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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

OMNIBUS HEARING
DECEMBER 4, 1989
PAGES 824 THROUGH 1012

VOLUME V

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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
November 30, 1989
3:46 o'clock p.m.

APPEARANCES:

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1 PROCEEDINGS

2 NOVEMBER 30, 1989

3 (Tape: C-3513)

4 (2377)

5 THE COURT: You may be seated.

6 Resume the testimony of Mr. LeBeau, you're
7 still under oath, sir.

8 JOSEPH P. LeBEAU

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

12 A Yes.

13 MR. LINTON: Judge, I have a few more
14 questions on direct I thought up over the weekend and
15 Mr. Friedman has kindly consented that I be permitted
16 to do that, and if the court has no objection I'll
17 proceed to ask a few more.

18 THE COURT: Sure, you can go.

19 MR. LINTON: I'd ask that this be marked as
20 the next State exhibit.

21 Your Honor, for the record maybe I can short
22 cut the process a little bit.

23 The next exhibit that I'm asking be marked is
24 a series of compilations of data by people who did
25 aerial surveys for the Alaska Department of

1 Environmental Conservation of the spread of the oil.

2 The point to be made by the introduction is
3 that the oil was spreading towards habitable areas
4 where people lived and inevitably would have been
5 discovered.

6 I think there may be a stipulation in effect
7 by the defense that inevitably, at some point, it would
8 have been discovered by persons. But they think --
9 reserving, of course, the right to insist that the
10 State prove when that was and prove that the evidence
11 that it used fell within the time period when it would
12 inevitably have been discovered; preserving, as well,
13 the claim that inevitable discovery doesn't apply at
14 all.

15 Perhaps with such a stipulation we could move
16 past this exhibit quickly.

17 MR. FRIEDMAN: Your Honor, we'd be willing to
18 stipulate this exhibit accurately reflects the movement
19 of the oil during the days after, or hours, even, after
20 the grounding.

21 I told Mr. Linton we don't have a problem with
22 that if the court just wants to accept it based on
23 that, and not go through the witness for the entire
24 foundation.

25 THE COURT: Is that what you want, then? This

1 exhibit accurately reflects the spreading of the oil
2 after the grounding?

3 MR. LINTON: Fine. Then I'll have to question
4 him about what areas are habitable, what areas do
5 people live in on those maps, to establish that, in
6 fact, there would have been places where people would
7 have seen it.

8 MR. FRIEDMAN: We'll stipulate to that, too,
9 Your Honor.

10 THE COURT: That the exhibits reflects areas
11 where people live, and that those people would have
12 discovered the oil when it reached the shore, is that
13 what you're asking for? Is that agreeable?

14 MR. LINTON: Please.

15 MR. FRIEDMAN: Yes, Your Honor.

16 THE COURT: What is the number, again?

17 MR. LINTON: It's 57.

18 EXHIBIT 57 ADMITTED

19 THE COURT: All right. We'll accept Exhibit
20 57 with that understanding.

21 DIRECT EXAMINATION OF MR. LeBEAU, CONTINUED,
22 BY MR. LINTON:

23 Q Mr. LeBeau, while you were on board the Exxon
24 Valdez did you get any records of the ship,
25 itself?

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A Yes, I did.

Q I've handed you what's been marked and admitted as Exhibit 6. Explain to the judge what, if any records you got while you were on board the Exxon Valdez?

A If I could refer to my notes here of my report, there was a specific list detailed in my report. And, Your Honor, I was able to pick up the copies of the last -- I picked these copies up, I believe on March 27. And I was able to pick up copies of the last week's telex logs, the Bell Log. There was eight pages of the Bell Log. A list of the employees on the ship. Copies of the ship's damage drawing that was released at the press conference.

THE COURT: I'm sorry. The last, please?

A Copies -- a copy of the ship's damage drawings. It was released at the last press conference. And a copy of the U. S. Coast Guard subpoena for documents. I was able, also, to pick up Xerox copies of the licenses for Catherine Haven, Jerzy Glowacki, Ray Jones, Graham Keith Oldham (ph), Lloyd LeCain, Jr., and James R. Kunkel.

In addition, one of the people who works for

1 the Department of Environmental Conservation
2 provided me a copy of the VHF log book. There
3 are five pages of that. And, also, five pages of
4 the compass observation book.

5 Q Did you get the license of Captain Hazelwood
6 or the third mate, Cousins?

7 A No, I did not.

8 Q Did you get what's been marked as Exhibit 3,
9 the engine-room computer printout of engine bell
10 logs?

11 A I don't believe I picked this document up.

12 Q What was it that you described as a Bell
13 Logger that you...

14 A The Bell Log that I picked up was also called
15 -- it's labelled "Exhibit 6". And it's -- on the
16 front cover it's a tally book for the Exxon
17 Valdez. And there are some -- the Bell Log that
18 I picked up started March 9, 1989, and extended
19 through March 24, 1989. Possibly part of March
20 25, 1989.

21 Q The same pages contained in Exhibit 3 --
22 excuse me, Exhibit 6?

23 A Yes.

24 Q Exhibit 6.

25 A This is Exhibit 6. This is the Bell Log that

1 I picked up from the vessel.
2 Q Could you describe the crew list that you
3 picked up?
4 A Yes. It was a typewritten or a computer
5 printout of individuals; their position; their
6 salary rate, I guess; their social security
7 number; and the date that they signed on to the
8 vessel.
9 Q Is Exhibit 7 a copy of what you picked up?
10 A Yes, it is.
11 Q Did you find the course recorder, which is
12 Exhibit 5?
13 A No, I did not.
14 Q Did you find the chart, which is Exhibit 8?
15 A No, I did not.
16 Q Is the subpoena you described Exhibit 14?
17 A Yes, it is.
18 Q Sometime after you were on board on March 24,
19 did you have a conversation with Captain
20 Hazelwood?
21 A Yes, I did.
22 Q What time did that conversation take place?
23 A I believe that was an hour to an hour and a
24 half after I arrived at the vessel, which would
25 make that between 12:30 and 1:00 on March 24th.

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Q Could you summarize what happened in that endeavor?

A Well, as I started the interview I opened up the question, "What's the problem here?"

 Captain Hazelwood responded, throwing his arms open wide: "You're lookin' at it."

Q Did you ask him any further questions?

A I asked him some additional questions, and Captain Hazelwood indicated that he had described this situation that the vessel was in with Mr. Cousins. Had given him directions to follow, and asked Mr. Cousins if he was comfortable. And then Mr. Hazelwood stated that Mr. Cousins responded affirmatively. And that he was comfortable. And at that point Captain Hazelwood indicated that he had left the bridge and gone below to work on paperwork.

Q Anything else that you recall?

A That's all that I specifically remember pertaining to the conversation that we had.

 MR. LINTON: Nothing further, Your Honor.

(2860)

CROSS EXAMINATION OF MR. LeBEAU

BY MR. FRIEDMAN:

Q Mr. LeBeau, I forget who you told us, or if

1 you told us who called you first, I think you
2 said around 4:00 in the morning on May 24?
3 A Mr. Lamoreaux called me.
4 Q And who is that?
5 A Mr. Lamoreaux is the regional supervisor for
6 the Department of Environmental Conservation.
7 Q Okay. And did he ask you to go to Valdez
8 immediately?
9 A He asked me to get ready to go and to get
10 there as soon as I could.
11 Q Okay. And you left shortly thereafter, is
12 that right?
13 A I left at approximately 4:30 in the afternoon
14 [sic]. I believe Mr. Lamoreaux contacted me
15 around 1:30.
16 MR. LINTON: Excuse. 4:30 in the afternoon?
17 A Well, 4:30 in the morning, I'm sorry. Thank
18 you.
19 Q And I think you told us that on your way to
20 Valdez in the car you heard reports of the
21 incident on the car radio?
22 A I believe the car radio, around 6:00 o'clock.
23 Q In the morning.
24 A In the morning, indicated that there was a
25 problem. It may have been around Glennallen.

1 Q And you wound up boarding the ship at
2 approximately 11:30 in the morning?
3 A Yes, I did.
4 Q Now, did you have a tape recorder with you on
5 the ship?
6 A Yes, there was a tape recorder.
7 Q Was it your tape recorder, or...
8 A No, it was not. It was Mr. Lawn's tape
9 recorder.
10 Q Okay. When you boarded the ship did Mr. Lawn
11 leave?
12 A No, he did not.
13 Q Did you attend -- other than the interview you
14 described with Captain Hazelwood, did you attend
15 any interviews of any crew members or anyone else
16 on the ship?
17 A Yes, I did.
18 Q Can you tell me whose interviews you attended?
19 A On -- let's see, I believe I attended the
20 interviews with Sergeant McGhee on March -- I
21 believe it was March 29. I'm not sure about the
22 date.
23 Q I would like to just focus on March 24, first,
24 if we could.
25 A Okay. I spoke with Mr. Kunkel, Mr. LeCain and

1 I believe Mr. Cousins on March 24.

2 Q All right. Kunkel, LeCain and Cousins. Now,
3 did -- were you alone with them when you spoke to
4 them?

5 A There were other people in the room when I
6 spoke with Mr. Kunkel.

7 Q Okay. Did you have the tape recorder going
8 when you talked to Mr. Kunkel?

9 A No, I did not.

10 Q Okay. How about when you talked to Mr.
11 LeCain, did you have the tape recorder going
12 then?

13 A No, I did not.

14 Q How about with Mr. Cousins?

15 A No, I did not.

16 Q All right. Were you the one asking the
17 questions in those three interviews?

18 A I was having a conversation with them in that
19 format, yes.

20 Q Okay. Did you also sit in on interviews
21 conducted by other people?

22 A As I recall I sat in on an interview -- are we
23 focusing on March 24?

24 Q Still the 24th.

25 A I don't recall sitting in on other interviews

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with other individuals.

Q Did you sit in on interviews conducted by somebody else on dates other than the 24th?

A Yes, I did.

Q Could you tell me when that would have been?

A I sat in on interviews with Trooper Sergeant McGhee. As I recall, that would have been on the Monday or Tuesday following the accident.

Q That would be interviews of crew members?

A Interviews of crew members and on-board the vessel Thail-T (ph) tied up alongside the Exxon Valdez.

Q Okay. Now, you told us that you spoke with Mr. Cousins on the 24th?

A I believe I did.

Q And would it be fair to characterize his demeanor or emotional state as being pretty upset?

A Yes. He was very distraught.

Q In fact, you were even concerned that he might commit suicide or something of the kind.

A I was concerned that -- I was concerned with -- that he might take his life.

Q Okay. Now, am I correct that on March 29th you turned over the documents you had obtained to

1 the State Troopers?

2 A Yes, that would have been approximately
3 correct.

4 Q Okay. At some point you became aware that
5 there were restrictions on who you could talk to
6 about this case, is that right?

7 A Yes.

8 Q Could you describe for us what your
9 understanding of those restrictions was?

10 A Oh, my understanding was that I could not
11 provide information to the investigators who were
12 untainted pertaining to information that was
13 obtained on March 24 -- or, that I obtained on
14 March 24. And I -- with respect to individuals
15 that I spoke with, the untainted officers, as I
16 recall, I didn't provide them any names of any --
17 or provide any information that came from March
18 24.

19 Q Okay. You did talk to -- well, let me ask you
20 this: did you keep any sort of notes or a
21 notebook on your activities regarding this case,
22 other than what's reflected in the memos you gave
23 to me on Thursday?

24 A There were some notes -- there was a note --
25 Mr. Lawn's notebook from March 24th of -- has

1 some of my notes in it. I did not have a
2 notebook when I arrived at the Exxon Valdez, so I
3 just continued on with Mr. -- and the notebook --
4 my reports reflect and expand upon the notes that
5 were in -- that I placed in Mr. Lawn's notebook.

6 Q Okay. May 8th of '89. Did you talk to
7 Trooper Stogsdill about the fact that you had
8 gone out to the vessel on the 24th?

9 A I don't recall talking to him about March
10 24th.

11 Q Okay. If he had written a report and
12 testified in court that he and you had a
13 conversation in which you basically described
14 your activities on the 24th and going out and
15 interviewing Cousins and Captain Hazelwood.
16 Would that be consistent with your memory of your
17 contact with Trooper Stogsdill?

18 A Yes, that would be.

19 Q That would be under your understanding of the
20 strictures you were under, a violation of the
21 rules you were supposed to follow, is that
22 correct?

23 A It could be.

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

25 *

1 REDIRECT EXAMINATION OF MR. LeBEAU

2 BY MR. LINTON:

3 Q When did you make a written report of your
4 conversation with Captain Hazelwood and Mr.
5 Cousins, and/or -- well, did you make a
6 memorandum of your interview with Captain
7 Hazelwood?

8 A Yes, I did.

9 Q With Mr. Cousins?

10 A I believe I did. I think they were contained
11 in the same memorandums.

12 Q With Mr. Kunkel?

13 A No, I did not.

14 Q With Mr. LeCain?

15 A No, I did not.

16 MR. LINTON: I'd ask that this be marked as
17 the next State's exhibit.

18 THE CLERK: State's 58.

19 Q I hand you what's been marked as Exhibit 58.
20 Is that the report that you prepared?

21 A Yes.

22 Q Your interviews with Captain Hazelwood and Mr.
23 Cousins?

24 A Yes, that's correct.

25 Q And what's the date of the report?

1 A The report on -- the date on this copy of the
2 report is November 29, 1989.

3 Q And was there some other date on it at one
4 point?

5 A I believe there had been -- I believe I had
6 submitted a report pertaining to my interview
7 with Captain Hazelwood and Mr. Cousins at an
8 earlier date.

9 Q Explain that to the judge?

10 A Well, Your Honor, I believe I typed up, in
11 response to an interview that I had with one of
12 our civil attorneys, I typed up a response. And
13 I thought I provided that information to Mr.
14 Linton in May of 1989.

15 Q Did you type it up on a computer or on a piece
16 of regular written paper?

17 A I typed it up on a computer, and as I recall,
18 I printed it off on a laser jet, and that
19 information -- and I took the memory out of. I
20 disposed -- erased that note from the memory.

21 Q So on -- when you went to prepare such a
22 document on March 29, 1989, like Exhibit 58, you
23 didn't actually have it in the memory of the
24 computer?

25 A No, I did not.

1 Q What did you mean when you said you had
2 prepared it for a civil lawyer?
3 A Well, the civil lawyer suggested that I
4 provide the information to you, and I thought
5 that I had done that. I may have...
6 Q For whom was it initially prepared?
7 A The information was initially prepared -- it
8 would have been around May 7th, 1989.
9 Q For whom?
10 A I believe I sent the memorandum to you.
11 Q How does the civil lawyer get into it?
12 A Well, it's kind of -- I'm working -- in
13 addition to the -- my job with the Department of
14 Environmental Conservation pertaining to the
15 Exxon Valdez case, also included the supervision
16 of the documentation section for Exxon Valdez.
17 I separated the items that I dealt with that
18 were pertaining to the criminal case and did not
19 enter those into the civil record.
20 Q Did you prepare a memo for the civil lawyer
21 about the remarks by Captain Hazelwood and/or Mr.
22 Cousins?
23 A It could have been for the civil attorney. I
24 thought I delivered it to the criminal side.
25 Q And when do you believe you did that?

1 A It would have been around the -- probably the
2 8th or 9th of May.
3 Q Nothing further.
4 MR. FRIEDMAN: Nothing further.
5 THE COURT: You may step down.
6 (Witness excused)
7 (3700)
8 (Oath administered)
9 A I do.
10 THOMAS G. FALKENSTEIN
11 called as a witness in behalf of the plaintiff, being
12 first duly sworn upon oath, testified as follows:
13 THE CLERK: Sir, would you please state your
14 full name, and then spell your last name?
15 A Thomas Grant Falkenstein. F-a-l-k-e-n-
16 s-t-e-i-n
17 THE CLERK: And your current mailing address?
18 A P. O. Box 486, Valdez, Alaska, 99686.
19 THE CLERK: And your current occupation?
20 A I'm a Lieutenant Commander in the United
21 States Coast Guard.
22 THE CLERK: Thank you.
23 DIRECT EXAMINATION OF COMMANDER FALKENSTEIN
24 BY MR. LINTON:
25 Q How long have you been in the United States

1 Coast Guard, sir?

2 A Thirteen years.

3 Q On March 24, 1989 where were you assigned?

4 A I was assigned to the Marine Safety office in
5 Valdez.

6 Q And what was your assignment there?

7 A I'm the executive officer at the Marine Safety
8 office.

9 Q You are now and were then?

10 A Yes.

11 Q At about 2:30 a.m. on March 24, 1989 did you
12 receive some notice regarding the Exxon Valdez?

13 A Pardon me. About what time?

14 Q Around -- I said 2:30. I should have said
15 12:30 a.m. on March 24, 1989.

16 A Yes, I did. I got a phone call.

17 Q Explain to the judge how you learned of that?

18 A I received a phone call from the Vessel
19 Traffic Service watch stander notifying me that
20 the Exxon Valdez had gone aground at Bligh Reef.

21 Q What did you do?

22 A I asked some questions and contacted the
23 commanding officer and then went immediately to
24 the office.

25 Q Who was the commander that you met?

1 A Commander Steven McCall.

2 Q And at some later point were you jointed by
3 Chief Warrant Officer Mark Delozier and then Dan
4 Lawn of the Alaska Department of Environmental
5 Conservation?

6 A Yes.

7 Q What was your understanding as to the
8 situation with respect to the Exxon Valdez?

9 A It's my understanding that the Valdez had gone
10 aground on Bligh Reef and was leaking oil.

11 Q As a result of what transpired there at the
12 Coast Guard station, did you go to the Exxon
13 Valdez?

14 A Yes.

15 Q Would you have gone to the Exxon Valdez even
16 if it had only been reported that the Exxon
17 Valdez was hard aground on Bligh Reef?

18 A Subject to Commander McCall's decision, since
19 he's the commanding officer, someone probably
20 would have gone to the Exxon Valdez.

21 Q What are your reasons for stating that?

22 A Primary reason would have been safety of the
23 ship and the personnel on board, and to verify
24 that there is no threat to the environment or no
25 danger that the vessel would sink.

1 Q Is there a Coast Guard regulation which
2 requires an investigation of a marine casualty?
3 A Yes.
4 Q Of the marine casualties that have been
5 investigated, in your experience, at Valdez --
6 and how long had you been at Valdez as of March
7 24?
8 A As of March 24 about 23 months. Was this the
9 kind of casualty which would merit an
10 investigation?
11 A Yes.
12 Q How would you rank it in the importance of the
13 investigations that you knew to have been
14 conducted?
15 A Well, any grounding is required to be
16 investigated by regulation, whether there is
17 significant damage or not. So it would be
18 required to be investigated as a standard
19 procedure.
20 Q Did you regard the grounding as a major event
21 in the area?
22 A Yes.
23 Q Why so?
24 A For a tank ship to go aground in Prince
25 William Sound it would be a very major event.

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There's very few places to go aground.

Q Is there anything of the geography of Prince William Sound which contributes to your conclusion?

A Prince William Sound is deep water and there is very few shallow muddy areas around Prince William Sound. They are mostly pinnacles or submerged mountain ranges in and around where the shoal water would be in Prince William Sound.

Q How does the nature of that -- the bottom you described, bear upon your conclusion?

A I'm a little confused.

Q How does the description of the bottom which you've just given us, bear upon your conclusion that someone would probably have gone to conduct the investigation?

A The bottom of Prince William Sound is a little more threatening to tank ships maintaining its integrity, because it is rocky. And unlike a muddy bottom, where the ship could go aground and not be ruptured, a rocky bottom is a little less forgiving, and the ship could go aground and conceivably be torn open, as the Valdez was damaged.

MR. LINTON: Nothing further, Your Honor.

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CROSS EXAMINATION OF COMMANDER FALKENSTEIN

BY MR. FRIEDMAN:

Q Commander Falkenstein, when you first went to the Coast Guard station after receiving the call that the tanker had a problem, did Commander McCall or Mr. Blandford brief you on the information known at that time?

(Tape: B-1315)

(000)

A Yes, they did.

Q Were you there during any radio conversations between Commander McCall and Captain Hazelwood?

A I was in and out of the traffic center. I was there for -- I did overhear some radio conversations, yes.

Q Okay. Do you recall hearing Captain Hazelwood indicate that there had been a problem with the third mate?

A No, I don't believe I was in there then. I believe Commander McCall briefed me on that.

Q Okay. He briefed you on that before you went out?

A Yes, sir.

Q What was your understanding as to what that problem might be?

1 A I didn't know what to expect. I had no real
2 understanding. I was just -- there was a problem
3 with a third mate, was all I was told. I wasn't
4 told what it might be.

5 Q Okay. Did you hear any radio transmissions,
6 or did Commander McCall tell you anything about
7 attempts to get the vessel off the reef?

8 A I heard some discussions between the commander
9 and I believe Captain Hazelwood concerning what
10 his actions were attempting to maneuver the
11 vessel off the reef.

12 Q Okay. So when you went out there with Mr.
13 Delozier and Mr. Lawn you were aware that there
14 was a potential problem with the third mate and
15 that efforts had either been made, or were going
16 to be made to get the vessel off the reef?

17 A Yes, sir.

18 (Pause)

19 Q You were interviewed by some state troopers
20 regarding some hypothetical fact situations they
21 gave you. Do you recall that interview?

22 A I was interviewed by some state troopers
23 concerning what I saw and did. I don't recall --
24 yes, I did talk to somebody about some facts,
25 yeah.

1 Q About what would have happened if the type of
2 questions...

3 A Uh-huh (affirmative).

4 Q All right. I'm going to ask you some of the
5 same sort of questions today. Do I understand
6 correctly that ordinarily a tanker leaving Valdez
7 will report in to the Vessel Traffic -- is it
8 Vessel Traffic Center or Vessel Traffic Control?

9 A It's Vessel Traffic Center.

10 Q Okay. Ordinarily a tanker leaving will report
11 in to the Vessel Traffic Center when it is abeam
12 of Naked Island?

13 A Yes. That's one of the check-in points.

14 Q Okay. And if a vessel does not check in at
15 that point there is no set procedure as to what
16 the radio operator is supposed to do?

17 A Well, the traffic control watch stander would
18 take steps to try to locate the vessel.
19 Sometimes they would -- we can assume that they
20 would have forgotten to report in, but I don't
21 know of any instance where that's happened.

22 Q And the point I'm making is that if the vessel
23 does not check in at that point, and if you -- if
24 the radio operator is unable to raise the vessel
25 on the radio, there is no set procedure as to

1 what happens next?

2 A No, it's not written down.

3 Q Okay. When you were interviewed by the State
4 Troopers about these issues, you were asked
5 specifically about the fact that the California
6 -- the Chevron California was in-bound on this
7 particular evening, is that correct?

8 A I believe so, yes.

9 Q And you estimated that the Chevron California
10 would have been abeam of Bligh Reef at
11 approximately 3:30, is that correct?

12 A I don't recall what time.

13 Q I'll show you the page from your interview.
14 You can read up further to kinda get into the
15 context if you'd like.

16 (Pause)

17 A Okay.

18 Q Is that what you estimated for the troopers?

19 A Right.

20 Q Does that still seem right to you, as you sit
21 here, in terms of the facts as you know them?

22 A Generally speaking, yes.

23 Q It might be a little bit on either side of
24 that, depending upon how much the Chevron
25 California had slowed down for ice and that sort

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of thing?

A Exactly.

Q Finally, Commander Falkenstein, nobody on the 24th actually did call and report the Exxon Valdez aground at Valdez or leaking oil at Blight Reef, did they, other than Captain Hazelwood?

A Not to my knowledge, no, sir.

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

(300)

REDIRECT EXAMINATION OF COMMANDER FALKENSTEIN

BY MR. LINTON:

Q Commander, is there a procedure prescribed when a radio goes out on a vessel in the Vessel Traffic System?

A I'm not sure I understand what you're asking for.

Q Do the Vessel Traffic System regulations make -- provide for what a vessel should do if it finds that it is unable to communicate with the Vessel Traffic Center?

A To my knowledge there is no written procedure. There is a provision in the regulations for redundancy of communications equipment to prevent that from happening.

Q Explain what you mean by the "redundancy" as

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to radio...

A The vessels are required to monitor certain frequencies. And in a Vessel Traffic System they are required to monitor Channel 13. There is a redundancy requiring sufficient radios to provide a back-up in case they lose a radio to still monitor Channel 13 from bridge to bridge in Vessel Traffic Service communications.

Q Number one, the ships are required to carry two radios, correct?

A I believe so, yes, sir.

Q And, in fact, one of them has to be capable of being battery operated?

A Yes, sir.

Q So two radios and one of them battery operated. Had a vessel in the Vessel Traffic System not reported its position at a mandatory reporting point -- well, first, was Naked Island a mandatory reporting point?

A Yes, sir, it is.

Q Not just a reporting point, it's a mandatory reporting point?

A Yes, sir.

Q Explain what a mandatory reporting point is?

A As specified in the regulations for the

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vessels to report at certain points. Naked island is one of those points.

Q You indicated that ordinarily they report but there is no set procedure if they don't report?

A Not that I'm aware of, sir.

Q You said the watch stander would take steps. What steps would he first take?

A His initial steps would be to try to try to contact the vessel by radio. He would attempt to initiate the contact.

Q And that's what you meant when you say the vessel -- he would assume first that the vessel forgot to report?

A Either that or he was behind on his schedule to report.

Q Okay. So the first thing the Vessel Traffic Center operator watch stander would try would be just to call the vessel and find out where it was?

A Yes, sir.

Q what steps are within his capabilities if the vessel does not respond?

A His next procedure would be, probably, to attempt to contact any other vessels that may be in the area.

1 Q To see whether they can contact him by radio
2 or whether they see him?
3 A Yes, sir.
4 Q In the event that turns out negative, what
5 other things could the Vessel Traffic Center
6 operator or watch stander do?
7 A Other than communications, be it by radio or
8 with other vessels -- it would strictly be by
9 radio or conceivably he could attempt to contact
10 the vessel's home office who may be in
11 communication with the vessel by telephone.
12 Q Is there some way for a home office to
13 communicate with the vessel?
14 A Frequently the home office would be able to
15 communicate with the vessel by satellite
16 navigation -- I mean satellite telephone service
17 or radio teletype connections.
18 Q Could the vessel traffic center watch stander
19 look at his radar to see if the vessel is on
20 radar?
21 A It would depend on where the vessel was at.
22 Q When you were at the Coast Guard station on
23 March 24, 1989, did you look at the radar screen?
24 A Yes, sir.
25 Q Did you try to find the Exxon Valdez on the

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radar screen?

A It was pointed out to me by the radar watch
stander.

Q Had you seen the radar screen before?

A Before when, sir?

Q Before it was pointed out to you?

A No, sir. He pointed it out as soon as I
walked in.

Q Okay. I understand on March 24 he pointed it
out. Before March 24 had you ever seen the radar
screen yourself?

A Yes, sir.

Q Were you familiar with the layout of the
physical geographic features of the radar return
in the area of Bligh Reef?

A Yes, sir.

Q Were you capable of discerning that there was
something in the area of Bligh Reef that
ordinarily would not have been there when you
looked at the radar screen?

A Not as quickly as it was pointed out to me,
no, sir. I could have instantaneously discerned
it, if that's what you're asking.

Q After some examination were you able to
discern it on your own?

1 A I believe I would have been able to, yes, sir.

2 Q Now, had there been no response to your radio
3 calls or to a watch stander's radio calls, and
4 none of the other vessels in the area were able
5 to contact it, are there any inferences that you,
6 in your experience, with the Coast Guard could
7 draw as to what the situation might explain that
8 condition? That is, you tried to call; they
9 don't call you back on either of their radios.
10 One of which is powered presumably by some engine
11 source -- some power source on the vessel, one of
12 which is independent and powered by a battery?

13 A There is a number of inferences that could
14 have been drawn.

15 Q Tell us what they are.

16 A Well, for one, the vessel could have been
17 lost.

18 Q Lost, meaning it did not know where it was?

19 A No, sir. Lost meaning, sunk with all hands.
20 For another, the vessel could have had a casualty
21 on board which involved all hands. For example,
22 a fire. It could have had a power failure as a
23 result of a casualty. For example, a fire which
24 may have damaged their radio so that their back-
25 up radio wasn't operational. Any number of

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things.

Q In the event those had been -- that had been, in fact, the situation. That is, there was no contact; no communication from the Exxon Valdez in response to calls. And those inferences were to be drawn. Would you tell the Chevron California to maintain speed or speed up as fast as it could to get to a position where it can find and help the Chevron California [Exxon Valdez] -- excuse me, where the Chevron California could find and help the Exxon Valdez.

A We would probably -- this is pure speculation -- have asked the Chevron California if they were able to see the Valdez, either visually or on radar.

Q All right. And if they were still too far away and said, no -- what's the range -- do you have any idea what the range of the radar is on the Chevron California?

A It would depend on the mast height and all that other -- I don't know.

Q Understood.

MR. LINTON: Nothing further, Your Honor.

(694)

MR. FRIEDMAN: Your Honor, Mr. Linton gave me

1 some material this morning which relates to this
2 witness, some of which I haven't seen. And I wonder if
3 we could take just a short break. There are a couple
4 things I may want to ask him questions about.

5 THE COURT: Okay. I'm gonna ask the witness a
6 few questions myself right now and then you all can ask
7 him based on those.

8 EXAMINATION OF COMMANDER FALKENSTEIN

9 BY THE COURT:

10 Q Commander Falkenstein, let's assume -- first
11 of all, how much experience did you have at the
12 time of the grounding of the Exxon Valdez as a
13 Coast Guard personnel?

14 A I've been in the Coast Guard 13 years. I
15 was...

16 Q So it would have been about 13 -- 12-1/2 years
17 or so.

18 A Yes, sir. I was on a ship for two years and I
19 spent four years in the Marine Inspection office
20 in New Orleans; five years in the Marine Safety
21 office in San Francisco; and now two years up
22 here.

23 Q Did you have any experience as a watch person
24 at all?

25 A Not in the Vessel Traffic Service, no, sir.

1 Q Did you have any experience in interpreting
2 radar returns?
3 A Yes, sir.
4 Q Now, assume that the Exxon Valdez is out-bound
5 and it's over 200,000 tons of crude oil; and it's
6 supposed to report Naked Island, and it doesn't
7 report Naked Island; and attempts to reach it by
8 radio are unsatisfactory and attempts to call the
9 company are unsatisfactory; and you can't see it
10 on the radar. What do you do next? As
11 commander, what would your policies be?
12 A My policy would be to direct the watch stander
13 to contact any vessels in the area in an effort
14 to see if they could see the Valdez. That would
15 be, really, our only other option.
16 Q And then you would just forget it, then, is
17 that what you do?
18 A No, sir. If we couldn't find it and we
19 couldn't contact it, we have to assume something
20 more drastic had happened to the vessel.
21 Q Well, tell us what you do, then, if you assume
22 something more drastic's happened?
23 A We probably have to initiate search and rescue
24 to locate the vessel.
25 Q How would you do that?

1 A I would probably contact our rescue operation
2 center in Juneau and initiate a procedure and get
3 assistance from Coast Guard vessels in the area
4 to start searching the area for the ship.

5 Q You say you probably would -- is that
6 something you might not do?

7 A Well, sir, it depends on a number of
8 circumstances.

9 Q Like what? Give me some circumstances where
10 you might not initiate search and rescue for this
11 vessel?

12 A Well, for one, I can really conceive of no
13 case where we would be completely unable to
14 locate the vessel.

15 Q Well, assume you can't, from my questioning.
16 And that the Chevron California is over by
17 Hinchinbrook and it's 2:00 o'clock in the
18 morning, and you can't find it on radar, and you
19 can't talk to anybody that knows where it is.
20 What do you do next?

21 A We'd initiate search and rescue proceedings to
22 try to locate the vessel. I'd have to use the
23 resources available, which would be Coast Guard
24 cutters in the area; the pilot boat in the area;
25 whatever I could locate that was in the area in

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an attempt to locate the vessel.

Q In response to Mr. Linton's question about -- if you received notice that the Exxon Valdez had gone aground, your answer, in response to what would you have done; would you have gone out there anyway? You said, depending on what Commander McCall did, somebody probably would have gone to the grounding to make sure of safety and make sure there was no danger of sinking.

When you say "probably" on that, what do you mean by "probably"?

A Commander McCall is the commanding officer, and it's not my place to direct anyone to go. He would be the person to direct the -- any individual to go out to the grounding site.

Q Do you think there is any likelihood that somebody would not go out to the grounding site as soon as possible if they heard the Exxon Valdez had gone aground?

A Yes, sir, depending on the weather and the availability of personnel and the safety of our own personnel. Had it been a very bad night weatherwise we might not have sent someone out to the grounding site.

Q What if it was a clear night and the weather

1 was good?

2 A If it was a clear night and the conditions
3 were as they were that night, my own personal
4 opinion is that I can't see of an instance where
5 someone would not have gone out.

6 Q Is one of the procedures that would be
7 employed normally if the watch were unable to
8 reach the vessel by radio, to look at the radar?
9 To turn it on and look at it?

10 A Well, the radar is always on, sir. And it
11 would depend on where the vessel would be. If we
12 had reason to believe that he hadn't cleared the
13 arm, yes, sir, we would search with the radar to
14 try to locate him that way.

15 Q Well, if the vessel was supposed to report
16 abeam Naked Island and there was no radio contact
17 with the vessel, and you were unable to reach the
18 vessel by any other means, would the watch
19 commander normally look at the radar to see if he
20 might be on the radar screen someplace?

21 A Yes, sir.

22 Q Would that be normal procedure for the watch
23 to do?

24 A Yes, sir.

25 Q Mr. Linton asked you if an investigation would

1 normally occur for a grounding and you said, yes,
2 it would. What does that investigation normally
3 entail?

4 A It's a marine casualty investigation in an
5 effort to determine the cause of the grounding.
6 That's its primary purpose.

7 Q Would that investigation necessarily include,
8 in every case, determination of alcohol or drugs
9 played a part in the grounding?

10 A Yes, sir, I believe it would.

11 (Pause)

12 Q We've had testimony that there were testing
13 kits on board the Exxon Valdez, to screen for, I
14 suppose, alcohol and drugs. Is that something
15 that's required, to your knowledge, of all
16 tankers?

17 A The regulations requiring -- concerning the
18 drug and alcohol regulations are new and I am not
19 completely familiar with them. I believe some
20 kind of testing kit is required to be aboard.

21 Q Do you know the purpose of their requirements?

22 A Not exactly, sir.

23 THE COURT: We'll take a break.

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

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(Off record - 9:40 a.m.)

(On record - 10:00 a.m.)

(1012)

THE COURT: You may be seated.

RE CROSS EXAMINATION OF COMMANDER FALKENSTEIN

BY MR. FRIEDMAN:

Q Commander Falkenstein, Mr. Delozier testified that his understanding of the state of the alcohol test kit regulations was that at the time of the grounding there was no regulation requiring test kits, but that new regulations went into effect -- or are about to go into effect requiring it on all vessels. Is that consistent with your understanding, or do you have...

A Yes, sir. To the best of my recollection, that is.

Q Okay. Is there any set procedure in -- that the Coast Guard follows in investigating whether alcohol or drugs have played a part in a marine casualty?

A Right now I'm not a designated investigator; that's not my specialty at this time, sir, so I wouldn't know what the current procedures are.

Q Fair enough. Assuming that the Exxon Valdez

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had not radioed in that night, and assuming that Mr. Blandford eventually got the radar image that you saw when you walked into the station showing the vessel in the vicinity of Bligh Reef. Could you have told from that image whether or not the vessel was aground?

A Not immediately, sir. We would have had to plot it on the chart.

Q Okay. Assuming that eventually you were able to determine that it was aground, would you have been able to tell whether it was leaking oil or not?

A Not from a radar image, sir.

Q You said that if you -- by the way, the radar, ordinarily doesn't reach to Naked Island, does it?

A No, sir.

Q And the image as far away as Bligh Reef can be fuzzy or indistinct or even non-existent?

A On occasion, yes, sir.

Q Depending on conditions?

Is it possible that had Mr. Blandford not received a report of where the vessel was, that it would have taken him some time to locate it on the radar, given the quality of the image as you

1 saw it that night?

2 A Yes, sir, but I can't say how long it would
3 have taken. It could have been -- very quickly,
4 it could have taken him a few minutes.

5 Q Okay. You said that assuming the vessel kinda
6 dropped off the face of the earth; you couldn't
7 raise it on the radio; none of the boats in the
8 area could find it; and you couldn't see it on
9 the radar. That a search and rescue effort would
10 be mobilized?

11 A Yes, sir.

12 Q And that would be by calling Juneau, did you
13 say?

14 A Yes, sir. The SAR Coordination Center that
15 work out of is out of the Juneau office.

16 Q And what would their response ordinarily be to
17 a call like, "The tanker's missing!"?

18 A It's a management procedure, but in order to
19 obtain Coast Guard assets -- vessels to assist us
20 in the search we would have to coordinate it
21 through that office in order to do so.

22 We would probably still coordinate and direct
23 a mission -- search and rescue mission, but we
24 would have to get assets through them.

25 Q Assets meaning vessels?

1 A Vessels, aircraft.

2 Q Whatever. Okay. Thank you. I don't have any
3 other questions.

4 I'm sorry, I do have one other question. Is
5 it possible that Mr. Blandford, had he not
6 received the radio call, would not have located
7 the vessel in the vicinity of Bligh Reef using
8 the radar, given the image that appeared on the
9 night you saw it?

10 A I honestly don't know.

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

12 MR. LINTON: Nothing further.

13 THE COURT: You may step down.

14 (Witness excused)

15 (Pause)

16 MR. LINTON: We call Julia Grimes, Your Honor.

17 (1300)

18 (Oath administered)

19 A I do.

20 JULIA P. GRIMES

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

23 THE CLERK: Ma'am, Would you please state your
24 full name, and then spell your last name?

25 A Julia P. Grimes, G-r-i-m-e-s.

1 THE CLERK: Your current business mailing
2 address?

3 A 5700 East Tudor Road.

4 THE CLERK: And your current occupation?

5 A Alaska State Trooper.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION OF TROOPER GRIMES

8 BY MR. LINTON:

9 Q How long have you been an Alaska State
10 Trooper?

11 A Seven years.

12 Q Were you one of the troopers who went to
13 Valdez shortly after the grounding of the Exxon
14 Valdez to conduct an investigation into the
15 grounding and oil spill?

16 A Yes, I was.

17 Q What time -- what date did you get to Valdez?

18 A I believe it was March 30 that -- yeah, March
19 30 we arrived.

20 Q A Thursday?

21 A Yes.

22 Q What did you do when you got there?

23 A The first thing that we did was meet with the
24 other troopers that were there and with yourself,
25 and -- basically to get a briefing on what was to

1 be done.

2 Q Did you interview people?

3 A Yes, I did.

4 Q Who in the course of the investigation did you

5 interview?

6 A I interviewed several people. Personnel from

7 the Coast Guard. A person by the name of David

8 Decker, which was a telephonic interview.

9 Q Who was he?

10 A David Decker was an ex-employee of, I believe,

11 Northland Maintenance who, at one time, was

12 contracted by Alyeska to provide oil spill

13 response or contingency plan response type. He

14 was a foreman, and I asked him about the

15 activities and what his job was when he was

16 working for Northland.

17 Q Who did you interview next? When did that

18 interview occur?

19 A Mr. Decker's interview was April 1st, via --

20 on a telephone.

21 Q Did you interview a Mr. Scott Conner on April

22 5th?

23 A Yes, I did.

24 Q And the purpose of interviewing him was to do

25 what?

1 A Mr. Conner's was the Coast Guard personnel who
2 had gone out to the tanker and taken the blood
3 and urine samples from the crew members. And we
4 wanted to get a synopsis -- get an interview
5 with him as to his activities.

6 Q Did you interview a Mr. Glen Haynes on April
7 6, 1989?

8 A Yes, sir, I did.

9 Q Who was he?

10 A Captain Haynes was, at that time, the co-chair
11 of -- he was stationed in Valdez and he was the
12 co-chair of the Regional Response Team which
13 monitors activities -- clean-up activities and
14 oil spills. And I was interested in a report
15 that the Regional Response Team issues on a daily
16 or twice daily basis, and that that's what we
17 spoke about.

18 Q Did you interview Gregory Knowlton on April
19 19, 1989?

20 A Yes, I did.

21 Q And what did he tell you? Briefly synopsise.

22 A Captain Knowlton was the master of the Arco
23 Juneau that had also transitted from the Port of
24 Valdez through the Narrows and Prince William
25 Sound earlier on the 23rd of March. And I

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basically interviewed him reference his observations of ice in the channel, et cetera.

Q This was before the Exxon Valdez went through?

A That's correct.

Q Did you interview Ms. Lucinda Heston on April 28, 1989?

A Yes, I did.

Q And Lieutenant Commander Tom Falkenstein on April 27, 1989?

A Yes.

Q Mr. Gary Graham on May 15, 1989?

A Yes.

Q Tom McCurdy on May 15, 1989?

A Yes.

Q Could you explain the circumstances under which you interviewed Ms. Heston, Lieutenant Commander Falkenstein, Mr. Graham and Mr. McCurdy?

A All of those interviews were conducted in an effort to determine when and if the spill would have been discovered in the absence of a call from the Exxon Valdez.

I'm sorry, beginning with Mrs. Heston?

Q That's correct.

A Myself and Investigator Burke had gone to the

1 union hall or the offices of the Cordova
2 Fisherman's Union. I'm not sure if that's the
3 correct title. In an effort to find out if any
4 fishermen had been out, or expected to have been
5 out. Was there an opening? You know, those
6 kinds of things.

7 What we did find out from the folks at the
8 union offices was that a person by the name of
9 John Rush lived near -- lived in the town or in
10 the village of Ellamar, which is on the shore of
11 Prince William Sound. And that John's -- Mr.
12 Rush's house sat in such a way that he could see
13 the Exxon Valdez, and, in fact, did see the
14 tanker and made some sort of report of it. That
15 was what was told to us.

16 We made the decision that we should try to
17 interview Mr. Rush as to his observations, so we
18 travelled to Ellamar -- myself and Investigator
19 Burke went to Ellamar to try to find him.

20 What we found was that no one was there except
21 for Mrs. Heston. The town or village is just a
22 few residences. And Mrs. Heston was the only
23 person we contacted.

24 What she told -- what she relayed was her
25 own...

1 MR. FRIEDMAN: Excuse me, Your Honor. I think
2 Ms. Heston and other witnesses on inevitable discovery
3 will all be testifying themselves, so I would have a
4 hearsay objection to the officer repeating what anyone
5 told her.

6 MR. LINTON: I agree.

7 THE COURT: All right.

8 (Pause)

9 Q Ms. Grimes, I show you what's been marked
10 Exhibit 36. Have you seen that?

11 A Yes.

12 Q Did you sign it to indicate that you've read
13 it?

14 A Yes, I did.

15 Q Tell the judge when and under what
16 circumstances you signed that, and what your
17 understanding was with request to the document?

18 A As far as the exact date, it was shortly after
19 I arrived there, probably within the first day or
20 so that I arrived in Valdez. But I signed this
21 with the understanding that there was to be no
22 contact with the person mentioned on here, Kelly
23 Mitchell, as well as anybody involved with the
24 NTSB or purposes -- you know, people mentioned
25 here.

1 Q And did you comply with it?
2 A Yes, I did.
3 Q At some later time did you learn that there
4 was to be no contact with certain other people?
5 A Yes.
6 Q Explain to the judge what you learned there?
7 A Later on as the investigation ensued, we were
8 told that an additional team of investigators and
9 attorneys was going to be assigned and that we
10 were to avoid contact with them. That we were
11 both sort of capsulized in our activities, if I
12 may put it that way.
13 Q Did you have any contact or communicate any
14 information that you had learned with respect to
15 the events of March -- which you learned about as
16 having occurred on March 24, 1989, to Mary Anne
17 Henry?
18 A No, sir, I did not.
19 Q How about to Brent Cole?
20 A No.
21 Q How about to Jim Stogsdill?
22 A No.
23 Q At some point did you have some contact with
24 Jim Stogsdill about subpoenas?
25 A Yes.

1 Q Or any other subject matter -- we'll start
2 with subpoenas. What did you do for him?
3 A He -- I had contact -- telephone contact with
4 him and he told me that there were subpoenas in
5 existence that needed to be served, and could I
6 see that they got served.
7 Q Were you in Valdez at the time?
8 A yes, I was.
9 Q So it wasn't a matter of your travelling to
10 Valdez in response to his instructions; you were
11 already there?
12 A No, I was there.
13 Q Did you convey any information to him
14 regarding what had transpired on March 24, 1989
15 in the course of the telephone conversation?
16 A No, sir.
17 Q Did you have any other contacts with -- were
18 there times when you talked to Jim Stogsdill,
19 like getting subpoenas served?
20 A No. That was the only contact that I ever
21 had. And I do believe I might have spoken to
22 Mary Anne Henry on the subject that same day on
23 the telephone.
24 Q And did you convey any information to her?
25 A No.

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MR. LINTON: Nothing further, Your Honor.

(1795)

CROSS EXAMINATION OF TROOPER GRIMES

BY MR. FRIEDMAN:

Q Trooper Grimes, this Exhibit 36, which indicates that you are not to talk to Captain Kelly Mitchell or NTSB personnel. Did anyone ever explain to you the purpose behind that restriction?

A Yes, they did.

Q What were you told?

A Initially the NTSB were the first people to go to the ship and take records and that type of thing, and that their investigation -- because of the nature of their investigation, looking into safety and the cause and that type of thing, that we were not able to, and we were not supposed to have that -- access to that information, basically.

Q Were you ever told that there was a problem with an immunity issue or with tainted information, or words along that line?

A Yes. At some point that -- yes, that came out.

Q And when were you told about that?

1 A As far as the exact day, I probably would have
2 to -- I don't even know if I recorded it in my
3 notebook, but it was within a couple days after
4 arriving in Valdez.

5 (1870)

6 Q Okay. And what were you told then with
7 respect to immunity or tainted information?

8 A That because of a law that protected reporters
9 of oil spills, that there could be a problem with
10 the information that we came up with as a result
11 of that report, and therefore we had to attempt
12 to direct what -- our investigation outside that.

13 Q Now, do I understand correctly that you
14 participated in the search of the vessel on April
15 2 of '89?

16 A That's correct, I did.

17 Q And Captains Greiner and Beevers attended that
18 search with you?

19 A Yes, sir.

20 Q And they assisted in going through the ship's
21 documents and things of that kind to help
22 determine what to seize?

23 A Yes.

24 Q And afterwards you had Greiner and Beevers
25 initial each document that have been obtained?

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A Yes.

Q What was the purpose of having them initial each one?

A For purposes of chain of custody. To be sure that they knew which -- you know, because they initialed them, that they knew that they had already looked at it.

Q By and large, did they have access to the same information that you did during that time period? That is, early April of '89?

A That would be hard for met to say. We helped them. They helped us in certain things, but I was not with them enough to be able to really say one way or the other.

Q Were you given any instructions that you couldn't share information with them during this time period?

A No, I don't believe I was.

Q In your notebook on April 3 of '89 you have a notation that you discussed new evidence with D. A. Linton and both captain consultants. I assume that's Greiner and Beevers?

A Do you have a time next to that?

Q Monday -- down at the bottom of a page -- 1530. It's actually the page prior.

1 (Pause)

2 A Oh, okay.

3 Q In fact, let's start with 1530, the page
4 before. You indicate that you interviewed Mr.
5 Delozier regarding leads to follow-up on the
6 alcohol issue?

7 A Yes.

8 Q Okay. And then at the bottom of that next
9 page you indicate that you discussed new evidence
10 with Mr. Linton and both captains. I assume
11 that's Greiner and Beevers?

12 A Yes.

13 Q Okay. What new evidence was discussed. Was
14 that the evidence you just seized in the search
15 warrant?

16 A Well, I would believe it was what we got in a
17 folder that Mr. Delozier had marked Exhibit 5.
18 There was some documents in there that we had not
19 had before.

20 Q Okay. Let me see if I could -- on April 10th
21 of '89 -- maybe I could look at -- at 12:30. The
22 -- okay. The copy I had of your notebook had
23 portions of this blocked out. Let me get my
24 copy.

25 A This is a different page.

1 Q 1089.

2 A That's stuff that doesn't apply to this case.

3 Q It's a different case?

4 A Yes.

5 Q All right. That's all I wanted to ask you.

6 Likewise, on the next page, that all applies

7 to...

8 A Yes. Everything that was blacked out had to

9 do with something happening in Anchorage.

10 (2167)

11 Q 4/27/89 in your notebook, under 1600 hours.

12 A Yes.

13 Q Could you read to me what your entry is there?

14 A "At 1600 hours I arrived at the State Trooper

15 office. I called Mary Anne Henry and LeBeau will

16 be..." -- meaning Joe LeBeau -- "will be in at

17 5:00 p.m. and will find us tomorrow to help find

18 Stewart."

19 Q Who was Stewart?

20 A Steve Stewart. I'm not sure if I remember.

21 Q Okay. That's fine. then two pages later

22 under -- well before the 1200 entry, there's an

23 indication that Mary Anne Henry checked in. What

24 was she checking in about at that point?

25 A It was all -- the contact was all reference

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subpoenas. In fact the -- on the next page at 8:30 on Friday the 28th, I met with Joe LeBeau and planned a trip to the Valdez -- to the Exxon Valdez to serve Steve Stewart a subpoena. So that day or two there where I was talking to her was all reference to get the subpoenas served.

Q Okay. Was Mary Anne Henry actually in Valdez during this time period?

A No, I don't believe so.

Q So she just called you and checked on how the subpoenas were going?

A Yes.

Q Thanks. I don't have any other questions.

MR. LINTON: Nothing further, Your Honor.

THE COURT: You may step down.

(Witness excused)

(Pause)

MR. LINTON: Call Gayle Savage, Your Honor.

THE CLERK: You'll find a microphone there, sir. If you'd please attach that and remain standing and raise your right hand.

(Oath administered.)

A I do.

GAYLE W. SAVAGE

called as a witness in behalf of plaintiff, being first

1 duly sworn upon oath, testified as follows:

2 THE CLERK: Sir, would you please state your
3 last name and then spell your last name?

4 A Gayle Wayne Savage, S-a-v-a-g-e.

5 THE CLERK: And your current business mailing
6 address?

7 A 1031 West 4th Avenue, Suite 318, 99501 in
8 Anchorage.

9 THE CLERK: And your current occupation?

10 A I'm an investigator.

11 DIRECT EXAMINATION OF MR. SAVAGE

12 BY MR. LINTON:

13 Q By whom are you employed?

14 A Office of Special Prosecutions and Appeals for
15 the Department of Law.

16 Q And how long have you been employed that way?

17 A Since June of '84.

18 Q And would you explain to the judge what your
19 job is?

20 A I'm primarily involved in investigation of
21 white collar crime and public corruption matters.

22 Q And the Office of Special Prosecutions and
23 Appeals in general does what kind of work?

24 A Criminal appeals work.

25 Q And handles special prosecutions as well?

1 A Yes.

2 Q And is it that aspect of the work of that unit
3 that you are primarily involved in, the special
4 prosecution?

5 A Yes, the prosecution function.

6 Q Did you go to Valdez in March of 1989...

7 A Yes.

8 Q ...to work on the oil spill investigation?

9 A I did.

10 Q Explain to the judge how it was that you got
11 summoned to Valdez?

12 A The head of our office came in to me -- I
13 believe it was on the 28th -- and told me I was
14 to call Bob Linton in Valdez, that I was expected
15 to go to Valdez. I called the number given to me
16 and spoke with -- Mr. Linton was not in the
17 office at the time -- and spoke with a Mr.
18 LeBeau, and he advised me to come down as soon as
19 possible.

20 I was able to catch a flight the next day at
21 about noon and arrived, I think, on the 29th.

22 Q What was your job when you got to Valdez?

23 A I was told that my function would be to look
24 into the oil spill response functions and oil
25 spill contingency plan by Alyeska, to determine

1 whether or not they responded in a timely manner
2 and with the equipment that they were supposed to
3 respond with.

4 Q And when you got to Valdez who did you talk to
5 to get those instructions?

6 A You.

7 Q When you got there did you begin a review of
8 the oil spill contingency plan that had been on
9 file with the Department of Environmental
10 Conservation?

11 A Yes, I did.

12 Q And after you reviewed that plan did you
13 interview witnesses?

14 A Yes, I did.

15 Q How did you determine who to talk to?

16 A Well, the oil spill contingency plan outlines
17 the organization of Alyeska, and also the
18 organization that comes about as a result of a
19 spill. Based on that we were able to identify
20 the -- or, I was able to identify the positions
21 of the people I wanted to talk to.

22 It was not clear to me at that time who held
23 those positions at Alyeska, and I believe it was
24 through the assistance of the attorney for
25 Alyeska that we were able to determine the people

1 that I ultimately talked to.

2 Q Once you obtained the names of the people who

3 occupied those positions from the Alyeska lawyer,

4 did you interview employees of Alyeska?

5 A Yes. I interviewed five employees.

6 Q Did they include Mr. Larry Shier?

7 A Yes.

8 Q Mr. Reynolds?

9 A Yes.

10 Q Mr. Baldrige?

11 A Yes.

12 Q Mr. Sarnacky (ph)?

13 A Yes.

14 Q And Mr. Barnum?

15 A Yes.

16 (Pause)

17 (2549)

18 Q At some point in your work did you learn that

19 you should not convey information that you had

20 learned in your part of the investigation to

21 other people?

22 A Yes, I did.

23 Q Explain to the judge when that happened and

24 what you were told?

25 A I don't remember specifically when it was. I

1 do remember that while we were in Valdez we were
2 advised not to talk with anybody from the NTSB.
3 And, then, I believe when I returned to Anchorage
4 I was told not to talk with anybody else about
5 the matter, anything that was discussed or any
6 materials that I had should go through Mr.
7 Linton.

8 Q Did you convey any information that you
9 learned to Mary Anne Henry, Brent Cole, or Jim
10 Stogsdill, an Alaska State Trooper?

11 A No.

12 Q At some point in your work did you receive the
13 transcripts of the National Transportation Safety
14 Board hearings?

15 A Yes, I did.

16 Q When did you get them?

17 A I don't recall exactly.

18 Q Do you recall what month?

19 A It was in the summer sometime, as I recall.
20 And it probably would have been -- I don't know.
21 I wouldn't want to take a guess. It was a while
22 after the hearings.

23 Q After the National Transportation Safety
24 Board...

25 A Yes.

1 Q ...hearings?
2 More than a week afterwards?
3 A Yes.
4 Q More than a month after?
5 A Probably more than a month after.
6 Q Were you given an assignment with respect to
7 the transcripts?
8 A Yes. I was told to review the transcripts and
9 initially was told to excise those portions which
10 may tend to taint the evidence. That is, excise
11 portions which should not be revealed to Mr.
12 Cole, or Mary Anne Henry.
13 And that was based on a time element,
14 basically.
15 Q Did you transmit any materials to them as a
16 result of your review?
17 A No. I haven't.
18 Q It was your understanding that if anything
19 were to be transmitted to them how were they to
20 get it?
21 A It would be going through you.
22 Q Have you, in fact, sent anything to me for
23 review from the National Transportation Safety
24 Board hearings...
25 A No.

1 Q ...to today?

2 A No.

3 MR. LINTON: Nothing further, Your Honor.

4 (2695)

5 CROSS EXAMINATION OF MR. SAVAGE

6 BY MR. FRIEDMAN:

7 Q Mr. Savage, do I understand correctly that one
8 of the things you were investigating was whether
9 or not it might be appropriate to prosecute
10 Alyeska, or Alyeska personnel with regard to
11 Alyeska's response to the oil spill?

12 A That was what we were looking at.

13 Q Okay. And one of the things you were looking
14 at was how long it took for the response crews to
15 actually get out and do their thing after
16 receiving Captain Hazelwood's call, is that
17 correct?

18 A That's correct.

19 Q So, you were aware of his call, when it was,
20 what he said?

21 A I was aware through interviews with Alyeska
22 people when they became aware of the spill.

23 Q Okay. Did you ever investigate when the
24 radio call from the Exxon Valdez was made so that
25 you would know how long it took for Alyeska to

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receive notification?

A That was something I was going to do. I was planning on getting various logs and things, but I was told basically to hold off on that.

Q And why were you told to hold off?

A Presumably because it had to do with the spill report.

Q And were you told that you were not to accumulate any information relating to the spill report?

A At some point, I believe I was.

Q And who told you that?

A It would have been Mr. Linton.

Q All right.

Was Mr. Linton regarded as your supervisor?

A At that point, in Valdez, and upon my return to Anchorage, yes.

Q Okay. What about...

A With respect to this case.

Q Right. What about Mr. Guaneli? What was his role in your work at that time?

A Mr. Guaneli also would be giving me some instructions?

Q So, he would be regarded as your supervisor as well?

1 A They had to do with materials that we were
2 obtaining from Alyeska Pipeline Service Company.

3 Q Uh-huh (affirmative). Do you draw a
4 distinction in your mind between the case you
5 were working on for Mr. Guaneli, and the case you
6 were working on for Mr. Linton?

7 A No. It was the same matter.

8 Q All right. Did Mr. Guaneli sit in on any of
9 your interviews in Valdez?

10 A Yes, he did.

11 Q Do you recall which ones?

12 A I just remember that he was there the first
13 day on April 6th. I don't recall specifically
14 which interviews were done on that day.

15 Q All right.

16 (Pause)

17 I want to make sure I understand this
18 correctly. You were told to investigate
19 Alyeska's response to the spill, or to the
20 report, but you were also told not to investigate
21 the report, or the circumstances surrounding the
22 report?

23 A Well, I mean, there was information that was
24 available in the press.

25 I always presumed that the information

1 relating to spill, if ever I needed it, you could
2 get it through logs and things of that nature.

3 Q Uh-huh (affirmative).

4 A And I never got so far as to do that.

5 Q Why is that?

6 A One, I was told not to talk to NTSB
7 investigators, and not to go get the records of
8 the organization -- the response organization put
9 together by federal government.

10 Q Okay. You were told not to do those things?

11 A Yes. To hold off on those things.

12 Q Were you told not to read the newspapers?

13 A No.

14 Q Okay. Were you told not to listen to the
15 radio, or TV?

16 A No.

17 Q So, you were generally aware of the fact that
18 a call had been made by Captain Hazelwood,
19 reporting the spill?

20 A Yes.

21 Q And you were generally aware that that
22 occurred shortly after midnight on the 24th?

23 A Yes.

24 Q And you were aware that that call had been
25 made to the Coast Guard, initially?

1 A It wasn't clear to me at that point whether it
2 was made directly to Coast Guard, or whether it
3 went to Alyeska first, or...

4 Q Okay.

5 Now, you were permitted to talk to Mr. Linton
6 about your activities in this case, is that
7 correct?

8 A Yes.

9 Q But you were not permitted to talk to Mr.
10 Cole, or Ms. Henry...

11 A That's correct.

12 Q ...or Trooper Stogsdill?

13 A That's correct.

14 Q Were you allowed to talk to Mr. Guaneli about
15 the information, or about your work on the case?

16 A I don't know if I was allowed, or not.
17 Substantively I don't believe I ever did. My
18 contacts with Mr. Guaneli had to deal with
19 receiving documents from Alyeska Pipeline Service
20 Company and their attorneys.

21 Q How about Mr. Weeks? Did you have any contact
22 with him with regard to this case?

23 A Only with respect to my assignment to review
24 NTSB materials.

25 Q Okay. Can you tell me what you mean by that?

1 A Well, initially, I was told to review these
2 hearings and, you know, excise certain portions.
3 And I went to my office chief, Mr. Mannheimer,
4 and said, "I'm going to need some guide lines."
5 In order to do this he contacted Mr. Weeks and
6 there was a call that I had with Mr. Weeks and we
7 discussed those guide lines.
8 Q Okay. Who else was present, or participated
9 in that call besides you and Mr. Weeks?
10 A Mr. Mannheimer.
11 Q Anybody else?
12 A No.
13 Q All right. And can you tell us what occurred?
14 What you were told, what you asked?
15 A Well, I had to have some basis for which
16 things would be excised. And we discussed how
17 we'd go about doing it. And it was based on sort
18 of a time element that assuming certain time
19 periods would be sort of tainted time periods and
20 I could do it on a step by step basis in terms of
21 which material should be excised.
22 Q Did Mr. Weeks indicate whether he had reviewed
23 the NTSB materials at the time he talked with
24 you?
25 A It's my understanding Mr. Weeks had not

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reviewed them.

Q Do you have an understanding as to whether or not he was aware of what had transpired, let's say in the first 24 hours after the grounding?

A I don't know how -- I don't know to what extent his understanding is, how much of an understanding he has and how specific it is.

Q Did you talk about events during that first 24 hours with him in the context of trying to sort out where to draw the line?

A No. Not specific events.

Q Other than you going to Mr. Mannheimer and asking for assistance on the NTSB editing, did you have any involvement with Mr. Mannheimer during your work in this case?

A No.

Q Thank you. I don't have any other questions.
MR. LINTON: Nothing further, Your Honor.

(3175)

THE COURT: You're excused.

(Side conversation)

THE COURT: He's still inside, but he's about to leave.

(Pause)

Who's the next witness?

1 MR. LINTON: We call Bruce Blandford, Your
2 Honor.
3 (3258)
4 (Oath administered)
5 A I do.
6 BRUCE L. BLANDFORD
7 called as a witness in behalf of the plaintiff, being
8 first duly sworn upon oath, testified as follows:
9 THE CLERK: Would you please state your full
10 name, and then spell your last name?
11 A Bruce L. Blandford, B-l-a-n-d-f-o-r-d.
12 THE CLERK: Current mailing address?
13 A Pardon?
14 THE CLERK: Your current mailing address?
15 A Box 789, Valdez.
16 THE CLERK: And your current occupation?
17 A U. S. Coast Guard, Civil Service.
18 THE CLERK: Thank you.
19 DIRECT EXAMINATION OF MR. BLANDFORD
20 BY MR. LINTON:
21 Q Would you outline your work history for the
22 judge, please?
23 A Recent, or?
24 Q As long as you've been workin'.
25 A I came to Alaska in 1977 as a member of the

1 Coast Guard, active duty.

2 Q What rank did you hold?

3 A I was lieutenant.

4 Q How long were you in the Coast Guard?

5 A Fourteen years.

6 Q When did you first enter the Coast Guard?

7 A 1966.

8 Q And when did you resign or retire from the

9 Coast Guard?

10 A That was in 1980.

11 Q Could you tell the judge what the nature of

12 your assignments were over your Coast Guard

13 career?

14 A Several tours, ship board. And when I came to

15 Valdez I was a vessel traffic watch officer.

16 Some time after -- shortly after I came to Valdez

17 I was made the operation's officer, which I had

18 -- I was in charge that time of the Vessel

19 Traffic Center itself.

20 Q Could you explain what your response -- well,

21 how long did you do that?

22 A Approximately three years.

23 Q 1977 to 1980?

24 A Yes.

25 Q Explain to the judge what your

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responsibilities were for that space of time?

A To oversee the overall operation of the Traffic Center, and make sure that it operated smoothly and resolved any difficulties which may arise. I was also in charge of the electronic's maintenance, not the -- overseeing electronic's maintenance. We had Coast Guard technicians and some civilian contractors who had maintenance for the radars and the communication's gear.

Q As of March 24, 1989, what was your relationship to the Coast Guard facility there?

A After being away from there for several years, I was rehired as civilian as vessel traffic controller.

Q When did that occur?

A It was August 1986.

Q And what was the job for which you were hired at that time?

A I was hired as vessel traffic controller.

Q What were the responsibilities of such a person?

A To basically operate the Vessel Traffic Service on a watch standing type basis; shift work.

Q How man persons were on duty during a shift as

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of March 24, 1989?

A One vessel traffic controller and one radioman.

Q And...

A Let me clarify that a little bit. As far as the Vessel Traffic Service itself, there is a single watch stander. The radioman is a Coast Guard -- handles the Coast Guard functions as far as search and rescue and -- just providing the services of what they call Valdez radio, which makes safety broadcasts. And he also takes care of the communications traffic for the unit.

Q Does he communicate with vessels that are moving within the traffic system?

A Only in the event that the vessel traffic controller would have to leave the room.

Q Who receives...

A In other words, to go to the restroom, or...

Q Otherwise, that's whose responsibility?

A That would be the vessel traffic controller's.

Q On the evening of March 23, 1989, were you scheduled to work?

A I was scheduled to have the midnight watch.

Q What time did you arrive in the station?

A Approximately 20 minutes to midnight.

1 Q And what time did you begin work?
2 A I believe, to the best of my recollection, it
3 was right about quarter of -- 2345.
4 Q At the time that you went on duty were you
5 briefed in some manner by the person who had been
6 before you as to the situation that -- as to
7 traffic in the system?
8 A Yes. I relieved Mr. Gordon Taylor of the
9 watch. We were together for approximately five
10 minutes.
11 Q Is there a practice or procedure under which
12 the responsibility of the former watch stander to
13 brief the new watch stander as to the situation
14 with respect to traffic in the system?
15 A That's correct.
16 Q And did you do that?
17 A We sure did.
18 Q What did he tell you about the situation with
19 respect to traffic in the system?
20 A When I came in to relieve the watch he
21 informed me, among other things, of which I can't
22 entirely remember everything that was said -- but
23 he did inform me that the Exxon Valdez had
24 dropped its pilot and he had called in to deviate
25 from his traffic lane to avoid ice. That he as

1 going to course two-zero-zero and that the ship
2 would call when he was clear of the ice with a
3 new ETA for Naked Island.

4 He also said that he had lost him from the
5 radar. In other words, due to whatever
6 conditions were in effect at the time, he no
7 longer had radar contact.

8 Q Did you understand whether or not the Exxon
9 Valdez had an estimated time of arrival at Naked
10 Island?

11 A Right. The stated ETA for Naked Island was
12 zero 100, but he said he would call with a new ETA
13 for Naked Island once he was clear of the ice.

14 Q I would like you to listen to some
15 transmissions and tell us whether you recognize
16 the voices as your voice communicating with the
17 Exxon Valdez?

18 (3782)

19 (Tape played)

20 (3894)

21 Q Did you recognize your voice and the other
22 voice on the...

23 A Yes, that is my voice.

24 Q And is that a transmission you received that
25 night on the Exxon Valdez?

1 A Yes, it is.

2 Q What time did you receive that transmission?

3 A I put it in my log book at 0028, after

4 listening to the tape, which we had the time --

5 the time is automatically recorded on the tape.

6 The transmission started, I believe, at 0026.

7 But when I finished talking it was 0028, the time

8 I put in my log book.

9 Q Before that time -- before the transmission

10 that we just listened to, had you been in radio

11 contact with the Chevron California?

12 A I don't recall for sure.

13 Q I'll rewind the tape and play an additional

14 part.

15 A Okay.

16 (4007)

17 (Tape played)

18 (4084)

19 Q Is that your voice?

20 A Yes, it is.

21 Q That was you communicating with the Chevron

22 California?

23 A Yes, it is.

24 Q Do you recall whether that communication was

25 before or after the report that you received from

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the Exxon Valdez?

A It had to have been before.

MR. LINTON: I would ask that the tape be marked and admitted as the next state's Exhibit.

MR. FRIEDMAN: Your Honor, I would ask that the conversations immediately prior to that also be included. I'm not sure if they're on the tape or not, but under Evidence Rule one-"o" whatever it is, you are allowed to get the complete section, there is a transmission just prior to this in which Captain Hazelwood indicates that he will be late arriving to the Naked Island check point, which I think, in fairness, ought to be included in this section.

THE COURT: Is that contained shortly before the transmission of the grounding?

MR. LINTON: It is, Your Honor.

THE COURT: Then we will admit the exhibit with that additional language included, that hasn't been played so far.

And what's the exhibit number next in order?

THE CLERK: 59, Your Honor.

THE COURT: 59 is admitted.

EXHIBIT 59 ADMITTED

MR. FRIEDMAN: Your Honor, as long as it's there, i wonder if you could just play that section now

1 so the court has that before it as well.

2 THE COURT: I don't have any problem. It's up
3 to Mr. Linton. You can play it or he could play it.

4 MR. FRIEDMAN: I could play it on cross,
5 whatever is easier. Just that Mr. Linton knows where
6 it is, and probably...

7 MR. LINTON: If I could find that particular
8 point, or I could go all the way back to the beginning.

9 THE COURT: We'll do it on cross examination.
10 You can go on.

11 (Tape: C-3516)

12 (000)

13 Q (Mr. Blandford by Mr. Linton:) Mr. Blandford,
14 when you said the words recorded on the tape,
15 "You just about one mile north of Bligh Reef?"

16 And the Exxon Valdez responds: "Yeah, that's
17 correct."

18 What were you looking at at the time?

19 A Well, when he called and made that report and
20 said where he was, I tried to find him on the
21 radar. And that's the resultant pause between
22 his report and my answer, is what I was doing, is
23 trying to find him.

24 Q What did you find when you looked at the
25 radar?

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A A pretty good sized blip off -- in that position that we discussed on the tape.

Q When you say, "a pretty good sized blip", what do you mean?

A Oh, on that range scale, it was probably a half an inch long I would say.

Q Were you familiar with the return in that area when there was no vessel on -- aground on Bligh Reef?

A Yes.

Q And would you compare for the judge what you saw on a normal radar return when there was no vessel there, and what you saw when you looked down at the screen?

A It's kinda hard to describe, but you had the outlines of Bligh Island, Busby Island, and occasionally you get -- under good conditions you may get a return off of Bligh Reef buoy, which comes into about maybe two out of five sweeps. It's just a little dot.

 And the return of the Exxon Valdez would have been, oh, maybe an inch and a half -- inch to an inch and a half above that, and it was sitting perpendicular to the radar.

THE COURT: Would you get that on every sweep

1 on good conditions or periodically, on two out of three
2 or three out of five sweeps?

3 A Are you speaking of the buoy?

4 THE COURT: No, the vessel?

5 A It was there -- it was there steady.

6 THE COURT: One more question before you go
7 on.

8 What do you consider good conditions?

9 A Well, you have both equipment conditions and
10 weather conditions. And both of them affect how
11 the radar is operating, as far as the picture you
12 get. It's very susceptible to weather, and it
13 doesn't have to be -- the weather in the local of
14 the target doesn't have to be poor, but if
15 there's a little weather cell in between the
16 target and the radar, it's very easy to lose even
17 a thousand foot tanker under those conditions.

18 THE COURT: You say "weather", so you're
19 referring to rain or some precipitation?

20 A Usually rain or snow. Snow is usually worst.

21 THE COURT: And what were the weather
22 conditions at the time?

23 A I'm not really sure. We had passing squalls
24 of rain and/or snow. I'm not entirely sure what
25 was on at the time. And the equipment itself --

1 sometimes we have a little degradation of the
2 signal due to some of the components just wearing
3 out, and they have to be replaced from time to
4 time.

5 THE COURT: Just one more thing. Could you
6 observe the buoy at Bligh Reef when you were looking
7 for the vessel?

8 A About like I described. About two out of five
9 sweeps, at that time.

10 THE COURT: Would that be consistent with your
11 good conditions, then?

12 A Yes.

13 THE COURT: That existed at the time?

14 A Right.

15 Q (Mr. Blandford by Mr. Linton:) I show you
16 what's been marked as Plaintiff's Exhibit 1.
17 Could you utilize that to show the judge what you
18 mean by what you could see on the screen? First
19 indicating, where is the radar unit which
20 transmits and receives the signal -- the radar
21 signals to be located?

22 A It's right up here (indicating).

23 Q And it's marked on the map how?

24 A Right here with this symbol for a light, and
25 then there's a little -- it says "radar tower"

1 right there (indicating).
2 Q At Potato Point?
3 A Uh-huh (affirmative).
4 Q And will you show the judge, then, what you
5 were able to see from the radar return on the
6 screen?
7 A The target was right here. Like I say, it was
8 registering approximately a half an inch long,
9 and it was turned pretty much 90 degrees to the
10 radar.
11 Q Is the position of Bligh Reef buoy, which you
12 said you were able to make out, it was on the
13 chart.
14 A Okay.
15 Q How is it marked?
16 A On the chart?
17 Q Yes, sir.
18 A With the standard buoy symbol.
19 Q And by R6 FLR4S bell?
20 A Right.
21 Q R6.
22 A That means red number 6, flashing red 4
23 seconds, which is your light characteristic, and
24 it has a bell on it.
25 Q And that's the thing that showed up as a dot?

1 A Right. Intermittent, right.

2 Q Is that equipped some way to return a radar
3 signal?

4 A Yes. Yes. Almost all lighted buoys have
5 radar reflective capabilities and it's in the
6 design of the -- what they call a cage, which is
7 the top part of the buoy.

8 Q How big is it?

9 A I believe that one is an eight foot -- 8 by
10 26.

11 Q Eight represents what?

12 A Eight feet in diameter.

13 Q And 26 feet long?

14 A Right.

15 Q Basically cylindrical in shape, that's why you
16 have just two figures?

17 A Well, it's not actually cylindrical. It has a
18 counterweight on the bottom which consists of a
19 tube and a weight, so it's smaller than the
20 actual buoy body. The buoy body itself is eight
21 feet in diameter and probably about -- oh, I'm
22 gonna guess -- say, eight to 10 feet high. And
23 then on top of this buoy body you have the cage
24 or the or superstructure, and this is where the
25 radar reflector is. It's up at the top.

1 Q And how far does it extend above the surface?
2 A Oh, probably 10 feet.
3 (350)
4 Q Was there more than one radar screen on which
5 it was observable?
6 A How so do you mean?
7 Q How many radar screens are there in the vessel
8 traffic center?
9 A Well, we have three indicators, and they can
10 be moved to different configurations. At that
11 particular time we had two different sites. The
12 first one being within the Port of Valdez on the
13 entrance to the Small Boat Harbor. And that
14 covers the Port of Valdez. The other site is at
15 Potato Point.
16 Q Show us on...
17 A At that time there were two radars at each
18 site, but you could only run one or the other.
19 You could operate both.
20 Q Let's talk about the positions of those. Two
21 were at Potato Point, which you pointed out
22 earlier?
23 A Right.
24 Q Were they directional in some fashion?
25 A No.

1 Q They bother covered the same range of...

2 A Right. Yeah. It was purely -- at that time

3 it was purely a redundancy feature. If one of

4 the radars failed you could switch to the other.

5 Q Is the location where the other one was

6 situated on Plaintiff's Exhibit 1, and if so,

7 show it to the judge, please?

8 A Okay. The other radar?

9 Q Yes, sir.

10 A It's right here (indicating).

11 Q You're pointing to a point where there is a

12 flashing green light?

13 A Right. It also says "radar tower", I believe.

14 It says tower, "TR".

15 Q TR.

16 A That's a little circle with a dot in it.

17 Q Just south of Valdez -- the writing of

18 "Valdez"?

19 A It's the entrance to the Small Boat Harbor.

20 Q Have a seat.

21 Now, you had three screens, but you could only

22 pick up two radar signals at any one time. Is

23 that what I understand?

24 A That's correct.

25 Q Explain that to the judge?

1 A We were using, at that time, as I explained
2 earlier, one of the radars at a time at each
3 site. We used two of the screens to monitor the
4 Potato Point radar because we would like to be
5 able to look at Valdez Narrows and Valdez Arm at
6 the same time. The only trouble that we had was
7 that there is a difference in the transmission
8 and reception characteristics in the radar itself
9 between the three mile and under scale and the
10 six mile and over scale.

11 So if we were running two scopes off the same
12 radar, the one scope which had control of the
13 radar itself would be the master and the other
14 would be, more or less, the slave configuration.

15 Now, as long as what you were wanting to look
16 at, the -- if you looked at it on the master,
17 everything came -- was clear and usable. If you
18 had the master in three mile and under, you could
19 not go over three miles on the slave. You would
20 get no picture whatsoever.

21 If you had the master in six miles or over,
22 you get a clear picture from the master, and
23 you'd have a somewhat usable picture on the slave
24 in the three mile and under, but it was not all
25 that good.

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Does that answer your question?

Q Could the both radar units be both a master -- both of the Potato Point radar units be both a master and a slave when looking out in the direction of Bligh Reef so that you would have two different screens with...

A Yes. If he turned them both on the same scale they would be exactly alike.

Q Okay. So there was a potential for two separate screens?

A Right. There was that potential.

Q Now, in the early morning hours of March 24, 1989 what was the arrangement that you had with respect to the radar screens that you had physically in the center?

A Before -- as I relieved the watch the radar was set on the -- this is the master now -- was set on the six mile scale, and was offset to 10 miles. In other words, you can offset the picture so that the origin is up in the corner and you can effectively expand the range out to 10 miles.

 When I came in Mr. Taylor informed me that he had been lost -- he had lost the target from that range scale. For what reasons, I can't address.

1 Whether it was an equipment problem. Whether it
2 was a weather problem. But he informed me that
3 he had lost the target and it was no longer
4 visible when I got there.

5 Q Did you look to see whether -- are you saying
6 you looked and you did not see it, or are you
7 saying he told you it was not there?

8 A I looked at it and he also told me that.

9 Q And when you looked did you see the Exxon
10 Valdez?

11 A No.

12 Q Between that time that you looked, when you
13 first went on duty, and the time that the
14 Captain, or the Exxon Valdez reported that it was
15 aground, did you look again to determine
16 whether...

17 A No.

18 Q ...you could find the Exxon Valdez?

19 A No.

20 (629)

21 Q As of the time that you were working, was
22 there a practice or procedure as to how vessels
23 would report their movement through the Vessel
24 Traffic System?

25 A Yes.

1 Q Explain to the judge what that was, please?

2 A It's pretty well addressed in our operating
3 manual, the users manual, which I'm sure you have
4 a copy. But they had the reporting points
5 normally on outbound -- on an outbound voyage it
6 goes as follows: The pilot calls in. When he's
7 -- 30 minutes prior to the vessel departing the
8 Alyeska Terminal, he gives certain information.
9 At which time will inform him of any traffic.
10 Particularly if the one-way zone in Valdez
11 Narrows is gonna present a problem by another
12 vessel coming in from the other direction.

13 Q Explain what you mean by the one-way zone?

14 A That's the area between Tongue Point and
15 Entrance Island in Valdez Narrows.

16 Q Show the judge where that is so that we know.

17 A It's restricted to one-way traffic when a tank
18 vessel over 20,000 dead weight tons is in it.

19 Q Is Tongue Point identified...

20 A Yes, right here.

21 Q And there's actually a dotted line from Tongue
22 Point?

23 A Right. Those are the limits of the one-way
24 zone.

25 Q In a northwesterly direction to the far

1 northwest shore?

2 A Uh-huh (affirmative).

3 Q And the other is from...

4 A Entrance Island.

5 Q Entrance Island where -- so marked on the
6 chart, where there is a flashing (indiscernible -
7 away from mike) five meter, 14 aide, and extends
8 in a northwesterly direction to the far shore.
9 The red dotted line in both places?

10 A Uh-huh (affirmative).

11 Q That's the one-way zone?

12 A Right.

13 Q What are the rules in the one-way zone?

14 A Only -- well, it's restricted to one-way
15 traffic, as I said, when a tank vessel over
16 20,000 dead weight tons is operating therein.

17 Q Continue, please. You told us about a call a
18 half hour before departure from the Terminal.

19 A Then he would call when he's away from the
20 dock -- when he's underway and cleared the berth,
21 and gives an ETA to Entrance Island. At which
22 time we would either grant him clearance or deny
23 clearance, depending on the circumstances, to
24 enter the one-way zone.

25 Okay. Then he may or may not -- he's not

1 obligated to call at Entrance Island. Then he
2 would probably call again at Potato Point when he
3 is increasing speed. And at that time he would
4 be releasing his escort tug, which he was obliged
5 to have standing by in the Narrows.

6 Q Is it one of the regulations that he report an
7 increase in speed, as well as a position?

8 A Right.

9 Q As the vessel moves?

10 A Right.

11 Q Continue then with what customarily occurred?

12 A After that he would increase speed and, on his
13 way to the pilot station, which, at that time,
14 was at Rocky Point. He may or may not call
15 advising us that he's making a lee to drop the
16 pilot off. In which case he may have to go out
17 of his assigned traffic lane in order to do so.

18 Q Explain that to the judge, what you mean by
19 "making a lee"?

20 A Well, generally they have to come along and
21 turn broadside to the sea so that the pilot can
22 safely embark or disembark, so it's calmer.

23 Q Continue, please, then.

24 A After the pilot would be away, the person
25 generally in command or piloting the ship from

1 that point on would call and inform us that, in
2 fact, the pilot was away and give us an ETA for
3 the next reporting point, which was abeam of
4 Naked Island.

5 Q Naked Island is off in the lower left hand
6 corner of the chart you just pointed to.

7 A Then, again, upon reaching Naked Island, he
8 would call and report that fact and give the next
9 ETA for the check-out point, which would be abeam
10 of Schooner Rock, which is not on this chart.
11 It's on this one.

12 Q Go to Exhibit 2 which is underneath there.

13 A Pardon?

14 Q I said, go to Exhibit 2 which is underneath
15 Exhibit 1. Tell us whether that final point
16 you've referred to...

17 A That's Schooner Rock, right here (indicating).
18 And we would check him out of the system at that
19 point.

20 Q And Schooner Rock is so marked on the chart
21 off the northwest tip of -- northeast tip of
22 Montague Island?

23 A Right.

24 Q How about an inbound vessel now. What
25 reporting practice...

1 A An inbound is required to give an initial
2 report three hours prior to entering Cape
3 Hinchinbrook, which includes, again, various
4 information. His drafts; course in speed; the
5 fact of whether he has any dangerous cargo;
6 whether or not he's towing; what type vessel he
7 is; what his destination is within the VTS area;
8 his ETA destination; his last port of call; next
9 port of call; and sometimes give us a weather
10 report.

11 Q Does he indicate his pilotage?

12 A Yes.

13 Q What is pilotage?

14 A All U. S. vessels are required to have
15 pilotage -- federal pilotage for the Sound.

16 Q Was the Exxon Valdez such a vessel?

17 A Right. Of this size requiring it. And they
18 are required to report that upon their initial
19 report.

20 THE COURT: What does that mean, "report
21 pilotage"? Somebody qualified to operate, is that what
22 you're referring to?

23 A Right. They have the Coast Guard
24 certification for that size vessel for that
25 route.

1 Q In its exit from the Port of Valdez, did the
2 Exxon Valdez indicate that it was a pilotage
3 vessel?
4 A Yes.
5 Q That it had someone authorized to navigate the
6 waters of Prince William sound on board?
7 A Right.
8 Q Let's continue then with the inbound course.
9 Could you tell us what would be reported outside,
10 including pilotage?
11 A Let me backtrack a little bit. I did not take
12 the report, that was Mr. Taylor, when they were
13 getting underway.
14 Q I see. Is there a form that's used to record
15 those things as the vessel goes in and out?
16 A Right. We call it a vessel data sheet. And
17 we record the information on it from the time he
18 checks in, inbound, until the time he checks out,
19 outbound. on the same sheet.
20 Q So when you took over you had such a sheet
21 that Mr. Taylor had started for the outbound
22 voyage?
23 A Uh-huh (affirmative).
24 MR. LINTON: I'd ask that this be marked as
25 the next state's exhibit.

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THE CLERK: Exhibit 60.

(980)

Q I'll show you what's been marked as Exhibit 60. Do you recognize any of the documents which are state's Exhibit 60?

A Yes.

Q Are any of those documents which were utilized in the Vessel Traffic Center on the night of March 23, 24?

A Yes. This is a copy of the vessel data sheet.

Q Is that one that you saw on the night of March 23, 24, 1989?

A Right.

Q And are any of the entries on it in your handwriting?

A Only the aground entry and I believe something has been scratched off of that or whited out.

MR. FRIEDMAN: Your Honor, the sheet -- actually my sheet that Mr. Linton asked if he could mark -- my understanding is that this sheet was actually prepared after -- in other words, it's not a contemporaneous record, which is what I understand the sheet to be. I may be wrong on that, but I think that might be part of the problem.

A Okay. The original sheet -- I made this entry

1 right here, "0028 aground in" and then it should
2 say "position" -- whatever it said. Something's
3 been whited out there, the best I could
4 recollect.

5 THE COURT: Is that an original?

6 A No.

7 MR. LINTON: No.

8 THE COURT: Where is the original?

9 Q It bears a stamp, "Certified to be a true
10 copy. I have seen the original and compared this
11 with it and found it to be a true copy." Is that
12 Falkenstein's signature?

13 A Uh-huh (affirmative).

14 MR. LINTON: With Lieutenant Commander
15 Falkenstein's signature on it, Your Honor.

16 I understood it was produced by the Coast
17 Guard this morning in response to a defense subpoena
18 for records, and that Lieutenant Commander Falkenstein
19 has brought the records; left them in the custody of
20 Lieutenant Commander Nelson, an attorney for the Coast
21 Guard, who is here, who produced them in response to
22 the defense subpoena.

23 THE COURT: May I see the document. Okay.
24 Mr. Linton I just wanted to see what the witness meant
25 by "whited out". It looks -- I don't see anything

1 that looks like it's whited out. But what you're
2 saying is that something is missing from it, is that
3 what you're saying?

4 A I couldn't say for sure. But that entry there
5 is incomplete.

6 THE COURT: The "0028 aground in"?

7 A Right. It should say something after that.

8 Q (Mr. Blandford by Mr. Linton:) Is all the
9 other data there true to the best of your
10 knowledge? Let me put it this way. In all other
11 respects, does that appear to be a true copy of a
12 document that you...

13 A Yes, it does.

14 Q ...got from Mr. Taylor and then used yourself?

15 A Right.

16 MR. LINTON: Move the admission of the
17 exhibit, Your Honor.

18 MR. FRIEDMAN: Your Honor, as I said, my
19 understanding is that that may be a subsequent form
20 that was filled. I'm not -- I guess if Mr. Linton has
21 something he's trying to establish, I would probably
22 stipulate to it, but I'm not very comfortable...

23 THE COURT: Why don't you lay a little better
24 foundation for this, Mr. Linton.

25 MR. LINTON: Sure.

1 Q (Mr. Blandford by Mr. Linton:) Is there a
2 practice or procedure as to how those are filled
3 out?
4 A Right. Well, they are kept as the vessel
5 moves throughout the system.
6 Q Explain how it...
7 A We use this -- this is how we were able to
8 relay to other traffic various vessels' ETAs.
9 Q Explain to the judge how you use that form?
10 A Okay. For instance, going back to the Chevron
11 California, was it.
12 Q Coming in -- the 0015?
13 A Right. I would have -- aside from what Mr.
14 Taylor told me on relief, I would have referred
15 to this to give the Exxon Valdez's ETA to the
16 other ship.
17 Q Let's go a little more basically. Suppose a
18 ship were entering the traffic system inbound for
19 the first time. Would that form be used for the
20 first time?
21 A Yes.
22 Q On this particular voyage, would that form be
23 used in some fashion?
24 A Yes.
25 Q Tell the judge how it can be used?

1 A Well, the initial report information would be
2 recorded right on here (indicating).

3 THE COURT: The same form for the vessel
4 coming in would be used for the vessel going out?

5 A Right.

6 THE COURT: The same document?

7 A This form is filled out initially when he
8 checks in inbound. Okay. And it's kept on a
9 stand-by board while he's in port and it's reused
10 when he gets underway outbound. There's two
11 sections of it, inbound and outbound.

12 Q Is the form, then, in blank when the ship
13 makes its entry into the...

14 A Right. We start with the blank form.

15 Q And then at the conclusion of the voyage, what
16 is done with the record?

17 A It's filed away.

18 Q Are the entries on the document made as the
19 events which they record occur?

20 A That's correct.

21 Q Explain that to the judge?

22 A Well, initially, inbound you get -- the time
23 that he checks in, his position. The answers to
24 the other questions that you asked for. Speed.
25 Or if he has any impairments to the vessel.

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Whether they have pilotage. Has the traffic manual, so on and so forth.

The next report required inbound would be one hour before entering Cape Hinchinbrook. But when he again gives his position course and speed, and reaffirmation of his ETA for Cape Hinchinbrook. Okay. When he's at Cape Hinchinbrook, reports that back, get's an ETA for Naked Island. When he's at Naked Island, reports that back, gets an ETA for the pilot station. Which, at this time, was at Rocky Point.

At Rocky Point, when he arrives there he calls when the pilot is aboard and gives an ETA for Entrance Island and then he's either granted or denied clearance for the Narrows.

And then he's probably logged in when he passes Entrance Island and then when he's tied -- when he has first line out alongside the berth, he calls and checks out, and then he gives his estimated time of departure.

And then we put this form on a stand-by board, and as soon as he's loaded and ready to go, then we'll take this off the stand-by board and take his 30 minute pre-call we call it. When he's given his 30 minutes notice to getting underway.

1 Which -- and we again fill out his destination;
2 his ETA to destination; whether he has any
3 impairments to the vessel; and usually what the
4 pilot's report is, that he's ready for sea in all
5 respects.

6 (1288)

7 Q With respect to this form, is there a time
8 recorded when the Exxon Valdez first reported
9 inbound?

10 A Right. It was 1438 on the 22nd.

11 Q Is there a time recorded when it arrived in
12 Valdez?

13 A 2248 on the 22nd.

14 Q Is there a time when it reported at its half
15 hour pre-call on the outbound?

16 A Right. 2057 on the 23rd.

17 Q And is there a time when it reported that it
18 estimated it would be at Naked Island?

19 A 0100. And that was given -- that was given at
20 2326 when he passed Rocky Point and presumably
21 dropped the pilot at that point.

22 Q And could you tell us what the entry was that
23 enables you to say that?

24 A Because his ETA is recorded.

25 Q There's a line "RKYPT".

1 A That's Rocky Point.

2 Q There's no ETA there. There's a column for
3 "arrived", and across from Rocky Point it's 2326.
4 What does that mean?

5 A That's when he called with his arrival at
6 Rocky Point. And presumably he told the watch
7 stander that the pilot was away and gave his --
8 probably gave his ETA at that time at 0100.

9 Q And so the "NI"...

10 A That's Naked Island.

11 Q 0100 means Naked Island?

12 A Uh-huh (affirmative).

13 Q So at the time you received this document, the
14 last entry was NI 0100 ETA for Naked Island?

15 A That's correct.

16 Q And that's when you put an additional entry
17 about "aground" on?

18 A No. That was...

19 Q Excuse me. And it was thereafter that you
20 made that entry?

21 A That's correct.

22 THE COURT: It still is not in evidence.

23 MR. LINTON: At this time I would renew my
24 motion to admit the exhibit.

25 MR. FRIEDMAN: Your Honor, could I ask Mr.

1 Blandford just one question?

2 THE COURT: Voir dire. Yes.

3 VOIR DIRE EXAMINATION OF MR. BLANDFORD

4 BY MR. FRIEDMAN:

5 Q Mr. Blandford, the document that you had in
6 your hand. Do you have any reason to think that
7 that particular document is not the one that was
8 prepared on the night of the 23rd and 24th?

9 A That is a copy of the one.

10 Q Right. Do you have any reason to think it's
11 not a copy of the one that was prepared?

12 A I have no reason to believe that it's not a
13 copy of the one that was prepared. I'm not quite
14 sure about my entry there, whether I, in fact,
15 left it like that, or something's been deleted.

16 MR. FRIEDMAN: Okay. Fine. I have no
17 objection to it being admitted.

18 THE COURT: When you say "copy", are you
19 referring to a facsimile, like a Xerox copy, or
20 something...

21 A Right.

22 THE COURT: ...somebody did by hand.

23 A No. Xerox.

24 THE COURT: And do you know where the original
25 is?

1 A No, sir, I don't.

2 THE COURT: And do you recall what your
3 language might have been that might be missing?

4 A I think that it should say -- now, whether I
5 left it incomplete, I couldn't say for sure. But
6 it should say "aground in", and what I was
7 getting at, "position" -- aground in position
8 such and such.

9 Now, maybe I did leave that off and I stuck it
10 in a log book instead. It's been a while.

11 THE COURT: But other than that additional
12 language, the document is accurate to the best of your
13 recollection?

14 A Yes.

15 THE COURT: Any further objection?

16 MR. FRIEDMAN: No, Your Honor.

17 THE COURT: Okay. Sixty is admitted.

18 EXHIBIT 60 ADMITTED

19 MR. LINTON: I'd ask that this be marked as
20 61.
21 (1600)

22 THE COURT: We've been going about an hour and
23 35 minutes. I would like to maybe get a jump on lunch.
24 Maybe leave about quarter of 12:00. So why don't we go
25 on until about quarter of 12:00.

1 MR. LINTON: Yes, sir.

2 Q (Mr. Blandford by Mr. Linton:) Mr. Blandford,
3 I show you what's been marked as Exhibit 61. Do
4 you recognize that?

5 A Yes, that's a log page from March 24.

6 Q And how is that form used in the Vessel
7 Traffic Center?

8 A This is basically a unit log, and significant
9 events are recorded in it.

10 Q Recorded when?

11 A As they happen, hopefully.

12 Q And if not as they happen?

13 A As soon as you can get to it.

14 Q And do you recognize any of the handwriting on
15 there as your handwriting?

16 A The top portion of the page is all my
17 handwriting.

18 Q And does it reflect the events that occurred
19 on your watch on March 24, 1989?

20 A Not entirely, but I'd say most of the major
21 events.

22 Q And does it show that you recorded the
23 position in which you observed the Exxon Valdez?

24 A That's correct.

25 Q When you had some doubt about the prior form,

1 as to whether or not you might have recorded the
2 position. Does this document help you understand
3 what entries you might or may not have made?

4 A I may have decided that since I had recorded
5 it here that that fell by the wayside.

6 MR. LINTON: Move the admission of 61.

7 MR. FRIEDMAN: No objection.

8 THE COURT: Admitted.

9 EXHIBIT 61 ADMITTED

10 MR. LINTON: Mark this as the next state's
11 Exhibit.

12 THE CLERK: This is marked as 62.

13 Q I show you 62. Tell us what that is, please?

14 A That's the user's handbook for the Prince
15 William Sound VTS.

16 Q Explain what that is, please?

17 A Well, these are the publications that are
18 distributed to the users. It contains the CFR
19 which has in it the regulations for the Prince
20 William Sound VTS. And it also has -- the
21 beginning part is, more or less, of a
22 narrative...

23 Q Is there a practice...

24 A ...extracted from the VFR.

25 Q Is there a practice or procedure at the Marine

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Safety office for the distribution of such a manual?

A How so.

Q Who does it go to?

A The users.

Q How do you get it?

A Generally through their -- either their agents or companies.

MR. LINTON: Move the admission of the user's manual, Your Honor.

MR. FRIEDMAN: No objection.

THE COURT: Admitted.

EXHIBIT 62 ADMITTED

Q Mr. Blandford, on March 24, 1989, can you tell the judge when, if ever, you would have tried to reach the Exxon Valdez if it had not reported to you...

A When it did?

Q ...when it did?

A Well, after being there for -- well, at that point it was about two and a half years doing the same job. You get pretty much of a feel for when people are going to call you, even without looking at your notes that you keep on these vessel data sheets.

1 When I relieved the watch and Mr. Taylor told
2 me that -- and I noted at what time that he had
3 dropped his pilot. Apparently he had -- Mr.
4 Taylor had recently corresponded with the Exxon
5 Valdez, and he was just relaying what he said to
6 me.

7 After listening to the tapes subsequent to
8 that, he told me just about verbatim what was
9 said. And knowing that, you know, it takes a
10 certain amount of time to go from Rocky Point to
11 Naked Island. A certain amount of time to go
12 from Rocky Point to Bligh Reef. I was getting
13 just about to the point where I was beginning to
14 wonder in my mind, why have not they called with
15 this new ETA to Naked Island. I felt in my mind
16 they should have been clear of the ice by now.

17 Q Explain to the judge why you say they should
18 have been clear of the ice by now?

19 A Well, the ice is generally in the area between
20 -- not always -- in an area just below Busby
21 Island to -- can I put this back down. The ice
22 is generally in an area from here down to here
23 (indicating). And under some conditions, when
24 it's heavily packed, it may take an hour to get
25 through there -- just through that area.

1 The ships may have to slow to dead slow ahead
2 doing just bare steerage way. A knot, knot and a
3 half, and just creep on through.

4 Mr. Taylor related to me that the previous
5 ship had been through there and had gone over
6 into the southbound lane and didn't even have to
7 slow down.

8 So under that scenario I was thinking that it
9 was probably not thick enough to slow them down
10 very much. And it should have taken no more than
11 probably an hour from the time he dropped the
12 pilot until the time he would have been past the
13 buoy and presumably clear of the ice. Because
14 it's an hour and a half, generally, from Rocky
15 Point to Naked Island.

16 So along about -- knowing what time he dropped
17 the pilot -- I had that right on the ship -- or,
18 on the sheet.

19 Q And the time on the sheet was, what? You
20 don't recall?

21 A 2326, I think.

22 Q Looking at the form, that confirms 2326?

23 A Right.

24 Q And giving them, you know, 10 to 15 minutes
25 leeway. About quarter after or so I was

1 beginning to wonder why I hadn't heard from them.
2 THE COURT: Quarter after what?
3 A Midnight.
4 Q Could you just draw a red dashed line like the
5 lines that we had on the one-way zone, in the
6 area that you said you were generally familiar
7 with ice being found?
8 A Generally. Now, this is not hard and fast,
9 because it could be -- and some extremes, we have
10 ice all the way up into the arm, depending on
11 conditions. And sometimes it goes all the way
12 down here (indicating).
13 Q Down towards Naked Island.
14 A But more commonly, the ice is gonna be in this
15 area here.
16 Q Two red lines, one extending...
17 A Right. That's just generally speaking.
18 Q Roughly, Busby Light to Point Freemantle?
19 A Right. And most commonly of all, it's going
20 to be heavier in the inbound -- or, excuse me,
21 the outbound lane, probably right around in here
22 (indicating).
23 Q Draw a circle in the area that you're saying.
24 A Probably right around in there would be the...
25 Q Would you put your -- you've drawn an arc into

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the southbound lane. Would you put your initials by the arc so that we know that's what you have drawn. And would you put your initials by the line extending from Busby Light to Point Freemantle so we know that that's the line that you've drawn.

A Okay.

Q And then you've drawn another line that extends from Bull Head in a southeasterly direction. Would you put your initials by that line so the record reflects what it is you're referring to.

THE COURT: Is this a good time to stop, Mr. Linton?

MR. LINTON: Yes, sir.

THE COURT: We'll come back around 1:15. It's make it 1:15.

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

(Off record - 11:46 a.m.)

(On record - 1:30 p.m.)

(2061)

Q (Mr. Blandford by Mr. Linton:) Mr. Blandford, I would like to ask you some -- a question about what you would have done had the Exxon Valdez not

1 returned a call which you might have placed to it
2 had it not reported. But, with background to
3 that, what radio equipment does a vessel -- a
4 tanker like the Exxon Valdez carry with it by
5 regulation?

6 A According to the vessel traffic regulations
7 for Prince William Sound, they are supposed to
8 carry two VHS radios. One of which is capable of
9 battery operation.

10 Q Is that a requirement of statute or
11 regulation?

12 A Yes, it is.

13 Q And which is it? Regulation?

14 A It's in the CFR, listed in that book.

15 Q Did the Exxon Valdez have such equipment on
16 board?

17 A According to the reports, yes.

18 Q And you judged that from the exhibit which we
19 talked about before lunch, which was the
20 exhibit...

21 A If the pilot, which is normal -- when he makes
22 his preliminary 30 minute notice for getting
23 underway -- if he says the vessel is ready for
24 sea, in all respects, we assume that to be
25 correct, that he is fulfilling all of those

1 equipment requirements.

2 Q Is there a notation that that was, in fact,
3 recorded on the form?

4 A It is noted as having alternate means of
5 communications.

6 Q And that appears in the upper left hand
7 corner?

8 A That would be right here.

9 Q It's A-l-t-c-o-m-m-s.

10 A Uh-huh (affirmative).

11 Q And there's an I/B and O/B. What is I/B?

12 A Inbound and outbound.

13 Q There's a "Y" then in the block by "OB"?

14 A Yes.

15 Q And that indicates that they were battery
16 powered communications specifically on board at
17 the time of the outbound?

18 A Yes, it should.

19 Q Now, if a vessel loses radio communication
20 with others, do regulations -- what do
21 regulations require that it do?

22 A They are required by some means -- this gets
23 kinda nebulous because how are you gonna contact
24 someone. But, if they -- if they suffer a
25 casualty to any of their required systems or

1 equipment, they are supposed to notify the VTS as
2 soon as possible by whatever means they can.

3 Q Can they continue the voyage?

4 A Theoretically, no.

5 Q If they are -- let me show you Exhibit 62,
6 page 4, paragraph 5 on that page. Read that to
7 yourself. (Pause) Having read that over, may
8 the vessel continue the voyage if it loses radio
9 contact with the Vessel Traffic Center?

10 A It can do so only with permission of the
11 traffic center.

12 Q So if they can't reach the traffic center,
13 then it has to stop where it is?

14 A Well, like I say, it's a pretty nebulous
15 question. It has never come up.

16 Q Explain what you mean, it's never come up.

17 A It's never happened, where we completely lost
18 radio contact with a tanker.

19 Q And that's because there are these back-up
20 systems in the form of two communications?

21 A I would presume that to be the case.

22 Q Actually, the user's manual, Exhibit 62,
23 reads, "A vessel participating in this system
24 which experiences radio failure while transitting
25 the Vessel Traffic Service area may continue to

1 its reported destination. Alternative
2 communications should be used as available. The
3 master should exercise due diligence to restore
4 it, or cause it to be restored to effective
5 operation condition at the earliest practicable
6 time. Such failure should be reported to the
7 VTC...", that's Vessel Traffic Center?

8 A Uh-huh (affirmative).

9 Q "...as soon as possible."

10 So on its face the regula -- the booklet that
11 you hand to users says that it can continue the
12 voyage?

13 A Uh-huh (affirmative).

14 Q But you said you never actually had a case
15 where you lost such communication?

16 A No.

17 Q If you lost such communication where the
18 vessel was not responding, for whatever reason,
19 what steps could you take to locate it?

20 A If we suspected that -- if we had made
21 repeated calls to the vessel, and with no
22 response. If he were in radar coverage area we
23 might look to find him on the radar. We might
24 make calls to other vessels in the area to
25 ascertain where this vessel may be and be headed.

1 Q Were here other vessels in the area who you
2 might have called on the evening of March 24, at
3 around 12:30 to 1:00 o'clock a.m.?

4 A If we had not made contact with the Exxon
5 Valdez, I suppose we would have called probably
6 the next inbound tanker. We may have called the
7 pilot vessel.

8 They've been -- the pilot vessel has been of
9 great assistance to us in past cases where we've
10 had search and rescue case in their area or an
11 area that they can respond to, because they have
12 all of the -- have a live watch all the time, and
13 they are so much closer to the Sound than anyone
14 in port.

15 Q What services has the pilot vessel provided in
16 the past?

17 A They've taken distressed vessels in tow.
18 They've taken people off the beach who swamped
19 their vessels. There's a variety of times and
20 circumstances where they've assisted the Coast
21 Guard.

22 Q What would you have asked of the pilot vessel
23 had you lost -- had the Exxon Valdez not
24 responded to your calls?

25 A I may have -- this is all pure speculation on

1 my part. We -- I was not confronted with that
2 circumstances, I'm purely speculating here. But
3 I may have asked him to go out and take a look to
4 see if he could spot anything. But, again, this
5 is really speculating.

6 Q Well, you did call the pilot vessel that night
7 didn't you?

8 A Yes, we did. And we asked them if they would,
9 in fact go down and get a first class -- a first
10 hand look at this situation up close and give us
11 an assessment of -- what the difficulties may be.

12
13 Q Will you tell the judge what you did when you
14 -- after you received the call notifying you of
15 the grounding? Who did you contact?

16 A Well, as best as i recall, I immediately
17 called the commanding officer, and he asked me to
18 call the executive officer.

19 Q And you did that?

20 A And I did that. And after I spoke with him I
21 called the Crowley stand-by tug from the Alyeska
22 Terminal, which is the tug Stollert (ph), and
23 told the of what had happened, or what had been
24 reported to us and asked if he would get underway
25 immediately to see if he could possibly -- to get

1 down there on the scene and assist, if possible.
2 And then I called the -- shortly after that,
3 the marine supervisor at the Terminal and
4 informed him of the situation and asked that he
5 begin to muster his response people...
6 Q And that was...
7 A ...and, again, get there as soon as they
8 possibly could.
9 Q That was David Barnum?
10 A Yes, it was.
11 Q And did you make a request of the pilot
12 vessel?
13 A And we asked the pilot vessel, again, to send
14 a boat down to the -- where the Exxon Valdez
15 reported being aground to assess the situation.
16 And we also asked them to send their other
17 smaller faster boat into Valdez to pick up some
18 Coast Guard personnel.
19 Q And that was the boat which was to pick up
20 Lieutenant Commander Falkenstein, Mr. Delozier
21 and Mr. Lawn of the Alaska Department of
22 Environmental Conservation?
23 A That's correct.
24 MR. LINTON: Nothing further, Your Honor.
25 MR. FRIEDMAN: Your Honor, Mr. Linton and I

1 agreed that Exhibit D can be admitted into evidence.
2 What it is is a transcript of transmissions between the
3 Coast Guard station and the Exxon Valdez.

4 The advantage it has over the tape is that it
5 tells you what times certain transmissions were made,
6 and that's the purpose for which I wanted to introduce
7 it.

8 THE COURT: Agreed?

9 MR. LINTON: Agreed.

10 THE COURT: It's admitted.

11 EXHIBIT D ADMITTED

12 MR. LINTON: So the record is clear, the times
13 are in six digit figures. The first, for example, Your
14 Honor, is 2249.31. I understand that to me 2200 hours
15 49 minutes and 31 seconds.

16 CROSS EXAMINATION OF MR. BLANDFORD

17 BY MR. FRIEDMAN:

18 Q Mr. Blandford, you said that at the time you
19 took over from Mr. Taylor he informed you what
20 transmissions had taken place between himself and
21 the Exxon Valdez up to that point, is that
22 correct?

23 A Well, at the time that I relieved him he told
24 me of the pilot being away; his ETA for Naked
25 Island; and then he also told me that the vessel

1 had called, and saying that they were having to
2 deviate from the lanes. They were going to alter
3 their course to 200, and would give a new ETA for
4 Naked Island when they were clear of they ice.

5 Q Okay. You also -- I think this morning you
6 said that you went back after all this happened
7 and listened to the transmissions and found that
8 he had reported to you almost verbatim what had
9 taken place between the Exxon Valdez and himself?

10 A That's correct.

11 Q And so he relayed to you as well the Exxon
12 Valdez statement that its ETA at Naked Island was
13 likely to be a little out of whack because of
14 going outside the traffic lanes and having to
15 slow down?

16 A Right. Right.

17 Q So you were aware that the ETA at 1:00 o'clock
18 was probably not going to be an accurate one?

19 A Right.

20 Q And the error would be in the -- they would
21 arrive at Naked Island later than what they had
22 initially estimated?

23 A That's correct.

24 Q Mr. Taylor also told you that he had lost the
25 ship from the radar -- on the radar, is that

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correct?

A Correct.

Q And I think you told us that it had been a little squally -- snow and rain squalls that night.

A Patchy, as best I recall.

Q I think you said passing squalls or something like that.

Those sort of squalls can affect the reception of radar, can't they?

A Certainly.

Q When you took over the watch from Mr. Taylor, the radar was on the six mile screen, is that right?

A That's correct.

Q Six mile scale, I mean. I'm sorry.

Q And you checked and you couldn't see the Valdez on that screen -- on that scale?

A Correct.

Q After Captain Hazelwood's call that the vessel was grounded, you then immediately switched to the three mile scale?

A Twelve mile scale.

Q I'm sorry, the 12 mile scale.

And at that point you were able to see the

1 ship?
2 A Right.
3 (3020)
4 Q At that point could you tell whether the ship
5 was leaking oil...
6 A No.
7 Q ...from what you saw?
8 A No. That's impossible.
9 Q Would it be fair to say that the vessel
10 traffic center is, in essence, an advisory
11 system? A system whose function is to inform the
12 vessels of information relating to the passage
13 along these waters?
14 A That's correct.
15 Q And it's not a control system in the sense
16 that an air traffic controller can command
17 aircraft to fly in particular areas.
18 A It's only controlled to the extent that we are
19 tasked generally with enforcing -- or making sure
20 that captain of the port orders and regulations
21 are adhered to.
22 Q It's not unusual for a vessel travelling in
23 and out of these waters to be late reporting at a
24 particular check point, is it?
25 A It happens occasionally. I would say it's not

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unusual.

Q Okay.

A In other words, someone will drop its pilot, for instance, and forget to call. But usually -- I can't speak for the other people who stand watch there. But generally when that happens I end up calling the ship when it's obvious to me that the pilot is away and they haven't -- because we got our little paperwork we got to fill out, too, that the pilot's gone -- state pilot.

Q Right.

MR. FRIEDMAN: Your Honor, I can't recall. Did you say Exhibit D was admitted?

THE COURT: Yes.

MR. FRIEDMAN: Thank you.

Q Mr. Blandford, I'm showing you what's been marked Exhibit E. Could you tell us what that is?

A This would be a data sheet for the tanker, Exxon Benicia for the 6th of February.

Q It's the same sort of sheet that -- the same form that we talked about this morning, which you write down the estimated times of arrival and so on?

1 A Uh-huh (affirmative).

2 Q This form was filled out by yourself, at least
3 as to the later entries?

4 A Let's see.

5 Q Let me show you another document that might
6 help you?

7 A From -- this is my writing on the arrival time
8 at Naked Island, and the pilot away time.

9 Q This reflects that the -- how is that
10 pronounced? Exxon Benicia?

11 A Uh-huh (affirmative).

12 Q That the Exxon Benicia was expected to pass
13 Naked Island at roughly 1640.

14 A Okay. From what I'm able to determine from
15 this, the pilot probably called in at Rocky Point
16 and did not disembark until he was at Bligh Reef.
17 In between time is when the watch was relieved.
18 Not having a log book I couldn't say exactly what
19 time that day I came on, but...

20 Q Would that help.

21 A Okay. 1545. This is a non-pilotage vessel.
22 So...

23 Q The tanker, though isn't.

24 A That's correct. But at the time the
25 regulations stipulated that the pilots would

1 disembark at Rocky Point if they had qualified
2 federal pilotage on board. If not, they would
3 disembark at Bligh Reef.

4 Q I guess my question was focused on the Naked
5 Island check point. Essentially that sheet
6 reflects that this tanker was expected to arrive
7 at a particular -- at Naked Island at a
8 particular time, and actually arrived there 20
9 minutes later, is that correct? 22 minutes
10 later.

11 A That's correct. But the way it's recorded
12 here, if he was at Rocky point at 1515 and gave
13 an ETA for Naked Island of 1640, that's a little
14 bit less than the norm. That's generally an hour
15 and a half. Okay. So that's a little bit less.
16 And his pilot was not away until 1557 at Bligh
17 Reef. And we have no indication from what we
18 have here on this particular voyage -- this leg
19 of the voyage -- the outbound leg, what the ice
20 conditions were like.

21 Q Which might have accounted for the 20 minute
22 delay?

23 A That's right. There's some missing variables.

24 Q Sure. And that's not uncommon, is it, for a
25 vessel to arrive at a check point later than what

1 was originally estimated because of ice or other
2 unique conditions that may exist on that
3 particular leg of the trip?

4 A Right. Sometimes -- more often than not, the
5 vessel will update their ETA.

6 Q But not always, as in that case?

7 A But not always.

8 Q And that's not a cause of panic or general
9 alarm at the Vessel Traffic Center when that
10 happens, is it?

11 A If they're going through the ice, we would
12 expect it. It would be -- in this particular
13 case it may have been -- there may have been a
14 delay in putting the pilot off.

15 Q Sure.

16 A They may have had, you know, taken more time
17 than usual to make a lee for the pilot boat and
18 get the pilot off and get the pilot boat away.

19 Q There are all sorts of things that could
20 account for a vessel being late in reporting in
21 to the Vessel Traffic Center?

22 A That's true.

23 Q Okay. And if there is a delay for even as
24 long as 22 minutes, that, alone, is not cause for
25 immediate alarm at the VTC? That's the point I

1 was getting at, that the delay alone is not going
2 to...

3 A No. Oh, most often we're watching them at the
4 same time.

5 Q Right. But on this night you weren't able to
6 follow the Exxon Valdez?

7 A That's correct.

8 Q Okay. (Pause)

9 MR. FRIEDMAN: Your Honor, I don't know what
10 you were prefer. I'm going to be showing Mr. Blandford
11 some documents. I don't intend to introduce them into
12 evidence. I could mark them if you wish or not.

13 THE COURT: What's the purpose of showing him
14 a document before asking any questions?

15 MR. FRIEDMAN: Well, I'm going to show them to
16 him and ask him questions about the documents.

17 THE COURT: I don't have any objection to
18 proceeding that way. Do you, Mr. Linton?

19 MR. LINTON: No.

20 MR. FRIEDMAN: Thank you, Your Honor.

21 Q (Mr. Blandford by Mr. Friedman:) Mr.
22 Blandford, this is another vessel data sheet.
23 This one is from February 6, of '89 referring to
24 the tanker Arco Prudhoe Bay, is that correct?

25 A Uh-huh (affirmative).

1 Q And this indicates that the vessel estimated
2 its arrival at Smith Island at 1756, is that
3 correct?

4 A Uh-huh (affirmative).

5 Q And then it doesn't indicate an actual arrival
6 time. Do you have an understanding as to why
7 that might be the case? Let me ask you first:
8 could you point out Smith Island to me. I'm not
9 sure I know...

10 A Well, he was bound for Nikiski and he was
11 going through Montague Strait. Smith Island is
12 right here (indicating).

13 Q And which way would he have been going?

14 A He would have cut out of the lane here at
15 Smith Island and gone down through Montague
16 Strait.

17 Q I see. Okay. And so he estimates his arrival
18 for the VTC, and there's an ETA marked on the
19 form, but then there's no indication that he ever
20 arrived, is that correct?

21 A Apparently.

22 Q Do you recall whether any sort of search was
23 initiated for that vessel on that occasion?

24 A Well, it's hard to say. You know, in this
25 particular circumstance, actually, what happened

1 there, it was just -- I forgot to write it down
2 that he was at Smith Island, or he didn't call.
3 It's impossible for me to tell.

4 Q It's possible that he didn't call and that you
5 didn't follow up on it?

6 A Gee, I really -- that really would be a guess.
7 If we had the companion form -- one of the
8 companion forms that we keep, which tells the --
9 gives the check-out time, it would be a little
10 bit easier to determine. Or if we listen to the
11 tape for this day.

12 Q Right. Showing you another document. This
13 relates to a tug boat, is that correct. Another
14 vessel data sheet, but for a tug boat.

15 A Uh-huh (affirmative).

16 Q Are the tub boats required to report their
17 passage, say, when they get abeam of Naked Island
18 or Entry Island, places such as that?

19 A They are required to maintain the same
20 reporting points.

21 Q Okay. This...

22 A This is common to any participant in the
23 system.

24 Q And a tug vessel would be considered a
25 participant in the system?

1 A Correct.

2 Q This form indicates that there was an ETA for
3 Naked Island for this tug vessel, but no
4 indication that it ever arrived there, is that
5 correct?

6 A According to this sheet, yes.

7 Q And you don't know whether that's because it
8 simply didn't report, or someone forgot to write
9 it down, or what may have happened on that
10 occasion?

11 A Correct.

12 Q And another vessel data sheet relating to the
13 tanker Arco California, is that correct.

14 A Uh-huh (affirmative).

15 Q And that's for February of '89 -- February 15
16 or '89?

17 A Uh-huh (affirmative).

18 Q And that indicates an estimated time of
19 arrival at Entry Island of 1035, but apparently
20 no report of when the vessel arrived there, is
21 that correct?

22 A There's no report required.

23 Q Okay. So the gave an ETA but that was
24 apparently just now being abundantly careful, or
25 whatever you want to call it?

1 A No, that's required to give the ETA.

2 Q Oh, I see.

3 A We're going to, more often than not -- if
4 there is an entry in this blank it's going to be
5 when we see them on the radar there as entering
6 the one-way zone.

7 Q Okay. Then we've got another vessel data
8 sheet for the Chevron California, another tanker,
9 for March 7 of '89, is that correct?

10 A Uh-huh (affirmative).

11 Q And is that Entry Island or is that...

12 A Entrance Island.

13 Q Entrance Island. And there's a Potato Point
14 ETA as well. Do they ordinarily report when they
15 arrive at Potato Point?

16 A I would just be guessing, but i would say this
17 probably in the wrong slot. Because they don't
18 give -- generally they don't give an ETA at
19 Potato Point; not outbound.

20 Q Okay.

21 A Or inbound.

22 Q Good enough. Now, as I recall, this morning
23 you said that vessels may or may not report
24 increasing speed when they reach Potato Point, is
25 that correct?

1 A They generally always do.

2 Q Okay. They do.

3 A Right. They're required to report -- I

4 believe it's more than a knot.

5 Q Change in speed?

6 A Uh-huh (affirmative).

7 Q Now, in the early morning hours of March 24 --

8 actually, late on the 23rd you arrived and you

9 had a series of duties to perform when you first

10 got there.

11 A That's correct.

12 Q Could you tell the judge what you had to do

13 before -- not before you went to work, but what

14 was part of your work when you first arrived?

15 A Well, every day at midnight we have to change

16 the tapes, which all these transcriptions come

17 from on a 40 channel tape recorder. Do all the

18 maintenance on it; clean the heads; erase tapes;

19 file them away; make the mid-watch log entry,

20 which includes calibrating the radar; getting a

21 bearing and range of a known point, which, in

22 this case it's always Middle Rock. To make sure

23 that our radar is as accurate as it can be. And

24 filing some miscellaneous traffic reports.

25 Tabulating the days traffic and...

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1 Q Is that referred to as "plotting sheets"
2 sometimes?
3 A Right.
4 Q And so those were some of the things you were
5 doing during your -- what, the first few minutes
6 after midnight?
7 A Right.
8 Q Okay. In addition to that -- or was it before
9 that that you went down and got a cup of coffee
10 or something?
11 (Tape: C-3517)
12 (000)
13 A It was probably about, oh, 10 minutes of.
14 Q When you went down?
15 A Right. And I was back up by midnight.
16 Q Mr. Blandford, handing you what has been
17 marked Exhibit 61. There's a reference there --
18 by the way, this is dated March 24 of '89, is
19 that correct?
20 A Yes.
21 Q It's part of your -- I don't know what --
22 what's the terminology you use to refer to this
23 sheet?
24 A Unit log.
25 Q Okay. There's a reference to the Naked Island

1 and Cape Hinchinbrook radio sites being in
2 operable. What does that refer to?

3 A The VHF at Naked Island and Cape Hinchinbrook.
4 Radio sites were not operable.

5 Q In practical terms, what affect did that have
6 on VTC operations?

7 A It mainly affects the communication outside of
8 Cape Hinchinbrook.

9 Q And in what way does it affect that
10 communication?

11 A Well, it makes it hard to -- we have to use
12 alternate sites -- possibly a site in Cordova,
13 and communicate on a non-standard frequency of
14 the VTS, such as channel 22.

15 Q Now, did you tell us this morning that you
16 were aware that a vessel had travelled through
17 this area some hours before the Exxon Valdez?

18 A Correct.

19 Q And what was your understanding as to how long
20 before that vessel had travelled through?

21 A All I was told by Mr. Taylor was that a few
22 hours before. And I took that to mean, two,
23 three, four hours.

24 Q Okay. Is there a difference in...

25 A In any case, less than eight, because he would

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have only been there for eight.

Q Do the tide conditions affect the ice in this area?

A Yes.

Q For example, in an ebb tide, when the tide is flowing out of the arm, is it fair to say that the ice tends to spread out more?

A You probably have to talk to some NOAA guys on that. I'm not really knowledgeable. And I do know that the tide has more affect than wind.

Q Okay. And you do know that at different points in the tide cycle the ice can be more condensed or more spread out?

A That's correct.

Q Okay.

A And generally, after tidal extremes, you're minus and your high highs, there's more ice available that escapes from the glacier.

Q Now, you told us this morning it may take an hour or more to get through the ice in a certain area, and I forget which area you were saying it could take an hour or more?

A Between the two red lines, basically.

Q Could you just point those our for me, I was so far away before.

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(180)

A The north and south boundaries there. It may take even longer than that if it's really, really thick, and depending on visibility and other things.

Q Okay. Now, I think in response to a question by Mr. Linton you said that if a vessel loses radio communication with a vessel traffic center, your initial response would be to try -- after trying to contact that vessel, would be to try to contact other vessels that might be in the area, is that right?

A That's true. I think that if we didn't hear, you know, under the -- under the circumstances, and, you know, having just a real remote chance of this happening -- of losing all contact, I think that would probably send up a flag to me. Say, hey, there must be a problem.

Q Would it have been a logical reaction on your part in that situation to contact the Chevron California and ask them to see what was going on when they -- as they passed through this area.

A If they were within a reasonable distance, yes.

Q Given what you know of the positions of the

1 vessels that event, would they have been in a
2 reasonable position for you to contact them?
3 Could you have contacted them with the
4 Hinchinbrook radio thing out -- the radio...
5 A That's what we -- well, we spoke to them
6 before when they were at Cape Hinchinbrook.
7 Q Okay.
8 A And we're using the Potato Point site. That
9 was the only one that was operational.
10 Q So assuming you hadn't heard from the Exxon
11 Valdez, and knowing what you know about where the
12 Chevron California...
13 A At what time?
14 Q ...what its course was, would it have been
15 reasonable for you to contact the Chevron
16 California and ask them to keep their eyes open?
17 A Okay. Do you want to put a time on this?
18 Q Well, let's sat at quarter to one.
19 A At quarter to one, possibly.
20 Q Okay.
21 A If I hadn't heard from them, and I had been
22 trying to contact them, and this is -- this is
23 strictly conjecture...
24 Q I understand.
25 A But that's one of the possibilities.

1 Q Okay.

2 A Because they would have been almost as close
3 as what my site would have been, you know, had he
4 reached...

5 Q What do you mean by your site?

6 A Well, my site is up here...

7 Q Oh, meaning your radar site.

8 A Right. At quarter to one, if the Exxon Valdez
9 was supposed to have been to Naked Island at
10 1:00, and these guys were at -- those guys were
11 at Cape Hinchinbrook expecting Naked Island at
12 2:00, I believe it was. The Exxon Valdez could
13 have conceivably been down here and the Chevron
14 California would have probably been about right
15 here (indicating). And he would have been closer
16 than I would.

17 Q Okay. Let's try a different speculation, if
18 you will. Let's speculate that you didn't hear
19 from the Exxon Valdez. You tried to raise them
20 on the radio. You were searching for them on
21 your radar, and ultimately you were able to raise
22 them on your radar, as you did after Captain
23 Hazelwood's call?

24 A Uh-huh (affirmative).

25 Q As I understand it, at that point you could

1 have called a pilot vessel to go check out the
2 situation?

3 A If we were genuinely concerned that there was
4 trouble.

5 Q Would you have been...

6 A That would have certainly been one of my
7 options.

8 Q Would you have been genuinely concerned under
9 those circumstances? Exxon Valdez not answering
10 you by radio and appearing on the screen at that
11 point?

12 A Oh, certainly.

13 Q So one of your options would have been to call
14 the pilot vessel?

15 A Uh-huh (affirmative).

16 Q Another option would have been to ask the
17 Chevron California to check into the situation as
18 it passed?

19 A Right. Probably only to the extent of radio
20 contact, because we would not want him to leave
21 the traffic lanes.

22 Q Okay. What about -- what were your other
23 options? What would your other options have
24 been, I should say?

25 A Well, if -- like you said, if I had no

1 response and I had the radar target sitting there
2 where it was, I woulda probably gone ahead with
3 my notification.

4 Q Called Commander McCall?

5 A Right. And the rest of the...

6 Q Now, of these options...

7 A I probably would not have called the marine
8 supervisor, not knowing that -- whether or not
9 there was oil in the water. But as soon as, you
10 know, an initial contact would have been made
11 that woulda probably been next.

12 Q Right. But if you called Commander McCall, it
13 then would have been his responsibility to decide
14 what to do, given the situation as you reported
15 it; i.e., can't raise them on the radio, and this
16 is their position?

17 A Basically. Basically.

18 Q Okay. Any of the options we just discussed,
19 the pilot boat; talking to the Chevron
20 California; calling Commander McCall. Would any
21 of those have been inevitable responses on your
22 part? You've referred to speculating several
23 times today. Can you say as you sit here that
24 you would have done this, that or the other thing
25 under those circumstances?

1 A It's really tough to say. You just don't know
2 until it happens.

3 Q Okay. Fair enough. Thank you. I don't have
4 any other questions.

5 (480)

6 REDIRECT EXAMINATION OF MR. BLANDFORD

7 BY MR. LINTON:

8 Q On some of those other vessels that you were
9 asked about, the tug boats. Do any of those
10 reflect movement of the vessels across the
11 traffic zone, as opposed to -- across the Traffic
12 Separation System as opposed to up and down the
13 system from the entrance at Hinchinbrook to the
14 Port of Valdez?

15 A Two of those were starting within the system,
16 the Arco Prudhoe Bay and the -- I think it's the
17 Phillips' Foss -- started in Valdez and departed
18 the traffic lanes at a place other than Cape
19 Hinchinbrook.

20 Q Is there a different practice with respect to
21 those vessels?

22 A Yes.

23 Q Explain it to the judge?

24 A Well, they are supposed to give us a call when
25 they depart the lanes, and then another call when

1 they depart the VTS are, which the western
2 boundary is in position 147 20 minutes -- degrees
3 20 minutes west. When they cross that line is
4 when they officially check out.

5 Q Are there lines, then, that are not reflected
6 on the map -- excuse me, the chart, which is
7 Exhibit 1?

8 A It's in the book, the boundary.

9 Q And so there are boundary lines which are not
10 reflected on the chart, which is Exhibit 1?

11 A Is this one 1?

12 Q Yes. Actually, I may be wrong. That's 2.

13 A Right.

14 Q Could you describe those to the judge so he
15 knows what they are?

16 A Okay. This is not -- you have to use 2 here.

17 Q Okay. Use 2.

18 A Okay. Well, this is a -- it doesn't go over
19 far enough. The eastern boundary is at 147.20,
20 which is this meridian right here -- or, that's
21 the western boundary. The eastern boundary is at
22 146.40, which is through here.

23 So the geographic points that we refer to,
24 depending on which way they're going. You know,
25 they may be going this way, this way, this way

1 (indicating), but they're gonna be asked to call
2 when they're checking out.

3 Let's say, if the guy is going down Knight
4 Island Passage. He's gonna go north to Story
5 Island. Okay. He can call and say he's going to
6 be abeam of Naked Island; he's going to be abeam
7 of Granite Point. If he goes this way, he's
8 going to be abeam of Smith Island, or Seal
9 Island, or Applegate Rocks.

10 And then there's some other -- the two most
11 common on this side would be Knowles Head and
12 Johnstone Point.

13 Q And that applies to vessels that are not
14 travelling within the northbound or southbound
15 lanes of the Vessel Traffic System?

16 A They not using the TSS to its conclusion at
17 Hinchinbrook Entrance.

18 Q Is there a practice as to what, if anything,
19 is recorded as the move in positions outside the
20 Traffic Separation System?

21 A As a general practice we -- let's say, for
22 instance, the case of the Arco Prudhoe Bay. We
23 get his ETA to Naked Island, because that's a
24 required check point. And then he would call us
25 when he's departing the lanes at Smith Island.

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And then, again, when checking out of the VTS area.

Okay. In the case of that Phillips's Foss, he would -- if he went this way, which is unclear -- it's really -- it's unclear for me to tell which way he did go. He was going to Seward, but it doesn't indicate on that sheet which way he went. He may have gone this way or he may have gone that way.

Q One way is to the north of Story Island and the other way is to the south of -- excuse me, north of Naked Island and to the south of Naked Island.

A Right. Right. If he were going through Knight Island Passage and north of Naked Island group, he would have departed the lanes at Bligh Reef and then checked out at Naked Island.

Q Is it a practice to give an estimated time of arrival at the meridian, which would be the edge of the area?

A Sometimes they do, sometimes they don't. We ask them for a call when they approach this so we can check them out and don't carry them in the system indefinitely.

Q And the reason for a difference between the

1 way you treat reports like that of a vessel
2 leaving the system somewhere between north of
3 Naked Island, as opposed to the care with which
4 you track vessels within the Traffic Separation
5 System?

6 A I think it's probably fair to say that we
7 place the emphasis on the tanker traffic, and the
8 people in the crossing situations were generally
9 concerned about when they cross or enter the
10 traffic lanes in -- as it relates to people
11 traversing -- vessels traversing the traffic
12 lanes.

13 Q There is only a few -- I'll just give you a
14 case in point. Let's say we've got our
15 theoretical tug here, and our -- well, let's make
16 it any participating vessel.

17 And he's gonna come up through Montague Strait
18 and go to Cordova. We'll ask him to call -- this
19 is all in the book -- 30 minutes prior to
20 arriving in the VTS area, which would be this
21 line right here (indicating).

22 So he's gonna call somewhere down here. He's
23 gonna call again when he's here (indicating).
24 And he's gonna be asked for an ETA for the
25 traffic lane, for crossing it. Ten minutes --

1 when he gives a stat, we'll ask him to call 10
2 minutes prior to crossing the traffic lanes.
3 When he does that, we'll ask him to call when
4 he's cleared the traffic lanes. And then when he
5 checks out at this line.

6 I don't know if I cleared anything up there.

7 Q In defining the area, just so the record is
8 clear, you were referring to one side of the
9 traffic area as a particular meridian, and you've
10 outlined it in red. And that is a meridian...

11 A 147.20 minutes west.

12 Q 147.20 west. Marks the western boundary. And
13 a meridian...

14 A 146.40.

15 Q 146.40 marks the eastern boundary, and you've
16 highlighted those in red, at least as to the
17 portions that are between the mainland and
18 Montague Island on the west and the mainland and
19 Hinchinbrook Island via Knowles Head.

20 A You could extend that up. Very little traffic
21 originating from Port Fidalgo.

22 Q Describing the course of the hypothetical tug,
23 you said you started at a position roughly around
24 Seal Island; went to a position where with
25 respect to when it would report -- where it would

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be reported?

A It would give us a preliminary report 30 minutes prior to entering the VTS area, which is this line.

Q Somewhere between Green Island and Knight Island.

A When he's at that line he would call again. We would ask him for an ETA for the traffic lane. Once he's given that we would ask him for a call 10 minutes prior to crossing...

Q Proceeding eastbound.

A ...the lanes, and then another call when clear of the lanes, and then when checking out.

Q You said something about, you have to check the companion form for the check-out time.

A Okay. What I meant by that is, it may have been neglected on here, but we keep another form for tankers, which gives their underway time, their pilot away time, and their check-out time.

MR. LINTON: Nothing further, Your Honor.

THE COURT: I have a couple questions, sir.

(867)

EXAMINATION OF MR. BLANDFORD

BY THE COURT:

Q In your direct testimony I think you mentioned

1 that you were staring to get concerned, or
2 something along that line, about the Exxon Valdez
3 giving you a new ETA for Naked Island?
4 A Uh-huh (affirmative).
5 Q Approximately when did that concern you? When
6 did you have that concern?
7 A I probably started thinking about whatever
8 time it took me to do these midnight chores; 15
9 minutes; 20 minutes.
10 Q Are you talking about 15 or 20 minutes after
11 midnight, then, is that what you're referring to?
12 A Correct.
13 Q Okay. Now, in response to this concern, what
14 would you have done if you had not got the
15 response from Captain Hazelwood? What would you
16 have done?
17 A Oh, I think probably given another -- knowing
18 that he would -- from his sheet here that -- this
19 isn't the right one, but he had dropped the pilot
20 off at 2325, I believe. And after an hour,
21 probably at about 0030 I would have probably
22 start -- I would have probably tried to call him
23 and said, "What's goin' on? Are you back in the
24 lane yet?"
25 Q Where would you expect -- could you show me on

1 the map where you would have expected him to have
2 been if you made that call at 0030. You can use
3 Exhibit 1, it's a little larger scale?

4 A I would...

5 Q Let's use the map, so it's -- the chart,
6 excuse me.

7 A I would have expected -- well, I don't know
8 for a fact, since he wasn't on the radar when I
9 arrived -- I assumed him to be past there,
10 depending on the ice.

11 MR. LINTON: Where is the area you are
12 referring to?

13 A Okay. The radar -- the scale that it was set
14 on, it was showing out as far as here
15 (indicating) -- Busby Island.

16 MR. LINTON: You're pointing to a line --
17 actually, the same line you've drawn?

18 A Just about. That's 10 miles from the radar.

19 MR. LINTON: A point from Busby Island to
20 Freemantle Point -- Busby Island Light?

21 A Approximately. It probably was more like
22 that.

23 MR. LINTON: Continue, please.

24 Q (Mr. Blandford by The Court:) Where would
25 you expect him to be? The general range you

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would expect him to be?

A I would have expected him to be past Bligh Reef Buoy by -- in another -- well, it would have been in another 45 minutes.

Q How far is Potato Point from the drop-off point for the pilot?

A Okay. At that time it was about six and a half miles, right here (indicating).

Q Okay. And how far is Bligh Reef, where the Exxon Valdez finally came to rest from Potato Point?

A 13.2.

Q Okay. You can be seated. You said you would call him on the radio and ask him what's going on and where he is, if he's gone through the ice. And assuming no response to this at 0030, what, if anything, would you have done as far as visual search on the radar, if you had not heard from him on the radio?

A I probably would have tried to see if I could find him.

Q What would you have done to the radar in order to do this?

A Turn it up to the 12 mile scale.

Q And what scale...

1 A Make sure it's...

2 Q I'm sorry.

3 A Make sure it was tuned up properly.

4 Q What scales are available on that radar screen
5 that you had in front of you?

6 A Oh, it goes from a mile and a half, or a half
7 mile scale all the way up to 64 miles, I think.

8 Q How high is the transmitter/receiver on Potato
9 Point?

10 A It's about 100 foot tower.

11 Q Now, is the available distance for radar
12 dependant somewhat on how high the object that is
13 being seen, and how high the transmitter and
14 receiver is?

15 A That's correct.

16 Q Is it line of sight, essentially?

17 A Essentially. You can get some curvature with
18 different atmospheric temperature and versions,
19 and so on.

20 Q On a good -- good conditions, as you
21 testified, that apparently existed when you did
22 see the Exxon Valdez, how far would you expect to
23 see the Exxon Valdez from Potato Point using your
24 radar with various scales?

25 A It really varies with the weather conditions.

1 Within the last couple weeks I've had two
2 occasions where vessels larger than the Exxon
3 Valdez, and in ballast, which means they're up
4 higher out of the water, presenting a much bigger
5 target, I've had them be completely lost for a
6 period of 20 to 30 minutes in the area between
7 Bligh Reef buoy and Busby Island, which is
8 exactly where the Exxon Valdez was.

9 Q Was there a reason for losing them? Was it...

10 A Weather.

11 Q Weather. On the conditions that you believed
12 to have existed on the night of the 24th --
13 morning of the 24th, and as existed when you saw
14 the Exxon Valdez, do you have an opinion as to
15 how far you could have seen the Exxon Valdez from
16 Potato Point, using the various scales available
17 on the radar?

18 A Do you mean after the grounding or...

19 Q That same time frame? 1:00 o'clock in the
20 morning.

21 A Well, he would have had to have been on the 12
22 mile and above. Because the scale that he was
23 lost from was -- the six mile scale effectively
24 extended out to 10 miles, by offsetting.

25 Q I understand that. My question is, do you

1 have an opinion as to how far away you could
2 still pick up the vessel, Exxon Valdez, or one of
3 similar size, had it continued it's outbound
4 course, if you were using increasingly longer
5 scales on your radar?

6 A After it's been lost -- if it gets lost in the
7 weather -- the higher you go in the range scale
8 the less sensitive it is. Particularly when you
9 have weather conditions.

10 Q Let me find out something else in another way.
11 On good condi -- what is the farthest you've ever
12 seen a vessel the size of the Exxon Valdez?

13 A All the way down to Smith Island.

14 Q And that would be ideal conditions?

15 A Uh-huh (affirmative).

16 Q Radar working good. Weather conditions,
17 atmosphere conditions good.

18 A And with a little boost from the temperature
19 inversion.

20 Q Which way was the Exxon Valdez facing when you
21 saw it on the radar? Could you tell by looking
22 at the radar which way it was facing?

23 A It appeared to me to be facing at about 080,
24 as I recall, and then it shifted. Later on -- I
25 can't remember how much later that was, but it

1 shifted about 30 degrees, I'd say.

2 Q Have you been on the water in that area, in
3 the shipping lane abeam Bligh Reef?

4 A Many times.

5 Q And when Captain Hazelwood radioed in his
6 report, were you aware of where Bligh Reef was?

7 A Certainly.

8 Q Were you aware that it would pose a hazard to
9 a vessel like the Exxon Valdez?

10 A Certainly?

11 Q If you had tried to call the Exxon Valdez and
12 were unable to communicate with it, and then
13 turned your radar on and saw it on Bligh Reef,
14 would you draw any conclusions from the
15 information you gathered so far?

16 A If I had no radio contact, and just all of a
17 sudden noticed him there...

18 Q Then you turned your radar on and you saw him
19 on Bligh Reef...

20 A Right.

21 Q ...and searching for him, would you draw any
22 conclusions from that information up to that
23 point?

24 A Yes. That's he's in a lot of trouble.

25 Q Why would you draw that conclusion?

1 A Because I know there's no water there to speak
2 of.

3 Q Then what would you do if you drew the
4 conclusion he was in big trouble. What would you
5 do at that point?

6 A If I had no contact with him, I would have
7 started my notification sequence. Well, I would
8 have done that regardless, with or without...

9 Q Would you have waited for the Chevron
10 California to come near the area and tell you
11 what it saw, or what it picked up on the radio
12 before you launched any notification?

13 A I don't think so. This is guessing, but...

14 Q Well, why is it guessing? Let's assume those
15 facts. We have those facts now to deal with.
16 Why is it guessing? I understand it's hindsight,
17 but...

18 A Right.

19 Q I'm trying to find out what you would normally
20 do as an operator at watch under those
21 circumstances?

22 A Well, that's probably what would happen. You
23 know, I can't say in all certainty that's what
24 would happen, but...

25 Q Would you do nothing?

1 A Oh, most certainly not.

2 Q Do you have anything other than VHF radio
3 communication in your watch facility? Like,
4 single side band or FM or anything else?

5 A We have single side band.

6 Q Are there frequencies in your single side band
7 that you could use to communicate with a vessel
8 like the Exxon Valdez?

9 A Yes.

10 Q Do you know if they are required, or if there
11 is any policy that requires them to monitor a
12 single side band frequency?

13 A No, I don't. We have talked to tankers on
14 occasion with it, but it's pretty unusual.

15 Q If you are unable to raise a tanker on VHF 13,
16 would you have tried the single side band?

17 A We may have. Let me take that back. The Cape
18 Hinchinbrook site where the single side band
19 transmitter is located was inoperative. The
20 whole site was inoperative, due to a microwave
21 problem at Naked Island. Naked Island is a link.

22 Q Do radars have some sort of device that can
23 blank out, to some extent, the rain or weather
24 systems?

25 A Yes.

1 Q Would it be common to, when you are adjusting
2 your set and trying to locate a vessel, to set it
3 to see if there was any squalls in the area, and
4 try to blank that out?

5 A Well, when you use that, the problem that
6 comes along with that is you decrease your
7 sensitivity. And along with blanking out the
8 weather, you also blank out the target.

9 Q How large is the Exxon Valdez in relationship
10 to the buoy at Bligh Reef, the radar enhanced
11 buoy? What would you say in terms of? Three times
12 as large? It would present a radar target three
13 times as large? Five times as large? How would
14 you...

15 A It depends on the aspect.

16 Q What's that mean?

17 A Of his angle to the radar.

18 Q Let's take it astern, first of all. Just
19 astern, from the rear.

20 A Okay. That would -- if we had a steady return
21 off the buoy, which we don't, the size of return
22 of a ship that size is probably four to five
23 times the size of the return off the buoy.

24 Q How about when it's broadside?

25 A Probably 10 times or more.

1 THE COURT: Okay. Does that open up any new
2 avenues. You can start first, Mr. Linton, and then Mr.
3 Friedman.

4 MR. LINTON: None, Your Honor.

5 THE COURT: Mr. Friedman.

6 MR. FRIEDMAN: Thank you, Your Honor.

7 RE CROSS EXAMINATION OF MR. BLANDFORD
8 BY MR. FRIEDMAN:

9 Q Mr. Blandford, in response to some of the
10 judge's questions, you essentially said, in part,
11 that if the Exxon Valdez had not -- if you had
12 noticed that they were out of radio contact and
13 you tried to raise them and you couldn't, and if
14 you had then tried to find them on the radar and
15 been successful, and found that it was where it
16 was.

17 A Uh-huh (affirmative). And dead in the water.

18 Q Right. I'm sorry, and what?

19 A And dead in the water.

20 Q And dead in the water. If all of those things
21 had happened, then you would probably have
22 started the notification procedure.

23 A Uh-huh (affirmative).

24 Q Now, by the notification procedure, are you
25 referring to the calls to Commander McCall or...

1 A Correct.

2 Q Okay. Is there more to it than that?

3 A Well, the whole chain there.

4 Q Okay. So your job would be to call Commander
5 McCall and it would be up to him as to what would
6 happen after that?

7 A Uh-huh (affirmative).

8 Q You have to answer, yes, or, no.

9 A I would have probably have -- independently
10 get the tug moving.

11 Q Okay. So you would have called Commander
12 McCall?

13 A Uh-huh (affirmative).

14 Q You have to -- I'm sorry, you have to say,
15 yes, or, no, because it's being recorded?

16 A Yes.

17 Q And then you would have called the tug?

18 A That's correct.

19 Q And it would have been up to Commander McCall,
20 then, to decide what to do with the information
21 you conveyed to him?

22 A Correct.

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

24 MR. LINTON: Nothing further.

25 THE COURT: You may step down. Thank you.

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(Witness excused)

(1593)

(Side conversation)

MR. FRIEDMAN: Your Honor, could we have just a minute.

THE COURT: Do you want to take a little break?

MR. FRIEDMAN: That'd probably be the most convenient. Thank you.

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

(1593)

(Off record - 2:43 p.m.)

(On record - 3:01 p.m.)

MR. LINTON: Your Honor, we have a stipulation as to the testimony of a David H. Lindenau, L-i-n-d-e-n-a-u, that if called to testify he would testify under oath in accordance with his statement to the Alaska State Troopers, which I would ask be marked and admitted at this stage.

THE CLERK: It's state's 63, Your Honor.

THE COURT: 63?

THE CLERK: Yes.

THE COURT: All right. Is that stipulation acceptable, this constitutes his testimony, the

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affidavit 63?

MR. FRIEDMAN: Yes, Your Honor.

EXHIBIT 63 ADMITTED

THE COURT: Okay. I'll accept the stipulation.

MR. LINTON: We'll call Dwayne McConnell, Your Honor.

(Side conversation)

(Pause)

(1661)

(Oath administered)

A I do.

DWAYNE W. McCONNELL

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

THE CLERK: Would you please state your full name, and then spell your last name?

A Dwayne W. McConnell, M-c-C-o-n-n-e-l-l.

THE CLERK: Your current business mailing address?

A 1031 West 4th Avenue, Suite 520, Anchorage.

THE CLERK: And your current occupation?

A District Attorney.

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DIRECT EXAMINATION OF MR. McCONNELL

BY MR. LINTON:

Q How long have you been with the state of Alaska, Department of Law, sir?

A Since December 1979.

Q Explain where you have been assigned and what jobs you have been assigned to?

A Assistant District Attorney at Bethel; and the District Attorney at Bethel; District Attorney of Kodiak after that; District Attorney of Palmer, and finally the District Attorney here in Anchorage beginning in March '87.

MR. LINTON: I submit a copy, judge, for reference, a copy of the complaint in this case, to be marked as the next state's exhibit.

THE CLERK: State's 64.

Q Mr. McConnell, I show you what has been marked as state's Exhibit 64. Have you seen that before?

A Yes, I have.

Q Could you explain under what circumstances you first saw it?

A I saw it when a copy of it came over the Panafax machine in my office, I believe on April 4th of this year.

1 Q Did you read the information?
2 A I'm sure I did at the time, yes.
3 Q Did you read the probable cause portion of the
4 information?
5 A I'm sure I did at the time, yes.
6 Q At some point thereafter did you become aware
7 that there were to be special procedures set
8 forth in the state Department of law as to
9 separating prosecutors who would try the case
10 against Captain Joseph Hazelwood?
11 A A few days after this, yes.
12 Q Explain what they were, please? That is, how
13 you became aware of those things, and what you
14 became aware of, having been set up?
15 A I became aware that we might have to put
16 together -- build a wall of some sort between
17 prosecutors that were tainted and prosecutors
18 that were untainted for the prosecution purposes.
19 Became aware of that, I believe, on April 10th of
20 this year. And it was further discussed on about
21 April the -- I believe on April 12. And the --
22 you were designated as the tainted attorney at
23 the time required to screen all materials that
24 were coming in involving the Hazelwood case,
25 Exxon Valdez case, whatever you will call it; all

1 of the materials being received from whatever
2 source. Deciding whether or not they were
3 materials that would be considered tainted under
4 the setup that we had developed.

5 Q What was your understanding as to the
6 relationship between what I was to be doing and
7 what lawyers you assigned to try the case were to
8 be doing?

9 A You were to be screening all materials, seeing
10 if it met our standard of set-up -- you would be
11 screening all materials to determine whether or
12 not they were tainted or untainted. If they were
13 untainted they were given to Mary Anne Henry, who
14 was the first attorney assigned, and then later
15 to Brent Cole as he started working on the case.

16 Q Did you ever receive police reports in the
17 case?

18 A No.

19 Q FBI reports in the case?

20 A When you're asking me personally, no, I never
21 received any of those -- I never received any FBI
22 reports, no.

23 Q Any National Transportation Safety Board
24 reports or transcripts?

25 A No.

1 Q Any United States Coast Guard reports?

2 A No.

3 Q Did you participate in telephonic or person-
4 to-person meetings between yourself and/or any of
5 the following: Mr. Weeks, Mr. Guaneli, Ms. Otto
6 and the team you had assigned to prosecute the
7 case, or the lawyers you had assigned to
8 prosecute the case, Mary Anne Henry and Brent
9 Cole, after April 12?

10 A Yes.

11 Q In the course of those meetings did you hear
12 either Mr. Weeks, Mr. Guaneli, yourself or Ms.
13 Otto convey any factual information to Mary Anne
14 Henry or Brent Cole which pertained to the events
15 which transpired on March 24, as opposed to later
16 or earlier dates?

17 A I don't recall -- I don't recall any factual
18 information being given them, no.

19 Q Did you, yourself, take care not to convey
20 such information?

21 A I did.

22 Q Explain to the judge why?

23 A Well, the information that I had, I suppose,
24 was this Exhibit 64 that I reviewed at some point
25 in time. I realized that if -- that only Bob

1 Linton was the person that was to be looking at
2 all materials. And what Mr. Linton decided was
3 not tainted material, was then given to Ms. Henry
4 and Mr. Cole.

5 I didn't have any other information, if you
6 will. The discussions that occurred regarding
7 any facts that were facts that were raised by
8 Brent Cole or Mary Anne Henry, in the discussions
9 of charging, et cetera.

10 MR. LINTON: Nothing further, Your Honor.

11 (1929)

12 CROSS EXAMINATION OF MR. McCONNELL

13 BY MR. FRIEDMAN:

14 Q In these conferences, Mr. McConnell, the
15 factual discussions would relate to facts brought
16 up by Mr. Cole or Ms. Henry?

17 A That's my recollection, yes.

18 Q And as I understand it, it would be you, Mr.
19 Cole, Ms. Henry -- sometimes Trooper Stogsdill
20 here in Anchorage, and then by telephone it would
21 be Mr. Weeks and sometimes Mr. Guaneli?

22 A And sometimes Ms. Otto. Sometimes one of
23 those parties would be missing; not always
24 everyone was there, but, yes.

25 Q Between the time of the grounding and today,

1 could you estimate for us how many of those sort
2 of conferences you participated in?

3 A Between the time of the grounding? It's
4 probably a guess than anything else. There were
5 -- none of the conferences took place, that I
6 recall, until beginning about -- until beginning
7 on April 12th. So there were none between the
8 grounding and -- there were none that I recall
9 between the grounding and April 12.

10 I suppose there may have been a telephone call
11 or two before that, but never a conference, that
12 I recall.

13 After the -- from about the 12th forward
14 through the grand jury phase, we met in telephone
15 conference probably almost every day. I'm sure
16 we missed a day once in a while. I don't think
17 that we normally got together on weekends. We
18 may have got together on some weekends in
19 discussions.

20 Q A rough estimate would be five times a week,
21 give or take?

22 A Four to five times a week.

23 Q Okay. Is there some reason the 12th sticks in
24 your mind as the day in which all of this began?

25 A I think it sticks in my mind because I have

1 attempted to reconstruct when we did start this
2 process. And so I have discussed that with Mr.
3 Linton; with Ms. Henry as to time frames as to
4 when that actually started.

5 Q Okay. Did you yourself keep any notes or
6 memos regarding your participation in these
7 conferences?

8 A No, I didn't.

9 Q Other than you participating in these
10 conferences, have you had any involvement in the
11 conduct, prosecution of this case?

12 A I don't know that I can -- yes, I guess I have
13 had responsibility for it in an overall oversight
14 kind of fashion. I consider myself kind of the
15 manager of the office in my position, and
16 therefore give Ms. Henry help by adding Mr. Cole,
17 by adding Mr. Adams, by a paralegal assignment,
18 by a press person, and, also, certainly dealt at
19 various times with the issues of charging, and
20 what to do in that regard. What to do in dealing
21 with the case as a whole. I think that's my
22 function as the D. A.

23 Q Okay. So let me just go through them one at a
24 time. One aspect of your involvement in the case
25 has been the assignment of resources, if you want

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to kind of generally categorize one type of involvement?

A Yes.

Q Another type of involvement -- well, why don't you characterize the next type of involvement for me. How would you...

A Certainly talked about what charges to bring dealing with the information we had. What would be the appropriate charges. Discussion of those with the people that you mentioned. How to do the charging.

Q What do you mean by "how to"?

A How? One count, two counts, three counts. Various strategies on whether or not to agree with the movement of the case from Valdez. Whether or not to agree to move it elsewhere, other than Anchorage, those sort of discussions.

Q When there was discussions about possibly agreeing on a judge, were you involved in those discussions?

A Yes.

Q Other types of involvement you can recall?

A I'm sure there are -- whether or not to expend money for a given person to be used in some expert capacity, all of those things have to be

1 approved by me. Travel to wherever, has to be
2 approved by me. Outside the state, in any event.
3 So dealing with the resources and making sure
4 that I can cover those responsibilities. The
5 strategy. I say that that's largely it.
6 Q Okay. Now, focusing first on the charging
7 issue. Were you involved in any discussions
8 about how to charge before the information?
9 A Before the information?
10 Q Right.
11 A No.
12 Q Did Mr. Linton, as far as you know, just sort
13 of do that on his own?
14 A I believe Mr. Linton -- at that time Mr.
15 Linton was dealing with working directly with
16 Juneau.
17 Q And at any rate he didn't consult you before
18 filing the charges?
19 A Correct.
20 Q Now, after the 12th -- or, one other thing.
21 There has been some testimony about attempts to
22 keep Mr. Cole, Ms. Henry, Mr. Stogsdill, separate
23 from media coverage? All the letters from their
24 mothers were screened, and that sort of thing.
25 Was that process applied to you?

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A Yes. Yes.

Q So you didn't read the newspaper either?

A Once I became aware of the problem, no.

Q Are we talking April 12 now?

A April 10 through April 12.

Q So from that point on, whenever you saw a case -- or, I'm sorry, an article regarding the oil spill, that you would pass over it.

A I would pass over it, yes.

Q And if a story came on the radio or TV, you would turn it off?

A I would turn it off or walk away.

Q So after the 12th the only material related to this case that you saw, came through Mr. Linton?

A Yes. I can't say that I've actually seen information after that date. I have certainly been involved in discussions with Ms. Henry and Mr. Cole. But as far as reading the individual statements of whoever, I have not.

Q And likewise, in your contact with Mr. Weeks or Mr. Guaneli, neither of them have given you any memos relating to the conduct of this case that contained factual information?

A I have not.

Q And neither of them have volunteered any

1 factual information to you?

2 A No.

3 Q You haven't seen the NTSB?

4 A I have not.

5 Q Now, Mr. Cole testified that at various points
6 in the prosecution -- or, in the strategy
7 sessions you described, there were splits of
8 opinion as to how various decisions should be
9 made?

10 A Yes.

11 Q I think I'm fairly characterizing this as say,
12 Mr. Cole's characterization was that he and Ms.
13 Henry, for example, wanted to indict Mr. cousins,
14 or at least give the grand jury that opportunity.
15 Is that your recollection?

16 A Yes.

17 Q And Mr. Cole's recollection is that you
18 supported them in that view?

19 A I agreed with that, yes.

20 Q And Mr. Cole's recollection is that Mr. Weeks
21 slash Guaneli (Weeks/Guaneli) -- at any rate, the
22 folks in Juneau overrode that decision and said,
23 no, we don't want the grand jury to be able to do
24 that at this time. Is that your recollection?

25 A Yes.

1 Q As a result, somebody drafted a statement to
2 be read to the grand jury at the end of the
3 session, do you recall that?
4 A Yes.
5 Q Who drafted that?
6 A I believe it was Dean Guaneli. It was either
7 Mr. Weeks or Dean Guaneli.
8 (2370)
9 Q It came out of Juneau?
10 A Yes.
11 Q And Ms. Henry was unwilling to read that to
12 the grand jury?
13 A Correct.
14 Q And you agreed to do that?
15 A I did.
16 Q What did Mr. Weeks or Mr. Guaneli tell you
17 regarding why they didn't want Mr. Cousins
18 indicted?
19 A Well, there were various reasons. It was the
20 belief of Mr. Weeks, Mr. Guaneli -- possibly the
21 attorney general, that the captain is responsible
22 for his ship. That we should be moving up the
23 chain of command, if you will, rather than going
24 down the chain. I can't think of any other -- I
25 can't think of other reasons -- I recall there

1 Q I think it was Brent Cole who indicated that
2 Mr. Weeks and/or Guaneli helped draft the
3 indictment that was ultimately presented to the
4 grand jury. Do you recall you, yourself,
5 participating in that process in any way?

6 A I do. Well, yes. Well, I -- my recollection
7 is that Mary Anne Henry had more of a hand in it
8 than anyone else. Certainly, Mr. Weeks was
9 involved in it, as well as Mr. Guaneli. I
10 believe Laurie Otto was still working on it at
11 that time, and I think that David Mannheimer was
12 brought in from the Office of Special Prosecution
13 and Appeals. I recall him being there and
14 discussing it. We all participated at the end on
15 how to draft that indictment.

16 Q Mr. Mannheimer is the head of the state Office
17 of Special Prosecutions and Appeals?

18 A Yes.

19 Q Do you know whether he was screened or self-
20 screened from newspaper articles and media
21 coverage on the spill?

22 A I do not.

23 Q Do you know whether he was insulated from
24 other material related to the spill?

25 A He was brought in for the legal wording of the

1 documents, as I recall -- the indictment -- the
2 proposed indictment. And for that -- and had
3 very short participation in the process. I
4 recall, probably not more than a couple of
5 meetings.

6 So, I can't answer your question, but his
7 appearance, if you will, in these meetings was
8 short and only pertained to, how do we charge
9 under the criminal mischief second degree portion
10 of the statute.

11 Q What was the extent of Laurie Otto's
12 involvement, from what you recall?

13 A I don't have any recollection as to exactly
14 what she -- I know she was in early in some of
15 the discussions and then did less and less.

16 Q With regard to Mr. Weeks, do you know whether
17 he was insulated from media coverage?

18 A No, I don't.

19 Q How about Mr. Guaneli.

20 MR. FRIEDMAN: I wonder if I could see the
21 information.

22 Q When you participated in the discussions
23 regard what charges to file, how they should be
24 structured, how they should be worded, what
25 strategies should be implemented in the

1 prosecution of this case, you were aware that a
2 blood alcohol test had been administered to
3 Captain Hazelwood?

4 A I believe I was, from looking at the
5 information, yes.

6 Q And you were aware of the other information
7 contained in this?

8 A I was at the time, yes.

9 Q Mr. McConnell, as you sit here today, can you
10 honestly say that the -- your participation in
11 the events we discussed, was uninfluenced by the
12 information you learned prior to April 12?

13 A I certainly believe it was, yes.

14 Q Was there any procedure you employed with
15 yourself to make sure that you did not rely or
16 think about the fact that a blood alcohol test
17 had been done, and had been positive, and that
18 Captain Hazelwood made the statements reported in
19 the probable cause statement, and so on.

20 A Was there any procedure I set up myself?

21 Q Yes. That's sort of like not thinking of a
22 white elephant, isn't it? I mean, how did you --
23 how can you tell us that you were uninfluenced by
24 that information? What makes you feel that you
25 were?

1 A Well, the information -- the criminal mischief
2 charge, as it's defined by the statute -- just
3 simply looking at that statute in and of itself -
4 - just looking at that, with the information that
5 was gained from -- and I can't give you specifics
6 as to the testimony, but from the people in the
7 ship -- the people that were determined to be
8 untainted information that Mr. Linton gave us, I
9 felt there was more than enough information there
10 to show that that was a reckless act, fitting the
11 definition of criminal mischief in the second
12 degree.

13 And aside from what was in this information,
14 which, right now, I don't even remember what was
15 in there -- it's been so long since I looked at
16 it -- I, unaided by whatever the blood alcohol,
17 if it's mentioned here, appeared, it seems to me
18 that it clearly fit under the statute.
19 Forgetting entirely about the alcohol angle.

20 Q Mr. Cole has testified that in his belief,
21 based on the information he's been allowed to
22 see, the alcohol case is pretty thin. Did you
23 share that belief? Let me ask you first, did he
24 talk with you about that?

25 A Yes, he did.

1 Q Did you share that belief?

2 A With the information that I recall us working
3 with and working in the grand jury time from, you
4 know, mid April thereon until the indictment.
5 Yes, my feeling was that it was relatively weak.

6 Q Okay. Mr. Cole indicated that he felt, as a
7 matter of strategy, that it might make sense to
8 dismiss the alcohol case because it was weak.
9 Did he discuss that with you?

10 A We did, yes.

11 Q And what was your position on that issue?

12 A Wait and see.

13 Q Wait and see what?

14 A At the time it was wait and see, and we're
15 still waiting, I suppose. It hasn't been
16 dismissed.

17 Q Okay. And you are waiting to see if the judge
18 will give you more information that you can use
19 at trial, is that correct?

20 A It's certainly possible, yes.

21 Q And you knew when you adopted the wait and see
22 attitude, that there was more information out
23 there that the judge could give you on the
24 alcohol issue, is that right?

25 A I knew that there was some alcohol test that

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had been -- some blood test had been done.

Q So you knew there was more information the judge could give you to bolster the alcohol case when you adopted the wait and see attitude?

A I don't know that that was in my thinking, but, yes.

Q Thank you. I don't have any other questions.
MR. LINTON: Nothing further, Your Honor.

EXAMINATION OF MR. McCONNELL

BY THE COURT:

Q Mr. McConnell, you knew that there was a blood alcohol test administered to Captain Hazelwood and it was above the legal limit. You knew that at the time, didn't you?

A Judge, I don't remember that it necessarily was above the legal limit. I knew there was some blood test that had been done, and it may say that, in fact, in this information. But it's been so long that I've read it that I don't recall that.

Q Did you express anything to Mr. Cole, the information contains additional facts that may support the alcohol charge?

A I did not.

Q That's all I have.

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(Witness excused)

(3044)

THE COURT: Thank you. You may step down.

MR. LINTON: Judge, actually, that ran me out of witnesses for today. I had Mr. Guaneli flying this morning, but his plane early this morning did not leave Juneau. He was supposed to get on the 10 o'clock plane. It did not leave Juneau. He will be flying in tonight and I expect we can put on our final three witnesses tomorrow.

THE COURT: All right. I don't have any problem with that.

We only have half days left between now and the end of Thursday. I've got afternoon proceedings each day, tomorrow, Wednesday and Thursday. So, we'll go until 1:30 with breaks in between.

You gave me a list of the order in which you want oral argument. I'm going over that list now. Presumably we can do that, but I'm more prepared on some of those issues than others, and if it comes down to a point where I'm not prepared at all on one of your issues, but I'm prepared with the next one, would you mind if we took the next one?

MR. FRIEDMAN: It's mostly Mr. Madson's...

MR. MADSON: Your Honor, that was merely a

1 suggestion. We'll take them in whatever order the
2 court feels appropriate.

3 THE COURT: Well, there's quite a few of them.
4 There's over 10 left. There are 12 left and I'm
5 falling behind. Because of the length of these
6 proceedings I'm not able to gear up with all of these
7 at this point, so I'll need some time.

8 Do you have any kind of an estimate on how
9 much time you're gonna need and how much evidence is
10 going to be required on some of these other items?

11 MR. MADSON: Your Honor, I don't believe any
12 evidence is going to be required on any of the other
13 matters. It'll be strictly oral argument unless Mr.
14 Linton has a different view.

15 Whatever time limits the court wants to set,
16 that's fine. I think some of these obviously will take
17 longer than others.

18 If we were to finish with the witnesses
19 tomorrow, and I think it would be -- I would suggest
20 that probably the best thing to do is to take the oral
21 argument with regard to the immunity issue, since
22 that's all fresh and it's still in the court's mind and
23 have that resolved, then whatever order the court
24 wants.

25 I would anticipate we could be through

1 Wednesday, certainly Thursday. Thursday I would say,
2 for sure, with argument of the case.

3 (3190)

4 THE COURT: That seems a little fast for me,
5 but maybe we can get done by then.

6 I'm not trying to pressure you into finishing
7 faster than you need to. I just need to let counsel on
8 the trial next week know that they probably won't go,
9 or will go.

10 I don't expect I'm going to have a very
11 lengthy decision available for you right after oral
12 argument. I'm gathering information on a day to day
13 basis. I'm trying to get the start of a written
14 opinion on some facts and every day we get more and I'm
15 finding more law every day.

16 So, I doubt I'm going to have a definitive
17 opinion for you, or decision for you at the completion
18 of your oral arguments. So, I would like to just go
19 right into oral argument on the remaining issues so we
20 can use that time productively while witnesses are
21 available, while you're present and while Captain
22 Hazelwood is present. And then I'll take what time is
23 necessary to get the decision out as quickly as I can
24 if that's agreeable.

25 MR. LINTON: It is.

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MR. MADSON: Uh-huh (affirmative).

MR. FRIEDMAN: Your Honor, you had asked us for some findings of fact and conclusions of law focusing primarily on findings of fact.

THE COURT: Findings of fact, yes not conclusions of fact.

MR. FRIEDMAN: Right. I have a draft that I was going to submit to the court. It will need some modification in light of some of the testimony that came in today, although I don't think it will require a great deal.

And with the court's permission I'd like to file it in relatively rough form and then, fine tune it and get you a better copy in another day or so.

THE COURT: All right. That'd be fine.

Mr. Linton gave me a very brief document here that is a summary of finding of facts and I expect that the court will be making considerably more findings than what you've submitted.

MR. LINTON: I was taking it in stages. I have three separate submissions on three separate issues and that was the first of the three, Your Honor.

THE COURT: And I'm going to need some detail argument. There has been no real response by the state to the defendant's claim that the burden of proof here

1 is clear and convincing. There is some loose language
2 in your brief saying you can prove something beyond a
3 reasonable doubt. I do not think that the standard is
4 beyond a reasonable doubt in this, but there may be
5 some dispute as to whether it is preponderance of the
6 evidence as set forth in Kastigar, or by clear and
7 convincing evidence as set forth by the case.

8 So, I'll need some information, because I
9 think this case to some extent will hinge on the burden
10 of proof to some extent.

11 Okay. I'll see you back at 8:30 tomorrow.

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

14 (3324)

15 (Off record - 3:35 p.m.)

16 ***CONTINUED***
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