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

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

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

OMNIBUS HEARING
DECEMBER 6, 1989
PAGES 1112 THROUGH 1285

VOLUME VII

Original

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

Anchorage, Alaska
December 6, 1989
8:43 a.m.

APPEARANCES:

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PROCEEDINGS

DECEMBER 6, 1989

(Tape: C-3518)

(3003)

THE COURT: You may be seated.

Ready?

LARRY WEEKS

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

(Pause)

(3020)

CROSS EXAMINATION OF MR. WEEKS, CONTINUED

BY MR. FRIEDMAN:

Q Mr. Weeks, I'm handing you what's been marked Exhibit Q, which have all been taken from your file.

MR. FRIEDMAN: Your Honor, I've got for the court most of the questions I'll be asking.

Q Before we get to that file, Mr. Weeks, you said yesterday on direct examination that at some point you realized that Mr. Linton could not make decisions regarding who could be prosecuted. What is the reason that you reached that conclusion?

A Because I believe that he had been exposed to

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things that were arguably tainted from a claim of immunity.

Q And do you believe that somebody who had been exposed to tainted information or arguably tainted information could not make a charging decision?

A Not necessarily. But we were trying to be cautious.

Q And the underlying thrust of your caution, at least at that point, was that you were going to try to see that someone who had been exposed to tainted information not make charging decisions?

A Right.

Q Okay. This first memo in Exhibit Q is to you from Mr. Linton dated May 15, 1989, is that correct?

A Right.

Q Could you read the first sentence under summary?

A "There is no evidence to date of an independent source."

Q On the -- moving past that memo, on the next page is a note that looks like, from -- or, relating to information you received from Mr. Mannheimer, is that correct?

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A Say again? What page?

Q It's after that memo, page seven -- numbered page seven at the bottom; handwritten.

A Yes.

Q Could you tell me what that...

MR. LINTON: Excuse me, Judge. I have the 106 objection to the line just read. Mr. -- the defense has taken a statement out of context, and I think the full document should be read.

The question the memorandum addressed itself to, as stated in paragraph one, "Were there any reports by witnesses to the Exxon Valdez oil spill, other than..."

THE COURT: Just a minute. Is this document going to be admitted into evidence?

MR. FRIEDMAN: Yes, Your Honor?

THE COURT: Okay. Do you object to the document being put in evidence?

MR. LINTON: No, sir, I don't.

THE COURT: I'll read the entire document. In fact, I've already read that -- just to tell you that I've read -- read all that first document from you to Mr. Weeks.

MR. LINTON: Very well.

THE COURT: Excuse me.

1 EXHIBIT Q ADMITTED

2 Q (Mr. Weeks by Mr. Friedman:) Mr. Weeks, this
3 page of citations, could you tell us how you came
4 to get that? And what that has to do with?

5 A Best recollection -- I'm not sure what these
6 really are. I believe that these are citations
7 to cases pertaining to the immunity issue.

8 Q And at some point did the Department of Law,
9 or someone in the Department of Law write a memo
10 as to how immunity would apply to the facts of
11 this case?

12 THE COURT: Excuse me one moment, please.

13 MR. FRIEDMAN: Yes.

14 THE COURT: Do you have a copy of the exhibit?

15 MR. LINTON: Judge, I gave about 300 pages --
16 some have been selected out and made up into this
17 exhibit, and I don't have...

18 THE COURT: All right. I'll...

19 MR. LINTON: Unless I get a page reference --
20 each time with a reference to a page. I have to fish
21 through my documents.

22 THE COURT: I think what we'll do is, I'll
23 just call my clerk in here and have him make a copy of
24 this so you don't have to keep coming back and forth to
25 the witness. You could follow along a little easier.

1 But go ahead in the meantime.

2 Q (Mr. Weeks by Mr. Friedman;) Mr. Weeks, I
3 think the question I asked was whether, at some
4 point, someone in the Department of Law wrote a
5 memo outlining how the immunity law would apply
6 to the facts of this case.

7 A I don't believe so.

8 Q Turning to the next page, could you tell us
9 what this is?

10 A It was an offer of immunity to Greg Cousins
11 to testify at the grand jury.

12 Q Was that actually conveyed to Mr. Cousins or
13 his attorney?

14 A It was.

15 Q And what was his response?

16 A My recollection is that they said that they
17 were not willing to have him testify unless there
18 was also immunity from the federal prosecution.

19 Q This letter says "The state grants Mr. Cousins
20 immunity from prosecution for any acts committed
21 in connection with the Exxon Valdez incident
22 occurring on the 24th or 25th of March," etc.

23 Was it the intent -- first, let me ask you,
24 did you have involvement in the decision to offer
25 Mr. Cousins immunity?

1 A I approved it.

2 Q And who was it who asked you to approve it?

3 A My recollection that it was Mary Anne Henry's
4 desire to have him testify.

5 Q So Mary Anne Henry wanted Mr. Cousins to be
6 immunized?

7 A Yes. Wanted to have him testify.

8 Q And is she -- did she agree with the scope of
9 this immunity grant? That is -- appears to be a
10 transactional immunity grant, at least from state
11 prosecution?

12 A I believe so, yes.

13 Q She testified last week that she was in favor
14 of allowing the grand jury to consider indicting
15 Mr. Cousins. Could you explain or reconcile
16 those two apparently contradictory things?

17 A This was on the 25th of April when she decided
18 she would like to go ahead with a prosecution
19 basically at the end of the grand jury. I don't
20 remember when that was, but the 20th of May, or
21 something like that, as I recall.

22 Q At the time this immunity was offered to Mr.
23 Cousins, were you aware of the substance of the
24 statements he had made to the various
25 investigators?

1 A No. I did not know.

2 Q By offering this immunity, had he accepted it,
3 you would have obviously not been able to
4 prosecute Mr. Cousins. Was there some reason you
5 didn't want to know the full scope of his
6 involvement before granting him immunity?

7 A I think that -- no. I mean, I think that at
8 the time when you grant immunity you want to know
9 as much as you can about what the people would
10 say. We did not know that.

11 I think that from our evaluation at the time,
12 there was no reason to think that basically we
13 wanted to prosecute Mr. Cousins. I don't think
14 that on April 25th there was anybody that was
15 basically interested in prosecuting Mr. Cousins.

16 Q But you didn't know what he said?

17 A I did not know what he said.

18 Q I mean, for all you know, he could have said,
19 "It was all my fault, and I was drunk, and I
20 purposely ran it on the rocks.", or something of
21 the kind, is that correct?

22 A It's hard to go back that far and reconstruct
23 the things that were done and what were not done.
24 I believe that if that had been the case that Bob
25 Linton would have said that that's an

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inappropriate thing to do.

(3863)

Q Let me ask you this: were you reading newspaper accounts of the oil spill and the subsequent events?

A I did not. In the initial couple of days I happened to be in Anchorage and was busy in meetings. It happened to be at a time when my wife was in Anchorage, too, and we simply weren't doing those things at that time.

On Sunday Mr. Linton went to Valdez and we went back to Juneau, and there were a couple of days between the time that we went back to Juneau and I became aware of the possible immunity issues where I read it in the newspaper.

Q That would have been early April, roughly?

A Late March. We became aware of the immunity problems at the last week in March, I believe.

Q Do you recall whether you had -- any alcohol or drinking might have been involved in the accident?

A I do not.

Q Do you recall whether you had read that Captain Hazelwood reported the spill to the Coast Guard?

1 A I can't tell you what I read, and I do not
2 specifically remember reading anything. I can't
3 believe that to the extent the Juneau Empire had
4 anything in it between Monday and Tuesday, or
5 whenever we eventually discovered what was going
6 on, that I didn't read it.

7 Q That you didn't read it?

8 A Right.

9 Q What procedure was followed as to you and your
10 involvement in the case. First of all, were you
11 designated a tainted or an untainted prosecutor?

12 A Well, I don't think there was any designation
13 of "taint" originally. (Pause) We had to send
14 somebody out to Valdez. Valdez is normally
15 covered out of the Palmer office. The Palmer
16 office has four DA's in it and they were
17 tremendously overworked, as they are, without
18 anything like this magnitude.

19 In order to get a body to go we had to get it
20 out of Anchorage. In reviewing those things, we
21 sent Bob Linton. Bob went. I was in, basically,
22 daily, at least, contact with Bob Linton in his
23 immediate efforts down there, attempting to find
24 resources, and do other things that he might
25 need.

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I talked to Col. Gent of the troopers,
Commissioner English.

In the initial efforts, I was not thinking
about taint at all. It was only after we became
aware of the immunity issue.

After we became aware of the immunity issue, I
tried to stay unknowing of anything that had gone
on before.

Q In your daily contact with Mr. Linton, when he
was in Valdez, he would report to you, in
essence, what was going on in the investigation,
and what he was doing to further the
investigation?

A And those things that he needed, and what he
felt ought to be done in other places, and other
things, yes.

Q So you knew that alcohol was suspected to be
involved in the incident?

A I knew all those things that are in that
probable cause statement. And I don't believe
that I knew anything that's not in that probable
cause statement, because if I had, I would have
put it in the probable cause statement when I
typed it. And to the extent that there are
things that are in a probable cause statement

1 that are tainted, then I am tainted by those
2 things.

3 I don't believe that I know other things that
4 are tainted, other than the things that are in
5 that probable cause statement, in the original
6 complaint information.

7 Q And are you saying that after you became of
8 the immunity issue, that you stopped reading
9 newspaper accounts related to the oil spill?

10 A Yes.

11 Q And presumably you turned off the television
12 and radio when those things came on?

13 A We don't, basically, have TV in our house, and
14 we have a TV -- we don't watch TV.

15 Radio, those things that we get our APRN, I
16 made a deliberate effort to avoid that.

17 (Tape: C-3519)

18 (000)

19 Q When -- well, let me ask you this: did you
20 receive other information in your work as head of
21 the Criminal Division which related to this case,
22 which wasn't screened by Mr. Linton?

23 A Well, I mean, as you see by going through my
24 file, we regarded the case at this stage as
25 involving Exxon, Alyeska and Mr. Hazelwood. And

1 I guess to some extent, that there were other
2 things that I received respect to Alyeska and
3 Exxon that were not screened by Mr. Linton.

4 I don't believe, and to the extent that that's
5 so, it's reflected for the most part in that one
6 memorandum to Ron Lorensen from the Civil
7 Division people.

8 I don't believe that I got anything about this
9 case from anyone other than Mr. Linton or Mary
10 Anne Henry and Brent Cole in our conversation,
11 with one exception some time later.

12 Q Which was what?

13 A Sometime in, I believe the month of July, I
14 was talking with a lawyer back in Washington,
15 D. C. about obtaining NTSB materials, to have
16 them screened by someone in OSPA. That person is
17 someone who does legal work for the state of
18 Alaska in the Amarada Hess case in Washington,
19 D. C.

20 He mentioned to me that he had listened to a
21 tape recording of a conversation between Mr.
22 Hazelwood and the Coast Guard, and that he
23 believed that it would help us. I tried to cut
24 the conversation off.

25 Q Now you say that you primarily considered this

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a case involving Alyeska, Exxon and Mr. Hazelwood, in terms of criminal possibilities, is that correct?

A Yes.

Q I would like to show you Exhibit H, which Mr. Guaneli testified are notes he outlined as to possible defendants in the case; possible legal theories for prosecuting those people. He has four defendants up there, one of which is Mr. Cousins.

Did you talk to Mr. Guaneli about possibly prosecuting Mr. Cousins as well?

A Yes. And we did. And we considered prosecuting Mr. Cousins.

Q Okay. You made the decision, as I understand it, to grant Mr. Cousins immunity without knowing the extent of his involvement or the extent of his statements on the matter, is that correct?

A I did not have access to his statement.

Q Neither did Mr. Guaneli, as far as you knew?

A No, he did not.

Q Did anyone who had input in the immunity decision have access to Mr. Cousins decision?

A Well, I can't tell you whether or not we told Bob Linton that we were considering granting

1 immunity to Greg Cousins. He'll have to tell you
2 that. I can't tell you that. He would have been
3 the only person who would have had all that
4 information, I believe.

5 Q Would...

6 A I did not have it, let me say that.

7 Q Was the final decision up to you, or did Mr.
8 Baily have to approve the granting of immunity to
9 Mr. Cousins?

10 A I made that decision. I approved it.

11 Q All right. On the next page titled
12 "Confidential attorney/client work product;
13 draft; for discussion purposes only.
14 Investigation tasks to be undertaken under the
15 direction of Leonard Linton."

16 Could you tell me who drafted this memo?

17 A Let me, perhaps, correct something. I have
18 never read a police report in this case. I've
19 never read a 302 from the FBI. I don't know any
20 of those things.

21 When I say the business about cousins, what
22 I'm saying is, that I had no access to that. I
23 do not know, Mary Anne Henry may have had a
24 cousins statement, and that may have been
25 delivered to the "clean team" by the time we

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decided to offer him immunity, 25 April.

Q The point is, you, as the decision maker for the Department of Law, were prepared to grant Mr. Cousins immunity without knowing what he said about the incident? That's correct, isn't it?

A Well, I was prepared to approve it if the people who were making the decision decided that that's what they wanted to do.

Q But you don't know whether they even saw Mr. Cousins statement?

A I can't say that.

Q And if Ms. Henry were to testify that she didn't have his statement at that time, and Mr. Cole didn't have his statement at the time, that no one in the Department of Law who was granting Mr. Cousins immunity, other than, perhaps, Mr. Linton...

A If they didn't, that's correct.

Q This next memo has the number 14 at the bottom. Could you tell me who drafted that?

A It was drafted by Laurie Otto basically at my suggestion.

Q Who does she work for?

A Me.

Q Is she in the criminal division?

1 A She's a staff person advisor.

2 Q Okay. We have -- the structure of the

3 division is basically, we have 15 offices

4 throughout the state; 13 DA offices, the Special

5 Prosecutions and Appeals Office, and then the

6 Central Office. In that Central Office we have

7 five assistant attorney generals; Mr. Guaneli,

8 Ms. Otto and three lawyers who advise

9 Corrections.

10 Q And Ms. Otto drafted this memo we're looking

11 at now?

12 A Under my -- yes.

13 Q At your suggestion?

14 A Yes.

15 Q Paragraph two says, "Internal memorandum to

16 file, for the record only, must be prepared that

17 sets out the complete chronology of who told what

18 to whom and why, and under what circumstances,

19 just prior to the grounding, and during the first

20 12 hours after the oil spill occurred.

21 Was that memo ever prepared?

22 A No. Well, this memo that you have here, this

23 number 14, to the best of my knowledge, was never

24 promulgated. I don't believe that that was ever

25 submitted. I have drafted -- I believe that we

1 believed that this process would be so cumbersome
2 that we would never be able to get all the
3 paperwork shuffled through to the defense in time
4 for discovery if we went through all this.

5 Q Paragraph two part, is that what you're
6 referring to as "the process so cumbersome"?

7 A Well, I think that this -- it's been a while
8 since I read this in detail. But I believe that
9 the reasons that we didn't, in fact, institute
10 all of these, was we felt things would come to a
11 halt. Mr. Linton, by this time, was receiving
12 thousands of pages of discovery.

13 Q The -- are you familiar with the inevitable
14 discovery exception that the state is urging in
15 this case?

16 A I've heard that, yes.

17 Q This process that you thought would be too
18 cumbersome, isn't that, in essence, what the
19 state is asking the judge to do at this hearing?

20 A I don't understand your question.

21 Q What -- as I understand this paragraph, Laurie
22 Otto is suggesting that the chain or causation,
23 if you will, be outlined in written form so that
24 what led to what can be evaluated. And if I
25 understood your answer correctly you said that

1 you thought that would be too cumbersome to do,
2 and so it was never implemented.

3 A Well...

4 Q Am I right so far?

5 A I believe that if we had done all of these
6 things that are listed here, this hearing today
7 would be here just in the way that it is, going
8 through the same things that we're going through.

9 Q Okay. Another draft memo on page 15. Was
10 that ever promulgated?

11 A I don't believe so.

12 Q Okay. Again, there's a suggestion in
13 paragraph one, of Ms. Otto's memo. Again,
14 suggesting that a memo be written documenting
15 various things. Was that ever done?

16 A You'd have to talk to Mr. Linton. I never got
17 it. And I don't believe that this was
18 promulgated.

19 (404)

20 Q Okay. Page 16. Is that a memo written by
21 you?

22 A It is.

23 Q Second paragraph, "Gale will also do Alyeska
24 and Gruenstein alone; Dean will encourage
25 troopers to go to the bars and find out about the

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night before the boat left."

Could you tell me what that refers to?

A Mr. Guaneli was in Valdez. He was dealing, to some extent, with the troopers. And he was going to go to the troopers and encourage them to talk to people in the bars and find out if they had seen Mr. Hazelwood drinking that night.

Q That's basically to follow up on the alcohol leads as outlined in the -- among other places, in the probable cause statement?

A Right. Statements of Mr. Murphy and the other person.

Q Now, do you know whether Mr. Guaneli did that?

A I assume that he did, I do not know.

Q The next paragraph has Mr. Guaneli also searching for underwater surveyors that could take videos of the tanker, is that correct?

A Yes.

Q A few paragraphs down from that, "Bob will prepare outline." That's Bob Linton?

A Right.

Q Bob will prepare outline of what we need to prove at grand jury next week, and witnesses we would need to prove it, assuming that we try to go with everything. Could you tell me what that

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means?

A Just what it says, I think. He would prepare -- I think at that time we would not -- decided that we would have to have a separate prosecution and screening unit, and that he was to try to prepare an outline of what needed to go to the grand jury.

Q Did he ever give you such an outline?

A Well, along later he gave me names of witnesses or persons who would be clean people who could testify at grand jury.

Q Okay. Other than that did he ever...

A No.

Q What is this clause, "Assuming that we try to go with everything." What does that refer to?

A Well, I think that's the variety of the different charges that we had talked about.

Q In other words, assuming you tried to indict him on all of the charges you've talked about.

The next paragraph says, "I will ask Mannheimer to look at the possibility of indicting only on reckless and using alcohol theory at trial."

Does that refer to using alcohol evidence to show recklessness and not indicting on alcohol

1 itself. Is that what that's referring to?

2 A I don't understand our question.

3 Q All right. Why don't you explain what this

4 paragraph means?

5 A I think that the question was whether or not

6 we could indict and not talk about alcohol in

7 front of the grand jury, and still have the

8 flexibility to introduce the alcohol evidence at

9 trial if it was not before the grand jury.

10 Q I see. At this point what evidence were you

11 focusing on in terms of that strategy?

12 A The things that I knew about were the things

13 that were in the probable cause statement.

14 Q The probable cause statement is dated March

15 31st, I believe. Were you in Anchorage or Juneau

16 on the 31st?

17 A Juneau.

18 Q And Mr. Linton, after the probable cause

19 statement was written, continued to check in with

20 you every day, or virtually every day?

21 A Yes.

22 Q And he continued to tell you the progress of

23 the investigation?

24 A He did not tell me everything that he knew. I

25 mean, he would tell me things that he had done

1 and things that needed to be done, and what he
2 needed in the way of resources and things like
3 that. He did not tell me everything that he did.

4 He would become aware, even by the 6th of
5 April, that there were things out there that he
6 knew that were tainted.

7 Q How about the 1st of April. If there has been
8 a substantial development on a particular
9 investigatory lead, would you have expected him
10 to relay that to you on the 1st of April?

11 A Well, I think that if there had been something
12 happened that he realized was untainted, that was
13 that -- then, yes. If it was something that he
14 feared was tainted, then I think we would have
15 had to have made a decision about what we did
16 that didn't happen.

17 Q What rules were in effect to determine what
18 was or was not tainted on April 1st?

19 A You'll have to talk to Bob. I can't tell you
20 what rules he was applying at that time.

21 Q So you weren't involved in that aspect of sort
22 of setting up the prophylactic procedures in any
23 way?

24 A Well, I guess I was involved in it. I don't
25 recall what the result of it was now.

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Q Did you know it at the time?

A Well, I knew what my involvement was at the time. I may not have known what Bob Linton was actually applying. Bob Linton tends to be more cautious about things like that than Larry Weeks does. And it would certainly be understandable to me that he was applying a higher standard than I would have suggested.

Q And stating that another way, is it conceivable that you may have broken some of the rules that you had laid down, for how people -- or, how it was going to be determined what was tainted and what wasn't?

A Well, I only got my information from him, though. And if he was obtaining things that were tainted, and he was not telling me about that, and he was applying a stricter standard than I might have in the same circumstance.

Q Okay. I want to ask you about that. Are you saying you only got information that would be relevant to the Hazelwood case through Bob Linton?

A I believe Bob Linton, and Mary Anne Henry, and Brent Cole.

Q So none of the material you received on the

1 Exxon case, on the Alyeska investigation, on the
2 civil cases that were being handled by the state.
3 you didn't receive any information on those
4 items, other than what Mr. Linton gave you?

5 A There were personnel records from Exxon that
6 passed through our office. I did not look at any
7 of them. Because of the dealings that Mr.
8 Guaneli had had with John Clough, who was the
9 Exxon lawyer. Some things were delivered
10 directly to us in Juneau. They were sent to Mr.
11 Linton.

12 I have seen one of the Alyeska materials --
13 the Exxon materials at all.

14 Q Okay. You've seen the materials that are in
15 the file, I take it?

16 A Yes.

17 Q And at least can we assume that whatever was
18 in your file, you at least, at one point, looked
19 at or read?

20 A I wouldn't want to promise all that. Some of
21 the things that are there are publications, and
22 otherwise -- and I wouldn't want to say that I
23 -- if you have a particular question we should
24 look at it individually.

25 Q Okay. How about Mr. Guaneli in Valdez during

1 the early part of April, looking into possible
2 criminal charges against Alyeska. Did he, like
3 Mr. Linton, report to you on a relatively
4 frequent basis?

5 A Normally they were together when they did it,
6 yes.

7 Q And did Mr. Guaneli report to you the progress
8 of his investigation?

9 A He did. And then telling me what he was doing
10 and what needed to be done, and so forth.

11 Q Now, are you saying that Mr. Guaneli never
12 talked with you in those days without Mr. Linton
13 being there?

14 A I would not say that.

15 Q So at least on those occasions Mr. Guaneli
16 gave you information regarding the investigation
17 that was not screened by Mr. Linton?

18 A I doubt that I got any substantive information
19 about the Alyeska things.

20 Q But you don't know what's tainted and what
21 isn't, is that correct?

22 A Well, I got no information from Mr. Guaneli
23 about Alyeska that pertained to anything, I
24 believe, that resulted from a spill report that
25 occurred in the first day. If we assume that the

1 taint period is all the 23rd and 24th of March.
2 I don't believe I got any information from Mr.
3 Guaneli about that.

4 Q Mr. Guaneli didn't tell you any information
5 about Alyeska's response in the first 24 hours,
6 the very thing he was there investigating?

7 A Mr. Guaneli talked about what we needed to do
8 to do an Alyeska investigation. For the most
9 part, what he was there was to set up the
10 logistics -- the scale that's referred to as a
11 paralegal, is to do the interviewing.

12 He probably told me things like, "We're not
13 getting things that are beneficial out of
14 Alyeska."

15 (815)

16 Q But he didn't tell you what they were?

17 A Well, he did not tell me specific things that
18 I recall of what they were getting out of
19 interviews. He undoubtedly gave me his
20 impressions. I mean, he would have said things
21 like, "Alyeska didn't respond the way they should
22 have." He very well may have said things like
23 that. I don't believe that he gave me specifics,
24 but I think he very well may have given me his
25 impressions of tendencies.

1 For the most part, literally what we were
2 trying to do is get bodies on the scene; decide
3 how we were going to proceed with interviewing
4 them; taking their documents; proceeding with
5 that phase of the investigation.

6 Q And you are, in essence, supervising the
7 people who are attending to those tasks?

8 A Yes.

9 Q And you've been a lawyer for how long?

10 A 1972.

11 Q And a district attorney for much of that time?

12 A Ten years.

13 Q Supervising these lawyers on the scene who are
14 handling this intensive investigation. You're
15 saying that they didn't convey to you any facts
16 regarding what happened in the first 24 hours?

17 A Well, what we were talking about was Alyeska,
18 and...

19 Q Well, with Mr. Guaneli. Let's talk about him.

20 A All right. With Dean Guaneli and Alyeska -- I
21 don't believe that I got details of facts that
22 Alyeska was revealing to them while he was down
23 there.

24 Q So, for example, when Mr. Guaneli said, "I
25 don't think Alyeska responded as they should

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have, you didn't say, "What do you mean?"

A Well, I guess what I felt like, that it was going to take a detailed investigation to find out. I can't tell you...

Q You weren't interested in the facts they were coming up with?

A I could not tell you -- I could not tell you conversations that occurred there, and I can't...

Q I understand that.

A My best recollection is what I told you.

Q I understand you can't repeat verbatim what was said. I'm just asking you, as a district attorney, as a trial lawyer, as somebody who is supervising a large case of enormous public interest, you weren't interested in the preliminary facts that were being uncovered by your subordinates on the scene?

A Well, I was getting a certain amount of that. I mean, I guess we were focusing more upon what was going on with the spill and what was happening there than we were with Alyeska. I mean, we basically believe that Alyeska was something that could be put off basically indefinitely.

That it was, one, a documents case, and it was

1 going to be subject to the kinds of things that
2 you do in depositions or long term grand jury
3 investigations, or that kind of thing.

4 So to the extent that we were looking at what
5 had happened on that night, we were much more
6 interested in what happened out on the water, and
7 those kinds of things, than we were with Alyeska.

8 And I was certainly inquiring of Bob Linton as
9 to what he was discovering about finding people
10 in the bars or those kinds of things. So, to
11 that extent, you're absolutely correct.

12 Q Okay. And you were getting...

13 A But with respect to Alyeska, I don't believe
14 that that's correct.

15 Q Okay. You were getting those details from Mr.
16 Linton then?

17 A I think so. I think those are the things that
18 are in the probable cause statement, and I knew
19 all those.

20 Q But after the 31st he was still reporting
21 those things to you, up until the 12th when this
22 screening procedure went into effect?

23 A I don't believe that I got any additional
24 information past that probable cause statement as
25 to day-to-day things that were being done that

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pertained to that -- that would have been subject to the taint issue. Undoubtedly, I continued to get information.

Q Page 17. Could you tell me who drafted that, sir?

A Laurie Otto.

Q So she set up -- was this memo actually implemented?

A We tried to do this.

Q Okay. And is Laurie Otto, in addition to the person who drafted it, the person who basically created these procedures?

A I think this was a result of discussions between myself and her, and myself and Bob Linton, and her and Bob Linton. And I believe that she got some of her ideas from someone who had done this kind of thing with the Department of Justice at some point in time.

Q So among others, you and Mr. Linton discussed the procedures that he implemented to do this screening?

A We did.

Q All right. And you understand that the state has taken a position that a line can be drawn through the investigation at a particular point

1 in time, and that material on one side of the
2 line is tainted, and material on the other side
3 of the line is not tainted?

4 A Well, I think that what our position is is
5 that from the time that the spill would have been
6 discovered in any case, that things that are
7 received after that time would have been received
8 by us in the course of investigations, and,
9 otherwise, are not tainted.

10 Q Okay. And so a particular point in time --
11 and if the state's brief says 8/20 -- but
12 whatever the time is, the position of the state
13 is that after that time things aren't tainted,
14 and before that time things are tainted, is that
15 your understanding?

16 A Well...

17 THE COURT: Excuse me. I don't see how this
18 is going to help me at all, this line of questioning.
19 The state's position, as set forth in the briefs has
20 alternate theories. There's one that starts from the
21 time of the report of the grounding. There's one that
22 starts sometime afterwards. And I don't think this is
23 going to assist me in any way, this line of
24 questioning. The briefs set forth the legal arguments.
25 (1162)

1 Q The point I'm getting at, Mr. Weeks, is that
2 at some point a line was drawn. Did you have a
3 role in deciding, for purposes of screening,
4 where that line would be?
5 A The decision was made by Bob Linton.
6 Q Next memo is dated 4/10/89, indicates that a
7 meeting was held on that date, is that correct?
8 A Yes.
9 Q And then there's an LML initial?
10 A That's Bob.
11 Q And is that something that he is telling you?
12 Is that what that note indicates?
13 A I think that was something that he was going
14 to follow up on.
15 Q And he was telling you that he was going to
16 follow up on that?
17 A Yes.
18 Q So he's reporting to you, as late as April 10
19 of '89, an investigatory lead relating to alcohol
20 and how he's going to follow up on it?
21 A I think -- yes. I mean, I think he was
22 telling us that the troopers were going to be
23 checking with this person about that.
24 Q And my point being, as late as April 10th...
25 A Yes, you're right.

1 Q ...he's still reporting those investigatory
2 leads to you.

3 A And Mr. Guaneli, down, one, two, three, four,
4 five, six paragraphs -- Guaneli will follow up
5 with Clough in getting videos, etc. Mr. Guaneli
6 -- I can't tell, is that what he's reporting to
7 you?

8 A I don't know that it's reporting. I guess to
9 some extent, what this is, is sort of the minutes
10 of a meeting that we had. It also may be sort of
11 a summary of the things that occurred on that
12 day. But Guaneli had indicated that he was going
13 to follow up with Mr. Clough on getting the
14 videos.

15 Q What is the handwritten note at the very
16 bottom indicate?

17 A I can't tell you any more. I have no
18 independent -- that's my handwriting, but I have
19 no independent recollection of it.

20 Q The next page is a page of handwritten notes,
21 with "21" at the bottom. Could you tell me what
22 these notes are?

23 A First of all, is it your handwriting?

24 A It is my handwriting. And what it looks like
25 is a collection of things. And basically what I

1 do during the course of a day is, that I have a
2 tablet there and I make lists of things that need
3 to be done. Things that I need to remind myself
4 about. And that looks like what this is.

5 Q One of the things you put on your list is
6 "bartenders". Do you know what that relates to?

7 A I assume following up on the alcohol.

8 Q And "can autopilot be overridden". Another
9 thing that needs to be followed up on, I take it?

10 A Yes.

11 Q What's in the box off to the right there?

12 A Preserve blood or urine sample.

13 Q Okay. Down at the right hand side it says,
14 "sample of oil, alcohol" -- there's sort of a
15 list running down the right hand side. Could you
16 tell me what that is relating to?

17 A Basically I think this was an outline of
18 people who might be called before the grand jury,
19 and things that need to be covered at the grand
20 jury.

21 Q Okay. And where did you get this list?

22 A Basically out of the things that I knew from
23 Bob Linton.

24 Q And then it says, "Memo on Chinese Wall and
25 immunity". Again, I take it that memo was never

1 done?

2 A Well, I think that's the Laurie Otto...

3 Q Oh, I'm sorry. I thought you said there's one
4 that never...

5 A No, the Laurie Otto memo up here that is --
6 that's number 17.
7 (1370)

8 Q Oh, it states the procedures. I see.
9 Page 22. Actually, maybe that's the back part
10 of 23 or the second page to 23, does that look
11 right?

12 A I would say so.

13 Q So let's...

14 A Page 23 starts first.

15 Q Right. Okay. And can you tell us what 23 is?

16 A I think it's sort of a summary of things that
17 occurred in a meeting on that day?

18 Q Do you recall who was present at that meeting?

19 A I could not tell you.

20 Q The third paragraph says, "We need to follow
21 up on interviewing Coast Guard people and
22 establishing what will flow from the initial
23 report and what won't. I will call DeMonaco on
24 that."
25 Who is DeMonaco?

1 A He is the chief of the Environmental Crime
2 Section of the Department of Justice in
3 Washington, D. C.
4 Q "I'll talk with him on getting 302s now."
5 302s are the FBI reports?
6 A Yes.
7 Q I'll agree to give him our notebooks. What
8 are you referring to there?
9 A My recollection is that police reports that
10 had been collected in Valdez by troopers had been
11 put in notebooks.
12 Q Okay. So basically you're referring to the
13 police reports?
14 A I believe so, yes.
15 Q You say "Mary Anne will do grand jury." I
16 take it this is where that was determined; this
17 meeting?
18 A I believe so. I think it's where it was --
19 yes.
20 Q Okay. Do you know if Mary Anne was at this
21 meeting?
22 A I doubt it.
23 Q "David is concerned about property of
24 another." That's David Mannheimer?
25 A It is.

1 Q Was he present at the meeting or by phone?

2 A I cannot tell you that. I don't know whether

3 he said that or someone else had had some

4 conversation with David, and they said that.

5 Q Someone needs to look at the Coast Guard order

6 and talk to the Coast Guard about it?

7 A Right.

8 Q What does that relate to?

9 A I can't tell you that.

10 Q Down at the bottom -- towards the bottom it

11 says, "McGhee notebooks to Mary Anne Henry as

12 soon as possible." Is that the police reports?

13 A Yes.

14 Q Was McGhee present at the meeting?

15 A No. He's a trooper.

16 Q Excuse me?

17 A He's a trooper. He was not present.

18 Q And was there something you expected him to

19 do, is to get the notebooks to Mary Anne Henry?

20 A Yes. I don't know what the mechanism was, and

21 Bob could tell you about it; that's what it was

22 about.

23 Q And it says, "McGhee, bartenders and Bixby

24 lead gone."

25 Is this McGhee reporting that to you, or

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how...

A I -- it's been a long time. My best evaluation of that is that McGhee has said that the bartenders and the Bixby lead turned to naught.

Q So somebody is reporting that to you at this meeting but you can't recall who at this point?

A That's right.

Q It says on the next page, "LML should follow up on where Burke got the tainted documents." It's up at the top of page 22.

A Right.

Q What does that refer to, if you know?

A You should ask Bob. My recollection is that on one day, down about the fourth or fifth of April, Bob Linton believed that Trooper Burke had gotten some documents from the Coast Guard that contained tainted information. I think this is...

Q A reference to that?

A Yes.

Q Okay. Then you have grand jury and then a list of witnesses. What does that relate to?

A I think basically that's the same thing as what was on the notes earlier. Basically

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possible witnesses and different kinds of things that needed to be covered.

Q Okay. Understanding that you can't tell for sure who was present at this meeting, do you have any idea who would likely have been present?

A Most likely people -- Bob Linton, Dean Guaneli, and very possibly Laurie Otto.

Q All right. And am I correct that at this meeting you are discussing who to call at Grand Jury, and the source of things that they could say?

A Right.

Q And there's an indication that there is a plan to use alcohol, not just to impeach, is that correct?

A Give me a hint.

Q Still at the same -- under -- on page 22, grand jury. There's a list of witnesses, and then it jogs over a little to the right -- sample of oil, and then it says, "alcohol, not just to impeach".

A Yes.

Q Was there a discussion of using alcohol evidence, not just to impeach?

A Obviously there was some discussion about

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alcohol, not just to impeach, but I can't call it back.

Q Let me ask you this: as you're discussing who to call at grand jury, how to use the alcohol evidence at grand jury and at trial, you still were aware of the evidence contained in the probable cause statement?

A I was.

Q Turning to page 24. Is this a continuation of the first -- a memo that still is reporting on that first meeting?

A No, I think this is different.

Q Okay. Is this a separate meeting then?

A Yes.

Q All right. And, again, these are your notes of what took place?

A Yes.

Q The next page, page 25, is this a letter you wrote to Dean Guaneli? Is that a note you wrote to Dean Guaneli?

A No. I think this was similar to the other memos. This was just things Dean had said and then Bob, and so forth, as you go down.

Q I see. So this is what Dean is reporting to you?

1 A Well, either -- what Dean says in the meeting
2 or what Dean's going to do.
3 Q Likewise, with Bob Linton, he's reporting, or
4 these are things he's going to do?
5 A I don't think that they necessarily always
6 thought of it as reporting, but certainly things
7 that they talked about.
8 Q Okay. And there's a reference down, one, two,
9 three, four, five lines from the bottom.
10 "Probable cause to Greiner to see if he's
11 tainted."
12 A Right.
13 Q And can you tell us what that was about?
14 A I think that's with respect to the book
15 documents back there. I think there were some of
16 those documents, and Bob was concerned about
17 whether or not some of those documents that Burke
18 had gotten had been looked at by Greiner.
19 Q Was there any discussion or inquiry as to
20 whether Greiner or Beevers had read newspaper
21 accounts, or had been exposed to tainted
22 information in some other way?
23 A I can't tell you the answer to that at all.
24 Q There was testimony from some of the district
25 attorneys at this hearing that there was a split

1 in the office as to whether Mr. Cousins should be
2 indicted. Do you recall that division?
3 A I do.
4 Q Can you describe for us what that was about as
5 you understood it?
6 A After grand jury presentations went on, as it
7 got to the end, Mary Anne and Brent wanted to
8 indict Mr. Cousins. We had been talking about
9 the course of grand jury and who was able to
10 testify. My recollection is it went on for
11 several days. Maybe even over a period of a
12 couple weeks. And who was available and who was
13 not, and otherwise. And we had been talking by
14 phone. And basically it was my position that we
15 shouldn't indict Mr. Cousins.
16 Q Should not?
17 A Should not. I hadn't felt so initially. They
18 didn't tell me anything that changed my mind
19 about it. After one of those telephone
20 conversations where they got strong that that's
21 what they wanted to do, I decided to come up and
22 have an in-person sit down and talk about it all.
23 I did that.
24 Prior to doing that, I went over and I talked
25 to the attorney general. I said, basically,

1 something to the effect that these folks would
2 like to indict Greg Cousins; I'm going to tell
3 them, no, unless you feel differently about it.
4 The attorney general felt even strong about it
5 than I did. And I came up. We had a sit-down
6 with Dwayne McConnell, Brent, Mary Anne and
7 myself. They wanted to do it, and, basically, I
8 told them, no.

9 Q And did you give them any reasons?

10 A I did. I gave them several.

11 Q Could you tell us what those were?

12 A Well, I think, most of all, what I said was, I
13 felt like that if we were going to be prosecuting
14 other people, that I wanted to go up the chain
15 and not down the chain.

16 If there was someone other than Joe Hazelwood
17 that the state was going to prosecute, I wanted
18 that to be an Exxon entity or a facsimile, or
19 someone in that organization. I didn't feel
20 like, that given the magnitude of things, that we
21 ought to be going down further. There were other
22 reasons.

23 Q Was there any entity you were considering
24 above Mr. Hazelwood at that time?

25 A We had considered Exxon and Alyeska as a

1 possibility of filing charges against individuals
2 in either of those organizations. That we
3 thought that there was sufficient evidence.

4 Q By this point in time, though, you had decided
5 not to target Exxon?

6 A I believe that we had notified the U. S.
7 Attorney's office that absent other things, we
8 were going to leave it to them.

9 Q You also notified Exxon?

10 A We did. And Alyeska.

11 Q So, in terms of going up the ladder, you had
12 already pretty much decided not to go up the
13 ladder?

14 A Pretty much. And if we weren't going to go up
15 the ladder, we shouldn't go down the ladder.

16 Q But you still didn't know what Cousins had to
17 say?

18 A Well, I knew all those things that Mary Anne
19 Henry and Brent Cole knew. They told me in great
20 detail the things that they knew.

21 Q Okay. And what did they know that they
22 thought justified indicting Mr. Cousins?

23 A It's hard for me to tell you right now. They
24 felt like that he had been the actual control of
25 the ship, and that he had time to do something

1 differently and didn't do it. And Brent, in
2 particular had been on the ship and had looked at
3 the instruments and he felt like that Mr. Cousins
4 should have been able to see that something was
5 coming up and didn't do it.

6 Q Page 26 is a memo -- or another one of your
7 minutes of a meeting, is that correct?

8 A Yes.

9 Q Likewise, page 27?

10 A Yes.

11 Q Who is Barbara Herman?

12 A She's the person who is in charge of the
13 state's civil litigation effort in the Attorney
14 General's Office.

15 Q There's a reference in this memo to the fact
16 that you or Dean Guaneli are going to talk to her
17 about NTSB issues?

18 A I think that there were some people in the
19 state that thought that Bob Linton ought to be
20 the person who went over to the NTSB hearing and
21 sort of advised the state's participant in that
22 hearing. We had concerns about that dating back
23 to that old business of civil division and
24 criminal division, doing things in a parallel
25 proceeding.

1 I believe that I called Barbara Herman and
2 told her that we didn't believe it was
3 appropriate for Bob Linton to be doing that. He
4 did not do it.

5 Q Mr. Weeks, there has been some testimony from,
6 I believe it was Brent Cole and Mary Anne Henry
7 that the procedure they were told to adopt is
8 when somebody tried to talk to them about the oil
9 spill or anything having to do with the oil
10 spill. They would say, "Stop, I can't talk to
11 you about that." To make sure that they didn't
12 receive any tainted information.

13 Did you employ a similar procedure during the
14 last how many months it's been?

15 A Well, I felt what I tried to do was stop
16 anything that would keep me -- that would give me
17 information that I shouldn't have. Anything that
18 might be tainted.

19 Q Anything that related to the first 24 hours,
20 as Mr. Linton laid it out?

21 A Basically.

22 Q So if, for example, you're talking to Barbara
23 Herman, or Bill Mellow, or somebody else in the
24 state structure about oil spill issues, you would
25 warn them that they couldn't talk about the first

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24 hours?

A Yes.

Q Page 28. Another memo regarding a smaller meeting. The second paragraph says, "Bob will fax down a copy of the history of the efforts to avoid cross examination [contamination]."

A Cross?

Q I'm sorry, cross contamination. Did he ever do that?

A I don't think he ever got around to writing it.

Q And Laurie...

A If he did, he didn't send it to me.

Q Okay. And it says, "Laurie will finalize that." What was the thinking there? What was Laurie Otto going to do with Bob's Linton's...

A Basically, Bob Linton was maxed out. Bob Linton had literally thousands of pages of stuff around him, and has had for months. He's been working 16 hours a day. We were looking for any way to take a load off of Bob Linton.

Q Because Laurie Otto didn't know any of the factual material other than what was reported?

A No.

Q Was she similarly instructed to keep herself

1 insulated? Not read newspaper accounts; not talk
2 to people about the first 24 hours?
3 A I didn't instruct her to that.
4 Q Page 29, the next page, refers to another
5 small meeting, four paragraphs down. Does that
6 refer to Dean Guaneli checking on where crew
7 members are?
8 A Yes.
9 Q So he's still involved at this point. I
10 guess, is there a way to tell what date or time?
11 Is this the 20th?
12 A This would have been -- that would have been
13 April 20th.
14 Q All right.
15 A That 4/20 right at the top.
16 Q It means April 20th. So as of April 20 Dean
17 Guaneli is still helping out in terms of factual
18 matters?
19 A What Dean Guaneli was doing was that he was
20 doing the dealing with Exxon, and the Exxon
21 lawyer was headquartered in Juneau, and Dean was
22 overseeing that portion of it and doing the
23 directive.
24 Q Next memo, page 30, indicates another small
25 meeting on April 21, is that correct?

1 A Yes.

2 Q It says, "Dean will follow up on Clough for
3 videos and location of witnesses." That's what
4 we were talking about earlier?

5 A Right.

6 Q "Bob will get history of procedures memo to
7 Laurie." Is that what was referred to on the
8 earlier page?

9 A Same guy.

10 Q Still not done. Okay. A couple lines down,
11 "We will decide on who goes to grand jury after
12 getting rid of Bob." What does that mean?

13 A Not what it could be. After getting him off
14 the phone -- I mean, I think that what it was is
15 that we did not want a person who was tainted to
16 take part even in the brainstorming that went on
17 with the grand jury.

18 Q Okay. Who was, then, present at that
19 brainstorming?

20 A Well, in some of those it would have been Dean
21 Guaneli and Larry Weeks, and the people in
22 Anchorage. This would have all been with Dean
23 and I in Juneau, with maybe two exceptions. I
24 may have been there.

25 Q All right.

1 A But to the extent that I was tainted by those
2 things in the probable cause statement, then I
3 was in that -- there would have been no one --
4 and Dean, and there would have been no one else.

5 Q Now, I think it was Mary Anne Henry and Brent
6 Cole who testified that you had a great deal of
7 input into what took place at Grand Jury. First
8 of all, as I understand it, you helped selected
9 the witnesses who would be presented, is that
10 correct?

11 A Basically, I got the things from Bob and those
12 were the things that had been in the earlier
13 memos that you have referred to. And...

14 Q You never got any police reports?

15 A Never got a police report.

16 Q So you got information on Bob as to who could
17 say what, or...

18 A Basically.

19 Q And then you passed that information on to
20 Mary Anne Henry?

21 A Right.

22 Q In addition to doing that, did you help
23 formulate the charging language -- the actual
24 wording of the indictment?

25 A We were involved in discussions. At some

1 point in time David Mannheimer got involved and
2 did some research and took part in a couple
3 discussions. I guess I would not think that
4 Larry Weeks would normally formulate actual
5 wording of indictments.

6 Q I agree. You wouldn't ordinarily. Did you in
7 this case?

8 A I don't think that's one of my strengths.
9 David Mannheimer is a lot smarter guy than I am.
10 And one of my strengths is that I know it.

11 Q I don't know about that. Mr. Mannheimer, was
12 he somebody who was not reading the newspapers
13 and not exposing himself to tainted information,
14 subject to the same strictures as yourself?

15 A I believe that he was trying to keep himself
16 untainted. I think the information that he got
17 with relation to what was, and the theories that
18 were going to be going on was the information
19 that we discussed at the meetings.

20 Q All right. Are you saying he didn't read the
21 newspapers about the oil spill, or you just don't
22 know?

23 A I can't tell you that.

24 Q Now, in these conversations about how the case
25 was going to be charged, you -- at the time you

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had these conversations you were still aware of the information in the probable cause statement?

A Yes.

Q Did that, in any way, influence your discussion or decision making in the grand jury strategy?

A Well, I can't say that it -- I guess I think that the decision was made by Mary Anne and Brent, with all these people putting in their two bits worth. I didn't disapprove it to the extent that -- I knew those things that were in that probable cause statement -- I didn't take any action one way or the other, having known that, but you can't wipe those things out of your memory. I'm not trying to claim that.

Q You would be surprised at who would try to claim that. Now, when -- well, let me go on to the next page. Page 31 is another set of minutes of a small meeting on the 24th?

A Yes.

Q And the third line from the bottom says, "Bob should start as soon as possible on taint investigation." What is that referring to?

A I think that that's the investigation that resulted in a memo of May 15. I think that's

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page one.

Q The very first one we were talking about.

A Page one.

Q The next page is page 32. It's handwritten notes. Is that your handwriting?

A It is. It says, "Get copy of order on licensed person on bridge and Coast Guard person to talk about it." What does that relate to?

A The actual order or whatever regulation -- whatever it was, that pertained to who had to be on the bridge and what their qualifications had to be.

Q The next page down at the bottom says, what to do about discovery. What does that relate to?

A How to handle the massive paperwork.

Q You were aware that there was massive paperwork in the case?

A Yes.

Q Was that something Mr. Linton had been talking to you about?

A Yes.

Q Page 34 is entitled grand jury. What is page 34?

A I think that basically it's an outline more detailed than some of those other memos talking

1 about particular people. I guess I would think,
2 this is probably my suggestions on things that
3 need to be covered at the grand jury.

4 Q Would you have given this to Mary Anne Henry,
5 or talked to her about these suggestions?

6 A Certainly talked to her about them?

7 Q The first thing says, "disqualification
8 warning". What does that relate to?

9 A Whether grand jurors have become so involved
10 in the case that they can't be fair.

11 Q Now, did you or Mr. Guaneli draft such a
12 warning and give it to Mary Anne Henry?

13 A I can't recall. I did not. Dean Guaneli very
14 well may have.

15 Q The third paragraph says, "Beever's to explain
16 from Bell Logs, course recorders, etc., what
17 happened after grounding. Does it make any
18 sense, etc." That's relating to what you think
19 Beever's can testify to at the grand jury?

20 A Right. I had actually had one session with
21 Beever in Anchorage, where he had -- what I
22 remember, the little narrow guy, and I believe
23 it's a Bell Log that records mechanically things
24 that had occurred.

25 Q Now, the next paragraph refers to pilot

1 Murphy, is that correct?

2 A Yes.

3 Q And that contains what you think he can cover
4 in his testimony?

5 A Yes.

6 Q Is it fair to say that you were participating
7 in evaluating and deciding what evidence or
8 information would be presented to the grand jury?

9 A I think I was making suggestions.

10 Q Okay.

11 A I couldn't tell you how many of these things
12 they actually offered and how many they did not.
13 They never said we will or will not do these.

14 Q Now, are these the suggestions that Mr. Linton
15 had given you and you're passing on, or are you
16 coming up with these on your own?

17 A Well, I think that factual matters -- Mr.
18 Linton has given me some of the things -- perhaps
19 some of the work that is in it is things that I
20 have thought about.

21 (2848)

22 Q Well, for example, under Murphy there is a
23 note, "smell alcohol". So you were aware that
24 pilot Murphy said he thought he smelled alcohol
25 on Mr. Hazelwood?

1 A Correct. And Bob Linton had told me that, and
2 that's in the probable cause statement.

3 Q Going a few lines down, about the middle of
4 the page it says, "Crew member written statements
5 that are exculpatory." Were you aware of crew
6 member statements that were exculpatory?

7 A No. But -- well, I wasn't sure whether there
8 were crew member statements that were exculpatory
9 or not. I can't recall now whether I knew about
10 it. I was concerned that if there were that they
11 needed to be put in.

12 Q Likewise, it says, "Hazelwood's exculpatory
13 statement that he had one beer prior, and two
14 Moussys on board." You were concerned that that
15 would be presented to the grand jury?

16 A I wasn't sure whether it should or not. It
17 was something that I wanted to discuss. And I
18 think that there was argument that it's...

19 Q Who did you want to discuss that with?

20 A Well, basically, I wanted Mary Anne to make a
21 decision about it?

22 Q Had you told her that?

23 A I'm sure we talked about it.

24 Q So we know then that Mary Anne was aware of
25 Hazelwood's statement to that effect?

1 A I can't tell you that -- that's a natural
2 inference from it. I can't tell you whether this
3 is a note to myself to say Hazelwood's
4 exculpatory statement has to be admitted if it's
5 there. I'm not sure that Mary Anne Henry had any
6 of Mr. Hazelwood's statements. I don't believe
7 that she did.

8 Q No, she didn't. But you just said that you
9 were sure you talked with her about this?

10 A I'm sure I talked to her about the problems of
11 exculpatory statements of Mr. Hazelwood.

12 Q Okay.

13 A I'm not sure that I discussed with her the
14 content of the statement, but I am sure that I
15 talked to her about the possibility of having to
16 present exculpatory statements that he made.

17 Q Well, you suggesting that to her isn't going
18 to do her any good, is it, because she doesn't
19 have the statement and can't even make a decision
20 as to what to do about that issue?

21 A Well, I think that there is some question as
22 to whether or not you present statements -- it's
23 like an illegal confession that has exculpatory
24 things in it. The question as to whether or not
25 you put it in at all.

1 Q Right.

2 A And to some extent, that's a legal decision to
3 be made.

4 Q That's right. But in order to discuss that
5 with Mary Anne you would have had to discuss what
6 the substance of the statement was, wouldn't you?
7 To do her any good, and -- if you're going to put
8 the decision off on her you need to give her the
9 information from which she could make the
10 decision.

11 A I don't think you have to give her the
12 substance of the statement. I'm not saying that
13 I did not. In looking at this -- an inference of
14 that, is that it has been. I can't tell you that
15 I did not.

16 Q All right. Then you have some legal theories
17 listed, and those were theories you talked with
18 Mary Anne about?

19 A Yes.

20 Q The next page is just a continuation of that
21 same grand jury outline.

22 A Yes.

23 THE COURT: Mr. Friedman, you've been at this
24 now for over an hour and a half. What do you think we
25 take a break?

1 MR. FRIEDMAN: That would be fine, Your Honor.

2 THE CLERK: Please rise. This court is in
3 session subject to call.

4 (Off record - 10:00 a.m.)

5 (On record - 10:36 a.m.)

6 (3087)

7 THE COURT: Be seated. Thank you.

8 Q (Mr. Weeks by Mr. Friedman:) Mr. Weeks, could
9 you tell me what page 36 is?

10 A It's a printout from a computer service in
11 Alaska called Motznik (ph).

12 Q What is -- why was this done? Why is it in
13 your file? What does it relate to?

14 A Well, it looks like it's a check to see
15 whether Mr. Hazelwood has property in Alaska. I
16 would suspect that it was done back at the time
17 that we were trying to find him. Seeing if he
18 had a local address.

19 Q So you were involved in that process, at
20 least, to the extent of...

21 A Yes.

22 Q At some point in time did Bob Richmond, Mr.
23 Cousins lawyer, approach you with a letter
24 regarding the pilotage issue and the licensing
25 issue?

1 A He did.

2 Q Could you tell me what transpired when he

3 talked to you?

4 A He...

5 Q This was before grand jury?

6 A I can't tell you when it was. I should be

7 able to put it into context. I had talked to Bob

8 Richmond about the grant of immunity to Greg

9 Cousins. I had indicated to him that I didn't

10 think that we were going to be prosecuting Greg

11 Cousins. That was early -- I believe that the

12 letter was delivered prior to grand jury. I got

13 it and turned it over to Bob Linton.

14 Q You're talking about the Coast Guard -- or the

15 letter regarding the Coast Guard requirements?

16 A What he gave me.

17 Q How did that come about? What did Mr.

18 Richmond say when he gave you this letter?

19 A He had started to tell me about what Mr.

20 Cousins would say at the NTSB. I told him that I

21 couldn't talk to him about those kinds of things.

22 He said that he didn't believe that his client

23 was guilty of anything. He had these things, and

24 he said he thought that they went to prove that.

25 I said, "Get me whatever you have; I will pass it

1 on to the folks that are involved."

2 Q Did you read what he gave you?

3 A I undoubtedly looked at it.

4 Q And you passed that on to Mr. Linton?

5 A I did.

6 Q The next page is page 77. Is this your

7 handwriting?

8 A It is.

9 Q Up at the top there is a reference to Kelly

10 Michael or Mitchell.

11 A Mitchell.

12 Q Could you tell me what that note relates to?

13 A I think in chronological order, this is way

14 out of sequence, I think. But this would have

15 been way back early prior to -- at the end of

16 March -- 1st of April. We were looking for an

17 expert to tell us about big ships.

18 Kelly Mitchell, my recollection is, is the

19 port captain for the Marine Trans System, and had

20 some tanker experience of some kind or other. We

21 were looking at him early.

22 Q The next page is page 78.

23 MR. FRIEDMAN: Just for the record, Your

24 Honor, pages 78, 82, and 86 in the exhibit have been

25 reduced from long legal paper.

1 Q Can you tell me -- this is your handwriting?
2 A It is.
3 Q Down towards the middle of the page there is a
4 list of five items. Could you tell me what that
5 relates to?
6 A I think those are kinds of things why we would
7 do a prosecution.
8 Q Okay. Why you would do a prosecution.
9 A In this case.
10 Q Can you read those to me? I have trouble with
11 some of the words.
12 A Gravity, deterrent, stigma, stop potential
13 violators, state of mind, intentional, knowing,
14 degree of individual responsibility, help civil
15 case, res judicata.
16 Q And then the list below that?
17 A Grand jury, Miranda, misconduct, want for
18 other discovery, misleading, don't have the
19 foggiest.
20 Q Next page is your notes as well?
21 A Yes.
22 Q Could you tell me what that relates to? Put
23 it in context for us.
24 A Well, the first thing is discovery.
25 Basically, I think the decision was made to give

1 you people everything that we had, whether or not
2 we gave it to the clean team. I think that's
3 the first time that phrase has ever passed my
4 lips. Whether we gave it to the people who were
5 prosecuting the case.

6 Advise from Guaneli, I can't recall.
7 Investigation. Two troopers, two years. I don't
8 know. Access to expert reports hired so far. I
9 think that's, again, discovery.

10 Q The next few things there?

11 A That's basically talking about Exxon and
12 prosecution of Exxon. And we would -- if we were
13 involved in any input into the Department of
14 Justice decisions about what would happen with
15 Exxon. We would want an agreement from them that
16 an order of restitution would have preference
17 over a fine, making the state whole.

18 If we had input to the federal Department of
19 Justice with Exxon, that we would ask them not to
20 agree to a no contest plea without state
21 agreement.

22 Three. Hazelwood immunity and talk with state
23 -- misdemeanors.

24 Q What does that relate to?

25 A I suppose the possibility of doing some sort

1 of a immunity arrangement with Mr. Hazelwood,
2 whether the federal people wanted that.

3 Q The next page is page 87. Is this a memo you
4 received from Ron Lorensen regarding potential
5 immunity issues?

6 A He has an electronic mail device and it's a
7 printout of electronic mail.

8 Q And you would have received this on March
9 31st?

10 A Yes.

11 Q The next page is a memo that found its way
12 into your file regarding immunity issues again?

13 A Right.

14 MR. LINTON: Could we have the addressees
15 identified if he's able to identify them.

16 Q Could you identify who it's from and who it's
17 to?

18 A From Mike Frank to Ron Lorensen, WPFC MJF
19 would be Mike Frank. WCMCO2 is Ron Lorensen.

20 Q The next page, can you tell me what that is?

21 A It's a memo from Mike Frank to Bob Linton
22 about the subject matter, whatever it is.
23 Immunity, I think.

24 Q Were you -- this was in your file. Did you
25 read this roughly around the end of March?

1 A I cannot tell you when I got it or the context
2 of it.

3 Q Can you tell me -- the next page is 99. Can
4 you tell me what that is?

5 A It's a memo from a lawyer who is with the
6 Department of Justice, Environmental Crime
7 Section in Washington, D. C. to his chief there
8 about possible violations relating to the spill
9 -- possible legal violations.

10 Q Did you meet or talk with any of the federal
11 attorneys working on this?

12 A I did.

13 Q Could you tell us, in general terms, the
14 extent of those contacts; what they consisted of?

15 A They came down to -- Charles DeMonaco and Eric
16 Nagle came down and met the Sunday -- that would
17 have been after the 26th of March in Juneau. We
18 talked about whether or not we would have a
19 cooperative investigation or we would each go
20 alone. And these were people involved in the
21 criminal prosecutions in the federal end. And we
22 talked about what we might share and what we
23 might not share. Those kinds of things.

24 Q Any factual information exchanged?

25 A Well -- at that meeting?

1 Q Yes.

2 A I don't think so. Relating to the spill?

3 Q Right.

4 A I don't think so at all. I think strictly
5 procedures. Basically setting up an arrangement
6 whereby the state and the feds did or did not
7 prosecute and did not cooperate.

8 Q Did that arrangement get set up?

9 A Yes. I have to say that my experience is, the
10 state and the federal Department of Justice had
11 the best cooperation of any arrangement like that
12 that I've been a part of. I have never been a
13 part of a cooperation where I felt like that the
14 feds gave more than they got.

15 Q But you felt that in this case?

16 A I felt like that they were professional; they
17 were real prosecutors; they were interested in
18 doing the right thing. They tried to help us in
19 ways that they felt like they could.

20 Q How did they help you?

21 A They made available FBI reports to Mr. Linton.
22 At times when federal agencies might be reluctant
23 to cooperate with state people, they asked them
24 to do their duty. I think, basically, those
25 kinds of things.

1 (3958)

2 Q The next page is page 156. Could you tell me
3 what this is?

4 A Page what? Excuse me.

5 Q It's a faxed message, it says at the top.

6 A I don't have the foggiest.

7 Q Okay. Go to the next page. Let me ask you,
8 first. This fax message was in your file, wasn't
9 it?

10 A To the best of my knowledge, yes. It's
11 something I gave you yesterday that was in my
12 file. It obviously looks like it was in my file.
13 I don't recall ever having read it.

14 Q How about the next page?

15 A Nor that.

16 Q Do you recall having conversations with Mr.
17 Cole about potential expert witnesses in the
18 case?

19 A Yes.

20 Q Did you help him structure his strategy --
21 trial strategy with regard to expert witnesses,
22 as far as it's been formulated to this point?

23 A Trial strategy. I guess I wouldn't say so. I
24 mean, it may have been talked about in meetings
25 where we were all present, and I don't think I

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tried to direct anything.

I am sure that I gave him Greiner's name and Beevers' name for the grand jury.

Q Although you haven't read this page 157, that was in your file as well?

A Okay. I will accept that.

Q Next page, 288.

A Right.

Q Could you tell me what this is?

A This is a memo that I wrote to Dick Pegues, who is the administrative director in the Department of Law who was trying to formulate an application to the legislature to obtain money for lawyers and experts, and so on and so forth.

Q The last full paragraph on page 288 seems somewhat inconsistent with what you told us earlier about your attitude towards Alyeska being a criminal case that could wait, if you will. Am I misreading that, or is there an inconsistency there?

A Last paragraph on 288.

Q Right.

A Okay. Excuse me. Well, I think that the things that we're saying here, and I don't think I was fibbing on this, Alyeska was ahead of us.

1 They had produced hundreds of documents. We were
2 unable to review them. We didn't have the
3 horsepower -- manpower to -- we didn't have the
4 personnel to do that.

5 To the extent that those things are true,
6 witnesses go on, so forth, I think those things
7 are correct. I don't think that we felt like
8 there was anything like the urgency with Alyeska
9 there was, as determining what happened on...

10 (Tape: 3520)

11 (000)

12 Q But you were -- you did have the feeling that
13 you wanted to move on the Alyeska criminal
14 investigation as soon as possible?

15 A Well, if we were going to do anything we
16 needed to do it. Probably a huge percentage of
17 my job is simply allocation of resources. And
18 we've lost 10% of our funding over the last five
19 years. We have 10% fewer dollars than we did
20 five years ago.

21 We have 25 fewer legal and paralegal
22 positions. I mean, I end up spending a whole lot
23 of my time just taking people and plucking them
24 and sending them from one place to another.

25 Basically, we didn't have personnel to do

1 Alyeska. Weren't going to be able to do Alyeska
2 unless we got legislative help. And if we were
3 going to go ahead with it, it was going to have
4 to be after a commitment was made from somebody
5 that we were going to get money to do it.

6 Any time you are going to do a criminal
7 investigation you are better off doing it as soon
8 as you can do it.

9 Q Okay. Page 324. Proposed instructions to
10 grand jury regarding multiple charges. Did you
11 draft that?

12 A I did not.

13 Q Do you know who did?

14 A Probably Dean Guaneli.

15 Q Why were you having Dean Guaneli draft
16 instructions for Mary Anne Henry's grand jury?

17 A Mary Anne Henry was doing all the things that
18 she could do. I was allocating resources.

19 Q Okay. Page 332. This is the case that you
20 had some role in coordinating with the New York
21 law enforcement officials regarding Mr.
22 Hazelwood's case?

23 A Mr. Dennis had been representing Mr. Hazelwood
24 and communicating with me. I had talked to him
25 about the arrangements with New York with

1 extradition and so forth. And this was -- I
2 believe that I faxed this to this fellow in New
3 York so that Mr. Hazelwood would appear -- maybe
4 had already appeared -- had already appeared by
5 that time.

6 Q So you had...

7 A So he wouldn't be arrested if he showed up
8 back in New York on re-extradition.

9 Q And why were you handling this rather than Ms.
10 Henry or Mr. Cole?

11 A I was available to do it. Dennis had been
12 talking with me. A body available.

13 (140)

14 Q Page 334. Memo to Mary Anne Henry from Dwayne
15 McConnell. It says, "Larry needs to talk with
16 Gale a bit more about how the material should be
17 screened for taint."

18 At this point in time, that is, August 9 of
19 '89, are you involved in still structuring the
20 procedure by which material will be screened for
21 taint?

22 A The NTSB material caused a certain amount of
23 friction in our office. Mary Anne Henry and
24 Brent Cole wanted to look at those things. Bob
25 Linton didn't believe that they should look at

1 any of them, given his rules. It seemed to me
2 that it was possible that some of the things
3 could be clearly determined not to be tainted and
4 some not.

5 Bob Linton had all the work that he could
6 handle, if he did all the things that he felt
7 like that he had to do. I had Gale Savage, who
8 is in OSPA, take the NTSB materials and go
9 through those things, basically using Bob
10 Linton's standards of a day or after 7:00
11 o'clock, or other things. I asked him to do
12 that. To this day, I don't know whether it's been
13 done. Nothing's been turned over. A decision on
14 the NTSB materials basically was awaiting some
15 sort of court ruling as to what was tainted
16 material and what was not, I guess. Simply
17 because we hadn't gotten to the place where it
18 was.

19 Q Do I understand correctly then that you were,
20 in essence, supervising Bob's job of screening,
21 in the sense of saying, "Gale, why don't you have
22 a look at this and apply your standards, as
23 opposed to Bob's view that none of it should be
24 given."

25 Bad question. Let me reword that. Do I

1 understand correctly that Bob had said, "I don't
2 think you guys should get any of this stuff."

3 A He did.

4 Q And you said, "Well, Gale, why don't you have
5 a look at it and apply these standards, and you
6 decide -- or, at least, make the first cut at
7 whether..."

8 A Well, what I asked him to do was to sort
9 through the NTSB materials and decide what could
10 have been derived -- what would have been derived
11 as of 8:00 a.m. on the 24th. What would have
12 been -- what things would be in that, assuming
13 that there was nothing after all of the 24th. My
14 recollection of those two things.

15 And I asked him to sort of mark those two
16 pieces of evidence -- I mean, those two things.
17 Anything prior to that, possibly, would be cut
18 off under any standard. Some of those might be
19 admissible under any standard. Even Bob Linton's
20 standard of nothing from January -- or, nothing
21 for the 24th.

22 Q Did you view yourself as supervising Bob
23 Linton in this case?

24 A Yes. Yes.

25 Q Did you view yourself as supervising Brent

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Cole and Mary Anne Henry?

A Yes. I guess -- more correctly, I guess I -- with respect to Mary Anne and Brent, I believe that I was supervising the way McConnell, who was supervising them.

Q But you had some direct hands on supervisory contact with Brent Cole and Mary Anne Henry, didn't you?

A Well, what I see myself is more -- most of the conversations that were going on, I guess I see myself more as a sounding board and somebody who talks about things, and makes decisions. They tell me what they want, and why they want it, and how bad they need it, and I sometimes say, simply, there are not resources out there. I do those things.

Q But you may...

A Occasionally -- occasionally I say, no. I think, in this situation -- I mean, I believe that I always have the ability to veto. And I believe that I exercised that in two instances in this investigation.

Q Cousins?

A Cousins and NTSB. I mean, if they had their way they would have had NTSB, at least for the

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nonce, I was saying no to that.

Q Right. My point is, that in this structure that we're talking about with the Chinese Wall as it's been referred to between Mary Anne Henry and Brent Cole and Bob Linton, you were supervising people on both sides of the wall?

A Yes.

Q And you have access to at least the tainted information to the extent that it's tainted in the probable cause statement...

A I do.

Q ...on the tainted side of the wall?

A I do.

Q I don't believe that I ever passed any of that information on to Mary Anne and Brent, with the possible exception of the things that you brought out.

Q Right. But you are also not in the position to tell us to what extent your knowledge of the tainted information influenced your conversations, discussions, or directions of Mary Anne Henry and Brent Cole?

A I believe they made their own decisions. And unquestionably, they made lots of decisions that I wouldn't have made. I don't see myself as

1 making the decisions. I see myself as
2 supervising someone who supervises them, and when
3 things get -- either because of resources or
4 other things, to get to the place where I have to
5 say, no. It's, I believe, a veto situation
6 rather than me out there directing that this is
7 the way things were. I believe that that was the
8 process here.

9 Q I think it was Mr. Guaneli who testified that
10 his recollection is that you folks got together.
11 That is, you and he by phone with Mary Anne Henry
12 and Brent Cole at least once a week. I think it
13 was Mr. Guaneli who said that. Is that your
14 recollection?

15 A I would say probably to grand jury, that's
16 what we did. Prior to grand jury, that's what we
17 did.

18 Q Okay. And would you agree with me that
19 anything you contributed in those conversations
20 would at least be seriously considered by Brent
21 Cole and Mary Anne Henry, even if it's not
22 categorized as a direct order?

23 A Well, I think that they listen. I'm certain
24 they don't always do.

25 Q And in the discussions prior to grand jury,

1 you were not in a position to tell us the extent
2 to which your knowledge of the tainted
3 information may have affected your comments to
4 which they listened; and for that matter, your
5 decision on the Cousins issue.

6 A Well, I don't believe that I transmitted
7 things to them explicitly or impliedly that
8 resulted from tainted things. I don't believe I
9 did that.

10 Q I'm not saying that you consciously did any of
11 that. I'm just saying that, as an honest person
12 who knows some significant information and it
13 smart enough understand its significance, that
14 may have affected your outlook on this case.

15 A Well, I believe that the things that I knew in
16 the probable cause statement, to me, made me
17 decide that it was -- that Joe Hazelwood was
18 culpable and deserved to be prosecuted, if
19 legally he could be prosecuted. I believe that
20 we left that decision to Mary Anne Henry and
21 Brent Cole as to what he ought to be prosecuted
22 for, and how, and what evidence that they had
23 access to that they used. And I don't believe
24 that I -- I don't believe that I intruded on
25 those areas with those people.

1 (510)
2 Q Page 338. You have a fax memo, it looks like,
3 from Mary Anne Henry to yourself, is that
4 correct?
5 A Yes.
6 Q Could you read aloud the second paragraph?
7 A "Are you and Dean coming up to Anchorage next
8 week."
9 Q I'm sorry. I meant the third paragraph.
10 A "In addition to thinking about grand jury
11 instructions, can you also be thinking about how
12 I should word the indictment to distinguish each
13 count without getting too specific. Thank. Mary
14 Anne."
15 Q You did receive that from her?
16 A I did.
17 Q And did you give her some input on those
18 issues?
19 A Well, I suspect that that's -- 324. I suspect
20 that's Dean's Guaneli's response -- 324 is Dean
21 Guaneli's response to that.
22 Q I'm sorry. What are you referring to, 324?
23 A Page 324.
24 Q Oh, I see. All right. You don't know if you
25 discussed those issues with her beyond that 324

1 -- 334, I'm sorry.

2 A I have no specific recollection.

3 Q Page 349. Could you tell us what that is?

4 A It's a memo from Dwayne McConnell to Brent
5 Cole.

6 Q It refers to having meetings every Thursday
7 with them regarding the case. Did you
8 participate in any of those meetings?

9 A I think that the first meeting after the
10 indictment, which was probably this, I was there
11 and I guess -- I think that it's unlikely that I
12 continued. There may have been individual times
13 when they called up about something in
14 particular.

15 My notes of those meetings have extinguished
16 back here, and then you have...

17 Q Right. Okay. The next page, could you tell
18 us what that is?

19 A Something that I got in the mail from someone.

20 Q "Alaska Oil Spill Reporter".

21 A Right.

22 Q Right there we just have the first page of it,
23 but actually the entire issue is in your file,
24 isn't it?

25 A I'm sure it is.

1 Q And, actually, there's another -- did you also
2 have the June issue in your file?

3 A Yes.

4 Q So although you weren't reading newspaper
5 accounts of the oil spill, you had a newspaper
6 wholly devoted to the oil spill -- at least two
7 issues of it in your file?

8 A Yes.

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

10 (624)

11 REDIRECT EXAMINATION OF MR. WEEKS

12 BY MR. LINTON:

13 Q Mr. Weeks, would you compare the things that
14 you did in the work on this case with the things
15 that you do on cases in the -- that are being
16 handled in the Criminal Division of the
17 Department of Law in general, please?

18 A Well, I was more involved in this case than
19 most. Probably for the simple reason, just
20 because it required more allocation of resources.
21 And at a particular time I have more control over
22 the people myself than the people in my office
23 and other places as to allocation of resources.

24 At this point in time, right now, we are
25 preparing for murder trials in half a dozen

1 communities in the state to commence just after
2 the first of the year.

3 I have had involvement with all of those with
4 respect to allocation of resources. Some of them
5 with respect to plea bargains on, or offered,
6 with respect, sometimes, to tactics of how things
7 should be done and how not.

8 Some of those cases I have undoubtedly had
9 more dealings with tactics and the sort of the
10 hands on kinds of things as to what to do and
11 what not to do in trial strategies, and so on,
12 than I have in this case. Not that I had -- I
13 mean, I spent more time on this case simply
14 because of the resources problem and all those
15 things. But effecting more of those cases --
16 those homicide cases like that.

17 MR. LINTON: Nothing further, Your Honor.

18 MR. FRIEDMAN: Nothing further.

19 THE COURT: May Mr. Weeks, if he wants, return
20 back to Juneau?

21 MR. LINTON: That's fine, Your Honor.

22 (Witness excused).

23 (710)

24 (Pause)

25 THE COURT: Are you going to be next, Mr.

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Linton?

MR. LINTON: Yes, sir.

THE COURT: Okay. Are we going to have to go through the same procedure in examining the file, Mr. Linton?

MR. LINTON: No, Your Honor. It will be much quicker.

THE COURT: All right.

All right, Mr. Stockler, you can come on up.

MR. STOCKLER: Judge, for the record Mr. Linton's notes were discovered last night.

May I approach your clerk?

THE COURT: Yes, sir.

THE CLERK: Sir, if you'd attach the microphone and stand behind the chair.

(Pause)

THE CLERK: Would you raise your right hand please?

(758)

(Oath administered)

A I do.

LEONARD M. LINTON, JR.

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

THE CLERK: Sir, would you please state your

1 full name, and then spell your last name?

2 A My name is Leonard M. Linton, Jr., spelled
3 L-i-n-t-o-n.

4 THE CLERK: Current business mailing address?

5 A 1031 West 4th Avenue, Suite 520.

6 THE CLERK: Your current occupation?

7 A I'm a lawyer.

8 MR. STOCKLER: Your Honor, I have four
9 exhibits I would like to mark.

10 DIRECT EXAMINATION OF MR. LINTON

11 BY MR. STOCKLER:

12 Q Mr. Linton, how long have you worked for the
13 District Attorney's office?

14 A Just about 12 years; just a little short of 12
15 years, beginning February 1978.

16 Q And besides assistant district attorney, do
17 you have a specific job title there?

18 A I'm denominated among the assistance as the
19 chief assistant district attorney, yes.

20 Q And what are your responsibilities as the
21 chief assistant?

22 A I am the person who has to answer when the
23 boss is away, and I'm responsible for the
24 operation of the office during periods of time
25 that he's on vacation, other otherwise

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unavailable.

Q During March of this year were you asked to go to Valdez, Alaska to investigate an oil spill?

A Yes, I was.

Q Could you tell the court, briefly, how you got assigned the case?

A Judge, it was on Easter Sunday. That morning the Attorney General, Doug Baily called me and said he was looking for Larry Weeks and couldn't find him. He was looking for Dwayne McConnell and couldn't find him. And mine was the first telephone number down the list that he could find anybody home on.

Coincidentally I had plans -- my wife and I had plans to meet Larry Weeks and his wife for Easter brunch, and I told him I would convey his desire to see Mr. Weeks, to him. So I told Larry Weeks, when we met, that the attorney general was calling.

Q And was there subsequent conversation with the attorney general?

A Yes. After we had a meal, we returned to Mr. and Mrs. Weeks suite -- room in the hotel where we had eaten, and he called the attorney general and as a result of that conversation they decided

1 that some lawyer was -- on behalf of the Criminal
2 Division of the Department of Law would have to
3 travel to Valdez, and I was standing there.

4 Q And hence you went?

5 A I was chosen.

6 Q When did you actually leave for Valdez?

7 A The next day.

8 Q I assume at the time you had already heard
9 about the oil spill?

10 A Not that I knew of. I probably heard of it,
11 but it hadn't been something that caught my
12 attention, no.

13 Q You hadn't been reading any newspaper
14 accounts?

15 A No.

16 Q You would have left for Valdez, then, on
17 Monday morning?

18 A Yes.

19 MR. STOCKLER: Your Honor, instead of being
20 repetitive, I'm handing Mr. Linton Exhibit 65. It's
21 his affidavit attached to his response to his motion.

22 Q Mr. Linton do you recognize state's Exhibit
23 65?

24 (Pause)

25 A Yes, sir.

1 Q And is that information -- what is that
2 information?
3 A This is an affidavit I filed as part of my
4 response to the motion to suppress and dismiss on
5 immunity grounds.
6 MR. STOCKLER: Your Honor, I'd ask that it be
7 incorporated by reference to his direct testimony,
8 subject to cross examination by Mr. Friedman?
9 MR. FRIEDMAN: That's fine.
10 THE COURT: All right. We'll admit 65 as a
11 supplement to Mr. Linton's direct testimony.
12 Q (Mr. Linton by Mr. Stockler:) Could you tell
13 us briefly what you did that first week -- the
14 first couple days that you got to Valdez, Alaska?
15 A Initially I had talked to Mike Fox on Sunday
16 afternoon. That is, after I had been told I was
17 going to be the one going to Valdez. I talked to
18 Mike Fox, the Fish and Wildlife trooper who had
19 gone on board the Exxon Valdez. And had some
20 idea about what he thought were appropriate lines
21 of investigation, even at that stage.
22 When I got to Valdez it was on the afternoon
23 of that Monday. The first thing I did was go to
24 the Coast Guard to try to get copies of ship's
25 documents. I went to the Coast Guard station

1 there. And then when we were unable to get them
2 there, participated in interviews -- an interview
3 with Captain Murphy. So when I initially got
4 there I was acting as an investigator, trying to
5 get documents and participating in interviews.

6 Over the next few days, additional
7 investigators began arriving in Valdez. Trooper
8 McGhee got there that afternoon. Troopers
9 Grimes, and Burke, and Chris Stockard, and Gale
10 Savage arrived in the course of that week, and as
11 the week progressed I was able to back out of the
12 interview process and assume a role where I was
13 helping decide what lines of investigation to
14 follow, and then receiving the information that
15 was gotten in the course of interviews, and
16 helping to decide where to go next.

17 Q Now, you got to Valdez on Monday March 27.
18 There was a defense exhibit, Defense Exhibit T,
19 which is a memo from Mike Frank. It's dated
20 March 27. Did you get a copy of that memo?

21 A Yes, I did. Yes, I did.

22 Q Could you tell the court when you saw that
23 memo?

24 A I don't know whether I saw it on the 27th or
25 the 28th. By the 28th I had it for sure.

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THE COURT: What's the identification of that memo?

MR. STOCKLER: Defense Exhibit T.

THE COURT: Okay.

Q (Mr. Linton by Mr. Stockler:) And for the court, Mr. Linton, do you remember essentially the substance of that memo?

A Yes. I kept a copy of it among my notes, and I have it in front of me. And the substance was that Janet Goldstein, a lawyer from the Department -- a lawyer who had been employed by the Department of Justice, working in oil spill type criminal prosecution, I understood, was of the opinion that the immunity issue was one to be taken seriously, and that efforts should be made to stay away from the report or information derived from the report.

Q Was this your first awareness of immunity issue?

A There were several things happening all at the same time in that regard. I know I spoke with Mr. Weeks -- Larry Weeks on the 28th. And in the conversation with him -- let me just check -- (pause) -- if it was not the first it was very nearly the first. It may have been the first,

1 but within a matter of days, I was talking to Mr.
2 Weeks as well about the issue. I don't recall
3 which came first. Seeing the memorandum or my
4 conversation with him.

5 Q So at least you were -- you can say you were
6 alerted to this issue very early on?

7 A Yes, sir.

8 Q And did you start to try to get ship's
9 records?

10 A Yes. When we were in his hotel room, before I
11 -- at the time I got off the phone with the
12 attorney general, we sat down and talked about
13 lines of investigation. And actually got a
14 notation on the slip of paper that he handed me,
15 saying that "We need access to people and
16 records; give them written request if access is
17 denied.", was a note that I have in Mr. Weeks'
18 handwriting from the hotel, as we were talking on
19 March 26, 1989.

20 Q Did you have trouble actually trying to get
21 the records?

22 A Yes, I did.

23 Q Very briefly, could you describe that?

24 A I went to the Coast Guard station on the
25 afternoon of the 27th when I got there, and met

1 with Mr. Delozier or Commander Waldron and a Mr.
2 Woody of the National Transportation Safety
3 Board.

4 I asked if we could get copies of the
5 documents from the ship. They told us that they
6 had them but they didn't have time to have
7 someone Xerox them for us. I said, that made
8 sense, "I'll tell you what, we'll give you a body
9 to xerox the things, and you just have somebody
10 stand by and provide security; we'll provide the
11 manpower, is that acceptable?"

12 And they said, no, that wasn't acceptable to
13 them.

14 So over the next few days I made calls to
15 other federal lawyers; some in the justice
16 department, some in the Coast Guard, in an
17 attempt to get them. And for a few days, was
18 frustrated in that effort.

19 Q Had your search of the ship occurred yet?

20 A No, it had not.

21 MR. STOCKLER: May I approach the exhibits,
22 Your Honor?

23 THE COURT: Yes, sir.

24 A Search warrants would be in the pile to the
25 left front, I think.

1 Q I'm actually looking for Exhibit 36, the
2 letter you had written.

3 A I think that -- not there. In the pile to
4 your -- right hand pile.

5 Q Showing you what's already been admitted as
6 state's Exhibit 36, and what's been marked for
7 identification as state's Exhibit 66. The one
8 marked for identification, 66, what is that?

9 A Number 66 is a letter I wrote to Captain Kelly
10 Mitchell, a master with the Alaska Marine Highway
11 System on March 29, 1989.

12 MR. STOCKLER: Your Honor, I'd move the
13 admission of state Exhibit 66.

14 MR. FRIEDMAN: No objection.

15 THE COURT: It's admitted.

16 EXHIBIT 66 ADMITTED

17 Q Could you describe for the court now, and give
18 the court the date of when these letters were
19 written, so it has sequence of how soon these
20 things were occurring, what you were doing in
21 Exhibit 36?

22 A Judge, in the course of that conversation with
23 the NTSB people, Mr. Woody, Mr. Delozier, and
24 Commander Waldron, as I recall, on the afternoon
25 I first got there, where I was asking for the

1 documents. The NTSB people, Mr. Woody, I think,
2 specifically said, "Well, no, you can't have the
3 records, but you could be of assistance to us if
4 you would supply us with an expert familiar with
5 the waters of Alaska who could provide us with
6 guidance in the investigation we're conducting."

7 And they said, "We think Kelly Mitchell would
8 be an appropriate person for you to provide us.
9 Would you please do that?"

10 When I left the meeting I knew that I needed
11 the same kind of help, and thought that if they
12 thought highly enough of Kelly Mitchell, then
13 maybe I should get Kelly Mitchell.

14 So I spoke to Mr. Weeks and asked him if he
15 would get help in the form of having Kelly
16 Mitchell fly to Valdez. He did. I met him at
17 the airport on the 28th, and he came back to the
18 District Attorney's Office there with me. When
19 we got there I got involved in a telephone call
20 of some kind, and while -- with Mr. Weeks,
21 actually. And while I was talking to him, Kelly
22 Mitchell, who is a very aggressive kind of
23 person, said, "Well, I'm gonna go talk to Mr.
24 Murphy and get my own investigation started."

25 He went to do that and left while I was on the

1 phone. The next thing I heard was a call from
2 him, just about an hour and a half later, where
3 he says, "I'm now participating in the U. S.
4 Coast Guard National Transportation Safety Board
5 investigation, and I'm in the middle of
6 interviews, so, by golly, I'm gonna find out what
7 you need to find out."

8 Well, that was not our purpose in having him
9 come there.

10 I was aware, number one, of this immunity
11 issue that had been -- I learned of at least on
12 the 28th, if not on the 27th. And, actually, in
13 the conversation I was having with Mr. Weeks, as
14 Mr. Mitchell left to go join the NTSB, Mr. Weeks
15 was cautioning me not to get the Coast Guard
16 records that they might have from the vessel
17 because of the immunity issue. We were still
18 trying to figure out how that might apply, and
19 so, he said, hold off until tomorrow getting the
20 records.

21 So it became apparent to me that I had to
22 caution Mr. Mitchell about not only getting
23 records, but more importantly, participating in
24 an investigation and coming back and talking to
25 me or other investigators about what had

1 happened.

2 So on the evening of March 29th -- on March
3 29th, I wrote the letter, which is Exhibit 66, to
4 him. And at the same time, the gist of the
5 letter is that we understand that there may be
6 some problems with use of the information that is
7 given to the NTSB, either by virtue of something
8 in their procedures, or by virtue of the immunity
9 question. And that, therefore, he should not
10 communicate with troopers, investigators or me,
11 in order to avoid even an accident communication
12 of information from the National Transportation
13 Safety Board.

14 I further cautioned him that if he violated
15 such a thing he might very well be a principal
16 witness at a hearing which would be -- the state
17 would be asked to give all its information I had
18 obtained from the NTSB and everyone who had ever
19 gotten such information, either orally or in
20 writing, and to state the date and time when he
21 had given it. And that rather than get him
22 involved in a hearing like that, he just ought to
23 have no contact with anybody. And that's what I
24 was writing to him on the 29th about.

25 Simultaneously on the 29th I wanted to tell

1 the troopers that they shouldn't have any contact
2 with him, and Exhibit 36 is a memo I wrote to the
3 trooper who was in charge of the investigators
4 down there. Trooper John McGhee saying, don't
5 have any contact with Kelly Mitchell and don't
6 get any information from him.

7 Q As to those two documents, you were referring
8 that the communication shouldn't even go to you.
9 I assume the Chinese Wall theory, and your being
10 on the other side of the fence, hadn't developed
11 yet?

12 A This was the primordial stages of it, but no,
13 it had not fully developed.

14 Q Did a search warrant occur within a few days
15 from those memos?

16 A Yes. As I recall it was Saturday the 1st.
17 There was a point at which Mr. Mitchell said, "I
18 can get you those records."

19 And I said to him, "We can't use them in that
20 form. I don't know what you're doing, and I
21 can't afford to get involved in an investigation
22 of it."

23 He brought them -- just showed up in the
24 District Attorney's Office. The District
25 Attorney's Office in Valdez is just two rooms in

1 the state building there. The outer office,
2 normally the secretary's office, is where I was.
3 The inner office, normally the lawyer's office,
4 is where the Civil Division lawyers were.

5 And when he brought the materials from the
6 NTSB, I told him -- I said, "Put them in an
7 envelope, seal them up, give them to one of the
8 civil lawyers and tell them to keep them and
9 don't give them to me."

10 So I think had to pursue some other route to
11 get these records. And so I decided that we'd
12 have to go to the ship and look on the ship to
13 see if they were there.

14 So on the first -- yes, Saturday the 1st, I
15 participated in the application for a search
16 warrant for magistrate or deputy magistrate in
17 Valdez, and then on the 2nd went out and helped
18 the officers execute it -- went along as they
19 executed it, is probably the more proper
20 language.

21 Q And which day did the execution of the warrant
22 occur?

23 A Sunday, April 2, 1989.

24 Q Showing you what's been marked state's Exhibit
25 67 for identification. Do you recognize that?

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A Yes. This is a copy of the attachments, Attachment A and Attachment B which actually listed the things to be seized or the things to be done on board the vessel.

There were documents to be seized, and under 3VA 89-7 SW. And then there were also tests to be performed. Tests of navigational equipment, steering equipment, and then video taping and inspection of garbage and checking of clocks that were to be done, in addition to the seizure of things.

Q Besides being photocopies of the attachment that went on the search warrant application, are there anything additional written in on that document that wouldn't have been on the search warrant document?

A Yes. This is a copy of the attachments that I carried with me. When we got on board the Exxon Valdez, there were two masters on board, Captain Wallace and Captain Deppe. They were first concerned that our execution of the search warrant and some of the tests described would interfere with the safe operation of the ship.

We assured them that if there was anything that we proposed to do, which would interfere

1 with the safe operation of the ship, or endanger
2 the ship in any way, we didn't intend to do that.
3 We took Captain Beevers along -- Captain Robert
4 Beevers to say -- we told him, "You tell Mr.
5 Beevers why we shouldn't be doing this, we'll go
6 away."

7 And after a brief conference they decided that
8 except with respect to testing, steering, and
9 equipment, which might require starting some
10 engines and creating vibrations, which would
11 create a danger. Most of the things they could
12 accommodate us on.

13 However, they pointed out that most of the
14 records which we were asking to obtain on
15 Attachment A had already been taken by the Coast
16 Guard.

17 I was directed to the radio room where I was
18 put on the line with a lawyer for the Exxon
19 Company, and we then went down the list of ships
20 records to be seized under the search warrant,
21 and he told me where they were and when they had
22 -- well, he told me first, that they weren't on
23 the ship, and told me where his understanding was
24 of where they were and where they might be
25 obtained.

1 So there are notations -- for example, the
2 first line, the deck log of the Exxon Valdez for
3 23 and 24 March 1989. There is handwriting after
4 it which says, USCG 3/26/89. That reflects that
5 in my conversation with the Exxon lawyer, I was
6 told that the Coast Guard had taken those records
7 off on March 26, 1989. And there are dittos on
8 down the page for most of those items.

9 Item 7, the chart in use on the bridge of the
10 Exxon Valdez on 23, 24 March 1989. I have
11 dittos. And then USCG 4/1/89, all other
12 navigational charts were taken off.

13 There's notations like that as to where the
14 things which were not on the Valdez could be
15 found.

16 MR. STOCKLER: Your Honor, I'd move the
17 admission of state's Exhibit 67.

18 MR. FRIEDMAN: No objection.

19 THE COURT: It's admitted.

20 EXHIBIT 67 ADMITTED

21 Q (Mr. Linton by Mr. Stockler:) We're now on
22 Sunday, April 2. Can you tell us briefly how
23 much longer you stayed in Valdez and what your
24 responsibilities were in those days?

25 A I stayed through April 7. There were three

1 jobs that I had at that point, or three focuses
2 of work that I was engaging in.

3 Number one was work on the investigation of
4 the -- whether there was a failure to comply with
5 the Oil Spill Contingency Plan on behalf of
6 Alyeska or Exxon.

7 (1870)

8 Q Mr. Savage had travelled to Valdez, the
9 Wednesday before or something like that, give or
10 take a day. And he had come from our office of
11 Special Prosecutions and Appeals and had some
12 experience in white collar type investigations.

13 The troopers that we did have on hand were
14 pretty well busy with the alcohol aspects of the
15 investigation, either by conducting interviews or
16 by beginning to log and catalog records or tapes
17 of interviews, and just keeping track of things
18 like that, so that that was a second -- the
19 trooper work in conducting further
20 investigations, and then documenting what things
21 had been seized was the focus most of the work
22 for that second week after the Sunday in which we
23 boarded the vessel and executed the search
24 warrant.

25 Q So you returned to Anchorage on Friday, April

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A Yes, I did.

Q Do you know if you worked at all on that weekend, the 8th and 9th?

A I think I took the 8th and 9th off.

Q And did you return to the Anchorage office on Monday morning, the 10th?

A I did.

Q On Monday the 10th, did anything happen changing the course of the way you were handling this case?

A Yes, it did.

Q This had happened the week before. I think it was on about April 6th that investigators for the FBI and the Environmental Protection Agency had been by the previous week. And one of them -- the Environmental Protection Agency investigator had gone with Trooper Burke to the Coast Guard and had managed to obtain from Mark Delozier directly Coast Guard documents. They were looking for ship's documents and came back with a whole set of documents. They are the documents in the envelopes that Trooper Burke introduced here earlier.

When he came back he made a copy -- he made a

1 copy before he gave me anything, so I had
2 something to work from. The first thing I did
3 was flip through them to see if there were ship's
4 documents in them. I was looking specifically
5 for things like course recorder that Captain
6 Beevers and Greiner, who were still in town, and
7 whose meters were still running, but who didn't
8 have the essential kind of documents that would
9 enable them to do sort of a quick reconstruction
10 of what had happened in the grounding.

11 And so I went to these real fast to see if I
12 could have ship's documents, and I found them and
13 gave them to Mr. Beevers and Mr. Greiner and
14 said, "Okay. With these can you guys give me
15 some idea of what you can do with these, and how
16 this ship went aground? What course it followed
17 and what orders were given to engines, that kind
18 of thing."

19 They did a preliminary version of that while
20 they were still there. But it was either that
21 day or the next day, they were going to be
22 leaving to go back to their respective places.

23 It was clear that there were certain kinds of
24 analysis on things like a course recorder that
25 you could do that we couldn't do there in Valdez.

1 For example, there were times on the course
2 recorder, which contains the lines that -- if I
3 might just -- (pause) -- there are lines which
4 show the courses of the vessel over time.

5 And Captain Greiner would hold up this thing
6 and kinda look at it and say, "Well, if you look
7 at the waves in the line, and look at it this
8 way, rather than this way and this way, you can
9 make out some movements in the line that you
10 can't make out -- and a more careful study of
11 these might tell us something about when the ship
12 went aground, or when it first struck rocks."

13 But he explained that he couldn't do that kind
14 of analysis there. But he needed that kind of
15 thing to do that kind of analysis. And as I
16 recall, it may be that he actually needed a
17 better copy than we had initially gotten from the
18 Coast Guard, so he went back -- he or Burke went
19 back to get a more careful copy of the Xerox
20 copy.

21 Anyway, he was about to leave and we needed to
22 give him these papers. So we had Xerox for him
23 -- or, maybe he took the Xeroxed copy that Burke
24 had given me, and he was going to take it back to
25 Anchorage on his way back to Seattle where he's

1 based. Gonna meet my secretary, Anita Marshall,
2 in the airport. Leave her copies of the
3 documents -- leave her the copy of the documents,
4 and then they would be copied by me and
5 distributed when I got back to Anchorage.

6 Well, he missed my secretary in the airport
7 and ended up back in Seattle with the documents,
8 and, in turn, sent a copy back to my secretary,
9 who had Xeroxed them and they were on my desk
10 when I came in Monday morning.

11 Some time on Monday, April 10, Larry Weeks
12 called and said, "Where was the Exxon Valdez
13 bound?"

14 And I said, "Well, I don't know, but I'll look
15 through these papers that I got and maybe there
16 is something in there that will tell me what that
17 is.

18 So I started going through the documents to
19 see if there was something that had the
20 destination of the Exxon Valdez on it.

21 As I went through them I came across three
22 pages which appeared to be -- it's designated a
23 "logs-remark" sheet; a Coast Guard form. Which
24 appeared to be notations by the watch standers,
25 like Mr. Blandford, in the Vessel Traffic Center.

1 And in looking for the Exxon Valdez' destination,
2 I read an entry on the document that Mr.
3 Blandford identified here earlier, which were his
4 notes for his watch. It's the one that had the
5 notations of the Exxon Valdez reporting itself
6 aground and leaking some oil, and then it shows
7 his notations as to where on the radar screen.
8 He saw it 13.2 miles and such and such a
9 direction from the Potato Point radar.

10 Well, it was apparent to me that this was the
11 report of an oil spill in one of its purest
12 forms. That is, at this point I didn't have any
13 tape recordings of any such transmissions. Here
14 was a notation by Mr. Blandford saying, "I
15 received a report from the Exxon Valdez, and this
16 is the -- what was communicated to me."

17 That was the notification in one of its purest
18 forms. And it became apparent to me then that --
19 well, not immediately, but I took it seriously
20 enough that I immediately called, or quickly let
21 somebody know that I had been exposed to things
22 like that. And I called Mr. Greiner, I called
23 Mr. Beevers and said to them, "Hey, you got a --
24 did you get a bunch of papers? Have you been
25 through them yet?"

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The response was basically, "No."

I said, "There somewhere in there something I don't want you to see. Would you please do this. Would you please go to the point where you see something which says 'logs-remark'. The front date should be 3/23, which would be okay. But there's going to be a paper under that which you shouldn't look at. Go through your pack and see if you can find that kind of a thing."

And they'd say, "Well, okay, I found the one on top."

"Okay. Well, it's the next one I don't want you to look at."

And I did that with both Mr. Beevers and Mr. Greiner, and they assured me that they had found such documents and they had not looked at them, and told me that they would make sure they didn't.

But besides taking care of the possibility that they had been exposed to, it became apparent to me that it's very difficult to -- and nearly impossible to stay away from something from a spill report unless you know where you're going. It's just like you can't just fend off if you don't know what you're fending off.

1 And so it became apparent to me that a better
2 way to do this, that is, to stay away from these
3 materials, was to simply recognize that there was
4 going to be somebody who had to look at the
5 materials that came in first and take that kind
6 of material out before it was passed on to
7 somebody who was going to be doing a prosecution.

8 Q And is that where the idea was formed to
9 actually set up a Chinese Wall or clean team and
10 let you be the eyes in the screening of the
11 material that would end up going to them?

12 A Yeah. I had never known what a Chinese Wall
13 meant. I mean, I know the Great Wall of China is
14 long and it's stone and it's been there for
15 thousands of years. But there have been a lot of
16 barbarians that got over the wall, and it's not a
17 continuous thing. And I've seen it and it's not
18 so high that you couldn't get over it if you
19 wanted to get over it. So I had never known
20 whether the Chinese Wall meant a real wall or a
21 phoney wall. But on the assumption that it means
22 a real wall and a big strong wall, yes.

23 Q And can you give us a time frame now of how
24 this started to develop and how subsequent people
25 got brought into the case after you realized that

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you couldn't continue in this way anymore?

A Well, I communicated that I had come across something that could not be utilized to other people in the Department of Law. And it was on the 11th and 12th, as we thought about these things and talked about them, that we decided to meet on April 12. And that Mary Anne Henry would be brought in to prosecute the case, and that I would then screen materials that were received from the troopers. And it would only be materials that I had screened that would then go to Mary Anne Henry, who was, at that time, the lawyer who was going to be responsible for prosecuting the case.

Q Prior to April 12 when this was then created and Mary Anne Henry was brought in, had you had any substantive conversations with Mary Anne Henry, either while you were in Valdez or in Anchorage regarding this case?

A No, sir.

Q How about Brent Cole?

A He reminded me, when he testified, that I had a conversation with him, but for that, I don't remember any conversations with him, no.

Q And that conversation was telephonically,

1 asking him to pass on a message to Anita Marshall
2 regarding newspaper clippings?

3 A Yes, that was it.

4 Q Did you discuss the substance of the facts, or
5 anything that you were discovering with Mr. Cole?

6 A Only to the extent he refreshed my
7 recollection that I said something about one of
8 the thousands of things that wasn't getting done
9 was documenting damages at that point.

10 Q Starting on April 12, then, what did your
11 involvement change to?

12 A My function after April 12 was to receive
13 investigative reports from the Alaska State
14 Troopers who had been in Valdez with me. And to
15 review those to remove anything that was an oil
16 spill report, or information which could fairly
17 be said to be derived from the oil spill report.

18 Q What kind of a system did you set up?
19 Logistically, how did the transmission of Mary
20 Anne Henry occur? How did you take in
21 information?

22 A Trooper McGhee was instructed to bring the
23 reports to me alone. And initially what happened
24 is, I went out to the Troopers myself and picked
25 them up physically and carried them in myself, so

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that there would be no intermediaries.

As it became more an established procedure, they would occasionally leave things for me and it would come to me in the ordinary course of the distribution of things within the District Attorney's Office. But initially, I would go out and get them, bring them to the District Attorney's Office, and then I would first have them numbered so that each page in sequence that I receive from the Troopers -- one through -- the last thing I screened to date go through about page 12,000. It was numbered, and then given to me.

(2585)

With that, then, I would review each of the pages to determine whether there was anything on it which was either an oil spill or an observation of somebody made during the first 24 hours following the grounding of the vessel. So you're speaking roughly -- if this course recorder says 004, some people read it 007, actually, as the time of the grounding.

From that point on through midnight -- it would be, actually, midnight on the 24th, 25th. Any observations made by people on that date

1 would be screened out. And by that I mean, this.
2 If it were an entire page that dealt with that
3 subject matter, I would simply set that page
4 aside.

5 If it were a partial page -- if there were
6 just a paragraph or lines, I would cover over
7 that part of the paragraph, Xerox the page in the
8 form, and then do this. I would give to the
9 prosecuting team the original pages which were
10 okay. I would save the page from their set of
11 documents, which I had removed if the entire page
12 was bad. And in the case of a page which was to
13 be redacted, I would do two things. I would put
14 a copy of the redacted page in the set they were
15 to receive, and retain myself, number one, the
16 original page which a I had taken from their set,
17 and then a copy of the redacted copy that I put
18 in their page -- in their set.

19 And then I would do a memorandum to the file
20 -- to the Exxon Valdez oil spill discovery file
21 as to what I had done.

22 I would then take those documents which had
23 been screened out or redacted and put them in an
24 envelope and kept them.

25 Another set of the same documents was then

1 given to the defense in its entirety as
2 discovery.

3 Q Did you always do the physical job of the
4 redaction, alterations yourself?

5 A Yes.

6 Q Did you ever let someone else do it?

7 A No.

8 Q Did you always do the physical job of copying
9 and providing to Brent Cole and Mary Anne Henry
10 only the portions they were allowed to see? Did
11 you physically do that job or did you let someone
12 else do it?

13 A Yes. I physically went through each page of
14 the materials they got and removed them and
15 redacted those that were redacted, and physically
16 put back a redacted page in the set that they
17 got. Yes.

18 Q And you also, then, were the only person who
19 physically retained your own files and were able
20 to keep records of the original redacted form,
21 what was provide and what wasn't provided?

22 A That's correct. To your left. Right below
23 you there.

24 Q Showing you what's been marked and admitted,
25 states Exhibit 53. Do you recognize that?

1 A Yes. This is one of those envelopes or more
2 properly speaking, this is a photocopy of one of
3 those envelopes. That is, at the end of that
4 process, Your Honor, I had generated maybe 10 or
5 15 envelopes like this.

6 In preparation for these hearings I made
7 discovery of these envelopes to the defense, and
8 this is one of the -- what we did is we took it
9 to a commercial service and had it Xeroxed at the
10 commercial service. This is a commercial service
11 Xeroxed version of what I had in my office. And
12 has both the memorandum that I would attach as to
13 the pages which I delivered, the pages which I
14 did not deliver, and then the pages which were
15 delivered in a redacted form, listed page by page
16 or sequence by sequence.

17 So that with respect to this June 26, 1989
18 memorandum, which is on the face of the packet
19 and marked as Plaintiff's 53, I have written, "On
20 June 26, 1989 I delivered to Mary Anne Henry the
21 following pages: 1008460-85 -- excuse me dash -
22 008504. And then I list five other such
23 sequences.

24 Then I write, "I did not deliver to her
25 certain pages from that sequence which had the

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following numbers. And then I list the pages I didn't receive -- I didn't deliver to her.

And then I list -- I write, "The following pages were delivered to Mary Anne Henry in a redacted form." And then I list 15 sequences or individual documents, which were in a redacted -- delivered to her in a redacted form.

I then write, "I will put copies of the pages that I used to create the redacted forms in a separate envelope." This envelope. "I will also put copies of those pages in the form in which I delivered them to Mary Anne Henry in the envelope."

So if Mary Anne Henry's set had a whole page, I would take the whole page out; I would put a copy of the redacted form in this envelope.

Now, in some instances I would simply take the original and just tape a piece of paper over the bad part, Xerox it and keep a Xerox copy and the original page -- and the original page will still have the taped-over portion that I took out of her set and put into the envelope which is Exhibit 53.

Q Now, you described using a commercial service when you -- information as Mary Anne and Brent

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got it, you didn't use a commercial service?

A No. The commercial service was used only in the discovery process in preparation for these hearings. All the other times, I did those acts myself.

Q Did you keep track of how many hours you actually spent in going through this material and discovering it to Mary Anne Henry and Brent Cole?

A As to the reading, probably, I think I calculated it just quickly in preparation of these hearings; 115 hours of that process, some of which might have include Xeroxing, and some of which didn't include the Xeroxing, and standing at the Xeroxing machine. And so there probably is a very conservative estimate.

Q Did you have an additional amount of time that you knew was related to redacting and Xeroxing and discovery?

A I know there was additional time, but defining how much of that was redacting as opposed to dictating the memoranda and checking the memoranda. Just the sheer task of going through them was at least 115 hours. If you add dictating the memoranda and doing the redacting process, it was greater than that, by maybe a

1 factor as much as 50% greater than that.

2 Q How was the standard of 24 hours -- waiting 24
3 hours in terms of what to provide to Mary Anne
4 Henry and Brent Cole developed?

5 A It was developed through just a process of
6 thinking about what had happened on the 24th, as
7 I knew it from the initial investigation. And,
8 as I experienced it when I was down in Valdez,
9 too.

10 It -- when you speak of whether something is
11 derived from an oil spill report, it seemed to me
12 that when one reports an oil spill, there is
13 going to be -- there may or may not be a response
14 to it by law enforcement officials. Maybe EPA or
15 Coast Guard, whatever. And that certain
16 information may be gained by that, which can
17 fairly be said to be a response to it.

18 But having been in Valdez for that time, it
19 was just a crazy time in the sense that when I
20 got there the hotels were already booked up. I
21 understood, for the most part, by Exxon. People
22 were trying to get into town to find anyplace to
23 sleep.

24 The places I found to sleep -- I was bedding
25 down with news reporters from NBC news, and who

1 were flying out on helicopters in the early
2 morning hours to go film something for a film
3 story, and National Guard pilots from Kenai who
4 were flying other missions for these people.
5 Coast Guard people were all around the place.
6 Troopers were trying t find places to sleep.

7 The Alaska Department of Environmental
8 Conservation had offices just down the hallway in
9 the state building and they were overcrowded.
10 Nobody had time to eat, and some people would
11 bring food and put it here and there. Newspaper
12 reporters were all over the place.

13 The office I was in didn't have a receptionist
14 or a secretary, so when the phone rang I had to
15 pick it up and didn't know whether it would be
16 Mr. Baily or Mr. Weeks, or whether it was going
17 to be a newspaper reporter who I shouldn't have
18 been talking to and didn't have time to talk to.

19 And just that flurry of activity made it clear
20 to me -- I said to myself, is this -- all this
21 activity a response to a report, or is it a
22 response to the existence of a ship on a rock
23 leaking a lot of oil?

24 And the question was, it seemed to me, that at
25 some point the response was to a ship on a rock

1 leaking oil, and not to, simply, a report made by
2 a person.

3 When that time period was going to be -- when
4 you could fairly say it was going to be, wasn't
5 as clear as the proposition that there was such a
6 time.

7 I picked a 24 hour time period out of a sense
8 that that was probably a cautious estimate of a
9 time when the activities of people in that town,
10 or the surrounding areas, would have uncovered
11 the existence of the ship and the oil, and would
12 have been reacting to it in and of themselves
13 even had there been no initial report.

14 I didn't know what those activities were at
15 the time. How to define who might have seen it,
16 but 24 hours seemed like a time -- if it weren't
17 in that time period then there never was such a
18 time period. And my impression was, there
19 certainly was such a time period.

20 In retrospect, that's a far different number
21 from what you're arguing as the discovery point
22 in this case, is that correct?

23 A Oh, decidedly, I mean. Actually, I think the
24 position I take in my memorandum even, presented
25 to the court, is liberal compared to the kind of

1 testimony that's been heard in the proceedings
2 here in court.

3 Q Are there any mistakes that you're aware of,
4 information that violated the 24 hour time period
5 that got to Mary Anne Henry and/or Brent Cole?

6 A One could say that Captain Beevers and Captain
7 Greiner are in that category, in the sense that
8 when they got to Valdez, I had to brief them on
9 what had happened. And I recall sitting them
10 down with Mike Fox to let them tell -- let Mike
11 Fox tell them what he had seen and done on board
12 the Valdez when he was there.

13 It's my estimation that experts can generally
14 distinguish between materials; that they can form
15 their opinion on the materials that they can't
16 form their opinion on, and really it's the ship's
17 documents which they can provide and help with,
18 and in that sense it isn't.

19 I'm aware that there was -- one time when, I
20 think, my system didn't work. I became aware of
21 that on, I think, the 27th. One of the documents
22 that I had given to them was this one, Judge.
23 Was this diagram of a survey done apparently by
24 divers, and it speaks of a survey afternoon 3/25
25 morning 3/26.

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THE COURT: Did you give this diagram to Beevers and Greiner?

A Beg your pardon?

THE COURT: Who did you give it to?

A To Mary Anne Henry and Brent Cole, among the discovery things. It's Exhibit 31.

THE COURT: When did you give it to them?

A It was among the exhibits which they had at the time of the grand jury, and was the basis for their then trying to find out who it was who had created that document. And I have seen, on November 27 -- well, to explain the process, Mary Anne Henry and Brent Cole also had a trooper who began working for them; Trooper James Stogsdill.

At the time of grand jury he apparently, judging from these police reports and what I've heard him say, since -- he was going to try to find who it was who had done the surveys listed there on 3/25 and 3/26. In preparation for the hearings I happened to go through some reports that Mary Anne Henry had left on my desk probably months ago. She put them there say, "Please screen these."

They appeared to me to be things that she had done in advance of grand jury and had her officer

1 been following the rules and just gone to find
2 out who did something on 3/25, 3/26 would have
3 been perfectly all right. If she was able to
4 come up with a witness who had observed things on
5 3/25, 3/26.

6 And when I saw what Trooper Stogsdill had, in
7 fact, found. He says -- he has a report that on
8 May 1st, 1989 he talked to Mr. Rick Wade, who was
9 the owner of R & R Diving Services. And that in
10 the course of the interview Mr. Wade told him,
11 Trooper Stogsdill, that he had gone to the Valdez
12 on the 24th.

13 I looked at the grand jury testimony then and
14 saw that Mr. Wade testified that he had gone to
15 the valdez at four on the 24th. I think Mr.
16 LeBeau said he saw the divers in the water around
17 9:00 p.m., or heard their radio activity around
18 9:00 p.m. on the 24th.

19 So that was an instance where I learned the
20 system of cutting things off on the 24th had not
21 worked in the sense that that chart -- the
22 Exhibit 31 led back to Mr. Wade, who was there --
23 actually there on the 24th, and the summary of
24 his statement is contained in Plaintiff's Exhibit
25 49. That's the troopers report, on his

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conversations with Mr. Wade before grand jury.

THE COURT: Mr. Stockard, how much longer do you have on direct?

MR. STOCKLER: About two more minutes.

THE COURT: Okay. We'll stop after you complete your direct then.

(3570)

A Those are the only -- I mean, that's the only instances in which I know information that didn't meet the standards was conveyed. In the course of these hearings I have heard instances of contact between people who I would have preferred not have had contact with each other.

Q And with regarding the diver who went out there at 4:00 and dove at 9:00. His testimony in front of the grand jury was as to underwater observations of damage?

A Of damage, that he made after arriving at 4:00 p.m. on March 24, yes.

Q That 4:00 p.m. time now is still well after what you argued in your briefing in terms of what's the appropriate discovery time?

A It is.

Q Did you do anything -- my last area is, did you do anything within the office to keep people

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from discussing this case or talking?

A Yes.

Q Discussing the case with Brent Cole and Mary Anne Henry?

A Yes, I did. It was -- besides telling troopers who were in Valdez not to talk to Mary Anne Henry or Brent Cole. I wrote a memo to everybody in the District Attorney's Office on May 18, 1989.

Q I've handed you state's Exhibit 68 for identification. Do you recognize that?

A Yes. That's the memorandum I wrote. The gist of it is that Mary Anne Henry and Brent Cole are working on the case with Jim Stogsdill and they -- I write that the report of the oil spill by the master cannot be used against him, or his company, in a criminal prosecution, and evidence gathered in investigation based on that report, may not be used against him. And that I had been screening materials, and that it was important for the people in the office not to communicate with them, any information which I hadn't been screening.

I sent a copy of the memorandum to each of the people in the office and then asked them to

1 circulate another copy, to sign it to indicate
2 that they had read and understood the memorandum.
3 That's Exhibit 68.

4 MR. STOCKLER: I move admission of state's
5 Exhibit 68.

6 MR. FRIEDMAN: No objection.

7 THE COURT: Admitted.

8 EXHIBIT 68 ADMITTED

9 MR. STOCKLER: I have no further questions.

10 THE COURT: Take a break.

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

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

14 (On record - 12:24 p.m.)

15 THE COURT: Will we be finished by 1:30?

16 MR. FRIEDMAN: It depends on the answers, but
17 I think we might. I'm going to try.

18 THE COURT: No rush. I'm just wondering.

19 MR. FRIEDMAN: I would like to.

20 THE COURT: We're not going to be finished
21 with everything tomorrow, it doesn't look like, anyway.

22 (3775)

23 CROSS EXAMINATION OF MR. LINTON

24 BY MR. FRIEDMAN:

25 Q Mr. Linton at the time that you had -- well,

1 let me put it this way: either before the grand
2 jury commenced, or before it ceased its
3 deliberations in this case, have you ever
4 received copies of any of Greg Cousins
5 statements?

6 A Yes.

7 Q Can you tell us which ones?

8 A In the materials that Paul Burke picked up on
9 April 6, the Coast Guard materials that contained
10 the ship's documents and contained that one
11 tainted document that I referred to -- Mr.
12 Blandford's notations about his receiving the
13 report from the captain -- had in it four Coast
14 Guard statements by Mark Delozier on the 24th,
15 and then on the 25th. Mr. Kagan's, Mr. Cousins',
16 Mr. Hazelwood's and Mr. Glowacki's on the 25th.
17 Yes. All four were in the packet that I had.

18 Q Okay. And Mr. Cousins statements among --
19 that statement regarding Mr. Cousins, among other
20 things, has Mr. Cousins saying that he did not
21 notice any sort of alcohol impairment on the part
22 of Captain Hazelwood, is that correct?

23 A I'd have to look at it again. It's here in
24 evidence.

25 Q Maybe you could pull it out.

1 A Yeah, I could find it. (Pause)
2 Q It's his handwritten statement?
3 A It's Mr. -- I understand it to be Mr.
4 Delozier's handwritten statement, because the
5 handwriting is the same on each of the four.
6 That's Exhibit 11.
7 And I also -- I had talked to Michael Fox, who
8 was in on both of the interviews of the captain
9 and Mr. Cousins. Yes.
10 Q So you had Exhibit 11 and you had talked to
11 Trooper Fox about Cousins' statements before the
12 grand jury met?
13 A Yes.
14 Q I think we have a lot of evidence about your
15 intent in forming this Chinese Wall, and I don't
16 want to belabor the point. But am I correct that
17 at the time -- first, that the time that you
18 formed it was roughly April 12, that the actual
19 wall went up?
20 A It was -- (pause) -- yes. I mean, in fact,
21 there was nothing to be transmitted before that
22 point anyway, and as I recall, there wasn't
23 anything immediately to be transmitted anywhere.
24 So there wasn't anything to transmit until very
25 close to the grand jury time. So I can't say

1 that -- that was a time when it came clear to me
2 that there ought to be one constructed, and Mary
3 Anne Henry was assigned, as part of the
4 construction of it. But I can't say I actually
5 did anything with her until -- by way of
6 conveying anything to her until later in April,
7 close to grand jury time.

8 Q So later than April 12?

9 A That it actually started functioning, I guess
10 is what I'm saying. There was nothing to be
11 screened before -- later in April.

12 Q Well, there were no written documents, but you
13 had information that...

14 A Exactly. I mean, that's sorta true.

15 Q So from April 12, you gave yourself an order
16 not to transmit any of the information?

17 A Absolutely. Absolutely.

18 Q And as of April 12 a great deal of information
19 has been developed by the troopers in their
20 investigation, hadn't there?

21 A Information had been developed, yes.

22 Q By that time Troopers Fox, McGhee, Burke,
23 Grimes, Alexander, Hickman, Nesbitt, Stockard,
24 Holland had all been working on the investigation
25 in some regard, is that correct?

1 A I think when Holland -- I mean, the answer is
2 90% yes. I'm just trying to think, Hickman and
3 Holland.
4 Q Okay.
5 A And I'm pretty sure it's, yes, to those two as
6 well -- yes.
7 Q In addition, Coast Guard investigators
8 Delozier and Falkenstein had been working on the
9 case?
10 A Yes.
11 Q Dan Lawn from the DEC and Joe LeBeau from the
12 DEC had been working on the case as
13 investigators?
14 A I don't think it's fair to say what Dan Lawn
15 was doing was as an investigator. What Joe
16 LeBeau was doing, yes, that was as an
17 investigator.
18 (Tape: C-3521)
19 (000)
20 Q Okay. Now, as of April 12 you knew, as a
21 matter of fact, that what had happened was
22 Captain Hazelwood had reported the oil spill?
23 A Yes.
24 Q And you knew as a matter of fact that that had
25 led to a series of steps by investigative and

1 regulatory agencies. The first one being
2 Delozier, Falkenstein and Lawn going out to the
3 ship?

4 A Yes.

5 Q And you knew as a matter of fact that those
6 steps had led to other steps in the
7 investigation? I'm not asking you to buy into
8 the entire pyramid, but the concept that one
9 thing had led to another, and that there was very
10 little in the way of information uncovered in the
11 investigation that came outside of that chain of
12 causation, is that correct?

13 A That depends upon when you stop.

14 Q What do you mean by "stop"?

15 A Well, there are a lot of things that an
16 investigator can do beyond what was done by those
17 officers in that space of time. I have not been
18 privy to all the things that they might have been
19 doing. Looking at the reports, as to what they
20 actually did, I think the answer to your question
21 is right -- is correct. There was a lot of work
22 that could have been done, yes.

23 Q And your Chinese Wall was designed, not to
24 change that historical fact, that Captain
25 Hazelwood's report had led to all these other

1 investigative steps, but was designed to bolster
2 your inevitable discovery argument. That at some
3 point we would have discovered all this stuff
4 anyway, and so we'll draw a line through it, and
5 assume we would have found this. Is that a fair
6 statement?

7 A Something like that is a fair statement. It
8 was designed to keep a group of prosecutors free
9 of information, which could fairly be said to
10 have been derived from these reports. And to
11 make sure that what they did -- what evidence
12 they gathered, what evidence they presented at
13 the grand jury or hearings, would be independent
14 of information that fell at some period of time
15 before that -- before it would have been
16 discovered.

17 Q Well, I guess that focuses, then, on the
18 meaning of derived? I won't quarrel with you on
19 that now. We'll wait for oral argument. But the
20 point I'm getting at is, you understood that --
21 well, I think we've covered that.

22 At any rate, April 12 the troopers I
23 mentioned, the investigators I mentioned, had
24 already been working on the case for several
25 weeks.

1 A Yes, sir.

2 Q You had not instructed them that they were
3 limited in any way as to how they -- as to how
4 they could use information that they had
5 obtained.

6 THE COURT: Excuse me. Move that microphone,
7 Mr. Linton. You're covering it with your hand and
8 Scott says we can't hear you.

9 A Yes, Your Honor.

10 Q You didn't instruct any of the investigators
11 that they were limited in how they used their
12 information, or what information that you
13 obtained, did you?

14 A No, I didn't.

15 Q Up until April 12, I mean?

16 A I didn't, no.

17 Q And you didn't restrict yourself in terms of
18 what information you could see, or hear, or get
19 prior to April 12?

20 A That's correct.

21 Q Likewise, you didn't restrict yourself or any
22 of these investigators from what could be read in
23 the newspapers or seen on the TV or radio?

24 A That's correct.

25 Q Would it be fair to say that roughly, or over

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40 people were interviewed during that first two weeks by state investigators?

A Well, there was a list that was marked and put in evidence. That's what I...

Q You don't need to get it out. That reflects...

A That's what I can say was done. (Pause) I guess I really need to see it to answer the question, because in some respects, I don't recall much being done by them after that date.

Q I don't either. But I as asking about before.

A Okay.

Q And my point is, a great number of witnesses were interviewed before the Chinese Wall went up on April 12?

A Absolutely. Absolutely.

Q And many of those witnesses were witnesses who were identified by utilizing information obtained by Chief Delozier or -- well, Chief Delozier or Trooper Fox during their first few hours on the vessel?

A That's correct.

Q In addition, during those first weeks before April 12, Mr. Beevers and Mr. Greiner were hired as expert witnesses by the state?

1 A Yes, by me.

2 Q By you, but for the state?

3 A Yes.

4 Q And they were hired to help you investigate
5 the cause of the accident?

6 A Yes.

7 Q And the material they saw in those first
8 several weeks wasn't screened either, was it?

9 (Pause)

10 A It's easier for me to tell you what I know
11 they know, rather than tell you what I know they
12 didn't know.

13 Q You didn't have any procedure in place...

14 A I know that they sat down with me and listened
15 to Mike Fox's rendition of what he saw when he
16 got on board and went through at least the
17 statement of Captain Hazelwood as he -- Fox
18 remembered it at the time.

19 Fox had tape recorded it, but it had not been
20 transcribed at that point, and he gave an oral
21 rendition of what Captain Hazelwood had told
22 them. That's the specific thing that I do know
23 that they had, in addition to the ship's
24 documents, to work from.

25 Q But as far as you know, there was no procedure

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in place to screen what information they received?

A That's correct.

Q They were in Valdez with state troopers, news reporters, prosecutors, and there was no -- nothing set up to prevent them from getting what could be considered tainted information?

A That's correct.

Q All right. And they weren't instructed not to read the newspapers about the oil spill?

A No.

Q Have they ever been so instructed?

A Not by me.

Q To your knowledge have they ever been so instructed?

A No. No.

Q Now, two search warrant hearings were held on April 1st and 2nd. Do I have those dates right?

A Yes.

Q And you participated in the applications for the search warrants?

A I did.

Q And at the time the applications were made for the search warrants, no effort had been made to screen out tainted information from getting to

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the magistrate?

A That's correct.

Q And among others, Mr. Greiner and Mr. Beevers testified at those search warrant applications?

A They did.

Q Did they both -- I just...

A I know that Captain Greiner did, I know that Michael Fox did.

Q I think I misspoke. I don't think Mr. Beevers did.

A I have no -- right now I couldn't tell you one way or the other on Beevers.

Q I think I misspoke. I don't think he did.

At any rate, Mr. Greiner has testified. And then search warrants were obtained as a result of those applications?

A Yes, sir.

Q And you went out with the officers who executed those warrants?

A Yes.

Q As did Beevers and Greiner?

A Yes.

Q And Beevers and Greiner helped you identify what documents you wanted to seize when you were out there?

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A Yes.

Q And they helped you test the equipment as allowed by the search warrants?

A Yes. They did it.

Q Did you ever make a decision not to use Mr. Greiner after he participated in the search warrant -- or, execution of the search warrant? Not to use him as an expert witness or investigator?

Let me tell you, it seems to me the materials I've seen that there's -- you don't see Greiner's after a certain point in time. And I guess my question is, did you make a decision at some point not to use him anymore?

A No, I don't know -- I didn't make any such decision and I don't know of any decision having been made.

He is a retired Coast Guard officer who runs a consulting service which is, in a large measure, a clearing house for expert witnesses. So, number one, he has a great deal of experience in the operations of the Coast Guard. And, number two, he has just a wealth of contacts with expert witnesses. And it was through him that we got several of the names of people who we talked to

1 or considered retaining as expert witnesses. And
2 it was not really so much a decision not to have
3 him any more as a recognition of the expertise
4 that he possessed and whether we needed it any
5 further.

6 Q The...

7 A Needed it in an evidentiary standpoint as
8 opposed to consulting with witnesses.

9 Q I understand.

10 A I mean, not consulting with witnesses, I mean
11 getting experts and getting help along those
12 expert lines.

13 Q Now, when you went out to the ship one of the
14 things you were all looking for was evidence of
15 alcohol use, is that correct?

16 A Yes.

17 Q And Greiner and Beevers knew that?

18 A I assume they did. That was on the face of
19 the warrant, and to the extent that Attachments A
20 and B were on the face of the warrant. And that
21 Greiner was there to hear the testimony of Mike
22 Fox, which talked, in part, about alcohol. So, I
23 would say, yes, that they probably did, although
24 I would be just inferring that from those
25 circumstances. It's a reasonable inference, but

1 I don't know specifically what they knew.

2 Q Now, Beevers and Greiner were hired in part as
3 accident reconstruction people. People who could
4 tell you how this happened, is that right?

5 A Yes.

6 Q And, in essence, by giving them the first two
7 weeks worth of information, you told them a major
8 part of why it happened, haven't you?

9 A Perhaps in your experience, not in mine.

10 Q All right. They know, for example, that
11 there's a possibility that alcohol played a role
12 in the accident?

13 A They know what?

14 Q As of April 12, Greiner and Beevers know that
15 alcohol may have played a part in the accident?

16 A I inferred that, yes.

17 Q Okay. And that's not something they would
18 have learned from examining these ship's records?

19 A I believe that's correct.

20 Q They know that Third Mate Cousins was on the
21 bridge at the time of the accident, and that
22 Captain Hazelwood was not?

23 (Pause)

24 A They -- as far as I know, they were not kept
25 from the reports of the members of the crew. And

1 there were members of the crew on the bridge.
2 Maureen Jones, the look out, and Mr. Kagan, the
3 helmsman, who have given statements to both the
4 FBI and to Trooper McGhee, and who testified
5 before at grand jury. So they would have access
6 to those things and would know that -- who was on
7 the bridge and who was not on the bridge.

8 Q They had access to Mr. Cousins' statement?

9 A (No audible response.)

10 Q If not, the actual transcript -- the
11 information contained therein? Talking to Mr.
12 Delozier; talking to Mr. Fox; talking to other
13 people involved in the investigation?

14 A Say that again? Access to Mr. Cousins'
15 statement?

16 Q Or the information contained in those
17 statements?

18 A (No audible response.)

19 Q Let me rephrase the question. Do you think
20 that Mr. Beevers doesn't know what Greg Cousins
21 has said about the accident?

22 A I don't know. I don't know. It would be a
23 guess on my part.

24 Q Same question with Mr. Greiner? Same answer?

25 A I don't know. It would be a guess on my part.

1 Q In any event, the ship's records would not
2 tell these experts who was on the bridge at the
3 time of the accident? That is, whether Captain
4 Hazelwood was there or not?

5 (Pause)

6 (665)

7 A I don't know if there is any way to identify
8 handwriting on any of the tally books, things
9 like that, or not. As far as I know, I'm not
10 aware of any evidence as to whose handwriting it
11 is at various points on the tally book, bell log,
12 that serves to identify who it was that was
13 making the checkmarks, and indicate the engine
14 orders.

15 Q Now, among the documents seized in your -- I
16 think it was in your search warrant -- no, I
17 guess maybe you should just tell me. The
18 Blandford log that indicates the report from
19 Captain Hazelwood. How did you first come into
20 possession of that?

21 A It was among the documents that I found on my
22 desk when I returned on May -- when I returned on
23 April 10, 1989, to my office.

24 Q And do you know how the state got custody of
25 that?

1 A Yes. That tracks back through my secretary,
2 Greiner, to -- sort of me and Greiner and
3 Beevers, back to Burke and the EPA investigator,
4 back to Delozier.

5 Q So these are documents obtained from Delozier
6 originally?

7 A Yes.

8 Q Okay. And your understanding is not only did
9 those documents pass to Greiner and Beevers,
10 albeit, they may not have read them, but also
11 passed to Paul Burke?

12 A Through him, yes.

13 Q And he read it, is that correct?

14 A I don't know what he did.

15 Q Okay. (Pause) I'm just showing you page two
16 of your April 12 memo, directing your attention
17 to the last paragraph. (Pause) So Trooper Burke
18 had -- you're aware that Trooper Burke had read
19 the log -- the Blandford log?

20 A Yes. In my -- I did a memorandum when I
21 discovered those things in the Blandford notation
22 in the documents that Burke had supplied. And I
23 not only called Beevers and Greiner, but I called
24 Burke as well and asked him not to look at it,
25 and whether he had looked at it, and he said he

1 had looked at it. And that was in my memorandum
2 that was attached to my affidavit, which is the
3 first exhibit we have here.

4 I guess I understood your question to mean,
5 had he read all the documents in that packet of
6 papers, and I didn't know that he had read all
7 the documents in the packet of papers.

8 Q But you knew he read Blandford's?

9 A Right. Right.

10 MR. FRIEDMAN: Your Honor, Mr. Linton and I
11 have a stipulation that Defendant's Exhibit F, which
12 consists of -- I don't know, roughly 20 interviews,
13 conducted by the State Troopers of various people, may
14 be admitted into evidence and correctly -- basically
15 that the interviews are what they purport to be. That
16 is, interviews of the people listed on the dates
17 indicated.

18 A That's correct, Your Honor.

19 THE COURT: Okay. And did you expect me to
20 read each of those interviews? Is there some argument
21 you're going to make from the content of those
22 interviews that would be germane?

23 MR. FRIEDMAN: Yes, Your Honor. The argument
24 is contained in our proposed findings of fact. It's
25 really that those don't contain any particular pieces

1 of evidence, rather than what they do contain. But we
2 thought they should be part of the record.

3 I don't think the arguments we're going to
4 make, based on that, is going to be contested, but
5 there it is.

6 THE COURT: I just want to let you know, when
7 you submit a little innocuous number, and it is
8 accompanied by a two-inch thick document you expect me
9 to read, that's going to delay me somewhat. And I will
10 read these things. I've got quite a bit to read, so
11 don't expect any decisions in a hurry. The more you've
12 given me to read, the longer it's going to take.

13 MR. FRIEDMAN: I understand. As I said, I
14 don't think the proposition for which we will be asking
15 to use this is going to be disputed, but I think it
16 needs to be in the record.

17 I would move for admission of Exhibit F, Your
18 Honor.

19 THE COURT: It's admitted.

20 EXHIBIT F ADMITTED

21 Q (Mr. Linton by Mr. Friedman:) Mr. Linton, are
22 you aware of any evidence -- let me ask it this
23 way -- let's go to your book, that's probably the
24 easiest way to do it.

25 The first one is March 29. (Pause) Mr.

1 Linton, what I'm going to do -- some pages of
2 your notes I wasn't able to read. And if you
3 could interpret them for me. I probably won't be
4 asking you for a long explanation of anything,
5 but I'm just making sure I understand what they
6 say.

7 Will you start with this page here under 8:00
8 to 9:00 o'clock.

9 A The notation at 8:00 to 9:00 o'clock on March
10 29, 1989 reads as follows: "8:00 to 9:00
11 telephone to..." "T" slash "T" means "telephone
12 call to" -- it means I'm calling Captain Greiner.
13 I write:

14 1.) "Need to get additional VLCC captain."
15 Very large crude carrier captain. A captain with
16 experience in large tanker vessels. I don't know
17 what the dead weight ton definition of VLCC
18 versus other kinds of tankers is, but VLCC means
19 very large crude carrier.

20 2.) "Consider NTSB joint hearing - can use
21 results? I said, DJ..." -- meaning Department of
22 Justice -- "...and D of L..." -- Department of
23 Law -- "...say questionable."

24 3.) "Saturday arrival."

25 Q Those are things you discussed with Mr.

1 Greiner on that day?

2 A Yes. And they were based on a communication
3 I had gotten from him on the 29th.

4 Q A fax communication?

5 A A fax communication from him on the 29th in
6 which he wrote...

7 Q Unless you think it's germane, I...

8 A You just wanted to interpret it. Okay. I
9 mean, I don't think it's...

10 Q The fax message indicates that Captain Greiner
11 has been interviewing, or trying to locate
12 witnesses for you who could be expert witnesses,
13 is that correct?

14 A That's correct. He had one suggestion, and
15 then in a telephone conversation he made another
16 suggestion. And then I wrote the suggestion via
17 the telephone on top of the fax message.

18 Q Okay. The next page I would like to refer you
19 to is -- for Mr. Stockler's benefit, I'll
20 identify the date. Thursday, March 30, '89 about
21 four pages in. Could you interpret this note for
22 me?

23 (Pause)

24 A 11:30?

25 Q Right.

1 A Yes. "McGhee back from vessel crew
2 interviews. Two crew in town. One said four
3 drinks; one said three to four drinks." That
4 means...

5 Q So Trooper -- I'm sorry.

6 A That means that McGhee told me when he got
7 back from his day on the Exxon -- at the Exxon
8 Valdez interviewing crew members, that he had
9 found there were two crew members who had been in
10 town with the captain. One of them said that the
11 captain had four drinks; one of them said the
12 captain had had three to four drinks.

13 Q So Trooper McGhee was focused in significant
14 part on alcohol usage by the captain at this
15 point. Is that a fair assumption, based on this
16 note?

17 A That was certainly one of the things he was
18 investigating, yes. That's the...

19 Q The only thing you thought worthy enough to
20 write down at this point in time?

21 A That's correct.

22 Q With regards to his report?

23 A That's correct.

24 Q Next page I want to ask you about -- I don't
25 know if that's the name -- if that's the date.

1 4/3, I guess. Three pages in -- I'm sorry, four
2 pages in. (Pause) Can you tell me what this
3 note refers to?

4 A The note reads, "Need..." -- meaning, my
5 notation for need this kind of information.
6 "Greiner and Beevers. What would we want to know
7 from Cousins if we could interview him?"

8 Q Does that mean you want to know from Greiner
9 and Beevers what information would be relevant?

10 A Yes. What could Mr. Cousins tell us -- I
11 mean, what would someone in his position on the
12 bridge be capable of telling us about what had
13 been going on. There was so much we didn't know
14 about, how the bridge of a vessel operates, and
15 this was my notation to myself saying, I need to
16 talk to those people to find out what he --
17 Cousins would have been doing in the ordinary
18 course of his business at that stage of the
19 voyage, and what could he tell us. What could we
20 find out from him.

21 Q All right. Then there's a list of questions
22 you don't need to go through, but the following
23 information -- or, list, is questions they
24 suggested to you for what Cousins might be able
25 to provide. Am I reading that correct?

1 A Yes. There are one, two, three -- at least
2 three pages of questions.

3 Q And you got that by talking to Beevers and
4 Greiner?

5 A Yes.

6 Q On the second page there is a reference to
7 Moussy. Could you read that for me?

8 (Pause)

9 A Yes. There were a series -- this was a list
10 of the questions. "Alcohol in Valdez. Go into
11 Valdez at all. Moussy beer used on board the
12 vessel?" I mean, question -- was Moussy beer
13 used on board the vessel.

14 Q And likewise, the alcohol in Valdez was the
15 question they were proposing?

16 A Right. Did they get -- do members of the crew
17 get alcohol in Valdez, or do they go into Valdez
18 at all and have an opportunity to get alcohol.

19 Q And then do they have Moussy beer on board?

20 A Do they have Moussy beer on board the vessel.

21 Q So your accident reconstruction experts, at
22 this point in time, were also focused on the
23 alcohol issue? Focused in the sense that they
24 were aware of it and wanted more information
25 about it?

1 A Yes. That was one of the things in the three
2 pages that they listed, yes. That's right.

3 Q The next note I want to ask you about -- I'm
4 not sure what that date is -- Thursday?

5 A Well, let me look at my version and maybe I
6 could -- I'm not sure I can tell you.

7 Q Or, Tuesday maybe that is.

8 A Yes. Tuesday. Tuesday, April 4.

9 Q Down at the bottom, could you read that entry
10 for me, where it begins, "Debrief"?

11 A "Debrief Beevers on Murphy. Smelled alcohol.
12 No impairment. Hazelwood went below. Not
13 unheard of per Murphy." That is...

14 Q He says it's not unheard of for the captain to
15 go below?

16 A For the captain to go below during the transit
17 from the berth out to Rocky Point.

18 "Hazelwood back on bridge when Murphy to get
19 off. Smelled alcohol. Cousins and lookout or
20 other sailor went down." Meaning to the ladder
21 to accompany Mr. Murphy as he got off the vessel.

22 Q So...

23 A "Could not remember what lighting." That is,
24 what lighting there was on the Valdez as he went
25 down to descend the ladder to leave the vessel.

1 Q So this note indicates that you are telling
2 Beevers what Murphy has said? Basically, the
3 results of the Murphy interview?

4 A No. Beevers is telling me.

5 Q The results of his interview with Murphy?

6 A That's right.

7 Q All right. So Beevers obviously interviewed
8 -- did he interview anyone else besides Murphy?

9 A He sat in on an interview with Mr. Murphy,
10 because he had the kind of knowledge that would
11 enable him to help the troopers ask intelligent
12 questions. That's...

13 Q Do you know if he sat in on any others?

14 A I couldn't tell you right now.

15 Q The next one is April 6, second page in. Up
16 at the top, could you read me just that first
17 paragraph? Or, does that begin on the other
18 page?

19 A Yes, it begins on the other page.

20 "April 6, 1989. Thursday. 9:00 to 9:30. EPA
21 and Burke..." -- that the Environmental
22 Protection Agency investigator and Burke -- Paul
23 Burke of the Alaska State Troopers -- "- try to
24 get records from U. S. Coast Guard that we do not
25 have; determine source and give us only things

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clearly not part of NTSB."

Q All right.

A Then the notation, "Burke will stand clear of questionable items."

Q Could you read the very bottom entry for me?

(Pause)

A Well, this entry is - it just says, "Weeks, Hazelwood - charged coming to a close, Alyeska - interview/records on contingency - B misdemeanor. Feds cooperating - with records."

But that is just one notation on a phone call at 10:30 that morning where there was a conference phone call between me, Dean Guaneli, where were in Valdez; Michelle Brown and Mike Frank, assistant attorney generals in the Civil Division in Anchorage; the attorney general Doug Baily; Bill Mellow, an assistant attorney general in Juneau who works in litigation matters; Laurie Otto; and assistant attorney general Larry Weeks and Ron Lorensen, the deputy attorney general. And this was a telephone conference in which each said what was being done and reporting to the attorney general as to what was being done by his particular group of people, so that there is a -- there are reference to the fact that three suits

1 have been filed where the state has been named.
2 And we talked -- there was discussion about what
3 the defenses and the cross claims were.
4 And then Mr. Mertz was reporting on behalf of
5 one person -- on behalf of the Civil Division in
6 the oil spill litigation type report. And then
7 Mr. Weeks was reporting from the Criminal
8 Division. And then Mr. Mellow was reporting from
9 the litigation standpoint on the civil lawsuits,
10 and talking about how many have been filed, and
11 who is going to be responding to them.
12 Q On the Weeks section...
13 A And it was the Weeks section that I read.
14 Q Right. And that's the section I wanted to ask
15 you about.
16 A Right.
17 Q "Hazelwood charged - coming to a close." Do
18 you recall what that referred to? What's coming
19 to a close?
20 (Pause)
21 A I think that's a reflection that he believed
22 that the investigation as to charges against
23 Captain Hazelwood was substantially finished at
24 that point.
25 Q And what point is that? What date?

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A April 6.

Q All right. And that's before the Chinese Wall goes up.

A Yes, it is.

Q We have a next note, 4/10. It may not be the next one, but that's the one I want to ask you about. 4/10 is a Monday.

A Right.

Q And if we turn to the next page it's a Tuesday. Tuesday is the one I want to ask you about.

A Yes, sir.

Q Down at the bottom it says, "Immunity memo done." That seems to be referring to a telephone call to Larry Weeks, and there's conversations about Laurie Otto and then there's a notation that an immunity memo has been done. What memo is that referring to?

A I don't know. There -- the only thing that it could refer to that I'm aware of are, one, my memo about having on, the day before, come across the Blandford notations.

As I recall, there -- Laurie Otto was going to be, at some point, working on a draft of a document which has been admitted here, about what

1 functions I was going to be performing; how I was
2 going to be screening things.

3 Those are the only two memos that I know deal
4 with in the immunity issue that come anywhere
5 close to this time period. And I can't tell you
6 that it's one, or either, or neither.

7 A Okay.

8 Q 4/18/89. You have a note, Item 70, "Hazelwood
9 BA test report." What does that refer to?

10 (Pause)

11 A That refers to the fact that beginning at
12 12:45 p.m. on April 18, 1989, I was reviewing a
13 group of documents that I had gotten from the
14 troopers. They were designated by item number
15 -- in the trooper way of identifying discovery
16 things that are coming to me. And that
17 "Hazelwood BA test report" I take to be the
18 Computech report on the blood alcohol results
19 which were contained in the probable cause
20 statement.

21 Q Was a decision at some point made not to
22 present the BA test report to the grand jury?
23 The test results, I should say?

24 (Pause)

25 A Well, the job of getting ready for the grand

1 jury was Mary Anne Henry's, and I didn't presume
2 to advise her about things like that.

3 Q Okay.

4 A As someone who possesses infor -- as a
5 prosecutor who possesses information which one
6 can view as exculpatory, I understood an
7 obligation to present that. I did not regard
8 that as exculpatory?

9 Q And Mary Anne didn't have access to that?

10 A She didn't have access to it.

11 Q Could we turn to the next page, which was
12 4/19/89. Roughly half way down, there is
13 reference to a telephone call to Mr. Weeks.
14 Could you read that entry for us?

15 A "Don't get 302. Telephone -- 4:30 p.m.
16 telephone to Weeks. Don't get 302s. 1.) if
17 exculpatory we would have to put..." -- and I
18 don't know what -- and then it just trails.
19 Nothing else is written.

20 2.) "Would be discoverable and feds do not
21 understand that."

22 Q And does "if exculpatory we would have to
23 put", refer to putting them on in grand jury?

24 (Pause)

25 A 4/19. Let me just see if there is anything

1 else here that helps me. (Pause) I think that's
2 the only interpretation I could put on it. I
3 can't make out any other meaning from the
4 context.

5 Q Okay. And again, the 302s refer to the FBI
6 reports?

7 A Yes.

8 Q Now, was Mr. Weeks telling you not to get the
9 302s, or were you telling him you shouldn't get
10 them?

11 (Pause)

12 (1920)

13 A I believe he was telling me -- I believe he
14 was telling me.

15 Q The next note I would like to ask you about is
16 4/21/89. That would be the second page. I don't
17 know if it starts on the first or not. But the
18 part I wanted to ask you about is the very top.

19 A "4:30 to 5:00 p.m. on Friday April 21, 1989.
20 Grand jury plan -- Weeks, Guaneli, Otto..." -- it
21 means they were on the phone -- "GJ plan" --
22 means grand jury plan -- "No Fox except Hazelwood
23 exculpatory. No Delozier except ship's
24 documents. 3 copies of discovery to be done."

25 Q Was Mary Anne Henry involved in that meeting,

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do you know?

A No, she was not.

Q All right. And do you know if any exculpatory -- it says, "No Fox except Hazelwood exculpatory." Do you know if any Hazelwood exculpatory material was presented through Fox at the grand jury?

A I don't think that there's anything that was exculpatory through Fox.

Q The next one I want to ask you about is April 26, '89.

A April 26?

Q April 26.

A Yes, sir.

Q There's a reference in the middle of the page to a Daily News Hazelwood article of 4/24/89. Do you recall what that's referring to?

A 4/24. I'm sorry, there are a bunch of references to 4/24 now that I see -- I just have "9:30 telephone from Don Steele."

Q "He said he had not read the Hazelwood article in Daily News of 4/24/89."

My question is, simply, were you aware of a Daily News article on 4/24/89 which published excerpts of the transmission in which Captain

1 Hazelwood reported the spill and grounding?
2 A Yes. If you go back to the day before, 4/25,
3 at 8:15 I read the Daily News article which
4 contained verbatim transcripts of the Vessel
5 Traffic System communications between the captain
6 and the Valdez. And then at 9:15 I wrote,
7 "Meeting MAH..." -- Mary Anne Henry -- "Tell her
8 not to read this article." Because his one was
9 really bad. I mean, it just...
10 Q It just laid out the entire report.
11 A And Stogsdill was there, too, and I told him
12 the same thing. It just needed reemphasis at
13 that point. And then on the 26th the portion you
14 pointed out is, I was talking to -- I had a
15 telephone call from Don Steel of the Federal
16 Bureau of Investigation. He -- I explained to
17 him how we were handling the problem of
18 inevitable discovery, and how I was funneling
19 information to the prosecuting team.
20 And in the course of that I mentioned that
21 there was an article, which under our rules,
22 would have been a very bad one for anyone to have
23 read.
24 Q Under anybody's rules that would be a bad one
25 for anyone to have read, wouldn't it?

1 A Under anybody's rules, to have read it, yes.

2 Q That was the report?

3 A And so I took it upon myself to -- maybe a
4 little presumptuously, to say, "Hey, you guys
5 ought to be staying away from that." And he said
6 he had not read it. But that Special Agent
7 McMullen had read it.

8 Q That's an article that appeared -- let me just
9 ask you this: to your knowledge did an article
10 appear in the April 24 issue of the Daily News
11 which repeated in substantial part, the oil spill
12 report of Captain Hazelwood, or the transmission
13 of Captain Hazelwood to the Coast Guard?

14 A Yes. Yes.

15 Q Thank you. The next page I want to ask you
16 about is, it looks like 4/29, a Saturday.

17 A Yes.

18 (2228)

19 Q Down at the bottom of the second page, you
20 write, "Beevers explain taint." And I can't read
21 the rest.

22 A "Explain taint; don't tell MAH..." -- meaning,
23 Mary Anne Henry -- "about, 1., Cousins; 2.,
24 Hazelwood statements."

25 Q So Beevers knew about those statements?

1 A They were among the things that I had gotten
2 back on my desk. And I assumed he had or may
3 have, I guess, there.

4 Q When you say "explain taint", is this the
5 first time that you explained the taint problem
6 to Mr. Beevers?

7 A Well, I had talked to him about having
8 discovered that one page earlier. And this was a
9 Saturday when he -- on April 29, when they were
10 getting ready for grand jury. And he had
11 travelled to Anchorage to prepare for grand jury.
12 And when he arrived in Anchorage on that Saturday
13 morning, I talked to him from about 11:30 to
14 1:30. And among the things I wrote down about
15 talking to him, was I explained the taint
16 situation and told him, "Don't tell her about
17 these things; don't utilize yourself. You're
18 gonna have to act like an expert and decide
19 things based on course recorders, on things that
20 you genuinely have an expertise in, and not on
21 the basis of factual information that may have
22 come from them." And that's what I was telling
23 him.

24 Q The next page I'm having some trouble finding
25 the date on. That's the page I want to ask you

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about. I don't know what the best way to locate it is. It's some pages in from the ones you were looking at.

A Just go until you find the dates, that's the best way to do it. May 11.

Q So these are all May 11?

A Yes.

Q Twelve page in. Could you tell me what this note refers to?

(Pause)

A Yes. This refers to a telephone conversation that I had with Bob Maynard on May 11 at 5:15.

Q And who is Bob Maynard?

A Bob Maynard was a lawyer with the Civil Division at that time, and may still be, who was to be the lawyer who was going to go to the National Transportation Safety Board hearings on behalf of the state. And in the course of the telephone conversation with him, he asked me about some things. He was...

Q These are the things he was asking you about?

A He was communicating to me.

Q Thank you. That's all we need to -- I just wanted to make sure I wasn't missing anything.

May 17, '89. If you could just tell me who

1 this is referring to, I may be able to skim right
2 by it. 10:50 it looks like, or 10:05. What does
3 that say?

4 A Ten -- mine's no better. Ten something five -
5 - o-five, one-five, two-five, I don't know.
6 "Telephone from White. He wants to work with us
7 on experts."

8 Q Who is White?

9 A Let me just make sure I -- yes. "White" is
10 Michael White of the law firm of Preston,
11 Thorgrimson and -- I'm embarrassed to say, I
12 don't know the rest of the names.

13 Q And he's in charge of the civil litigation for
14 the state, or was involved in the civil
15 litigation for the state relating to the oil
16 spill?

17 A He was with the law firm who has been retained
18 to do that, yes.

19 Q All right. 5/24/89. By the way, these notes
20 -- were these kept exclusively on the Hazelwood
21 case?

22 A I have used this kind of a form maybe two
23 times before, if I'm working on a lengthy drug
24 investigation, other times I've applied it, where
25 I'm going to be involved in the investigative

1 stage of something for months at a time. I'll
2 keep something like this. But I've never had
3 anything that was this lengthy, this detailed,
4 this carefully done.

5 Q Okay. I'm just curious about the entry in the
6 middle of the page here related to the
7 Hollingshead case. Why that would be in this
8 case's notes?

9 A It was just a means of accounting for my time
10 that day. At 1:10 I was redacting certain pages,
11 and at 1:45 I received a call from Judge
12 Johnstone's chambers saying that there was a hung
13 jury in the Hollingshead case and they needed an
14 attorney in Courtroom B. And part of my job as
15 chief assistant is to respond to problems when
16 lawyers don't show up, and that's just saying
17 that's were I was -- at 2:25 I was back doing the
18 work again.

19 Q Okay. The last page I want to ask you about
20 is, 6/1/89. If you could just read that entry
21 for me.

22 (Pause)

23 A "10:10 to 10:15 on June 1, 1989, Thursday.
24 T/F..." -- telephone from -- "...Weeks. 1., TV
25 tape will be sent to McGhee AST.

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"2. (Weeks gave cc..." -- a copy -- "...to civil and U. S. Attorney.

"2. Get two copies of summary underwater tape of Exxon Valdez -- EX Valdez -- to copier." Then I can't make out the next word.

"3. Talk to Maynard on NTSB. Will be review for taint on my standards." That is he -- Weeks had talked to Bob Maynard and he, Maynard, would be reviewing the National Transportation Safety Board transcripts based on the 24 hour screening standard that I was...

Q Why would Maynard be doing that?

A Because he was the lawyer who had been to the National Transportation Board hearings on behalf of the civil people, and therefore he had already been exposed to it. Could efficiently screen it in the way that I didn't have time to efficiently screen it.

Q I see. So you are going to have Maynard screen it and then give it to Mary Anne and Brent Cole?

A No. He would screen it and then he would give it to me.

Q Oh!

A And I would screen it.

1 Q Okay. Number four?
2 A And that never happened.
3 And number four, "White wants to read AST
4 reports and that is okay."
5 Michael White -- again, we're referring to
6 Michael White.
7 Q Thank you. That's all the questions I have.
8 MR. STOCKLER: No redirect, Your Honor.
9 THE COURT: All right. You could step down.
10 Pretty good timing.
11 (2763)
12 (Witness excused)
13 Is the state going to have any further
14 witnesses, Mr. Linton?
15 MR. LINTON: No, Your Honor.
16 MR. FRIEDMAN: We don't have any witnesses,
17 Your Honor.
18 THE COURT: All right. Does that conclude the
19 taking of evidence in this phase of the omnibus
20 hearing?
21 MR. FRIEDMAN: Yes, Your Honor.
22 (2798)
23 THE COURT: I propose, gentlemen, that we come
24 back on Monday and give us tomorrow, and Friday's the
25 day I have other matters, in fact, I'll be out of the

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office.

Give me time to go through a lot of this and give you folks time to prepare an argument, and you can make the argument on Monday.

If I'm prepared to rule at that time, I will. If not, we'll just go into other arguments, or other phases of the omnibus hearing.

Is that agreeable to the state?

MR. LINTON: It is.

MR. FRIEDMAN: Yes, Your Honor.

THE COURT: Now, if that's going to present any problems, because we're not going tomorrow, and you had something you wanted to get done, or something of that nature, you can start arguing tomorrow, but it will be more meaningful to me if I have a little more time, but I'll accomodate the counsel's schedule to some extent.

MR. FRIEDMAN: I don't think that's any...

MR. MADSON: I was just concerned about a possible conflict I have next week, Your Honor, but if it's better for this court because of the magnitude of this case that you have this additional time and we argue Monday, I'm sure I can work out whatever minor conflicts I...

THE COURT: Okay. I have a homicide case

1 supposed to be starting next Monday, and I'm going to
2 be working out my conflicts, and I hope that you can
3 work yours out, too. I appreciate the conflict
4 problem.

5 I'll give you just a few little guide lines on
6 things I'd like to have you focus in on your argument.
7 I just took some notes. It may be helpful to me if you
8 can focus in on the burden of proof in this case.

9 I'll need some argument, and if you can focus
10 on the effect of the report of the grounding that was
11 contained in the initial report by Captain Hazelwood,
12 whether this report of marine casualty is, I think, the
13 regulations seem to define, was an independent report,
14 or a combination, or was essentially a report of an oil
15 spill. Focus you argument on whether or not that would
16 constitute a wholly independent source from which the
17 investigation could stem from. And then, if so, why?
18 And if not, why not?

19 And I'd like to hear argument on the policies
20 of both of these required reports, the report of marine
21 casualty and the report of an oil spill.

22 I'd like to hear some additional argument on
23 whether the inevitable discovery doctrine, which one of
24 the cases including Nix (ph) and Martinez applies in
25 this case. There seems to be a Fifth Amendment case

1 and a Sixth Amendment case, and may some Fourth
2 Amendment cases. I'd like to hear some policy
3 arguments behind the applicability of that doctrine, or
4 not to this case.

5 And then, I'd like to hear some specific
6 argument on the time of the inevitable discovery. If I
7 do apply that doctrine, I'm going to have to some time
8 pick a time.

9 And the applicability of the burden of proof
10 to my finding of a time in this case.

11 I don't know how long your arguments will
12 take, but I'll give you any reasonable length of time.

13 Is there anything further we can do in this
14 case?

15 MR. MADSON: One last question. I think I
16 already know the answer, Your Honor, but I assume
17 Captain Hazelwood will be required to be hear for
18 Monday, also?

19 THE COURT: Yes, sir.

20 MR. LINTON: Judge, I would like the tape
21 recordings of the applications in support of the search
22 warrants to be part of the record here. And I have
23 such tape recordings. Mr. Friedman has transcripts,
24 and I would ask leave to reopen and submit one or the
25 other, or both.

1 MR. FRIEDMAN: I think that's appropriate,
2 Your Honor. I told Mr. Linton I would do that. I
3 simply forgot.

4 THE COURT: Okay. So, you're going to submit
5 transcripts in lieu of the actual cassettes?

6 MR. FRIEDMAN: It's up to you. I would think
7 you could go...

8 THE COURT: I'd prefer to have the transcript.

9 MR. FRIEDMAN: Right. And...

10 THE COURT: Well, why don't you go ahead and
11 get together on that and have them marked. We can do
12 that some time between now and a decision in this case.

13 And, if I can get them by tomorrow sometime,
14 I'll be reviewing them as well.

15 MR. MADSON: One last thing, Your Honor, does
16 the court have any particular order in which you want
17 to hear the other arguments, or is our proposed
18 schedule sufficient?

19 THE COURT: To be honest with you, Mr. Madson,
20 I haven't had a chance to really go over that. I have
21 been swamped by this phase, just like you have -- well,
22 maybe you haven't.

23 MR. MADSON: Well...

24 THE COURT: I know some of us have.

25 MR. MADSON: I've kind of been like I'm on the

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bench for two weeks and I want to get in the game before it's over.

THE COURT: Well, I'm sure you're going to get in.

MR. MADSON: Okay. We'll resolve...

THE COURT: I don't know the answer to your question. I haven't made a decision, but...

MR. MADSON: All right.

THE COURT: ...I know what we're going to go first on.

We'll stand in recess.

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

(3105)

(Off record - 1:37 p.m.)

CONTINUED