

SPEC
COLL
GL
1552
.P75
H39
1990
v.6

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 5, 1989
PAGES 1013 THROUGH 1111

VOLUME VI

Original.

H & M Court Reporting
510 "L" Street, Suite 650
Anchorage, Alaska 99501
(907) 274-5661

ARLIS
Alaska Resources
Library & Information Services
Anchorage, Alaska

BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
December 5, 1989
8:50 o'clock a.m.

APPEARANCES:

For Plaintiff:

DISTRICT ATTORNEY'S OFFICE
ROBERT LINTON, ESQ.
1031 West 4th Avenue, Suite 520
Anchorage, AK 99501

For Defendant:

RICHARD FRIEDMAN, ESQ.
1215 West 8th Avenue
Anchorage, AK 99501

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

3 3755 000 22244 8

H & M Court Reporting
510 "L" Street, Suite 650
Anchorage, Alaska 99501
(907) 274-5661

ARLIS
Alaska Resources
Library & Information Services
Anchorage, Alaska

TABLE OF CONTENTS

WITNESS INDEX

DIRECT CROSS REDIRECT RECROSS VOIR DIRE

FOR PLAINTIFF:

GUANELI, DEAN

Mr. Linton

1023

1097

Mr. Friedman

1029

WEEKS, LARRY

Mr. Linton

1100

Mr. Friedman

1106

H & M Court Reporting
510 "L" Street, Suite 650
Anchorage, Alaska 99501
(907) 274-5661

EXHIBIT INDEX

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
G	Guaneli's outline of time spent on case	1053
H	Memo: "Procedures for protecting integrity of prosecution evidence"	1058
I	Note re: telephone number of Greiner and Beevers	1065
J	Note re: call from Trooper Burke re: information on autopilot	1067
K	Note re: proposed comments to grand jury	1069
L	Memo to Henry from Guaneli re: witness available for grand jury	1075
M	Proposed set of introductory comments	1077
N	Notes re: moving property of another in excess of \$100,000.00	1087
O	Notes re: meeting	1089
P	Notes re: overview of FBI interview	1091

1 PROCEEDINGS

2 DECEMBER 5, 1989

3 (Tape: C-3514)

4 (484)

5 THE COURT: I understand there's a conflict in
6 the need for an attorney in this courtroom and his
7 presence in another courtroom as a witness.

8 Have counsel worked out something that will
9 accommodate the other courtroom and this case too.

10 MR. LINTON: We're having a hard time doing
11 that, Your Honor.

12 Mr. Paul Stockler was an attorney in the
13 District Attorney's Office who was going to do my
14 direct examination and cross examination.

15 He's also needed in the trial of Officer Frank
16 Feichtinger. He's a witness in that proceeding.

17 In that proceeding he could testify this
18 afternoon -- that is, perform his duties in this case
19 and testify this afternoon in another case, that is, in
20 the Feichtinger case without disruption of either this
21 court's schedule or the other court's schedule.

22 However, he can only testify in the afternoon
23 if Ms. Sheley is available to testify in the morning
24 and Ms. Sheley is before Judge Katz in yet another
25 trial. Judge Katz is unwilling to let Ms. Sheley go

1 for the space of time it takes her to be examined, and
2 as a result they're asking in the Frank Feichtinger
3 case that Mr. Stockler come over this morning. And as
4 a result he's being asked to come away from this case.
5 Thus we have an instance where a conflict between three
6 judges, two of whose work can be accommodated. Mr.
7 Stockler can be made available to two if only one will
8 make concessions, or one judge, Judge Katz, can keep
9 Ms. Sheley and the other two judges make
10 accommodations.

11 Usually one would think that one judge ought
12 to accommodate two, rather than two judges
13 accommodating one. And this is a -- now there's going
14 to be some period of time this morning in this
15 proceeding before Mr. Stockler is actually needed to do
16 my examination, but it would be nice for him to be able
17 to hear the examination of the witnesses which precede
18 mine in anticipation of presenting my testimony.
19 Things may come up in the course of the cross
20 examination of the first two witnesses that I need to
21 be asked about on direct and there would be very little
22 time for us to consult about those things if we are
23 going to promptly continue with the proceedings here.

24 So...

25 THE COURT: Do you want me to come up with a

1 solution?

2 MR. LINTON: Yes, sir.

3 THE COURT: Do you have any preference, Mr.
4 Friedman?

5 MR. FRIEDMAN: No, Your Honor.

6 THE COURT: Well, how about when it's time for
7 Mr. Stockler to go over to the Feichtinger case he goes
8 and we just continue this until he's available?

9 MR. LINTON: He would go now, then.

10 THE COURT: Okay. Can you call Mr. Guaneli,
11 or Mr. Weeks in the meantime? Are they here?

12 MR. LINTON: Mr. Guaneli is here. Mr. Weeks
13 is outside.

14 THE COURT: We could go ahead with those two
15 witnesses' testimony and then, when Mr. Stockler's
16 available go ahead and take yours?

17 MR. LINTON: Yes, sir.

18 THE COURT: Is that okay with you, Mr. Roosa?

19 MR. ROOSA: That's fine with me, Your Honor.
20 Mr. Stockler's testimony is substantially shorter than
21 Ms. Sheley's, so we are still, even if we adopt that
22 solution, we will still be in a situation where we will
23 run out of witnesses this morning before our normal
24 morning recess would occur, and we're still going to
25 lose trial time as a result of that, because Ms. Sheley

1 is -- apparently Judge Katz does not want her to
2 testify until she is finished with today's court
3 proceedings, which won't occur until this afternoon.

4 THE COURT: What is the best that I can do,
5 Mr. Linton? Tell me the best I can do and I will do
6 it.

7 MR. LINTON: I think you've done the best you
8 can do.

9 MR. ROOSA: You've done the best that you can,
10 Your Honor.

11 THE COURT: So, we'll take Guaneli and Weeks
12 and then if Stockler's available, we'll take him. If
13 he's not available, you can have him and then you and
14 Katz' trial can battle it out.

15 Is that agreeable to you?

16 MR. ROOSA: The only reservation I have, Your
17 Honor, is I wonder if there's any indication how long
18 Mr. Stockler's expected to testify if he, then, goes
19 for two or three days, which is not unheard of -- I
20 don't know how important he is, or whatever. I'd hate
21 to put off the end of this.

22 THE COURT: You said in my chambers his
23 testimony on direct would be about 15 minutes or so?

24 MR. ROOSA: No. That was Judge Stemp's
25 testimony we were referring to. Mr. Stockler's direct

1 testimony will probably be about 30 to 40 minutes. And
2 I can not...

3 THE COURT: Well, Judge Hanson's going full
4 days, isn't he?

5 MR. ROOSA: Yeah. We're breaking at 11:30 and
6 coming back at 1:00.

7 THE COURT: So do you expect Mr. Stockler to
8 be finished today in any event?

9 MR. ROOSA: Absolutely.

10 THE COURT: Okay. Now, if we can't -- we only
11 have a half day today anyway. We have to recess at
12 1:30. So, why don't we go ahead and do what we can.
13 And, things sometimes don't go as fast in the
14 Feichtinger trial as anticipated and it may be that Mr.
15 Stockler may not even get on. Who knows?

16 MR. ROOSA: Thank you, Your Honor.

17 THE COURT: Okay. You can call your next
18 witness, Mr. Linton.

19 MR. LINTON: It would have been Dean Guaneli
20 and then Mr. Weeks, then me.

21 THE COURT: Okay. Do you want to call Mr.
22 Guaneli?

23 MR. LINTON: No. That was my point. I mean,
24 my point was we needed Mr. Stockler here during their
25 testimony.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. So, we'll just recess now until Mr. Stockler is available?

MR. LINTON: Yes. I'm afraid so, Your Honor.

THE COURT: Okay. Is that agreeable with you?

MR. FRIEDMAN: Yes.

THE COURT: I guess I didn't communicate real well, but that's fine. If that's agreeable with counsel, I've got lots to do on this case and I can put this time to use.

We'll stand in recess.

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

(716)

(Off record - 8:50 a.m.)

(On record - 9:59 a.m.)

THE COURT: You may be seated. Thank you.

Are we ready to proceed, Mr. Linton?

MR. LINTON: Yes, sir. I call Dean Guaneli.

THE COURT: All right.

(716)

(Oath administered)

A I do.

DEAN J. GUANELI

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

1 THE CLERK: Would you please state your full
2 name, and then spell your last name?

3 A Dean Joseph Guaneli, G-u-a-n-e-l-i.

4 THE CLERK: Your current business mailing
5 address?

6 A P. O. Box KC, Juneau, Alaska, 99811.

7 THE CLERK: And your current occupation, sir?

8 A Assistant Attorney General for the state of
9 Alaska.

10 DIRECT EXAMINATION OF MR. GUANELI

11 BY MR. LINTON:

12 Q How long have you done that kind of work?

13 A Since 1976.

14 Q In late March 1989 did you become aware of an
15 investigation being conducted by the state
16 Department of Law regarding the grounding of the
17 Exxon Valdez?

18 A Yes, I did.

19 Q What was your first involvement?

20 A I believe it was on the evening of March 27 I
21 received a call from Attorney General Doug Baily.
22 He asked me to get a hold of Mr. Linton, who was
23 in Valdez, to be briefed on Mr. Linton's
24 involvement in the investigation, and to review
25 with Mr. Linton possible criminal statutes that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

could be charged in that case.

Q And the days thereafter were you involved in further discussions about the charge resulting -- about potential charges resulting in a document that I'll show you now, Exhibit 64?

A Yes, I was.

Q What, if any role did you have in the introduction of that document?

A I certainly discussed the charges with Mr. Weeks, Laurie Otto of our office, and Mr. Linton. And at some point in time prior to the filing of this document, reviewed it and may have even made some editorial changes in it.

Q Did you travel to Valdez, Alaska yourself?

A Yes, I did.

Q What was your purpose in traveling to Valdez, Alaska?

A I went to Valdez on April 4th. There were a couple purposes. The first purpose was to essentially give Mr. Linton a break. He had been there for about a week and a half working long hours. It was our perception in telephone conversations with him that he was getting tired and needed a few days break, at least. So I went there for that purpose.

1 I also went there to assess whether or not it
2 would be appropriate to assign more attorneys to
3 the case -- perhaps more investigators to the
4 case. Mr. Linton, at that time, was -- or, had
5 been asking for additional attorney assistance in
6 Valdez.

7 And I also went there to begin to look into
8 the question of Alyeska's role in the clean-up of
9 the spill. And whether or not there was any
10 validity to the allegations floating around that
11 Alyeska had not responded properly to the spill.

12 Q When you arrived in Valdez did you receive a
13 briefing from me?

14 A Yes, I did.

15 Q Did you talk to police officers about what
16 they had found?

17 A I talked with the troopers who were there, in
18 general terms, about what they were doing; how
19 they were proceeding with the investigation that
20 they had already outlined. How they were coming
21 on writing police reports, on getting interviews
22 transcribed, things of that sort.

23 Q At some time did you become aware of
24 arrangements that were to be made in the District
25 Attorney's Office in Anchorage to separate the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

prosecuting lawyers from others who had been involved in the investigation?

A Yes, I did.

Q When did you become aware of that?

A Those arrangements really evolved over the first couple weeks in April through discussions with Larry Weeks, Laurie Otto, Mr. Linton. And by about mid-April the procedures were pretty much set.

Q Would you outline those procedures as you understood them?

A Generally it was that information that would come into our possession, reports, documents, transcripts, things of that sort, would be given to Mr. Linton. That he would screen that material to determine what could properly be used in a prosecution, and what potentially could not be used.

He would then turn over what material could clearly be used to Mary Anne Henry and Brent Cole, and that they would be assigned to pursue a case through the grand jury if they determined that there was sufficient evidence to do so.

Q And what was your understanding of the criteria under which information would be given

1 to them -- to Mary Anne Henry and Brent Cole?

2 A Essentially that information on the first day,
3 which would have been March 24, would not be
4 given to Mary Anne Henry and Brent Cole, with the
5 exception of certain things like crew interviews
6 -- interviews of the crew members, and documents
7 from the ship -- ship recordings, things of that
8 sort.

9 Q In preparation for grand jury, were you
10 involved in the process of obtaining witnesses
11 regarding damages from the oil which had been
12 released?

13 A Yes, I was.

14 Q Explain to the judge what you did and -- how
15 that assignment came to you and what you did?

16 A The statute we were proceeding under required
17 that we prove a risk of damage of \$100,000.00 or
18 more. And Larry Weeks asked me to see if I could
19 find some witnesses who would be able to testify
20 to that fact.

21 I contacted Joe LeBeau, who worked for the
22 Department of Environmental Conservation, who was
23 in Valdez. Asked him to talk to some people from
24 state agencies who could get information of that
25 sort. I also contacted people in the Department

1 of Fish and Game to determine if they could
2 provide some of that information. Essentially we
3 had focused on two primary areas that would
4 likely lead to concrete information, a dollar
5 amount. And that is the closure of fisheries
6 which the Department of Fish and Game testified
7 to, and some additional costs that others were
8 able to provide.

9 Q Did you participate in telephone or personal
10 conversations with Mary Anne Henry or Brent Cole,
11 perhaps in the presence of Larry Weeks, Dwayne
12 McConnell and Laurie Otto?

13 A Yes. They were all telephone conversations.
14 I don't believe I spoke with them face to face.

15 Q In the course of such conversations did you
16 communicate any factual information regarding
17 what transpired on March 24, 1989; that date
18 itself, yourself?

19 A No.

20 Q Did you hear anyone else convey such
21 information?

22 A No, I did not.

23 MR. LINTON: Nothing further, Your Honor.

24 (1082)

25 *

1 CROSS EXAMINATION OF MR. GUANELI

2 BY MR. FRIEDMAN:

3 Q Mr. Guaneli, what is your job? What do you
4 ordinarily do during the day?

5 A Our office is the -- is called the central
6 office of the Criminal Division of the Department
7 of Law. Larry Weeks is in charge of the Criminal
8 Division. I am the supervisor of a small group
9 of attorneys who work in that office. And our
10 primary responsibility is handling civil
11 litigation that involves criminal justice
12 agencies, such as prison litigation; litigation
13 involving -- some litigation involved the State
14 Troopers; Department of Public Safety; Parole
15 Board; Fire Marshall's; Violent Crimes
16 Compensation Board; agencies that have some
17 relationship to criminal justice.

18 Q And why were you picked to help Mr. Linton out
19 up in Valdez on March 27?

20 A I -- first of all, I volunteered, and I was
21 available.

22 Q How did you know there was even a need for
23 somebody to go up there? You say you
24 volunteered. How did you know there was a need
25 for somebody?

1 A Well, Larry Weeks and I had been in contact
2 with Mr. Linton on a fairly regular basis, and it
3 was Larry Weeks' determination that we needed to
4 send somebody else to Valdez.

5 Initially there had been a couple of attorneys
6 from the Civil Division of the Department of Law
7 from Anchorage who had been in Valdez. They were
8 no longer there. Mr. Linton was the only state
9 attorney on the scene and we felt that he needed
10 a break.

11 Q Now, you are in the criminal division?

12 A That's correct.

13 Q So Mr. Weeks is your supervisor?

14 A Yes.

15 Q Did you say that you arrived in Valdez on the
16 27th of March?

17 A No. I was called by the Attorney General at
18 night on the 27th, and that's when I first talked
19 with Mr. Linton. I went to Valdez on April 4.

20 Q And when you arrived on April 4 you received a
21 briefing from Mr. Linton in which he indicated,
22 in essence, the work that had been done thus far
23 in the investigation?

24 A Yes, that's basically correct.

25 Q The attorney general, when he called you, also

1 wanted you to help review the criminal statutes
2 that might apply to this case?

3 A That's right.

4 Q And when you arrived on April 4 in Valdez did
5 you talk to Mr. Linton about that as well?

6 A I don't specifically remember speaking with
7 him about criminal statutes on that when I
8 arrived. I -- the weather was real bad that day.
9 It took me a long time to get there. I arrived
10 about midnight, and we didn't discuss too much of
11 the case when I first arrived. So I don't
12 specifically remember talking about statutes at
13 that time.

14 Q How about in the following days?

15 A I think that there were a number of
16 discussions about what statutes were applicable.

17 Q After you arrived in Valdez on the 4th, did
18 Mr. Linton go back to Anchorage, or did he stay
19 in Valdez?

20 A He didn't go back initially. We sort of
21 expected him to. He's not the kind of person who
22 would, probably from his point of view, abandon
23 his post and go back to Anchorage, even though he
24 probably needed a rest. So he stayed on for a
25 couple more days.

1 Q Now, by the time you had arrived in Valdez,
2 the Information had already been filed, is that
3 right?
4 A That's correct.
5 Q But you told us you had discussed the
6 information with Mr. Weeks and Laurie Otto before
7 you -- so you must have done that before you went
8 to Valdez?
9 A That's correct, yes.
10 Q What was the focus of your discussion with Mr.
11 Weeks and Laurie Otto with respect to the
12 Information?
13 A The focus was on what charges would be filed.
14 Whether there was sufficient information to
15 support those charges, and specifically, what the
16 Information would look like. How it would be
17 drafted.
18 Q And you said you even reviewed it and may have
19 even added portions of it?
20 A That's correct.
21 Q I take it, then, you reviewed the probable
22 cause statement prior to its filing?
23 A Yes.
24 Q And you discussed the information contained in
25 the probable cause statement with Mr. Weeks and

1 Laurie Otto?

2 A That's correct. Yes.

3 Q I take it it was determined that there was
4 sufficient probable cause to go ahead with filing
5 the Information?

6 A That's correct.

7 Q Who did you view as the decision maker in that
8 regard for the Department of Law?

9 A I think it may have been a combination of Mr.
10 Weeks and Mr. Linton. I think, as far as
11 determining that there was sufficient evidence.
12 I think the decision to file the charge was made
13 by Mr. Linton.

14 Q Then what part did Mr. Weeks play in the
15 decision making aspect?

16 A That -- I don't specifically recall the
17 conversations that we had and what specific
18 decisions were made. As the head of the criminal
19 division, I think that he certainly had a role in
20 deciding that, yes, in fact, there is sufficient
21 evidence and it would be appropriate to file
22 charges.

23 Q Okay. Focusing just on the time period before
24 the information was filed. Was there any
25 discussion that you are aware of, between

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

yourself, Mr. Weeks, and Mr. Linton, regarding any possible immunity Mr. Hazelwood might have?

A Yes, there was.

Q And can you tell us the nature of those discussions? Again, focusing just on the time prior to the Information being filed?

(1355)

A I think that in a couple three days before the Information was filed, we were certainly aware of the provisions of the Clean Water Act. And it was something that we were -- it came into our discussions, and at that point in time I don't think that we decided specifically how we were going to address those issues over the long term.

I had had some discussions with the federal prosecution authorities who were similarly concerned with the Clean Water Act provisions, and they indicated that they were in the process of reviewing that, and they were going to be providing us with some advice. That advice never really came. So we were -- at that point in time it was something that we were concerned about, and, as I indicated, our response to it evolved over the next couple of weeks.

Q Okay. You said that you were, of course,

1 aware of the immunity provision in the Clean
2 Water Act. How did you first become aware of
3 that?

4 A There was a short -- not a memorandum --
5 something over the intra-office electronic mail
6 that came from an assistant attorney general in
7 Anchorage who had spoken with a former federal
8 prosecutor. And that person had been told of the
9 provisions. And we had gotten notice that way.
10 And I think that was probably either -- I think
11 it was Tuesday the 28th, or maybe the following
12 day.

13 Q Who was the assistant A. G. that had had that
14 discussion -- the former federal prosecutor?

15 A I believe that was Mike Frank.

16 Q And was this a memo written by Mike Frank, or
17 a memo written by somebody else?

18 A I believe it was written by Mike Frank.

19 Q And it was directed to whom?

20 A I don't recall who it was directed to.

21 Q At any rate, that came to your attention, you
22 believe around the 28th of March?

23 A That's correct.

24 Q Prior to the 28th of March had there been any
25 discussions between yourself, Mr. Weeks, or Mr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Linton, that you are aware of, that referred to the immunity issue?

A No. My first involvement came on the 27th when the attorney general called me at home. And that was -- I believe that may have been a holiday, and the next day was the first work day where I think those things may have been discussed.

Q Did you keep any notes relating to your involvement in this case?

A Yes.

Q Could you describe for me the nature of the notes that you got?

A I certainly kept -- at least in the initial stages of the investigation, I kept notes on how much time I was spending. We were directed to keep track of how much time we would spend in case there was, at some later time, provisions for reimbursement to the state for attorney time spent.

Beyond that I did not take many notes of specifically what I did in the first couple of weeks. After that I started taking notes of telephone conversations that I had specifically with attorneys for Exxon and Alyeska.

1 When I got back from Valdez one of my primary
2 functions was to try to get documents from Exxon.
3 And I was dealing with a variety of different
4 attorneys, and it was important that I keep track
5 of what I was being told at what point in time so
6 that I could make sure that we got information
7 from them.

8 Q What form do your notes take? Is it on a
9 legal pad or in a notebook?

10 A There is a -- I've got a folder which has a
11 number of yellow legal pages in it, and it also
12 has copies of some memos -- copies of letters
13 that I sent, things of that sort.

14 Q Did you bring that with you?

15 A I did.

16 Q I'll talk about that in a minute. When you
17 arrived in Valdez, could you tell us what you did
18 to help Mr. Linton out to further the criminal
19 investigation?

20 A Because Mr. Linton didn't leave immediately,
21 my role was very limited in terms of the
22 investigation that was going on with the State
23 Troopers.

24 They had already outlined witnesses who they
25 were going to interview and things that they were

1 going to do. Because he decided to stay in
2 Valdez, and was doing that, my attention
3 primarily was focused on Alyeska and their role
4 in the clean-up operation. And that was my
5 primary role.

6 Q Did you have access to the trooper reports, or
7 the information that the troopers were uncovering
8 during that first two weeks, let's say, of the
9 investigation?

10 A I, to this day, have not read any of the
11 trooper reports. They had not been written at
12 that point in time. The interviews were, I
13 think, being transcribed and were being checked
14 by the troopers for accuracy, but they were not
15 available. So I have not seen any of that
16 material.

17 Q The troopers were reporting to you, though,
18 what they were doing, weren't they? For example,
19 you were aware that Mr. McGhee had gone out to
20 the ship -- Trooper McGhee had gone out to the
21 ship to interview the crew members?

22 A I was aware that that had occurred. The
23 troopers were not reporting to me. They,
24 essentially, were reporting to Mr. Linton.

25 Q You were aware that they were pursuing or

1 attempting to pursue evidence relating to alcohol
2 use?

3 A That's correct.

4 Q And in a general way you were aware of the
5 progress of the investigation; the direction it
6 was heading, and so on?

7 A Yes, that's true.

8 Q Whether through Mr. Linton or through other
9 people, including the troopers, during your time
10 in Valdez, specifics of the investigation came to
11 your attention, such as the particular witness
12 had been interviewed and said such and such. I'm
13 not asking you to recall as you sit here today,
14 what those specifics were. But did that occur,
15 that you received specific pieces of information?

16 A I received some information. At the point in
17 time when Mr. Linton left -- and I was the only
18 attorney in Valdez, the troopers were also in the
19 process of leaving. It was coming up on a
20 weekend and they wanted to go. I talked to the
21 troopers just in terms of making sure that they
22 had completed what they had already outlined what
23 they were going to do. In other words, that they
24 said they were going to do. That they were in
25 the process of writing the reports. That the

1 tapes had been sent to wherever they send them to
2 to get them transcribed.

3 So my primary function at that point, because
4 I knew that they were on their way out of town,
5 was to make sure that they had at least done the
6 work that they were supposed to do. And if that
7 wasn't going to be the case, I was going to
8 recommend that additional investigators be sent.
9 But...

10 Q And in terms of the work that they were
11 supposed to do, part of that was interviewing
12 certain people?

13 A That's correct.

14 Q And so you were aware of what people the
15 Department of Law thought should be interviewed,
16 and whether or not the troopers had interviewed
17 them?

18 A I wasn't aware of the specific names of those
19 individuals until sometime later. I was aware
20 that they had identified certain taxicab drivers
21 and people in bars, and security guards at
22 Alyeska.

23 And in those general terms, the troopers
24 indicated to me that they had completed on the
25 interviews of those groups of people.

1 Q Going back to the filing of the Information
2 for a minute. You got it in front of you. I
3 think it was filed the 31st, is that the date?

4 A I think so, yes. That's what it says.

5 Q So by that time you, Mr. Weeks and Mr. Linton
6 were aware of the immunity issue?

7 A Yes, that's correct.

8 Q And you were aware that the statute appeared
9 to provide use derivative use immunity for
10 Captain Hazelwood?

11 A I personally was aware that that was an issue.
12 That use derivative use immunity was an issue
13 that needed to be considered. Frankly, at that
14 time, and to this very day, I do not know who
15 specifically made a report about this. Whether
16 it was Captain Hazelwood or whether it was
17 somebody at his direction, or who that report
18 went to. Whether it was to the Coast Guard or to
19 somebody else.

20 So I knew that was an issue that needed to be
21 considered, but I did not know specifically what
22 statements, if any, it applied to.

23 Q You didn't know that when the ship went
24 aground Captain Hazelwood had radioed the Coast
25 Guard?

1 A I did not know -- I did not know that, that's
2 correct.

3 Q And you didn't read that in the papers?

4 A I do not recall reading that in the papers.

5 Q You didn't hear it on the radio or see it on
6 TV?

7 A No.

8 Q That wasn't discussed by Mr. Linton?

9 A I don't recall discussing that with Mr.
10 Linton. There was -- at the time there was a
11 question whether calls had been made -- I guess I
12 knew at some point a call had been made to the
13 Coast Guard. There were questions raised at that
14 time whether calls had been made first to
15 somebody else -- to Exxon or Exxon Shipping or
16 Alyeska. And it was never clear in my mind,
17 specifically, where the first call went.

18 Q Now, you were there in Valdez in part to
19 investigate the response of Alyeska, is that
20 correct?

21 A That's correct.

22 Q And have you continued investigating in that
23 area, up until the present, or were you taken off
24 that assignment?

25 A It was determined while I was there in Valdez

1 that we didn't really know enough about Alyeska's
2 role to be interviewing witnesses, so we needed
3 to collect more documents before we actually
4 interviewed witnesses. So once a few interviews
5 were done we decided to step back, collect some
6 documents and go forward after that.

7 Shortly thereafter I left on a fairly long
8 vacation that had been planned for a long period
9 of time. When I got back a decision had been
10 made not to pursue criminal charges against
11 Alyeska.

12 Q And so initially when you were in Valdez
13 interviewing witnesses about Alyeska's response
14 to the spill, and looking into possibly
15 criminally charging Alyeska for poor response,
16 you didn't look into how this all started? In
17 other words, who filed the first report?

18 A For purposes of deciding whether Alyeska's
19 response was appropriate, it really didn't matter
20 who made the report to the Coast Guard. What
21 mattered was when Alyeska was aware of this and
22 when they found out about it, what they knew and
23 how they responded.

24 Q You'd also want to know when the first report
25 to the Coast Guard was so you could evaluate how

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

long it took for the Coast Guard to notify Alyeska, because that would have been one of the underlying factors which would come into play in Alyeska's response?

A Perhaps eventually. But at that point in time our focus was on Alyeska.

Q Did you ever research the issue of the scope of immunity provided by USC 1321, the Clean Water Act?

A The research -- I did a limited amount of research. And specifically I reviewed some materials that had been provided to me by federal authorities relating to two cases that raised the issue, but really didn't decide it.

One was a case, I believe, that had been appealed to the Ninth Circuit involving the Pennwalt Corporation (ph). I think it may have ultimately settled before reaching the issue. The other was a case involving a spill back east involving Ashland Oil. I reviewed some material in that case as well.

Q What do you mean by "material"?

A I reviewed briefs -- briefs that had been written by federal officials and also the briefs written by the defendants.

1 Q All right. And did you review that before the
2 Information was filed or after?

3 A I am almost certain that it would have been
4 afterwards.

5 Q How about before the information was filed,
6 did you look into the issue of the scope of
7 immunity provided?

8 A I didn't do any -- I may have gone down to the
9 law library and looked up the Clean Water Act and
10 read specifically what it said. The extent of my
11 research was talking to the same former federal
12 prosecutor who advised Mike Frank about the issue
13 in the first place. That was someone in Los
14 Angeles. I called her and spoke briefly with her
15 about the issue.

16 Q And who is that?

17 A Her name is Janet Goldstein.

18 Q And in talking with her, in reading the
19 statute -- did you read the annotations to the
20 statute or look through them at all?

21 A I honestly don't recall

22 Q In talking to the former prosecutor, was that
23 before or after the Information was filed?

24 A I believe that was before.

25 Q And reading the statute was before?

1 A Yes.

2 Q Anything else you did before?

3 A Not that I recall.

4 Q Were you aware of Mr. Weeks, or Mr. Linton, or
5 Ms. Otto doing any research on that subject,
6 prior to the Information?

7 A Not specifically.

8 Q Did you become aware through your research and
9 conversation with the former prosecutor, that it
10 was significant who reported the spill in
11 determining whether there was immunity or not?

12 A Well, we knew that this was an issue that, at
13 some point in time, was going to have to be
14 addressed and resolved. And certainly the person
15 who reports the spill has some immunity under the
16 clean water act. So that would have been
17 important.

18 Q I think from our standpoint there were a
19 number of facts that we needed to determine.
20 Among them may have been who reported the spill,
21 but, also, what evidence was derived from that
22 and what flowed from that, and was there -- would
23 there have been another source for the
24 information.

25 Most of the briefs that I read on the subject

1 did focus a great deal of attention on inevitable
2 discovery, would there have been another source.
3 So before we could really address the issue,
4 there were a lot of things we had to know, and we
5 simply didn't know them at that initial point in
6 time.

7 Q If you understood that Captain Hazelwood might
8 have immunity, and you understood that you didn't
9 know the scope of that immunity on March 31st,
10 why was the Information filed then?

11 A The Information -- Mr. Linton is probably in
12 the best position to answer that specific question
13 about why the information was filed. I think
14 that it was a situation where we have been
15 assured by Exxon Shipping that Captain Hazelwood
16 would not be leaving the state of Alaska. We
17 were concerned that if he did leave that it would
18 delay any proceedings.

19 When it -- when I believe he was fired, Exxon
20 Shipping lost any control over him. And we had
21 information that he was about to leave the state.
22 We thought that that justified filing an
23 information and seeking an arrest warrant and
24 trying to arrest him at that point in time.

25 Our information was incorrect in the sense

1 that I believe he already left the state by the
2 time we had information that he was going to
3 leave the state. So I think that's -- that is my
4 understanding of a specific timing of the
5 information.

6 Q Was it discussed amongst yourself, Mr. Weeks
7 and Mr. Linton, that you might not be able to
8 make a case against Captain Hazelwood because of
9 this immunity issue?

10 A Well, as I indicated, we knew that there was
11 an issue that was going to have to be resolved.
12 We expected that at some point in time it would
13 be subject to legal motions and that it would be
14 decided by a court.

15 Q You were not going to take -- the Department
16 of Law was not going to take any responsibility
17 for deciding whether he had immunity or not,
18 before charging him with a criminal act?

19 (2340)

20 A Well, I think we did take on that
21 responsibility in the way I described, prior to,
22 certainly, proceeding with the grand jury.

23 Q Right. Before the grand jury you did take that
24 on. But I'm talking about the Information still.

25 A That's basically correct.

1 Q Now, was there any procedure erected to keep
2 you from reading news accounts, or hearing news
3 accounts related to the spill, after April 12?

4 A Any specific procedure, no. I think we all
5 discussed that it would not -- it probably would
6 not be a good idea. I mean I, I know, personally
7 came to that conclusion when the NTSB hearings
8 were going to be held. It became difficult at
9 that point to avoid them, but, you know, I
10 switched channels on TV when they came on.
11 Turned off the radio and specifically did not --I
12 think it was my impression that I was aware of
13 certain information that may fall within the
14 provisions of the Clean Water Act, immunity. And
15 that I didn't want to be further tainted by
16 anything that might have gone on at the NTSB.

17 Q Why not.

18 A Why not? Because I think we knew that at some
19 point in time we would be going through this kind
20 of proceeding -- some sort of taint proceeding.
21 And that it would be a lot easier, the more
22 limited our knowledge was.

23 Q Did Mr. Linton screen all information related
24 to this case before you saw it, after April 12?

25 A Yes, with perhaps one exception, he screened

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

all the material.

Q Okay. So, for instance, Exxon wouldn't have sent you any documents that Mr. Linton didn't see first?

A That was the one exception.

Q All right. In terms of police reports, memos, expert reports, that sort of thing. You wouldn't have seen anything unless he screened it?

A That's true. In deciding who were going to be the witnesses at the grand jury for the damages aspect, I think Joe LeBeau sent me a memo describing who those people were and what kinds of things they could say. I think that came directly to me. But other things done by other investigators all went to Mr. Linton.

Q You said that Mr. Weeks asked you to find witnesses who could testify as to damages before the grand jury. Why did he assign that to you? That seems like an unusual thing for someone in your position to be doing?

A There were a lot of things that we were doing at the time -- a lot of tasks that I had. This was a case, from our standpoint, that was fairly important. Larry Weeks asked me to find some witnesses who could testify to X, Y and Z. I was

1 willing to do it.

2 Q Other than talk to Mr. LeBeau, did you do
3 anything to pursue damage witnesses?

4 A Once Mr. LeBeau had identified the witnesses
5 and talked with them, I believe I followed that
6 up with a phone call of my own to each of them,
7 just to confirm the kinds of things that they
8 could say, and their availability for the grand
9 jury.

10 Q Have you imposed upon yourself a screen
11 regarding conversations with people about the oil
12 spill or this litigation? In other words, if
13 you're at a party and someone starts talking
14 about the oil spill, do you walk away or tell
15 them you can't talk about it?

16 A I believe that I have probably spoken to
17 people at cocktail parties about the oil spill.

18 MR. FRIEDMAN: Your Honor, I wonder if we
19 could take a short break so that I could look through
20 the notes that Mr. Guaneli kept of his activity?

21 THE COURT: Okay. How much time would you
22 need?

23 MR. FRIEDMAN: Five minutes.

24 THE COURT: Okay. We'll stand in recess.

25 THE CLERK: Please rise. Court stands in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

recess.

(Off record - 10:41 a.m.)

(On record - 11:05 a.m.)

THE COURT: Are you ready to proceed now?

MR. FRIEDMAN: Your Honor, I thought what I'd do is go through with Mr. Guaneli some of the pages in here. If we decide we need to mark any of them as exhibits I will mark them at that point. We could copy them later and introduce them.

MR. LINTON: Agreed.

Q (Mr. Guaneli by Mr. Friedman:) Mr. Guaneli, I take it that this first page you have before you is basically an outline of the time that you spent on the case during the first -- I don't know what -- first week or two?

A That's correct.

Q Am I interpreting that right?

A Right.

Q And among other things, this indicates that you met with -- or, had a telephone call with Trooper McGhee on the 11th of April. Am I reading that right?

A Yes.

MR. FRIEDMAN: Your Honor, I think what I would like to do is mark...

1 Q The second page continues that same basic
2 outline of time you spent doing different things
3 on this case?

4 A Right.

5 MR. FRIEDMAN: I think what I would like to do
6 is just mark those first two pages to get just an
7 overview of those first two weeks -- first three pages,
8 I'm sorry.

9 THE COURT: When you say "mark", Mr. Friedman,
10 are you referring to an exhibit sticker?

11 MR. FRIEDMAN: That might be the best way to
12 do it. Would it be acceptable to you to get a copy
13 back of this rather than the original?

14 A That's fine.

15 (Pause)

16 MR. FRIEDMAN: Your Honor, I move the
17 admission of G.

18 MR. LINTON: No objection.

19 THE COURT: Okay. We'll make a copy and give
20 you a copy back.

21 EXHIBIT G ADMITTED

22 Q (Mr. Guaneli by Mr. Friedman:) The first
23 thing I want to draw your attention to is a memo
24 with "Confidential Attorney/Client Work Product"
25 marked at the top. "Procedures for protecting

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

integrity of prosecution evidence." Do you know who drafted that?

A I believe that this was drafted by Laurie Otto in our office.

Q The next memo indicates that Mr. Weeks wrote a memo to Attorney General Doug Baily. Some of it I don't want to ask you about, but there's a paragraph here that says, "We have agreed to do an immunity taint investigation with the feds, trying to determine what happened, who reported, whether they would have reported in other circumstances, etc., with respect to the Coast Guard."

In fact, did such an investigation take place in cooperation with the federal government?

A I don't believe that it did, not in the sense of a joint investigation. They may have provided us with portions of their investigation -- provided Mr. Linton with that. But I don't recall us doing anything in terms of the joint investigation.

Q Okay. The next page of your notes on yellow paper says "Linton's list", and then it has a list of witnesses. Could you tell me what caused you to write these notes? What it represents?

1 A This represents notes I took during a -- I
2 believe it was a telephone conversation between
3 myself, Mr. Weeks, and Mr. Linton.

4 Q And what does the "Linton's list" refer to?

5 A This was a list of potential witnesses for the
6 grand jury who Mr. Linton had decided we could
7 probably call at the grand jury.

8 Q Okay. So Mr. Linton is telling you and Mr.
9 Weeks that?

10 A That's correct.

11 Q All right. We don't have a date on that, do
12 we?

13 A There is not a date on this particular sheet,
14 no.

15 Q The next sheet is dated -- it's another page
16 of your notes -- 4/5/89, is that when you would
17 have written this page?

18 A I would imagine.

19 Q Could you tell us what this is?

20 A This is a page which lists potential charges
21 that might have been brought against a variety of
22 people and organizations. Mr. Hazelwood, Mr.
23 Cousins, Alyeska and Exxon.

24 Q All right. And was this prepared by you?

25 A That's certainly my handwriting. Yes, it was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

prepared by me.

Q Do you recall, did you sit in your office and just kind of sketch this out. Was it in the course of a conference, or how did it come into existence?

A I don't recall exactly how it came into existence.

Q Okay. This indicates that there are crew interviews regarding DWI and reckless endangerment by McGhee relating to Captain Hazelwood, is that correct?

A Well, it certainly indicates that McGhee had something to do with crew interviews. Whether that meant he was assigned to do them, or is completing them, or has gotten them done, I don't recall at this point. But his name is associated with that.

Q And Burke and Grimes -- Troopers Burke and Grimes' names are associated with DWI interviews, or interviews related to DWI's.

A Certainly an investigation relating to DWI, correct.

Q And at least at 4/5/89 you were aware then that the troopers were pursuing interviews with the crew regarding these two issues, reckless

1 endangerment and DWI?

2 A Yes.

3 (3040)

4 Q And would it be fair to say that this page
5 represents some of the initial planning you
6 engaged in with regard -- planning or
7 strategizing, perhaps is a better word, with
8 regard to what charges might exist, what
9 defendants might exist, and what action the state
10 would take?

11 A Certainly with respect to potential
12 defendants, potential charges and which of the
13 investigators were assigned to various tasks.

14 Q And, also, then at the bottom there is some --
15 it says eliminate, and then there is a colon, and
16 then the first thing listed is "equipment,
17 navigational, eliminate steering, other crew
18 error." Are those things that you thought the
19 future investigation should try to eliminate as
20 possible defenses?

21 A That's correct.

22 MR. FRIEDMAN: Your Honor, I would ask to have
23 this marked and admitted, Exhibit H.

24 MR. LINTON: There's no objection to H, Your
25 Honor.

EXHIBIT H ADMITTED

1
2 Q On your next page of notes there is
3 indications of telephone numbers of Captains
4 Greiner and Beevers. Did you have contact with
5 them yourself?

6 A Yes, I did. When I first got to Valdez, I
7 believe I met them, probably on April 5th. That
8 was the first full day I was in Valdez, and I met
9 them, and I think they left shortly thereafter.

10 Q Okay. And what did you talk to them about?

11 A I met them and we looked -- they pulled out a
12 map. I think it may be this chart that's to my
13 left right here. They showed me some of the
14 things that they believe happened when the boat
15 went out of the -- when the vessel went out of
16 the shipping lanes and on to Bligh Reef. And
17 then I believe our meeting was cut short because
18 Bob and I were off doing something else. I
19 didn't speak with them very long.

20 Q Did you talk to -- what was your understanding
21 as to what role Captains Greiner and Beevers were
22 to play in the investigation, at this point in
23 time, 4/5/89?

24 A They were providing us with expert help on how
25 vessels of this sort operate, in terms of

1 navigation. I don't think any of us had much
2 experience in those areas, and they were experts.

3 Q Did you discuss with them the possibility that
4 alcohol may have played some role in the
5 accident?

6 A No.

7 Q There is a fax transmittal which consists of
8 five pages, apparently. Could you tell me what
9 this is?

10 A Well, I can't exactly. On the third page -- I
11 guess the second page of the actual transmittal,
12 it indicates on the top of it that it's a
13 memorandum from Ron -- who I believe to be Ron
14 Lorensen, the head of the civil division, from MB
15 and MF, which I -- and I believe that is Michelle
16 Brown and Mike Frank.

17 Q A memo from Ron for...

18 A A memo to Ron from them. So I believe that --
19 and I believe that both of those individuals who
20 are assistant attorney generals stationed in
21 Anchorage were in Valdez at the time, and this
22 looks like something that was sent by them to
23 him.

24 Q Okay. Now, this memo indicates that you and
25 Mr. Linton are going to be handling Hazelwood as

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a defendant, is that correct?

A Well, it has our names listed after the name "Hazelwood". And I think all that reflects is that we were in Valdez on the scene and involved in the investigation.

Q And it says right above here, "cooperation with Department of Justice, NTSB, who is coordinating who will handle." And then it says "defendants, Hazelwood, Linton, Guaneli", is that correct?

A That's what it says, yes.

(Pause)

Q On 4/6/89 there's a note, "Look into preserving piece of metal cut off boat hull."

A Right.

Q Is that something you were going to look into?

A I believe it was.

Q At whose request?

A I believe it was Larry Weeks' request; maybe even Doug Baily's request.

Q Could you tell me what this next page refers to. Not the first entry but the second one, 4/7/89, 8:00, "Meeting with McGhee." I take it that means you met with Trooper McGhee, Alexander and Stockard?

1 A Right. That's correct. Well, I met with
2 Trooper McGhee, and I believe I asked him for an
3 update on how the troopers under his supervision
4 were proceeding with their tasks. And I believe
5 he told me that Trooper Alexander and Stockard
6 were working with documents and evidence and
7 organizing those -- putting them in binders, and
8 with tabs on it, and those sorts of things.

9 That Gale Savage, from our office, and Julie
10 Grimes were doing the Alyeska interviews. And
11 that Trooper Burke was still working on the
12 alcohol aspects.

13 Q You mean on the alcohol investigation?

14 A Yes, that's right.

15 Q What does this first entry on the next page
16 indicate? I'm sorry, the very first meeting
17 with...

18 A On April 10, 9:00 a.m., it says, "Meeting with
19 AGO." And that stands for Attorney General's
20 Office. "Etc."

21 Q "Etc." Do you know who that meeting was with?

22 A If I could check some of my other notes I
23 might be able to...

24 Q Why don't I mark that so we don't lose our
25 place.

1 A Actually, if you could give me the first
2 exhibit that you marked, that might...

3 Q Sure.

4 A I believe my other notes show that that was a
5 meeting with Larry Weeks, Doug Baily and others.
6 I believe Ron Lorensen, head of the Civil
7 Division, was there. There may have been other
8 Civil Division attorneys, Doug Mertz, I seem to
9 recall was there at one time as well.

10 Q Any other criminal attorneys?

11 A I don't recall if there were any other
12 criminal attorneys at that time.

13 Q Other than yourself and Mr. Weeks?

14 A That's correct.

15 Q And then what does the next entry say?

16 A It says, "Steve White: check with someone
17 named Bill Bixby for bartenders, etc., with good
18 information."

19 Q Okay. Now, is that relating to this meeting
20 still? Is this something that came out of the
21 meeting?

22 A It may have been, or it may have been a
23 separate telephone call that I received from
24 Steve White saying that someone had told him that
25 a certain individual may have information.

1 Q Okay. The next entry says, "Need memo on
2 immunity." I can't read the next word.

3 A Derivation.

4 Q And then "LRW", is that Larry Weeks?

5 A Yes.

6 Q "To do draft."

7 A Yes.

8 Q So Mr. Weeks, as of 4/10/89, as going to do a
9 draft -- research memo on the immunity issue?

10 A Well, I don't know whether it was going to be
11 a memorandum on the law surrounding immunity, or
12 whether it was going to be a draft of the
13 procedures that we ought to follow to address the
14 question.

15 Q Okay. This next 4/11/89, telephone call to
16 McGhee. Is, then, all of the other information
17 what he conveyed to you during that telephone
18 call?

19 A I believe that's true.

20 Q So he's updating you on efforts to find pilot
21 Murphy on the blood alcohol tests and on efforts
22 to find bartenders or people who might have
23 information about alcohol use?

24 A Well, as it indicates, he's telling me that
25 notebooks that they were preparing have all been

1 copied and put together. Interviews with Alyeska
2 officials had been partially done. That, yeah,
3 they were still trying to find Captain Murphy.
4 Something about the blood test.

5 I think I may have asked him who has the test
6 results? And it looks like he informed me that
7 the Coast Guard or the NTSB had them. And he
8 informed me that the interviews of all the
9 bartenders had been completed. And that Paul
10 Burke -- Trooper Burke was going to follow up on
11 the lead that I got from Steve White, that Mr.
12 Bixby had some information for us.

13 Q The next thing is a typed memo which indicates
14 a meeting that was held on 4/10/89, is that
15 correct?

16 A That's correct.

17 Q And do you know who was present at that
18 meeting?

19 A I believe -- this may very well have been the
20 same meeting that is referred to on the previous
21 yellow page. The handwritten notes on the yellow
22 pages are my somewhat sketchy notes. The typed
23 notes are Larry Week's.

24 Q So this typed note is a note of Larry Weeks
25 indicating what transpired at this meeting on

1 4/10/89?

2 A Well, at least his notes about -- it may have
3 been things that transpired; things that needed
4 to be done. That is his handwriting as well.

5 Q Okay.

6 MR. FRIEDMAN: Your Honor, I would ask for
7 this to be marked as an exhibit.

8 MR. LINTON: No objection.

9 THE COURT: I is admitted.

10 EXHIBIT I ADMITTED

11 Q (Mr. Guaneli by Mr. Friedman:) Now, on 4/14
12 there is an indication that Paul Burke -- Trooper
13 Paul Burke called you regarding information on
14 the autopilot, whether it can be overridden and
15 things of that kind?

16 A That's correct. He was giving me information
17 about the instrumentation on the vessel.

18 Q And...

19 A I believe the reason was that...

20 Q That's all right, we don't need to know the
21 reason. I'm just trying to go through what
22 actually happened in the nature of your
23 involvement.

24 A Sure.

25 Q The next thing indicates that Mr. LeBeau is

1 reporting to you about a video he did on the
2 damage to the beach and some other things, and,
3 including that there is a notebook on the Exxon
4 Valdez that he asked for but they wouldn't give
5 him.

6 Q That's correct. He had been out to the Exxon
7 Valdez and had seen a notebook on the bridge, and
8 had inquired about it, and it had been whisked
9 away. And he thought there might be information
10 in it. I think he specifically asked me if we
11 should get a search warrant for it. And I
12 believe that I then contacted John Clough, who is
13 an attorney for Exxon, to try to get whatever it
14 was that Joe LeBeau had seen.

15 Q The next page is a "To Do" list. Is this your
16 To Do list?

17 A I believe that this is something that Mr.
18 Weeks typed up, and there are -- I made specific
19 notations on it of the things I was asked to do.
20 But this is something that he prepared.

21 Q And the notations regarding what you were
22 asked to do is indicated in the margin by an
23 arrow or triangle?

24 A That's correct.

25 Q And you were asked to do these things by him?

1 A Yes.

2 Q By Mr. Weeks?

3 A Yes.

4 MR. FRIEDMAN: Your Honor, this is two, four,
5 five pages which I'd asked to have marked and admitted.

6 THE COURT: J will be admitted.

7 EXHIBIT J ADMITTED

8 Q So one of the things you were asked to do is
9 to find the log book LeBeau was talking about?

10 A That's correct.

11 Q Another thing was to reinterview the crew
12 members who did not testify at grand jury,
13 especially Stewart and Haver?

14 A That's what it says.

15 Q So did you yourself conduct those interviews?

16 A No. I was not to interview them. I was to
17 find out when they would be back in town. I was
18 supposed to get their schedules from Exxon, and I
19 did that by calling -- at least, I don't know
20 whether as to those particular individuals, but
21 as to some others.

22 I called Bob Bundy, who is an attorney in
23 Anchorage representing Exxon, and he was able to
24 give me some limited information about when the
25 crew members would be back in town.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Tape: C-3518)

(000)

Q The next page is entitled proposed comments to the grand jury. Who drafted that?

A I did.

Q What was the purpose of that? Let me get that marked while we're talking about it.

What was the purpose behind your drafting this document?

A At that point in time Mary Anne Henry, I believe, wanted to ask the grand jury to indict Mr. Cousins as well. I wanted to propose an indictment for the grand jury's consideration. And that was vetoed by Larry Weeks. And Mary Anne did not want to instruct the grand jury to that effect, so Mr. McConnell volunteered to instruct the grand jury, and wanted a suggestion from us as to the kinds of things that could be said to the grand jury. Again, asking them not to return an indictment at that point.

Q So this Exhibit K is what you drafted to carry out Mr. Weeks' strategy or policy as to what the grand jury should be told at the end of its hearing of evidence?

A Yes, that's correct.

1 MR. FRIEDMAN: Your Honor, I would ask for the
2 admission of Exhibit K.

3 MR. LINTON: No objection.

4 THE COURT: Exhibit K is admitted.

5 EXHIBIT K ADMITTED

6 Q What did Mr. Weeks say about why he did not
7 want the grand jury to consider indicting Mr.
8 Cousins at this time?

9 A I think that there were a couple of different
10 reasons. I believe his basic position was that
11 the -- at that point in time the prime target of
12 our investigation was Captain Hazelwood, and that
13 he was the person who was -- in light of his
14 position, he was the person who wa responsible;
15 he was the person who was the most culpable. And
16 that it did not seem appropriate to start
17 charging one or more crew members. If there were
18 going to be additional charges it should be of
19 corporate defendants at that point. And I think
20 the phrase to use was, rather than going down the
21 line, let's go up the line.

22 Q Did Mr. Weeks...

23 A There were other reasons involving potential
24 problems with Bruton. I think our feeling was,
25 Mr. Cousins testimony might very well be

1 necessary, and if he was charged, in order for us
2 to obtain his testimony, it would be necessary to
3 immunize him. And it seemed an unnecessary step
4 to go through, to charge him, if we're just going
5 to have to immunize him. Those were the basic
6 reasons that we discussed.

7 Q Did Mr. Weeks indicate why he thought Captain
8 Hazelwood was the most culpable?

9 A I think that it was our belief that he was in
10 charge. He was responsible. And he had put the
11 ship on the course that ultimately caused it to
12 go on the rocks.

13 Q Was Mr. Weeks, to your knowledge, aware of the
14 evidence that indicated Captain Hazelwood may
15 have been drinking the day before, or the evening
16 before the incident?

17 A Yeah, I believe he was aware of that, yes.

18 Q Could you tell me what this next page is?

19 A Well, it's entitled "Proposed Instruction to
20 the Grand Jury" regarding multiple charges. And
21 that's all I could tell you. I didn't draft it,
22 and, frankly, I'm not sure why it's in here.
23 It's probably just something that came into my
24 possession and I stuck it in the file.

25 Q Could you tell me what the next page is?

1 A This is an informal memorandum that I wrote to
2 Jim Stogsdill, sending him a video tape of the
3 underwater survey of the vessel.

4 Q When was this survey done?

5 A It was done at various times. What was
6 delivered to me may be -- this was, I think,
7 another exception of things that were delivered
8 to me instead of Mr. Linton by the Exxon
9 attorneys.

10 There were a number of video tapes taken of
11 underwater -- an underwater survey at the bottom
12 of a boat. They were done at various points in
13 time. Whoever did the video tapes had taken a
14 number of highlights from all of these -- I think
15 there were many, many hours of tapes, I believe.
16 This was a compilation of some of the highlights.

17 It was delivered to me -- I'm not sure exactly
18 why. I think I had been putting pressure on them
19 to get me the tapes. There were problems getting
20 them to Mr. Linton, and so they delivered it to
21 me, and I sent it to Jim Stogsdill.

22 Q Did you know that the tape had begun -- the
23 survey had begun on the 24th of March?

24 A I think that I knew that an underwater survey
25 had been done at a fairly early point in time

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

after the grounding. I had been told that the early video tapes were not very good quality because of the location of the boat on the rock. They couldn't see all of the underneath, because the boat was still on the rocks, so I was told they weren't very good, but I was told that it had been done at a fairly early point in time.

Q But none of that footage is included in the tape you sent Mr. Stogsdill?

A I honestly don't know.

Q At any rate, you sent this directly to Mr. Stogsdill, rather than through Mr. Linton, is that correct?

A It appears that I did, yes.

Q Okay. And you told him that after he had received it, to give you a call and the two of you, and Bob Linton, and Captain Beevers -- well, actually, "Give us a call after the two of you...", meaning Bob Linton and Stogsdill, "...and Captain Beevers have reviewed it. So that was your intent that the three of them would review it?

A It was certainly my intent that it be reviewed. I wasn't -- I don't know that I was specifically giving anybody any directions as to

1 who should review it. But I...

2 Q Let's see. What you wrote was, "Please let
3 Bob Linton know that you have received all of
4 this, and give us a call after the two of you and
5 Captain Beevers have reviewed it." Is that what
6 you told him?

7 A That's what it says, yes.

8 Q "We could then discuss whether to interview a
9 witness who was involved in making and editing
10 the tape, and whether it would be used as
11 evidence in some way." Is that what you...

12 A Right.

13 Q There is references on this next page in front
14 of you regarding "Blades". Am I reading that
15 right?

16 A Yes, you are. This...

17 Q Blades is committed to trying to take action
18 against Murphy. Who is Blades [Blais]?

19 A I believe that Blades [Blais] was someone with
20 the Coast Guard -- some enforcement officer with
21 the Coast Guard. Probably with the
22 responsibility for licensing -- licensing pilots,
23 and things of that sort. And we got information
24 that he was considering whether to take some kind
25 of action against the pilot, Captain Murphy.

1 Q Okay.

2 A This is not my handwriting, this is somebody
3 else's.

4 Q Do you know whose it is?

5 A I think it's probably Laurie Otto's, but I
6 can't be sure. It wasn't Blades, it was Blais.
7 Lieutenant Commander Blais.

8 Q Could you tell us what the next page is? Or,
9 the next three pages?

10 A This is a memorandum that I wrote to Mary Anne
11 Henry describing to her what witnesses would be
12 available to the grand jury to discuss the
13 question of damages. This was done after I had
14 spoken with Joe LeBeau and all of the individuals
15 who I listed here.

16 Okay. And it was just informing her of who
17 they were, what they would say, where they could
18 be reached. And I left it up to her and the
19 paralegal who was working with her to make the
20 final arrangements as to when they would testify
21 in front of the grand jury.

22 Q So that was Exhibit L you and I were just
23 talking about?

24 A Right.

25 MR. FRIEDMAN: I'd move for admission of

1 Exhibit L, Your Honor.

2 MR. LINTON: No objection.

3 THE COURT: Admitted.

4 EXHIBIT L ADMITTED

5 Q (Mr. Guaneli by Mr. Friedman:) What's this
6 next document?

7 A This is something that I sent to Mary Anne
8 Henry. A proposed set of introductory comments
9 that she could read or use in some way, informing
10 the grand jury what they were going to be -- what
11 case they were going to be considering, and to
12 advise them that they ought not to be swayed or
13 influenced in any way by press reports of the oil
14 spill.

15 She had asked -- she asked that we give some
16 thought to some introductory comments that she
17 could make, and I typed that up and sent it to
18 her.

19 Q Well, Ms. Henry has been a prosecutor for -- I
20 don't know -- what she testified to, over 10
21 years, at any rate. And has worked on some high
22 profile cases involving all sorts of media
23 coverage. Why is she asking you for guidance on
24 how to instruct the grand jury?

25 A I think that Mary Anne Henry felt that she had

1 a lot to do to get up to speed in this case, and
2 that that was one less thing that she would have
3 to think about, if I could provide her with
4 something fairly quickly that she could use in
5 some way, or maybe even read to the grand jury.
6 It was just that much less work that she would
7 have to do, and I offered to...

8 Q Didn't you have a lot of work to do?

9 A Like most attorneys, I've got more than a full
10 time job.

11 Q Correct me if I'm wrong, but this seems like
12 fairly basic cautionary language that one would
13 read in virtually any high publicity case. Is
14 there some reason why, other than her work load
15 that you can think of, why she needed your
16 guidance on how to do this?

17 A Not really. She may have needed some guidance
18 as to how to instruct the grand jury to disregard
19 press reports that we expected they probably all
20 would have read. And she asked me to do
21 something and I did it.

22 Q That's exhibit M we've been talking about?

23 A Right.

24 MR. FRIEDMAN: Your Honor, I move the
25 admission of Exhibit M.

1 MR. LINTON: No objection.

2 THE COURT: Admitted.

3 EXHIBIT M ADMITTED

4 Q (Mr. Guaneli by Mr. Friedman:) The next page
5 is a page of your notes relating generally to
6 investigations you did regarding how the state
7 could go about moving the property of another in
8 excess of \$100,000.00 has been damaged. Is that
9 a fair overview of that page of notes?

10 A This was, I believe, my notes at the time that
11 I was trying to find witnesses who would testify
12 to the amount of damages, and it lists the number
13 of people who I had gotten their names, either
14 from Joe LeBeau or the state Directory of
15 Officials, as people who might be in a position
16 to testify as to those things. And we tried
17 reaching all of those people.

18 Q The next page of notes has something that says
19 "on bridge crew afterwards". What does that
20 refer to?

21 A I honestly don't know what that refers to. It
22 may very well refer to the two different -- or,
23 actually three different counts that we were
24 proposing. One involving action before the boat
25 ran aground and one involving action afterwards.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

But I can't be sure. They are fairly cryptic notes.

Q How about that next section, invitation to appear suggest exculpatory evidence. Am I reading that right?

A Yes. That was just an idea. I can't remember who suggested it. It may very well could have been me. That we actually ask Captain Hazelwood to appear in front of the grand jury, if he wanted to give testimony, or to send his attorneys a letter asking them for suggestions as to exculpatory evidence that they thought ought to be presented.

I think the decision we came to was that that wasn't necessary. That if they wanted us to present exculpatory evidence they would let us know.

Q Well, actually, you've got a legal obligation to present exculpatory evidence, don't you?

A Right. But if there was...

Q Anything else?

A ...any other things, that's correct.

Q And was the issue of exculpatory evidence ever discussed with -- or the possible existence of exculpatory evidence ever discussed with Mary

1 Anne Henry, Bob Linton or Mr. Weeks, that you
2 know of?

3 A I don't recall us discussing -- well, I think
4 in terms of the witnesses who would be before the
5 grand jury, I think we discussed in general
6 terms. We obviously knew we had an obligation to
7 present exculpatory evidence. And in listing the
8 witnesses who might come before the grand jury, I
9 think it was Mr. Linton's belief that, with
10 respect to a couple of them, the only information
11 that they could provide would be exculpatory
12 evidence.

13 In other words, I believe with respect to Fox
14 and Delozier, that we were not going to present
15 evidence of their initial observations, because
16 that fell within the time frame that we were
17 going to not present to the grand jury. However,
18 if they had other information that might be
19 exculpatory, or if they were being used to admit
20 documents, that we would use them.

21 So to that extent we obviously know we have an
22 obligation. I don't specifically recall
23 discussing this piece of evidence as exculpatory,
24 and this piece is inculpatory. It was something
25 that -- that's where we did rely on Mary Anne

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Henry's judgment and experience as to what she had and what she felt she had an obligation to present.

Q But what all she had was what Mr. Linton gave her?

(704)

A True.

Q And if there was something exculpatory in what Mr. Linton screened out, Ms. Henry wouldn't know about it, and therefore wouldn't know that she could present it to the grand jury, is that correct?

A If that's the case, I suppose that's correct, yes.

Q Could you tell me what this next page of notes refer to?

A This was, I think -- I don't -- I can't recall whether that was notes taken during a meeting or a telephone conversation. I believe we discussed at one point that because we were getting in a lot of information from a lot of different sources that we had to have one master numbering system.

I believe that -- Bob Linton probably suggested that. I suggested it as well. And I

1 think that something along those lines was put
2 into place, so that's just a notation that we
3 need to do that. It's also an indication of the
4 status of the interviews that had been conducted
5 by the State Troopers that somebody had read most
6 of them, and I'm not...

7 Q 75%?

8 A 75% read them. I, frankly, don't know whether
9 that is Trooper McGhee who was reading them and
10 making corrections and listening to the tape, or
11 whether it was Mr. Linton or somebody else.

12 The next note refers to...

13 Q You could skip that. And going down to the
14 one after that. Could you tell me what that
15 refers to?

16 A As I indicated, there were some initial
17 discussion as to whether Fox and Delozier would
18 testify at the grand jury. Questions about
19 whether they -- you know, whether it was required
20 that they testify. And somebody's tentative
21 decision that all of Delozier's testimony would
22 be out. The note says "out", and I assume that
23 means it would not be...

24 Q So this all refers to what? I'm sorry to
25 interrupt, but I think we can move it along.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

This all refers to what you thought you could present at the grand jury, or couldn't present?

A That's correct.

Q And the discussion that took place at whatever meeting this was? I'm assuming this reflects some sort of conversation?

A That's probably -- yeah, I'm sure it does.

Q Because you hadn't read 75% of McGhee's interviews?

A No.

Q Tell me what this next page is?

A This is a memorandum from Joe LeBeau to Bob Linton explaining his initial inquiry into the question of, you know, \$100,000.00 of risk of property damage.

Q The next is a memo from you to Mr. LeBeau, is that correct?

A No, it's the opposite, from Mr. LeBeau to me.

Q Again, detailing his activities and trying to determine damages caused by the spill?

A That's correct.

Q Could you tell me what this next memo is?

A It appears to be notes of a telephone call on April 17 from Bob Linton, I believe to Larry Weeks. This is one of Larry Weeks' typed notes.

1 Q Could I ask you why you have Larry Weeks'
2 typed notes in your file?

3 A He would occasionally -- I think occasionally,
4 because I'm not sure I got everything. But he
5 would make copies of what -- of his notes and
6 give them to me and I stuck them in my file.

7 Q Okay. It says, "Bob says..." -- that means
8 Mr. Linton?

9 A Right.

10 Q "Bob says troopers will get transcripts and
11 reports to us Wednesday. He will call at noon
12 tomorrow if he is not convinced we're going to
13 get things on Wednesday."

14 Is this relating to efforts to get ready for
15 grand jury?

16 A Well, yeah, I'm sure it is. Any time you work
17 with a police organization in a big case it's
18 difficult to get transcripts done and get reports
19 typed in -- as soon as we would like them done.
20 And this reflects his efforts to get it done.

21 Q When he says, "Bob says troopers will get
22 transcripts and reports to us.", is he referring
23 to Bob or to you and Larry Weeks?

24 A To Bob.

25 Q This next two page memo, I guess, regarding

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

another meeting, is that correct?

A Yes.

Q And this details efforts being made -- let me just see if I could focus on -- for example, we will need to follow up on interviewing Coast Guard people and establishing what will flow from the initial report and what won't. I will call DeMonaco on that. Who is "I" in this memo.

A This is Larry Weeks.

Q And it talks about some of the things you were to work on, such as damages, underwater survey -- I don't see any others right now.

A Right.

Q It also indicates -- there's "grand jury:" and then a colon. Do you know what that refers to?

A I believe that these are Larry Weeks' notes of a telephone conversation with Bob Linton that are also reflected in -- that is also reflected in my notes. I'm not sure whether you've marked those, where Bob Linton provided us with a list of potential grand jury witnesses?

Q Why did he provide them to you rather than Mary Anne Henry?

A I believe that Larry Weeks asked him to provide them to us.

1 Q Okay. For what purpose?

2 A To advise us of what Bob thought would be
3 presented to the grand jury.

4 Q A list of those names won't tell you anything,
5 will it? Those names didn't mean anything to you
6 until somebody told you who they were and what
7 their involvement in the case is, is that right?

8 A That's basically correct.

9 Q Okay. So what is the purpose in Mr. Linton
10 giving you a list of names, if it won't mean
11 anything?

12 A I think to -- I mean, you will have to
13 specifically ask Larry Weeks as to why he asked
14 for that list from Mr. Linton. But we wanted to
15 know the scope of the grand jury presentation,
16 and to keep us apprised of what Bob thought.

17 Q Did you know the scope of the grand jury
18 presentation? Did you know who would be
19 testifying and generally what they would be
20 saying?

21 A At this point in time I did not know who would
22 be testifying, and I did not know -- I suppose I
23 knew in general terms what some of them would
24 say.

25 Q How about right before the grand jury, or the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

day before the grand jury was to start, did you know pretty much who was going to testify, and in general terms, what they were going to say?

A At some later point in time, I believe that Mary Anne Henry gave us a more complete list of who the witnesses were.

Q She testified that you guys gave her the list of witnesses who were going to be testifying?

A Well, the only list that we had was this one, that listed witnesses in generic terms, such as "Alyeska guards, ship's agent, taxi driver, Coast Guard wife". I believe it was Mary Anne Henry who...

Q It also says Boggs, Beevers, Delozier, Murphy.

A Right. I believe that it was -- I mean, my recollection is that it was Mary Anne Henry who gave us a list and actually put names to all of those -- names of the guards, names of the ship's agent, the names of the taxi driver, the name of the Coast Guard wife. My recollection is that it came from her, but...

Q Okay.

MR. FRIEDMAN: Your Honor, I'd ask that this be marked.

THE CLERK: Defendant's N.

1 MR. LINTON: No objection.

2 THE COURT: N's admitted. Mr. Guaneli, you
3 have a stack of papers there that looks to be an inch
4 and a half thick. Are these all your notes?

5 EXHIBIT N ADMITTED

6 (1090)

7 MR. FRIEDMAN: I hadn't planned to go through
8 them all, Your Honor. We're actually towards the end
9 of what I consider the relevant ones. This is the
10 stack I plan to go through, and any of those...

11 A This is my file, yes.

12 (Pause)

13 Q Where did these diagrams come from -- diagrams
14 of the vessel?

15 A I believe that either Joe LeBeau or the
16 troopers provided them to me while I was in
17 Valdez.

18 Q This next page of notes indicates that you --
19 well, I'll ask you what it indicates. Does it
20 indicate that you talked to Mr. Greiner about
21 several issues?

22 A It appears to be, yes.

23 Q And you asked him about the steering autopilot
24 issue, is that correct?

25 A Whether I asked him or whether he told me what

1 needed to be done, I certainly made notes of some
2 things that Captain Greiner was telling us, yes.
3 Q And he was telling you that you needed to
4 "test the action of the helm while in autopilot,
5 check..."
6 A "Check what readouts occur when it is on auto
7 and when it is off autopilot."
8 Q And this is dated 4/7/89?
9 A Yes.
10 Q Now these notes are entitled "overview of FBI
11 interviews", is that right?
12 A Right.
13 Q Did you have the FBI interviews?
14 A No. While I was in Valdez -- while I was in
15 the small office that the D. A. uses when they
16 are there, the FBI agents who were in Valdez
17 stopped in. I had known them from prior cases,
18 or I had known one of them, and they were about
19 to leave town. They had only been there a few
20 days, and they just gave me a quick overview of
21 the kinds of things that they had done -- the
22 interviews that they had done with -- primarily
23 with the crew.
24 Q So this page refers to the overview or
25 briefing they gave you at that time regarding

1 statements made by different people?

2 A Yes, that's correct.

3 MR. FRIEDMAN: The clerk is marking this
4 Exhibit O. Your Honor, I would ask for admission of
5 Exhibit O.

6 MR. LINTON: No objection.

7 THE COURT: Admitted.

8 EXHIBIT O ADMITTED

9 Q (Mr. Guaneli by Mr. Friedman:) Who is Chuck
10 DeMonaco?

11 A Chuck DeMonaco is a federal prosecutor in the
12 Department of Justice in Washington D. C. in
13 their Environmental Crimes Section.

14 Q And basically you discussed some strategic
15 issues with him?

16 A That's correct.

17 Q All right. This is dated 3/28/89. It's from
18 -- could you tell me who that's from.

19 A I believe that this is from Michael Frank.

20 Q Is this the memo you told us about in which
21 Michael Frank reports what Janet Goldstein said
22 to him regarding immunity?

23 A That's correct.

24 Q All right. And this was your understanding of
25 the nature of the immunity problem shortly after

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the 28th when you read this?

A This -- yes.

(Pause)

MR. FRIEDMAN: This has been marked as Exhibit. Your Honor, I'd move for admission of Exhibit P.

MR. LINTON: Could we have a little more foundation as to whom it was address; what the date is, so we can -- it's just a bunch of letters, there isn't any plain writing on them.

Q You don't know who it was originally to or from, do you?

A Well, this was sent over the electronic inner-office mail, and it would be easy enough to find out whose machine it was to by finding out who has the call letters WCMC-002.

Q At any rate, this is...

A But I don't know that at this point in time.

Q At any rate, this is what triggered your awareness of the immunity issue?

A I don't know whether this triggered it or whether Mike Frank or someone else called me about it. But this was one of the early things that triggered our awareness of it.

MR. FRIEDMAN: Okay. Your Honor, I would ask

1 for admission of P.

2 MR. LINTON: No objection.

3 THE COURT: It's admitted.

4 EXHIBIT P ADMITTED

5 Q (Mr. Guaneli by Mr. Friedman:) You have a
6 memo here entitled "Possible federal criminal
7 offenses in Exxon Valdez". Do you know who wrote
8 that?

9 A I believe that was written by Eric Nagle, who
10 was an attorney working for Chuck DeMonaco in the
11 Environmental Crime Section of the Department of
12 Justice.

13 Q Why were you concerned with potential federal
14 criminal offenses?

15 A Early on we had to decide whether the state of
16 Alaska was going to proceed in a prosecution on
17 its own under state law, or whether the federal
18 officials would do so under federal law, or
19 whether we would do some kind of joint
20 prosecution. And so I had some meetings with
21 federal officials and they provided that list of
22 federal offenses that were possibly applicable.

23 Q All right. And was any joint prosecution ever
24 arranged?

25 A No.

1 (1390)

2 Q Could you tell me in general terms what these
3 next two pages of notes represent? You don't
4 have to go line by line.

5 A On March 30 I flew to Anchorage and
6 participated in a meeting with a number of
7 federal officials who were trying to decide what
8 the federal response to the oil spill was going
9 to be.

10 The reason they invited me was because I'm
11 cross designated as a Special Assistant U. S.
12 Attorney, and they felt comfortable -- I've had
13 involvement with the U. S. Attorney's Office on
14 other cases and they felt comfortable with me
15 being there.

16 There were attorneys from a number of
17 different federal agencies, both civil and
18 criminal. It started out initially, everyone
19 introducing themselves. Identifying what
20 possible action their agency might take, and then
21 the civil attorneys went off in one room, and the
22 criminal attorneys went off in another room and
23 discussed their various roles. So this was --
24 these are notes from that meeting.

25 Q In all of these conversations with these

1 different lawyers, different investigators, and
2 so on, you never learned that the captain had
3 reported the oil spill?

4 A Not specifically, no. I think, for example,
5 at this meeting with the federal officials, none
6 of them knew very much at all.

7 I think it's fair to say that at some point in
8 time, I or we were certainly assuming that
9 Captain Hazelwood -- I mean, for purposes of
10 constructionwise, we were assuming that Captain
11 Hazelwood had made the call. Others may very
12 well have known something specific. I never saw
13 any specific report or any specific document or
14 any interview that indicated that he personally
15 had made a call to the Coast Guard.

16 Q This next page and this last page of notes,
17 can you tell us what that indicates?

18 A These are notes of -- it looks like telephone
19 conversations that I had on March 28. Part of it
20 indicates 8/28 or August 28. But it's 3/28.
21 Discussions that I had with Charles DeMonaco.
22 And this, I believe is where he informed me that
23 there had been some briefing done on the question
24 of immunity in other cases. And we discussed in
25 general terms what might be the -- you know, some

1 sort of joint state/federal prosecution.

2 Q And did he tell you that the Clean Water Act

3 immunizes all statements given after a spill?

4 A I don't recall whether he told me that, and

5 that's what this note indicates.

6 Q What the note indicates is that somewhere you

7 got the information that the Clean Water Act

8 immunizes all statements give after a spill?

9 A Well, that's what the note says.

10 Q Did it mean something else?

11 A Well, I think what the Clean Water Act

12 immunizes is...

13 Q That's why we're here.

14 A That's why we're here.

15 Q Right.

16 A Is up for the court to determine. I don't

17 know at this point in time that I had actually

18 read it, and I was probably taking notes of

19 things...

20 Q Of what he was saying?

21 A I don't know. I don't know.

22 Q At any rate, on the 28th of March you wrote,

23 "Clean Water Act immunizes all statements given

24 after a spill."?

25 A I did right that, yes.

1 Q Then there are references to a variety of
2 cases. Did you look at any of these cases cited
3 here?

4 A I don't recall whether I did or not. The
5 citations are there. I just don't recall.

6 Q Did you read the briefs that are referred to
7 there?

8 A I did read the briefs in the Pennwalt case.
9 That's the Ninth Circuit case that I referred to.
10 I did read the briefs in the -- it's Ashland -- I
11 think it's Ashland Oil case. I'm not certain at
12 what point in time I read the briefs, but I did
13 ultimately.

14 Q The rest of this file, as I understand it, all
15 relates to civil matters regarding Exxon, or
16 Alyeska, or perhaps some criminal matters
17 relating to them, but not directly related to
18 Captain Hazelwood, is that right?

19 A That's correct.

20 Q Thank you. I'm sorry, I tore part of your
21 file.

22 A That's all right.

23 Q Mr. Guaneli, after the grand jury indictment,
24 what involvement did you have in gathering
25 evidence or pursuing the case against Captain

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Hazelwood?

A I'm not certain that after the indictment I had any specific role in the investigation of Captain Hazelwood, except as what might come out of records, documents, things like that, from Exxon or Alyeska. My primary focus after that, as best I recall, is trying to get things from Exxon primarily. And things that we could get from Exxon might very well relate to Captain Hazelwood.

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

MR. LINTON: Break before we start?

THE COURT: Do you have any further questions, or did you want to...

MR. LINTON: Yes, I did.

THE COURT: You want to take a break?

MR. LINTON: Yes, please.

THE COURT: Okay.

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

(Off record - 12:10 p.m.)

(On record - 12:32 p.m.)

THE COURT: You may be seated. Thanks.

(1686)

*

1 REDIRECT EXAMINATION OF MR. GUANELI

2 BY MR. LINTON:

3 Q Mr. Guaneli, in your work with respect to the
4 Exxon Valdez Oil spill case, did you ever receive
5 reports from the Alaska State Troopers?

6 A No, I did not.

7 Q From the Alaska Department of Environmental
8 Conservation, other than the memos from Joe
9 LeBeau about damages which we've talked about?

10 A No. You're referring to written reports?

11 Q Written reports, yes.

12 A No, I did not.

13 Q Did you receive any written reports from the
14 federal bureau of investigation?

15 A No.

16 Q Did you receive any written reports from the
17 U. S. Coast Guard?

18 A No.

19 Q Did you receive any written reports from the
20 National Transportation Safety Board?

21 A No.

22 Q Or any transcripts of hearings before the
23 National Transportation Safety Board?

24 A No.

25 Q How about from the Environmental Protection

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Agency?

A No.

Q In your cross examination you referred to one matter that did not come to me after April 12, 1989.

A In addition to this one video tape that was delivered to me that we talked about, I had been trying for a number of weeks to get certain records from Exxon Shipping Company, and I was having a particularly difficult time getting personnel records of Captain Hazelwood, Mr. Cousins, and I believe Mr. Claar.

There were a number of telephone conversations with John Clough, who is designated as the attorney for Exxon involving records, and he's a person in Juneau who I know.

I had a number of conversations with him. I wrote a number of conversations with him. I wrote a number of letters to him asking for those records. And, specifically we told him, deliver them to Mr. Linton. On two separate occasions we wrote him letters directing him to deliver them to Mr. Linton. And one day they showed up on my desk with a cover letter saying, "Here it is." That was the one exception, and I put that in an

1 envelope and sent that to Mr. Linton.

2 MR. LINTON: Nothing further, Your Honor.

3 THE COURT: You may step down. Could the
4 witness go back to Juneau?

5 MR. LINTON: That's fine.

6 (Witness excused).

7 (1805)

8 THE COURT: Mr. Guaneli, Mr. Linton will make
9 sure you get copies of your notes. I'll just leave it
10 up to you to work it out with the in court, Mr.
11 Linton...

12 MR. LINTON: Very well, Your honor.

13 THE COURT: ...and send it to Mr. Guaneli.

14 (Pause)

15 (1870)

16 (Oath administered)

17 A I do.

18 LARRY WEEKS

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

21 THE CLERK: Please be seated and attach the
22 microphone to your tie or lapel. Sir, would you please
23 state your full name, and then spell your last name?

24 A My name is Larry Weeks, W-e-e-k-s.

25 THE CLERK: Current business mailing address?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Box KC, Juneau, Alaska, 99811.

THE CLERK: Your current occupation?

A I'm the Chief Criminal Prosecutions for the state.

DIRECT EXAMINATION OF MR. WEEKS

BY MR. LINTON:

Q Mr. Weeks, would you explain for the record what the relationship to the various parts of the Department of Law are, that is, particularly, the Criminal Division and its breakdown within the state of Alaska?

A There's a Civil Division that basically does advice to agency. There's a Criminal Division that does advice to agencies and criminal prosecution. The Criminal Prosecution Division does advice to agencies in the way of advising the Department of Public Safety and the Department of Corrects. We represent them in litigation.

On occasion we handle all the criminal prosecution throughout the state with respect to felonies and all the state misdemeanor prosecutions.

Q What is your relationship to the Attorney General of the state?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A He's my boss.

Q What is your relationship to the District Attorneys around the state?

A I supervise them.

Q And what is your relationship to the Assistant District Attorneys throughout the state?

A I supervise the people that supervise them.

Q I show you what's been marked Exhibit 64. Do you recognize that document, the Information?

A I do.

Q Have you seen it before?

A I have.

Q Would you explain to the court what, if anything, you had to do with that document coming into existence?

A Well, I may have typed it. I typed something that looked a good deal like it anyway. And then during the course of discussing matters with yourself and people -- assistant attorney generals and the Criminal Prosecution Division, Bob Linton and I worked on it. He prepared handwritten materials; faxed them to me in Juneau. We did the typing in Juneau; faxed them back to him. And I either typed this guy here, or a reasonable facsimile of him.

1 Q Excuse me. You personally typed it, or you
2 had it typed? You personally typed it?
3 A Larry Weeks.
4 Q Would you explain how it was that it was not
5 being typed in the District Attorney's Office in
6 Valdez?
7 A Bob Linton was down there by himself; had no
8 help. Much of the work that was being done was
9 being done in the evening hours, or other times,
10 in Juneau. And we did not have secretarial help
11 there. And because he didn't have secretarial
12 help, and we had computers and printers, he would
13 scratch things out in handwriting -- handwritten,
14 fax them to us, and we typed them and faxed them
15 back to him.
16 Q Sometime after your work on that, did you
17 become aware that it was important to separate
18 the functions within the state Department of Law
19 as to a prosecuting team, and whatever other
20 functions needed to be done?
21 A Yes.
22 Q Explain to the judge how that came about?
23 A Sometime prior to this -- back, actually, in
24 March or January -- December of 1988, January of
25 this year, I had become concerned about parallel

1 prosecutions by the Criminal Division and civil
2 proceedings in civil cases. And I had written to
3 a fellow back in New Jersey who had given me a
4 Law Review article that he had written, and other
5 things, in environmental crimes about parallel
6 proceedings in both of those instances.

7 I'd become sensitized to that to some extent.
8 As we became aware of Bob Linton learning
9 information that he felt like, that was a result
10 of a report made. We realized that he could not
11 make decisions about what was going to be
12 prosecuted.

13 We decided to set up a team of people who
14 would have their materials all screened by Bob
15 Linton and a determination made by them as to
16 what, if anything, could be prosecuted, and then
17 they would have to do it.

18 Q Could you tell us when, approximately, that
19 occurred?

20 A I think it was an evolving process, and I
21 think that we were aware of the problems with
22 immunity and things flowing from the report not
23 long after you got to Valdez. I think that we
24 thought that for some period of time you could
25 disregard the things that you knew, or you could

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

avoid learning things that were resulting from the report.

I think that at some point it came to be clear that you couldn't, and that we couldn't do an investigation without having somebody out there to make those decisions. And I think that was -- that decision was finalized, probably, 10th, 11th, 12th of April or something like that. Maybe a little earlier.

Q Who was assigned to be on the prosecuting team?

A Mary Anne Henry and Brent Cole.

Q Were you aware of the guidelines under which information was to be given to them after April 12?

A Yes.

Q Explain what they were to the judge, please?

A We had some disagreement about that. There was actually subsequently a memorandum done that Bob Linton was to follow. I basically believed that anything after about 7:00 o'clock in the morning on the 24th was what I would say, free of taint.

I think that we adopted a conservative and cautious approach, and basically decided that

1 anything that pertained to what was going on that
2 was on the 24th would not be turned over to them.

3 Q Did you have any role in gathering a list and
4 telling anyone about a list of witnesses before
5 the grand jury?

6 A I did.

7 Q Explain what you did and why you took those
8 steps?

9 A Basically I took -- I asked you to prepare a
10 list of people, although I don't think that you
11 gave me actual names -- but of people who we were
12 talking about -- I don't think I knew all the
13 names. Who were not people who had information
14 that would have been resulting from a report.
15 That is, basically people who were not tainted.

16 So that I could give those things to Mary Anne
17 Henry, so that she could then plan on using those
18 people in the grand jury.

19 I did that because I felt like we were trying
20 to minimize the actual verbal conversations back
21 and forth between you and Mary Anne Henry, and
22 Brent Cole so that we didn't have accidental
23 leakage.

24 Q In your work did you have conversations with
25 Mary Anne Henry and/or Brent Cole, either by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

telephone or in person, which sometimes included Dean Guaneli, Dwayne McConnell, and/or Laurie Otto?

A Yes, both.

Q Did you understand that information was not to be transmitted from any of those persons to Mary Anne Henry or Brent Cole, which fell within the prohibited time period?

A I did.

Q Did you transmit any information that you may have obtained from your work to either Mary Anne Henry or Brent Cole, which came into existence during the prohibited time period?

A No.

Q Did you hear anyone else do that?

A No.

MR. LINTON: Nothing further, Your Honor.

(2381)

CROSS EXAMINATION OF MR. WEEKS

BY MR. FRIEDMAN:

Q Mr. Weeks, did you happen to bring the file we subpoenaed?

A I brought a file. Mr. Linton has it on his table. I don't believe that there is anything in it that's not work product. But I do have it.

1 MR. FRIEDMAN: Your Honor, I would ask for an
2 opportunity to look at that. I think it will make
3 things go quicker than they did with Mr. Guaneli.

4 THE COURT: Well, I'm not sure what Mr. Weeks'
5 statement means. Mr. Linton, do you wish to address
6 that? It sounds to me like a suggestion that it's not
7 something that should be produced. Do you want an
8 opportunity to consult with him before you respond to
9 that?

10 MR. LINTON: That would be helpful. That
11 would be helpful. I'm not sure we'll be able to
12 completely resolve the question, but if we have a
13 minute or two, maybe we could cut off some of...

14 THE COURT: Well, to the extent you can't,
15 I'll help you when I come back. We'll stand in recess.

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

18 (Off record - 12:48 p.m.)

19 (On record - 1:00 p.m.)

20 (2438)

21 MR. FRIEDMAN: Your Honor, Mr. Weeks has given
22 me a stack of material that's going to take me some
23 time to go through. I can use a lot less court time if
24 I could look at this over the evening, and probably
25 move a lot faster tomorrow than I did with Mr. Guaneli.

1 So, that would be my request. He has, just
2 for the record, he has stated that he would like to
3 withhold from us a report, a memo written by Brent Cole
4 regarding an expert witness that they might hire. I
5 have agreed that we won't seek that.

6 My understanding is Mr. Linton has three or
7 four other memos that they wish not to produce. Maybe
8 we take that up at this time?

9 MR. LINTON: Judge, I didn't know that there
10 was an agreement they not seek the one. If they're not
11 seeking the one I'll give them the other three that I
12 was going to fight over.

13 THE COURT: All right. That takes care of
14 that problem.

15 So, the rest of it is produced, then and the
16 work product privilege is no longer being asserted, is
17 that correct?

18 A Following the advice of my attorney, that's
19 correct.

20 THE COURT: So, you want to continue until
21 8:30 tomorrow morning?

22 MR. FRIEDMAN: Yes, please.

23 THE COURT: Any problem with that?

24 MR. LINTON: No, Your Honor.

25 THE COURT: Okay. We'll do that until 8:30

1 tomorrow morning.

2 In reading over the defendant's proposed
3 findings, I notice that the defendant made a finding
4 based on the affidavit of Captain Hazelwood. I don't
5 know if you've had that affidavit, or you wish to
6 concede the statement in that affidavit that's referred
7 to, or you wish to cross examine the defendant. So, be
8 prepared to make a decision on that sometime.

9 Otherwise the court will accept that if you now know
10 what it is and you don't object.

11 MR. FRIEDMAN: Your Honor, Mr. Linton and I
12 have talked about that issue. He has agreed to
13 stipulate that Captain Hazelwood has standing to assert
14 the protection of the statute regardless of his
15 awareness, or not. And that whether he was aware of
16 the statute, or not should not have any legal bearing
17 on the issues before the court.

18 MR. LINTON: I took the affidavit as a
19 statement that I was genuinely relying upon what I
20 believe to be immunity provided by federal law. And I
21 was not doing this consensually on my own, because I
22 was volunteering to make a statement, and to the extent
23 there were additional factual assertions in it I was
24 going to object to the affidavit, but I agree that the
25 captain has standing to assert the claim of immunity.

1 THE COURT: I think that's a given, but that's
2 not what the affidavit says insofar as the finding.
3 The finding, I think, and I don't have it in front of
4 me, states that Captain Hazelwood was aware that he was
5 going to be given some sort of immunity for the report
6 of the oil spill.

7 Is that a fair summary of it?

8 MR. FRIEDMAN: That's a fair characterization,
9 yes.

10 THE COURT: And if your stipulation that he
11 has standing, if that's it, then I will not consider
12 that as a fact in the case. I won't consider any part
13 of the affidavit as a fact in the case other than so
14 far as you say he has standing, which I agree he does.

15 MR. LINTON: I think that's the extent to
16 which we can agree, that is he had standing to assert
17 the claim, but the affidavit should not be considered
18 by the court.

19 THE COURT: Mr. Friedman, if Captain
20 Hazelwood's not going to take the witness stand, then
21 I'm not going to consider that...

22 MR. FRIEDMAN: Your Honor, I will consider,
23 and I think there's a good chance that we will have him
24 take the stand on that issue alone. I may have to talk
25 to Mr. Linton about how broadly he thinks he's entitled

1 to cross examine, and we may need to hammer some of
2 that out before he does.

3 THE COURT: Okay. Well, I'm sure you'll work
4 something out.

5 We'll see you tomorrow morning at 8:30.

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

8 (2680)

9 (Off record - 1:04 p.m.)

10 ***END***