

SPEC COLL
GC
1552
.P 75
H39
1990
v.42

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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

TRIAL BY JURY
MARCH 20, 1990
PAGES 7850 THROUGH 8063

VOLUME 42

Original

H & M Court Reporting
510 "L" Street, Suite 350
Anchorage, Alaska 99501
(907) 274-5661

ARLIS
Alaska Resources
Library & Information Services
Anchorage Alaska

BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
March 20, 1990
8:35 o'clock a.m.

APPEARANCES:

For Plaintiff:

DISTRICT ATTORNEY'S OFFICE
BRENT COLE, ESQ.
MARY ANNE HENRY, ESQ.
1031 West 4th Avenue, Suite 520
Anchorage, AK 99501

For Defendant:

CHALOS ENGLISH & BROWN
MICHAEL CHALOS, ESQ.
300 East 42nd Street, Third Floor
New York City, New York 10017

DICK L. MADSON, ESQ.
712 8th Avenue
Fairbanks, AK 99701

3 3755 000 23389 0

H & M Court Reporting
510 "L" Street, Suite 350
Anchorage, Alaska 99501
(907) 274-5661

ARLIS
Alaska Resources
Library & Information Services
Anchorage Alaska

TABLE OF CONTENTS

OPENING ARGUMENT BY PLAINTIFF:	7859
ARGUMENT BY DEFENDANT:	7912
CLOSING ARGUMENT BY PLAINTIFF:	8027

H & M Court Reporting
510 "L" Street, Suite 350
Anchorage, Alaska 99501
(907) 274-5661

EXHIBIT INDEX

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
AC	Statute	8062
AJ	Summary of Vessel Location	8062

H & M Court Reporting
510 "L" Street, Suite 350
Anchorage, Alaska 99501
(907) 274-5661

1 PROCEEDINGS

2 MARCH 20, 1990

3 (Tape: C-3685)

4 (702)

5 (Jury not present)

6 THE CLERK: ...the Honorable Karl S. Johnstone
7 is now in session.

8 THE COURT: You may be seated.

9 THE CLERK: Mr. Madson, did you need to take up
10 a matter before we bring the jury in?

11 MR. MADSON: Yes. Very, very briefly, Your
12 Honor.

13 What I was concerned about is that since the
14 Court has ruled that the State can not use the .10 theory
15 to support its case for intoxication I want to make sure
16 that Mr. Cole is precluded from arguing that .10 or
17 above, as far as the blood test is concerned, is evidence
18 -- is, in fact, intoxicated under State law.

19 In other words, I think since the Court has
20 ruled on this, the State shouldn't go around the bend, so
21 to speak, and be able to argue this to the jury even
22 thought there's no instructions on it and that whole
23 theory has been effectively discarded. So, I think any
24 statement saying .10 or greater is in violation of State
25 law and would be prohibited under the Court's ruling.

1 THE COURT: Do you wish to be heard, Mr. Cole?

2 MR. COLE: That's what the law is in the State
3 of Alaska. Above a .10 you're intoxicated. We should be
4 able to put that in and talk about it. It was testified
5 to by Dr. Prouty. It's evidence of what other people
6 have found to be a level of impairment that we're talking
7 about.

8 THE COURT: Is that part of the evidence in this
9 case? That under State law that it was .10?

10 MR. COLE: Mr. Prouty testified as to that, yes.

11 THE COURT: Well, Your Honor, he did.

12 We're making a mistake here and I really urge
13 the court to think about this very carefully, because,
14 again, there are two theories here. The court has ruled
15 that the .10 theory is out. And the only way that can
16 come into play is when the test is given within the four
17 hours, or in other words there's a valid test. Then you
18 have the .10 theory.

19 That's out of the picture. It's impairment, and
20 impairment only. Now, the State is free to argue these
21 numbers. I'm not saying that. The .10 or greater, or
22 .07, or a .2 -- it's all evidence of impairment. But, to
23 say that that, by itself, now -- State law says .10 or
24 greater is violation of State law. To be able to argue
25 that now is simply doing what the court said they

1 couldn't.

2 THE COURT: Okay, Mr. Cole. You can argue the
3 evidence. Whatever Dr. Prouty said, you can argue that
4 as the evidence. And if -- my recollection is that Dr.
5 Prouty said that many states have a threshold of .10.
6 Some have lower. He doesn't know any that have less
7 than, I think a little higher number. Maybe it was .10
8 any more. And it included Alaska State law was .10. You
9 can argue the evidence.

10 Mr. Madson, he can do that. And I'm going to
11 remind the jury that arguments of counsel are not
12 evidence and they're bound to follow the court's
13 instructions on the interpretation as evidence.

14 Are we ready now with the jury?

15 MR. MADSON: Yes.

16 MR. COLE: Yes.

17 THE COURT: I would like to be able to see what
18 you're doing do the argument. You can twist it around
19 enough for me to see.

20 MR. COLE: Yes. I will.

21 THE COURT: And, Mr. Madson, if you want to sit
22 over by Ms. Henry to look at the board you may do so
23 while the argument is going on, or you may remain there.

24 MR. MADSON: Another thing, Your Honor. The
25 jury has their notepads there, but I would -- since

1 argument is not evidence I would urge the court to remind
2 them that, perhaps, they should not be taking notes,
3 because I think that might -- I'd like to have them take
4 notes for me, but I don't want them to take notes for Mr.
5 Cole. So, I just think that, you know, note taking --
6 I've don't know. I've never seen it done. I don't know
7 what this court's preference is, and it's obviously your
8 call, but I kind of worry about taking notes during final
9 argument.

10 THE COURT: All right. I'll tell the jury that
11 they should just listen and not take notes at this time.

12 Counsel, I'm going to have 12 copies of the jury
13 instructions prepared. Any objection to giving 12 copies
14 to the jury? Mr. Cole?

15 MR. COLE: (No audible response)

16 MR. MADSON: I'm sorry. I didn't hear.

17 THE COURT: I'm having 12 copies of the jury
18 instructions made, for each individual juror. Any
19 problem with that?

20 MR. MADSON: Oh, no. Not at all.

21 (Pause)

22 (Jury present)

23 THE COURT: Good morning, ladies and gentlemen.
24 We're about to hear final arguments in this
25 case. During the course of the evidence I've allowed you

1 to take notes. That's to facilitate your recollection
2 and deliberations, to assist you in your recollection,
3 and to assist you in deliberations if need be.

4 However, as I instructed you earlier,
5 statements, and now, final arguments of counsel are not
6 evidence. So, I'd ask you not to take notes. Just put
7 the notepads down on the floor. You may take your notes
8 with you into deliberations.

9 Mr. Cole will be making a closing argument in
10 just a minute. I remind you that his closing argument,
11 as Mr. Madson's closing argument is not evidence.
12 Sometimes the arguments differ from the evidence. It's
13 generally inadvertent. Y o u
14 will have 12 times the collective memory of any one of
15 us. Use that collective memory if the arguments differ
16 from it.

17 I'll be giving you jury instructions sometime
18 later on, probably this afternoon. They're fairly
19 lengthy. It's not a memory contest. You'll be each
20 getting a copy of the jury instructions for your
21 deliberations.

22 We'll take a break probably in about an hour and
23 half. I don't know how long Mr. Cole's first part of the
24 argument will take, but around an hour and a half we'll
25 take a break, and we'll take breaks periodically. We

1 will have a lunch break today. And we'll try to coincide
2 with a break in the arguments, but we will have lunch.

3 Mr. Cole.

4 MR. COLE: Thank you, Your Honor.

5 (1030)

6 CLOSING ARGUMENT BY PLAINTIFF

7 MR. COLE: Mr. Madson, Mr. Chalos, Judge
8 Johnstone, ladies and gentlemen of the jury: on March
9 23rd, 1989 Captain Joseph Hazelwood, the man who sits to
10 my right, chose to be a gambler. He chose to be a risk
11 taker that day.

12 He chose to sit in a bar, the Pipeline Club,
13 most of the afternoon and drink prior to going to work
14 that evening. And when he made that choice he risked the
15 safety of this vessel, right here. He risked not only
16 the safety of that vessel. He risked the safety of the
17 crew. And he risked the cargo that she carried.

18 He gambled that day that his drinking would not
19 adversely effect his judgment, or decision making that
20 night. He was wrong, ladies and gentlemen, because
21 alcohol never improves judgment, never.

22 Captain Joseph Hazelwood gambled and lost. He
23 took too many risks, and it resulted in a captain's worst
24 nightmare, finding your vessel grounded on a rock and
25 helplessly watching the oil that you had once known was

1 stored safely within a vessel boiling out and being
2 carried into the rest of Prince William Sound.

3 And, if there is any question in your mind about
4 that risk that faces every tanker captain that enters and
5 leaves Prince William Sound every day, then I urge you to
6 watch the video tape that was done by Dan Lawn. That
7 videotape shows better than any one, or any person can
8 testify, or describe in words, the helpless feeling that
9 a tanker captain must feel, the fear that every tanker
10 captain is aware of when that film showed you the oil
11 bubbling out of that vessel and being carried away.

12 Essentially, ladies and gentlemen, what that
13 video shows is just exactly what you would expect out of
14 tanker captains. It shows that they know the risk that's
15 involved and that above all else, safety should be first.

16 On March 23rd, 1989 Captain Hazelwood did not
17 have safety first in his mind when he was drinking at the
18 Pipeline Club that day. If he had he wouldn't have been
19 there. He didn't have safety first on his mind when he
20 left the bridge through the narrows. Because if he had
21 had safety first on his mind he wouldn't have left the
22 bridge.

23 He didn't have safety on his mind when he placed
24 the vessel on autopilot after toward Bligh Reef at
25 accelerated sea speed. If he had had safety first, he

1 wouldn't have left the lanes in the first place. And, if
2 he had to leave the lanes he wouldn't have accelerated to
3 sea speed and he would have kept the steering on helm.

4 And, he didn't have safety first when he left
5 the bridge that evening in the hands of Greg Cousins and
6 Mr. Kagan. Because, if he had had safety first, he
7 wouldn't have left.

8 And these errors in judgment are not merely the
9 product of a person who's careless. They were much more
10 than that, ladies and gentlemen, as all the captains came
11 in and testified to you. They were actions and judgments
12 of a person whose mind was clouded with alcohol from
13 drinking that day. And as Mr. Prouty so accurately
14 stated, alcohol has the effect of unraveling the knitted
15 sleeve of care. And there could be no better example of
16 that than the facts of this case.

17 On March 23rd, 1989 Captain Joseph Hazelwood
18 chose to be a gambler. He chose to be a risk taker. And
19 because of his choices that day you have been called to
20 sit in this case.

21 Now, Judge Johnstone indicated to you that this
22 is closing. And this is the second to the last part of
23 this case before you will be asked to deliberate. The
24 last part, obviously, is Judge Johnstone will read the
25 instructions.

1 The purposes of closing are for the attorneys to
2 summarize the facts, to go through some of the
3 instructions and show you how the facts apply, or don't
4 apply to the instruction in the law that you've been
5 given.

6 I remind you, as Judge Johnstone did, that our
7 arguments are not evidence. If I misstate the facts I
8 apologize. If my recitation of the facts is different
9 from what you remember, you should follow your own -- how
10 you remember it, because your collective memory is much
11 better than mine.

12 But, remember this. You've taken an oath to
13 follow the law in this case, and you will receive that in
14 this package of instructions. And it looks a lot like
15 this.

16 In addition to the law in this case you will get
17 very helpful instructions on how to view the evidence,
18 how to evaluate the credibility of witnesses and expert
19 witnesses. In addition to that, there is also
20 information on how to deliberate, some interesting
21 tidbits to help during your deliberation.

22 And we're going to be discussing some of them,
23 but by no means all of them.

24 That's not because they aren't all important.
25 It's just that we're limited in time.

1 In this case, ladies and gentlemen, there have
2 been four crimes that have been charged. As you can see,
3 criminal mischief in the second degree, reckless
4 endangerment, operating a watercraft under the influence,
5 and negligent discharge of the oil.

6 You will be instructed that it's the burden of
7 the State of Alaska, which it is, to prove beyond a
8 reasonable doubt these elements of the crimes. And that
9 is what the State of Alaska's burden is. It's not any
10 more than that.

11 An example of that, oftentimes you hear the
12 language drunk driving. Ladies and gentlemen, you're not
13 going to see in any of these instructions where a person
14 has to be drunk. That's not what the law is, and we
15 don't have to prove that a person is drunk.

16 We have to prove that they were impaired, under
17 the influence and operating. Those are the things. And,
18 additionally, there will be times, and there will be
19 disputes over, for instance, what type of coat somebody
20 was wearing, something like that. Or, what time a vessel
21 left, or what time it actually hit the reef.

22 You'll see that there's no requirement that the
23 State prove that beyond a reasonable doubt. The burden
24 of the State of Alaska in this case is to prove the
25 elements beyond a reasonable doubt.

1 Now, there are several things that jurors often
2 become confused upon in criminal trials and I'd like to
3 talk about a couple of them. You're going to get an
4 instruction that says that there is a requirement that
5 there be a joint action of a culpable mental state and a
6 criminal act. And you're going to say, "Gosh, what do
7 they mean by that?"

8 Well, in criminal law, the law that we have in
9 Alaska, it requires that there be -- for a person to
10 commit a crime that they both do a criminal act, and that
11 they have a culpable mental state.

12 Let me give you an example of what happens when
13 you don't have one and you have the other. I hate my
14 neighbor. I can't stand my neighbor. And I plot every
15 day to kill my neighbor. But, I never do anything about
16 it. Now, I may have a culpable mental state in that I
17 intend to kill my neighbor, but if I never do any
18 criminal act I'm not guilty of any crime, because we're
19 not guilty of crimes in Alaska for just having bad
20 thoughts.

21 Now, another example: you're driving down the
22 highway. It's night out. You're in a desert. There's
23 nobody, no houses, no establishments, no nothing. And
24 you're driving down the road. You're observing the speed
25 limit. Your lights are in working condition. And out of

1 the blue, somewhere you had no expectation of somebody
2 being a small child jumps out and you strike that child
3 and you hurt her -- him.

4 Now, there is what would be called a criminal
5 act. Someone's been hurt, or even maybe killed. But, if
6 you were exercising all care, caution -- you would not be
7 guilty of a crime, because you didn't have the reckless
8 mental intent.

9 Now, in the State of Alaska there are five
10 culpable mental intents. You can see them here. You
11 will also see them in the criminal charges. But,
12 essentially they go in an order of priority. They are,
13 for criminal matters a person acts intentionally,
14 knowingly, recklessly, with criminal negligence, and
15 negligence. And we assume that a person who acts -- who
16 commits crimes intentionally is more culpable, is a worse
17 person, than someone who does it negligently. That just
18 makes sense. Nothing confusing about that.

19 A person acts intentionally when their conscious
20 objective is to cause a result. A person acts knowingly
21 when they have a -- the language is "aware of a
22 substantial probability that their actions will cause the
23 result".

24 A person acts recklessly when they are aware of
25 and consciously disregard a substantial and unjustifiable

1 risk.

2 And, a person acts with criminal negligence when
3 they fail to perceive a substantial and unjustifiable
4 risk.

5 And, finally, a person acts negligently when
6 they fail to perceive an unjustifiable risk that the
7 result will occur.

8 And I'm sure you're saying right now, what does
9 all that mean, Mr. Cole, that's all nice and good, give
10 us some examples. And the easiest way to do that is to
11 start with a criminal act that we can all understand.
12 And, let's call it a homicide, a death. Let's say we
13 have a homicide. And let's apply it to these particular
14 culpable mental states.

15 If I take my car and I see my neighbor, the
16 person I hated so much, and I say I'm going to kill you,
17 and I run that person over, my conscious objective is to
18 cause that result. I act intentionally. That's an
19 example of when a person acts intentionally.

20 Now, the second culpable mental state is
21 knowingly. That is when, for instance, I may be driving
22 down the road and I see people on the sidewalk and I
23 don't intend to kill them, but I intend to drive on the
24 sidewalk. Well, I'm aware of the substantial probability
25 of causing their death if I know that there are people on

1 the sidewalk.

2 The next level down, when a person acts
3 recklessly in my scenario, the easiest way to understand
4 that is manslaughter. And in the State of Alaska it's
5 when a person gets behind the wheel of a vehicle, when
6 they've been drinking too much and they kill someone.
7 Because people are aware of the risks of drinking and
8 driving. We hear it every day. But, if you drink and
9 you drive, you consciously disregard that risk of
10 somebody being injured, of your judgment being bad. And
11 that is a substantial and unjustifiable risk in our
12 society. That is the best example of when a person acts
13 reckless, when they're under the influence and they get
14 behind the wheel and drive.

15 A person acts with criminal negligence. Well,
16 how would that happen?

17 Well, that's a tough one. The law is that you
18 don't necessarily have to be aware of the risk. You just
19 have to fail to perceive a substantial and unjustifiable
20 risk. And an example of that would be someone who has
21 never seen a car. Maybe he comes from someplace where
22 they never had them. And he is given a car and he has no
23 idea of the danger involved with driving a motor vehicle.
24 And he gets in it and he drives and he hurts somebody, he
25 kills somebody. That person might not have been aware of

1 the risk, but he failed to perceive it. And it's a
2 substantial and unjustifiable risk. Let's say he was
3 speeding.

4 Finally, negligence under this circumstance, and
5 that's very simple. You're driving along the road and as
6 you're approaching an intersection your pen falls over on
7 your passenger side and you reach down to get it and you
8 take your eyes away from the road. You don't see that
9 the light turns red and you go through the light. That's
10 an example of when someone acts negligently. He should
11 have known better.

12 And those are the standards that we have in
13 Alaska, but in particular, ladies and gentlemen, this
14 one, recklessly and negligence are the ones that will be
15 applicable in this case. I only did this to give you an
16 idea of where these particular mental states sit. You'll
17 notice that nowhere will you read that a person has to
18 intend to violate the law. That's not what the law is.
19 And that's exactly why we have manslaughter laws. Most
20 people that get behind a wheel of a car and drive when
21 they've been drinking don't intend to commit any crimes.
22 They're aware of the risk of danger and they consciously
23 disregard it. But, they're not intending to commit any
24 crimes.

25 Next you say, "Well, how do you ever determine

1 what's going on in a person's mind to be able to make
2 this determination of what a person is," because
3 obviously I can't look into any one of your minds and
4 think what you're thinking. That's a difficult concept,
5 but it's not impossible. It's not impossible at all.

6 I'll give you an example. You go to a store, or
7 a restaurant and you hang it up on the wall and you walk
8 over to the corner and you're sitting there looking and
9 you watch, and all of a sudden someone gets up and goes
10 over and starts to take your jacket. Now, at that time,
11 right there, if you freeze that instant, it might be
12 difficult to determine whether that person was just
13 making a mistake, or whether that person was
14 intentionally stealing your jacket. So, what would you
15 do?

16 You would look at what he did, and what he did
17 after. Was he cautious? Did he try and avoid you? Did
18 he run when he did it? Did he appear to nonchalantly do
19 it?

20 Those are common sense factors, things that we
21 think about every day. We make these decisions about
22 what's going through a person's mind every day whenever
23 we meet people. That's exactly what you're going to be
24 asked to do here. And that's exactly what the law will
25 say.

1 Circumstantial evidence is a good indication,
2 absent someone saying, "I'm thinking right now this,"
3 circumstantial evidence is a good indication of what a
4 person's state of mind is.

5 I'd like to start by eliminating some things
6 that are not at issue so that when you go back you will
7 have certain things that are not at issue and you'll know
8 it.

9 First of all, that this happened on or about
10 March 24th is not really an issue in this case.
11 Everything happened on or about -- you'll read the on or
12 about instruction. It says it doesn't have to be on
13 exactly that date. It could be a little bit before. It
14 could be a little bit after.

15 Negligent discharge of oil. "That Captain
16 Hazelwood negligently discharged, or caused to be
17 discharged, or permitted the discharge of oil into and
18 upon the waters and the land." Well, there's no doubt
19 that oil got discharged in this case.

20 There's no doubt that it happened on March 24th.
21 And, ladies and gentlemen, there's no doubt that Captain
22 Hazelwood was at a minimum negligent.

23 Remember -- I forgot to mention this. If a
24 person is reckless they also act with criminal negligence
25 and they also act with negligence. I mean, just a person

1 who intentionally kills somebody acts knowingly,
2 recklessly, with criminal negligence and with negligence.
3 So, this encompasses that. The reckless standard
4 encompasses negligence.

5 Captain Hazelwood said it was his fault in his
6 statement. "I've got to accept responsibility for
7 overestimating the abilities of the third mate." That's
8 an admission.

9 He told Mr. Myers, "It's my fault for not being
10 on the bridge."

11 He was asked by Trooper Fox what the problem was
12 and he said, "You're looking at it."

13 And his attorneys in essence said that in their
14 opening when they talked about fault and how it was
15 evenly distributed among the people.

16 This count is not an issue, ladies and
17 gentlemen. It happened on the 24th. There's no doubt
18 that oil was discharged. And if you follow the law and
19 the testimony there's only one verdict that applies to
20 that count.

21 Now, I'm going to skip the operating under the
22 influence and just talk briefly about this part. You'll
23 see that the common thread running through both criminal
24 mischief and reckless endangerment is that the defendant
25 had to act recklessly in both cases.

1 There's no doubt that this happened on the 24th,
2 1989.

3 There's no doubt that Captain Hazelwood had no
4 right, or any reasonable grounds to believe that he could
5 create this risk. He didn't have that.

6 And there's no doubt that the risk of damage in
7 this case exceeded \$100,000. You saw, and you've seen
8 that the damage that actually occurred went over millions
9 of dollars.

10 And you've seen that the risk was created by the
11 use of widely dangerous means. Now, the definition of
12 widely dangerous means, you'll find that in here. And it
13 basically said any difficult to confine substance, force,
14 or other means capable of causing widespread damage. An
15 oil spill falls right in that definition. It's a
16 difficult to confine substance, as we saw. And it is
17 capable of causing widespread damage which you heard
18 testimony about, the cleanup, the killing.

19 In addition you saw how many animals it killed.
20 It could be considered a poison. Don't be misled by the
21 fact that in the first part of the definition of widely
22 dangerous means it doesn't have the word oil spill in it.
23 The last word is -- and it gives a bunch of examples
24 about what constitutes widely dangerous means. And you
25 don't find the words oil spill in that. But, that's

1 because legislatures can't anticipate every possible
2 widely dangerous means that could be introduced into our
3 community. And so, what they did is they said, they
4 defined it as meaning, "any difficult to confine
5 substance, force, or other means capable of causing
6 widespread damage," and then they gave some examples,
7 "fire, explosion, avalanche, poison, radio-active
8 material, bacterial, collapse of buildings, or flood."
9 But, it's not an inclusive group.

10 And all that it means -- the instruction reads,
11 "An oil spill may be considered a widely dangerous
12 means."

13 There's no doubt that oil is a widely dangerous
14 means. So, really the risk here -- the element at issue
15 is whether or not Captain Hazelwood recklessly created a
16 risk of damage to the property of another.

17 Second, on reckless endangerment, there's no
18 doubt that it occurred on March 24th.

19 And third, there really isn't much of a doubt
20 that by grounding you created -- the risk of a grounding
21 creates a substantial risk of serious physical injury.
22 If you ground -- both tankers capsize, they break up,
23 that causes people to be placed at serious risk. There's
24 no doubt about that. The only real issue on that count
25 is whether Captain Hazelwood recklessly engaged in

1 conduct that created a substantial risk.

2 Now, I'm halfway through with my argument so
3 bear with me. There's only a couple more areas that I
4 want to talk about. The first part that we're going to
5 talk about is what operating a watercraft under the
6 influence. And then we're going to talk about what
7 constitutes recklessness.

8 So, let's focus on the first thing for just a
9 minute.

10 There's no doubt that this occurred on or about
11 March 24th, 1989. Captain Hazelwood operated a
12 watercraft. Well, you say, "What does operate a
13 watercraft mean?" That will be defined in the
14 instructions that you receive.

15 It basically says it means to navigate or use.
16 That's what operate means. In addition, there's another
17 instruction that talks about what navigate, or use means.
18 And that means -- and it's further defined to mean,
19 "Directing influence, domination, or regulation of the
20 vessel." That's the instruction that you will receive on
21 what the definition of operate is.

22 There's no doubt that this is a watercraft. I
23 mean, it's used for commercial purposes.

24 Now, on a tanker you've learned a little bit
25 about how they actually operate. It's not like a motor

1 vehicle. We've seen through the testimony that it
2 requires at least two people generally, and in certain
3 circumstances three. But, the helmsman stays at the
4 helm. And all he does is direct the steering. He takes
5 orders and he just keeps whatever, he just does what they
6 tell him. He's an extension of the wheel, as Captain
7 Walker said.

8 The watchman officer, if there's three people on
9 the bridge, is just required generally to oversee the
10 helmsman, work the throttle, the teletype, and make plots
11 if it's necessary to put them in their position.

12 But, the person who actually navigates the
13 vessel, who exercises control over the vessel, that is
14 the one who has the con. We've heard that expression a
15 number of times. That person has the control of the
16 vessel. He is the one -- he, or she is the one that
17 directs what heading it will take, what turns it will
18 make. He is the one that is responsible for the safety
19 of the vessel at that time, the person on the con.

20 And on this evening, ladies and gentlemen,
21 Captain Hazelwood had the con from 11:24 when the pilot
22 got off until 11:53 when he left the bridge. And, then,
23 again, at 11:18 when he ordered it turned off. And,
24 then, again at 11:36, I believe -- 38, when he ordered
25 the vessel started up again, until 1:41 that morning.

1 Captain Hazelwood gave the orders. He gave the
2 turning instructions. He had control of the vessel. He
3 operated a watercraft.

4 Finally, the State has to prove that while he
5 was operating that watercraft he was under the influence
6 of intoxicating liquor.

7 Now, I touched on it briefly at the beginning,
8 but I want to emphasize again, because it's a notion that
9 a lot of people have. This is not drunk driving. There
10 is going to be -- you're not going to read one thing in
11 there that says a person has to be drunk. Because the
12 image that we have when a person is drunk is that he's
13 stumbling, and that he's falling down, and he needs
14 support. We don't let people get to that point before we
15 say that they've committed a crime in our state because
16 by the time they've gotten to that point they're well
17 beyond being a danger. They're a hazard.

18 What we make a crime is that when you operate a
19 motor vehicle when your physical and mental abilities are
20 impaired, and that's what the definition is.

21 You're going to find that instruction in
22 instruction 33. And I'd like to read just a portion of
23 it to emphasize how important it is.

24 "A person is under the influence of intoxicating
25 liquor when he has consumed alcohol to such an extent as

1 to impair his ability to operate a watercraft.

2 "Under the influence of intoxicating liquor
3 means that the defendant consumed some alcohol, whether
4 mild or potent, in such a quantity, whether great or
5 small, that it adversely effected and impaired his
6 actions, reactions, or mental processes under the
7 circumstances then existing and deprived him of that
8 clearness of intellect and control of himself which he
9 would otherwise have possessed.

10 "The question is not how much alcohol would
11 effect an ordinary person. The question is what effect
12 did the alcohol consumed by the defendant have on him at
13 the time and place involved. If the consumption of
14 alcohol so effected the nervous system, brain, or muscles
15 of the defendant as to impair his ability to operate the
16 watercraft, then the defendant was under the influence."

17 Well, you say, "That's nice, Mr. Cole, but I
18 mean, how do we -- how do we apply that to these facts?"

19 Well, you've got a number of ways. You need to
20 focus on several of the witnesses in evaluating that.
21 You need to think about what Mr. Prouty had to say. You
22 need to think about what Mr. Burr had to say and you need
23 to think about what Mr. Hlastala had to say, because they
24 all say pretty much the same thing. They may not want to
25 admit it, but they do.

1 We know that in Alaska, as Mr. Prouty -- and in
2 many states in the country, the legal level for
3 intoxication is .10. We also heard that many people
4 believe -- many other states have an even lower blood
5 alcohol content level, at a .08.

6 You heard Mr. Prouty talk about when alcohol
7 starts to impair people's judgment. And, remember, we're
8 talking about judgment. We're talking about decision
9 making. And whether or not alcohol has an effect on your
10 judgment and decision making. And you remember Mr.
11 Prouty saying that in his experiments he found a person's
12 judgment is effected well before clinical manifestations
13 of impairment are seen.

14 He told you, and you learned both from him and
15 Mr. Burr, that physical and visual observations are a
16 crude means of predicting intoxication. And that the
17 best means is the blood test. And why is that? It only
18 makes sense, ladies and gentlemen, because physical
19 evidence doesn't lie.

20 You can do whatever you want. You can argue
21 whatever you want in this case, but you've got to
22 remember that at 10:30 a.m. on March 24th Captain
23 Hazelwood had a .061. And you can't take that away. A
24 .061. You can't get around that.

25 Their experts testified that they assumed that

1 it was valid. They found nothing to believe that that
2 was an invalid test. You can't get around a .061 at
3 10:30 in the morning.

4 And the next thing you can't get around is that
5 there's on evidence that he was drinking after 8 o'clock
6 that evening the night before. You can't do it.

7 And Mr. Madson in his opening that he told you,
8 you're going to conclude that that's meaningless. It has
9 no value. Ladies and gentlemen, you can't do that,
10 because you can't get around .061. You can try, but you
11 can't. And he can try, but he can't.

12 He can do anything he wants. He can bring
13 people in here to say, "Oh, you know, some people
14 eliminate at very high levels and they're all
15 differentiate. Some people it takes longer for alcohol
16 to get through their system. The bottom line is at 10:30
17 he's got an .061.

18 And we all know from our own experiences nothing
19 new -- Mr. Prouty came up here and said, "Look, after a
20 while alcohol starts eliminating." And the studies show
21 that 96 percent of the people, a large material,
22 everything they've had to drink, when they've stopped it
23 takes them about an hour to an hour and a half before
24 they stop going up.

25 And remember that's the important thing about

1 that calculating a retrograde extrapolation. You have to
2 be able -- you can only do it when you're in the
3 elimination phase.

4 That calculation is not a difficult concept. It
5 just makes sense. If you haven't had a drink in a long
6 time and you go and you have a blood alcohol test and
7 you're not going up at the time you have the test, if you
8 go back, you would be at a higher level. It's not a
9 difficult concept.

10 Now, the accuracy of it may be difficult to
11 pinpoint because people have different individual
12 elimination rates, but the concept itself is sound.
13 Every graph that you saw them draw and bring up here and
14 put up here went down, because at a certain point we all
15 go down. And the evidence in this case is that Captain
16 Hazelwood stopped drinking, essentially at, he says --in
17 his statement he makes one statement that he stopped
18 drinking at about 8:30 when he had a couple of Moussies,
19 but before they sailed.

20 But, you know that that has no significance
21 because the level of alcohol in a Moussy is very small.
22 Essentially he stopped drinking at 8:00. And under
23 everybody's theory he's in the elimination phase at 12
24 o'clock.

25 Now, you say, "Well, what significance does that

1 have?"

2 Well, it has a large significance. We know that
3 if he's a .061 at 10:30 and he's in the elimination phase
4 back to midnight, if he has a rate of elimination of
5 about .08, which is what most people have, he's at about
6 a .25 at 12 o'clock. If he has an elimination rate of
7 .01, he's at a .17 at 12 o'clock. If he happens to have
8 an elimination rate -- even as low as .004, he's still at
9 12 o'clock is a .14. Under
10 every scenario that you have he is above a .10 at 12
11 o'clock that night.

12 The law in Alaska is that way. You heard Mr.
13 Prouty tell you that all people are impaired at that
14 level. You have no reason to disbelieve that. There's
15 no evidence of drinking afterward. And without any
16 evidence of drinking you have to conclude that his
17 alcohol level was going down.

18 And though Dr. Hlastala may not like the theory
19 he even wrote about it. What did his article say? He
20 comes in here and tells you that you can't do it. You
21 can't back calculate. But in his own article he says,
22 "In addition it is always worth considering retrograde
23 extrapolation from the time of the blood, or breath test
24 to the time of the driving, or the other incident.
25 However this procedure has some uncertainty. Widmark's

1 formula does not provide an easy answer, because that
2 formula assumes all the alcohol is completely absorbed
3 from the stomach into the blood stream. If the defendant
4 was well into the post absorptive phase calculated BAC
5 will be accurate."

6 Their own expert.

7 However, remember that it sometimes takes four
8 hours after drinking to reach the post absorptive
9 phase. And if Captain Hazelwood stopped at 8 o'clock,
10 there's your four hours.

11 That's an extreme. Most people are an hour and
12 a half. We know in this case that he was in a bar in the
13 afternoon from 2 o'clock at least -- Jamie Delozier was
14 in there -- until sometime after she left, which was
15 2:45.

16 He had at least two drinks there. And she saw
17 (A) she saw the outfit that he had on; the hat, the
18 jacket. He came within two feet of her. He ordered a
19 vodka on the rocks. And it was a special vodka. And he
20 had two of them then -- at least, that she remembers.

21 We heard the testimony of Jerzy Glowacki who
22 said that he got there sometime before 4 o'clock and
23 Captain Hazelwood joined him about 15 minutes later. And
24 the two of them drank in that bar until at least 7
25 o'clock that evening.

1 And that's all they did. They didn't say they
2 ate. They weren't playing games. They weren't
3 socializing. They weren't doing anything. All they were
4 doing was sitting in the bar, knowing they were leaving
5 that night. Captain Hazelwood, knowing that he was going
6 to be the one responsible for the safe passage of that
7 vessel outside Prince William Sound that evening, and
8 they sat in the bar and did nothing but drink. They had
9 nothing else to do but drink and talk.

10 You know, ladies and gentlemen, it doesn't take
11 someone like Mr. Prouty, or Mr. Burr, who both said it,
12 that we don't accurately remember how many drinks we have
13 when we're sitting around unless we have a reason to do
14 it, or unless somebody's keeping track of who's paying.
15 People don't do it.

16 And they didn't do it accurately in this case.
17 Because it boggles the imagination that these three
18 gentlemen who are doing nothing but drinking have two to
19 three drinks over a three hour period in the Pipeline
20 Club. It isn't happening.

21 Then, from there what do they do? They don't go
22 home. They don't get anything to eat. They go over and
23 they pick up a pizza. They can't stay in the pizza
24 parlor and wait for their pizza. They can't shop around.
25 No. They've got to go to another bar and have another

1 drink. And Captain Hazelwood has another vodka.

2 Now, remember when they had left they knew they
3 were leaving at 9 o'clock that evening and they had to be
4 back at 8:00. Now they're going to say, "Well, they
5 learned that it was supposed to leave at 10 o'clock."
6 Well, they could have checked, number one. And number
7 two, so what. If they're leaving at 10 o'clock what are
8 these guys doing drinking at 7:30?

9 And it's because they just didn't care. He
10 didn't care. He was willing to take the risk that by
11 drinking it would not effect his judgment that evening.
12 He was willing to take the risk and he took it.

13 And you saw there was other evidence. Patricia
14 Caples testified Captain Hazelwood wasn't his normal
15 businesslike personality. He seemed much more personal.
16 I suspected he'd been drinking. He seemed to stumble at
17 one point when he was leaving. He had red eyes.

18 Mr. Murphy, Captain Murphy said, "I smelled
19 alcohol on his breath at 8:30."

20 What else did he say? "He left the bridge.
21 When he came back up when I was getting read to get
22 dropped off."

23 What did Captain Murphy say? "I smelled alcohol
24 on his breath again."

25 This is right before this guy's getting ready to

1 take over command of this vessel.

2 And who was the next person -- the next
3 objective person on this vessel? Falkenstein.

4 Lieutenant Commander Falkenstein when he comes
5 aboard the vessel at 3:45 that morning what does he say?
6 "I smelled alcohol. It was obvious."

7 What did Investigator Delozier say? "It was
8 obvious."

9 The first thing. It wasn't 15 minutes later.
10 It wasn't a half an hour later somebody went, "Gee whiz,
11 you know, something's wrong here." They have a
12 conversation with this man from two to three feet away
13 and what's the first thing they do? They walk outside
14 and say, "We got to do something." And they attempt to
15 order someone to get out there and get a blood test.

16 That's the first thing they do. It's not 20
17 minutes later. It's not a half an hour later. They come
18 in there and it's obvious.

19 And so, you got to say to yourself, "Wait a
20 minute," you know. Murphy, Patricia Caples, these two
21 guys. What was going on with the crew?

22 I mean, you know, Greg Cousins never smelled
23 anything, no signs whatsoever.

24 Maureen Jones, nothing.

25 Bob Kagan, no signs of impairment.

1 Ladies and gentlemen, all I can say is I direct
2 you to instruction 6. This talks about how you can
3 interpret, or perceive a witness' testimony. And there
4 are a lot of things that you should look at in evaluating
5 someone's credibility. Among those, the witness'
6 attitude, behavior and appearance on the stand, and the
7 way the witness testifies.

8 You've got a good chance to watch how these
9 witnesses, one after one stepped down, gave their
10 respects to Captain Hazelwood and walked away, like it
11 was a very difficult thing for them to be doing in this
12 courtroom.

13 You've got an opportunity to see the accuracy of
14 their memory and how they were so sure about all the
15 events that happened up to the grounding, but gosh, when
16 it came time to tell you about what he was trying to do
17 after the grounding, Greg Cousins goes, "Geez, I don't
18 know what he was doing."

19 Maureen Jones goes, "Oh, I don't know what he
20 was doing."

21 So, they're sitting on the bridge for an hour
22 and half, or an hour, while he's giving commands. They
23 don't know what he's doing.

24 And Bob Kagan says, "Well, I don't know what he
25 was doing either."

1 And, you know what the best example of the
2 loyalty of this crew was? It's this point exactly.
3 Everyone of those witnesses, when I asked them, I said,
4 "Look, what was he trying to do?" "I don't know." "I
5 don't know."

6 "Well, isn't it true that you told this person,
7 this person and this person that he was trying to get it
8 off the reef and now you're saying you don't know?"

9 And they said yes.

10 Everyone of those crew members came in and
11 changed their mind and said in front of you, "Well, I
12 don't know what he was doing," or "I think he was trying
13 to get it off the reef." And the reason is because they
14 all knew that that was a dumb decision by Captain
15 Hazelwood to try to take that vessel off the reef.

16 Bob Kagan expressed that more than anybody. He
17 realized in talking, remember, I said, "Mr. Kagan, the
18 reason that you've come to this conclusion that he was
19 trying to get it off the reef is because you've talked
20 with people and they say nobody would have tried to get
21 it off the reef, so he couldn't have been trying to,
22 isn't that right?"

23 "Yes."

24 But, at the time when he gave his statements,
25 and before anybody knew the importance of it they were

1 all saying what everybody knew, and what they heard, and
2 what you've seen. He was trying to get it off the reef.

3 Motive not to tell the truth? How about having
4 to go back into the maritime industry knowing that you
5 have been a witness against a captain? How far do you
6 think that will get you in the maritime industry?

7 Pressures. Pressures put on by Exxon. Notice
8 all these people had attorneys. They're all talking with
9 Exxon attorneys. You see the presence of Exxon
10 throughout this trial. And you heard from Captain
11 Stalzer that Exxon has an interest in it. And it doesn't
12 take a brain surgeon to figure out what Exxon
13 Corporation's interest in this matter {is}. It's seeing
14 Captain Hazelwood get acquitted.

15 And it doesn't take anybody to figure out that
16 when Exxon's experts are coming in and testifying for the
17 defense, where Exxon stands in this, and the pressure
18 that they had to be putting on these crew members.

19 Ladies and gentlemen, each one of these
20 witnesses said there was nothing different with Captain
21 Hazelwood that evening. And what I would ask you to do
22 is when you go back in that jury room you take that tape,
23 that inbound tape, and you put it in and you listen to
24 it. And then you take the next tape, the outbound tape.
25 On the 23rd before 11:24, and listen to that tape. There

1 is a different person on that bridge. It's the same
2 Captain Hazelwood, but he's a different person. And you
3 can tell it just from listening to it.

4 And then you take, and you get the one at 9
5 o'clock and you put it in there. And then you take and
6 you put the one that says Captain Hazelwood's interview
7 at 1 o'clock with Trooper Fox, and you put it in there.

8 Everyone of those, ladies and gentlemen, you'll
9 see is different when the person who was operating that
10 vessel at 11:24 when he called the VTC center. And it's

11 It's a person who's obvious, precise, who makes mistakes, whose voice is
12 slow, makes one mistake after another.

13 But, the best evidence, ladies and gentlemen, of
14 Captain Hazelwood's intoxication is his judgment during
15 the course of this.

16 Leaving the bridge through the Narrows:
17 evidence of bad judgment.

18 Putting the vessel on autopilot in Prince
19 William Sound when confronting this: bad judgment.

20 Accelerating to sea speed: bad judgment.

21 Leaving the TSS zone without contacting the VTC:
22 bad judgment.

23 Leaving the bridge with Bob Kagan at the helm:
24 bad judgment.

25 Leaving the bridge with Greg Cousins the only

1 one up there: bad judgment.

2 Not coming to the bridge after Greg Cousins
3 called and said we may be running into the leading edge
4 of the ice: bad judgment.

5 Attempting to get the vessel off the reef: bad
6 judgment.

7 Now, one of the things you've got to remember
8 is, you say, "Well, what about the other physical signs
9 no crew member saw?"

10 You got to remember two things. First of all,
11 Captain Hazelwood -- this is a three hour trip that we're
12 talking about. They left at 9 o'clock. They're grounded
13 at right around 12:00. And he's down below where no one
14 can see him for an hour to an hour and a half of that,
15 closer to an hour and a half.

16 That's one of the reasons why people don't see
17 him. And that's one of the reasons why we don't have
18 more signs. Because Captain Hazelwood knew that he was
19 not in a condition to run that vessel and he did what Mr.
20 Burr said. In an attempt to mask -- in an attempt to
21 prevent people from seeing the signs, the clinical
22 manifestations of intoxication he chose to be absent.

23 And he chose to be absent in the two places that
24 it's the most critical. Sure, there's a couple more
25 critical places, but I can't think of too many. One of

1 them might be Hinchinbrook, and they didn't make it
2 there. The other might be in the Gulf of Alaska under
3 certain circumstances if the weather comes up. But, the
4 Narrows you're within a quarter mile of each and he's not
5 there. Poor judgment, ladies and gentlemen. All of it
6 a sign that Captain Hazelwood on March 23rd was impaired
7 by the use of alcohol that day.

8 In addition to that you have the evidence of
9 back calculation going from an .061 back to midnight.
10 You can't get around that .061 and you can't get around
11 the fact that he exercised bad judgment throughout this
12 vessel. And you can't get around the fact that he was
13 drinking in the bar before.

14 Now, in the last part of my argument I'd like to
15 focus on the risk, and what constitutes recklessness in
16 this matter. But, I'd like to talk for just a minute
17 about what we've learned about this industry.

18 Obviously there was a lot of information that
19 you received during the course of this trial that was not
20 really relevant to these particular counts. But, in
21 order for you to understand what was the industry
22 practice you had to understand the tanker industry,
23 itself. And that required learning about what the crew
24 members did, their qualifications and their licenses and
25 things like that, but, there are some areas that are

1 particularly important. And I'd like to talk about them
2 now.

3 The first thing that we learned is that every
4 tanker captain that came in here came in and told you
5 that the most important thing on his mind was safety:
6 the safety of his crew, the safety of his vessel, the
7 safety of his cargo.

8 And when we talk about safety and we talk about
9 risk and we talk about recklessness sometimes people get
10 a little bit confused about it. But, it's really -- the
11 concept of recklessness is really no different, though
12 it's maybe termed in legal words -- it's no different
13 than what your ordinary understanding of the word
14 reckless is.

15 What's the best example that comes to mind when
16 you think about a person being reckless? You think about
17 the young kid who's driving down the street in kind of a
18 souped up car and he's going through fast through traffic
19 and you reach out and you say, "You know, that's just
20 reckless. That guy is going through the lanes and he's
21 going to cause an accident." And that's no different
22 than the concept of reckless that we're talking about
23 here.

24 Another example, you're driving -- some of you
25 may drive back from Alyeska and I'm sure that you've

1 seen, after skiing, those people have got to pass 15 cars
2 that are all going home, not knowing who's coming the
3 other way.

4 Another example, you know, you say -- when that
5 person goes by you say, "God, that's just reckless. How
6 can that person do that when he doesn't know who's coming
7 around the corner. You're aware of the risk when you get
8 out of the passing lane and try and go somebody, and you
9 consciously disregard it because you go out there. And
10 it's a substantial and unjustifiable risk. The same
11 thing in this case.

12 A reckless person is generally a risk taker.
13 He's a person who's not safe. And it's important to
14 realize that safety and risk taking are kind of inversely
15 related. In other words, the more safe you are the less
16 risk is involved with what you do. However, the more
17 risky you are the less safe you become. That's a very
18 simple concept, but it's something you should remember
19 during your deliberations.

20 And in determining in this case what constitutes
21 a gross deviation from the standard of care as a
22 reasonable person, you need to think about the situation
23 that these people have placed themselves in, these tanker
24 captains.

25 You're dealing with more than just a ship

1 captain, okay? The person that we're talking about here,
2 we're dealing with a tanker captain. And that's
3 different than just a ship captain.

4 A tanker captain has the responsibility in this
5 case for at least 19 people, crew members on board. And
6 his decisions have a significant effect on their well
7 being.

8 The second thing is he differs, though, from
9 like a grain ship tanker captain, because let's say a
10 tanker captain is carrying grain grounds his vessel, he
11 feeds the ocean.

12 When a tanker captain, he grounds his vessel, he
13 spills oil wherever he goes.

14 The risks are much greater: the risk to our
15 environment, the risk to our wildlife, everything is much
16 greater. It's on an elevated plain.

17 In this case Captain Hazelwood's vessel was
18 carrying 1.2 million barrels of oil. There's no doubt
19 that the risk that's involved is that if you damage, or
20 ground your vessel you risk causing an environmental
21 catastrophe. Every tanker captain who came in here told
22 you that.

23 (Tape: C-3686)

24 (003)

25 So, what that means is when the risks go up,

1 ladies and gentlemen, your duty to exercise care, and to
2 be safe also goes up. And that just makes sense. And
3 the reason is because as you go up the potential
4 consequences of your actions, and of not being safe go
5 up.

6 And that's what we want, isn't it? I mean,
7 think about it. Think about it in these terms: we
8 demand high standards out of these tanker captains for a
9 reason, because they carry an ecological time bomb on
10 board. We demand the same thing out of the people that
11 carry hazardous wastes on our highways. We demand the
12 same high standard and level of care out of the people
13 that fly our airplanes armed with nuclear bombs. We
14 demand the same high standard of care from even the
15 commercial pilots that get on our airplanes and fly us to
16 places, because when we're dealing with those people the
17 consequences of them making mistakes, of their judgment
18 being effected by alcohol are significantly greater than
19 a person driving down the highway. And we demand a
20 higher standard of care.

21 And you saw that these tanker captains accept
22 that responsibility. You saw what type of conscientious,
23 good tanker captains that came in here: Captain Stalzer,
24 Captain Beevers, Captain MacKintire, salts of the sea.
25 Understood their responsibility and went by the line --

1 Captain Deppe. Even Captain Walker was always on the
2 bridge and put safety first.

3 But, it's important to remember that this is a
4 very high standard that we expect out of them. So, I
5 guess the next thing is -- well, before I even go into
6 that, I think that you should also remember that the
7 system that we have designed is devoted to creating and
8 fostering safety in this industry.

9 We've got a VTC Center to help them. We've got
10 one way traffic in the Narrows. We've got radar tracking
11 him all the time in the Narrows. We've got a speed limit
12 in the Narrows. We've got lanes out in Prince William
13 Sound. We provide them with a pilot who has special
14 knowledge of the area to help guide these tankers in and
15 out. We provide them with radio communications.

16 All of that designed for one reason: to promote
17 safety. It is done to avoid the risk that is inherent in
18 every trip that goes in and out of Prince William Sound.
19 Promotion of safety.

20 Now, in addition to that, the vessels,
21 themselves, are designed to promote safety. I mean, the
22 Exxon Valdez, you saw that it was a -- navigationally it
23 was a very good ship. It had rudder indicators, rate of
24 turn, gyro repeaters, fathometers, Nav-Sat systems,
25 Lorans. They had capability for celestial navigation,

1 dopplers, speed indicators. Everything was designed to
2 make the navigation of this vessel as safe as possible.
3 You had communication. You had an advanced steering
4 mechanism.

5 And what about the people that actually were on
6 the vessel?

7 You heard about the qualifications that were
8 necessary to even be an AB you had to be in the industry
9 for a long time, or you had to go -- or, for a third mate
10 you had to be in the industry a long time, or you had to
11 go to a maritime school. And then you had to get in so
12 much sea time, and then you could qualify for a second
13 mate. And then, after your licensed, to get your second
14 mate's license you have to qualify and go through other
15 courses and learn more things. You saw how long it took
16 for a lot of these people to get to the level of master.

17 And even once they made the level of master,
18 they're still sending them to steering schools, fire
19 fighting, things like that.

20 And what is the whole purpose?

21 The whole purpose is to be safe.

22 And why is that?

23 Because the consequences are so great if you're
24 not. If you're a risk taker, the consequences are just
25 too great.

1 The best insurance policy of the whole thing,
2 though, ladies and gentlemen, is a competent, sober
3 tanker captain. And that's the best insurance policy any
4 ship could have, because that man takes them in and out.
5 He's the one that directs them. He's the one on the
6 bridge. And it's through his experience that the safe
7 passage can occur. And that didn't happen in this case.

8 The second concept of risk that I would like you
9 to think about is that -- and which is important in this
10 case, because your initial reaction, I'm sure, is "Well,
11 Mr. Cole, that's nice, but if there's a risk with every
12 one of these guys, isn't that a problem? Every one of
13 these tankers -- there's a risk of it going aground,
14 perhaps spilling oil."

15 And that's true. But, that's why we create the
16 system that we did. This whole maritime industry is
17 nothing more than risk minimization. Every step is
18 designed to minimize the risks involved in this industry.

19 But, there's another concept that you need to
20 think about. And that is there are certain circumstances
21 where it's even more important that you be safe. And
22 that's what the circumstance was on March 23rd, 1989.

23 It was approaching ice that was laid out like
24 this. You'll see, it says, "Note E: During the calving
25 season Columbia Glacier deposits ice which drift into the

1 northern part of Prince William Sound. Mariners are
2 advised to exercise extreme caution," extreme caution,"
3 and report all ice sightings."

4 Pick up the bridge manual when you're in there.
5 Read about the bridge manual. In one of them it says,
6 "When you shall be on the bridge". 2.1.5. "The master
7 must be on the bridge whenever conditions present a
8 potential threat to the vessel, such as passing in the
9 vicinity of shoals, rocks, or other hazards which
10 represent any threat to the safe navigation."

11 How about less than a mile -- or a mile off
12 Busby shoals threat?

13 How about the red sector? Being in the red
14 sector? Being minutes away from the red sector?

15 These are the kind of situations, ladies and
16 gentlemen, when you're around ice, when you're around
17 land, that you have to exercise extreme caution. And
18 that was not done in this case.

19 Now, we've talked about the risk that's involved
20 when you drink before you do anything. And you were
21 asked -- a number of you were asked those questions.
22 Before you go to work do you drink?

23 You don't drink because it impairs your
24 judgment. It impairs your ability to do work. And
25 that's exactly what happened in here.

1 And by drinking in the bar that afternoon
2 Captain Hazelwood risked -- was aware of the risks and
3 chose to disregard the risk that alcohol would effect his
4 judgment that evening.

5 And by doing that, there was more risk involved
6 in his case, and his vessel was going to be less safe.
7 And I'm not going to go over and talk about all the
8 things that we talked about drinking, but you have to
9 remember that in this particular scenario we've got a
10 person that's going to work. And prior to it he's
11 drinking for at least 3-1/2 hours.

12 What did the masters say about that?

13 They all said that he was not -- they would not
14 drink.

15 Now, the second thing, leaving the bridge in the
16 Narrows. Like I said, ladies and gentlemen, there's only
17 a couple places that are important in this whole thing,
18 but one of them's Prince William Sound. But, even more
19 importantly there's the undocking process. There's going
20 through the Narrows. There's going through Hinchinbrook.
21 He didn't make it to Hinchinbrook and he missed one of
22 the -- going through the Narrows.

23 He risked the safety of his vessel. He risked
24 the fact that something might go wrong, that the other
25 people -- and that he would not be able to be there to

1 respond.

2 Who would be on the bridge, the tanker captains.
3 Captain Stalzer, Bob Beevers, Captain MacKintire, Captain
4 Walker said he was always on the bridge through the
5 Narrows. And Mr. Mihajlovic, Captain Hazelwood's friend
6 for 14 years said he was on the bridge all the time
7 except for once.

8 And why?

9 It's very simple. Because it's a dangerous
10 area. And danger means you exercise more caution. And
11 that's all that they're telling you.

12 But, Captain Hazelwood chose to disregard that
13 risk on this particular occasion. He chose to put the
14 safety of his vessel down below, not place it as his
15 first priority. And while doing so he showed you why he
16 was not functioning properly. His functions were not
17 proper that evening.

18 The next thing, somewhere after 12:45 this
19 vessel was placed on autopilot.

20 Now, you remember the testimony that Mr. Claar
21 steadied up on 180. And you can see it from the course
22 recorder. 12:45 -- 12:48, somewhere in there this vessel
23 was placed on automatic pilot. And it did not vary the
24 whole time until it turned. There isn't one piece of
25 variance. You can see somebody right here, making

1 changes back and forth. But this one, there's no
2 variance, none whatsoever.

3 Now, what did Captain Hazelwood risk by placing
4 that vessel in autopilot? He risked that someone would
5 forget that it's on if he left, and that it would not and
6 they would attempt to make maneuvers and that it wouldn't
7 occur, they wouldn't be able to, because you heard that
8 you can't turn the vessel. It doesn't turn when it's on
9 autopilot.

10 What tanker captains told you that they use
11 autopilot in Prince William Sound?

12 Captain Stalzer said he didn't. Captain Beevers
13 said he didn't. Captain Walker said he didn't. Captain
14 Mihajlovic said he may have used it once when he was
15 stowing the ladder. Captain MacKintire said he didn't.

16 There's a reason why all these people, these
17 captains come in here and say, "I don't use it." It's
18 because it's not safe. And you don't want it in gyro, or
19 automatic pilot when you're confronting these type of
20 situations. It's like putting your car on cruise control
21 when you're approaching an accident. You don't do it.

22 Accelerating to sea speed. Well, before we get
23 there, he left the traffic lane at about 11:51 and that's
24 when he left it entirely. Ladies and gentlemen, those
25 traffic lanes don't contain any rocks. Look at the

1 fathom markers. They're safe.

2 You stay in those traffic lanes just like you
3 stay on a road, in the lanes, and you're safe. Now, you
4 may have to slow down because of ice. And you may have
5 to maneuver around, but you don't run into land there,
6 when you're in the traffic lanes. You don't run into the
7 reefs. And if you're going to go out of them, if you're
8 going to leave a traffic lane, then you've got to be sure
9 of what you're doing, because it's more risky once you
10 get out of those traffic lanes. And they're a mile wide.

11 But, once you get out of them you start running
12 into land everywhere you go, so you've got to be even
13 more safe.

14 What's the risk? I guess the risk, according to
15 -- as it was so eloquently put, the reason to do this is
16 in an attempt not to lollygag around, as Captain Walker
17 said. The risk is that you will not have enough time to
18 recognize a problem ahead of you and take sufficient --
19 and be able to take sufficient action.

20 Think about it.

21 A vessel traveling at 12 knots, which is
22 approximately what the Exxon Valdez was traveling at this
23 time, travels at about .2 nautical miles per minute --.2
24 nautical miles per minute it will go a mile.

25 If it travels at six knots, or one half it will

1 take 10 minutes to do a mile. And in a minute it will
2 only go .1 mile.

3 If Captain Hazelwood had been traveling from the
4 1155 mark, which is abeam of Busby, if that vessel had
5 been traveling at six knots, rather than 12 at 12:01-1/2
6 when this vessel started to turn it would only have gone
7 half the distance. That would have been a margin of
8 safety that Greg Cousins could have used to get out of
9 this thing.

10 In addition, if it had gone 12 minutes, then
11 they would have been at the place down here. But, either
12 way, going at a slower rate of speed gives you more time
13 to take action. And that just makes sense. You're more
14 risky when you're going faster. And you're less safe.

15 And think about it in this situation. You're
16 driving down the highway, and up ahead you see a trooper
17 that's got his lights out. And there's an accident in
18 one of the lanes. And it's -- let's say it's a four lane
19 highway. You've got two lanes on your side and two on
20 the other. You don't accelerate coming to that accident,
21 ~~because you know that that's risky~~ get through it you
22 accelerate. But, you don't increase speed going into
23 that accident.

24 And that's exactly what Hazelwood was doing.
25 And that's what he risked. And by doing it, he was more

1 risky and less safe.

2 Leaving the bridge with Bob Kagan at the helm -
3 - what do we know about Mr. Kagan?

4 You saw him testify. You know that Captain
5 Stalzer was told, "Watch him carefully."

6 Captain Stalzer had a conversation with Captain
7 Joseph Hazelwood, and he said, "He needs close
8 supervision." Those were his words.

9 Captain Hazelwood was told that by Lloyd LeCain,
10 Bob Kagan's own mate.

11 He was told it by James Kunkel.

12 He was told it by all these people, ladies and
13 gentlemen. And by leaving the bridge he risked Bob Kagan
14 not being able to handle the circumstances that he was
15 put in. By not carefully making sure that the people on
16 the bridge were the people that should be there, he
17 risked the safety of this vessel.

18 And, you know, the sad thing is that Bob Kagan,
19 himself, told people that. Bob Kagan told Captain
20 Stalzer, "Look, I don't feel comfortable."

21 That's what Captain Stalzer said. "So, I gave
22 him practice."

23 Bob Kagan told Mr. LeCain he didn't feel
24 comfortable. He told everybody.

25 But, Captain Hazelwood didn't listen. And now

1 Captain Hazelwood comes in here through his attorneys and
2 blames Bob Kagan for this accident. After telling him he
3 did "a hell of a job, Bob," but now we find out that was
4 sarcasm.

5 Leaving the bridge with Mr. Cousins as the watch
6 officer -- ladies and gentlemen, this is a chart of what
7 Mr. Cousins did from 11:39 when he came up on the bridge
8 to the time Captain Hazelwood left the bridge. And it's
9 just like the one that he did before. But, these are the
10 things he did from 11:39 to 11:53 when the Captain left.

11 He went and took a fix. So, at 11:39 he was out
12 on the bridge. Then he went back to the starboard radar
13 to get a range. Went to the chart room to plot the fix.
14 Returned to the starboard radar. That's when the Captain
15 tells them they were going to divert the first time.

16 He goes to the window to look for ice. He then
17 goes to the bridge wing. He returns to the bridge.
18 Returns the binoculars. Goes to the starboard radar to
19 determine the range. Estimates it. Tells the captain
20 about the ice. Goes back to starboard radar to get a
21 range. Goes to the chart room, back to the radar. And
22 about that time Captain Hazelwood puts the vessel on to
23 accelerate to sea speed. Soon after that there's the
24 crew change. And he goes back to the starboard radar,

25 and then Captain Hazelwood leaves the bridge within about 13

1 minutes.

2 But, it's even greater between 11:53 and 12:11.
3 I mean, he leaves the bridge and he leaves Greg Cousins
4 there himself. It's almost as if this is a test. Look,
5 you've got all these things to do. Now I'm giving you 10
6 minutes to get out of it, because that's essentially when
7 he left Greg Cousins.

8 He said, "Mr. Cousins, you're here. When you
9 get to here, turn there. And you've got 10 minutes to do
10 it. I'll be back in a couple minutes."

11 He didn't tell him the track. He didn't tell
12 him a rate of turn. He didn't go to a chart. He didn't
13 do any of that, Captain Hazelwood didn't.

14 He pointed to something on a radar and said when
15 you get to about that point, turn and wind your way back
16 into the TSS lanes.

17 That's not an exercise of extreme caution,
18 ladies and gentlemen. That is an exercise of no caution.

19 That is someone who is not willing to accept the
20 responsibility.

21 And all we're talking about is a couple of
22 minutes he's got to stay up on the bridge. 30 minutes to
23 get through this problem that he's taken steps to avoid
24 in the first place. Two minutes to make sure that the
25 turn is executed. But, he can't even do that. He can't

1 wait around for two more minutes. He's got to go below
2 to do what? Paperwork? Paperwork for Captain Hazelwood
3 was more important than the safety of his vessel.

4 And that's why when he left Mr. Kagan, a person
5 of limited experience as a watch officer -- and it was in
6 violation of the Exxon policy regs. When he did that he
7 was more risky, less safe. No doubt about it.

8 There's been some talk during this trial that
9 these regs, these guidelines, the bridge organization
10 manual -- they're just guidelines. They don't have any
11 effect.

12 Well, ladies and gentlemen, I guarantee you that
13 if Captain Hazelwood had followed those regs he'd be in
14 here. And his attorneys would be putting them in front
15 of our desk every day saying he followed this, this, this
16 and this. But, he didn't. It was clear that he was
17 violating those regs when he left the bridge that day,
18 after placing -- after he was the one that placed his
19 ship in the position of peril, placing the Exxon Valdez
20 in peril and leaving the bridge.

21 Don't forget, ladies and gentlemen, that it was
22 Captain Hazelwood who decided to avoid the ice and take
23 an heading of 180 degrees, placing this vessel directly
24 in line with Bligh.

25 It was Captain Hazelwood who put it on

1 autopilot.

2 It was Captain Hazelwood who chose to accelerate
3 to sea speed.

4 It was Captain Hazelwood who chose to leave Bob
5 Kagan on the bridge at the helm.

6 It was Captain Hazelwood who chose to leave Greg
7 Cousins by himself. And Greg Cousins wasn't qualified to
8 be up there, and he didn't have any pilotage indorsement.
9 And I'm not going to spend any time on that, ladies and
10 gentlemen, because it's a moot issue. Y o u
11 know, we've heard a lot of evidence here about sound
12 pilotage and pilotage. But, the bottom line was and is,
13 the Exxon Valdez was a pilotage vessel. Captain
14 Hazelwood was required to be on the bridge at the con
15 throughout Prince William Sound as a pilotage vessel, and
16 not one tanker captain except for Captain Walker said
17 differently. And he said it was based on a letter that
18 he couldn't even explain why that letter changed the regs
19 for pilotage vessels.

20 The bottom line is Greg Cousins didn't have
21 pilotage. Captain Hazelwood did. They didn't have a
22 pilot on board, so Captain Hazelwood was required to be
23 there, and by law could not leave the bridge until they
24 were out of Prince William Sound.

25 But, finally, it's Captain Hazelwood who places

1 the vessel on autopilot.

2 It's Captain Hazelwood who leaves the bridge;
3 who leaves the TSS zone.

4 It's Captain Hazelwood who orders it to
5 accelerate.

6 And it's Captain Hazelwood who leaves.

7 And when he left, ladies and gentlemen, there
8 was more risk and he was less safe.

9 The concept of recklessness is not an absolute
10 thing. You just can't say one thing is recklessness.
11 When a person drinks and drives and hurts somebody in his
12 motor vehicle, you look at the totality of their actions
13 then. You look at whether they were speeding at the
14 time. You look at whether they went through a red light.
15 You look at whether they went through a stop sign. You
16 look at whether it was light out, it was easy to see.

17 And then you look at all those things and you
18 say, are these indications of impairment if a person is
19 disregarding these safety rules. And, that is how you
20 determine whether a person is reckless. It's not one
21 thing and it's not another.

22 But, in this case, ladies and gentlemen it's a
23 number of things. It's his drinking before departure.
24 He knew what the risk was, but he consciously disregarded
25 it by going ahead and drinking anyway. The risk was that

1 it would effect his judgment. And by doing so he was
2 less safe.

3 When he left the bridge in the Narrows he knew
4 what his risk was, but he was willing to take that risk.
5 He was willing to walk away from the bridge and leave his
6 vessel in the safety, and hands of other people.

7 When he left the traffic lanes he knew that that
8 was more risk than being in the traffic lanes. He knew
9 that and he consciously disregarded it and left. And by
10 doing so, he was less safe, particularly when you put it
11 in light of placing the vessel on autopilot, accelerating
12 to sea speed and placing the vessel in a position where
13 it's going to have Busby within a mile on your left, ice
14 within a shorter distance on your right. A red zone,
15 with Bligh straight in front of you.

16 He knew what the risks were and he consciously
17 disregarded those risks. And they were substantial,
18 ladies and gentlemen, because if you'll remember there
19 wasn't one tanker captain that came in here and said that
20 they would not be on the bridge during the hypothetical
21 that we gave to them. One person said he probably would
22 be on the bridge, but everyone else said, "I'm on the
23 bridge." And that goes to show that this was a gross
24 deviation in this particular case, ladies and gentlemen.
25 It was a gross deviation from the standard of care that

1 an ordinary prudent tanker captain would exercise under
2 the circumstances.

3 And for that reason, we'd ask (indiscernible -
4 away from mike).

5 Thank you.

6 THE COURT: We'll take our break, ladies and
7 gentlemen. Don't discuss this case in any way with any
8 other person, including among yourselves. Do not form or
9 express any opinion.

10 We'll take about a 15 minute break.

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

13 (1270)

14 (Off record - 10:15 a.m.)

15 (On record 10:35 a.m.)

16 (Jury present)

17 THE CLERK: This court now resumes its session.

18 THE COURT: You may be seated. Thank you.

19 Are you ready, Mr. Madson?

20 MR. MADSON: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 CLOSING ARGUMENT OF DEFENDANT

23 MR. MADSON: Well, at long last, ladies and
24 gentlemen, we're getting close. Bear with me.

25 You know this is the time for a trial attorney

1 -- it's either the time you dread the most, or the time
2 you kind of like the most. I guess it just depends on
3 your make up. Because it's a time where you've got a
4 captive audience, and you really hope and you -- if not
5 dream, at least, that there's something you're going to
6 say that's going to make a difference in the case.

7 It's also the time that you wish you look Paul
8 Newman, and had a voice like Walter Cronkite, and you
9 could argue like Billy Graham, or Martin Luther King.

10 But, like Captain Hazelwood, when he is on the
11 ship, the Exxon Valdez, you kind of -- what you see is
12 what you get. And that's the situation you're in here
13 today.

14 But, first of all, I want to, certainly on my
15 behalf and that of Captain Hazelwood and my co-counsel,
16 thank you for your attention during your trial. It's
17 been a very long trial. It's been a very detailed trial,
18 sometimes a very confusing trial.

19 You've seen papers floating around up here. And
20 you've seen people talk about things that you haven't
21 seen, documents, pictures that you have just got a
22 glimpse of, and you're soon going to have in there. Take
23 your time.

24 You've learned a lot about tanker operations.
25 You've learned a lot about Prince William Sound. Maybe

1 you're ready to take the pilotage indorsement exam. But,
2 the purpose of a final argument like this -- and it is
3 argued. There's a reason for that. It's because we,
4 either Mr. Cole, or myself, can take the evidence and
5 argue it in the light most favorable to our position.

6 But, I think it's important to go back to the
7 beginning here. Let's start over again, if you will, and
8 just take a few minutes.

9 At the very beginning there were opening
10 statements. Now, that's not evidence either, but that's
11 a time where you don't argue your case. You just say,
12 ladies and gentlemen, you don't know anything about this
13 case, except what you read in the papers, of course. And
14 you all said it isn't going to make any difference.

15 Okay. So, put that aside and we'll start fresh.
16 And we're going to prove that, as the State says, "Here's
17 what we're going to prove beyond a reasonable doubt."

18 Now, the defense made an opening statement, too.
19 Now, let's go back to that, just so we can start fresh
20 and get a proper perspective in this case.

21 The State's opening said they were going to
22 prove that Captain Hazelwood was reckless, drinking in
23 town, he was off the bridge in the Narrows, that he left
24 the bridge to unqualified people, that the autopilot was
25 on, and the load program up was on.

1 He also said we're going to prove intoxication
2 by experts. These are important things.

3 He also said we're going to prove reckless
4 endangerment that someone was actually -- there's a
5 substantial risk of serious physical injury, or death.

6 And, lastly, that he was going to prove that
7 Captain Hazelwood was negligent and caused the discharge
8 of oil.

9 On the other hand, we came to you and said, in
10 effect, there's a lot of things that went wrong out
11 there. A lot of things in hindsight could have been done
12 differently.

13 But, Captain Hazelwood isn't perfect. And he
14 made mistakes.

15 The key question is do those mistakes, errors,
16 or whatever you want to call them, on the part of him and
17 others, but only him, because he's the only one on trial
18 here -- were they the kind of mistake, the kind of error
19 in hindsight, again I remind you, in hindsight, that
20 rises to the level of a criminal offense?

21 As I said, there were two things that were going
22 to be important: the different between criminal
23 responsibility, civil fault or the state -- accident. He
24 said it was a maritime accident and accidents do not
25 happen, except in very rare cases by an act of God, a

1 tree limb falling on your car, or something, or lightning
2 striking. They don't happen without human error. We are
3 not perfect, none of us.

4 And that's the difference. And it's an
5 important -- we have to stress that over and over -- the
6 difference between accidents that are going to happen no
7 matter how we try, no matter what kind of technology we
8 have, no matter how many instruments are on the bridge of
9 a ship, it still comes down to people. And people aren't
10 perfect. And Captain Hazelwood isn't perfect.

11 We also said that alcohol did not play any role
12 in this.

13 Now, let's look at the evidence here, and first
14 of all, before we do that, though, I think we should take
15 a minute or two and, perhaps, just talk about some of the
16 legal aspects again. Mr. Cole did this and I'm not going
17 to elaborate on it.

18 We asked you to become maritime experts. That's
19 difficult enough.

20 And now we're going to ask you to become legal
21 experts. And it's a very, very difficult task for any
22 jury to know all this, to acquire that knowledge and
23 apply it in a short period of time when we spend days
24 arguing about things that we're not sure of, when the
25 court has ~~and shows~~ we expect you to resolve those.

1 The jury system is just the greatest thing in
2 the world, if it works. And it almost always does. And
3 when it does, there's nothing better, because it was 12
4 people that had never seen each other before, come from
5 different walks of life, different ages, different
6 everything. We put you together and you come up as one
7 mind. You put all this together and yet, you become one.
8 I think it works pretty good.

9 Now, first of all, I think it's appropriate to
10 mention that in Mr. Cole's opening remarks -- and I say
11 opening remarks, because he's going to talk to you again.
12 The way the rules work here, some of you have been on
13 criminal cases before and probably remember this. For
14 those of you who have not, I think it's important to note
15 that the prosecution gets to argue, I get to argue. And,
16 if they choose, they can save part of their argument
17 until later. And I feel very confident Mr. Cole's going
18 to do that.

19 The reason for that -- it may sound a little
20 unfair, why should the State get two bites of this apple
21 and I only get one?

22 The reason is because under the laws of fair
23 debate the State has to prove their case beyond a
24 reasonable doubt, so generally the rules are, say, well,
25 since you have this high burden of proof we'll let you

1 make these two arguments.

2 So I say that now just so you can understand,
3 perhaps, what's going to happen later.

4 But, Mr. Cole said Captain Hazelwood took a
5 risk.

6 We've all taken risks. Every day you get up you
7 start taking risks. You take a shower and step into the
8 bathtub you take a risk. When you drive to work, you do
9 everything. Everything's taking a risk.

10 Now, these are minor risks. Mr. Cole says
11 that's a major risk. He talked about Prince William
12 Sound and operating a ship, and drinking. Major, major
13 risk.

14 Well, the word he left out was substantial.
15 We'll talk a lot about that.

16 Let me just continue for a minute and talk a
17 minute, or two about the same thing Mr. Cole did, but
18 perhaps in a little different way. Not much, but at the
19 very least maybe a few minutes of our time will help you
20 understand what these different mental states are that
21 are required before a person can be convicted of a crime.

22 And we have to think about this for one second.
23 What is the difference between making a mistake, a civil
24 fault, if you will, an error, and a criminal offense.

25 The difference is really a pretty simple one

1 when it comes down to it. Think about it. The
2 legislature determined that the person's acts, conduct
3 and mental state together are so bad they deserve
4 punishment. That's the difference between the civil
5 standard and just pure negligence, and a crime and
6 punishment.

7 Somebody made that determination. And it isn't
8 one of just, "Well, he made a mistake." No. It's a
9 gross, serious mistake. So serious, the law says, you
10 can go to jail and pay fines for it.

11 There is a basic distinction. And I think you
12 have to keep that in mind at all times, because you're
13 going to hear over and over -- you already have, safety
14 of the ship, safety of the ship. You do this. You do
15 that.

16 Well, let's keep our eyes focuses on the issues
17 here, because oftentimes in a case where you don't have
18 the facts you talk emotion, talk around it. In this case
19 we're going to talk facts.

20 The criminal law is also divided into different
21 categories because of the seriousness of that mental
22 state and acts, or conduct.

23 Now, that makes sense. Obviously murder is a
24 far more serious offense than something like shoplifting.
25 You know, they're both crimes, and rightly so, but one's

1 far more serious. So, the legislature has divided it up
2 into what we call the mental state, what you do and why
3 you did it.

4 Mr. Cole talked about the most serious,
5 homicide. Of course, it's an intent to kill. Can you
6 think of anything worse than that? Intending to kill
7 someone and doing it. That's the ultimate. It goes
8 downward from there.

9 Intent to steal is the same thing. That's
10 showing what the person truly wanted to do. He wanted to
11 accomplish that result, which the law prohibits.

12 Then we get into -- knowingly doesn't apply
13 here. And Mr. Cole touched on that.

14 Let's just get right down to recklessly, and
15 criminal negligence, negligence and so forth.

16 Recklessly is the most important definition
17 you're going to hear in this case and you've heard it
18 over and over again. And I can only tell you, ladies and
19 gentlemen, that it's the one that you definitely have to
20 look at the closest. You've
21 heard it defined. You will have it defined in the jury
22 instructions.

23 But, it really means that being aware of, okay?
24 Aware of and consciously disregarding a substantial and
25 unjustifiable risk and the results will occur.

1 Now, there's some words in there -- we're going
2 to talk about that later, after we discuss the evidence
3 here. But, that requires, perhaps, some kind of a --
4 maybe an analogy. Analogies don't always work.
5 Sometimes they do, sometimes they don't. But, sometimes
6 they're also helpful.

7 An analogy for reckless. Mr. Cole gave you one.
8 I can give you one, too. I don't know if one's any
9 better than the other, but let's think about this for a
10 minute. You leave work and you drive home the same way
11 every day. You know that road very, very well. You know
12 as you come over the top of a hill there's a long grade,
13 and at the bottom of that hill there is a traffic light.
14 And you leave work and you want to get home fast. You're
15 in a hurry. And the streets are a little slippery, and
16 you know that light. You come over the hill and the
17 light is green. And you think to yourself, "If I step on
18 it I could make it, I think." But, there's a yellow
19 school bus sitting there, probably taking kids home from
20 school. And if the light does change that bus is more
21 than likely going to go out into the intersection and I
22 may hit it, with disastrous results.

23 Knowing this -- putting all this in your mind
24 you make a conscious decision. You say, "I'm going to
25 risk it. I'm going to take that chance."

1 Now, granted, if the result doesn't have to
2 happen. The school bus may not pull out, because the
3 driver may look around and see me, say, "My gosh," and
4 stop. He'll see me. I'll whiz right through. No
5 problem.

6 That's the risk.

7 Now, you might contrast that with a little
8 different one by being in the back seat and telling
9 somebody, "When you go over this hill be very careful
10 down here." Okay? You instruct someone to be careful,
11 and then tell the driver to be careful and all these
12 assurances. And, in spite of that, something happens.
13 The person you told didn't follow what you said.

14 Anyway, that's one example, for instance, of
15 what could be deemed reckless behavior.

16 And it is a serious thing. You think about it
17 for a while. That's asking an awful lot. It's requiring
18 an awful lot on the part of a person's mental state, what
19 he's doing that the law prohibits.

20 It's right up there when you can't say you
21 intended the result, because, in my analogy obviously,
22 the driver did not want to hurt anybody, or kill anybody.
23 But he sure took one heck of a risk.

24 That's what we're talking about here, except for
25 one charge. And oddly enough, the only charge that

1 involves the discharge of oil, the criminal mischief
2 charge, which has as high degree, or mental state
3 requirement doesn't say anything about spilling oil, not
4 one word. The only one that does is this negligent
5 discharge of oil statute. That's the only charge that
6 Captain Hazelwood faces here in this courtroom that has
7 anything to do with spilling oil. That
8 may sound strange, but we don't make up these laws,
9 folks. We've just got to deal with them.

10 So, for whatever reasons, that one simply says
11 that he had to act negligently. That's the lower
12 standard. That's the should have known. That's the
13 failure to perceive what could occur.

14 Now, you think about that, and the basic
15 difference between that and recklessness is a very
16 substantial, very important one. For recklessness the
17 State has to prove what Captain Hazelwood actually knew
18 and disregarded.

19 For negligence they have to prove what he should
20 have known and failed to perceive.

21 Now, that may sound confusing, and I'll put in
22 with you. It is. But, if you just take a few minutes
23 and think about it, keep that distinction in your mind at
24 all times -- and it will be written out in the
25 instructions, but in all honesty -- in all fairness,

1 these are confusing and you'll probably find them to be
2 so, but maybe that helps a little bit. Keep those two
3 things in mind at all times.

4 Recklessness requires the state to prove what he
5 knew, and what he consciously disregarded. What he knew,
6 when he knew it, what he did.

7 Negligence, what he should have known, what he
8 should have done, failure to perceive and one other
9 factor, that failure to exercise that due caution and
10 care must have been a proximate cause, or a substantial
11 cause of the result. We'll talk about that a little
12 later.

13 But, anyway, those are the basic distinctions
14 that we have.

15 Now, with regard to each crime that he's charged
16 with, let's take a minute, or two and see how these fit.

17 Okay. Criminal mischief in the second degree.
18 You've already heard about that, and I'm not going to
19 dwell on it. But, that has the recklessness. That's the
20 reckless element. They have to prove what he knew, and
21 it was a substantial and unjustifiable risk, and that he
22 consciously disregarded it. And this, again, when you go
23 out -- everything I say here, and everything Mr. Cole
24 says when we talk about proving it is beyond a reasonable
25 doubt. And we'll talk about that a little later.

1 But, that's number one. That's a tough hurdle
2 to get over right there. But, rightly so, because it's
3 a serious crime. This is the serious crime we're talking
4 about here, because of that high mental state. It may
5 sound, you know, when you talk about it -- criminal
6 mischief? What does that sound like? Sounds like a kid
7 went and threw a baseball through the neighbor's window,
8 or something, you know.

9 Well, that's, you know, mischief. That's
10 something we associate with just some kids playing, or
11 letting the air out of your tires. But, what makes it go
12 up to that very high level of criminal culpable, serious
13 crime?

14 Think about the rest of it. It's not only
15 reckless, which is high enough, but you have to show that
16 the risks -- damage to the property of another in the
17 amount of \$100,000 or more. Now, that's a lot of money.
18 That's not throwing a baseball through a window. We're
19 talking serious stuff here. \$100,000 or more.

20 Plus widely dangerous means. That's the means
21 you have to employ. You're required -- that's an element
22 of this, too.

23 All these are separate elements. And the
24 court's going to instruct you that you have to find
25 reasonable doubt on each and every -- you have to find

1 beyond a reasonable doubt to find him guilty. And it's
2 proven on each and every one of these elements. And
3 they're all spelled out for you. And that, of course, is
4 one of them, is widely dangerous means. We'll get into
5 that after a while.

6 But, that's how the mental state relates to a
7 specific charge here.

8 The next one is reckless endangerment. You've
9 heard a little bit about this, but not much.

10 First of all, it requires the same mental state,
11 recklessness. Nothing changes when you go to that charge
12 and consider it. Not one thing changes. He has to be
13 just as reckless in one as he does in the other.

14 The difference there, and it's a big difference
15 is that reckless endangerment requires a substantial risk
16 of death, or serious physical injury to a person. We're
17 not talking property. There's the distinction. Forget
18 the property, go to person. Everything else stays the
19 same, but you have to have this serious risk, substantial
20 risk of death, or serious physical injury.

21 The next one to talk about -- the mental state
22 isn't important here, but driving while intoxicated is
23 something you could all understand. That's just
24 something you know you're not supposed to do. You don't
25 have to do it recklessly, intentionally, or anything like

1 that. But, I think it's important that you put it in the
2 proper perspective in this case. Mr. Cole touched on
3 this and we're going to talk about it a little later, but
4 when I get to it in, hopefully, a few minutes.

5 We have to talk about one key word here, and
6 that's impairment. That's the key word. Impairment of
7 one's physical, or mental abilities. It has to adversely
8 effect what he does.

9 Now, Mr. Cole didn't mention those words in very
10 loud terms. Adversely effect. We'll talk about that
11 later. But, keep that in mind, because in this case
12 that's the only way they're going to be able to prove
13 Captain Hazelwood guilty of that charge is by actual
14 physical, or mental impairment. The State says, "We're
15 going to show it by experts." That's what they told you.
16 And we'll get to that and see if they did.

17 Negligent discharge of oil. Again, I told you
18 that that's a lowered mental state. But, they still have
19 to prove it beyond a reasonable doubt. And it still must
20 be a substantial factor. Negligence still has to be a
21 substantial factor in causing that result.

22 Well, that's the legal lecture. I hope it
23 helped. I'm not so sure I understand it myself,
24 sometimes. But, all we can do in a short period of time
25 is use what the courts have used for years, the

1 legislatures determine -- give you this material. And we
2 feel with every degree of confidence that you will
3 understand it. It takes some time, perhaps, some things
4 are a little more confusing than others. But, it's still
5 designed for people to use in deciding these very
6 important questions.

7 And these instructions, law, that you hear have
8 been kind of time tested. They've stood the test of
9 time. It's like the rules of evidence. You have these
10 rules for a very good reason. We eliminate some things
11 from your consideration because it just -- over the
12 centuries it's just decided that it's best. The things
13 that you hear in hear in court are the things that really
14 meet the test of good reliable evidence. And the same
15 thing on these instructions. They meet that test.

16 Now, let's look to the evidence, itself.

17 To do that I think we have to kind of recap.
18 Now Mr. Cole has put out some charts. I've got a few,
19 too. Not as many. Not as good, but hopefully they'll
20 help a little bit.

21 I don't have the bells and whistles and smoke
22 screen, though. And that's what you use when you don't
23 have the facts.

24 This is the facts.

25 Let's look at everything that happened, in a

1 very -- briefly, now, because we obviously don't have
2 time, nor the desire to go through everybody's testimony
3 again. But, let's start with basically what happened.

4 When Captain Hazelwood left the ship, when they
5 came into Valdez, he left about 11 o'clock, went to the
6 ALAMAR office and he made some phone calls and he went to
7 lunch. There was no alcohol consumed there at all. We
8 know that. We know there was no impairment at that time.
9 That's the starting point.

10 Next, we have lunch that finishes somewhere
11 around 1:30, maybe later. Now we get into one of the few
12 real factual disputes in this case. Mr. Cole said
13 Captain Hazelwood went into the Pipeline Club and began
14 drinking at 1:30 -- 1:40, something like that. And
15 stayed there until about 7 o'clock, drinking. And what's
16 that based on? The testimony of one single witness,
17 Jamie Delozier.

18 Remember? This was some time back, now, but
19 this is a critical area, because it may put into context
20 why certain things were done in this case, coming in in
21 kind of a jumbled up manner, but hopefully you understand
22 it.

23 She said, "I was there and I recognized him,
24 because of a picture in the paper." That was a couple
25 days later. "And I knew he was there that afternoon,"

1 although she was also there that evening.

2 But, she said she described him as a man in his
3 50s, about five foot nine, he weighed so much. Then she
4 said, "Yes. I am absolutely 100 percent sure that he was
5 there from around 1:30, or a little around 1:30 when she
6 got there until..." when she left much later -- 2:45, or
7 something like that.

8 She was absolutely 100 percent sure.

9 Now, how many people do you know that could be
10 100 percent sure of anything? And the more you question
11 Ms. Delozier, the more sure she was, until it was 100
12 percent. No question about it.

13 Well, how did she identify Captain Hazelwood
14 here? Mr. Cole hands her a picture, and says, "This is
15 a picture of Captain Hazelwood. Is this the picture you
16 saw?" "Yeah.

17 "Now do you see Captain Hazelwood?"

18 Well, lo and behold, she did. Can you imagine
19 that? It's just everyone fell over in a state of actual
20 shock that she could identify him after looking at his
21 newspaper picture.

22 The important thing there is that even if the
23 identification is okay -- even if, we proved the
24 testimony of Emily Kaiser that Captain Hazelwood was
25 absolutely, positively in her shop at two minutes after

1 2:00 that same day. Two minutes after 2:00.

2 How do we do that? She said, "I thought he was
3 there between 2:00 and 3 o'clock. He bought flowers to
4 send back to Long Island."

5 She wasn't absolutely sure until she looked and
6 got her phone records. And there's the transaction --
7 that's in evidence -- at that time, of the call she made
8 to the florist in Long Island, because obviously when you
9 send flowers by wire there's a call. You order them that
10 way. You order them by telephone. And there it was
11 documented, logged in.

12 What does that show? Absolutely, positively
13 Jamie Delozier did not tell it the way it was.

14 But giving her the benefit of the doubt she may
15 very likely have had him confused either with someone
16 else, or the time. When she was there later that night,
17 maybe she saw him then, got it twisted in her mind
18 somehow, but you just know there was absolutely no
19 question about it. And this is the nice thing about
20 things like telephone records. Otherwise you have two
21 people saying two contradicting things. But,
22 that record just does it all. It makes it abundantly
23 clear.

24 So, what does this do? What's the effect of
25 that? The effect is you eliminate two of these

1 mysterious drinks that the State says Captain Hazelwood
2 has.

3 Everyone else -- we'll get the little people in
4 -- Jerzy Glowacki comes and says (indiscernible - away
5 from mike) walked around for a while. And he was the
6 first one to get in the Pipeline Club at around 4
7 o'clock.

8 Jerzy Glowacki says, "Captain Hazelwood arrived
9 next, somewhere between that time and 4:30."

10 That's uncontroverted evidence, ladies and
11 gentlemen. There's no question about that. He has not
12 -- I might remind you, the State of Alaska called these
13 people called these people to prove their case. Their
14 case. They called them to say we're going to prove it
15 in opening statement, "Here's how we're going to do it."

16 Except for these last three people they called
17 everyone of them as their witnesses, to prove their case.
18 And now they turn around and say, in essence, don't
19 believe them. Don't believe them.

20 So, going on, the next thing that happens is
21 that Mr. Robertson, the radio operator shows up. And,
22 yes, they admit, and there's no question about -- again,
23 there is no dispute, that they drank in that club. And
24 Captain Hazelwood may have had as many as three drinks in
25 that time.

1 The State says, "What are they doing there?
2 They're sitting there drinking."

3 Is there a scrap of evidence that says anything
4 about how much somebody has to drink because you're there
5 socializing, and talking with your friends? Are you
6 going to drink more in that situation? How is it just as
7 consistent with three drinks? Three and two drinks? Of
8 course it is.

9 Lo and behold they went to the pizza palace.
10 And he said, "What do they do there? They went and had
11 something else to drink?"

12 Why did they?

13 Well, they went in there and the place was
14 crowded. All they wanted was a pizza, so they went next
15 door. It was the only place to wait for a pizza. So,
16 they had maybe another drink. Maybe. But that's one
17 more. Okay? Four at the most.

18 So, they head back to the ship now. Now, that
19 takes a little time. Somewhere around 8 o'clock -- 7:30
20 -- took a while to pick up somebody else and get to the
21 ship.

22 We know that about 24 minutes after 8 o'clock,
23 is when they arrived. We know that through testimony of
24 Mr. Patrick Kiesler (ph). He logged them in. He was one
25 of the Alyeska guards, along with Michael Craig.

1 Now, think back to their testimony, ladies and
2 gentlemen. What did they say? "Not impaired." That's
3 what they said. "He was not impaired in the slightest."
4 And they certainly were used to seeing people that were
5 impaired. But, not at all. No signs.

6 Now, there's something else that's important
7 there. You haven't had a chance to re-examine this yet,
8 but you will shortly. It's an exhibit here. This
9 happens to be B-2. BZ-2. It's a gangway that goes out
10 of the ship on the Exxon Valdez. It's the way you get
11 there from the shore.

12 Now, it's obviously too far away for you to see,
13 but when you do get a chance to look at these look at
14 them closely and you conclude, if you will, that this is
15 the probably the toughest sobriety test you're ever going
16 to see. And that's going to tie in with, later, the
17 testimony you heard from the experts that Mr. Cole is
18 relying on to say Captain Hazelwood must have been
19 impaired.

20 Well, at the time he was going on this gangway,
21 at that time under the State's scenario -- under their
22 belief of how the evidence should be viewed here, Captain
23 Hazelwood would have had to have been dragged up there by
24 his collar. He would have been so high up that blood
25 alcohol level he would be virtually incapable of doing

1 anything, let alone walk up this thing and down it.

2 And what are -- and, again, I agree with Mr.
3 Cole on this, is that recollection of testimony is a -
4 - we can be mistaken. I mean, it comes right down to
5 that.

6 I recall Maureen Jones testifying that she saw
7 Captain Hazelwood arrive carrying an attaché case. If
8 the testimony supports that and your recollection of that
9 is correct then we have one other factor in there. He
10 did real well with one hand going up this ladder.

11 In any event, he's back on the ship and we have
12 Pilot Murphy, Captain William Murphy. What does he say?

13 Everyone of these witnesses -- the State's
14 witnesses were asked these questions. Mr. Murphy doesn't
15 work for Exxon, and certainly the gentlemen down here
16 don't. And a number of other people don't.

17 What do they say? In one solid, uniform voice
18 they say, "Not impaired." The State's going to have you
19 disregard 21 people and say he was guilty of being
20 intoxicated.

21 Now that is absurd.

22 Pilot Murphy said, "I smelled alcohol, and
23 that's all."

24 Pat Caples. Mr. Cole said -- the only person on
25 this list, by the way, -- and she doesn't work for Exxon

1 either. The only person on this list that he says
2 Captain Hazelwood showed signs of impairment.

3 What did she really say? She was asked was
4 there any slipping or stumbling. She said, well, I saw
5 him hesitate slightly going to the door, or something.

6 The question was, "Did you attribute that at all
7 to consumption of alcohol?"

8 Her answer was, "No." She did not.

9 She attributed nothing to the consumption of
10 alcohol.

11 He had watery eyes. Could that be just as
12 likely from being outside in the weather coming up there?
13 Of course. She acknowledged that.

14 Not one person said he did anything that they
15 saw, noticed, or anything else as impairment.

16 The State says, "Well, disregard that. We'll
17 get to judgment. We'll talk about judgment." Even
18 though nobody can see this, nobody saw anything at all,
19 it's got to be judgment that's important here.

20 Well, going on, after Captain Murphy is there
21 Captain Hazelwood assists in the undocking process. You
22 heard about that. Captain Murphy said he went through
23 the routine with no problems. Everything was fine.

24 "Did Captain Hazelwood act like he was in
25 command?"

1 "Yes, he did."

2 Now, Maureen Jones sees him at that time, too.
3 Again, not impaired.

4 Then he's seen by the chief mate, Mr. Kunkel,
5 James Kunkel, not impaired.

6 Now, it isn't like Captain Hazelwood was hiding
7 behind something. He's there talking to people and
8 undocking the ship. He's giving orders. He's giving all
9 these things. Not impaired.

10 Everything went routine. The ship left dock
11 about 9:51 -- 9:50, something like that anyway.

12 The Captain went below during part of the
13 transit through the Narrows. We'll talk about that
14 later.

15 He returns to the bridge, but what's important
16 in this time chronology that we're doing here is to show
17 you this, that when he returned to the bridge was there
18 any change in him at all?

19 Captain Murphy once again says he saw absolutely
20 no signs of impairment. He discussed the maneuvers of
21 the getting off the ship with Captain Hazelwood. He
22 discussed the course. Did all this stuff. Talked to
23 him, could hear him and see him. He was standing right
24 there. Not impaired.

25 Greg Cousins said the same thing.

1 I know I sound like a broken record here, but
2 it's so important to express, how 21 people could come
3 into this court and say he wasn't impaired, and the State
4 can raise this absurd notion that he was.

5 Then, after Captain Murphy is off the ship, then
6 certain other things happen, but the times get somewhat
7 important here. Some are critical, some are not.

8 So, Captain Hazelwood then calls the Vessel
9 Control Center and tells them what his intentions were.
10 What did they really say? The Coast Guard people say
11 about that? What did they really want to know? Well,
12 what your intentions were. It's not written down here,
13 "Are you doing this exactly right?" We want to know what
14 your intentions are.

15 I'm going to talk about the Coast Guard a little
16 later, too.

17 But, that's what he did. He said, "Here's my
18 intention. I'm going to go around the ice. I'm going to
19 deviate, and I'm going to end up back in the other lane."

20 That kind of shows that you have to get out of
21 the lane if you're going to end up back in it. But,
22 anyway, that's not too important.

23 He decides -- Captain Hazelwood decides to not
24 go through the ice, but to go around it. You're going to
25 hear a lot about this in a little while, too.

1 At between 11:45 and 11:50 Captain Hazelwood and
2 Greg Cousins discussed the situation, and discuss what's
3 going to be done. They go over the ice conditions
4 report, look at the radar together. And the radar is
5 like a chart, ladies and gentlemen, you look at it and it
6 shows just what a chart will show in a different context.
7 You see landforms. You see exactly where you are. And
8 you see ice. Maybe not the full extent of it, because,
9 as you heard, it's somewhat difficult to pick up.

10 But, as is also in evidence, there's a law that
11 the Congress of the United States passed some time ago
12 that says when a ship captain encounters ice, on a U.S.
13 vessel, he must either slow down, or go around it. And
14 Congress thought that was important enough to pass a law
15 about. It makes sense, doesn't it? Do one, or the
16 other.

17 But, the important fact is, you don't have to do
18 one as opposed to the other. The captain is given the
19 discretion of doing either one. Whatever in his judgment
20 is best. One isn't necessarily better than the other.

21 He chose the course in his mind to go around,
22 talked to Cousins about it. They discussed. Gregory
23 Cousins said something really important. And I want to
24 bring that up right now, because sometimes we forget
25 these things.

1 And Gregory Cousins said I just don't blindly
2 follow orders. I'm part of this operation and I discuss
3 it. If I don't feel right about it, if I think
4 something's wrong about it, he said, I certainly would
5 have told the captain. Of course he would. He's just
6 not there taking orders like -- maybe just a private in
7 the army when the general's ordered him to clean the
8 latrine, or something. He had a part to play in running
9 this ship. And he says, "Yes. I understand what you
10 want to do, Captain. Yes. It sounds good to me. And,
11 yes. I am comfortable with doing this." H e
12 assured Captain Hazelwood he was comfortable doing this.

13 What did Captain Hazelwood know?

14 He knew Gregory Cousins was comfortable doing
15 this.

16 The State also made the thing about at 11:50
17 putting this thing on gyro, or automatic pilot. We'll
18 talk about that a little later.

19 11:53, or so, it was off.

20 Mr. Cole, in his opening statement told you it
21 was off. He said, "Yes. The (indiscernible - away from
22 mike) was on. And then, the testimony will be that it
23 was off." So, it's on for just this three or four
24 minutes.

25 The captain does leave the bridge. You heard

1 that there's only one place in the entire world where
2 there's any law, or regulation that requires the captain
3 to be on the bridge. And it wasn't a state law, ladies
4 and gentlemen. It wasn't a state regulation. It was a
5 federal Coast Guard regulation that says, "The only time
6 a captain is required to be on the bridge is in the
7 Panama Canal." Nowhere else.

8 They would have you say that this is some
9 horrendous thing he did by leaving the bridge, when the
10 people that are really in control of this situation, the
11 ones who seem to know -- are supposed to know the best of
12 how tankers should be operated make no such requirement.

13 Cousins is comfortable with doing what he's
14 doing up there. And why shouldn't he be?

15 He, then, looks, gets his fix. Real simple to
16 do. We'll talk about that later. But, he takes the fix
17 and then he tells Kagan to turn 10 degrees right rudder.

18 We know that order wasn't carried out. That's
19 a given thing.

20 But, just going through this time sequence the
21 captain, then, comes back on board as soon as the vessel
22 -- in fact, Cousins was on the phone to him at the time.
23 "Captain, I think we have a serious problem here. I
24 think we're in serious trouble." Crunch.

25 But, going back a little bit -- in case I forget

1 again, going back a little bit, between these intervening
2 times Cousins called the Captain and says, "We're
3 starting our maneuver."

4 What does Captain Hazelwood know? The ship is
5 starting to turn. That's what he knows.

6 "What's the ice condition? How do you view the
7 ice up there?"

8 He said, "Well, I think we're going to get back
9 into the leading edge."

10 And here's what Mr. Cole did not tell you.
11 What's the next part of that statement?

12 Captain Hazelwood asked him, "Do you think that
13 will be a problem?"

14 Greg Cousins said, "No. It won't be a problem."

15 What did Captain Hazelwood know? The ice won't
16 be a problem. The ship is turning.

17 After Captain Hazelwood came up on the bridge at
18 approximately 12:09 -- about nine minutes after -- little
19 variance in the testimony on when it actually happened,
20 but assume for the sake of argument it's about that time.
21 Again, no impairment.

22 What did he do? He was calm, cool and collected
23 under the circumstances.

24 Jim Kunkel, the first mate, who actually has a
25 master's license, who's qualified to operate that vessel

1 just as much as Captain Hazelwood, he was shook. He was
2 shook. He was really shook. What did he say? The
3 Captain calmed the situation down.

4 And he did certain things after that. He told
5 the engine room -- he told Glowacki to do certain things.
6 Sound the engine room void spaces, report. How about the
7 engine, will that run?

8 We'll talk about this later, but basically he
9 tells Kunkel, "Give me some options. What are we going
10 to do? Can we get off? Are we stable? What's our
11 situation?" And he's doing this at a very traumatic time
12 of his life.

13 Now, the question -- and this is going to be
14 important -- I guess everything's important, but one
15 thing is going to be a little bit confusing to discuss
16 right now, but I'm going to say it and probably come back
17 to it, but the court is going to instruct you on certain
18 things about the grounding and what occurred after the
19 grounding, and what you can consider. It's a little bit
20 confusing, because there's two different times involved
21 here.

22 The court will give you a specific instruction
23 that says after the ship is aground on Bligh Reef you may
24 not consider Captain Hazelwood's actions as bearing on
25 the question of recklessness or negligence for a simple

1 reason.

2 The reason is there was no risk involved after
3 that point. That's a matter of law. There's no dispute.
4 There's no dispute on some of these. The jury shouldn't
5 have to consider it. And there's no dispute that there
6 was no risk because the ship could not move. You've
7 heard that over and over and over again.

8 Now, the State's going to say Captain Hazelwood
9 didn't know that and show that he was intoxicated because
10 he was trying to do these things.

11 Okay. That's recklessness. You can not
12 consider -- once that vessel gets 12:09 -- 12:07 --
13 whatever time you want to place on it, that ends the
14 question of recklessness right there because a risk can
15 not be a hypothetical one. It can't be something to
16 speculate about. It has to be real, not imaginary. And
17 it has to be substantial.

18 What in the world is substantial? Maybe that's
19 a good time to talk about this right now.

20 Nobody knows. You can't really define it,
21 except, what does the word mean to people like
22 yourselves, that have used English, probably all your
23 lives.

24 Substantial means a lot, any way you look at it.
25 It means a lot, large, great, considerable.

1 I suppose it depends on the situation, also.
2 What is a substantial risk? If there were ten revolvers
3 on the table in front of you, only one of which was
4 loaded and I get angry and I grab one of them, not
5 knowing which is loaded and which isn't -- I grab it and
6 point it at the judge -- maybe I better use another
7 example, maybe Mr. Cole -- and pull the trigger, that's
8 a substantial risk, ladies and gentlemen. Because of the
9 dangerous consequences of what could happen.

10 Probably if there were a hundred revolvers there
11 it's still a substantial risk, because the risk of what
12 could result is so great that society simply will not say
13 that that's appropriate. So, that's substantial.

14 What's in between you don't know, and you can't
15 define it. It would be virtually impossible to put a
16 definition on that word that could possibly cover every
17 single event that you want to think about.

18 You could go from that extreme down to others
19 where -- perhaps property is at risk. Is that a
20 substantial risk because it's property, and not a life?

21 Yeah. You can look at all kinds of examples.
22 In the final analysis you decide what substantial is, and
23 that's very risky. It's probably the most important
24 decision you'd ever make in your life if you judge the
25 actions of a captain of a tanker by your version of

1 what's substantial.

2 I'm not saying you can't do it. You're going to
3 be called upon to do it. And that's a heavy, heavy
4 responsibility and you must decide whether or not the
5 vessel was a mile away from Busby Island, two miles from
6 Bligh Reef, that can turn in a very short period of time
7 with five degrees rudder, four degrees rudder it would
8 have easily missed that reef if a simple command was
9 carried out, whether that risk when the decision was made
10 was a substantial one. That's really what it's going to
11 come down to.

12 Anyway, going on a little bit there's a gap in
13 time here. There's a gap because Captain Hazelwood,
14 then, also called the Coast Guard and says, "Yeah, we're
15 aground." And that, maybe does not sound like a happy
16 camper when you hear that.

17 Can you imagine the absolute feeling that must
18 go through someone's mind in that event? The total
19 helplessness of what has occurred and you can't do
20 anything about it. You do the best you can and you try
21 to make sure that things get done, people are safe, but
22 it's a totally helpless feeling.

23 What he did were the right things.

24 The Coast Guard eventually arrives. You've
25 heard a lot of testimony about what happened. And, this

1 might be of some interest. Mark Delozier was the Coast
2 Guard investigator. He got the call shortly after the
3 grounding. Commander McCall, or someone -- the Coast
4 Guard called him at his home. Earlier, he had been at
5 the Pipeline Club. And lo, and behold, he had been
6 drinking there. He said two beers.

7 He's not a problem here, so that isn't an issue,
8 whether he had two, or six. The fact is, he was drinking
9 when he went on duty a short time later, just a very
10 short time later. He left about 11 o'clock. Less than
11 two hours later he's on his way to the ship, after he had
12 been drinking.

13 Now, argue all you want that he didn't know this
14 was going to happen. Of course, he didn't. But, he also
15 told you, "I'm on duty all the time. I'm the
16 investigator. If anything happens, bingo! I'm the one
17 that goes out there."

18 So, he was aware of the risk. And he
19 disregarded that risk that alcohol might effect his
20 judgment.

21 Whether it's the same degree, or not, that's up
22 to you. Whether it has any bearing on this case is up to
23 you. I point it out just to show you that sometimes we
24 can get into some real ridiculous situations here. And
25 I'll even zero in on one person's actions, what we

1 (indiscernible - away from mike) commonly acceptable
2 human behavior on the part of somebody else.

3 Now, there was a lot of talk about what happened
4 on the ship afterwards. But, remember these things.
5 These people (indiscernible - away from mike)
6 Falkenstein, Fox and Delozier all said he wasn't
7 impaired.

8 The Coast Guard people said we had the power and
9 the authority at that time, when they came on the ship,
10 even smelling what they thought was alcohol, they had the
11 power and the authority to remove the captain. And they
12 wanted to get a blood test. It took a long time to do
13 that. What value that has as evidence in this case is
14 open to speculation and conjecture and wonder.

15 But, I think the testimony was Trooper Fox
16 showed up thinking he had a raving maniac of a drunk on
17 board. That wasn't the case. He said, "I saw nothing."
18 He said the captain was in his quarters. He was there
19 for some time by himself. He thought he was sleeping.
20 But, he wasn't impaired.

21 The Coast Guard said they didn't take him in for
22 a breath test. They didn't remove him. They didn't tell
23 him what they're going to do. They didn't do any of
24 these things because, as Falkenstein said, "That man
25 knows the ship better than anybody else. We want him

1 here to be in charge and command, to make sure that the
2 stability of this vessel remains the same, that no one
3 else is injured. We want him here."

4 Now, does that sound like anybody who's
5 impaired?

6 Do you think anyone would allow anyone whose
7 faculties are so adversely effected by alcohol that
8 they'd want the captain to remain in charge?

9 Absolute nonsense.

10 Now, we get to something else at this point. We
11 have a blood test which I agree with Mr. Cole. That
12 number is there. We are not saying, however, that that
13 number means anything except what it stands for, that at
14 that time it was that result. We'll talk about that
15 later, too.

16 But, just to make sure we set some things at
17 rest, yeah. The number is there, some hours and hours
18 and hours later.

19 Now, something else you should keep in mind,
20 perhaps at this time, because we're going to talk about
21 expert testimony here in a minute was Lieutenant
22 Commander Falkenstein gave an opinion based on a federal
23 statute, again, that says something about pilotage.
24 You're going to get that too. And it talks about
25 direction and control.

1 Falkenstein said that in his opinion the person
2 who has the pilotage should have the con, in his opinion.

3 He's a Coast Guard officer, but he was not a
4 legal expert. So, he was giving an opinion as what we
5 call "lay people", as anybody else, because it's an
6 interpretation of what the law means, is what he did.
7 He's no legal scholar. He didn't write that statute.
8 His opinion is worth nothing more than mine, Mr. Cole's
9 or any of yours. And I think he's supposed to bear up to
10 understand that. Just because somebody has a uniform
11 here does not make them a legal expert on the
12 interpretation given a statute by the Congress of the
13 United States.

14 He can interpret it one way. If Congress wanted
15 to make it clearer, they had every opportunity to say a
16 person must be on the bridge, a person must have the con.
17 They did not do that. And that's why we brought in all
18 this testimony about what that really means. What's
19 direction and control? What's this pilotage stuff?

20 That leads us into what we call the war of the
21 experts. Now, getting back, these people, of course,
22 were not experts. That's what we call the fact
23 witnesses, or the ones who simply were there. They saw
24 They heard. They observed. And that's what they said,
25 not impaired.

1 The experts leads us into another field
2 altogether. There's a difference between people who can
3 testify about what they've seen and what they heard and
4 what they did, and experts.

5 The difference is an expert is allowed to give
6 you opinions that a law person, or a fact witness can
7 not.

8 And, if you think about it, it's very helpful in
9 many situations. And this is a classic example, because
10 we're talking about technical operation of a large ocean
11 going vessel, how things are done, what does this mean,
12 how does that work. These people have to be able to tell
13 you here's what's commonly accepted, here's how I do
14 things, here's how the industry does things, here's what
15 this machine, or this instrument does, and give you
16 opinions, because it helps you as a fact finder to
17 understand exactly what's at stake here.

18 Now, the first witness you heard, that was Mr.
19 -- for the State, again. I'm going to kind of take them
20 almost in order, if I can -- Mr. Greiner. He testified
21 a long time. And at the risk of oversimplification --
22 here I am creating a risk -- but, at that risk -- and
23 I'll take that risk -- Mr. Greiner said really nothing
24 more than there was a two hit theory.

25 He said he viewed the ship when he was down in

1 San Diego. And in his opinion there was a first striking
2 and a second striking. There's no dispute about that.
3 That occurred.

4 That's Mr. Greiner's testimony. It hit twice.

5 Where he was perhaps mistaken, and where the
6 others have some conflict is when and how that striking
7 occurred, how far apart they were. Now, Mr. Greiner said
8 they were some two minutes, or so apart. And he had the
9 ship farther back, because he assumed the grounding took
10 place at an earlier time. But, by doing that, he starts
11 with that conclusion, goes backwards, and then says the
12 ship must have been here, which oddly enough places it on
13 what could have been a reef, caused the first strike.
14 Okay?

15 And he said, well, for whatever that purpose
16 that had, apparently it was to show that maybe Captain
17 Hazelwood must have known there was an earlier strike and
18 he couldn't back up, and explain why he never put the
19 engines in reverse, because there was this first strike,
20 and then the second one. That's when he said, I can't go
21 backwards, because I've already hit.

22 (Tape: C-3687)

23 (003)

24 However, the fact witnesses don't support that.
25 They say we heard this initial, kind of vibration,

1 scraping sound. It continued for a while and stopped.
2 Not one, and then another.

3 And, in fact, the State's own experts agreed
4 that in all probability the crew would never have noticed
5 that first striking that kind of tunnelled along the
6 midship section of the vessel.

7 That may sound strange when you look at pictures
8 of damage to this ship. But, think about the cargo
9 loaded it had, the size of the vessel, things like this.
10 And it starts to make sense that in actuality they could
11 not feel something like that.

12 So, all it proves from Mr. Greiner's testimony
13 is that there was two hits.

14 Then we have Mr. Beevers. Captain Beevers said
15 he never really testified in court before. He's done
16 some small consulting on the side. He's done an hour
17 here, a day here, and a day there. But, primarily what
18 he does, he's a contractor and he makes cement sidewalks
19 and things of this nature. And he got \$30,000 to come in
20 here and to a critique, a critique of Captain Hazelwood.

21 And, according to Captain Beevers, Captain
22 Hazelwood didn't do anything right. He didn't do a darn
23 thing right. He risked everything from the time he left
24 the vessel -- from the time after striking the reef.
25 Everything single thing.

1 He, apparently -- well, let's put it this way,
2 from his testimony, if there's any question about how a
3 tanker should be run I guess you leave it to Beevers. I
4 couldn't resist that.

5 Anyway, you don't leave it to Captain Beevers.
6 Leave it to Mr. Cole. He'll tell you how a vessel should
7 be run. "I will bring in captains -- we'll bring in some
8 captains that say, 'well, that's what they would have
9 done.'" "Here's what I would have done. This is wrong.
10 That's wrong."

11 Where do you draw the line here folks? Do you
12 bring in every single captain -- everyone who's ever been
13 in Prince William Sound and let's take a majority vote,
14 shall we? Raise your hands if you were on the bridge.
15 Raise the hands if the pilot ever left the bridge. Raise
16 your hand this."

17 That's the problem with a case like this. And,
18 again, that's the problem with experts. Because they can
19 have different opinions. And the reason is it's all
20 based on the luxury that Captain Hazelwood did not have.
21 He did not enjoy the luxury of hindsight.

22 Captain Milwee also testified. He was the
23 salvage expert.

24 Again, at the risk of oversimplifying, maybe
25 leaving some things out, because he testified at great

1 length. But, one thing he did say was that the captain
2 of a ship can't be expected to have the same amount of
3 knowledge and expertise as someone in his position,
4 because he salvages ships. He knows what to do, as an
5 expert, once a ship is aground. Captains of vessels
6 don't have that experience, because many are the times
7 they don't go aground. They're not supposed to. So,
8 they don't have a chance to use that, or develop and
9 expertise in what to do after.

10 So, Captain Hazelwood is then put in the
11 position of being judged by Captain Milwee, who's an
12 expert in what to do afterwards. And what Milwee did is
13 he gave Captain Hazelwood an exam. He said, I'm going to
14 test you even though you're never required to take the
15 course. And even though you had a number of different
16 materials, I would require you to take only the stuff
17 that I print and ignore what other people print as to
18 whether soundings should be taken first, last, or
19 somewhere in between.

20 So, he gives him a test that he never was
21 required to take -- for a course he was never required to
22 take, with books that he never knew he had to use, and he
23 could not use some other ones in Mr. Milwee's opinion,
24 because he doesn't rely on those. Only his.

25 And, then, what does he do? He passes some 13

1 to 15 examples, test questions of what to do after a
2 grounding. He has no disagreement with the vast majority
3 of them, but he does with two.

4 Soundings. You take soundings right away. And
5 you've heard person after person here say it wouldn't
6 have done any good. It wouldn't have done any good to
7 take soundings. And they were done at the first
8 available opportunity.

9 He also made the horrendous error of judgment,
10 the unbelievable error of judgment of not ringing the
11 general alarm bell. Again, something a captain has
12 discretion to do. Some people can differ and say, "I
13 would have rang that alarm. I would have risked the crew
14 getting out from a dead sleep, running outside, who knows
15 what would happen, it's dark. There's oil fumes.
16 Getting their stuff on, panicking." Who knows? Is that
17 better than telling someone go there and wake everybody
18 up. Wake them up. Make sure they know what's happening
19 and have them stand by and I'll tell them what needs to
20 be done from there.

21 The luxury of hindsight, it's a wonderful thing.

22 Now, Mr. Vorus testified. Mr. Vorus went
23 through a long, detailed \$40,000 explanation of a
24 computer generated scenario that said the ship would sink
25 if it got off the reef.

1 That \$40,000 was wasted, ladies and gentlemen,
2 because the ship couldn't get off the reef. And it was
3 based on that assumption, plus another one, the
4 assumption that the crew would stand there and do
5 nothing. They'd say, "By golly, we're listing and it's
6 going down by the head. Well, son of a gun. I guess
7 we're going to sink," and do nothing.

8 That scenario just didn't make any sense. The
9 fact is, you can disregard it altogether, because for
10 what Mr. Vorus said, it couldn't possible occur. But,
11 we'll -- since you've heard all this, and for whatever
12 value it has on Captain Hazelwood's reactions, actions,
13 mental state, or something, in trying to get off the
14 reef, or not trying to get off the reef, consider that
15 testimony for whatever value you give it. And I submit
16 it doesn't have any, because it's based on a hypothetical
17 that could not exist, could not happen, and an assumption
18 that just has no relationship to common sense.

19 Now, after the testified the defense put on
20 certain experts. That's what we call the war of the
21 experts. You had Ed Hoffman testifying. Remember the
22 tall guy with the mustache?

23 He said -- first of all, he did the same thing.
24 He was called upon to render judgment, or opinions about
25 the ship, itself, and view it, what did he think.

1 He said, sure. It was all fore and aft damage.
2 It wasn't damaged any more after the initial grounding,
3 and that the use of the engine and the rudder caused no
4 additional damage whatsoever. And, he also said
5 something that was extremely important, that you hadn't
6 heard up until this time. And it could have made a very,
7 very big difference in this case, but because of what Mr.
8 Hoffman and some of the other people said here takes that
9 theory away from the State, getting off the reef, the
10 intoxicated behavior theory.

11 Mr. Hoffman told you about power curves of an
12 engine such as that contained on the Exxon Valdez. He
13 said, "It has a maximum output of 31,800 horsepower. And
14 Captain Hazelwood, running it the way he did, never
15 exceeded 8,600." Less than one third of what was
16 available.

17 He also said that no ship crew is going to get
18 off a reef, see that they're listing, in danger of
19 sinking, and stand by and do nothing. He said with
20 minimal -- the key word -- minimal intervention by that
21 crew, the ship would not have sunk. It would have been --
22 -- the oil still would be spilled. The oil still would be
23 spilled. Everything else would be the same. But, this
24 additional factor the State was trying to show early on
25 simply could not have happened, and would not have

1 happened.

2 Next, we get to probably what would be the most
3 important expert of all. You heard from a person called
4 Peter Shimuze. From what you saw -- and he certainly was
5 not an expert witness in the sense that he's testified a
6 lot. He doesn't make his business -- he does not have a
7 business of going around and testifying. He's a
8 physicist that is very, very good at what he does.

9 I submit the evidence showed that he is
10 excellent at computers, and simulating the courses that
11 ships take but using certain data and programming that so
12 you can tell what a ship would do. Maybe that sounds a
13 little far out to some of us, who aren't scientifically
14 oriented, but it's well accepted. It's done all the
15 time. You know, maybe computers are here to stay? I
16 guess they are. And he certainly proves it.

17 And how reliable that simulation he did -- you
18 know, simulation sounds like, gee, you know, it's
19 something you're kind of making up. But, he said, how
20 can you tell -- how do you know this was really reliable,
21 because he can plot it right on the course recorder of
22 that vessel. And it came out almost perfect. His was by
23 a computer. The vessel had a recorder. It recorded
24 every move made, and he said it came out right on it.
25 Very, very close.

1 But, he did something a little different. He
2 didn't do what Mr. Greiner did. Mr. Greiner had a
3 conclusion worked backwards from that conclusion to
4 support the theory that the State had.

5 Mr. Shimuze did what I would certainly submit to
6 you, ladies and gentlemen, was the more scientific
7 approach, reasonable, rational approach.

8 What he did is say I will take certain known
9 things from what the vessel had available there, the
10 course recorder, the bell logger, things like this, where
11 things were logged that we know are right -- and known
12 positions of the vessel. For from those he could
13 calculate then, the speed, course, and everything else of
14 that vessel. And it came out just right. His simulation
15 would show exactly what the course recorder did, or very,
16 very close to it.

17 So, what was the purpose of that? Well, we know
18 what happened. We know the ship hit the reef. We spent
19 all day talking about that and you'll accomplished one
20 more thing. His value in being here, as you saw, and as
21 you heard, had do with these charts, because he said that
22 had the turn been made as late as 1-1/2 minutes after
23 midnight -- six minutes later, it still would have easily
24 cleared the reef.

25 The net effect of the rudder, he said -- he

1 other important thing he said was that at that time --one
2 minute after midnight was when the course recorder showed
3 that the turn started, 1-1/2 minutes after midnight.
4 Now, this is some five minutes, at least after the turn
5 supposedly was started. That's from the testimony.
6 That's about the time Cousins said, "We're starting our
7 turn."

8 But, we know it didn't happen. And we know that
9 because the course recorder on this ship showed it did
10 not happen until 12:01-1/2. So, there's a gap in time
11 there that the evidence shows Captain Hazelwood did not
12 know that this was happening.

13 Going back again, what he knew is important.
14 When he knew it is important. And what he did, and
15 whether he could rely on that is important.

16 So, Mr. Shimuze said the net effect of the
17 rudder when the turn was finally made was only four
18 degrees. Gregory Cousins said, "I said 10 degrees right
19 rudder."

20 You know that didn't happen, because it was only
21 four degrees. There was no indication that the 20
22 degree, or hard right was made until far, far later.

23 But, there's something else. There's a little
24 wiggle in that course recorder that Mr. Shimuze examined,
25 that little jog there.

1 The State would probably have -- would argue
2 that that little jog happened because the vessel hit the
3 first reef and then changed it's heading somewhat,
4 because of that first striking.

5 Again, these are disputes based on the testimony
6 of experts who have a different way of looking at it.
7 You have to decide which one makes more sense. You have
8 to decide if any of them have any bearing on this.
9 You're free to disregard one, or all.

10 But, it's important that Mr. Shimuze said what
11 that indicated, that little wiggle -- and at that time -
12 - was that about a six degree left counter rudder was put
13 on this vessel. Why, nobody knows. But, counter rudder,
14 as you heard, means when you turn, let's say to the
15 right, you turn back again. And, that little wiggle in
16 that thing right there -- that thing right there --that
17 little wiggle, that little deviation, that counter rudder
18 put the Exxon Valdez on Bligh Reef, because just the
19 slightest more -- five degrees of that rudder angle would
20 have cleared. Close, but it would have cleared.

21 Hindsight, again, is a wonderful thing. But,
22 the importance for this is to show you -- it tried to
23 show you what really did happen.

24 Now, again, Captain Hazelwood isn't charged with
25 causing that oil spill, except for one of these counts,

1 the negligent discharge of oil. Obviously the discharge
2 of this oil occurred only in one way. And that way was
3 pretty simple, because it hit the reef, tore the bottom
4 out of some holds, and the oil went out.

5 But, as far as the risk is concerned for the
6 criminal mischief statute, again, go back to that. In
7 essence we're talking only about the risk here.

8 But, it's still important to know and understand
9 that there was plenty of what was called sea room. You
10 heard that testimony from ship captains.

11 A term called "sea room". And it means just
12 what the words imply. It means there's room to maneuver.
13 He had all kinds of room to maneuver, and, in fact, that
14 was a routine, ordinary maneuver, done frequently by many
15 captains, nothing wrong with it.

16 Now, we had Joe Winder testify. Anyway, getting
17 back to Mr. Shimuze. The main point I'd like to leave
18 with you with regard to his testimony is that if, as
19 Captain Hazelwood believed, right rudder was put on that
20 vessel, 10 degrees, or any right rudder command was
21 given, at the time the vessel was off Busby Island 90
22 degrees, right here, they would have missed Bligh Reef by
23 1-1/2 miles. A mile from Busby, a mile and a half from
24 Bligh Reef.

25 The State could argue, "Well, if it took that

1 long why didn't he know it? Why didn't Captain Hazelwood
2 do anything about it?"

3 But, the very simple reason is that they have
4 not shown that he did know it. And I remind you once
5 again, that for this major charge they have to show that
6 he, in fact, knew and disregarded the risk.

7 The risk he knew of at that time was non-
8 existent. The risk he thought had occurred right there
9 at that time was a minimal risk, extremely minimal,
10 because Gregory Cousins said, "We're starting our turn.
11 We're going to do exactly what we discussed." So,
12 where's the risk that was run.

13 Mr. Winer testified next. Mr. Winer, basically
14 confirmed Mr. Shimuze's computer simulations by his own
15 expertise, and his knowledge. He compared the course
16 recorder, data logger, bell book, and the crew's
17 testimony to see if it fit. And, in fact, it did. He
18 had no dispute whatsoever with that.

19 He also disagreed with Mr. Greiner's analysis
20 that at 12:05-1/2 the vessel hit the reef. He said at
21 that time, from his analysis, working the other way, mind
22 you, not concluding that the time occurred here and then
23 going backwards, but taking all the data available and
24 running it along and seeing what would happen as things
25 went on, the course recorder, data logger, and the rest

1 of it. That at 5-1/2 minutes after midnight the Exxon
2 Valdez was in 200 feet of water, not striking the reef,
3 in 200 feet of water.

4 He also, then, told you that the time between
5 the striking of the two times -- he agreed with Mr.
6 Greiner in that respect, that there were two strikings,
7 one followed shortly by another one -- and said that it
8 was only about a minute. He also confirmed that the
9 power available to Captain Hazelwood at the time he was
10 on the reef was substantially greater than any power he
11 decided to you; confirmation of that.

12 He also confirmed that the Exxon Valdez would
13 have missed Bligh Reef even as late as 12:01-1/2, much
14 later than this point here -- much farther down. It
15 still would have missed it.

16 Now we get into probably what gets to be more
17 important in this case, because the experts I just
18 discussed testified a lot about leaving, -- getting off
19 the reef, which we know was impossible. And all that
20 stuff as far as recklessness is now out the window.

21 The only thing you can use -- anything that
22 happens from the time the vessel grounded on the reef
23 until 1:41 a.m., the only value Captain Hazelwood's
24 actions had in your deliberations deal solely with the
25 question of intoxication.

1 The judge will also instruct you on this, that
2 after 1:41 a.m., when the engine was shut down a second
3 time, you can no longer consider anything he did as
4 evidence of intoxication, or impairment.

5 If you stop and think about it for a minute it
6 makes sense. First of all, there's a definition about a
7 vessel being capable of being used for transportation on
8 water. Operate a watercraft means to navigate or use a
9 vessel, or something -- capable of being used as a means
10 of transportation on water. Capable is a very key word.
11 Capable means -- we know it was stuck firmly on the reef,
12 couldn't go anywhere.

13 The court has ruled that after 1:41 you
14 definitely could not consider it anything past that time,
15 because the engine shut off, and the Exxon Valdez at that
16 time was nothing more than an oil storage tank, with some
17 of the tanks leaking, but it was an oil storage tank,
18 sitting there, incapable of any transportation, or
19 movement, or operation under the term as defined by law.

20 But, we had all this testimony, then, about
21 getting off the reef. So, that comes within this time
22 period of about nine minutes after 12, and 1:41. And
23 that deals solely, and I emphasize the word solely, with
24 the issue of whether or not his actions and his judgment
25 at that time was a result of impairment due to alcohol.

1 Your Honor, I wonder if this would be an
2 appropriate time, or I could go on, or -- I'm getting a
3 little hoarse.

4 THE COURT: It's up to you. Would you like to
5 rest for lunch now?

6 MR. MADSON: I think it would be a good time to
7 stop right now.

8 THE COURT: Okay. I've planned on having a
9 recess for lunch. Would that be okay with you?

10 MR. MADSON: Sure. That'd be fine.

11 THE COURT: Okay. When we return from lunch,
12 ladies and gentlemen, Mr. Madson will complete his final
13 argument. Let's try coming back at 1:15. That will give
14 us enough time to get in and out of a restaurant, or
15 otherwise take a break.

16 Don't discuss this case with any person, or
17 among yourselves. Don't form, or express any opinions.
18 Avoid the media information concerning it. Avoid media
19 personnel. Avoid everything connected with this case.
20 Particularly important at this time.

21 We'll see you back at 1:15.

22 Is there anything we need to take up, counsel?

23 MR. MADSON: No, Your Honor.

24 MR. COLE: No.

25 THE COURT: We stand in recess.

1 THE CLERK: Please rise. This court stands in
2 recess subject to call.

3 (880)

4 (Off record - 12:00 p.m.)

5 (On record - 1:20 p.m.)

6 (Jury present)

7 THE CLERK: This court resumes its session.

8 THE COURT: Thank you, ladies and gentlemen, you
9 may be seated.

10 Mr. Madson, are you ready to resume?

11 MR. MADSON: Uh-huh (affirmative). Thank you,
12 Your Honor.

13 THE COURT: You're welcome.

14 MR. MADSON: Well, ladies and gentlemen, I've
15 got some good news and some bad news. The good news is
16 I don't have my keys to rattle, and jingle and distract
17 anybody any more. Somebody reminded me I sound like
18 Captain Queeg of the Caine Mutiny.

19 The bad news is I'm going to talk anyway. And
20 I'm going to take off where I left off, and briefly go
21 again on the summarizing of some of what we think is the
22 important factors to consider in a witness' testimony.

23 If I forget something, or something else you
24 think was important wasn't covered, we all have
25 differences of opinion, you're the final judge.

1 Captain Walker, that's where we left off.
2 Captain Walker essentially said just the opposite of
3 Captain Beevers. The difference maybe between the two -
4 - one essential difference is Captain Walker is a guy
5 who's doing this every day. He's a pilot in a congested,
6 heavily trafficked area down in Florida, where ships are
7 coming and going far more frequently than you do in
8 Prince William Sound. And he does this for a living
9 every single day. He's been there. He's doing it now
10 and he did it before.

11 And he looked at Captain Hazelwood's actions,
12 and what he did, his decisions, and his judgment, and he
13 found no fault with them. He said, first of all, the
14 Narrows, there's no risk. That's what he said. There's
15 no risk in the Narrows to speak of.

16 Risk, certainly, we can argue that for the next
17 three months. But, it's such a minimal risk. He
18 basically said there's no risk because you've got a
19 competent pilot, Murphy, who he acknowledged is
20 competent. It's customary and routine -- and it was -
21 - you heard not the slightest evidence that there
22 anything that even remotely went wrong at this time.

23 And, then, you've got a vessel traveling only at
24 six knots. Think about that for a minute. Six knots,
25 that's a little faster than, you know, six miles an

1 hours. It ain't moving very fast.

2 You've got the Coast Guard, at the very least -
3 - now they get a little funny about where they're
4 monitoring vessels, but at least they said in the Narrows
5 they were.

6 You've got a tug boat right there in case the
7 vessel gets disabled, or something like that.

8 You've got the pilot, watchstander, helmsman,
9 lookout.

10 What more could a captain do at that point?

11 One more pair of eyes. Is that the difference
12 between tragedy and a routine transit? Hardly.

13 Captain Walker also said the captain is only 10
14 to 15 seconds away if necessary.

15 The ice conditions? Same thing. He said it's
16 better to go around. And, again, it's a discretionary
17 call.

18 Go around? That's a fine thing to do. And he
19 said what Captain Hazelwood did, he said he set up
20 beautifully. That was the word he used.

21 You're on a course of 180. That's one of these
22 nice straight lines going directly south. You come to
23 this point right here, abeam of -- you've heard that term
24 a lot. It means, it's 90 degrees. When the ship is
25 here, at 90 degrees, you start making the turn.

1 The simplest instruction anybody could possible
2 be given. No one could possibly get that confused, and
3 no one did.

4 It was set up beautifully, routinely. It's done
5 all the time. And here's where they would have gone. We
6 know that didn't happen.

7 Captain Walker continued and said that the
8 autopilot played no role in this. And there is certainly
9 no reason not to use it. Once again, ladies and
10 gentlemen, there's going to be talk about a lot of rules,
11 regulations and things.

12 The State's going to come back -- Mr. Cole's
13 going to come back, and sure as heck he's going to talk
14 about some regulations, Coast Guard regulations. He's
15 going to talk about this four hour no drinking rule the
16 Coast Guard has, and talk about this sort of stuff. All
17 immaterial. All irrelevant. It has nothing to do with
18 this case. Just like this red herring of this autopilot.

19 The biggest red herring of all. Captain Walker
20 said, "There's nothing wrong with using it." Of course
21 you can leave it on and not know it. But, what do you
22 think the chance is of that? You heard all kinds of
23 testimony, lights, this, that. You know it's off. You'd
24 have to be a total bimbo not to know it. It played no
25 part in this grounding whatsoever, had nothing to do with

1 it. It's another one of these red herrings they've
2 thrown at you. And there isn't even the slightest
3 regulation involving it. Even the precious Exxon manual
4 that Mr. Cole keeps referring to all the time, their own
5 guidelines say nothing about the use of an autopilot. No
6 guidelines whatsoever. Perfectly acceptable to use it
7 whether you want to, or not.

8 And, in hindsight, probably a lot of ship
9 captains aren't going to come in here and say, "Well, I
10 wouldn't do this." Because they know what happened.

11 The load program up? How much did we hear about
12 that? We heard all kinds about that, lots of stuff.

13 We know it takes 40 to 45 minutes to do it,
14 because it's computer generated. You just don't shove
15 the throttle forward and you immediately go. It takes
16 time to build up the speed. So, when it was put on it
17 was not going to be anywhere near sea speed until they
18 had, basically, cleared the ice and they're on their way.

19 Captain Walker said he puts his on sooner.
20 There's no problem with that. If you're going to go
21 through the ice, you slow down. If you're going to go
22 around the ice, it makes no sense to slow down. It
23 accomplishes nothing. There's no safety feature
24 whatsoever that can be utilized by going around at a
25 slower speed. Just think about that. That, again, is

1 common sense. Common sense. If you're going to go
2 around something, you can go at the regular speed. I f
3 you're going to through it and have the maneuver, you can
4 slow down.

5 The order to Cousins? Absolutely prudent.
6 Nothing wrong with it. Simple.

7 Cousins is a licensed second mate. Second mate.
8 Competent crew. If not, at least Captain Hazelwood
9 thought he was, because he had sailed with him before and
10 he knew his qualifications.

11 No reason has been shown here by the State of
12 Alaska, whatsoever, that Gregory Cousins was not a
13 competent person.

14 Did he make a mistake? Of course he did. One
15 of the simplest mistakes. The mistakes we all make. The
16 mistakes that result in maritime accidents.

17 He also said something very important, and that
18 was the sea room. He said there was plenty of room to
19 make the maneuver, plenty of room.

20 He also said that only in hindsight would he say
21 leaving the bridge could play any part of the grounding.
22 Mr. Cole brought up, he said, "Well, Captain Walker
23 admitted that if Hazelwood had been there, this probably
24 wouldn't have happened."

25 That's exactly right. Probably. Now, in

1 hindsight, looking back, yeah, probably not.

2 Is it still possible it would have happened? Of
3 course. Maybe Captain Hazelwood -- maybe he went to the
4 bathroom. Maybe he's in the chartroom. He could be
5 doing anything. He could be just not looking at the
6 rudder indicator, angle indicator the same as anyone
7 else. These things happen, and that's why we call them
8 accidents.

9 Captain Walker also said Captain Hazelwood did
10 something important. He left a check -- call me. "Mr.
11 Cousins, call me when you start doing this. Otherwise I
12 don't know if it's going okay, or not. But, once you
13 call me, bingo. I'm put at ease."

14 What does he know? He knew it was safe.

15 Did he know there was a risk? No.

16 Then, he also talked about, as did Captain
17 Beevers, the course of the ARCO Juneau and the Brooklyn.

18 The ARCO Juneau was a ship commanded by a
19 Captain Knowlton that did a much more dangerous maneuver.
20 Everybody agreed with that. His risk was substantially
21 greater than Captain Hazelwood's. Maybe he was on the
22 bridge. We don't know. Captain Knowlton never testified
23 here. The State didn't call him. They did Captain
24 MacKintire, who's the master of the Brooklyn, but not
25 Captain Knowlton, but he was called reckless. More

1 reckless than Captain Hazelwood was, because he did the
2 maneuver with his ship, faster, closer to Bligh Reef,
3 going around the ice.

4 And, it should be pointed out, in evidence
5 before you, you'll see his master's license. And it has
6 a pilotage indorsement on there from Hinchinbrook to
7 Busby Island. Now, isn't that odd? It says something
8 about pilotage and the way it's done.

9 This chart doesn't show a whole lot, but his
10 pilotage only comes up to here. The pilot's station is
11 well north. It's up at Rocky Point. Technically and
12 legally, under the State's scenario in their theory, even
13 Captain Knowlton was required to have a pilot on the con
14 after his pilotage indorsement stopped.

15 Nobody knows why it only went to Busby Island,
16 but it did.

17 We also know he dropped the pilot off well north
18 of Bligh Reef.

19 All these things are important because they are
20 critical in the sense of looking at the judgment, and
21 looking at whether Captain Hazelwood was exercising good
22 judgment, proper judgment, whether he was reckless. And
23 we're going to talk about the standard toward the end of
24 this. But, beyond a reasonable doubt is something you
25 can never put out of your minds. It's the most important

1 two words in this whole case, reasonable doubt.

2 Continuing on, Captain Martineau testified. And
3 he basically testified about something you haven't had a
4 chance to really see yet. And that's Exhibit B. That's
5 this document that's called -- it's a letter that was
6 sent out to the Exxon Shipping Company by Mr. Bob Arts,
7 who testified here. And it said new pilotage
8 requirements. There's been all kinds of talk about this.
9 And the State's going to say, "By golly, the first words
10 up there still says non-pilotage vessels."

11 But, you've got to read it in its context. And
12 all the people that testified, including Captain
13 Martineau -- and this is interesting, because, remember?
14 He was asked about this letter and what it meant.

15 Captain Martineau was only called here to show
16 on thing, that he sent this letter to the Exxon Valdez so
17 the captain would have this knowledge about pilotage
18 requirements.

19 The State, however, wanted to go a little
20 further. They had this Exxon guy that is obviously out
21 to get -- you know, to acquit Captain Hazelwood, all
22 these Exxon people, according to him, are out to just
23 help him. And, this one did. Mr. Cole didn't know it.
24 He thought he was going to get a different explanation
25 from Captain Martineau on this when he asked him about

1 it.

2 He said to him what'd it say? This does away
3 with pilotage. I know all about the pilotage stuff. I
4 was working on shore. The Coast Guard sent me something.
5 Fill this out. Is it necessary? No. I know what they
6 were doing. I know what they were trying to do. I know
7 the whole history. This was the final nail in that
8 coffin. You'll have it to look at.

9 I would submit, ladies and gentlemen, it does
10 not clearly say one way or the other. But, put it in the
11 context of everything concerning this pilotage stuff
12 you've heard about. And, at the very least, it becomes
13 extremely ambiguous, but the very last part -- the only
14 time you need this extra watchstander on the bridge is
15 every 10 minutes when navigating from Cape Hinchinbrook
16 to Montague Point. That, isn't on here, but without
17 taking the time that's toward the outer end of Prince
18 William Sound a short distance.

19 Now, whether this is right, or not, whether the
20 Coast Guard would approve this, or not, is not the point.
21 How much talk was spent? Well, you didn't call the Coast
22 Guard. You didn't see what they said about this.

23 What utter nonsense.

24 Once again, what did Captain Hazelwood know and
25 what did he do, and what did he rely on? He relied on

1 things like this. He had no obligation to call the Coast
2 Guard and say, "Hey, is this letter correct?" Everyone
3 that was going up there knew what was happening with
4 pilotage. It was meaningless. This was the final thing.

5 Under the State's theory they would have you, or
6 have so-called pilotage vessels have a higher standard
7 than non-pilotage ones. We'll get to that again, I
8 promise.

9 The last witness that was a captain was Ivan
10 Mihajlovic. He had no pilotage at all. No pilotage.
11 His pilot stays down below. He made 20 and 25 trips,
12 always dropped the pilot off around Busby Island. In
13 other words, without this indorsement on his license,
14 this piece of paper, this typing on his license, he went
15 around Busby Island and went around Bligh Reef. And the
16 pilot was picked up there, and vice versa. Always there.

17 He also said he's been left alone as a mate in
18 Prince William Sound. Nothing wrong with that. He's
19 qualified. He deviated around ice in a similar maneuver
20 as Captain Hazelwood. It was routine. It was customary.

21 He also said that Prince William Sound waters
22 were not dangerous, or hazardous compared to many other
23 areas. They were wide open with all kinds of sea room,
24 maneuvering room.

25 He also said he got this ALAMAR letter, as it's

1 called, in 1988. And he agreed that it waived pilotage,
2 too. All these people that are qualified and competent
3 to be captains of tanker vessels read something and they
4 say, "This is what it means to me." And the State will
5 say, "But that's not what it says in the first line."

6 Again, you have to look at the whole thing in
7 the proper perspective, in the context in which this
8 letter was written. And it was. Those persons with that
9 knowledge, and that background, said exactly that,
10 because they knew what this pilotage thing was. They
11 knew the waters. They knew it was something the Coast
12 Guard wasn't really doing anyway. Started out that way,
13 and gradually, through the Captain of the Port Orders he
14 said, "Well, this isn't necessary."

15 The pilots didn't like it. They had to go way
16 out in open water, where it was dangerous, they said. We
17 don't want to do that. Let's pull back here. That's the
18 only place -- the Narrows is really the only place it's
19 necessary, and docking.

20 The Coast Guard agreed. They finally said
21 visibility was the criteria. Visibility was the thing
22 that made the difference.

23 And the only difference that Ivan Mihajlovic,
24 Captain Mihajlovic was between Cape Hinchinbrook, as they
25 entered the sound, and Montague Point -- in that short

1 distance they would have two people on the bridge and
2 report their position every 10 minutes. And, after that,
3 according to the information they had, you didn't have to
4 do anything else until you picked up the pilot.

5 Mr. Lites (ph) testified. Very briefly he
6 testified that he was the salvage master that Exxon
7 hired, or contracted with, if you will. He was not an
8 employee of Exxon -- to refloat the vessel. And he did.

9 He was the guy that was there. He was the
10 expert who was there. And he knew everything about that
11 ship, inside and out, knew all about it, lived on it for
12 weeks.

13 And he said the ship wouldn't have sunk if it
14 was off the reef. Agreed with the other experts in that
15 regard, as long as the crew did anything. They could
16 easily do that.

17 And he said, "Captain Hazelwood's actions were
18 that of a prudent captain and showed extremely good
19 seamanship."

20 Again, remember the time this occurred. You're
21 called upon to come suddenly onto a situation that you've
22 never faced before in your life, never. And there's
23 everything happening at once. And whether he did it
24 instinctively, or sat down and mentally calculated each
25 and every move, he did it right. He did it right.

1 He also explained -- the big bugaboo here is
2 what Captain Hazelwood said, as opposed to what he did.
3 And both Captain Walker and Mr. Lites explained why they
4 thought that happened. There can be any explanation for
5 it. The facts are whatever he said is not what he did.
6 And it's just that simple. Because the people that knew
7 best said everything he did was designed to do it safely
8 and to make sure it stayed where it was.

9 Now, is that the actions of somebody who was
10 impaired? Somebody who didn't know what they were doing
11 and acting rashly? Just going off because they were
12 drunk? Under the influence? Didn't know what they were
13 doing? Absolutely not. He did it right.

14 Mr. Hudson, Don Hudson, testified that in
15 essence he helped Mr. Lites and the ship wouldn't sink is
16 basically what he said. He was the guy that had to go on
17 there to make sure the stresses were such that when they
18 refloated the vessel it could be done safely, but the
19 sink wouldn't ship. That's what he said.

20 All these people. For every expert the State
21 put on we put on at least one, if not two. Which ones do
22 you want to believe? Just the mere fact that you have
23 this overbalance -- in effect, there was a balance --
24 isn't that reasonable doubt? It's more than that. The
25 defense proved to you in this case that the actions of

1 Captain Hazelwood were prudent and good seamanship. And
2 they were not those of an impaired captain.

3 Something very important came up at the time you
4 heard the testimony of Ed Siedlick you probably wondered
5 what's this guy testifying about? What's the purpose of
6 having this guy talk about paper? When you hadn't even
7 heard the tape, knew nothing about it -- well, here's
8 why, because Mr. Cole said, "Take this tape in there, and
9 you play this tape and you listen to this other tape, and
10 you're going to hear two different people."

11 You're absolutely right. And Mr. Siedlick
12 explained why. Anticipating that this was going to
13 happen Mr. Siedlick came here and had the chance to
14 really go over these tapes. You heard him. He was 21
15 years with New York law enforcement, the police
16 department. He became a surveillance tape expert. He
17 knew tapes inside and out, because that's what he did a
18 lot of.

19 And then he said the biggest problem on one tape
20 -- the so-called inbound tape, that's when they were
21 coming into Prince William Sound -- there's other voices
22 on there that you'll hear. You don't know who they are.
23 You'll have no idea. You don't know if they talk that
24 way normally or not. The only thing you heard was the
25 Coast Guard, or ex-Coast Guard person who came in here

1 and said, "Yes. I heard this tape and it sounds that way
2 to me." He knows nothing about Captain Hazelwood's voice
3 and did not identify it and simply said, "Yes. I heard
4 myself on that tape."

5 What does it all mean?

6 Well, Ed Siedlick went down to Valdez, first of
7 all, and he found out the original tape was destroyed.
8 It did not exist any more. Found out that the tape
9 you're going to hear was made by holding up a little
10 micro-cassette to a speaker, batteries going? Maybe the
11 batteries are a little weak. Maybe they're good. But,
12 they probably were weak. And so it recorded in a slower
13 mode. And then it's re-copied onto something else, at
14 least once. We don't know how many times.

15 And he said, in conclusion, since I don't have
16 that original tape I can't say for sure, but I can say
17 that from listening to this tape and listening to another
18 tape and listening to Captain Hazelwood, guess what? It
19 doesn't sound like him.

20 Now, based on that, that evidence that is
21 totally unrefuted, the State had every opportunity to do
22 what we did with that tape and they did not. They're
23 going to say, "Take that back in there, listen to it, and
24 you compare it with this one. Then, you'll see that he's
25 a different person. He's sober here and he's drunk

1 here."

2 That tape sounds like he's talking too fast,
3 just as Ed Siedlick said he was.

4 And, just as Jim Kunkel said. He said, "I was
5 up here. The State had me over there and listen to this
6 tape. I couldn't even make it out. I went over and
7 listened to one Mr. Siedlick had copied when he was down
8 there and went to Washington, D.C., to check all this
9 out, and listened to that. And yeah, I could hear the
10 voices, but it didn't sound right. It didn't sound --
11 sound like he's talking too fast. That's the comparison
12 they want you to make.

13 Can you imagine convicting anybody for driving
14 while intoxicated based on that kind of evidence?

15 It's shameful. That's all you can say. It's
16 utterly shameful.

17 Lastly, we're going to quit talking about
18 experts and talking about witnesses to a certain extent.

19 Captain MacKintire was brought back here by the
20 State as what is called a rebuttal witness. As I told
21 you earlier Captain Knowlton didn't testify, but Captain
22 MacKintire did. He was basically brought back here to
23 show what he did that night, and how that was safely
24 done, and routinely, and all this. And, you know,
25 because of the pilotage thing and all that. And he has

1 no pilotage. He doesn't have this indorsement.

2 And he drops the pilot off somewhere north of
3 Bligh Reef, which means coming back -- when he left
4 Valdez and went out -- when he left, he actually did
5 something worse than they're saying Captain Hazelwood
6 did.

7 Think about this for just a minute. He talks to
8 the pilot and they say, "Well, okay. You can get off
9 here, because of the weather conditions, or whatever.
10 We'll let you off here, north of Bligh Reef." That's
11 supposed to be this big dangerous area, right? That's
12 the critical maneuver, around Bligh Reef.

13 He drops him off, so the pilot isn't even on the
14 ship. He's going away. So, here was have MacKintire on
15 the bridge with no pilotage, and he has to go around
16 Bligh Reef. But, they said, "We discussed it, and it was
17 a safe maneuver. Under the circumstances there was
18 nothing wrong with it."

19 And they're absolutely right. And that's
20 exactly what Captain Hazelwood did, except he was on
21 there, 15 seconds away, with the pilotage.

22 Now, you tell me where is the distinction?
23 Where is one reckless, and one not?

24 It makes no sense.

25 Secondly, Captain MacKintire said, "I don't know

1 anything about any visibility requirement in Prince
2 William Sound with this pilotage stuff." That's supposed
3 to be one of the things they ask you when they call in.

4 "Do you have pilotage in coming in?"

5 "No. I don't."

6 "Okay. What's the visibility," because the
7 Coast Guard said it's a two mile limit. They're not
8 going to let anybody in there according to their so-
9 called Captain of the Port Order if the visibility is
10 less than two miles. If it's more than two miles, the
11 guy that doesn't have this indorsement can take it on in,
12 report their position.

13 Captain MacKintire says, "Oh, we had fog."

14 So what? Nobody cared.

15 How does all this make any sense?

16 It doesn't.

17 And that's what they're relying on. That's what
18 the State of Alaska is relying on to say this man is
19 guilty, he's a criminal. It's amazing.

20 Now I'm going to something else, ladies and
21 gentlemen. This is kind of the heat of things, but I
22 want to put this up here.

23 It's basically like Mr. Cole's. Funny how great
24 minds think alike. That's the key to a number -- at
25 least two of these charts. It's right here. And notice

1 the words here. Notice the words, "Consciously disregard
2 a substantial and unjustifiable risk." And it must be -
3 - it's not a theoretical risk, not a maybe, not a
4 possibility, a real risk. A substantial one.

5 So, what do we have that proves beyond a
6 reasonable doubt this critical element of recklessness?

7 Well, not much. In fact, not anything.

8 The experts, they had Captain Beevers. Captain
9 Beevers comes in the category of someone I like to think
10 of as a Captain Not. A captain that he says that you
11 should not do this, and should not do that.

12 The Captain Nots of this world can sit in their
13 cozy little easy chairs by the fire, and a year later, 11
14 months later, six months later, they're never there.
15 They'll look at different papers and they'll examine
16 things. And they'll get up and maybe go and have a cup
17 of coffee, and maybe throw another log on the fire, and
18 they'll take all the time they want.

19 Then, they'll say, "Gee. I don't think he
20 should have done this. He should not have done this. He
21 should not have done that."

22 There's a lot of Captain Nots in this world.
23 They weren't there.

24 Hindsight, what a wonderful thing.

25 How many times, ask yourself, how many times

1 have you had an accident, misfortune, fell, sprained a
2 leg, broke a leg, whatever, and said, "Geez! That was
3 dumb. Why'd I do that? I shouldn't have done that. In
4 hindsight I would have walked around here. I would have
5 done it differently."

6 That's what makes us human beings. We learn
7 from mistakes, and yet, we continue to make them, because
8 we are not perfect.

9 Leaving the bridge in the Narrows. Well, before
10 I do that I want to go on and just make one little
11 comment that was somewhat disturbing.

12 When Mr. Cole said all these people here that he
13 called as his witnesses, "Exxon has this interest. They
14 want to see Captain Hazelwood acquitted."

15 He had experts. He had Captain Stalzer from
16 Exxon. He had Captain Deppe. And did they help Captain
17 Hazelwood? He said, no. Under the watch conditions as
18 I view that guideline, I would have done it differently.

19 Ladies and gentlemen, does it not appear that
20 Exxon was doing just the opposite?

21 They may have had attorneys. And maybe they had
22 attorneys because they were afraid the State might charge
23 them with something, based on what happened here, and
24 what they saw. You be they might have been scared. But,
25 trying to help him? No. Changing their testimony? No.

1 You know what they showed? Even Bob Kagan, when
2 he got off that stand, you know what he showed? The
3 humanity that was involved here. Just plain humanity.
4 You know what they showed? Respect. A good man. He was
5 a good man. And they saw what he was going through.

6 But, to lie? No. They told the truth. Every
7 one of them. And it wasn't because they were pressured.

8 Captain Hazelwood also was accused of being
9 reckless in going through the Narrows. We've already
10 talked about that. There was no risk, no risk. Put that
11 to bed. There's no evidence there.

12 We told you early on in that opening statement
13 that the key to this case, the key to this case lies in
14 that 10 to 15 minutes from Busby Island until they hit
15 the reef. From 11:55, let's put it that way -- five
16 minutes before midnight, until about nine minutes after.
17 There's the case. Nowhere else. The rest is red
18 herrings leading you on false trails.

19 At that time, after all I've said about what
20 witnesses testified to what, what did Captain Hazelwood
21 know?

22 Not what he should have known, ladies and
23 gentlemen, at that point. We're talking about what he
24 knew.

25 He had a competent person up there that was. He

1 was seconds away. The maneuver was simple, routine and
2 ordinary. And he left a check: "Call me when you do
3 it."

4 What substantial risk did he run at that point
5 by saying Cousins, do this. And it's understood.

6 "Are you comfortable with it?"

7 "Yes. I am."

8 "Any problems?"

9 "No."

10 He said, "How about the ice? What do you see?
11 Any problem?"

12 "No."

13 All these things were checks. And all Greg
14 Cousins had to do was say, "Captain, I'm not sure."

15 The second mate was perfectly qualified to do
16 what he did. He didn't have that magic piece of paper,
17 that so-called indorsement, which as you've heard over
18 and over again is not a test of anything but your
19 knowledge of navigational aids. And we asked that
20 question of Mr. Cousins. Do you know those aids there?
21 Do you know where Bligh Reef was?

22 Of course he did. Of course he knew them all.
23 Do you think it made one bit of difference whether he
24 would have had that indorsement, or not?

25 What if they'd still hit the reef? Do you think

1 we wouldn't be here?

2 Of course we would.

3 That -- this is another one of those great red
4 herrings, ladies and gentlemen, that looks good on the
5 surface, because you hear so much about it. But, it's
6 kind of like being able to drive a car but not having the
7 piece of paper that says you can. The difference between
8 let's say, having the ability to do it, the
9 qualifications to do it, the knowledge to do it, but
10 maybe not the authorization to do it. There's a big
11 difference there. And that's what you should look at,
12 because that indorsement played absolutely no part -- or
13 lack of any indorsement -- another big red herring.

14 Rely only, if you will, on the critical facts
15 here. That has to do with the fact that this turn was
16 made. It had plenty of room. The ship had more than
17 enough room to make it, and there was no reason it
18 shouldn't have.

19 Why didn't it? Two reasons. And this isn't
20 casting blame in a criminal sense, ladies and gentlemen,
21 only for the purpose of trying to show to you what really
22 happened here, to give you an idea of the actual sequence
23 of events. And that was really simple.

24 Greg Cousins probably gave the order to Kagan.
25 Maybe he didn't, but the chances are he did, because it's

1 logical. He would have done that.

2 Mr. Cole had you going up and down and say,
3 "Look at all these things he had to do." He listed every
4 little thing on there. What he didn't say was Greg
5 Cousins was asked, "Was there any problem on these?"

6 "No." It takes seconds. Here's how you do it.
7 You look on here, you've got a bearing. Boom, that's it.
8 You've got it all from the radar. You don't have to go
9 anywhere. You could sit there at the radar. You don't
10 have to go and look at a chart.

11 He knew exactly where he was. He could plot
12 everything from one position. And he said it was simple.
13 It was easy. He had no problem with that.

14 The State would have you believe he's running
15 around there like a one-armed paper hanger, with no time
16 to do anything.

17 He had 10 minutes, all the time in the world.

18 And, again, if I seem to be blaming somebody
19 it's only in the sense that a man is here on trial and
20 we're trying to show you what happened. And we're trying
21 to show you what he knew, and what he could rely on. And
22 he could rely on Greg Cousins. You have heard nothing
23 else except that he was qualified and capable. And
24 that's what Captain Hazelwood knew.

25 So, what went wrong?

1 He probably gave the order. And for whatever
2 reason he did not look up at the fail safe system, the
3 rudder angle indicators.

4 We know that the turn never started until a
5 minute and a half after. Kagan said he did. Cousins
6 said I gave him the order and I looked later and saw the
7 ship wasn't turning. "I gave him another 20 degree order
8 -- right rudder order. I gave him a hard right. By then
9 it was too late."

10 Gregory Cousins, for some reason, was
11 distracted, or whatever. That's what makes accidents.
12 We don't know. But, he didn't look up and see something
13 as simple as that.

14 So much has been said about Bob Kagan, all his
15 problems. What did Captain Hazelwood know? He knew that
16 the other masters said, "Hey, Kagan has a problem
17 steering." Steering. How many times did we go over that
18 steering versus rudder orders? Over and over until it
19 was just virtually no end to it.

20 Remember when Kunkel testified that Kagan -- he
21 said that he told Captain Hazelwood, yeah, he's -- Kagan
22 had trouble steering and watched him, or something.

23 What did Captain Hazelwood say? He said, "Gee,
24 I've used him before. He did okay. We didn't have any
25 problem, but okay."

1 So, what's wrong with Gregory Cousins looking at
2 him and watching? I mean, no matter who was on the helm,
3 it's a matter to say "10 degree right rudder." You've
4 heard it over and over again.

5 Steering versus rudder orders. Which is easier?
6 A rudder order is so simple any one of us here -- you go
7 like this. You've got to know your right hand from your
8 left hand, and you've got to be able to read a 10. And
9 you hold it there until somebody says do something else.
10 The simplest thing in the world.

11 Now, they would have you believe that Captain
12 Hazelwood knew that Bob Kagan couldn't carry that out --
13 couldn't carry that out. He may have trouble chasing a
14 compass, and going around and trying to get it back with
15 counter rudder, but when it comes to simple orders,
16 everybody agreed -- every single one of those witnesses
17 agreed, of course he could do it. Anybody could. No
18 reason to think otherwise.

19 Probably the most surprised person in the world
20 was Captain Hazelwood when Greg Cousins said, "We've got
21 trouble here." Crunch.

22 The farthest thing from his mind at that point
23 was that that was occurring. It's like, how in the world
24 could this have happened? It did.

25 Now, we heard a lot about the bridge manual on

1 this question of recklessness. The infamous Exxon bridge
2 manual, the guidelines. Just the guidelines.

3 The State would have you believe that if Captain
4 Hazelwood in his discretion looks at a certain watch
5 condition and disagrees with Captain Stalzer, or Captain
6 Deppe, well, by golly, then, he must have committed a
7 crime. Look at what outrageous judgment that exhibits.
8 How terrible that is.

9 That bridge manual is nothing more than a
10 guideline. And it depends on where you are and what you
11 see: congested areas, visibility, other ships, all these
12 things. But, what it really is is a way of Exxon
13 protecting themselves. That's their check, because then,
14 if something happens they can say, "Hey, look at. He
15 wasn't following our bridge manual. Look at that. It's
16 his fault, not ours."

17 And the State would have you believe that Exxon
18 is on captain Hazelwood's side when they come up with
19 this thing and say, "My goodness, look. He didn't obey
20 our rules."

21 Anyway, so there's a disagreement. Does that
22 make him a criminal?

23 What does near shoals mean? Shoals are reefs.
24 What in the world does that mean to anybody?

25 It means whatever interpretation you want to

1 give it. Is a mile away from Busby Island near? Is two
2 miles from Bligh Reef so near that you have to have
3 someone else up there on the bridge?

4 Then, we go along to something else. What did
5 he know? What did Captain Hazelwood know? He knew there
6 was a Coast Guard VTS system.

7 This was probably the most amazing thing of this
8 whole trial. Dragging that out of the Coast Guard that
9 their policy manual -- the first words in there says,
10 "Our purpose and function in Valdez is to prevent
11 groundings and maritime accidents." And you'd think you
12 were pulling teeth to get them to admit that.

13 They have a system where the lanes are in the
14 middle, right? That's where the ships are supposed to
15 be. You know what they say when you leave the lanes?
16 So, what?

17 How many times were those guys asked? "What
18 would you do if they leave the lanes?"

19 "Nothing. I might call and ask him his
20 intentions."

21 Of all the ridiculous things. For safety
22 reasons they want the vessels in the middle on the lanes,
23 but the minute you go out of the lanes, where there's
24 danger, they do nothing. They sit back and say, "Not our
25 job."

1 So, what did Captain Hazelwood know?

2 He knew that he told them he was leaving. He
3 was probably going to end up back, going around the ice
4 in the northbound lane. They knew that. No question
5 about it. He knew we told them.

6 He also had reason, every reason to believe that
7 the radar was effective down to Bligh Reef. Why not?
8 That's supposed to be the danger place. Why wouldn't it
9 be reasonable that the Coast Guard is going to be
10 concerned about that?

11 So, the Coast Guard knew that he was leaving the
12 lanes, knew he was out of the lanes, knew he was going to
13 weave around the ice. And Mr. Blandford went down to
14 make a sandwich. That's the concern -- now, the point of
15 all this is if it was that dangerous, and those waters
16 were so hazardous, does it make any sense that Blandford
17 would have done that? No, of course not. And the reason
18 is it was so routine, and so normal, and so ordinary,
19 there wasn't the slightest concern raised on the part of
20 anybody, least of all the Coast Guard.

21 For a half an hour he never even tried to see if
22 the vessel was on radar, or not.

23 The previous watchstander said I lost him on
24 radar. No one is coming in for quite a while. He's
25 virtually alone. No concern.

1 Outside these magic lanes where he was supposed
2 to be safe. So, they're going somewhere else, heading
3 south. The Coast Guard knew that.

4 The point is, once again, it wasn't the danger,
5 and it wasn't a hazard. And there was no reason for
6 anybody to be excited about it, because it was done
7 routinely all the time.

8 But, Captain Hazelwood, for what it's worth, had
9 that extra little bit of information there, that if
10 you're on radar, if something is going wrong, maybe
11 they'll tell you. Maybe they might let you know.

12 And one of the Coast Guard persons. I think Mr.
13 Taylor said, "Well, what would you have done if the ship
14 -- you're looking at a radar and it's -- Mr. Blandford,
15 I'm sorry.

16 "What would you have done if it was heading for
17 the reef and you could see it was too close, something
18 looked out of the ordinary, it wasn't changing course?"

19 "I might have called, radioed and said what are
20 your intentions."

21 At least he could rely on that. Somebody would
22 say, "What are your intentions? You're getting awful
23 close."

24 Again, this isn't to place blame and criminal
25 fault on anyone else. It goes to the element of

1 reckless, and what Captain Hazelwood knew. That
2 involves the knowledge of the Coast Guard and the system
3 that they set up and maintained at the cost of \$70
4 million.

5 It involves his knowledge of Gregory Cousins in
6 his capacity as a mate, and his knowledge of how he
7 carries out his duties.

8 And, as Captain Mihajlovic said, "Sometimes you
9 can do this right away." It isn't a question of time.
10 You get to know these people and you know how good they
11 are.

12 And he knew he was good. He knew he was fine.

13 So, that's what he knew.

14 You've heard the expert testimony to say that
15 what he did was normal, routine, and okay. Everything
16 about it. Now, how does that square with intoxication?

17 Well, it doesn't. He wasn't impaired.

18 Now, the pilotage thing, again, we've covered.
19 And I don't know how much more you can say about that,
20 but once again look at it from the point of view of what
21 in the world does this really mean? And look at it from
22 the history of what's happened and what you've heard
23 about pilotage and why it's necessary to advise people of
24 certain conditions in a local area, to advise them of
25 things.

1 You never take over a ship -- how ridiculous it
2 would be -- direction and control have to be with the
3 person of the pilot -- maybe it's the third mate.

4 What if Greg Cousins had the pilotage and he has
5 to be up there taking over from the captain, saying
6 "Captain, I'm sorry. I've got to tell you what to do,
7 because I've got the indorsement."

8 Nothing says a third mate can't have it.
9 Anybody can get it. Maybe an AB could get it.

10 The only requirement is a certain number of
11 trips, and knowledge of the area. Bob Kagan could have
12 had it. He could have had the indorsement. Could you
13 imagine him telling Captain Hazelwood how to run the
14 ship?

15 I mean, that's how ridiculous you can get if you
16 want to get into this pilotage thing.

17 Autopilot. Red herring. End of story. It had
18 nothing to do with anything. No rules. No regulations.

19 Load program up. Same thing. It meant nothing.
20 No rule. No regulation. No anything. Bad judgment.
21 That's the best they can say. "Oh, that's bad judgment."
22 When you've heard just the opposite. "It's excellent,
23 it's good judgment because you're trying to go around,
24 not through."

25 One thing should be probably mentioned right now

1 very quickly. You did not hear one scrap of evidence
2 about dangers, substantial risk of serious injury or
3 death.

4 That is one, ladies and gentlemen, you can
5 deliberate that charge of reckless endangerment for all
6 of two seconds, because what danger was there when some
7 of the people slept right through the whole thing?

8 There wasn't a scrape. There wasn't a bump.
9 There wasn't physical injury. There was no pain. There
10 was no anything.

11 The State can argue all they want about what
12 could have happened, but that's precisely what the judge
13 says in his instructions to you that you can not do, is
14 speculate about what could have happened. It has to be
15 a real risk, not a maybe.

16 So, what do we have here?

17 Well, we've got the one put to rest, the
18 reckless endangerment.

19 Now, on the criminal mischief the same element
20 of recklessness that I've already covered. We could
21 cover it forever and ever and ever. But, just look at
22 that definition and always, always keep in mind the real
23 risk involved: miles from anything, plenty of sea room,
24 competent crew. We could go on and on.

25 But, let's talk about something else for just a

1 second. There are elements that are involved there. Mr.
2 Cole touched on those briefly. But I'm going to talk
3 just for a minute or two more about them.

4 The two things, damage to property of another
5 over \$100,000. Now, Captain Hazelwood can always risk
6 damage to a ship, because that's a justifiable risk. He,
7 as captain could take certain risks with the property
8 that he's in charge of. The damage has to be to the
9 property of another, in this case the State, or someone,
10 I suppose, fish, animals, whatever.

11 But, you have to find that over \$100,000 was
12 placed at risk from what he knew at that time and what he
13 did.

14 The other thing is widely dangerous means. Mr.
15 Cole gave you a definition of that, widely dangerous
16 means. The last sentence that he gave you it says, "oil
17 spill may be considered as evidence of widely dangerous
18 means."

19 The key word is may. That sentence isn't in the
20 definition as the legislature defined it. The judge has
21 added that sentence and said because of the facts of this
22 case you can consider, from what was proven. You are not
23 required to in any sense of the word. You may consider
24 it.

25 Now, that still leaves you to find beyond a

1 reasonable doubt that an oil spill was widely dangerous
2 means.

3 Does that sound silly? Maybe it does at first.

4 Captain Hazelwood did not make up that
5 definition. Mr. Cole said the legislature -- all these
6 things are important, the safety of vessels, the safety
7 of tankers, how important they are that we have all this
8 stuff to make sure they're safe. Oddly enough the
9 legislature never passed a law that put oil tankers in
10 this little category. If an
11 oil spill was so obvious as widely dangerous means, maybe
12 they should have put it in there. But, now it's up to
13 you to decide whether it is or not.

14 But now it's up to you to decide whether it is,
15 or not. But, I'd submit to you, ladies and gentlemen, it
16 isn't all that obvious, not at all. Not in the
17 slightest.

18 The State's theory of how it fits in there, why
19 does an oil spill fit? They use the word poison. It was
20 a poison.

21 The only thing you've heard was the Fish and
22 Wildlife officer that gave -- had a list of what he
23 thought were dead birds. And you don't know how many of
24 those the death was due to poison, if any, or any other
25 reason.

1 They could be connected with an oil spill, but
2 not poison. That's what they're saying this shows,
3 poison.

4 And where's the evidence of \$100,000 worth of
5 dead birds. If that's where widely dangerous means fits
6 into this, and that's where oil comes into it, it seems
7 like, I submit to you, somebody could have come up with
8 a better way of determining it.

9 Which, once again, shows one thing, that in this
10 whole case you're not hearing anything about the State of
11 Alaska rules, regulations, or laws, about tanker
12 captains, except one. Negligent discharge of oil. The
13 rest it's general criminal laws that they're trying to
14 wiggle, shape, squeeze and trying to change the facts to
15 try and fit in there. That's exactly what's occurred
16 here.

17 If it's that all important, why do you have to
18 wrestle with things like this?

19 The fact is, you really don't, because no matter
20 how you cut it, no matter what law you're talking about
21 you've got this. There's no recklessness. There's no
22 substantial risk. The risk is always there, no matter
23 what.

24 Mr. Cole said there's no argument on the
25 negligence aspect, negligent discharge.

1 There certainly is. There certainly is. You
2 have to still show negligence on the part of Captain
3 Hazelwood beyond a reasonable doubt. Now, that's just
4 not something we can take too lightly here folks. That's
5 very important.

6 Secondly, that has to be a substantial factor in
7 what happened. In other words, a lot of people can be
8 negligent, but the negligence might be a small part of
9 what happened. It has to be, again -- this word keeps
10 cropping up -- substantial factor.

11 He admitted it. Captain Hazelwood admitted it.
12 He talked to Mr. Myers and said, "Yeah. I should have
13 been up there."

14 You know what that shows, ladies and gentlemen?

15 Sure. He admitted that. Does that admit
16 negligence?

17 It admits that, "Hey, if I'd been there, it
18 probably wouldn't have happened."

19 Do you know what it shows?

20 Something called leadership. Leadership. How
21 easy it would have been to say, "Hey, it wasn't my fault.
22 Those nuts up there in the bridge. They're the ones that
23 did it, not me. I told them to turn. The simplest thing
24 in the world. He didn't do it. And that goofy Kagan, we
25 don't know what in the world he was doing. But, not my

1 fault."

2 No. What he did was say, "Hey. The buck stops
3 here." Courage. Courage and leadership. No wonder his
4 men came off that stand and said -- shook his hand, or
5 whatever. No wonder. Because he took the brunt. He
6 took the responsibility.

7 So, is there a dispute on negligent discharge?
8 You're darn right there is.

9 Was there a substantial factor if there was any
10 negligence on Captain Hazelwood's part?

11 Yeah. There's rebuttal on that.

12 In addition there's something else here, I
13 think, involved in that. The State said -- he also
14 talked to Trooper Fox, or Mark Delozier when they
15 interviewed him. And he said, "Yeah." He said basically
16 the same thing. Again, showing -- taking the
17 responsibility.

18 When they came on they said, "What's the
19 problem?"

20 "You're looking at it."

21 There's two ways of looking at that, ladies and
22 gentlemen. Can you imagine, you're up there, and your
23 whole life is just about -- your career is ended, as I
24 think Mr. Lawn said when he saw Captain Hazelwood, he
25 looked dejected, like a man who saw his career go down

1 the tubes. And it certainly did.

2 And with that state of mind, you're sitting
3 there looking at all this oil, this disaster, and
4 somebody comes on board and says, "What seems to be the
5 problem here?" "You're looking at it." Dumbest question
6 in the world, "You're looking at it."

7 Does that mean, "Me"?

8 Nobody knows.

9 It's just as likely to be one as the other.

10 Driving while intoxicated. Nearing the end,
11 here, but it's a lot to cover.

12 The State is saying that he was impaired because
13 he used bad judgment. And that will be shown by experts.

14 The reason they did that is because they don't
15 have anybody else. They want to ignore their own
16 witnesses because some of them might work for Exxon.
17 Ignore them all. 21 people. Ignore them. But, we will
18 look at a hindsight from a captain who sits in his easy
19 chair and says it was bad judgment. And we'll take an
20 expert, Mr. Prouty, and show you that he must have been
21 impaired.

22 That's the way they're going to prove their
23 case. The most bizarre way of ever proving a DWI in the
24 history of the world. And if his name wasn't Joseph
25 Hazelwood they wouldn't even make the effort.

1 This, as you know, you've seen plenty of, plenty
2 of times, was used and prepared by Dr. Hlastala.

3 Mr. Prouty said there's such a thing called
4 retrograde extrapolation. Boy, what a mouthful that is.
5 Retrograde extrapolation.

6 He also said it's never, ever to his knowledge
7 ever been used going back 11 to 14 hours. Never. Four
8 hours was about it. Maybe a little longer. But, there's
9 a first time for everything. This was the first time.
10 Never even attempted before.

11 Why do you think that?

12 Because it was so ridiculous most people
13 couldn't (indiscernible - unclear) with a straight face.
14 You can't do it.

15 There's another one I want to show you. If I
16 can find it. Here it is.

17 This is the critical diagram right here. I'll
18 get to that in just a second, but anyway. Let's start
19 with this: Retrograde extrapolation.

20 Mr. Prouty said, "Well, I'm an expert, but the
21 other person in the state you wanted to use, or called as
22 an expert, isn't. I'm him."

23 "Well, what about these other guys?"

24 "Oh, they're experts, but I don't use their
25 stuff. I use mine."

1 That makes it limited to talk even about one
2 person and his theory. No one else, of all the experts
3 available. He's the only one. Because he said no one
4 else either is, or if they are, I don't believe in what
5 they have to say.

6 So, he comes up with this theory. And the one
7 thing he said is that, "Yes. It's a subject of much
8 debate among experts." He managed to say that.

9 Well, ladies and gentlemen, if the experts can't
10 even agree on the concept, to begin with, how in the
11 world can that be proof beyond a reasonable doubt?

12 It can't.

13 Mr. Cole spent a lot of time trying to show that
14 Dr. Hlastala was not an expert. Now he turns around and
15 uses a paper he wrote to try to convince you that it
16 proves the State's case.

17 But, what did he say at the very end of that
18 paper?

19 There was a time period there. Four hours was
20 kind of the outside. That's exactly what Dr. Hlastala
21 said when he was showing that. He says I didn't say it
22 was valueless. I'm just saying that it has limitations
23 even within a short period of time. Even within this
24 period of time from here to here. Look at the range you
25 still have. But, when you go back like this, he said

1 it's nonsense.

2 What if the drinking had stopped at 1:30 in the
3 afternoon, instead of later, at 7:30? What if it stopped
4 at 3:30?

5 These lines would continue to go on forever and
6 ever and ever until no matter what the burnoff rate was,
7 the person would be dead.

8 You take one point and it magically, by some
9 magic becomes proof beyond a reasonable doubt of DWI.

10 Mr. Cole said that .10 was the legal limit in
11 Alaska. True. What he didn't tell you is that -- and
12 this is very important -- Captain Hazelwood is not being
13 charged with having a blood alcohol of .10 or greater.
14 You can prove a DWI that way. That's one way the
15 legislature said you could do it. The other way is by
16 being impaired.

17 But, the legislature also said if you're going
18 to do it with a blood alcohol reading, that test must be
19 done within four hours.

20 The legislature agreed with Dr. Hlastala. Four
21 hours is basically the outside limit, because within that
22 period of time it is presumed that the level of alcohol
23 in your blood is the same as, or at least the same as the
24 amount at the time of the occurrence, or the incident.
25 Four hours. If you don't have the four hour tests, there

1 can never be a conviction of .10 or greater as proof of
2 DWI.

3 And, yet, that's exactly what they're trying to
4 do here. Exactly. And that's
5 something you can not do.

6 And you can't do it for another good reason.
7 Even if that were acceptable practice, what we have here
8 is Mr. Prouty took the lowest example. He took the
9 lowest -- and by the way, on this point here -- 0.61.

10 Now, there's no argument that that's correct.
11 We haven't disputed that number. But, does it fall on
12 this line. Remember Mr. Burr testified, he said he was
13 shown something by Mr. Cole and he said, "Yeah, but these
14 are just ideal curves, you know? They don't plot out
15 that way. A person's blood alcohol doesn't just go nice
16 that way. It goes up and down." He was shown one and he
17 said, "Look here, it points up here. It doesn't follow
18 that curve. It's way up here."

19 What does that do? It skews everything upward.
20 It makes it worse than it is. So, this point is correct.
21 Not where the point is, but the value is correct. But,
22 where it is is anybody's guess. It could be here. It
23 could be there.

24 And, under the State's one scenario, if you take
25 the average, take the average, 1.7 per hour, 21 drinks.

1 21 drinks when he was drinking. That's how much he would
2 have had to have. He would have been crawling, if he
3 could move at all, at 8:30 when he arrived at the ship.
4 Absolutely inconsistent with all the evidence.

5 The State says, "Well, there's no evidence to
6 show he drank any other time."

7 Let me remind you, ladies and gentlemen, on the
8 most important things at any criminal trial. The State
9 has to prove it. The defense does not. Defense has to
10 prove absolutely nothing.

11 So, what happened in the intervening time on
12 that ship, after the engines were shut down? There was
13 nowhere to go. You're sitting there and you're just
14 waiting and you know the end has come. Your career is
15 over. The State says there's evidence of drinking.
16 That's true. There's no direct evidence. But, you can
17 infer because of this ridiculous extrapolation in the
18 expert's testimony that one way of explaining it is
19 having something to drink in between times. Because then
20 the whole thing becomes worthless. And that's the only
21 way you could explain this.

22 Also, Mr. Burr testified that at levels of 15,
23 20, things like this, everyone shows signs of impairment.
24 It's visibly and noticeable. You see it. You can't hide
25 it. You can't mask it. That's what the State will argue

1 here. That's what they're saying. 21 people see him.
2 He's not impaired because he's hiding it.

3 Mr. Burr said if you take their best scenario,
4 even their lowest one, he's going to show it.
5 Everybody's going to see it. If not everybody, a lot of
6 people, because -- and the more higher up you go the
7 higher burnoff rate you have, the more you have to drink.
8 And the whole State's theory goes just the opposite of
9 what they want, because you have to have the higher
10 burnoff rate instead of here, get up to here, get up to
11 here, get up to here. You're up to 30 drinks.

12 (Tape: C-3688)

13 (003)

14 The State says, we're going to prove it by
15 tapes. We're going to take a 10 second segment of
16 Captain Hazelwood's voice, have you listen to it, compare
17 it with another voice and say, "Here it is. Here's your
18 proof."

19 I've already explained that tape. The State has
20 not. They have not reputed that testimony in the
21 slightest. They had the chance to cross examine an
22 expert. That had a chance to get their own. They had a
23 chance to do everything.

24 And, perhaps some of that may, or may not be
25 their fault, because unfortunately, the original tape

1 doesn't exist. So, we're comparing a tape of a tape of
2 a tape, or something along that line, to an original that
3 we can't even look at.

4 And as Mr. Siedlick told you, when you record
5 something on a recorder that's battery powered, and you
6 play it back, not on the machine you recorded it on, it's
7 going to play at a faster speed, because you're going to
8 slow, and suddenly you're going at the right speed, it's
9 going too fast.

10 Now, it was also cut off. You won't hear any
11 part of it. You don't know how it was done. It was very
12 difficult to try to put this back together. Mr. Siedlick
13 chased all over the country trying to do this. And he
14 could not conclude anything except something's wrong.
15 Something doesn't jive here.

16 Mr. Delozier and Mr. Falkenstein never told
17 Captain Hazelwood, "Hey, we think you've been drinking.
18 Stay here. We want to watch you. Sit down."

19 Never did that. They said, "Oh, go about your
20 business." And they said, "Well, we'll get around --
21 we'll get this blood test somehow." They didn't want
22 Fox's help, obviously. He came and said, "Look. Here's
23 a number of things we can do."

24 It was a Coast Guard investigation, and I submit
25 to you they didn't want the State of Alaska anywhere

1 around. And they just ignored Fox. And, oddly enough,
2 if it wasn't for Fox having a tape recorder -- Delozier
3 didn't even want it. He said, "I have a tape recorder."
4 He said, "I don't want it." He said, "Well, can I sit in
5 and, you know, help the investigation?" "Yeah, sure."

6 And he started without him. He talked to Kagan
7 first and didn't even wait for Fox. So, if it wasn't for
8 Fox the Fish and Game game warden down at Valdez, the
9 State wouldn't even have that tape. Because it was a
10 Coast Guard investigation. And I think it was pretty
11 apparent that if Fox couldn't help in doing what they
12 wanted to do, they didn't care if he was around. It was
13 their show.

14 But, days later a search was made. He also said
15 he smelled alcohol when he came on board. Well, he
16 brought something here. It's in evidence as 119, a
17 bottle of Moussy Beer.

18 If I recall the testimony correctly, Fox got
19 some of that and asked them if that's what they could
20 smell and they said yes. Both Delozier and Falkenstein
21 said, "Yeah. That could be it."

22 "Open it up and smell it. See if it smells like
23 the right beer."

24 What does it all mean?

25 It means there certainly isn't (indiscernible -

1 unclear) that Captain Hazelwood was impaired by the
2 consumption of alcohol.

3 The State's argument here says if you drink
4 anything, you are impaired. That's not the way the law
5 is designed to work, folks, because that means anyone who
6 drinks anything would be impaired. Because they say,
7 "Well, you drink, your judgment's impaired."

8 There has to be some reasonable relationship
9 between drinking and the crime that has to be -- when
10 you're talking impairment -- is proof of impairment by
11 some means other than some kind of a ridiculous theory
12 that the experts can agree on. And what does that leave?
13 What people saw.

14 Like the officer that stops somebody for drunk
15 driving, or driving under the influence and says, yes.
16 They did things very well. They could count. They could
17 do this, but they made this mistake, and they made that
18 mistake, and they couldn't walk this way and they
19 couldn't do that so well. Not so good, under the
20 influence. I could see it. It was obvious.

21 Twenty-one witnesses said he was not impaired,
22 21 witnesses. The State says don't believe them.
23 Believe Mr. Prouty and believe this theory that
24 apparently only he relies on, that even he has never used
25 to go back as early as 8:30, or midnight -- go back 10,

1 12, 14 hours. It's never been done.

2 Ladies and gentlemen, if Captain Hazelwood is
3 convicted of that charge this would be the all time first
4 anywhere, anytime on a theory that no one even dreamed
5 of.

6 Now I want to put up something else, and I'm
7 just about done for today. Before I do that I just want
8 to say I'm sure I've forgotten a lot of things, but,
9 again, there are times when I must agree with Mr. Cole.
10 And one of them is that your collective memory is
11 certainly better than ours, because there's 12 of you.
12 And you've sat here and I've talked to you kind of
13 individually, because you can not discuss anything about
14 this case. In a little while you'll be able to do that
15 for the very first time, to know what each one of you is
16 thinking. Until then you've been totally independent in
17 your own thoughts. And suddenly, you're going to become
18 a body and decide as one.

19 In deciding as one -- and here's another item I
20 just want to mention, however, Exhibit A of all things.
21 Exhibit A. It's the pilot -- when the pilot has
22 disembarked it has to be filled out and signed. It is
23 signed by Captain Hazelwood. This was when Pilot Murphy
24 got off at 2320 hours -- 11:20. The signature on here,
25 look at it. See if that isn't just as good as a tape

1 recording as to whether somebody's impaired. It's an
2 excellent signature, right on the line.

3 For whatever it's worth -- it's certainly worth
4 as much as a tape recording, more in this case.

5 Lastly, I want to sum up by saying reasonable
6 doubt. Reasonable doubt. Those two famous words that
7 distinguish a criminal case from any other kind. The
8 distinguishing feature of this case, or any criminal
9 case, and a civil case, is a reasonable doubt.

10 What does it mean?

11 That's one of those things that's been kicked
12 around for years and years. And I guess in doing that -
13 - Now this part of the definition, and it's going to be
14 a long one. But, this is actually what reasonable doubt
15 actually says in the instruction -- the judge will
16 instruct you, too. And by taking this out I didn't mean
17 to imply that there's nothing else there. I'm merely
18 saying that this is what reasonable doubt is, a doubt
19 founded upon reasoning and common sense, the kind of
20 doubt that makes a reasonable person wonder, hesitate to
21 act, hesitate to act (indiscernible - away from mike)
22 more important offense.

23 It isn't beyond all doubt whatsoever, because
24 very few things in real life you can resolve beyond all
25 doubt. You, I guess, can say there's no doubt you're in

1 this room. We know that. There's no doubt about it.
2 Other things are very questionable.

3 This is the standard you must abide by. Can you
4 sit here and say to yourselves in that jury room, "I am
5 convinced beyond this doubt, beyond this reasonable doubt
6 that there was reckless actions here, that there was
7 negligent actions here, based on what Captain Hazelwood
8 knew and what he did." Can you
9 say beyond a reasonable doubt based on a chart, a graph,
10 a possibility, a theory, that he was under the influence
11 when 21 witnesses say no?

12 There's no doubt, ladies and gentlemen. This is
13 one of the rare cases where the defense has actually
14 shown the opposite. Going back to what we said in our
15 opening statement I submit to you we've proved exactly
16 what we said we would, even though there's no
17 requirement. We didn't have to do it. We told you,
18 "We're going to show you what happened. We're going to
19 show you why it happened, and yet there's going to be a
20 gap in there." We don't know why certain things weren't
21 done during the period of time, but we do know now that
22 Captain Hazelwood had every reason to believe they were
23 being done, they were being carried out, and what
24 happened was the remotest from the substantial risk that
25 he had to face and the conscious decision about them.

1 Which kind of leads us to the ultimate here, the
2 ending of this. And I hope I haven't bored you. I hope
3 I haven't talked about things that you thought weren't
4 important. We only can do what we can, because lawyers
5 speak for clients, whether that be the State of Alaska,
6 Captain Hazelwood, or anybody else. And you try to cover
7 things you think are important.

8 This case, when you look at the whole thing,
9 can't help but remind somebody of a story that goes back
10 as far as the Bible. It was a time when -- I don't know
11 who it was, I can't remember who it was, but they put the
12 sins of the Israelites on a scapegoat, and they sent the
13 scapegoat into the desert to take the sins away.

14 That word has come down through the centuries to
15 kind of mean a little bit something else, but it's a way
16 of focusing blame, and fault, and responsibility on only
17 one, and it makes us feel better. It's all his fault.
18 It still exists today. It worked then, and it worked
19 today.

20 Exxon pressure, how much have we heard about
21 that? It worked to Exxon's advantage as well as
22 disadvantage. If they have any interest in this at all,
23 blame it on him. Blame it on him. Captain Hazelwood's
24 caught in the middle. The State of Alaska, Exxon,
25 everybody. Coming at him for all directions. Make it go

1 away, we'll feel better.

2 I submit to you, ladies and gentlemen, there may
3 be something else involved here. Maybe it makes the
4 State hope that people will look the other way when it
5 comes to their responsibilities, focus the attention
6 elsewhere. It's as old as time.

7 This was a maritime accident, ladies and
8 gentlemen. It was a tragic one. No one disputes that.
9 But, it was not a crime. At least, for the very first
10 time, somebody is attempting to make it one, and that's
11 now.

12 This case really revolves around not how a
13 tanker is operated by the law, by the regulations, by the
14 Coast Guard, what captains should, or should not do. It
15 comes down to how the state prosecutor says it should be
16 operated. There's no rules. No regulations. There's no
17 end. Maybe the next prosecutor might think different.

18 But, every tanker captain is suddenly subject to
19 the whim of a representative of the criminal justice
20 system for the State of Alaska. I don't like the way he
21 did it. We can spend all this money, and all this time,
22 because we don't like what you did.

23 As we said earlier, there's so few regulations
24 here, none of which are the State's, and Mr. Cole is
25 going to come back and start talking about Coast Guard

1 regulations, administrative regulations and say if you
2 violated them, Oh, you must be a bad person. If he drank
3 in a four hour period before coming on duty, he must be
4 a bad person. That's the regulation.

5 You know what's missing there?

6 They never proved he knew anything about it.
7 They never proved Captain Hazelwood knew of any such
8 regulation. Not once. They have to prove what he knew
9 and what he did not. ~~Let~~ him
10 talk about it all he wants.

11 Secondly, think of it in these terms. A master
12 of a vessel, when he's at sea, when he's on there, he
13 doesn't have any duty hours as such. He's the one in
14 control. He's the got ultimate responsibility. It's
15 also his home. He can't do what we do. We go home and
16 take our shoes off and kick back and maybe relax and have
17 a beer, or two. The State says he's not allowed to do
18 that, even though someone else is perfectly qualified to
19 run that ship and is there doing it. They're saying at
20 all times he has to be the sole one responsible for
21 everything that happened. And that, again, is nonsense.

22 He is not. He is not required to. He is a
23 human being like the rest of us. And he has to sleep,
24 and eat, and he's even entitled to make mistakes, just
25 like everyone else, but they want you to brand him a

1 criminal.

2 I submit, ladies and gentlemen, that once you
3 get past the smoke, and the mirrors, and the bells, and
4 the whistles, and look at the facts in this, you look at
5 this. There's no doubt. There's no dispute. He
6 couldn't prove the case.

7 And I would submit, ladies and gentlemen, that
8 there's a reason we're here today. The reason is
9 politics. Politics. Money and politics. A higher
10 agenda on the part of somebody.

11 Take on person out, zero in on this and spend
12 all this time and all this effort. Fortunately, Captain
13 Hazelwood could meet that, and defend against it. What
14 that really is, who made decisions and why, is something
15 else here.

16 The State really thought tankers should be
17 controlled and regulated, it seems like they should have
18 had some proper rules, some proper statutes and
19 everything. The trick was to bend, wiggle, squeeze,
20 whatever it takes, to try to find him guilty of
21 something. It's crazy.

22 You know, Alaska is known as the Last Frontier.
23 You know, this frontier, though, we've learned from the
24 mistakes from the prior ones. We don't have vigilantes,
25 and we don't have lynch mobs. What we do -- what this

1 frontier does is grant a fair trial to everybody. And we
2 believe in the fairness, and the concept of fairness, the
3 equality, and fair trials. And we believe in the state,
4 juries, people. We believe that even for people who
5 transport who transport what they call black gold, oil.
6 Captain Hazelwood's entitled to that same fairness. That
7 same equality as everyone else.

8 Get past the emotions, ladies and gentlemen, and
9 that's what the State was trying to do. Look at the
10 video. Look at that terrible stuff that happened down
11 there. Get your emotions to the point where you're going
12 to lose sight of what it's all about. Look at the video.
13 You'll be asked that again, I'm sure. Why was it there?
14 For that reason. To get the emotions up. And every one
15 of you said we heard about this case, we read about it.
16 But, you agreed, I should put that out of my mind, and I
17 don't care what I read and I don't care what I saw. I'm
18 going to be fair, and I'm going to be impartial. And I'm
19 going to ignore all that, base my decision solely on what
20 I heard today -- what you've heard in the last seven
21 weeks.

22 When you were being selected Mr. Cole asked you,
23 "Do you realize the importance of this case to Captain
24 Hazelwood and the State of Alaska?" You all said,
25 "Yeah."

1 Well, it sure has importance to Captain
2 Hazelwood. There's no doubt about that.

3 And it must be very important to the State of
4 Alaska, but your verdict, no matter what it is, it can
5 not change, it can not alter, can't improve one thing
6 that happened a year ago in Prince William Sound. That's
7 happened. It's over and it's done. Your verdict isn't
8 designed to change that. It just can not. Your verdict
9 will never address blame. It will never address fault in
10 the entire industry, Exxon, the Coast Guard, the State,
11 the federal government, Alyeska, or anybody else, except
12 to do one thing.

13 You're being asked to assess criminal -- serious
14 criminal responsibility and nothing else.

15 Does that seem fair?

16 Maybe it is, maybe it isn't. But that's your
17 responsibility. And your verdict will not change
18 anything else in that regard. However, based on the
19 evidence in this case, even though it won't ever prevent
20 another maritime disaster, I'll tell you what a not
21 guilty verdict will do, because it's based on the
22 evidence and the facts, it will send out a nice, loud,
23 clear message to the world. And it says, you, the
24 consciousness of this state, representatives of the
25 state, you came here, not because you volunteered,

1 because it was your duty. You came. You heard the
2 evidence. You listened and you followed the law. And
3 after you did that you simply said those two, simple
4 words, "Not guilty," mean only that the state has failed
5 to prove their case, and by doing so, Captain Hazelwood
6 did not commit a crime. And that message is, "Justice
7 was done here today."

8 Thank you.

9 THE COURT: We'll take another break, ladies and
10 gentlemen. It'll be about 10 minutes this time.

11 Don't discuss this case among yourselves, or
12 with any other person. Don't form or express any
13 opinion.

14 THE CLERK: Please rise. This court stands in
15 recess subject to call.

16 (765)

17 (Off record - 2:40 p.m.)

18 (On record - 2:56 p.m.)

19 (Jury present.)

20 THE COURT: Thank you. You may be seated.

21 We'll resume with Mr. Cole's closing. At the
22 conclusion of Mr. Cole's argument I'll read the
23 instructions to you and give you further instructions
24 after that.

25 Mr. Cole.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. COLE: Thank you, Your Honor.

*

FINAL ARGUMENT OF PLAINTIFF

MR. COLE: When I came to Alaska I had the opportunity, ladies and gentlemen, to work with a very famous judge in Alaska. His name was Judge Robert Bucklew and he had a courtroom across the way and I had the opportunity to work with him for one year. And, he was a very well known defense attorney in the city of Anchorage, and he was also a prosecutor (indiscernible - away from mike).

I remember asking him. I said, "Well, judge, you know, I watch some of these cases and sometimes I don't understand how these defense attorneys can do what they do. How do you do it?"

He gave me advice that you see written in almost every defense book on how to defend a case. And that is, if you have the facts in your favor, argue the facts. But, if you don't have the facts in your favor, argue the law. But, if you don't have the law in your favor, then blame everybody else, but don't focus any blame on your client.

And if you think about it, ladies and gentlemen, Mr. Madson has followed that to a tee.

He says, "Don't use emotion." But, then he

1 tries to make you feel as guilty as possible about what
2 you're going to be doing in this case, in complete
3 contradiction to what the judge will instruct you.

4 He uses the words like -- what did he say, "a
5 criminal conviction", "go to jail", "branded a criminal",
6 "acts and conduct so bad they deserve punishment", "make
7 him a criminal", "brand him a criminal", "make him into
8 a scapegoat".

9 Ladies and gentlemen, that is not your purpose.
10 You're going to get an instruction that says you're not
11 to consider punishment. You're not to consider the
12 effects of this. That's up to the judge.

13 What you have been called upon to do is to look
14 at the facts and determine those facts and determine what
15 the law is and whether it applies to the facts that we
16 have here, but you are not here to brand Captain
17 Hazelwood a criminal, or make him into a scapegoat.
18 Don't feel like the pressure is that.

19 It's normal in any of these cases, ladies and
20 gentlemen, to feel pity for someone. And there's
21 sometimes I'm sure you felt that. They've made it very
22 apparent and clear, they brought out that he got fired.
23 And I'm sure you felt bad about that.

24 And at times I'm sure that your emotions, you
25 felt sorry.

1 And at other times I'm sure you felt like "This
2 is a terrible thing." When you watched that oil come out
3 I'm sure you were going, "How could this happen?"

4 And maybe you felt very angry toward Captain
5 Hazelwood at that time.

6 Those are all natural emotions that you can't
7 help but have, but all we ask, ladies and gentlemen, is
8 that you not make your decision based upon those. I
9 didn't ask you to do that. Mr. Madson apparently wants
10 you to feel guilty about your role.

11 This is one of the greatest opportunities you've
12 ever had. Don't feel compromised because of what Mr.
13 Madson characterizes as you branding someone a criminal,
14 because you're not.

15 Mr. Madson says, "Oh, the State wants to
16 influence you, and make you emotional by showing you
17 videos."

18 Ladies and gentlemen, if we wanted to show you
19 videos, you heard Mr. LeBeau say we made hundreds and
20 hundreds of hours of video. We could have played them
21 day in and day out and they would have been a lot more
22 graphic.

23 But that's not why we're here. We are here to
24 present our case, to show you that Captain Hazelwood -
25 - the action he took fit within the definition of the

1 law.

2 Now, Captain Hazelwood, Mr. Madson says, is a
3 scapegoat. He's a scapegoat.

4 The State of Alaska didn't put a vodka in
5 Captain Hazelwood's hand at 2 o'clock and force him to
6 drink it. Neither did the Anchorage District Attorney's
7 Office, or the state prosecutor, or the VTC, or Robert
8 Kagan. The only person that put those drinks in his hand
9 is that person that sits at that table right there.

10 He's the one who took the risk. He's the one
11 who went into a bar and drank for four hours, at least.
12 At least four hours, prior to taking command of that
13 vessel. It wasn't Bob Kagan that put this position in
14 the position of peril that it ended up. And it wasn't
15 Greg Cousins who did that.

16 Putting this ship right there, knowing it's
17 going to pass within a mile, less than a mile of Busby
18 you've got two miles to Bligh, you've got a 29 mile gap
19 right there, and you've got ice all the way around you.
20 It wasn't the State of Alaska that did that. And told
21 him to walk away. It wasn't Bob Kagan who put that
22 position and walked away. It wasn't Greg Cousins who put
23 the ship in that position and walked away. It wasn't the
24 VTC who put the ship in that position and walked away.
25 It was Captain Hazelwood.

1 Oh, but Mr. Madson says, "Well, the VTC, they
2 should have warned him. They should have told him."

3 Told him what? What? You're vessel's
4 approaching someplace in here. He'd have to be on the
5 bridge for it to make any difference, and he wasn't. He
6 left the bridge.

7 What are they going to tell Greg Cousins that he
8 didn't already know? He said he knew he was already
9 there.

10 But, that is another example of how to cast
11 blame on somebody else, to try and ease your own
12 responsibility.

13 Reasonable doubt. Mr. Madson told you about
14 reasonable doubt. He put up a nice sign on there. But,
15 what he didn't read, what he didn't place up on the
16 board, he just commented on it in passing is that it is
17 not required that the prosecution prove guilty beyond all
18 possible doubt, for it is rarely possible to prove
19 anything to an absolute certainty.

20 There's no way you can prove anything to an
21 absolute certainty, ladies and gentlemen. But, what you
22 have to remember is that we don't have to prove
23 everything in this case. We have to prove the elements
24 of the crime charged beyond a reasonable doubt.

25 That this occurred on March 24th, that he had no

1 right, nor any reasonable grounds, that he recklessly
2 created a risk of damage, that the risk of damage is an
3 amount exceeding \$100,000, and that the risk was created
4 by the use of a widely dangerous means.

5 Those are the things we have to prove beyond a
6 reasonable doubt.

7 Under operating under the influence. On or
8 about he operated a watercraft. And while under the
9 influence of the intoxicating liquor he operated it.

10 So, let's talk about the facts that Mr. Madson
11 say don't support the State's case.

12 Mr. Madson says look at the State's witnesses.
13 They brought in all these witnesses and none of them
14 supported this case.

15 That's not true, ladies and gentlemen. Those
16 witnesses that came up, (1) talked about a lot of other
17 things besides impairment. (1), the State of Alaska, at
18 the beginning of this case, asked you if you could be
19 fair and impartial.

20 We didn't ask you say we find this person guilty
21 if we prove the case. You were asked, "Can you be fair?
22 Can you be impartial?"

23 And in presenting our case we didn't hide
24 anything from you. We called all those people not only
25 for what they had to say about intoxication, but what

1 they had to say about Captain Hazelwood's conduct on that
2 night.

3 They talk about Jerzy Glowacki. We had to call
4 him to show that Captain Hazelwood was drinking in a bar.

5 Mr. Roberson. We had to call him to show he was
6 drinking in a bar.

7 Captain Murphy. He saw signs that he'd been
8 drinking that evening, on two different occasions.

9 All the rest of the people were put on for a
10 purpose. Not because we were hiding the ball. Not
11 because we were trying to deceive you, but to show you
12 the whole picture of what went on.

13 Now, you can say whatever you like about whether
14 they thought he was impaired, and the reasons why they
15 said, or didn't say he was impaired.

16 But, you can't change a couple things. You can
17 not change physical evidence. The physical evidence in
18 this case does not lie. And remember that. It does not
19 lie.

20 And they've made a big thing about this one tape
21 of Mr. Siedlick's. Remember? The New York investigator
22 that told you about how accurate, or inaccurate these
23 are?

24 Well, if you remember Mr. Siedlick's actual
25 testimony he talked about one tape. And that was the

1 inbound tape. And he said if you listen to the inbound
2 tape, that's too fast. And that's all he said.

3 But, if you'll remember, he was asked, "Well,
4 what about the tape of Trooper Fox with Captain Hazelwood
5 that was done 13 hours after the grounding?"

6 He said, "Oh. That's an accurate one. Sure,
7 that's fine. I've listened to it. That's accurate."

8 What he didn't know is the same type of micro-
9 cassette recorder that they'd used on the inbound tape
10 was used to tape this conversation.

11 Well, if you don't like the inbound tape, listen
12 to Captain Hazelwood in the tape with Trooper Fox, and
13 compare that to what he said at 11:24 to the Coast Guard.
14 And then, compare it to what he said at 9 o'clock the
15 next morning.

16 Mr. Siedlick talked about one tape. You don't
17 like that tape, use another one. But, ladies and
18 gentlemen, you'll hear the difference.

19 And the physical evidence doesn't lie. And all
20 those people were asked, was there any difference between
21 when you saw him the night before on the 22nd and how he
22 was acting on the 23rd, and they said, "Absolutely not.
23 He was absolutely the same person."

24 And I'd submit to you, listen to these tapes and
25 see if that is the same person. I submit it's not. I

1 submit that you will hear before the grounding a person
2 who is making mistakes, who is slowing down his words.
3 His selection of words is wrong. He shows evidence of
4 impairment. And the physical evidence doesn't lie.

5 Mr. Madson says no signs of impairment, no signs
6 of intoxication.

7 We know he was in a bar for at least four hours,
8 drinking vodkas all afternoon, not doing anything but
9 talking. We know that he was drinking within a half an
10 hour of going through the check point at Alyeska, yet
11 they didn't smell one bit of liquor. It couldn't be
12 because Alyeska has some liability in all this, could it?
13 Yet, within a half an hour of leaving the bar, after
14 they've been drinking for four hours, these two Alyeska
15 guards don't smell alcohol. Yet, Captain Murphy who sees
16 him 10 minutes later does. Now, you figure that out.

17 When he gets to the bridge Captain Murphy
18 smelled alcohol on him. Patricia Caples observed that he
19 appears to have changed personalities, notes that she
20 thinks he's been drinking.

21 When he leaves the bridge that evening -- why
22 does he leave the bridge?

23 Well, their own expert gave you a pretty good
24 indication of why. Because people that mask take steps
25 to avoid being seen in an intoxicated stage. And how -

1 - what better steps could you take to mask than to leave
2 the bridge.

3 And in addition to that, if you knew you were
4 intoxicated, and you knew you shouldn't be make
5 responsible decisions for the safety of your crew and the
6 safety of your vessel, what would you do? You'd walk
7 away so that other people had to make those decisions.
8 And that's exactly why he did that. H e
9 didn't want to have to make a decision, so he walked
10 away. And that covered up his alcohol.

11 His initial conversation with the Coast Guard,
12 listen to the tapes. He called it the Exxon Bat -- he
13 starts to say the Baton Rouge. He says, "We've departed
14 the pilot -- I mean, we've disembarked the pilot." He
15 says, "We're hooking up to sea speed." He was not sea
16 speed at that time, nor was he even close to it.

17 Listen to how his voice sounds.

18 He, then, has a second conversation at 11:35.
19 He says, "We're going to reduce speed to 12 knots." They
20 haven't been over 12 knots in speed. He should have
21 known that. That's a mistake. He talks about the
22 Columbia Glacier, instead of the ice coming out of
23 Columbia Bay. Listen to how his voice sounded in that
24 one.

25 These are 24 -- 30 minutes before the accident

1 happened. He placed the vessel on autopilot. He
2 accelerated to sea speed. He apparently didn't even
3 recognize the danger that this vessel was in. Every
4 person that we brought in here recognized the danger of
5 this scenario.

6 For back of a better word, or hypo, just call it
7 the Deppe hypo. "Captain Deppe, your ship is traveling
8 at night. You've made a course change of 180 degrees.
9 It's going to take you one mile off Busby and somewhere
10 in between the ice. You're headed straight for Bligh
11 Reef. You've got drafts of 56 feet. You're vessel's
12 worth \$150 million. Your steering helmsman has a
13 problem. At 11:53, where are you?"

14 And he says, "I'm on the bridge."

15 And why are they on the bridge? Because they
16 all recognize the problem here.

17 And for Mr. Madson to come in here and say that
18 tanker captains, particularly Captain Hazelwood doesn't
19 recognize this problem is ridiculous.

20 Think about it.

21 That's what they're responsible for. They're
22 trained to recognize problems. And if he's not
23 recognizing this problem and taking steps to effectively
24 avoid it, "to use extreme caution", to use the words of
25 this, then something's wrong. Something is wrong with

1 his judgment. And it's no different than the drunk
2 driver that's driving down the street and doesn't
3 recognize that the light is red and continues to
4 accelerate forward, and in fact, goes through it and
5 hurts somebody. There's absolutely no difference.

6 He left the bridge.

7 And, you know, there's a lot of talk about how
8 -- remember all the questions, a 10 degree turn is a
9 correct turn, it's an easy turn, that would put the
10 captain at ease?

11 If you listen to Greg Cousins' testimony he was
12 asked point blank by Mr. Madson, "Did you tell him that
13 he was turning 10 degrees?"

14 "No. I just told him we were turning."

15 And what did Captain MacKintire tell you about
16 that, and what did some of the other people tell you?
17 That you develop a sense when the ship is turning after
18 being on it a while. A captain has a feeling, that they
19 can feel the vessel turning, even if they're not on the
20 bridge.

21 That would have given Captain Hazelwood an
22 indication that this vessel wasn't turning. He should
23 have been expecting it. He knew it was going to be
24 turning in less than two minutes when he left the bridge.

25 And I'll tell you the other thing that really,

1 you've got to sit down and wonder. This is Captain
2 Hazelwood's office right here. You can see it in this
3 picture right here. It was shown to you. It's right
4 there. That window, and that window and that window.

5 Now, if he's actually doing paperwork like he
6 says he is, and he's sitting at this table right here and
7 there's a window right behind him, all he has to is look
8 out. And it's a dark night. Maureen Jones could see a
9 red light off the bow. Why can't Captain Hazelwood? All
10 he had to do was look out the window. It was there. He
11 was aware.

12 And if he wasn't aware, ladies and gentlemen,
13 it's only because he was intoxicated that night. And you
14 remember that the definition of recklessness, when Mr.
15 Madson put it up there he didn't talk about it a whole
16 lot, but at the end it says if you are not aware of risk
17 because you're intoxicated, that's not a defense if a
18 reasonable person would have been aware of those
19 circumstances, a reasonable person who was not
20 intoxicated.

21 So, because someone's impaired, and they don't
22 appreciate, or understand a risk doesn't mean that they
23 have been absolved. In fact, it's not a defense in
24 recklessness.

25 Not returning to the bridge upon grounding, they

1 say, "Well, he was there." Is that really the evidence?
2 He's 15 seconds from the bridge, right. Even under their
3 scenario, and it really makes no difference how this
4 vessel did, whether it finally grounded at 12:08, or
5 12:07, or 12:09. When you look at this course recorder
6 we know that it wasn't until 12:11, at least, that this
7 vessel stopped turning.

8 And what did Greg Cousins say?

9 He said the vessel was turning hard. And so, I
10 ordered a hard left and it didn't get responded to. The
11 order didn't get followed, so I grabbed the wheel and
12 ordered a hard left.

13 Now, do you remember, the Sperry people told you
14 that it would have taken about 27 seconds for the rudder
15 to go from a hard right to a hard left.

16 Greg Cousins didn't leave that bridge until the
17 vessel had stopped turning. And yet, when he left the
18 bridge Captain Hazelwood wasn't there. He didn't see
19 him. And what would be the first thing Captain Hazelwood
20 would do? Is it to come up and be quiet, if Greg Cousins
21 is sitting there turning the wheel, trying to stop this?
22 Of course not. Captain Hazelwood didn't return to the
23 bridge in time. And for who knows why?

24 But, all we know is that no one saw him until
25 Greg Cousins and Maureen Jones came back from the port

1 wing. And what he was doing down there -- what paperwork
2 was so important we just don't know. But, it's clear,
3 ladies and gentlemen, that Captain Hazelwood put his
4 paperwork below the safety of his vessel. And he was not
5 responding appropriately, because he should have been up
6 there within seconds. He should have been up there well
7 within the time Greg Cousins was trying to get that
8 vessel steady.

9 Not turning off the engines. Another indication
10 of impairment. He doesn't realize the engines are going?
11 It's on for nearly eight minutes, nine minutes. And
12 after the grounding, even according to their theory.

13 Not calling the Coast Guard for at least 16
14 minutes after the grounding. And listen to that
15 conversation. He says, "I'm north of Goose Island." And
16 remember what Mr. Blandford said? "I couldn't figure out
17 what he was talking about. North of Goose Island? That
18 puts him..." and here's Goose Island. That puts him
19 somewhere over here. Captain Hazelwood's all the way
20 over here. How does he get north of Goose Island by
21 Bligh? How about west? Just like Mr. Blandford said.
22 Listen to the tape. Mr. Blandford was obviously very
23 confused. And that's because it was a completely
24 erroneous place that he gave the location of the ship.

25 "Evidently leaking some oil"? That's kind of an

1 understatement. They lost 100 to 115,000 barrels at that
2 time. Listen to his voice there.

3 Several people testified that Captain Hazelwood
4 did not treat this as the emergency it should have been
5 treated as. You know, there's talk about what you would
6 and would not do after that. And to a certain extent,
7 that is hindsight. But, at the same time, your first
8 obligation is to protect your crew members. And it's a
9 very simple procedure, whether you choose to do it by
10 using the general alarm, or choose to do it by sending
11 someone down, the ultimate thing is to make sure that
12 they get all awake and prepared. And that wasn't done in
13 this case. They didn't take the right steps.

14 Trying to get the vessel off the reef. You
15 know, ladies and gentlemen, I'm sure that when you heard
16 Mr. Madson say in his opening, "We're going to bring
17 witnesses in here that say off means on," you had to be
18 as confused as everyone else.

19 I mean, when you think about it, why not just
20 get up here and say it was the wrong thing to do, we
21 admit it, but it wasn't reckless. And that would have
22 made a heck of a lot more sense. But, you know why they
23 didn't do that? Because everybody knows what a dumb
24 decision that had been made.

25 So, they, instead, bring in two people to say,

1 "Well, he didn't know what he was saying." One person
2 says he was telling the Coast Guard what they wanted to
3 here. Is that really true?

4 This is what his statement is. "This is Captain
5 of the Port, Commander McCall. Good evening. Do you
6 have any more of an estimate as to your situation at this
7 time? Over."

8 Answer: This is at 1:07. "Not at the present,
9 Steve. Joe Hazelwood here. A little problem here with
10 the third mate, but we're working our way off the reef.
11 The vessel's been hulled and we're ascertaining right
12 now, we're just trying to get her off the reef and we'll
13 get back to you as soon as we can. Over."

14 "Roger that."

15 And he goes on to say, "And you know, I'm not
16 telling you the obvious, but take it slow and easy, and
17 we're getting help out as fast as we can. And I'd
18 appreciate if, when you get around to it, if you can give
19 me a fairly good -- if you can give me an update,
20 whenever, as to the general location where you suspect it
21 might be, and of the stability info."

22 And Captain Hazelwood says, "We're pretty good
23 shape right now, stability wise. We're just trying to
24 extract her off the shoal here. And you can probably see
25 me on your radar. And once we get underway, I'll let you

1 know."

2 Underway. Do another damage assessment. And
3 then, this is the person that Captain Hazelwood is
4 supposed to be trying to please?

5 He says, "Let me know again, before you make any
6 drastic attempt to get underway. You make sure you don't
7 start doing any ripping."

8 He's not telling him, "Look. I want you to get
9 off the reef."

10 "You've got a rising tide. You've got another,
11 about hour and half worth of tide in your favor. Once
12 you hit that max, I wouldn't recommend doing much
13 wiggling."

14 He's not encouraging him to do this.

15 And then, Captain Hazelwood's statement 13 hours
16 later to Trooper Fox, "Okay. All right. When you
17 arrived on the bridge did you do anything at that time?"

18 "I was -- I tried the rudder and the engine for
19 a few minutes to see if we could extract her from the
20 situation."

21 Extract it.

22 "But then I got my faculties about me. I was a
23 little upset, but then I thought about it, and driving
24 her off the reef might not be the best way to go, because
25 it just exacerbates the damage. So, I just stopped the

1 engine. Even Captain Hazelwood realized when he was
2 giving this interview that it was bad judgment to try and
3 drive that vessel off the reef.

4 But, you've got to --you've got to question the
5 people that will come in here and try and tell you as an
6 Alaska jury that off means on and on means off. It just
7 isn't there.

8 And yet these are the same people that want to
9 say, "Captain Hazelwood wasn't reckless. Captain
10 Hazelwood didn't do anything." They want to come in here
11 and they want to bring their New York investigators, and
12 they want to bring their people from Florida to tell you
13 that off really means on. Well,
14 think about it, ladies and gentlemen, and use your common
15 sense.

16 Now, they talked a little bit about Janice
17 Delozier. And from the way it sounds, apparently they
18 believe there was another person walking around in Valdez
19 dressed up in the same jacket as Captain Hazelwood had,
20 the same type of hat, the same type of beard, who was
21 walking into the Pipeline Club and drinking a different
22 vodka. That's what you have to believe. Either that, or
23 Janice Delozier saw him later on?

24 Janice Delozier told you exactly who she saw
25 that evening later on, and where she was. And it wasn't

1 sitting in the corner where she saw Joseph Hazelwood on
2 her lunch break. Now, she might have been off about the
3 time, but if you remember her, she was very clear in that
4 she identified him. And how could she have know that he
5 was drinking a special vodka. She didn't know Jerzy
6 Glowacki. She didn't know Roberson. How would she have
7 known that. She wouldn't. She knew it because she was
8 sitting right there when it happened.

9 And I can tell you another reason why they have
10 problems with this. And that's because you've got this
11 small town of Valdez, and people are walking around. And
12 what did Jerzy Glowacki and Mr. Roberson say?

13 They say when we dropped him off we never saw
14 him again until later. And, yeah. We were walking
15 around.

16 Well, think about it. You're walking around the
17 town of Valdez, it's not that big. And you're surely
18 gonna see Captain Hazelwood if he's walking around. But,
19 nobody saw him. And that's because they didn't go into
20 the Pipeline Club before 4 o'clock. And he was in there
21 until sometime after 2:45. And then maybe he left and
22 did some more shopping. But, it's clear that she saw him
23 in there during her lunch break, and that she saw him
24 have two drinks. And that's consistent with the fact
25 that Roberson and Glowacki didn't see him anywhere else.

1 And you look at his statement. When you have
2 that tape in there you can listen to his statement. He
3 said, "I bought some flowers, shopped for some postcards
4 and then we went to the Pipeline Club."

5 Well, what else? There was nothing else. He
6 was in the Pipeline Club. Now, how long he was in it --
7 from when he left after Janice Delozier we don't know,
8 but we know he was there and we know he came back. And
9 we know he came back the second time from 4:15 to nearly
10 7 o'clock. And we know that when he left there they went
11 to another bar. Mr. Madson didn't like to talk about
12 those facts, but they're facts that he can't get around.

13 His client couldn't just wait in the Pizza
14 Palace and pick up their pizza. They had to go back and
15 have another vodka.

16 And, finally, on the drinking aspect, two more
17 things.

18 Mr. Madson said there's some type of inference
19 that you can draw that he drank after. Now, really, is
20 that true?

21 We put Jerzy Glowacki, Joe Roberson, Paul
22 Radtke, Harry Claar, Robert Kagan, Greg Cousins, Maureen
23 Jones, Lloyd LeCain, James Kunkel -- we put almost the
24 whole crew on there. We asked them, do you know of any
25 alcohol on board? "No." "Did you have any alcohol on

1 board?" "No." The policy was you couldn't drink.
2 Everybody knew that. You got fired.

3 Captain Hazelwood at 1:50 knew that the Coast
4 Guard was coming out there. What's he going to do?
5 Drink on their way out there?

6 That's not a reasonable inference. There's no
7 inference whatsoever. There is absolutely no evidence in
8 this trial that he had anything to drink after the
9 incident in the bar. The only evidence that you have is
10 that he didn't drink, and that at 10 o'clock he had a
11 .06. Those are facts that Mr. Madson doesn't want to
12 deal with, but he has to.

13 And if you look at it in that light, you
14 understand why the retrograde extrapolation is completely
15 logical. If he's not drinking, he's eliminating. And if
16 he's eliminating, even according to Dr. Hlastala, their
17 expert, it's an accurate way of predicting blood alcohol
18 level.

19 Now, it may not be accurate in the sense that
20 you can pin it down to certain things, a certain number.
21 But, if you remember, that's exactly what Mr. Prouty
22 said. People eliminate in different ranges, between a
23 .08 -- .01 and a .25. But, if this is the elimination
24 phase, this whole period of time, which he had no reason
25 to believe that it was not, that -- even Dr. Hlastala had

1 to agree that it would only be in very, very rare
2 situations would a person be in the elimination phase at
3 12 o'clock. Under any scenario from a .04 to a .025, or
4 .030, this gentleman's over a .10.

5 But, Mr. Madson seems to think that we've
6 engaged in selective prosecution in this case.

7 Selection prosecution. Ladies and gentlemen, this man
8 had the responsibility of 19 other crew members and 1.2
9 million barrels of crude oil. He doesn't get treated any
10 different than a person that drives down the road and
11 gets hit with a DWI. In fact, I think there'd be a lot
12 of people out there that have gotten DWIs that would be
13 pretty offended if he wasn't charged, because the bottom
14 line is he sits in a bar for four or five hours and
15 drinks, and then goes to work.

16 Now, the last part goes to the recklessness.
17 And I would agree with Mr. Madson on one thing, and that
18 is that the more dangerous something is, the more danger
19 that represents, the more substantial the risk is.

20 In this case Mr. Madson admitted that in certain
21 instances the greater amount of danger will constitute a
22 substantial risk. And he gave you the example of the
23 guns. You know, one out of 10 might be loaded, but it's
24 a risk and you can't pick them up.

25 That's the same thing that we've got going on

1 here. There's always a risk that a tanker will -- it's
2 hull will be damaged, and that further pollution will go
3 on. But, in this case it was a very different risk. It
4 was a different risk because of the facts and the
5 situation that existed that night. It was
6 a different risk because of the ice.

7 They'd made the decision to go around it. And
8 if they did it was imperative upon them to proceed with
9 caution. And this is not the actions that were taken by
10 a crew person. Captain Hazelwood was willing to risk the
11 safety of his vessel through the Narrows. And when he
12 came out here and faced this second hazardous condition
13 he was willing to risk the safety of his vessel in that
14 case.

15 Mr. Madson says, "Well, experts, you know. They
16 don't really account for a whole lot."

17 But, the bottom line is, ladies and gentlemen,
18 they all recognized the risk that was involved in this
19 maneuver, because they all told you they'd be on the
20 bridge. And by doing that you can infer that Captain
21 Hazelwood either knew it and should have done something
22 different, or if he didn't recognize the risk it was only
23 because he was impaired.

24 What did those masters say?

25 Drinking before departure?

1 Murphy said, "Absolutely not."
2 Stalzer says, "I don't go to town. Drinking
3 would violate Exxon's policy."
4 Walker, their expert, "It's not my practice."
5 Mihajlovic: "I probably wouldn't."
6 MacKintire: "I normally do not go into town.
7 The only time is the one time he was in there."
8 Leaving the bridge in the Narrows?
9 Murphy: "Not typical for a captain to be gone
10 through the Narrows."
11 Stalzer: "I would be on the bridge."
12 Beevers: "I was always on the bridge."
13 Mihajlovic: "I left only once."
14 Walker: "I was always on the bridge."
15 MacKintire: "I was always on the bridge."
16 There's a reason why all these tanker captains
17 are taking steps. It's because they're aware of the
18 risks and they're out to protect the safety of their
19 vessel.
20 Leaving the TSS zone, calling the Vessel Traffic
21 System?
22 Beevers: "Must
23 advise."
24 Walker: "Required to advise."
25 MacKintire: "Required to advise."

1 It didn't happen in this case.
2 Autopilot?
3 Murphy: "Not in the Narrows. Not required.
4 Not maneuvering through ice."
5 Stalzer: "Not in Prince William Sound."
6 Beevers: "Not in Prince William Sound."
7 Walker: "Not my practice to use it."
8 Mihajlovic: "Maybe once."
9 MacKintire: "Not in Prince William Sound."
10 Sea speed?
11 Murphy: "I would slow down when maneuvering
12 through ice."
13 Beevers: "I would slow down near ice."
14 MacKintire: "I would slow down when maneuvering
15 through ice."
16 Mr. Madson says there's no reason to slow down.
17 What do you mean there's no reason to slow down?
18 How about Busby Island? Isn't that a good
19 enough reason for you?
20 How about Bligh Reef? Isn't that a good enough
21 reason for you?
22 All for the purpose of speed, for saving a few
23 minutes, and at the same time putting your vessel in
24 jeopardy. Captain Hazelwood was aware of that. He
25 disregarded that risk.

1 Leaving the bridge with one officer during this
2 maneuver?

3 Murphy: "Wouldn't leave the bridge while
4 maneuvering?"

5 Deppe: "I'd be on the bridge."

6 Stalzer: "I would never leave during a course
7 change."

8 Beevers: "I'd be on the bridge."

9 Walker: "I would be on the bridge."

10 Mihajlovic: "I would probably be on the bridge
11 during maneuver."

12 MacKintire: "I'm always on the bridge in this
13 area."

14 There's a reason for that, ladies and gentlemen.
15 Captain Hazelwood's conduct fell well below the conduct
16 of a reasonable person. And in that way he is no
17 different than if we had a case of drunk driving and the
18 police officer, or somebody else came and said I watched
19 this car, and I sat right behind it, and it weaved in the
20 lane, and it missed the stop light, and it didn't signal
21 to go into the right hand lane. And then it got in the
22 accident. And you'd use those same factors just like in
23 this case to determine that that person's judgment was
24 impaired. And this is no different.

25 Ladies and gentlemen, I, like Mr. Madson, have

1 a number of things to say, but really what it comes down
2 to -- you can talk all you want -- what it comes down to
3 this simple thing: was Captain Hazelwood reckless, or
4 was he not reckless? When
5 you go back in there, that's going to be the decision
6 that you have to make.

7 In making that decision look at the risks. Look
8 at the circumstances that he was presented. Look at how
9 he risked his vessel before that. Think about the
10 standard of care that a reasonable person should exercise
11 under those conditions. And ask yourself, does what he
12 did constitute a gross deviation from the standard of
13 care that a reasonable person would observe in those
14 circumstances.

15 Ask yourself, is it correct, as Mr. Prouty
16 testified, that in this case this is a good example of
17 how there has been an unraveling -- let me rephrase that.
18 How the care that is normally seen in a prudent captain
19 has not been taken in this matter.

20 I submit to you, ladies and gentlemen, that in
21 this case Captain Hazelwood has not been selected out.
22 Captain Hazelwood has been given a fair trial. Captain
23 Hazelwood is not being judged by any different standard,
24 and no one is asking you to do that. All that we're
25 asking is that you reach a fair and just verdict in this

1 matter for both parties. That has been what the State
2 has asked from the beginning, and that's what we ask from
3 you at this time.

4 Thank you.

5 (2755)

6 THE COURT: I'm going to read the instructions
7 to you, ladies and gentlemen, and then I'll give you 12
8 copies, so you'll each have a copy to review during your
9 deliberations. And in the middle of the reading we'll
10 take a little break and stand up and stretch a little
11 bit, but we won't leave the courtroom.

12 (Jury instructions read.)

13 (3780)

14 Want to take a stretch? Just go ahead. We'll
15 stand. We'll stay on the record. We'll take a couple
16 minutes. We're on the record, though.

17 (Pause)

18 THE COURT: All right. Let's be seated and
19 we'll finish the instructions. Please be seated, ladies
20 and gentlemen.

21 (3849)

22 (Jury instructions, continued.)

23 (Tape: C-3689)

24 (003)

25 (Jury instructions, continued.)

1 (355)

2 THE COURT: The instructions are dated this 20th
3 day of March, 1990 and signed by myself.

4 That completes the reading of the jury
5 instructions. There are a few administrative matters
6 we'll need to take up at this time before you go to the
7 jury room.

8 My question now is for the first 12 members and
9 does not include Ms. Turner, or Ms. Rosselle. Are the
10 first 12 members feeling okay? Are there any medical
11 emergencies, any other emergencies in the family,
12 anything that would prevent you from commencing
13 deliberations and continuing with them?

14 (Pause)

15 THE COURT: All right.

16 Ms. Turner, you are an alternate. Ms. Rosselle,
17 you are an alternate. The two alternates are excused at
18 this time with my thanks for your participation. I
19 regret you can not participate in deliberations. I've
20 talked to alternates who were not able to and they were
21 disappointed. That's the way the system works. But, if
22 you are interested in the outcome, as soon as there is an
23 outcome you can contact me. If you've made the
24 acquaintance of other jurors as to the outcome, you can
25 talk to them.

1 If you have any questions, or suggestions for
2 me, I'll be in my office in about 10 minutes and I'll be
3 happy to talk to you then.

4 You can go to the jury room with Mr. Purden's
5 key and retrieve your personal belongings. After you
6 leave the court building you are released from my
7 instructions about discussing the case. You're free to
8 form, or express opinions as soon as you leave the
9 courtroom.

10 Media people may want to talk with you. Whether
11 you talk to them or not is up to you. But, you're under
12 no restrictions. You may talk with anybody you want. On
13 the other hand, if somebody pushes you and tries to get
14 you to talk about something you don't want to, let me
15 know. I'll be able to take care of that.

16 Once again, my thanks for your attendance and
17 your participation. You have my thanks and the system's
18 thanks. Thanks very much.

19 (Pause)

20 I'm going to place you in the charge of a
21 bailiff momentarily. Under the Alaska rules of court the
22 jury shall be under the charge of a bailiff until the
23 jury agrees upon its verdict, or is discharged by the
24 court.

25 Unless otherwise ordered by the court the

1 bailiff who has the jury under his charge must keep the
2 jury together and keep it separate from other persons.
3 He must not allow any communication made to the jury, nor
4 make any himself, except to ask the jury if it has agreed
5 upon its verdict.

6 You must not before the verdict is rendered
7 communicate to any person the state of the jury's
8 deliberations, or the verdict agreed upon.

9 If Mr. Van Huss would stand forward, please?

10 Would you raise your right hand, please?

11 (Bailiff's oath administered)

12 A I do.

13 THE COURT: Okay. Step over here, Mr. Van Huss,
14 for a minute.

15 Ladies and gentlemen, I'm going to read from our
16 Alaska Rules of Criminal Procedure from rule 27 verbatim
17 to emphasize the importance of this.

18 "If any juror is permitted to separate from the
19 jury after the case is committed to the jury the court
20 shall admonish him that it is his duty to discuss the
21 case only with other jurors in the jury room and not to
22 converse with any other person on any subject connected
23 with the trial."

24 That means that you do your discussion of the
25 case in the jury room with all of you present. And I

1 suppose that means that if one of you uses the bathroom,
2 you might want to wait.

3 It does mean, for sure, that when you go to
4 dinner, or go to lunch, or you separate and go home later
5 on this evening that you can not talk about this case to
6 anybody.

7 And, you've heard me admonish you, and I'm
8 getting tired of it. You're probably getting tired of
9 hearing me, but avoid the media. Now, you can appreciate
10 how important it is right now to avoid any media
11 information about this case. So, keep that in mind.

12 If you have a question concerning the case, for
13 example, if you wanted a playback of testimony, we do
14 have the electronic means of recording and playing back
15 testimony.

16 You've taken notes and one of the reasons you
17 were allowed to take notes was to minimize the need for
18 this as much as possible and if it does I will consider
19 a legitimate request and I will take it up with counsel.
20 You can make our job a little easier if you are as
21 specific as you can be about your requests, regardless of
22 what your request is.

23 I'm required to take this up with counsel. It
24 will take us a while. We'll come up with a result,
25 hopefully satisfactory with your request. But, please be

1 patient, because it takes us some time to get this
2 together to answer your question.

3 You will be given pads, clear pads, and pencils.
4 You will each be given a copy of the jury instructions.
5 You will be given a tape recorder for playing exhibits.

6 I'll leave it up to the sound discretion of the
7 jury of how long they wish to deliberate for the
8 remainder of the day. It's getting to be 4:30. You may
9 want to just pick a jury foreperson and then retire for
10 the day and resume tomorrow. If that's the case, if you
11 do need to come back tomorrow, or any other day I'm going
12 to require you during court days to come back and resume
13 your deliberation at 8:30 a.m. and deliberate, if it's
14 necessary, at least until 4:30.

15 If you need meals you just notify the bailiff
16 and the bailiff will make reservations and we'll either
17 take you to lunch, or we'll bring lunch in to you. That
18 goes for any meals that are required. If you deliberate
19 in the evening and you want dinner the bailiff will
20 accommodate dinner for you as well.

21 When you start your deliberations counsel will
22 be working with the in-court deputy, Mr. Purden, to get
23 all the exhibits together and we'll get them in to you as
24 quickly as we can, together with the envelope that will
25 accompany the instructions, the sealed verdict envelope.

1 The evidence admitted is all the evidence that
2 you will receive. There is no other evidence other than
3 the evidence that has been admitted in the trial. So, if
4 you ask for something that has not been admitted the
5 question is going to be answered with something like,
6 you've received all the evidence in this trial.

7 Is there anything else you can think of,
8 counsel?

9 MR. MADSON: No, Your Honor.

10 MR. COLE: No.

11 THE COURT: We'll bring the other copies in.
12 Have you got the envelope? Okay. We'll get that too.

13 All right. I'm going to commit you to the
14 charge of the bailiff at this time, ladies and gentlemen
15 to embark on your deliberations.

16 (Pause)

17 (Jury not present)

18 THE COURT: Scott, would you close that door?

19 (Pause)

20 Please leave your telephone numbers where you
21 can be reached during court hours, 8:30 to 4:30, with Mr.
22 Purden when we recess.

23 MR. MADSON: Your Honor, two matters very
24 quickly. Exhibit AC, the court took judicial notice of
25 the height statute. That was not technically offered

1 into evidence. The court took judicial notice of it, but
2 it's not an exhibit at this time and I ask that it be
3 admitted.

4 THE COURT: Any objection?

5 MR. COLE: No.

6 EXHIBIT AC ADMITTED

7 THE COURT: AC's admitted.

8 MR. MADSON: And Exhibit AJ, which is the
9 document Captain Beevers testified about. It's
10 essentially just his position report, and it's where the
11 vessel was located on Bligh Reef. I'd ask that that be
12 admitted.

13 THE COURT: AJ. Any objection?

14 MR. COLE: No. Judge, the only thing...

15 EXHIBIT AJ ADMITTED

16 THE COURT: It's admitted also. Here you are.

17 MR. COLE: I assume that counsel is going to
18 work with us to make sure that the exhibits that were -
19 - that dealt with the law -- we have a little bit of
20 editing to do, I think, on those.

21 THE COURT: I'm sorry.

22 MR. COLE: When we talked about the statutes
23 that dealt with what the law was and you took judicial
24 notice...

25 THE COURT: Okay. Exhibit 180 we have in

1 evidence now, I believe. That's just a copy of the one
2 section. Is there another exhibit you're referring to?

3 MR. COLE: Well, I think that there is. I'd
4 like to go through it.

5 THE COURT: Go through those exhibits and if
6 they need to be edited out to just reflect what was
7 admitted, we can do that.

8 So, counsel, you probably want to stick around
9 here with Mr. Purden for a while. I'll get the
10 additional copies of the instructions to the bailiff so
11 he can hand them to the jurors.

12 And we have a sealed verdict envelope which Mr.
13 Purden will get for me in a minute and we'll -- do you
14 have one here?

15 THE CLERK: (Indiscernible - away from mike)

16 THE COURT: Okay. Anything else, counsel?

17 MR. COLE: No.

18 MR. MADSON: No.

19 THE COURT: Okay. We stand in recess.

20 THE CLERK: Please rise. This court stands in
21 recess.

22 (716)

23 (Off record - 4:20 p.m.)

24 ***CONTINUED***

25