your Honor, I was advised not to talk to the grand jury about anything that occurred -- or, anything that I knew about that occurred on March 24.

Q Had you engaged in some activities after the time that you were on board on March 24 and March 25, which you did testify about?

A Yes, I did.

Q Tell the judge what you had done after March 25 that you told the grand jury about?

A On April 15 I made a trip out to Eleanor Island via helicopter accompanied by Ms. Telfer. I collected some samples of oil. Ms. Telfer shot -- took some video tape of the sample collection process. I also took some video tape at various

1 points in Northwest Bay on Eleanor Island. And  
2 in addition we flew around the shore in Northwest  
3 Bay and I shot video tape of the shore area of  
4 Northwest Bay.

5 (1460)

6 THE COURT: What's the name of that island,  
7 again?

8 A Eleanor Island.

9 THE COURT: Okay. That's different than the  
10 island we've been talking about; Eleanor?

11 A Eleanor is -- it's actually down here -- it  
12 would be right here, Your Honor. It's spelled  
13 E-l-e-a-n-o-r (indicating).

14 THE COURT: It's an island itself off Naked  
15 Island?

16 A Yes, it is.

17 Q (Mr. LeBeau by Mr. Linton:) Can we show the  
18 judge where the Exxon Valdez was at the time you  
19 went aboard (indiscernible - away from mike).

20 A I believe she was anchored in this bay here  
21 (indicating).

22 Q Of Naked Island.

23 A It could be this one, but I...

24 Q Pointing to...

25 A The southern portion of Naked Island.

1 Q Two most southerly bays around Naked Island.

2 A She was anchored in a bay labeled -- called  
3 Outside Bay.

4 Q At some time prior to the presentation of the  
5 grand jury, did you do some work to try to locate  
6 witnesses with respect to damage issues that were  
7 to be presented to the grand jury?

8 A Yes, I did.

9 Q Explain to the judge how you -- who approached  
10 you with such a request and what you did to  
11 answer the request?

12 A Your Honor, as I recall, Dean Guaneli  
13 requested that I attempt to locate some witnesses  
14 who could establish the value of items that had  
15 been damaged directly as a result of Exxon  
16 Valdez.

17 I proceeded to contact all -- I contacted,  
18 first, an Eric Gunlock (ph). Dr. Gunlock  
19 provided me some names of resource specialist who  
20 might be able to provide information.

21 Q Who was he?

22 A Eric Gunlock is a consultant who works for the  
23 department in Valdez on the Oil Spill Research  
24 Program. He's an oil spill expert.

25 Q Did you know him from when?

1 A I met him in Valdez after March 24.

2 Q And tell us, from what he told you, what were  
3 you able to find by way of help to Mr. Guaneli as  
4 a witness?

5 A Actually, from -- Mr. Gunlock's leads were  
6 fruitless at that time. I wasn't able to reach  
7 the people that he had suggested that I contact.

8 Q Did you keep on trying?

9 A Yes. I contacted some individuals with Fish  
10 and Game, Paul Rosch and a Dennis Haanpaa, and a  
11 John Hillsinger.

12 Q How did you know to go and find those people?

13 A How did I know where to go?

14 Q Yeah -- yes, sir.

15 A I was looking -- some of the individuals were  
16 working in Valdez for Fish and Game. The -- I  
17 just started calling around the offices  
18 attempting to locate these individuals.

19 Q Did you know what kind of information you were  
20 looking for?

21 A I had an idea that I was looking for -- I was  
22 asking very general questions of them. Asking  
23 for documentation that would support a specific  
24 claim for damages. And they referred me to  
25 specific individuals who had the information

1 available.

2 Q At some point did you supply -- were you  
3 requested by either Mary Anne Henry or Trooper  
4 Stogsdill to get information regarding divers who  
5 could report the damage underneath the hull -- to  
6 the bottom of the hull of the Exxon Valdez?

7 A I may have been requested by Trooper  
8 Stogsdill, but I remember talking with Trooper  
9 Stogsdill about the diving companies that -- or  
10 the diver that was running the underwater video  
11 camera on the Exxon Valdez. His name was Steve  
12 Stewart. In addition, Rick Wade's vessel was  
13 tied up alongside the Exxon Valdez when she was  
14 at Naked Island.

15 Q When did you see Mr. Stewart?

16 A I believe I saw Mr. Stewart on April 17 and  
17 April 19 and several other times after that.  
18 He's a personal friend.

19 Q And Mr. Wade?

20 A Mr. Wade...

21 Q Had been there when? Had been at the Exxon  
22 Valdez when?

23 A I think I may have seen him on March 25.

24 Q But you were somehow aware that his company  
25 was around?

1 A Yes. Yes. I was just aware that the company  
2 was there. I don't recall specifically talking  
3 with Mr. Wade.

4 Q Just explain how you knew that the company was  
5 there, briefly?

6 A Just from the radio conversations from --  
7 March 24 was from the radio conversations that I  
8 had overheard when I was on the bridge of the  
9 vessel. In addition, from the -- I knew that Mr.  
10 Wade's company was involved because I saw his  
11 boat tied alongside the Exxon Valdez, as I  
12 recall, at Naked Island, on April 17 and 19.

13 Q So it was seeing them there that you connected  
14 back with radio communications you heard on the  
15 24th?

16 A No. No. I didn't make any connection at all  
17 to the radio communications on the 24th. I  
18 thought there was separate information that they  
19 had developed at Naked Island.

20 Q Were you -- did you have any role in locating  
21 the witness named James F. Hayden?

22 A Yes.

23 Q Explain what you were requested to do, and  
24 what you did?

25 A I was requested to find someone who could

1 document the amount of money that the state had  
2 expended, as I recall, on the clean-up on Sawmill  
3 Bay.

4 Q Who made the request?

5 A I believe it was Mr. Guaneli.

6 Q And what did you do?

7 A And I had talked with -- I new that Jim -- I  
8 know Jim Hayden, who is an environmental field  
9 officer with the department, who I have worked  
10 with on numerous occasions. Mr. Hayden had been  
11 involved with contracting the vessels, leasing  
12 the boom, and leasing various pieces of equipment  
13 that were necessary to protect the hatchery at  
14 Sawmill Bay.

15 Q How long had you known him?

16 A I've known Mr. Hayden for over five years. I  
17 can't give a specific date.

18 Q Were you instrumental in locating a witness  
19 named Bruce Suzumoto?

20 A Yes. I found Mr. Suzumoto in Cordova.

21 Q Who asked you to do that?

22 A I was not asked directly to locate Mr.  
23 Suzumoto, as I recall. I found Mr. Suzumoto  
24 independently.

25 Q Explain what you mean by that?

1 A Well, I was looking for people who had -- who  
2 could establish resource values. And Mr.  
3 Suzumoto was an officer in the Prince William  
4 Sound Aquaculture Corporation who operated or  
5 owned the hatchery at -- in -- oh, shoot, I have  
6 to look at the island. I'm sorry. In Sawmill  
7 Bay. I'm sorry. We're talking about protecting  
8 the hatchery in Sawmill Bay.

9 Q And when you say nobody asked you to find it,  
10 you found it independently; what do you mean?

11 A I found -- I tracked down -- I was looking for  
12 officers who were involved. I may have gone to  
13 Cordova Fisheries, the CDFU people and asked them  
14 who would be able to provide me information for  
15 resources in -- at the hatcheries in Prince  
16 William Sound. And followed the leads and  
17 ultimately discovered that Mr. Suzumoto was a  
18 source.

19 Q Did you speak to him?

20 A Yes, I did. I spoke with him over the  
21 telephone.

22 Q Did you make the information you learned from  
23 him known to Mr. Guaneli?

24 A Yes, I did.

25 Q What do you mean to say, then, that that was



1 an independent investigation on your part?

2 Hadn't he asked you to find...

3 A He asked me to find damage experts, or people  
4 who could document the damage, and I  
5 independently went out and looked for people.  
6 That's what I mean by an independent  
7 investigation.

8 Q Did you appear before a judge in Valdez to get  
9 a search warrant for the Exxon Valdez?

10 A Yes, I did.

11 Q Was the notebook that you described one of the  
12 things that you were looking for? "You", meaning  
13 you and the investigators were looking for in the  
14 search?

15 A Yes. That was the notebook that I saw on  
16 April 17 and April 19.

17 Q And did you so testify about that before the  
18 judge?

19 A I did.

20 Q Did you testify about the damages before the  
21 judge?

22 A I may have.

23 Q Did you testify about things you had observed  
24 on March 24 to the judge in support of that  
25 search warrant?

1 A I don't believe I did.

2 Q At some point in your -- after you got off the  
3 Exxon Valdez, was there a point when you began  
4 working with a team of Alaska State Troopers from  
5 the Alaska State Trooper -- at the Alaska State  
6 Trooper office in Valdez?

7 A Yes, I did.

8 Q Explain to the judge who you worked with and  
9 what you were doing?

10 A I worked with Trooper McGhee, Trooper Burke,  
11 Trooper Stockard and Trooper Grimes. Trooper  
12 Alexander was around in and out of the office and  
13 Trooper Fox. And I provided some equipment and  
14 some technical support to help them with their  
15 investigation.

16 Q Did you become aware at some point that there  
17 were limits on who you could convey the  
18 information to that you had learned in the course  
19 of your work?

20 A Yes, I did.

21 Q Explain to the judge what you understood?

22 A Well, I understood that there were -- and,  
23 District Attorney Linton explained to me that I  
24 would not be able to provide any information that  
25 I had developed or gathered on March 24 to any of

1 the -- to certain -- to Mary Anne Henry,  
2 specifically, and subsequently Mary Anne advised  
3 that I would not be able to convey that  
4 information to Trooper Stogsdill, as I recall.

5 THE COURT: When did you get this instruction?

6 A It would have -- as I recall, that would have  
7 occurred in May.

8 THE COURT: Can we narrow it down a little  
9 better than that?

10 A It would have been just before the grand jury  
11 hearing. A few days before the grand jury  
12 hearing.

13 And I had not had any conversations -- the  
14 Stogsdill information would have been in May.  
15 The information from Bob Linton would have been  
16 early in -- earlier in the investigation. And as  
17 I recall that would have been, oh, four or five  
18 days after March 24. I believe I signed a  
19 document that addressed the -- that I couldn't  
20 -- that I wouldn't have any conversations with a  
21 specific individual.

22 Q And with the exceptions that you spoke to them  
23 for preparation of -- some of those people for  
24 grand jury, have you abided by the rule in all  
25 other respects?

1 A I believe I have.

2 MR. LINTON: Nothing further, Your Honor.

3 THE COURT: Is the document he's referring to,  
4 Exhibit 36? The one that the witness...

5 MR. LINTON: It would be best that we make it  
6 clear. I was kind of taking that as...

7 Q (Mr. LeBeau by Mr. Linton:) Let me show you  
8 36.

9 A That's my signature.

10 MR. LINTON: Referring to Exhibit 36. Nothing  
11 further, Your Honor.

12 THE COURT: I know I said we'd go until 4:30,  
13 but I have to stop at 4:20, if that's not going to be a  
14 problem. I've got a few things I need to take care of  
15 before all state employees vacate.

16 MR. FRIEDMAN: That's fine, Your Honor.

17 CROSS EXAMINATION OF MR. LeBEAU

18 BY MR. FRIEDMAN:

19 Q Mr. LeBeau, my name is Rick Friedman, one of  
20 the lawyers here, obviously.

21 Could I look at the documents you've been  
22 referring to?

23 A Surely.

24 Q These are the reports of your activities on  
25 the 24th...

1 A 25th.

2 Q Maybe you can characterize them.

3 A Those are reports 24th, 25th, possibly 26th  
4 and 27th. In addition, April 15, 17 and 19.

5 Q Anything else you have been referring to in  
6 terms of your testimony?

7 A In terms of my testimony this is the document  
8 that I've referred to.

9 Q And what are these that you brought with you?  
10 This is Trooper McGhee's?

11 A And there may be another document here that's  
12 not related to the case. It came out of...

13 Q Eroding pipe.

14 A That's not yours.

15 MR. FRIEDMAN: Your Honor, I don't know how  
16 you feel about this. This is a -- I don't know. It  
17 looks like a 10-page document that I think I would want  
18 to read before I cross examine Mr. LeBeau.

19 THE COURT: Do you want to quit now?

20 MR. LINTON: One question. Judge, Ms. Heston  
21 has -- Mr. Heston's wife is here and they would like to  
22 fly back to...

23 THE COURT: Who is here?

24 MR. LINTON: Ms. Cindy Heston.

25 THE COURT: The recent witness' wife?

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MR. LINTON: Yes, sir.

THE COURT: Do you want to call her right now and get her out of order?

MR. LINTON: Excuse Mr. LeBeau, since there isn't much of...

MR. FRIEDMAN: That is fine.

THE COURT: Mr. LeBeau, why don't you step down, and we'll resume your testimony Monday morning, Mr. LeBeau, so you're excused until Monday morning at 8:30.

A Thank you.

(Witness steps down)

(Side conversation)

(2227)

THE COURT: Mr. Linton, why don't you take custody of those documents Mr. LeBeau had and then make the copies for us. And counsel, that way you can have custody of your documents.

THE CLERK: Ma'am, if you'd remain standing in front of the microphone right there?

A Okay.

THE CLERK: Please attach that to your shirt.

A Okay.

THE CLERK: Okay. And if you'd raise your right hand.

1 (Oath administered.)

2 LUCINDA R. HESTON

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

5 THE CLERK: Ma'am, if you'd please state your  
6 last name and spell your last name?

7 A Lucinda R. Heston, H-e-s-t-o-n.

8 THE CLERK: And your current mailing address?

9 A Mailing address is P. O. Box 331, Valdez,  
10 Alaska.

11 THE CLERK: And your current occupation?

12 A Mother/housewife.

13 DIRECT EXAMINATION OF MS. HESTON

14 BY MR. LINTON:

15 Q Are you married?

16 A Yes.

17 Q What is your husband's name?

18 A James Heston.

19 Q Where do you all live?

20 A In Ellamar.

21 Q I'll show you what's been marked as Exhibit 1.  
22 Can you point out on Exhibit 1 the location of  
23 your house?

24 A Okay. It's right here by Gladhaugh Creek.

25 Q Pointing to a place where there's a red X

1                   already on the map?

2           A           Yes.

3           Q           How long have you lived there?

4           A           About nine years.

5           Q           And what business are you and your husband in?

6           A           My husband has a charter boat and he used to

7                   work with the pilot boat association. Sometimes

8                   he relieves temporary help, deck hand, operator.

9           Q           How far is your house from the beach?

10          A           From the beach about 300 -- maybe 300 feet.

11                   It sits back in the woods.

12          Q           And from your house what view do you have to

13                   the west?

14          A           Not a very good view from the house.

15          Q           Where does your husband keep his boats?

16          A           In Virgin Bay. The Sea View is in Virgin Bay.

17                   We have a skiff out on the beach.

18          Q           How far from your house is the skiff on the

19                   beach?

20          A           Well, when it's moored out it could be about

21                   500 feet.

22          Q           It's moored out from the beach, itself?

23          A           Yes, because of the tide.

24          Q           Did you have a practice as to what hour you

25                   get up in the morning?



1 A We really don't have a set time. We just  
2 pretty much get up when our son gets up, let him  
3 sleep as long as possible.

4 Q And do you have a practice as to what time, if  
5 any, you leave the house?

6 A Usually -- well, a little shortly after we get  
7 up. Like I said, we're not much in a set time  
8 frame.

9 Q Is there a time period over which that might  
10 happen? You know, assume the latest on the  
11 average you would sleep in?

12 A Well, it kind of varies. In the summertime we  
13 get up lots earlier because it's light and we  
14 don't have curtains on our windows, so we pretty  
15 much get up then. In the winter time it's a  
16 little bit later. Winter time is probably about  
17 8:30. I'd say in the summer we could get up  
18 anywhere from 6:00 to 8:00, you know.

19 Q Do either of you make it a practice to go to  
20 the beach after you've gotten up?

21 A Yes, pretty much.

22 Q At what time of the day on the average in  
23 March of the year do you get down to the beach?

24 A If it's a good day we pretty much want to get  
25 up and go see how things are, usually check on

1 the boat and the skiff and just look around so,  
2 say if we got up around about 7 o'clock we could  
3 probably be on the beach by 8:00 easy, or even  
4 sooner.

5 Q Do you remember March 24th, 1989?

6 A Yes, I do.

7 Q Was it a good day, or not a good day?

8 A It was a very good day.

9 Q And at some point that day did you go to the  
10 beach?

11 A Yes, we did.

12 Q Before you went to the beach did you hear that  
13 there was something wrong with the Exxon Valdez?

14 A I really don't remember if I had heard that  
15 before I went to the beach, or not.

16 Q When you got to the beach that day what did  
17 you see?

18 A I had seen the Exxon Valdez between the gap,  
19 we call it the Gap. It's between Busby and about  
20 Bligh Island.

21 Q Did that strike you as anything unusual?

22 A Very unusual.

23 Q Explain to the judge why.

24 A It was in the wrong position, facing  
25 northwest, being a full tanker. And, also, it

1 was much too close to the islands.

2 Q Did you know where Bligh Reef was located?

3 A Yes.

4 Q Tell the judge how you knew, what you knew  
5 about the location of Bligh Reef, itself?

6 A Just from going to the islands beforehand,  
7 we'd been there. We go to get wood, or hunting,  
8 or just for skiff rides. I'd known that the reef  
9 was there. Plus, I was pointed out a couple  
10 years ago when I was riding on a pilot boat that  
11 an old steamship had gone aground on Bligh Reef  
12 and you could see the masts there at low tide.  
13 And you can see the masts at low water.

14 Q Did you go out to the Exxon Valdez that day  
15 you saw it?

16 A Yes, I did.

17 Q Who did you go with?

18 A My husband and my son?

19 Q Was there anybody else out there when you got  
20 there?

21 A Yes, there was. There were several different  
22 people. Dave Lindenaugh was by himself on his  
23 boat.

24 John Bradkin with Ronny Toyamov (ph) on his  
25 boat. And then later, Ken Vlasov came on his

1 boat and he was out shrimping. He was heading  
2 into the village of Tatitlek anyway, so he was  
3 -- I don't know whether he'd heard about that  
4 before, or on his way in or not. And another  
5 native, Jerry Totomov. And then, plus the  
6 different people on the pilot boat.

7 And there was, I think, maybe one or two  
8 different boats, I think, handling boom material.

9 Q What time did you get out to the location of  
10 the Exxon Valdez that day?

11 A It was before noon. So, I'd say roughly  
12 between 9:00 and 10 o'clock.

13 Q How long did you stay in the area?

14 A We stayed until about an hour before dark.  
15 And then my husband brought us home.

16 Q At that time, what hour was that?

17 A I'm not too sure. I think about 5 o'clock, or  
18 6:00.

19 Q Could you see, or smell oil while you were out  
20 there?

21 A Definitely.

22 MR. LINTON: Nothing further, Your Honor.

23 CROSS EXAMINATION OF MRS. HESTON

24 BY MR. FRIEDMAN:

25 Q Mrs. Heston, at 8 o'clock you were watching

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TV, or...

A I wasn't.

Q Your husband turned the report on?

A Yes, he might have. I was pretty much busy with my son...

Q Okay.

A ...and just getting things going there.

Q At least by 8 o'clock you hadn't seen the tanker...

A No.

Q ...that day?

A No.

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

THE COURT: You may step down.

A Okay.

THE COURT: Will that do it for today?

MR. LINTON: I believe so, Your Honor.

MR. FRIEDMAN: Your Honor, I just wanted to make you aware of one thing. You asked us to...

THE COURT: You're excused, Mr. Heston, thank you very much.

MR. FRIEDMAN: You asked us to inform you if we thought the hearing might go beyond next week.

I just received a report -- we had sent an investigator to subpoena the Captain of the Port down

1 in Valdez, or actually some records that he has in his  
2 possession.

3 The last report I got was that the  
4 investigator was outside his office. The Captain was  
5 refusing to come out and accept the subpoena and the  
6 investigator was waiting for him to...

7 THE COURT: Captain? What's his name?

8 MR. FRIEDMAN: I don't know his name, Your  
9 Honor. It's Captain -- the title is Captain of the  
10 Port in Valdez.

11 THE COURT: He's a city employee, or a...

12 MR. FRIEDMAN: He's a Coast Guard employee.

13 THE COURT: A Coast Guard employee?

14 MR. FRIEDMAN: Right.

15 And so, the only reason I raise the issue at  
16 this point is we may be asking for a continuance in  
17 order to effectuate that subpoena and get the records  
18 here and I just, I haven't been back to the office, so  
19 I don't know what the status is at this point.

20 THE COURT: Okay. We have next week  
21 available, and I have the week after that available,  
22 too. I can make available.

23 MR. FRIEDMAN: Right.

24 THE COURT: Things are going more slowly than  
25 I thought and I expect that with Mr. Weeks testimony

1 now and Mr. McConnell's testimony that it's going to be  
2 a little longer than we anticipated.

3 MR. FRIEDMAN: I agree. I just wanted to let  
4 you know that kind of strange development.

5 THE COURT: Sounds interesting. He's just  
6 holing up in the office and...

7 MR. FRIEDMAN: Apparently. His secretary  
8 won't accept service and he won't come out to get it,  
9 and...

10 THE COURT: He'll probably get hungry and come  
11 out sooner or later.

12 MR. FRIEDMAN: That's what we figured.

13 THE COURT: Okay. Give us that list of the  
14 oral argument you need, too, tomorrow.

15 MR. FRIEDMAN: I'll do that tomorrow morning.

16 THE COURT: Is there anything else we can  
17 dispose of now, or take care of now?

18 MR. LINTON: I don't think so, Your Honor.

19 THE COURT: Okay. We'll see you on Monday  
20 morning at 8:30.

21 THE CLERK: Please rise. This court stands in  
22 recess.

23 (2772)

24 (Off record - 4:26 p.m.)

25 \*\*\*CONTINUED\*\*\*