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VOLUME 1

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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In the Matter of:	:	
STATE OF ALASKA	:	Case No. 3ANS89-7217
versus	:	Case No. 3ANS89-7218
JOSEPH J. HAZELWOOD	:	
-----	:	

Anchorage, Alaska

November 27, 1989

The above-entitled matter came on for omnibus hearing before the Honorable Karl S. Johnstone, commencing at 8:35 a.m. on November 27, 1989. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

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On behalf of the Defendant:

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C O N T E N T S

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WITNESSES:

<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Daniel Joseph Lawn	46	62	-	-
Michael J. Fox	68	91	-	-
Mark J. Delozier	118	149	166	175
	-	-	177	-
	- - -			

E X H I B I T S

	<u>STATE'S</u>	<u>IDENTIFICATION IN EVIDENCE</u>	
1			
2			
3	1	90	126
4	2	90	-
5	3	90	132
6	4	90	131
7	5	90	133
8	6	90	134
9	7	90	131
10	8	90	136
11	9	90	-
12	10	130	140
13	11	139	141
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18	<u>DEFENDANT'S</u>		
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P R O C E E D I N G S

1  
2 (Tape No. C-3499)

3 THE CLERK: Good morning. My name is Scott  
4 Purden. Today's date is November 27th, 1989. Judge Karl  
5 S. Johnstone's Court is now in session.

6 JUDGE JOHNSTONE: You may be seated, thank you.  
7 This time has been set for proceedings in State of Alaska  
8 versus Joseph J. Hazelwood, Cases 89-7217 and 7218, in  
9 Anchorage. Everybody is present.

10 Before we go into the substantive portion of this,  
11 I want to take care of some administrative matters. I  
12 don't know if we need to go on the record for this. I want  
13 to go through some media coverage guidelines and try to  
14 accommodate all of the parties involved. We can stay on  
15 the record or we can go off the record, as Counsel may  
16 preference.

17 MR. : (Inaudible.)

18 MR. LINTON: My preference is to stay on the  
19 record.

20 JUDGE JOHNSTONE: Okay, we'll stay on the record.  
21 I've had numerous media requests and as a result of what I  
22 anticipate to be media interest, I've sequestered the media  
23 courtroom, Courtroom C, and for the duration of these  
24 hearings, we'll meet in Courtroom C.

25 Your media requests that you make today will

1 fulfill requirements for any media attendance throughout  
2 the duration of this hearing and trial, as well, so you  
3 don't need to do it twice. It will cover for the duration.

4 I understand all media requests, when signed, will  
5 have to be taken downstairs and you'll have to get a badge  
6 of some sort. That's an administrative policy which I do  
7 not set, but I concur in. So I will sign these media  
8 requests and if you have not filed a media request, during  
9 the first break we take, I'll have additional forms here  
10 you can fill out and take them downstairs for your badge.

11 We're in the media courtroom, but I went through  
12 the back room last week and I think it's wholly inadequate  
13 to give adequate coverage to any case. It was implemented  
14 back in the dinosaur days when we tried to avoid pictures  
15 of defendants and other persons involved. So I'm going to  
16 permit -- and it cannot be altered without some drastic  
17 changes -- so I'm going to permit some cameras in the jury  
18 box which can be pooled, to some extent, and the audio  
19 hookup can be made with the Gyre machine.

20 If you wish to go in the back room, you can hook  
21 your equipment up in the back room with the assistance of  
22 our technician. You'll see what cameras are available  
23 there and you can pool what resources you need back there,  
24 as well.

25 I intend in allowing only two video cameras in the

1 jury box and as far as still cameras, a couple of still  
2 cameras. I think you can pool that. Two ought to be  
3 sufficient in the jury box. If you think that's  
4 insufficient, you'll have a fairly high burden of showing  
5 me why. You can pool your video coverage from the jury  
6 box. I'm going to permit two cameras there. I don't know  
7 where your still cameras want to be, but if you want to put  
8 a couple of technicians in the jury box with still cameras,  
9 that would be adequate, as well. But I can't have a bunch  
10 of equipment in that jury box going off, whirring, clicking  
11 and clacking a lot. It will be somewhat distracting. But  
12 four I can tolerate.

13 I'm going to bar the first row there. We're going  
14 to put some tape on the first row of spectators, so nobody  
15 will be able to sit there. And the purpose is so you  
16 cannot overhear conferences between counsel and their  
17 parties. I don't want any recording of conferences between  
18 counsel, witnesses sitting at counsel table,  
19 representatives of the party or the party, himself. That's  
20 to effectively deter that.

21 If we run out of room in the Court, then we'll  
22 move counsel tables up a little bit and we'll fill up the  
23 first row, but it looks like we have some room now.

24 Now a few people came into my office this morning  
25 and filed media requests and I said that I would entertain

1 any suggestions or any specific complaints you have with  
2 the system we have here now. If you have a problem with  
3 what I've just said, two still cameras and two video  
4 cameras, and you think you can convince me why there should  
5 be some changes, you can raise your hand and tell me now,  
6 but you have a high burden to overcome. Is there any  
7 problem with what I've just set forth? Yes, sir, your  
8 name, please?

9 MR. WALSH: My name is Pat Walsh; I'm with  
10 Channel 11. There are three television stations in town.  
11 In fairness to all three of us, is there any way that all  
12 three of us could be in that box?

13 JUDGE JOHNSTONE: That's not sufficient. We've  
14 always had three television stations in town and generally  
15 only allow one camera, Mr. Walsh, so that's not a good  
16 enough reason. Is there any other problem with what we've  
17 set forth here?

18 MR. JOHNSON: Your Honor, I'm just curious on what  
19 -- I'm with \_\_\_\_\_ and my name is Walt Johnson. And  
20 I'm foreseeing some media in the future, basically, if  
21 there's more than two still cameras, what's going to  
22 determine who gets in the jury box?

23 JUDGE JOHNSTONE: Well, you're going to need one  
24 person for each camera and you'll have to work that out.  
25 Our media coverage guideline says you folks work that out.

1 If you can't work it out, they say you're to be excluded.  
2 So I don't want to take any drastic steps like that. I'm  
3 sure you all can work that kind of thing out with the  
4 cameras.

5 Now when we break, we don't have a security  
6 problem here, but we have some security personnel here just  
7 to make it look impressive, I suppose, but there's not a  
8 security problem. When we break, I don't want to have a  
9 bunch of interviews going on in Court. These folks have  
10 got more important things to do than interview in the  
11 courtroom. If you want to get some statements from the  
12 players, you can wait until they get out of the courtroom.  
13 I'm not going to permit any interviewing in the courtroom  
14 during the course of the hearings. And we'll take 15-,  
15 20-minute breaks. I always say ten minutes, but it lasts a  
16 lot longer, so you'll have plenty of time to hook and  
17 unhook, so when we come back in, everybody will be in  
18 place.

19 MS. : (Inaudible.)

20 JUDGE JOHNSTONE: Yes, I have some here. As soon  
21 as we take a break here, Mr. Purden will distribute those  
22 who haven't received one and take them down to me and I'll  
23 sign them as quickly as I can so you can go downstairs.  
24 And we'll wait until you all get geared up here. We'll  
25 give you an appropriate length of time, but then we're



1 going to start and we won't be moving cameras in and out  
2 during the course of the proceedings.

3 MS. : (Inaudible.)

4 JUDGE JOHNSTONE: You can hook it up back there  
5 for radio. You don't need to come up here. We have many  
6 plug-ins back there. Do we have a technician here for the  
7 -- is our tech. here?

8 MR. : In back, two of them.

9 JUDGE JOHNSTONE: Okay, our techs. can show you  
10 what to hook up back there for -- you might look back there  
11 before you think that it's not adequate because there may  
12 be some portions of it that are adequate and you can hook  
13 up your camera equipment, your movie camera equipment,  
14 video camera and your sound tracks back there and you may  
15 find it just as easy back there. You can talk back there,  
16 to some extent. It's soundproof, to some extent. And you  
17 might be able to communicate among yourselves back there.  
18 So take a look at it and I'll leave it up to you what you  
19 want to do.

20 MS. : Sir, you said no interviewing in  
21 the courtroom. What about in the hallways?

22 JUDGE JOHNSTONE: Sure, in the hallway is fine,  
23 but not in this room here. What I plan to do is to take a  
24 break and let everybody get their requests in. And as I  
25 said, these requests are going to be good through the

1 duration of this proceeding involving this case, so you  
2 don't have to continue. And these rules in Courtroom C  
3 will apply throughout the proceedings, these hearings and  
4 any subsequent hearings that may become necessary.

5           Okay, we'll take a brief recess and we'll come  
6 back in when everybody gets set up. I'll leave that to Mr.  
7 Purden to get that arranged. Will you have anybody else at  
8 counsel table with you, Mr. Linton?

9           MR. LINTON: No, Your Honor, I don't expect to.

10          JUDGE JOHNSTONE: Okay, we'll stand recessed.

11          THE CLERK: Please rise. Court stands at recess.

12          (Whereupon, at 8:43 a.m., a brief recess is  
13 taken.)

14          THE CLERK: Please be seated, thank you.

15          JUDGE JOHNSTONE: We're ready to resume. For  
16 Counsel's information, I have all day available, so I would  
17 plan on taking a normal lunch hour and coming back after a  
18 reasonable lunch hour and going until 4:30. Tomorrow, we'd  
19 only be able to go until about 1:30 and I think I have to  
20 cut things on the calendar Wednesday, too, but we'll see  
21 how it works out.

22                 All right, I'll just address one of you, and since  
23 you're looking at me, Mr. Friedman, you'll be the person.  
24 How would you like to proceed? Do you have several  
25 motions? I understand you like to take care of the

1 immunity issues first and how would you like to proceed on  
2 that? And then, Mr. Linton, you can give me your input on  
3 it.

4 MR. FRIEDMAN: Your Honor, as I suggested in the  
5 brief, I think it would be helpful to both parties -- I  
6 don't know how the Court feels about this, but it would be  
7 helpful to both parties to present the legal arguments to  
8 the Court relating to independent source and inevitable  
9 discovery. If you're in a position to rule on that after  
10 the oral arguments, we may not need to take any testimony.  
11 Or on the other hand, if you're not in a position to rule,  
12 I think that it would be helpful to you in terms of  
13 crystallizing what you're interested in hearing in terms of  
14 testimony.

15 If you don't want to hear oral argument, as such,  
16 I would ask for maybe five minutes to give what would  
17 amount to a small opening statement, what we expect the  
18 facts to show and how they tie into the law.

19 JUDGE JOHNSTONE: -- concur in legal arguments  
20 first or would you rather proceed with opening statements  
21 and get all the evidence under your belt and then do legal  
22 arguments at the conclusion?

23 MR. LINTON: It doesn't matter, Your Honor, and I  
24 state that because the question isn't purely a legal one, I  
25 don't believe. If Your Honor were to conclude, as a matter

1 of law, that the report of a grounding is independent of  
2 the report of a spill, but there's an independent duty,  
3 that still doesn't show that there would have been a  
4 similar response to that report, as opposed to the other --  
5 to the report of the oil spill. That is would, in fact,  
6 assuming it's an independent source, would the same  
7 response have occurred? That's a factual question, as  
8 opposed to a legal one.

9           There's some authority in the Ninth Circuit in the  
10 Croson case that you can decide those matters on affidavits  
11 and I have affidavits that I would be willing to submit to  
12 fill out that portion of the requirement of law that there  
13 be some factual basis to conclude that there would have, in  
14 fact, have been a response. But the defense might want to  
15 cross examine those witnesses and it seems to me we're  
16 going to be in a state where we're going to have -- we'll  
17 need to take testimony anyway. And since I would ask that  
18 we have a factual basis, as well as the legal one, on that  
19 score, on whether it's an independent source or not and the  
20 defense is going to want to cross examine and I think we're  
21 kind of at loggerheads. And I think the smarter way to go  
22 is to go ahead with the immunity question, both prongs of  
23 it, independent source and inevitable discovery, with  
24 witnesses and then argue the whole thing at the end.

25           JUDGE JOHNSTONE: Mr. Friedman, am I interpreting

1 in your remarks that there is no longer an issue on whether  
2 or not the scheme of immunity that would be afforded  
3 Captain Hazelwood would be transactional versus use  
4 derivative use?

5 MR. FRIEDMAN: I guess my thought, Your Honor, is  
6 that the use derivative use is a cleaner legal area. The  
7 transactional immunity argument we made under the state  
8 constitution I'm not into that. I think it's well  
9 briefed. I think you're going to make your decision. I'm  
10 not sure you need a whole lot of argument on it. I guess I  
11 sort of assumed that if you were going to decide in our  
12 favor on transactional immunity, you probably have a pretty  
13 clear idea of that. And if you're going to decide against  
14 us, we need to then address use derivative use.

15 JUDGE JOHNSTONE: Do you wish argument on that  
16 issue or are you willing to present it on the briefs?

17 MR. FRIEDMAN: I'm willing to rely on the briefs,  
18 Your Honor.

19 JUDGE JOHNSTONE: Mr. Linton, are you willing  
20 to --

21 MR. LINTON: Yes, Your Honor.

22 JUDGE JOHNSTONE: All right, so I'm inclined to go  
23 along with Mr. Linton's request here to present evidence,  
24 do a brief opening statement if you need to. I know what  
25 the issues are here and if you need a brief opening

1 statement to outline how you're going to present it, that  
2 would be somewhat helpful, but as far as telling me what  
3 you're going to offer, I think I know what you're going to  
4 offer on both sides. It seems to me that the burden here  
5 is on the state, using a use derivative use immunity  
6 scheme.

7 I've pretty much made up my mind that the  
8 Defendant is not entitled to a broad transactional immunity  
9 under our legislation. I think under Kastiger and under  
10 our statute and subsequent case that it's a use derivative  
11 use. That's the way I'm feeling now. I don't think  
12 there's much you can say to change my mind, but if during  
13 the course of the proceedings something comes up, I'll  
14 certainly entertain it, but that's the way I'm proceeding  
15 at this time.

16 So why don't we go ahead? I think that the facts  
17 and the law are so interconnected here that for me to have  
18 a full understanding of the parties' positions, I'm going  
19 to need to hear evidence before I can make a final  
20 determination on the law to be applied. So why don't we  
21 proceed on that basis, Mr. Friedman, if you want to? Mr.  
22 Linton, you're going to present the evidence first. If you  
23 want to give me some summary on how you intend on  
24 proceeding, you may do so, or you can call your first  
25 witness.

1 MR. LINTON: I'd like to give a brief summary,  
2 Judge. Judge, if we start with the proposition that both  
3 federal and state law give the master of a vessel use  
4 immunity for the report of an oil spill, there are two  
5 doctrines of law under which the state may avoid that  
6 immunity. One is what's referred to as an independent  
7 source theory; the other is an inevitable discovery theory.

8 Briefly stated, an independent source theory is  
9 where there is some report which is received by the  
10 government which would cause the investigation to go  
11 forward in the form in which it did. In the common case,  
12 that's somebody else sees it and reports it, either before  
13 or simultaneous with, sometimes even after, but not  
14 substantially after the spiller makes his report.

15 The other is the doctrine of inevitable  
16 discovery. That is our position is that, at some point,  
17 the consequences of the spill become so great that persons  
18 would have become aware of it, even if there had been no  
19 report, in fact, even if the master of a vessel had  
20 exercised his Fifth Amendment rights, which he shouldn't  
21 really have, and simply remained silent. That is if a  
22 vessel had gone aground and Captain Hazelwood, in this  
23 case, had not made any report at all, would the spill have  
24 been found and when.

25 I'd like to give you a brief overview of the

1 testimony I expect to cover those two theories and then  
2 witnesses who will testify that the state was aware of this  
3 problem and took steps to segregate lawyers who might be  
4 exposed to materials which were immunized, properly  
5 immunized, from those which are not. I've got basically  
6 three groups of witnesses that I'll be calling.

7           The first are a group of witnesses who made  
8 decisions about whether to go out to the Exxon Valdez.  
9 They are Commander Steve McCall, who is head of the Coast  
10 Guard unit; number two, Lieutenant Commander Thomas  
11 Falkenstein, who was second in command of the Coast Guard  
12 unit in Valdez; and Warrant Officer Mark Delozier, who is  
13 an investigator who went along with Commander Falkenstein  
14 to the Exxon Valdez that morning.

15           I have two other witnesses. One would be Dan  
16 Lawn, an employee in the Alaska Department of Environmental  
17 Conservation and, finally, Michael Fox, an officer of the  
18 Fish and Wildlife Protection Division of the Alaska State  
19 Troopers.

20           In terms of the gist of the testimony that I  
21 expect to elicit from these people is this. Given their  
22 knowledge of Prince William Sound and of the kind of vessel  
23 involved here, had they learned simply that the vessel was  
24 fetched up hard aground on some rocks in Prince William  
25 Sound, they would have gone to that location and done an



1 investigation, even if there had been no report of an oil  
2 spill.

3 Now, Judge, I have Dan Lawn and Michael Fox here  
4 this morning and I'm prepared to go with them here this  
5 morning. Commander Falkenstein and Mark Delozier are  
6 coming in this afternoon. Commander Falkenstein couldn't  
7 get away this week and wouldn't be available until next  
8 Monday and the same is true with Commander McCall and I may  
9 even have to request the Court that he permitted to testify  
10 telephonically at some point here this week. But those are  
11 the five witnesses I expect to call on the question of an  
12 independent source.

13 Then, Judge, I've got a group of witnesses who  
14 will address themselves to the inevitable discovery theory  
15 and they are in three separate groups. First, to some  
16 extent, Commander Falkenstein will cover that, but, more  
17 importantly, the captain of the Chevron California will  
18 cover that.

19 Judge, referring to a chart of Chart Number 16700  
20 of Prince William Sound, the Exxon Valdez was on the rocks  
21 at roughly, give or take ten minutes, at this location  
22 (inaudible). The vessel was outbound from Valdez Harbor.  
23 There is a vessel traffic separation which is actually  
24 portrayed on this 16700 chart. It's this blue area here.  
25 There is a northbound inbound lane, the traffic area

1 starting at Hinchinbrook entrance to Prince William Sound.  
2 There is an inbound northbound lane on the east side of the  
3 zone laid out on the map. There is a southbound chart --  
4 there's a southbound lane on the west side, portrayed here  
5 and, in between, a separation zone, which is denominated as  
6 such on the chart.

7           Now the Chevron California was here at  
8 Hinchinbrook entrance at about 12:00 o'clock, maybe quarter  
9 after 12:00. It was inbound and was going to be going  
10 directly into Valdez Harbor. There are times when ships  
11 back up at the entrance, trying to get into the dock, to  
12 the terminal, and they'll actually wait in an anchorage  
13 area located off Loan's Head here and they'll sit and wait  
14 their turn to come in to load up before they head south.

15           On this occasion, on the night of March 23d, 24th,  
16 there were no other vessels waiting to get into the dock,  
17 into the terminal, so that the Chevron California could  
18 come straight in to its position here.

19           As the Exxon Valdez had been outbound, reports had  
20 been heard that there was ice in the traffic lanes. The  
21 Columbia Glacier sits right here and ice breaks off of the  
22 Columbia Glacier, comes out Columbia Bay and then slides,  
23 moves into the traffic lanes from time to time. And on  
24 this particular evening, a vessel that had gone ahead of  
25 the Exxon Valdez had encountered ice and had reported that

1 to the Coast Guard station in downtown Valdez and they, in  
2 turn, had reported it to the Exxon Valdez as they were  
3 leaving, so that as the master and pilot on board came out  
4 of the Port of Valdez, they had been told that there was  
5 ice in lanes which they should be alerted for.

6 Similarly, the Chevron California was concerned  
7 about ice in those lanes because it was going to have to be  
8 making a transfer shortly thereafter. And if there were  
9 radio communications between the Coast Guard station in  
10 Valdez and the Chevron California as it was coming in,  
11 saying, "We've had reports of ice in the traffic lanes, so  
12 you might want to talk to the Exxon Valdez when the two of  
13 you start coming closer together," that is after the Exxon  
14 Valdez had gotten out of, through the ice and probably  
15 passed by \_\_\_\_\_ and points further south, ". . . and  
16 you would be inbound, then you can talk to him and get  
17 up-to-date reports of ice conditions." The Chevron  
18 California was -- anxious is too strong a word, but  
19 interested in talking to the Exxon Valdez to find out what  
20 the ice conditions were.

21 Now the channel that's used by vessels to  
22 communicate with -- (unintelligible) with the Valdez Coast  
23 Guard station is the same channel that ships use to talk to  
24 Prince William Sound or from bridge to bridge, so that the  
25 communications from the Coast Guard station to the Valdez

1 may be overheard, assuming that there's no interference  
2 with the transmission, may be overheard by other vessels in  
3 the system and vice versa. That is if they're talking to  
4 the Coast Guard, other vessels can also hear that  
5 conversation.

6           The testimony, then, will proceed under the theory  
7 that the state is advancing, that the Exxon Valdez, to give  
8 the captain the benefit, absolute benefit of his Fifth  
9 Amendment right -- let's assume he never reported being  
10 aground or spilling oil. He then would have been sitting  
11 at this location, having said absolutely nothing to anyone  
12 about the situation. Had that been the case, given the  
13 normal speed with which it travels (inaudible), the Chevron  
14 California would have been at a position at Bligh Reef at  
15 roughly 3:00 to 3:30 in the morning. It has radar on it,  
16 two sets of radar, actually, which carry 12- and 24-mile  
17 ranges of radar (inaudible). The scale on this chart, this  
18 is the ten nautical miles. So at the point it reached its  
19 position in the inbound lanes off of Bligh Reef, it would  
20 have been within two or three miles, five at the outside --  
21 that's ten -- two, three, four miles from the Exxon Valdez,  
22 would have seen it on its radar, could distinguish this  
23 little bell which would have shown up on its radar from a  
24 ship a thousand feet long, 900 feet long, and would have  
25 been in a position to say to the Coast Guard, "Hey, I've

1 been looking for the Exxon Valdez. I didn't pass it. I  
2 would have seen it on my radar if I passed it and I didn't  
3 see it. And I've gotten up here and now I find there's  
4 something on Bligh Reef on my radar that's big enough to be  
5 a ship." Likely, they could see the lights on the ship.  
6 And the Coast Guard station -- as of 3:30, I'm telling you  
7 that the Exxon Valdez is aground on Bligh Reef. So that as  
8 of roughly 3:30 in the morning, the location of the vessel  
9 and the fact of it being aground would have inevitably been  
10 discovered.

11           Actually, Judge, there's the other route by which  
12 you get to that, a fellow I expect to have testify next  
13 Monday, a fellow named Bruce Blandford who works in the  
14 Coast Guard station. One of the means of operating this  
15 system is to have reports made to the Coast Guard, that is  
16 before you come to the Hinchinbrook entrance, you're  
17 supposed to report when you're going to arrive so they'll  
18 know how much traffic is coming in. You report when you  
19 arrive here so they'll know where people are.

20           And then there's another reporting station off of  
21 Naked Island, this position up here, Naked Island. That's  
22 an intermediate point where the Coast Guard can make sure  
23 they know where you are and you report to them where you  
24 are and whether you're transit outbound or you're transit  
25 inbound. And there's actually a regulation which requires

1 a report at that position when you are traveling in this  
2 traffic separation coming and going from Valdez.

3 Before he went aground, Captain Hazelwood called  
4 the Coast Guard station and estimated that it would abeam  
5 Naked Island at 1:00 a.m., 0100. He did say that as he was  
6 making his diversion out of the traffic lanes to go around  
7 ice that he might have to update that report, he might have  
8 to amend it because of the additional time needed to travel  
9 outside the lanes and do whatever he could to avoid the  
10 ice. But by 1:00 o'clock, the Coast Guard station was  
11 expecting some kind of report from the Exxon Valdez. It  
12 might have had some \_\_\_\_\_ factor for the fact that he  
13 had to take a little longer going around ice, but roughly  
14 at that time, it would expect some kind of report.

15 Had the Exxon Valdez been aground here, they would  
16 have tried to contact him, "Where are you, Exxon Valdez,"  
17 "How far have you gotten," "Have you gotten to Naked  
18 Island, yet," "Did it take longer or not take longer than  
19 you estimated," "Where are you now because we've got the  
20 Chevron California coming in?" Had they started looking at  
21 that time, the Coast Guard would have been able to actually  
22 see the vessel on its radar. That is as it was, when the  
23 vessel went aground and reported it, the Coast Guard  
24 station was able to make out the position of the vessel on  
25 the reef. They had not been tracking it as it went out,

1 but at the time it was called to their attention, they  
2 could see the position of the vessel on the reef. So that  
3 as of roughly 1:00 o'clock time, had the Coast Guard  
4 started looking, they might have been able to see it on the  
5 reef. (Unintelligible sentence.) Those are two witnesses  
6 that will be called.

7 Judge, there are then four other witnesses. Three  
8 of them are residents of a town called Alamar, which is  
9 right here, on the mainland. It's not really a town; it's  
10 just a collection of houses. And a man named Dave  
11 Lindennow lives there and he lives there in a position  
12 where he has a view between the islands of Bligh Island  
13 here and this is Busby Island over the north, where he can  
14 see between those islands and see out to the position of  
15 Bligh Reef.

16 He got up at roughly 6:00 or 7:00 that morning,  
17 looked out his window and saw the Exxon Valdez aground on  
18 the reef. He turned on his radio and then began hearing  
19 all this press coverage of radio and television which had  
20 already started up at that hour that he saw it. But he  
21 then, himself, went out to the vessel, went around it to  
22 the south and saw that it was leaking oil. In fact, the  
23 boat slowed down as it came into the oil, it was so thick.  
24 So as of roughly 7:00 to 8:00, he has not only perceived  
25 it, but he is out there at the vessel, itself, seeing the

1 oil on the ground. He's been in maritime businesses for  
2 about 20 years and is prepared to say that, "Had I not  
3 turned on the radio or when I turned on the radio, had I  
4 not heard that there was -- that everybody knew about this  
5 thing already, then I would have told somebody this vessel  
6 was in distress. But as it was, it seemed apparent that  
7 everybody knew that already, so I (unintelligible)."

8 There are two other people from the Heston family,  
9 James and Lucinda Heston. They live in Alamar, too, and  
10 they could see the vessel on the rocks. And, actually,  
11 James Heston went out and (unintelligible) the same  
12 time every morning, go out to the Valdez, go out to look at  
13 it.

14 There was another person, a resident of the  
15 village of Tinkipling, just a little further south of  
16 Alamar, who heard reports on the radio and hoping he could  
17 find work, went out to the vessel and saw the vessel at  
18 8:00 o'clock in the morning.

19 A little later in the day, there was a fellow  
20 named Gary Graham who was a pilot who worked for \_\_\_\_\_  
21 flew a route which went from Cordova to the village of  
22 Tinkipling. He was on a flight at approximately 9:00, 9:30  
23 that morning and his route was taking him to Tinkipling,  
24 from which position he would have been (unintelligible  
25 phrase) islands, 1,600 feet high, so at that altitude



1 that he was flying, he would have been able to see  
2 everything, the Exxon Valdez. Had he done -- when he did  
3 that -- in fact, he had heard about it on the radio earlier  
4 and had flown out in a private plane just to look the  
5 situation over and gone back and gotten the mail flight.  
6 But he would have seen it, had he not been on the mail  
7 flight.

8           Judge, with those witnesses, we ask the Court to  
9 find that, to roughly sum up, the Exxon Valdez would have  
10 been found aground -- Chevron California probably places it  
11 closer to 3:30, really. But even most conservatively, at  
12 the time these other people are seeing it, it would have  
13 been discovered, particularly Dave Lindennow. That means  
14 that if you add to that the travel time for someone to get  
15 the report and get on the boat in Valdez to go out there  
16 and see it themselves, the investigation would have begun.  
17 I would place that at roughly 8:30 in the morning.

18           Judge, as you listen to the testimony, we ask that  
19 you focus on some of these times because it makes a  
20 difference. The two theories that the state has do not  
21 lead to the same result. That is if indeed the report of  
22 the ground \_\_\_\_\_ that's part of the same conversation,  
23 but nonetheless an independent duty on the part of the  
24 captain, if that is an independent source, then actually  
25 all of the evidence gathered would be admissible against

1 Captain Hazelwood. However, if only the independent --  
2 excuse me, only the inevitable discovery theory applies,  
3 then one must find the time when that would have occurred  
4 because that time, then, serves to define what observations  
5 which (unintelligible) for it would not be admissible  
6 evidence and which observations thereafter would be  
7 admissible.

8 For example, this is approximately 12:04,  
9 grounding; 12:28, the report. The Coast Guard arrives at  
10 approximately 3:30. Dan Lawn, Department of Conservation,  
11 on board. It's roughly 3:30 that the Chevron California  
12 would have come by and it's roughly 1:00 o'clock that the  
13 Naked Island report would have been made. It's roughly  
14 7:00 o'clock that the Alamar people get to the vessel. The  
15 Coast Guard people actually left about 1:30 and traveled  
16 another two hours. The Coast Guard people called Michael  
17 Fox at roughly 4:00. He left at roughly 5:00 and got there  
18 at 6:15, traveling an hour and 15 minutes. But then, once  
19 he arrives there, things happen on the vessel. There is an  
20 interview by Mr. Delozier with Trooper Fox sitting in with  
21 Kagan, the helmsman on the Exxon Valdez, at roughly 7:45.  
22 Thereafter, Mr. Cousins is interviewed, the second -- the  
23 third mate.

24 At roughly 10:00 a.m., blood samples, blood and  
25 urine samples are taken from members of the crew, including

1 Captain Hazelwood. At roughly 1:00 p.m., Captain Hazelwood  
2 is interviewed by Mr. Delozier and Trooper Fox is sitting  
3 in.

4 So that if you find, for example, that the  
5 evidence that we present doesn't show it would have been  
6 found until 3:00 o'clock in the afternoon, then things  
7 which fell before then would not be admissible in  
8 evidence. And that means that those things, the samples of  
9 blood and urine, would not be admissible and the Hazelwood  
10 statement would not be admissible under the inevitable  
11 discovery doctrine. As we said, under the independent  
12 source doctrine, everything from the report on down would  
13 be admitted. And if you found (unintelligible) the time,  
14 as the state suggests, roughly 8:30, then what would be  
15 properly suppressed would be things which occurred before  
16 that, like the observations of Dan Lawn when he first  
17 arrived there, the observations of the Coast Guard people  
18 when they first got there. Everything that fell in between  
19 the report and that time would be properly suppressed.

20 Now with that, I'd like to talk about the third  
21 group of witnesses that I propose to call because the third  
22 group of witnesses goes to this point. Judge, the state  
23 anticipated that this might be a problem in the prosecution  
24 and as early as March 27th, roughly four days after the  
25 grounding, began to talk about the problem and how to

1 handle it. We recognized that inevitable discovery, an  
2 inevitable discovery doctrine might be one of the  
3 exceptions to the reporting requirement. We also knew that  
4 it would be improper to use the report, itself, in that  
5 fashion. The problem was defining when, at what point  
6 these things would inevitably have been discovered.

7           It was a path, we decided, that required two sets  
8 of prosecutors and investigators. That is one set would go  
9 ahead and learn everything it could about all these  
10 circumstances, all the way down, and would learn about  
11 everything. The other set would not get information which  
12 would not be admissible under this inevitable discovery.  
13 That is they were not going to be given anything in this  
14 prohibitive area; they could get none of that to work from.

15           Even as late as April, mid-April, that line wasn't  
16 a clear line. That is we didn't know when, on the 29th, we  
17 could show a judge in your position that this spill would  
18 inevitably have been discovered and an investigation  
19 started. So from roughly mid-April, we set up a second set  
20 of prosecutors and investigators on a team. Since I had  
21 gone to Valdez on the 26th and been there since then and  
22 knew some things that fell on both sides of the line, it  
23 was decided that I would be a person to be on the team that  
24 knew everything and the set of investigators who had gone  
25 with me, who all gathered in Valdez to work on the case

1 initially, they would be on this team who would do the  
2 entire investigation.

3 It was then my job to separate stuff out and give  
4 it to a new set of prosecutors who had not been involved in  
5 the case earlier. They were Mary Ann Henry, initially,  
6 Brent Cole joined me later and, at a later date, Sam Adams  
7 joined that team. Similarly, they got their own  
8 investigators.

9 At that point, the captain had not been charged by  
10 the Grand Jury. An \_\_\_\_\_ charging only misdemeanors  
11 had been filed in Valdez, but the Grand Jury had not yet  
12 convened on the case. And so prior to the Grand Jury, I  
13 began screening materials and giving them to the  
14 prosecution team. The criterion that I used was this.  
15 Because it's not clear when this line -- when Your Honor  
16 might, if ever, find that that line was drawn, whether it  
17 would be here at 8:30, or back here at 3:30 or back here at  
18 1:00 o'clock or somewhere thereafter, I said to myself,  
19 "Let's let me be careful and exclude anything that occurred  
20 on March 24th, 1989, from the time of the report all the  
21 way through the end of the day, to midnight, 12:00 p.m."

22 So the material then that Mary Ann Henry and Brent  
23 Cole were given to present to the Grand Jury did not  
24 include, for example, the evidence of alcohol, blood  
25 alcohol test results. It did not include the statement by

1 Captain to Mr. Delozier and

2           They got a tape -- in one exhibit, for example,  
3 that they played, they played a tape recording of the  
4 communications between the vessel, the Exxon Valdez, and  
5 the Coast Guard station, starting from about the time that  
6 Captain Hazelwood takes over from the pilot. And that tape  
7 that they played before the Grand Jury ran up to the time  
8 of the report, but did not include the report, so that the  
9 tape that the Grand Jury heard of the communications  
10 between the ship and the Coast Guard station did not  
11 include the conversation in which Captain Hazelwood first  
12 says fetched up hard aground, (unintelligible) with some  
13 oil. That was not given to the prosecution team, nor to  
14 the Grand Jury in preparation for just this kind of a day,  
15 Judge.

16           So the third group of witnesses are people who can  
17 say that we played by those rules, Judge, and as to the way  
18 we did it. They would include Alaska State Troopers, on  
19 the initial team, Sergeant John McGhee, Trooper Julia  
20 Grimes, Trooper Paul Burke, Trooper Chris Stockard and  
21 includes an investigator -- includes Trooper Fox, includes  
22 an investigator for the Department of Law in the Office of  
23 Special Prosecutions and Appeals, Gale Savage. It then  
24 includes a trooper who was on the prosecuting team, James  
25 Stogsdill, S-t-o-g-s-d-i-l-l. And it includes the

1 lawyers, Mary Ann Henry, Brent Cole and me.

2 Judge, just a comment about the "me" part of  
3 that. Judge, ordinarily, a lawyer is not permitted to be  
4 both a witness and to argue a case. In this instance, I  
5 had such great exposure to both the facts, in terms of  
6 being able to present the case to the Court, but that same  
7 exposure made me an ideal witness, as well, that I ask  
8 permission of Mr. Friedman whether I could do that if I did  
9 not do what the canon of ethics prohibits and that is a  
10 lawyer argue his own credibility. So with that caveat,  
11 with that understanding, we are proceeding with this  
12 posture. I am expected to be the last witness in this  
13 series of witnesses. We will have another lawyer come in  
14 for that to do whatever direct or cross examination or  
15 redirect examination there may be of me. If the Court  
16 still feels that's appropriate, at the end of -- if that  
17 procedure is appropriate, then I will argue the case  
18 without arguing my credibility, one way or the other. And  
19 we hope it doesn't come to that, but if Your Honor wishes  
20 to insist that we have somebody else prepared to argue the  
21 motion, we can make those arrangements, but we prefer not  
22 to.

23 JUDGE JOHNSTONE: Can we resolve that right now?  
24 Do you object to that?

25 MR. FRIEDMAN: No, not at all, Your Honor.

1 JUDGE JOHNSTONE: I assume we'll probably go along  
2 with the agreement of counsel on this. Unless I can find  
3 some good reason not to, you can expect to argue this.

4 MR. LINTON: Very well, Your Honor.

5 JUDGE JOHNSTONE: You did not mention Mr. Adams'  
6 name as one of the lawyers. Was that your intention?

7 MR. LINTON: That's correct. He got into it so  
8 far down the road that I didn't expect to call him. If it  
9 became apparent that it would be important to do that, I'm  
10 prepared to do that, but had not planned on it, Judge. And  
11 that's how I expect to proceed.

12 JUDGE JOHNSTONE: I've been told by Mr. Purden  
13 we're having a hard time getting an audio pickup, so be  
14 sure and pull the microphone closer to you.

15 MR. FRIEDMAN: Your Honor, Mr. Linton has candidly  
16 admitted that what they're trying to do here is avoid Mr.  
17 Hazelwood's congressionally granted immunity and the  
18 state's problem in doing that stems from the inherent facts  
19 of this case. Ordinarily, an investigation is started, a  
20 body is discovered, a phone call is made, something takes  
21 place that starts an investigation. And as the authorities  
22 investigate, they cast an ever widening net of information.

23 Sometimes, they decide that a particular witness  
24 has evidence that they need and they need it so badly that  
25 they're willing to grant that witness use derivative use



1 immunity. And I'm sure the Court has read the cases now  
2 and is familiar. Over and over again, that is the posture  
3 in which these immunity cases are decided. A prosecutor  
4 grants a witness immunity. And then, of course, from that  
5 witness' testimony, a variety of other information is  
6 obtained.

7           If the prosecutors, at that point, decide that  
8 they want to prosecute this witness, everyone agrees that  
9 they cannot use this evidence, that is evidence that they  
10 only would have been led to by this witness' testimony.  
11 But if they can prove an independent source for this  
12 evidence, they can use it against this witness. And a way  
13 the prosecutors' offices, particularly federal prosecutors'  
14 offices try to deal with that issue is when the immunized  
15 testimony is presented, when this witness is examined in  
16 the Grand Jury or whatever, a totally different prosecutor,  
17 not the one conducting this investigation, but the one  
18 conducting this -- a separate one is brought in to question  
19 this witness. So this prosecutor can honestly say, "I  
20 haven't been exposed to this witness' testimony," and we  
21 were led to all of this stuff by our own leads, we had  
22 nothing to do with this. And as you read the case as they  
23 talk about the Kastiger hearings, that's often what they're  
24 fighting about, were the prosecutors led to this  
25 information by the immunized testimony or did they have

1 independent sources.

2 Now here, the entire investigation began right  
3 here. There were no independent sources. There was  
4 nothing else that triggered the investigation. The  
5 immunized testimony, itself, triggered the very  
6 investigation that \_\_\_\_\_ will use here. And that's  
7 the inherent problem. They're trying to use, the state is  
8 trying to use techniques that were developed for this  
9 situation, trying to use those techniques where they have  
10 this situation and that's why they don't work and I'll show  
11 you why in a moment.

12 Now one of the state's arguments, and they will be  
13 presenting evidence on this, is that there's an independent  
14 source here that when Captain Hazelwood said, "We're hard  
15 aground, leaking oil," the "hard aground" is separate from  
16 the "leaking oil." I would ask you to keep in mind as you  
17 hear comments about independent source the Kastiger  
18 language, which is "wholly independent source." They have  
19 to prove, to prove an independent source, that whatever  
20 they're claiming is the independent source was wholly  
21 independent of the immunized testimony. And I will argue  
22 this at the end of the hearing, the legal standard. But  
23 for present purposes, I would point out to the Court, I'd  
24 ask you, as you hear the testimony, to keep in mind that if  
25 you take the state's position that only the words "leaking

1 oil" are immunized and everything around them is not  
2 immunized, then there is no immunity. If Captain  
3 Hazelwood, if the only way he could get immunity is to call  
4 up and say, "Hi, I'm leaking oil, but I'm not going to tell  
5 you where I am, who I am or how it happened," if that's  
6 what Congress wanted him to do to get immunity, then the  
7 statute doesn't make any sense. And we're going to be  
8 asking the Court at the end of the hearing for a common  
9 sense interpretation of the statute and we have some  
10 authorities to cite to you in support of that common sense  
11 interpretation.

12 Your Honor, Mr. Linton spent a long time this  
13 morning and will spend a long time during the next couple  
14 of weeks, explaining or arguing to you what might have  
15 happened, what could have happened, what should have  
16 happened. This chart was designed to show you what did  
17 happen and it's very important because it will illustrate  
18 some of the problems with the state's case. And, later,  
19 I'll ask to mark it as an exhibit. You'll hear me asking  
20 questions, somewhat out of context to build the foundation  
21 for this and we'll be moving to move it into evidence at  
22 the end of the hearing.

23 When Captain Hazelwood first made his radio calls,  
24 he reported he was aground, leaking oil, that there had  
25 been a problem with the third mate and that he was trying

1 to get the ship off the reef. When Investigator Delozier  
2 first came aboard in response to this radio call --  
3 Investigator Delozier and several others went out to the  
4 ship as quickly as they could. When they got there at  
5 approximately 3:35 a.m., Investigator Delozier will tell  
6 you that he immediately smelled what he believed was  
7 alcohol on Captain Hazelwood's breath, he says within  
8 moments. So as of 3:35 a.m., what's happened is we have  
9 radio calls and the investigators respond immediately and  
10 immediately smell alcohol.

11 As of 3:35 a.m., they have three what Kastiger  
12 calls investigatory leads or, as Kastiger says, focuses of  
13 the investigation. Captain Hazelwood has focused the  
14 investigation for them and we have three theories, three  
15 leads to follow up on. One, was he properly getting off  
16 the reef? Two, was alcohol involved in the accident? And,  
17 three, was there some sort of problem with the third mate?

18 Now when we cross examine Mr. Cole, I expect that  
19 he will say that the case he intends to present to the  
20 jury, the allegations that he's going to make, actual  
21 assertions he's going to make a trial are, one, that  
22 Captain Hazelwood somehow responded improperly to the  
23 grounding, either that trying to get off the reef was  
24 improper or that the way he got off -- his failure to try  
25 to get off the reef was improper. He's going to tell us

1 that he has witnesses to say Captain Hazelwood smelled like  
2 alcohol, to say that he smelled like he had alcohol on his  
3 breath.

4 By the way, Your Honor, there are lots of  
5 witnesses to contradict all of this, but, obviously, at  
6 this hearing, we're not arguing the merits of the criminal  
7 case. We're trying to recreate the state's case. So the  
8 state has some witnesses who say he had alcohol on his  
9 breath, a witness who believes he exhibited guilty type  
10 behavior at the scene, some witnesses who saw him in bars  
11 that day, a witness who thinks he had red eyes, one who  
12 thinks he had a sway in his step, one who thinks he has a  
13 different mood. There was a blood alcohol test which the  
14 state will argue was elevated to prove that, at the time of  
15 the accident, he had an elevated blood alcohol. Those all  
16 relate to the alcohol.

17 I think Mr. Cole will also say that the final  
18 portion of the state's case, that he gave the conn, that's  
19 the bridge, he turned it over to an unqualified officer,  
20 that he, himself, was not on the conn in required waters,  
21 and that he did not give specific instructions to the  
22 people he left in charge of the conn and that's the basis  
23 for their recklessness charges, the felony charges.

24 What you see then is the very things that they  
25 have, the investigative leads that they had as of 3:35.

1 What is that, about two hours, two and a half hours after  
2 his calls? They wind up with the exact same theory of the  
3 case he gave them at that time.

4 The question, of course, is do they use this.  
5 Well, again, in this situation, his calls clearly  
6 precipitated everything that came after it. We're going to  
7 be looking at -- by the way, Your Honor, I hope to have a  
8 smaller version of this to give to you at some point for  
9 your own use during the hearing.

10 This does not represent everything that was done  
11 in the investigation, but it shows you the main threads of  
12 the investigation. And what you'll see, as an example,  
13 from the smell of alcohol, Mr. Delozier begins to suspect  
14 that Captain Hazelwood is exhibiting guilty behavior. He  
15 makes efforts to get someone out to the ship to test blood  
16 alcohol. A corpsman named Conner is in town, but is  
17 actually on his way to the airport. He's flagged down on  
18 the way to the airport. He has to come out. He arrives on  
19 the ship, collects blood alcohol and gets an elevated blood  
20 alcohol.

21 I won't go through all of these now, but there are  
22 several points that are illustrated by this chart that are  
23 going to be important to the Court's decision. Our  
24 position, as you know from the briefs, is that the  
25 inevitable discovery doctrine doesn't apply in this case,

1 that, legally, it makes no sense. It has a totally  
2 different trial basis and, in fact, the language of  
3 inevitable discovery smashes right into a brick wall when  
4 it hits the language of Kastiger saying you can't use his  
5 call as investigatory leads to focus the investigation.  
6 That's just inconsistent with the concept of inevitable  
7 discovery. Kastiger focuses on what actually happened, not  
8 what might have happened.

9           But if you decide that you're going to go for some  
10 sort of inevitable discovery theory, in theory, you find  
11 that it could be applied, this chart will help illustrate  
12 for us the impossibility in this case of the state meeting  
13 its burden in that respect.

14           I should emphasize that nobody is denying that  
15 inevitably, the ship and the oil would have been  
16 discovered. But that's not the state's case. The state's  
17 case is not there's a ship aground, leaking oil.  
18 Therefore, you're guilty. This is the state's case and the  
19 question is would the facts supporting this case have  
20 inevitably been discovered. So the state first has to  
21 prove to you when the ship, itself, would have been  
22 discovered. And, in essence, what the state is arguing is  
23 we would have found this all, that we would have found the  
24 ship and we would have gotten out here -- I guess from  
25 listening to Mr. Linton, he's saying, "At least by 8:30, we

1 would have walked onto the boat, instead of 3:30." But  
2 there's an important difference which he's either not  
3 recognizing or not owning up to, which is had Captain  
4 Hazelwood not called, had he remained silent, when they  
5 walked on the boat at 3:30, they would not have the  
6 investigatory lead of getting off the reef. They wouldn't  
7 have smelled alcohol because there are witnesses who said,  
8 at that point, there was no smell of alcohol on him, and  
9 they wouldn't have had the indication that there had been a  
10 problem with the third mate. So rather than just moving  
11 all this down to 8:30, which is what they're suggesting  
12 that you do, they're walking on board at 8:30 knowing  
13 nothing other than there's a ship aground, leaking oil.  
14 And, again, you have to assume that Captain Hazelwood would  
15 not have spoken to them.

16           And so the question is and what they have to prove  
17 to you is that all of this would have happened later on if  
18 they had started with a clean slate.

19           Now what they're prepared to do, of course, is  
20 bring investigators on who now, with the help of 20/20  
21 hindsight, now that they have in fact used all of this  
22 stuff, now that they have in fact put their case together,  
23 they're now prepared to work backwards and say, "Well, we  
24 would have found all of this anyway. We would have done a  
25 careful investigation. We would have found everything



1 anyway."

2 I would remind the Court that what Kastiger and  
3 the subsequent cases say is the state has to prove, has to  
4 present the Court with each piece of evidence it plans to  
5 use at trial and show an independent source or a  
6 non-Kastiger team for each piece of evidence. If you're  
7 going to somehow try to graft the inevitable discovery  
8 doctrine onto Kastiger, you're going to have to find that  
9 each piece of evidence they want to use at trial would have  
10 been inevitably discovered and that is a task that I'm not  
11 sure anybody would ever be up to. They're asking you to,  
12 in essence, make a leap of faith and say, "When we walked  
13 on board knowing nothing, we still would have been able to  
14 recreate all of this."

15 There are some things we'll be able to prove to  
16 Your Honor that they did not, they could not. For example,  
17 the blood test that I mentioned before. Had they walked on  
18 board at 8:30 and started their efforts to get someone to  
19 test the blood alcohol, at that point, Connors would have  
20 been on his airplane, flying to Anchorage. They wouldn't  
21 have gotten blood/urine tests at 10:00 or 10:50, somewhere  
22 in that range. It would have been hours later, if at all,  
23 we can show you. And for a fact, they couldn't have  
24 inevitably wound up with that, they would not have.

25 On many of the other things, we're going to have

1 to rely upon their inability to prove inevitable discovery  
2 because all we are is in this never never land, trying to  
3 determine what could have happened, what might have  
4 happened, what should have happened.

5 A final point I would ask the Court to be alert to  
6 as we go on, if I understood Mr. Linton correctly, he told  
7 us that it was in mid-April that the state decided that  
8 they'd better do something about this immunity problem and  
9 so they're setting up a separate set of investigators, a  
10 separate set of prosecutors that are going to try to  
11 somehow try to separate from this information, only give  
12 them this information. I guess I should talk about that  
13 for just a second.

14 Remember, Kastiger says you can't use it as an  
15 investigatory lead and anything your immunized testimony  
16 leads you to also gets thrown out. Their argument is that  
17 if you draw a line across here somewhere, wherever that  
18 line might be drawn -- it's probably a line like this, I  
19 suppose -- that if you only let the prosecutor see this  
20 stuff, you've done your job under Kastiger. But Kastiger  
21 says no, you can't use this stuff if you were led to it by  
22 the immunized testimony.

23 So their efforts with regards to separating  
24 prosecutors from the top of the pyramid doesn't help them  
25 under Kastiger because they still get the benefits of all

1 that investigation down here.

2           And in that regard, I'd like to point out to the  
3 Court -- and I think we will be asking questions that will  
4 elicit this testimony from various of the state's  
5 witnesses. We don't intend to call any witnesses ourselves  
6 or, at most, one or two. We'll try to make our points  
7 through their witnesses. What I think we can show, that  
8 before the state took any efforts to immunize their  
9 prosecutors or investigators, they had interviewed more  
10 than 46 people. They compiled approximately a hundred  
11 pages of police summaries, that blood and urine samples  
12 were taken, of course. Two experts were hired; they  
13 received reports from various sources. Two search warrant  
14 hearings were conducted, two search warrants issued, two  
15 searches conducted. Experts were given the benefit of  
16 materials seized in those searches. The experts,  
17 themselves, went out to the scene, reviewed documents,  
18 worked with the prosecutors and information, criminal  
19 information was sworn out, charging three misdemeanors. A  
20 probable cause statement supporting the information -- and  
21 by the way, that probable cause statement incorporated all  
22 this information that they're now, if not conceding, almost  
23 conceding is immunized. An arrest warrant was issued.  
24 Captain Hazelwood was arrested. All of that happened  
25 before they took their efforts to unring the bell, if you

1 will.

2 After that time period, virtually nothing was  
3 done. They have this investigator, Stogsdill who is their  
4 immunized or sanitized (unintelligible). Other than going  
5 to the scene to take some pictures, try to help put their  
6 inevitable discovery arguments together, Mr. Stogsdill  
7 hasn't done much. And the point is this, that the entire  
8 investigation was completed, virtually the entire  
9 investigation was completed before they took any actions to  
10 protect Captain Hazelwood under this immunity claim.

11 What that means is that they really are trying to  
12 unring the bell. All of this was put together before they  
13 even addressed the immunity issue. When they finally  
14 addressed the issue, they are trying to cut this off, get  
15 the benefits of everything, all his statements, everything  
16 that they were led to from his statements, without paying  
17 the price that Congress and, in our case, in the state, the  
18 state regulatory agencies expected.

19 The final thing, Your Honor, which I think is  
20 inclusive in what I've said so far is if you adopt the  
21 concept that inevitable discovery applies, the legal  
22 concept can apply, what you're going to need to do as this  
23 hearing goes on is try to figure out not just which of  
24 those strands, for simplicity's sake, we put on a diagram  
25 would have inevitably been discovered, but every fact they

1 want to present at trial, you're going to have to decide  
2 and make a ruling that it inevitably would have been  
3 discovered. Whether that burden is clear and convincing,  
4 as we've argued in the brief, or more probably than not,  
5 the preponderance of the evidence obviously hasn't been  
6 decided yet, but whichever standard it is, they're going to  
7 be unable to meet it as to any significant fact. And  
8 that's all I want to present at this time.

9 JUDGE JOHNSTONE: Let's get started here.

10 MR. LINTON: Call Dan Lawn, Your Honor.

11 JUDGE JOHNSTONE: Do we have other witnesses in  
12 the Court and is there any reason to exclude them or not  
13 exclude them?

14 MR. FRIEDMAN: I ask that witnesses be excluded,  
15 Your Honor.

16 JUDGE JOHNSTONE: Okay, if there are any witnesses  
17 that expect to be called, they'll have to remain outside.

18 MR. LINTON: He's outside now, Judge. I'm going  
19 to have to watch to see when he comes in, it's going to be  
20 a little hard to do. He's feeding a meter.

21 JUDGE JOHNSTONE: I wonder if we could have that  
22 thing taken down.

23 MR. : Sir, you'll find a microphone  
24 there (unintelligible).

25 Whereupon,

1 DANIEL JOSEPH LAWN

2 having been called as a witness by Counsel for the State,  
3 and having been duly sworn by the Clerk, was examined and  
4 testified as follows:

5 THE CLERK: Sir, would you state your full name  
6 and spell your last name?

7 THE WITNESS: Daniel Joseph Lawn, L-a-w-n.

8 THE CLERK: Mailing address?

9 THE WITNESS: Post Office Box 1483, Valdez, Alaska  
10 99686.

11 THE CLERK: Your current occupation, sir?

12 THE WITNESS: I'm an environmental engineer for  
13 the Department of Environmental Conservation in Valdez.

14 THE CLERK: Thank you.

15 JUDGE JOHNSTONE: Let's plan on taking a break  
16 around quarter of and keep an eye on the clock.

17 MR. LINTON: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. LINTON:

20 Q How long have you worked for the Alaska Department  
21 of Environmental Conservation, sir?

22 A Approximately 12 years.

23 Q And what are your responsibilities for them?

24 A I deal with various forms of investigation  
25 enforcement for the Department of Environmental

1 Conservation having to do with oil, water, sewage, all the  
2 regulatory elements the Department deals with.

3 Q Do your investigations result in both civil  
4 actions and criminal actions?

5 A Yes.

6 Q How long have you been in the Valdez office of the  
7 Alaska Department of Environmental Conservation?

8 A All the entire length of my employment with the  
9 Department.

10 Q How long has that been, compared to the time that  
11 the TransAlaska Pipeline has been operating and ships have  
12 been coming and going from Valdez?

13 A Just about the entire time. I believe I joined  
14 the Department about a month after the first shipment of  
15 oil.

16 Q Some time in the early morning hours of  
17 March 24th, 1989, did you receive word about a problem with  
18 the Exxon Valdez?

19 A Yes, I got a call around 1:00 a.m. from Alyeska  
20 OCC, that's the Operation Control Center. They advised me  
21 that the Exxon Valdez, outbound to avoid ice, had been out  
22 of shipping lanes and had run aground on Bligh Reef and may  
23 be leaking some oil. I tried to question them some more  
24 and they really had no additional information.

25 Q What did you do next?

1           A     I immediately told my wife that we had a major  
2 problem here and then I immediately called the Coast Guard.

3           Q     Who did you talk to?

4           A     Well, the phone was answered by someone there in  
5 their vessel traffic system and I announced who I was and,  
6 immediately, the phone was taken away by Commander McCall.  
7 Commander McCall and I discussed the report that I had just  
8 received from Alyeska in more detail. At that time, I told  
9 him and had known intuitively that we had a major problem  
10 and the potential for a catastrophic spill.

11                   We discussed a plan of action which included the  
12 use of dispersants, included mobilizing the Coast Guard  
13 forces and DEC forces, that the Coast Guard would be  
14 sending some people out there. He asked me if I wanted to  
15 go. I told him of course and I told him I'd be down there  
16 as soon as I could. He told me that the boat would be  
17 coming in soon.

18           Q     Did he tell you anything more specific about what  
19 the problem was on board the vessel?

20           A     Just we had probably had the discussion of the  
21 reason the ship was over there, that it was trying to avoid  
22 ice and it had run aground. I can't say at the initial  
23 phone conversation that we discussed it in any more detail,  
24 but --

25           Q     When you talked -- it was during that conversation



1 that you talked with him about dispersants?

2 A Correct.

3 Q What are dispersants?

4 A Dispersants are a chemical additive you put on oil  
5 to combat an oil spill, to make it break up so that the  
6 environment can handle it in a more ready fashion.

7 Q Why was it important to talk about those at that  
8 point?

9 A Well, I knew intuitively when I was told that the  
10 ship ran aground that we had a major catastrophic spill.  
11 And you need all of the weapons at your command and  
12 dispersants are one of those weapons.

13 Q You said you talked about other resources of both  
14 your agency and his being called in. What did you talk  
15 about?

16 A Yes. We talked about the strike teams, Coast  
17 Guard strike teams.

18 Q What are they?

19 A They are groups of oil spill response experts the  
20 Coast Guard has located around the United States.

21 Q Where is the nearest one?

22 A I think they're in the San Francisco area.

23 Q At least not in the State of Alaska.

24 A No, there's none, normally, in Alaska.

25 Q What happened next?

1 (Tape changed to C-3500.)

2 A I called my boss, Bill Lameraux, in Anchorage and  
3 gave him the limited information I had and it was still  
4 very limited. I told him that I had been notified by OCC;  
5 they didn't have much information. I called the Coast  
6 Guard and talked to McCall; he gave me a little bit more.  
7 In essence, the Exxon Valdez, outbound from the terminal,  
8 to avoid ice, had left the ship outbound lanes and ran  
9 aground and Naked Island -- excuse me, at Bligh Reef. And  
10 I indicated to him that this was -- we had minimal reports  
11 of the ship leaking oil, but I did tell him that this was  
12 the nightmare that I had been dreading, that we all had  
13 been dreading, and that I didn't need to go look at the  
14 ship to know that we had a major catastrophic event and  
15 that I wanted certain people in the Department headed this  
16 way right away. I asked him to notify those people.

17 He questioned me as to whether or not it could  
18 wait until morning. I told him no, that you don't run a  
19 ship aground in Prince William Sound without it being a  
20 major event and you can always turn the people around if  
21 you do not need them.

22 I told him that I would call one individual when I  
23 got to the office and asked him to call the rest of them.  
24 I also discussed with him the fact that we would be using  
25 dispersants, so the RT would need to be notified and that I

1 would continue to have conversations with him throughout  
2 the night and the morning, as I went out to the ship.

3 Q Where were the people you were asking him to  
4 gather?

5 A Well, they were scattered throughout the state.  
6 Two individuals that are normally in the Valdez office were  
7 in Anchorage for training and I didn't know where they were  
8 staying, so I had to track them down. And I wanted Joe  
9 LeBeau, who was in Wasilla, and I wanted John Jansen, who  
10 was in Fairbanks, Al Kegler in Juneau, several of our  
11 immediate first response people. I knew intuitively we  
12 would need a good handful, a half dozen to a dozen people  
13 immediately. I also discussed with him getting our oil  
14 spill experts informed, including the AG's office.

15 Q How long did that telephone conversation take?

16 A Oh, I expect the initial conversation took five or  
17 ten minutes. I had subsequent conversations with both  
18 McCall and Lameraux within the next few minutes. I went to  
19 the office and called John Jansen, apprised him of the  
20 situation and asked him to get mobilized.

21 Q Who is he?

22 A He's the DEC oil spill expert in Fairbanks and I  
23 had advised him that \_\_\_\_\_ would be making some  
24 contacts with him, also.

25 Q How long did you stay at the office?

1           A     Oh, I suspect I was at the office ten or 15  
2 minutes, maybe 20. I had to kind of look around for some  
3 gear. My normal response gear, most of it was in my  
4 vehicle which happened to be in the state DOT shop  
5 overnight and I couldn't get access to it, so I was trying  
6 to find some other gear.

7                     And then from there, I went to the Coast Guard and  
8 met with McCall and Falkenstein and Delozier. I was there,  
9 in and out. They were scurrying around, trying to get some  
10 gear together, also.

11           Q     How long did you stay at the Coast Guard station  
12 before you boarded the boat to go to the Exxon Valdez?

13           A     I would expect we were there a half hour, 45  
14 minutes. During that period of time, we discussed various  
15 options and various notifications and the fact that Alyeska  
16 personnel had stopped by the Coast Guard station on their  
17 way to the terminal. They were going to dispatch equipment  
18 from the terminal.

19                     We discussed that apparently Captain Hazelwood and  
20 Commander McCall had a discussion about rocking the ship  
21 back and forth at high water to remove the ship from the  
22 reef. As I recall, that would happen some time while we  
23 were on our way to the ship.

24                     We were waiting there for the pilot boat to come  
25 in and pick us up. It was apparently the fastest boat, the

1 closest one available, so we had to wait until it got into  
2 the dock. Again, we discussed with McCall the use of  
3 dispersants and notification of the federal -- the Coast  
4 Guard strike teams.

5 Q What time did you actually get on the pilot boat  
6 and actually leave the harbor at Valdez?

7 A I don't know the exact time. I expect it was  
8 around 3:00, between 2:45 and 3:00 o'clock, maybe a little  
9 before then.

10 Q What time did you get to the ship?

11 A Well, as we were approaching the ship, I took some  
12 video footage of that and when we first saw it, it seems to  
13 me that it was about 3:15 a.m. and we were up alongside or  
14 fairly close at about 3:35 or so. The pilot ladder  
15 apparently was not in a position where it could be easily  
16 accessed, so while the pilot ladder was being moved, we, in  
17 the pilot boat, trying to stay out of the oil, went around  
18 the back side of the vessel, the stern of the vessel to the  
19 south side and just took a look at what we could see and  
20 saw oil in the water and just waited for the ladder to be  
21 moved. Shortly thereafter, we were told that the ladder  
22 had been moved and we transferred from the smaller pilot  
23 boat to a larger one to use as a -- it was a little higher  
24 off the water and made it easier to get aboard the pilot  
25 ladder.

1           As I was stepping off of the pilot boat and ahold  
2 of the ladder, as I went up, I noticed that the oil surface  
3 next to the ship was elevated from the surface of the  
4 liquid just a foot or two out from the ship. My  
5 recollection is I could see a good foot of difference. In  
6 other words, there was oil moving up alongside the ship,  
7 welling up and -- this sticks in my mind, as I climbed the  
8 pilot ladder -- after the --

9           Q     Excuse me. You mean the oil was a foot away from  
10 the side of the vessel?

11          A     The oil alongside the vessel was higher than the  
12 liquid surface immediately say a foot or two away from the  
13 vessel. And I can't say it was higher than the waters,  
14 though, because we were in oil, so I don't know where the  
15 water was in relationship to the oil. But as the oil left  
16 the ship, it came up alongside, a rolling boil, if you  
17 will, and so there was a difference in elevation in the two  
18 liquids.

19                Anyway, I climbed the pilot ladder carrying my  
20 video camera and the other gear I had with me and when all  
21 three of us, the two Coast Guard personnel and I, were  
22 together, we went to the bridge of the vessel.

23           Q     Would you explain to the judge, then, what you did  
24 -- how long did you remain on board the vessel?

25          A     Oh, I don't recall what time I got off, but it was

1 in the neighborhood of 6:30 or 7:00 p.m.

2 Q On March 24th?

3 A Correct.

4 Q What did you do in the space of time that you were  
5 on board the vessel?

6 A Well, when I got on the bridge, I saw Captain  
7 Hazelwood standing on what would be the port side, up near  
8 the window, very quiet, pensive, stroking his beard. I  
9 introduced myself and the Coast Guard was there and the  
10 Coast Guard dealt primarily with Captain Hazelwood and  
11 other folks. I tried to confine my activities to the oil  
12 pollution incident, what we could do to mitigate that. And  
13 so that meant that I spent most of my time with the chief  
14 mate who was gauging the vessel. That's measuring how much  
15 oil was remaining in it, trying to determine how much was  
16 lost. I gave him the directive to gauge it at least every  
17 two hours to get some kind of a leak rate, see whether we  
18 were slowing down. I had various conversations through  
19 this period of time with the Coast Guard, so we were  
20 keeping tabs with each other. Mine were letting them know  
21 about the pollution and they were dealing with me about  
22 their investigation about what happened. I was not  
23 particularly concerned about what happened, but how we were  
24 going to deal with the pollution incident.

25 And I made several telephone calls from the

1 vessel. I called my boss, Bill Lameraux, in Anchorage  
2 again and advised him of the situation, requested  
3 additional help, suggested that we hire some additional  
4 people to help us with this incident and that he updated me  
5 on where he was on the notification process and who was  
6 headed down to Valdez with help and about what time they  
7 would get there. And that happened periodically through  
8 the morning.

9 I had a phone conversation with Alyeska, with  
10 Larry Shire, who was the man that had gone to the terminal  
11 to dispatch the equipment. We discussed the situation,  
12 apprised him of how much oil had leaked, what the leak rate  
13 was, where I suspected that it was. I had advised him that  
14 he should, one, notify his dispersement contractors to get  
15 the planes headed this way that were in Arizona; two, that  
16 he get CIRO, that's a regional response, Cook Inlet  
17 clean-up response team; that he get all available personnel  
18 and equipment; suggested then to him to get a helicopter  
19 out of Anchorage in Valdez. We normally don't have  
20 helicopters immediately available. I had made the same  
21 suggestion to my boss, Bill Lameraux, to get a twin engine  
22 helicopter down there to help us and tried to provide the  
23 information that I'd learned over my 12 years of dealing  
24 with oil pollution and various oil spill cleanups that had  
25 taken place.



1 Shire advised me that the equipment was  
2 essentially on the way. I did tell him that I would call  
3 him back right after first light and give him a more  
4 definitive position of where the oil was.

5 Sometime during that period of time between 4:30  
6 and 7:00, I was asked by Delozier whether I had been -- had  
7 smelled any alcohol on Captain Hazelwood's breath and I  
8 replied that I was never close enough to him to get that  
9 indication and I really hadn't spent any time talking to  
10 him, either.

11 Later, I passed Captain Hazelwood in the stairwell  
12 between the bridge and the radio room and I did detect  
13 something that smelled to me like there was alcohol of some  
14 description.

15 Q You said later. What time would you think?

16 A I'd say that was -- I didn't, really didn't mark  
17 the time down, but I would say that that was between 5:30  
18 and 7:00. Again, I wasn't dealing with Captain Hazelwood  
19 and what caused the incident. I was dealing with the fact  
20 that we had oil in the water and that we had to take  
21 immediate steps to reduce environmental damage.

22 When -- I did become aware during that period of  
23 time that the Coast Guard was interested in getting someone  
24 on board to administer certain tests related to alcohol and  
25 that was kind of going on around me. Again, I wasn't

1 directly involved in that. When Trooper Fox arrived, we  
2 had a very limited conversation about that and I told him  
3 what I had observed and later identified the smell that I  
4 had smelled about Captain Hazelwood in a companionway and  
5 that was there was some kind of a near beer or a low  
6 alcohol beer on board the vessel that when Mike Fox opened  
7 a bottle of it, that was the smell I had detected. And,  
8 again, I was not dealing with that particular aspect of  
9 it. The Coast Guard was and Mike Fox, he was dealing with  
10 that. And I was, again, trying to confine my activities to  
11 deal with the pollution incident.

12 Q Did you interview witnesses like the helmsman, the  
13 third mate, Captain Hazelwood, other members of the crew --

14 A No.

15 Q -- to find out how it happened?

16 A No.

17 Q Did you prepare reports that you submitted to a  
18 criminal prosecutor --

19 A No.

20 Q -- on what you had observed?

21 A No. I've been interviewed one time by someone  
22 connected with the state.

23 Q Mr. Lawn, would you have gone to the Exxon Valdez  
24 had the report been only of a grounding?

25 A Yes. I've got a clear written record of my

1 concern about ships running aground in Prince William  
2 Sound. I knew intuitively -- no one had to tell me that  
3 the ship was leaking oil. I knew intuitively that it was  
4 leaking oil. It would be a miracle if it would not be  
5 leaking oil. And there's no place where you can run a ship  
6 aground in Prince William Sound where you won't leak oil.

7           In 1980 or so, there was a vessel called the  
8 Prince William Sound that drifted in Prince William Sound  
9 for around 17 hours without power. During that period of  
10 time, the seas became progressively worse and the tugboats  
11 that went out to assist were unable to assist the vessel  
12 because there was no way to get a line from the tugboats up  
13 to the vessel. After that period of time, the Department  
14 spent a good deal of effort with Alyeska trying to prevent  
15 oil spills and that eventually required all of the tankers  
16 coming to Prince William Sound to have a towing bridle that  
17 is passive, that, in other words, you don't need any power  
18 on the ship at all. You can throw pieces of this over the  
19 side and a tugboat can come up and collect this bridle and  
20 hook up without needing power from the ship. That was a  
21 major, major focus. Even Alyeska retrofitted one tug to do  
22 a better job because during the Prince William Sound  
23 incident, a tug almost sank. We had 20-foot waves and a  
24 65-foot Fish and Wildlife boat was surfboarding down these  
25 waves. So Prince William Sound can be very, very

1 dangerous. And during that period of time, it became real  
2 obvious that you can't drop an anchor in Prince William  
3 Sound in most places, particularly if you're drifting over  
4 a knot, knot and a half, without a good chance of the  
5 anchor line parting and --

6 Q Why is dropping an anchor significant?

7 A Well, dropping an anchor is -- if you're adrift  
8 there and you don't want to hit the beach, you would  
9 normally anchor. But from the experience I've had and many  
10 conversations with tanker captains and other knowledgeable  
11 people, most of them have told me that a knot, knot and a  
12 half is a maximum speed at which you can do that and maybe  
13 it won't part; most likely, it will.

14 The other thing about Prince William Sound, it's a  
15 series of submerged mountain ridges and there is no real  
16 shallow water until you get right up next to the beach. So  
17 by the time you drop your anchor line and it didn't pull  
18 off the boat and you get enough scope out on your anchor  
19 line to actually hold the ship, your stern of the vessel is  
20 going to be on the beach. And the industry has recognized  
21 that and that's why they spent several million dollars in  
22 retrofitting ships to have these towing bridles and they  
23 have periodic exercises, some of which are at the  
24 Department's request or instigation. We had just had an  
25 exercise to test this equipment back in November of '88,

1 just four months before this. It was actually the end of  
2 November, I think the 28th of November.

3 So it's recognized that there is no place to run a  
4 ship aground in Prince William Sound without it being a  
5 major catastrophic event.

6 Q Is that statement based on --

7 JUDGE JOHNSTONE: I think we'd better take a  
8 break. We're running past. It'll be about a ten- or  
9 15-minute break.

10 THE CLERK: Please rise. This Court stands  
11 recessed for --

12 (Whereupon, at 10:55 a.m., a recess was taken.)

13 JUDGE JOHNSTONE: Can I get a feel for how long  
14 we're going to need? It sounds like we're going to need a  
15 whole two weeks from what I'm hearing now. Is that a  
16 pretty good estimate?

17 MR. LINTON: I'm loathe to judge on the basis of  
18 one witness, Judge.

19 JUDGE JOHNSTONE: Okay. Let's try to confine our  
20 questions and responses to the issues that are germane. I  
21 don't want to try the whole case here.

22 BY MR. LINTON: (Resuming)

23 Q In addition to the factors you've pointed out, is  
24 there something about the geography or the nature of the  
25 bottom of Prince William Sound that is the basis for your

1 statement that you would have gone out anyway?

2 A Yes, there are a number of reefs and rock  
3 pinnacles there that really aren't covered with any mud.  
4 There is not any soft bottom so that when a vessel runs  
5 aground there, it's going -- it indicates to me that there  
6 will be an oil spill. And even if it doesn't initially  
7 have an oil spill, the way the weather chain is in Valdez,  
8 it can have one before you can get the ship off the reef.

9 CROSS EXAMINATION

10 BY MR. FRIEDMAN:

11 Q Mr. Lawn, my name is Rick Friedman and I'm one of  
12 Captain Hazelwood's lawyers. When you first got the call,  
13 who was that who called you?

14 A It was the Alyeska Operational Control Center.

15 Q All right. And you said that after receiving that  
16 call, you called your boss in Anchorage?

17 A No, I said that I called the Coast Guard. The OCC  
18 really had no information, other than some very basic  
19 stuff, that the ship had run aground and may be leaking  
20 some oil. So I immediately called the Coast Guard, talked  
21 to Commander McCall.

22 Q And McCall told you that it was leaking oil?

23 A He -- yes, he indicated it was leaking, but he  
24 didn't really have any information about how much oil was  
25 leaking, either.

1 Q And at that point, you called your boss in  
2 Anchorage?

3 A After I hung up with Commander McCall, I called  
4 Bill Lameraux.

5 Q Okay. What was the last name?

6 A Lameraux.

7 Q Lameraux. Okay, and Mr. Lameraux asked you if it  
8 couldn't wait until morning or something of that kind?

9 A Yes.

10 Q And you said no, it couldn't.

11 A Correct.

12 Q Why couldn't it wait until morning?

13 A Well, I tried to impress upon Bill Lameraux, and I  
14 did, finally, that I didn't need to go look to see whether  
15 it was leaking oil. I knew that it was a major catastrophe  
16 and if it wasn't right then leaking oil, it was only a  
17 matter of a few hours before it would be leaking oil. And  
18 I believe my exact words to him were, "I do not need to go  
19 look. We need to make this happen now."

20 Q Let me ask you this. Given how extensive the  
21 damage to the ship turned out to be, did it do any good to  
22 get out there so soon?

23 A Well, I believe that it gave us an opportunity to  
24 get things in motion faster because we were there on site.  
25 I think the adequacy of response, initial response, by

1 those parties is another argument, that my firm belief is  
2 that if people had done what they were supposed to have  
3 done, it would have made a difference.

4 Q That that amount of time would have made a  
5 difference if people had been prepared to do the right  
6 things.

7 A Absolutely, absolutely. If we had followed the  
8 contingency plan, it would have bought some more time and  
9 we needed more time.

10 Q And that time is important in a catastrophe of  
11 this size.

12 A Absolutely.

13 Q Okay.

14 A It's that immediate response that's important on  
15 any oil spill to prevent downstream damage.

16 Q So the sooner you get there, the better.

17 A Absolutely.

18 Q Now you said that when you first thought that you  
19 smelled alcohol on Captain Hazelwood, you were already  
20 aware that the Coast Guard personnel were making some  
21 efforts to have him tested.

22 A I don't believe I said that. I believe that I  
23 said that Mark Delozier had asked me whether I had smelled  
24 alcohol and I had replied to him, "No, but I haven't been  
25 close enough to him to find out." Some time thereafter, as



1 I was going from the radio room just on the first deck  
2 below the bridge to the bridge, or back and forth, I passed  
3 Captain Hazelwood in the stairway and I did smell something  
4 that I determined was alcohol.

5 Q When Mr. Delozier asked you whether you smelled  
6 alcohol on the captain's breath, was that the first time  
7 you became aware of alcohol as a potential issue in the  
8 incident?

9 A Yes.

10 Q When you talked to Commander McCall back in, when  
11 you were still in Valdez, he didn't mention that to you.

12 A There was no discussion of it.

13 Q Okay, and when you met with McCall at the Coast  
14 Guard station and Falkenstein was in and out and so on --

15 A I never had a discussion with him about that.

16 Q Now did I understand correctly, you said that you  
17 believed you got off board around 6:30, you left the ship  
18 about 6:30?

19 A It was in the evening, 6:30 or 7:00 o'clock. It  
20 was probably closer to 7:00.

21 Q Okay, in the evening.

22 A In the evening.

23 Q And, finally, when you were going out to the ship  
24 in the pilot boat, you were aware that there had been some  
25 discussion between the captain and Commander McCall about

1 getting the ship off the reef.

2 A Yes, that's correct.

3 Q During your first trip to the vessel on the 24th,  
4 did you, yourself, seize any records or look at any records  
5 of the vessel?

6 A I seized no records. Records of the vessel, if  
7 you include the pieces of paper that we were writing on  
8 with the gauging and making some notes on, I did see those  
9 records, yes.

10 Q Did you subsequently seize any records from the  
11 ship?

12 A I do not believe that I seized any records.

13 Q Did anyone working for you with the DEC seize any  
14 records that you're aware of?

15 A I don't believe I've ever had a discussion with  
16 anyone who told me that they personally seized records.

17 Q Let me tell you why I am asking that and maybe you  
18 can enlighten me a little bit. There's a criminal pleading  
19 that was filed in the case. It's the information; it's a  
20 charging document, charging Captain Hazelwood with some  
21 misdemeanors. And then there's a sworn statement from Mr.  
22 Linton which is part of that complaint. And part of the  
23 sworn statement says, "The records of the vessel, Exxon  
24 Valdez, obtained by investigators of the Alaska Department  
25 of Environmental Conservation . . .," and then he goes on

1 to say what they talk about. Are you aware of the DEC  
2 seizing any records?

3 A There was another investigator by the name of Joe  
4 LeBeau that relieved me on the vessel and he was involved  
5 more in the investigation of what happened with Captain  
6 Hazelwood than I was and I really wasn't involved in that.

7 Q Okay, good enough. Thank you, I don't have any  
8 other questions.

9 MR. LINTON: No questions.

10 JUDGE JOHNSTONE: Thank you, you may step down.

11 MR. LINTON: Call Michael Fox, Your Honor.

12 Whereupon,

13 MICHAEL J. FOX

14 having been called as a witness by Counsel for the State,  
15 and having been duly sworn by the Clerk, was examined and  
16 testified as follows:

17 THE CLERK: Sir, would you please state your full  
18 name and spell your last name?

19 THE WITNESS: My name is Michael James Fox. The  
20 last name is F-o-x. My business address, Post Office Box  
21 650, Valdez, Alaska, the office of Fish and Wildlife  
22 Protection.

23 THE CLERK: Your current occupation?

24 THE WITNESS: I'm an Alaska state trooper,  
25 assigned to the Division of Fish and Wildlife Protection.

## DIRECT EXAMINATION

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BY MR. LINTON:

Q How long have you been an Alaska state trooper?

A Since January 1979.

Q How long have you been in Valdez?

A Since February of 1981.

Q On March 23d and March 24th, 1989, were you assigned to Valdez?

A Yes, sir.

Q What are your normal responsibilities with the Fish and Wildlife?

A My priority would be enforcing the fish and game regulations, commercial fishing, trapping and hunting, et cetera. As part of the Department of Public Safety, I'm also responsible to handle state trooper responsibilities on a secondary nature if a trooper is out of town or he needs additional help.

Q Is there a trooper assigned to Valdez?

A Yes, Ken Alexander.

Q Was he in Valdez on March 23d or 24th?

A No, he was vacationing out of the state.

Q Some time on the evening of March 24th, 1989, did you get a call regarding the Exxon Valdez?

A Yes, sir, I received a call. It was around 2:30 in the morning, actually on the 25th. The 24th was at

1 midnight. It was in the morning of that -- yes, 2:20 on  
2 the 24th.

3 Q 2:20.

4 A Yes, a.m.

5 Q And who did you get a call from?

6 A The Coast Guard.

7 Q What was communicated to you?

8 A I believe it was Chief Peterson of the Marine  
9 Safety Office who told me that the Exxon Valdez was hard  
10 aground on Bligh Reef.

11 Q Did he tell you his purpose in calling you?

12 A He said that our agency was on their list of  
13 notification. They go down a list when something happens  
14 and if your name is on it, they call you and tell you.

15 Q What did you do?

16 A Well, I asked him a few of the details and then we  
17 hung up and then I woke up a little bit more and called him  
18 right back and asked him if there was any fire, injuries,  
19 threat of imminent disaster and what that might be. And he  
20 said no, it was just hard aground and doesn't look like  
21 it's going to go anywhere.

22 Q Did he say anything about leaking oil?

23 A Yes, he said it was leaking.

24 Q As a result of that conversation, did you take any  
25 action?

1           A     No.

2           Q     Did you receive another call later in the morning  
3 about the Exxon Valdez?

4           A     Yes, about 4:30, the phone rang again. I don't  
5 think I was actually asleep again, I was still checking on  
6 this. And at this time, they said that the captain had  
7 been drinking and they wanted me to -- they wanted a  
8 trooper.

9           Q     What did you do?

10          A     Well, I asked for a few of the details and the  
11 second call was made by the commanding officer, Steve  
12 McCall, I believe, and I asked for a few of the details.  
13 And he said that Tom said the captain had been drinking and  
14 they wanted a trooper to come out. So I took it to mean  
15 that he said, he was referring to Tom McCarthy, DEC,  
16 because often -- well, I shouldn't say often, but in the  
17 regular course of business, we insist DEC, when they have  
18 problems -- if it's an unhappy landowner who wants to throw  
19 them off his property, if it's a restaurant person who  
20 doesn't want to be inspected or whatever -- a lot of times,  
21 they'll call the troopers to help deal with otherwise  
22 impossible situations. So I had in mind that Tom McCarthy  
23 of DEC was calling me to come out there and help them deal  
24 with a drunken sailor.

25                   So I -- drunk driving was the immediate thought.

1 I called the Anchorage Dispatch Office and got a message to  
2 the on-duty district attorney, Gene Cyrus, through Sergeant  
3 Loudon of the troopers. I asked for some advice on drunk  
4 driving because right from the beginning, I realized this  
5 was going to be a big thing.

6 Q What do you mean by that?

7 A Well, it was just amazing to me that there was a  
8 tanker on Bligh Reef and I spent quite a bit of time  
9 wondering what circumstances could have possibly placed a  
10 tanker on Bligh Reef. And then when they came back and  
11 said that the captain had been drinking, I figured that it  
12 was a case of incompetence or impaired operation. I knew  
13 it would be the biggest drunk driving case in quite awhile,  
14 so I wanted to have some pretty good advice on what to do.  
15 And seeing as I'm a Fish and Wildlife trooper, I haven't  
16 gained any experience, really, in drunk driving cases, so I  
17 wanted to know the elements I needed to prove and what  
18 steps I could take as an outline for my own \_\_\_\_\_ when  
19 I got out there. And Sergeant Loudon told me, he said,  
20 "Well, the elements would be control and impairment," and  
21 just try to gather whatever physical evidence I could find  
22 or statements in regards to those two elements.

23 So I arranged with the Coast Guard to meet them at  
24 5:00, I believe it was, at the dock and I ran down there,  
25 hopped on their boat and went out.

1 Q What time did you get out to the Exxon Valdez?

2 A We arrived alongside at about 6:45 and it took  
3 awhile to get on board because of all the oil that was --  
4 the oil was coming out of the ship so fast that it was  
5 pressing up out of the water, up above the level of the  
6 water. It was like someone had a hose, pointing it under  
7 the water and cresting up -- it was actually coming up out  
8 of the water all along, well, for a good section along the  
9 starboard side. So as I was trying to board the boat, the  
10 Coast Guard boat had a hard time laying alongside and  
11 putting me off and the deck of the Coast Guard boat was icy  
12 and snow covered and the rope ladder I was to climb was  
13 about chin high, so I was standing on this icy platform  
14 with this hot oil swirling around me and it took quite  
15 awhile. And we ended up having to go back around to the  
16 other side, the port side of the boat where they were able  
17 to get the ladder a little lower and there was less oil  
18 moving alongside the ship and I was able to climb up. So  
19 from about 6:45 to 7:05, I was alongside and then I was on  
20 the deck at 7:05.

21 Q What did you do when you got on board?

22 A There were two crewmen in coveralls, hard hats.  
23 They met me at the top of the ladder and escorted me to the  
24 wheelhouse.

25 Q When you got there, what did you do?



1           A     In the wheelhouse, there was Dan Lawn, DEC; Mark  
2 Delozier of the Coast Guard; the XO, Tom Falkenstein of the  
3 Coast Guard; and the second mate of the boat, I believe his  
4 name was LeCain. And I got up on the bridge, fully  
5 expecting to have to deal with a drunk type situation and  
6 it wasn't that at all. It was very quiet and dark, the guy  
7 just kind of gazing out the window at the -- it was a very  
8 quiet and a very sad kind of atmosphere.

9           Q     Was Captain Hazelwood on the bridge at the time?

10          A     No, he wasn't.

11          Q     What happened then?

12          A     Well, I figured -- I wanted to know what the heck  
13 to deal with, what was the problem, why was I there, who  
14 was in trouble, who needed help, et cetera. And I talked  
15 to the XO, Falkenstein, because he's been the ranking  
16 officer with the Coast Guard there, and that's when I  
17 realized that he was Tom, that was the Tom they were  
18 referring to, not Tom McCarthy, it was Tom Falkenstein of  
19 the Coast Guard. So I asked him what the deal was and he  
20 said that he and Delozier had both smelled alcohol on  
21 Captain Hazelwood's breath and they wanted me to haul him  
22 off and take a blood sample and do whatever. And I  
23 explained to them that I really couldn't do that if there  
24 wasn't a crime going on. We could investigate it, but I  
25 wasn't going to go ahead and go to the guy's room and wake

1 him up and arrest him while he was in his room. They told  
2 me he was in his bed, sleeping, when I got there.

3 So I talked to them about what they could do, what  
4 I could do and they told me that they could take blood. I  
5 said, "Fine, let's get the show on the road. Let's go  
6 ahead and do it."

7 Q And that conversation took how long?

8 A Oh, just a few minutes. Right away, when I got  
9 there, I realized there was going to have to be a Coast  
10 Guard investigation, per se. I didn't want to start a  
11 search or an investigation that could later be invalid  
12 because of no probable cause or no evidence in front of me,  
13 which is why I didn't immediately go to the captain's room  
14 and arouse him and start interviewing him.

15 Q Did you discuss with Mr. Delozier or Mr.  
16 Falkenstein at any point whether it was appropriate to take  
17 the captain from the vessel into town for --

18 A Oh, yes, for sure.

19 Q -- an investigation?

20 A The Coast Guard was anxious to get urine and  
21 breath or blood samples and we discussed how we could do  
22 that and there was a lot of options. For some reason, they  
23 were under the impression that I could take blood and I  
24 don't know how they believed that, but I'm not going to be  
25 taking blood from anybody. I can take them to a facility

1 where we can take blood if it's the smart thing to do or we  
2 can get a nurse or a doctor or EMT-3, of which there are  
3 several at the Police Department, for example. At that  
4 time, the Police Department had a unified force that was  
5 both EMT-3s, EMT-2s and policemen and it would have been a  
6 very simple matter to get one of those guys out because  
7 they can do injections and take blood. And I had, before I  
8 left town, told the Police Department that I was doing this  
9 and to be ready for a call if I needed some help. And we  
10 discussed all the options and the Coast Guard said, "Well,  
11 we can do this without any problem." I said, "Well, let's  
12 do it then and I'll just help you do whatever you need to  
13 do." And they kind of just took over the blood sampling  
14 process and Mark Delozier told me that he would be doing  
15 the investigation for the cause of the accident and  
16 Lieutenant -- I think he's a lieutenant, the commander,  
17 Falkenstein told me that he would be doing the oil spill  
18 end of the thing. So those two guys were on the phone to  
19 town a lot, trying to get somebody out to take blood, and I  
20 kept offering my knowledge because I'm more familiar with  
21 what's there, as to where they could get that, whether it  
22 be a doctor or a lab tech, EMT-3 or whatever.

23 Q Did Mark Delozier conduct some interviews that you  
24 sat in on and/or tape recorded?

25 A Yes, sir. He pretty much right away, as we

1 started finding out who was at the wheel, who was on  
2 lookout, who was in charge of the conn, et cetera, and  
3 started arranging to interview the people -- and they'd go  
4 on and off ship and go to bed and whatnot. It's kind of  
5 difficult to organize who you're going to do first and  
6 whatnot. And eventually, they decided they were going to  
7 interview Mr. Kagan, who was the helmsman. And Mr.  
8 Delozier invited me to sit in with him on the interviews  
9 and help him develop questions or whatever during the  
10 interviews, so I said, "Fine, I'll go in there with you."

11 And I was off, making a phone call or something  
12 from the radio room and came back to the wheelhouse and  
13 Delozier was gone and I said, "Well, where's Delozier," and  
14 they said, "Oh, he's interviewing Mr. Kagan." I said,  
15 "Where's that?" And then I ended up with I believe it was  
16 the chief, maybe the second mate, I don't know which one,  
17 walking all over the place, looking for these guys and  
18 eventually we found them in a spare officer's quarters, I  
19 believe it was, so I was arrived for Mr. Kagan's interview,  
20 probably five or ten minutes into it.

21 Q That was approximately 7:50 a.m. At approximately  
22 8:30, did you meet the captain?

23 A Yes, sir.

24 Q Is that a time that you recorded in your notes the  
25 first time?

A Yes.

1           A     Yes, sir. One of the first things I did was I  
2 told him that -- I mean it was real obvious that this was a  
3 real big deal and I knew right then, just from the volume  
4 of oil that was coming out of this thing. And we live with  
5 tankers, you know, we see them coming and going and we  
6 practice \_\_\_\_\_, we practice oil spill, we talk about  
7 separation, I mean all this stuff. It's what we focus on  
8 in Valdez is oil, oil, oil. But when I saw this, I knew,  
9 "This is the big baby." I knew this was going to be what  
10 it is. And I told the lieutenant, I said, "We're going to  
11 have to find out what . . .," (unintelligible). We have to  
12 have our own conclusions. We can't rely on the Coast  
13 Guard, we can't rely on the \_\_\_\_\_. We have to have  
14 our own conclusions. And I suggested that they send a  
15 trooper or troopers from somewhere else to go to Valdez and  
16 start an investigation (unintelligible).

17                     I suggested right off the bat that they contact  
18 Alamar, which are the shipping agents, because I know that  
19 the agents represent the oil companies with the tankers.  
20 The individual agents come and go from the tankers at the  
21 arrivals and departures. They have intimate, I should say  
22 close contact with the crew, captain, right at the time of  
23 departure. And I knew that an agent would have information  
24 on the condition of the captain and the crew immediately  
25 prior to sailing.

1 Q What happened then?

2 A We were between interviews. We were going to  
3 interview the third mate, Mr. Cousins. And when you're  
4 walking around on a ship, it's pretty narrow and there is  
5 no real gathering area. And I was walking through a hall  
6 and here was another guy that I hadn't met and I just said  
7 to somebody, "Is this the captain?" And I said hello to  
8 him and I told him who I was and introduced myself. Well,  
9 in the process of me telling him who I was -- it was not  
10 clear why a game warden would be on your ship, so I told  
11 him I was representing the state and we were trying to find  
12 out how this happened and why it happened and just what in  
13 the heck the problem was because we were all, you know,  
14 "How did this happen? What was the problem?" And he said  
15 to me, "You're looking at it."

16 Q Did you communicate with anyone higher up your  
17 organization after meeting with the captain?

18 A Yes, sir, I made more than one call to my  
19 lieutenant who's stationed in Palmer. They have a phone  
20 there on the ship that you can just, with the assistance of  
21 the radio officer, can just dial up whoever I need to talk  
22 to and I called up my lieutenant and told him this was a  
23 real big problem and that a lot of things had to be done.

24 Q Did you suggest any lines of investigation to  
25 conduct?

1 I also knew that there's a pilot that's on board  
2 and it's a standard operating procedure. I know where the  
3 pilots get on and off and I knew that they had to have a  
4 pilot. So I suggested to my boss to have a trooper come  
5 down and investigate any leads that he might uncover  
6 through the shipping agents in Alaska Maritime and the  
7 pilots (unintelligible) for starters.

8 Q And that was in a conversation which occurred  
9 when?

10 A Well, it was early in the morning, prior to the  
11 captain (unintelligible). I called him several times,  
12 telling him how things were progressing and how much oil  
13 was dumped in the water.

14 Q Did you sit in as Mr. Delozier interviewed Gregory  
15 Cousins, the third mate?

16 A Yes, sir.

17 Q Did that occur at 8:43?

18 A Yes.

19 Q At some time after your interview with Mr. -- Mr.  
20 Delozier's interview with Mr. Cousins, did you become aware  
21 of the blood testing process?

22 A Yes, it was a major concern of myself and Mr.  
23 Delozier, you know, when was this going to take place and  
24 we talked about it all the time. And there was a great  
25 deal of conversation between the boat and the Coast Guard

1 station over getting somebody out there to do this blood  
2 testing. And because I was in sort of an agency assistant  
3 position, I never really made any decisions, who was saying  
4 this and who was saying what. And I never really got down  
5 to the point where I directed anybody to do anything. And  
6 it was very frustrating for me because I knew what had to  
7 be done and I knew that time was important and no one  
8 seemed to be able to tell me what the problem was.

9           And some time before lunch, it was 10:00, 10:30,  
10 somewhere in there, I said to Delozier, I said, "We've got  
11 to get this blood sample. I mean what's going on here?"  
12 And he said, "Oh, we've got a guy doing it." And I said,  
13 "Well, good, fine." And it turned out that there was some  
14 sampling kits on board the boat from the beginning that  
15 they carried with them and it was just a matter of getting  
16 a person out there that could do the lab work and take the  
17 sample.

18           And then I went into the captain's stateroom which  
19 is right across from the radio room there and they were  
20 taking blood from one of the lookouts, a lady, Maureen  
21 something, Maureen Jones. She was sitting there, at the  
22 captain's desk, and the medic was taking her sample.

23           And I asked the medic, I said, "How are you doing  
24 this? Are you sealing this stuff up so that it's going to  
25 be good evidence and all that?" He said, "Oh, yes." He



1 showed me a container that was a standard blood and urine  
2 sampling kit that was taped closed, signed and dated by him  
3 and so I saw that and I said, "Well, that looks good to  
4 me," and I made no steps to secure it as evidence because  
5 he already was securing it as evidence. Then after he  
6 left, I asked Delozier what happened to the samples and he  
7 said the medic took them with him, so I was confident that  
8 their integrity would be safe (unintelligible).

9 Q Do you know what time actually the blood test  
10 was --

11 A No, I couldn't tell you, but it was late in the  
12 morning. It was late in the morning, before lunch.

13 Q What time was lunch?

14 A We ate, right around noon we ate, in the officers  
15 mess.

16 Q Did you see bottles of the substance labeled  
17 Mousey?

18 A Yes, there was Mousey, I believe is the  
19 pronunciation, nonalcoholic brew I think is what it says on  
20 the label. It's a green bottle with a foil top, like a  
21 beer bottle. And they were in the refrigerator in the  
22 captain's -- in the officer's mess. And there was also a  
23 couple of bottles in the refrigerator in the captain's  
24 office, stateroom, suite.

25 Q After lunch, what -- how many bottles were there

1 that you saw in the --

2 A In the captain's room, there were roughly two, I  
3 guess, and in the officer's mess, there was a lot, a case  
4 or two, I suppose, in the refrigerator. It's a glass  
5 fronted case full of pop and whatnot, juice and milk, and  
6 there was a whole shelf of them in there.

7 Q After lunch, did you sit in on the interview with  
8 Captain Hazelwood conducted by Mr. Delozier?

9 A Yes, I did.

10 Q And was that tape recorded?

11 A Yes, I tape recorded it.

12 Q After the interview with Captain Hazelwood, did  
13 you go look for those two bottles again?

14 A Well, after he had said that he drank some, I  
15 thought it would be a good idea to have a sample of the  
16 stuff, so I went back to the officer's mess and I took two  
17 bottles out of there and one of the bottles, I opened it,  
18 smelled it, offered it to Delozier, Dan Lawn and Mr.  
19 Falkenstein so they could smell it, see if it resembled  
20 what they smelled on the captain's breath. Then, later,  
21 Delozier took another one out of the captain's stateroom  
22 and gave it to me and, eventually, I took it to town and  
23 delivered it back to their Coast Guard station there. So I  
24 ended up with one bottle and the Coast Guard ended up with  
25 one bottle and the other one I opened and dumped it out.

1 Q What time did you leave the ship?

2 A It was around 3:00, I believe.

3 Q Mr. Fox, would you have gone to the Exxon Valdez  
4 in response to the report of a grounding, alone, had there  
5 been no report of leaking oil?

6 A No doubt.

7 Q Explain why.

8 A It's my back yard. Well, I'm the only Fish and  
9 Wildlife trooper there. It's my beat. It's where I work;  
10 it's where I live. You get news like this, you've got to  
11 go check it out.

12 Q Did you make efforts over the next few days to get  
13 help with the investigation?

14 A Yes, from the beginning.

15 Q Tell the judge what you did.

16 A Not to repeat what I did from the boat, after I  
17 got back to town, I continued to call my lieutenant and the  
18 colonel, the head guy in our division, and tried to press  
19 upon them the size of this problem. And everybody was  
20 listening, but nobody was really saying anything. And  
21 then, on Sunday, the commissioner called me up and he said,  
22 "What's going on," so I told him. And then I talked to  
23 Michelle Brown in the Attorney General's office, she came  
24 to town. And by Sunday night, I had gotten word that the  
25 District Attorney's office as sending someone and the State

1 Troopers' Headquarters was sending someone. And, in fact,  
2 we ended up with one person from the AG's office, one  
3 person from the DA's office, this is like on the first day,  
4 Sergeant John McGhee of the troopers and then, the next  
5 day, about three more troopers showed up.

6 Q At some time, did you receive instructions that  
7 you should not get information from the National  
8 Transportation Safety Board investigators who were in  
9 Valdez working on an investigation on their own?

10 A Actually, before they were even there. It was  
11 well before anyone came. It was in the very early parts of  
12 the investigation and we became aware of NTSB's efforts to  
13 investigate the crime. And the Coast Guard told us that  
14 the NTSB was going to do everything they weren't going to,  
15 so I felt that there was the state people and there were  
16 the NTSB people and the NTSB people were a one-way  
17 operation. You tell them things; they tell you nothing.  
18 And so from the very beginning, what we did is we weren't  
19 going to get any help from the NTSB anyway, so we just went  
20 about our business and then, eventually, the NTSB caught up  
21 with me and sort of drug me in for a couple of hour  
22 interview on theirs.

23 However, right from the very beginning, we never  
24 had any exchange of information with the federal  
25 investigation, the NTSB.

1 Q Did you receive specific instructions not to get  
2 information --

3 A Yes, from you.

4 Q When did that happen?

5 A I really can't say the date and time, but I know  
6 that in the very first part of the investigation, I was  
7 told to clear every bit of information through your office  
8 first or from you and to not necessarily share anything  
9 with any other agencies, but to strictly limit my contacts  
10 with other investigators to the point where I really didn't  
11 have any.

12 Q Did you ever, for example, send reports to Mary  
13 Ann Henry or Brent Cole in the District Attorney's Office?

14 A No, everything that I ever generated went to  
15 Sergeant McGhee, who was organizing our things, or directly  
16 to you. Anything written went to Sergeant McGhee who was  
17 organizing our report. A lot of information, investigative  
18 leads that needed checking or follow-up or whatnot I  
19 discussed with you prior to doing anything.

20 Q At a somewhat later point, did you receive  
21 instructions, an explanation about the inevitable discovery  
22 doctrine, the investigation that you were being asked to  
23 help in regarding that?

24 A Yes.

25 Q Explain to the judge what your understanding was

1 and what you understood your role to be.

2 A Sure. Well, it was prior to interviewing Mr.  
3 Lindennow, this specific group. I talked to Mr. Lindennow  
4 at 5:12 and we hadn't done anything or I hadn't done  
5 anything involving the investigation for some time prior to  
6 that, for a couple of weeks probably. And then I received  
7 a call from the DA's office, saying to go out and find  
8 these people and interview them. And the subject of the  
9 interview was supposed to be, "What would you have done,  
10 had you not already known that this ship was on the rocks?  
11 When would you have seen it? What would your actions have  
12 been? Did you in fact see it and what in fact did you do?"

13 And it was explained to me at that time, really  
14 not in very great detail because I didn't ask, I just went  
15 along with the job, explained to me that we needed to have  
16 an idea of when we would have inevitably discovered this  
17 thing. And my little part of it was to talk with these  
18 people. So I went and talked to Mr. Lindennow and Mr.  
19 Bradigan and basically Mr. Heston and I offered some advice  
20 on who else we might contact, spotter pilots for \_\_\_\_\_  
21 Fish and Game, you know, other commercial traffic,  
22 et cetera.

23 But I couldn't say -- before actually doing that  
24 work with Mr. Lindennow, I couldn't say when I actually  
25 knew about it. However, it seems like I've known it from

1 the beginning because we were doing our one little route.  
2 You know, we were not NTSB or anyone and there weren't any  
3 other investigators in town until much later when Trooper  
4 Stockard came to town.

5 Q At some point, did you suggest that an  
6 investigation could go in the direction of talking to  
7 guards at the Alyeska terminal?

8 A Oh, yes, that was prior to -- when I knew that the  
9 help was coming, that additional help was coming, what I  
10 thought I should do is try to have some of the groundwork  
11 done, a list of people that need to be interviewed, a list  
12 of offices that we could contact, so that we had an  
13 organized approach to the investigation. And because I am  
14 a longtime Valdez resident, I had a lot of contacts. I  
15 deal with these people every day and I knew the people and  
16 the places where to find them. So I made a list of  
17 everybody we needed to talk to and as soon as some help  
18 arrived, we sort of dispatched ourselves to interview all  
19 these people. And one of the first places we went was the  
20 terminal because when people go in and out of the terminal,  
21 they are screened by the guards for contraband. It's  
22 face-to-face contact and I thought that perhaps the guards  
23 could give us information in regard to the condition of the  
24 crew and I wanted to get right to them as quick as we could  
25 before their memories faded, et cetera. And that was on

1 the weekend, Sunday I believe, was when I called them up  
2 over there.

3 Q How about as to a cab company?

4 A When you go to the guard shack, they give you a  
5 log, if you ask for it, they give you a log of who goes in  
6 and out. And they had them coming in in a Yellow Cab which  
7 they --

8 Q Excuse me, what do you mean by "they had," when  
9 you say "they had"?

10 A The guards had them logged into the terminal via a  
11 Yellow Cab. I know the guy who runs the Yellow Cab  
12 Company, so I called him up and said, "Who was your driver  
13 this night," and he told me and I put his name down on the  
14 list of people to interview.

15 Q How about a woman, Patricia Caples?

16 A Pat Caples. She's usually referred to as Tiny  
17 Caples. She's a longtime, lifelong Valdez person. I know  
18 her family well. She works for Alamar, Alaska Maritime.  
19 And I didn't know that she was the agent right off the  
20 bat. However, the manager, the office manager of Alamar is  
21 a good friend of mine. I've known him for a long time and  
22 I knew that he would know who it was, so I called him up  
23 and said -- his name is Bob Barts -- I asked him, "Who is  
24 the agent that saw the Exxon Valdez off," and he told me it  
25 was Tiny Caples. I said okay and I put her on the list of



1 people to talk to.

2 Q How about identifying the pilot?

3 A Well, that was pretty easy. I called the pilot's  
4 business phone there, in Valdez, talked to them and the guy  
5 who answered the phone was the same pilot who escorted the  
6 ship out and that was Mr. Murphy. So I made an appointment  
7 to talk to him.

8 Q Let me distinguish talking to the pilot from  
9 identifying the pilot.

10 A Okay.

11 Q When did you learn who the pilot was?

12 A He told me on the phone, I think it was Sunday.  
13 It might have been Monday.

14 Q Did you learn in the course of talking to him, to  
15 Captain Hazelwood on the 24th?

16 A Yes, Captain Hazelwood told us that Mr. Murphy was  
17 the pilot.

18 Q You knew the name Murphy as a result of the  
19 conversation with Captain Hazelwood on the 24th.

20 A Correct.

21 Q Then to locate him, you simply called the  
22 Southwest Pilots \_\_\_\_\_.

23 A Correct.

24 Q Were there leads like that one that you got from a  
25 conversation with the captain?





1 Q And after they told you there was no immediate  
2 public safety danger, in essence, if you didn't go back to  
3 sleep, you stayed at your house and --

4 A Correct, I was waiting.

5 Q Next, you got a call asking for your assistance --

6 A Correct.

7 Q -- is that correct? And that was for your  
8 assistance regarding an alcohol issue, although you may  
9 have misunderstood or somehow there was a lapse in  
10 communication.

11 A I thought that it was wrestling a drunk type of a  
12 call, yes.

13 Q Okay. Now you told Mr. Linton that if you had  
14 only been informed of a grounding, you eventually would  
15 have gone out to the vessel anyway.

16 A For sure, yes.

17 Q Do you know how soon you would have gone out  
18 there?

19 A I would have waited until I could call my boss  
20 without waking him up. Probably 7:30 or so, I'd probably  
21 try him at his house, 7:00, 7:30, at his home. And then I  
22 would have run to where I keep -- I have a Boston Whaler  
23 skiff that I keep in a state of readiness in a warehouse on  
24 a trailer in the winter because if you leave it in the  
25 water, it gets filled up with snow and it's real hard to

1 use it. So I would have run to the warehouse and launched  
2 it and gone out. It would have taken, oh, maybe 30 minutes  
3 to put it in the water, total, and another 30 minutes to  
4 run out there or less.

5 Q Now would you have gone out there to investigate  
6 in an official capacity or how would you characterize your  
7 activities if this were the chain of events?

8 A Information gathering, see how bad is it, what are  
9 we looking at. Certainly, I'm not going to rely on the  
10 Coast Guard's information of whether or not it is a hazard,  
11 you know. I can make my own judgments on that. As the  
12 tide changes and as things develop, I thought it would be  
13 important for me to come to my own conclusions.

14 Q Now in fact, around -- did you say around 4:00  
15 o'clock in the morning, you got a call, requesting  
16 assistance?

17 A I think it was 4:30.

18 Q All right. And at that point, you knew that they  
19 needed assistance with regard to alcohol and thought that  
20 they had a problem with a drunk.

21 A That's the way I heard it.

22 Q Okay.

23 A It was a very brief message, you know. When  
24 someone's calling for your help, you don't really go into a  
25 lot of details. The first thing you do is get moving.

1 Hopefully between the time you get moving and you get  
2 there, you'll have more of the story.

3 Q When you arrived out at the -- I'm sorry. At that  
4 4:30 phone call, that was Commander McCall?

5 A I think it was, yes.

6 Q Did he tell you anything about who had been in  
7 charge of the vessel or whether there were attempts to get  
8 it off the reef, anything of that kind?

9 A No.

10 Q You arrived at the vessel at approximately 6:45?

11 A Correct.

12 Q And when you met with the Coast Guard personnel at  
13 6:45, they told you that they suspected that Captain  
14 Hazelwood had alcohol on his breath or they thought they  
15 had smelled --

16 A I arrived at the vessel at about 6:45. I was  
17 actually up in the bridge, where the Coast Guard fellows  
18 were, closer to 7:05, 7:10. And those two people, Delozier  
19 and Falkenstein, told me that they had smelled alcohol on  
20 the captain's breath and I went on to question them in  
21 regards to sobriety, you know, slurred speech, stomping  
22 gait, et cetera, and they had not observed that.

23 Q Now they also told you in that first conversation  
24 that the third mate had been on the conn at the time of the  
25 grounding.

1 A Yes.

2 Q Now did you think the fact that the captain may  
3 have alcohol on his breath was a significant fact?

4 A Well, for sure, yes.

5 Q And something that warranted further investigation  
6 by yourself?

7 A Yes.

8 Q That's why you asked that series of questions  
9 about did he have a stumbling gait or --

10 A Well, sure, if you get called to a drug call,  
11 that's the first thing on your mind, you know, is it the  
12 truth or not, is it a problem or not. And so you'd have to  
13 investigate whether it is an accurate summons for your help  
14 and you have to figure out what your role is going to be.

15 Q Is it fair to say that during the rest of the  
16 time, your time on the vessel that day, you did your best,  
17 given the constraints you were under to investigate that  
18 issue of alcohol as a factor in the accident?

19 A When I say I did my best, I did what I thought was  
20 correct. But if I had my way, if I had actually been doing  
21 the investigation, it would have been different.

22 Q Okay.

23 A The Coast Guard told me they could get the blood  
24 sample, they could get the urine sample and I just allowed  
25 them to do that. And certainly we talked about it.

1 Certainly I made suggestions and encouraged them. But to  
2 say that I really did it is not really fair because I was  
3 having a hard not to do it. I was having a hard time not  
4 to do it.

5 Q Fair enough. I guess what I'm getting at is --  
6 that's what I meant by within the constraints that you  
7 had. For example, you asked various people about potential  
8 alcohol use.

9 A Yes.

10 Q And that was as a result of having been told that  
11 the people had smelled alcohol on the skipper's breath.

12 A Correct.

13 Q And as another example, you looked around the  
14 captain's cabin for signs of alcohol use.

15 A Well, actually, I was in his cabin and I looked  
16 around for things obvious. I was in his cabin when Mr.  
17 Delozier gave it a more thorough search, you could say.  
18 What I did certainly was not a search. However, I was  
19 there when Mr. Delozier looked in his waste basket and in  
20 his stateroom. I was standing right there, in the office  
21 part.

22 Q You had some input into that in that you  
23 discussed --

24 A Sure.

25 Q -- the looking around for alcohol signs.



1 A "What did you find?"

2 Q Right. Now as to the issue of the third mate  
3 being on the conn at the time of the grounding, was that  
4 something that you thought was significant at the time?

5 A Sure.

6 Q And is that something, again within the  
7 constraints you were operating under, something that you  
8 pursued as you talked to people on down the line?

9 A I'm not sure there was much of a focus on the  
10 third mate. Certainly, when we did our investigation, it  
11 was more than just one prong, Captain Hazelwood. However,  
12 we never developed any leads to indicate there was a  
13 problem with him drinking or what would ever --

14 Q No, I understand that.

15 A I can't really say that we did much, you know, in  
16 regards to --

17 Q I didn't ask the question right. What I'm getting  
18 at is whether or not you asked questions of other witnesses  
19 about who was on the conn at the time of the grounding.  
20 For example, did you ask the helmsman who was on the conn?

21 A Well, Delozier did and I was sitting there when he  
22 did, so I heard him say that, yes.

23 Q Okay. You indicated that if you had been doing  
24 the alcohol investigation, you would have done some things  
25 differently. Can you tell us what those things are?

1           A     I don't have a chain of command to worry about,  
2 locally. If I want something done, it's just a matter of  
3 me doing it. When I became aware of alcohol sampling or  
4 blood sampling and urine sampling equipment on the boat, it  
5 would have been a simple matter for me to call up the  
6 Police Department and I would have said, "I want somebody  
7 out here right now to draw blood," because I had the  
8 authority to do it, and I would have been able to do it a  
9 lot faster. I wouldn't have worried about who it was or  
10 how they got there or who was paying for it or any of  
11 that. And apparently the guy, the Coast Guard officer that  
12 was there, was concerned about the procedure that he had to  
13 go through to get somebody there. Now what that was I  
14 don't know because I wasn't really involved in that  
15 process. And when I say things would have been done  
16 differently, I am convinced that I, given the same set of  
17 authority as they had, could have accomplished the goal  
18 faster because I would have been able to do it myself with  
19 just that one phone call.

20           Q     Okay. Now after getting aboard and getting  
21 oriented and becoming aware that this alcohol issue needed  
22 to be investigated, you mentioned in your direct testimony  
23 that you began to think of witnesses who might be able to  
24 account for Captain Hazelwood's condition earlier in the  
25 day.

1 A The whole crew's condition.

2 Q Right, such as --

3 A Anybody who got off the boat.

4 Q Such as Pat Caples, the agent; the pilot, Murphy;  
5 people of that type. And the reason you were interested in  
6 interviewing them or having other troopers interview them  
7 was again to see what they could say about this alcohol  
8 issue, is that right?

9 A Well, the accident. I mean, you know, what caused  
10 this, how did this happen. You know, there had to be some  
11 remarkable event we figured, you know. And certainly at  
12 that point, we weren't focusing on one single problem of  
13 alcohol. It was, "What the heck happened," you know. Were  
14 these guys okay? Were they healthy? Was there some kind  
15 of problem? And you have to find that out. And to say we  
16 were just focusing on alcohol just isn't true because that  
17 wasn't the case at all. We were trying to trace everyone  
18 to see what happened.

19 Q Okay, I thought you had said on direct examination  
20 that you were interested in talking to Murphy and the  
21 agent, Pat Caples, because they could give an account of  
22 what his condition, what Hazelwood's condition was earlier  
23 in the day.

24 A Yes, they could.

25 Q And the reason that was important is, barring some

1 epileptic seizure or something of the kind, the reason you  
2 were interested in talking to those two people is they  
3 could tell you whether he was drunk or not earlier in the  
4 day.

5 A Well, they certainly should be able to.

6 Q Now when you got out to the boat and had talked to  
7 the Coast Guard people and had been made aware of alcohol  
8 as an issue, you then spoke with Captain Hazelwood at  
9 approximately 8:30, is that right?

10 A Right.

11 Q And at the time, at that time, you had already  
12 talked to Sergeant Lowne about what you should look for in  
13 terms of gathering evidence of DWI?

14 A It was not Lowne.

15 Q Did I pronounce his name wrong? Loudon.

16 A I called him -- I called the Dispatch Office in  
17 Anchorage and he apparently was the only fellow or the main  
18 person at the dispatch center. So, yes, I asked him.

19 Q So you had already talked to Sergeant Loudon about  
20 what to look for in terms of making an alcohol case.

21 A Sure.

22 Q And you had already talked to the Coast Guard  
23 people and they told you that they suspected alcohol used  
24 by the captain.

25 A Yes, that's right.

1 Q And then you talked to the captain at 8:30 and  
2 noticed no sign of alcohol on his breath, is that correct?

3 A Yes.

4 Q And you were close enough to smell his breath and  
5 his breath was sour, but you didn't note any sign of  
6 alcohol, is that right?

7 A When I talked to him, he was drinking a soda, some  
8 sort of seltzer or whatever, and he was smoking cigarettes  
9 and he had just come out of his room from, I suspect,  
10 sleeping and he had sour breath with cigarette smoke in it  
11 and whatever else.

12 Q Yes. My point is that you were close enough to  
13 smell his breath --

14 A Sure.

15 Q -- and that you didn't smell any sign of alcohol.

16 A No.

17 Q All right. And at the same time, at 8:30, you saw  
18 no other signs of impairment by alcohol.

19 A No, he had bloodshot eyes, but it had been a long  
20 night.

21 Q Okay, no other signs of impairment such as slurred  
22 speech, unsteadiness, anything like that.

23 A No.

24 Q Okay. Now at 8:00 o'clock -- excuse me just one  
25 minute. At 8:00 o'clock on the evening of the 24th, you

1 passed on what you considered to be investigative leads  
2 relating to alcohol to the Coast Guard people, is that  
3 correct?

4 A To D.J. Towle is who I think I talked to.

5 Q Who is that?

6 A I think he's a warrant officer for the Coast Guard  
7 or he's a lower echelon Coast Guard officer.

8 Q And in essence, you were saying, "Here are the  
9 leads I think you should follow up on to determine whether  
10 the captain had been using alcohol that day.

11 A Well, it was more like, "This is what I found out  
12 so far today. What have you found out," and they didn't  
13 know anything or they didn't tell me.

14 Q At any rate, the leads that you passed on were in  
15 reference to alcohol use, what you thought you found or  
16 would --

17 A Actually, most of them were, if I can remember  
18 correctly, most of the things that I passed on to them was  
19 not so much alcohol as tracking movements and who would  
20 have seen these people and who would have been able to say  
21 who was off the boat and where they went and what they did  
22 and who they may have come in contact with, that sort of  
23 thing. If anything other, sort of foul play or any other  
24 problem was evident, perhaps some of those people could  
25 help us in those areas of the investigation.

1 Q Have you been briefed by Mr. Linton on what this  
2 hearing is about, that is the inevitable discovery and  
3 independent source arguments?

4 A Yes.

5 Q Okay. Did you make a report close in time to the  
6 24th in which you noted that you had passed on leads to the  
7 Coast Guard?

8 A Sure, I wrote that.

9 Q I wonder if you could read to the judge what you  
10 wrote about passing on leads to the Coast Guard, if you'd  
11 just read the yellow circle there.

12 A "At 8:00 p.m., I called the U.S. Coast Guard  
13 office and passed on several investigative leads to Coast  
14 Guard Investigative Officer, D.J. Towle. The leads were in  
15 reference to tracking the captain's suspected use of  
16 alcohol. Towle advised that he was interested in  
17 information and that he would check on it."

18 Q Your purpose in passing on these leads was to  
19 assist the Coast Guard in investigating the alcohol issue,  
20 wasn't it?

21 A I wanted to help them, pass them on \_\_\_\_\_ and  
22 I wanted them to help me.

23 Q At the same time, you were going to continue your  
24 investigation of that issue.

25 A Sure.

1 Q Okay. Now you told us that -- this was a holiday  
2 weekend, wasn't it?

3 A Easter.

4 Q Yes. And you called some of your superiors to try  
5 to convince them of the seriousness of this incident and  
6 how important it was to get other investigators to the  
7 scene.

8 A Right.

9 Q And I don't know if I can quote your exact words,  
10 but you said something to the effect that people were  
11 listening, but you weren't sure if they were hearing you or  
12 they weren't --

13 A It's difficult to pass on information in a factual  
14 manner that gets the correct result. And I didn't want to  
15 do it in an emotional fashion. I wanted to do it in a  
16 manner that would help them understand the situation. And  
17 I knew that this process was going to be difficult because  
18 no one had ever dealt with it before. Nobody knew it was  
19 going to happen. And, you know, it was easier for people  
20 like myself, Dan Lawn and others, who sat there and watched  
21 this happening, to understand what was going to happen.  
22 And we knew what was going to happen and the fellows on the  
23 ship knew what was going to happen, the Exxon employees.  
24 And it was a tremendous event and it was difficult  
25 convincing -- well, I shouldn't say difficult, but it was



1 difficult for me to accurately describe what I felt was  
2 going to happen to my bosses.

3 Q And you were telling your bosses that the state  
4 needed to do its own investigation --

5 A Right.

6 Q -- of this major event.

7 A Right.

8 Q When you talked to your bosses about it, did you  
9 tell them that there were indications that alcohol had been  
10 involved?

11 A Well, I told them everything that I knew.

12 Q And that was one of the things that you knew.

13 A Sure.

14 Q And did you tell them that you needed troopers or  
15 other investigators to investigate that issue?

16 A I recommended it, sure.

17 MR. FRIEDMAN: Your Honor, I wonder if it would be  
18 all right for me to move this chart over to the easel to  
19 ask Trooper Fox some questions about it.

20 JUDGE JOHNSTONE: Sure.

21 (Tape Changed to C-3501.)

22 (Inaudible discussion.)

23 BY MR. FRIEDMAN: (Resuming)

24 Q Trooper Fox, is it correct that at approximately  
25 7:05 a.m., you arrived at the ship?

1 A I was on the deck about then.

2 Q And by the deck, you mean the conn?

3 A I was actually on the boat.

4 Q Okay. And is it correct that shortly after  
5 arriving on the boat, you and/or Mr. -- you were present  
6 when Mr. Delozier talked to the master about what he'd  
7 done

8 A Yes, several hours, but that morning, yes.

9 Q So the morning of the 24th --

10 A It was after lunch.

11 Q Around 1:00 o'clock?

12 A Like 1:00 o'clock, yes.

13 Q So around 1:00 o'clock, you're asking the captain  
14 what he'd been doing the day before?

15 A Yes.

16 Q At that point, you're aware of the alcohol issue.

17 A Sure.

18 Q Then is it correct that on March 27th, you  
19 questioned the pilot, Mr. Murphy? First, is that correct,  
20 that you had an interview with him?

21 A Yes.

22 Q And you asked him questions relating to pilotage,  
23 that is who was on the conn at the time of the grounding  
24 and what licenses they held.

25 A He wasn't there at the time of the grounding.

1 Q Okay, I'm sorry, that's correct. Did you ask him  
2 questions about pilotage?

3 A We asked him, "What's the story," you know, to  
4 replay the events for us and he did from the time that he  
5 was with Mr. Hazelwood in town until he got off the ship at  
6 the Rocky Point Pilot Station.

7 Q Was there anyone else present when you interviewed  
8 him?

9 A Mr. Linton and I think also Joe LeBeau of the  
10 DEC. Someone else was in there. I think it might have  
11 been Joe LeBeau.

12 Q Did you ask Mr. Murphy any questions about what  
13 endorsements were necessary to pilot a ship in this area?

14 A I think -- I remember him talking about it. He  
15 was interviewed twice and I don't remember if it was the  
16 first time or the second time we talked about that.

17 Q Okay, at any rate, you questioned him about the  
18 pilotage issue on one of those occasions.

19 A Yes.

20 Q All right. You, also on the 27th, questioned him  
21 about alcohol?

22 A Yes.

23 Q Now on March 27th, you also met with Mr. McGhee,  
24 is that correct?

25 A Sergeant, trooper, Trooper Sergeant McGhee.

1 Q And what was the purpose of that meeting?

2 A He arrived in town to take over the investigation  
3 and pretty much from that point on, my role was sort of a  
4 local knowledge person. I didn't really do a whole lot as  
5 far as creative thought. They would say, "We want to do  
6 this," and I would say, "Okay, these are the people we need  
7 to talk to. We need to talk to these people. Here's where  
8 we find them." I was the guy who drove people around, set  
9 up meetings, said, "Yes, this person works there," that  
10 sort of thing. That's what my role became.

11 Q And on this meeting, the 27th, you're, in essence,  
12 briefing him as to what you found so far and what needs to  
13 be done --

14 A Yes.

15 Q -- as far as your opinion goes, what needs to be  
16 done in the future.

17 A Yes. Well, I didn't have a whole lot of input on  
18 that --

19 Q Okay.

20 A -- from then on, but I certainly told them what I  
21 had done.

22 Q Now back to the 24th, is it correct that at 7:37  
23 in the morning, you were present when Mr. Delozier  
24 interviewed the helmsman, Mr. Kagan?

25 A For most of the interview.

1 Q That's right, you were gone for the first --

2 A Right.

3 Q And you were present at 8:43 when Mr. Delozier  
4 questioned the third mate, Mr. Cousins.

5 A Yes.

6 Q And both of those people were asked questions  
7 relating to who was on the conn --

8 A Yes.

9 Q -- during the time of the grounding.

10 A Yes.

11 Q On April 1st, you were present at a search warrant  
12 hearing, is that correct?

13 A Gee, I really can't remember.

14 Q Would you have a record of it there?

15 A I can look in my notebook. Let's see if I have it  
16 written down here. At 1950, offered testimony in support  
17 of an affidavit for a search warrant.

18 Q And at that hearing, you reported parts of what  
19 you had discovered so far in terms of your investigation.

20 A I can't remember what I said there, but that was  
21 the whole point for being there, yes.

22 Q Right. You made references to suspicions of  
23 alcohol on the part --

24 A I assume so.

25 Q Okay. And did you participate in the search that

1 took place on April 2d?

2 A I looked through garbage bags.

3 Q Out on the vessel?

4 A Yes.

5 Q And what were you looking for when you went  
6 through the garbage bags?

7 A Garbage.

8 Q Alcohol bottles?

9 A We were supposed to look for anything that we  
10 thought might indicate alcohol use on board or any  
11 destruction of documents or evidence that might be useful  
12 to determine the cause.

13 Q I guess no one's really asked you this morning.  
14 You said that you weren't really in control of the  
15 investigation on the 24th, that the Coast Guard had the  
16 authority. Was that explicitly discussed by you and the  
17 Coast Guard? Did they say, "We're in charge"?

18 A Oh, yes.

19 Q "Tag along, if you want to"?

20 A Oh, yes. Well, mostly, I told them -- I asked  
21 them, "Do you have the authority to do this? Are you a  
22 hundred percent sure you can do this?"

23 Q Meaning what?

24 A Interviews, search the room, take blood alcohol  
25 samples. I said, "Are you sure you can do this? Because

1 if you can't do this, then we'll try. We'll get a search  
2 warrant or whatever it takes to get blood or whatever."  
3 Because I wanted to be sure that as much was going to be  
4 done as could be. And they said, "Yes, we're well within  
5 our rights to do this.

6 Q "We can do this without a search warrant. We  
7 can . . ."

8 A Right. So I said, "Okay, fine, as long as you're  
9 sure, go ahead and I'll help you in any way that I can."

10 Q Mr. Linton asked you a question this morning about  
11 whether you had received instructions not to share  
12 information with other agencies or not receive information  
13 from other agencies. And as I recall, you weren't able to  
14 tell us exactly when you got those instructions from him.

15 A Well, very early in the investigation, the Coast  
16 Guard made it clear that they weren't going to do anything  
17 as far as investigating.

18 Q Right.

19 A It might have been after the first day. And they  
20 said that the NTSB was going to do everything and the NTSB  
21 is a public organization, it's not a -- it's a fact-finding  
22 organization and we didn't want to or couldn't get involved  
23 in their public review of the case to prejudice our case.  
24 So, initially, that was the reason that I understood that  
25 we were to work completely independent of any other agency

1 or group.

2 Q What was your understanding as to why it would  
3 prejudice your case to be involved in the NTSB?

4 A Well, it's just not a good idea when you're doing  
5 an investigation to broadcast what you're going to be  
6 doing.

7 Q I take it, then, at that point, there wasn't any  
8 discussion of immunity or problems with immunity issues.

9 A I don't remember, I really can't say.

10 Q But your recollection is your concern or your  
11 understanding was that it had to do with broadcasting your  
12 investigative steps.

13 A And you just have to be careful, you know.  
14 There's a lot of money involved. There's a lot of emotion  
15 involved. And there are people with microphones, sticking  
16 them in your face every time you turn around. And it's  
17 just real important that when you're going about your  
18 business that you keep your business to yourself and that  
19 you do it properly. You don't just go off discussing  
20 things with people. You don't tell people what you're  
21 doing. There's a chain of authority that began with Mr.  
22 Linton and investigators and Mr. McGhee and you just stay  
23 within your own lanes, so to speak.

24 Q Now as a matter of fact, ultimately, the Coast  
25 Guard did turn over its transcripts of interviews of the



1 various witnesses to the state, didn't it?

2 A I couldn't say.

3 Q Okay, you're not aware of that.

4 A No.

5 Q You, at any rate, participated, at least by your  
6 presence, in many of the early interviews by the Coast  
7 Guard of the Exxon Valdez personnel.

8 A Well, I tape recorded one. I asked the Coast  
9 Guard guy if he was tape recording and he said no and I  
10 thought that was a mistake. So I tape recorded, at the  
11 point when I found out he wasn't, I tape recorded the last  
12 one with Captain Hazelwood.

13 Q Okay, and you were present for the other ones --

14 A Yes.

15 Q -- except for that portion of Mr. Kagan's.

16 A Right.

17 Q When can you recall first hearing that immunity or  
18 inevitable discovery might be an issue in this case?

19 A Well, I never wrote it down in my notes and I've  
20 reviewed, looking to see. I understood early in the  
21 investigation, and I just wouldn't feel comfortable telling  
22 you a date if I don't know a date.

23 Q What is it that you understood early in the  
24 investigation?

25 A Well, I knew that our investigation had to be

1 independent of the NTSB's and I knew that, farther along, I  
2 knew that Trooper Stogsdill was going to be assigned to  
3 another part. I was summoned to Anchorage to appear in  
4 Court and I was sent home without testifying and it was --

5 Q To appear at Grand Jury?

6 A Grand Jury. And it was explained in fairly good  
7 detail that time.

8 Q Let's take that as a fixed point because we can  
9 tell when the Grand Jury was held. Did anyone talk to you  
10 about the immunity issue, use the word "immunity" with you  
11 prior to your showing up for Grand Jury duty?

12 A It sure seems that I was aware of it because I  
13 knew when I came to the Grand Jury that that was an issue.  
14 However, I didn't know that it was an issue that was going  
15 to prevent me from appearing at the Grand Jury.

16 Q Let me ask you this. Did anyone ever say to you  
17 -- let's take before the Grand Jury date, again, that's a  
18 fixed point. Before the date of Grand Jury, did anyone say  
19 to you, "As you continue your investigation, Trooper Fox,  
20 we don't want you to utilize any information you obtained  
21 that first day"?

22 A I was -- as I said, when Sergeant McGhee came, I  
23 fell into a role that was so minor that that sort of a  
24 statement would have been unnecessary.

25 Q How about before Sergeant McGhee came, did anyone

1 say that to you?

2 A No, no.

3 Q All right. How long did you stay on the vessel on  
4 the 24th?

5 A I left around 3:00 o'clock to drive back into town  
6 around 3:00 o'clock. I flew in by helicopter, so it didn't  
7 take long.

8 Q Now after participating in the investigation on  
9 the 24th and after participating in the follow-up  
10 investigations that you did let's say in the next week or  
11 two, talking to Pilot Murphy, talking to the other  
12 witnesses you interviewed -- by the way, do you have some  
13 estimate of how many witnesses you interviewed in the first  
14 couple of weeks?

15 A I didn't actually -- Pilot Murphy, Mr. Murphy, the  
16 pilot -- I think Captain is probably appropriate, Captain  
17 Murphy --

18 Q All right, Captain Murphy.

19 A -- is the only one that I was really a main  
20 interviewer at and Mr. Linton was key there, also. After  
21 that, we relied on the investigators that were sent down  
22 and I was present for several of the interviews. However,  
23 once again, it was, "This is where we go. This is who we  
24 see, how we do it." And the questioning and the tape  
25 recording and whatnot was actually conducted by Sergeant

1 McGhee or Trooper Burke or whoever else there might have  
2 been.

3 Q I don't mean to put words in your mouth, but it  
4 sounds like you're saying you were essentially a  
5 facilitator, once the other investigators arrived --

6 A Absolutely, yes, absolutely.

7 Q -- but, nevertheless, aware of what was going on.

8 A Absolutely, yes.

9 Q Okay, having been that intimately connected with  
10 the first several weeks of the investigation, as I  
11 understand it, then your involvement dropped off  
12 significantly?

13 A Oh, yes.

14 Q And then you were called back up in roughly early  
15 May some time to do this inevitable discovery  
16 investigation?

17 A Once again, I was the only guy in town and I was  
18 called up and asked to locate and interview Lindennow, the  
19 Hestons and Mr. Berodikin.

20 Q Were you given any instructions along the lines  
21 of, "When you interview these people, you should not make  
22 use of whatever you learned in your earlier  
23 investigations"?

24 A Well, I was asking them. I wasn't giving them  
25 information; they were giving me information. And I just

1 asked them what the story was. So, no, I guess not.

2 Q In other words, you weren't given any specific  
3 instructions, "Limit your questions to these areas," or,  
4 "Don't utilize certain information in formulating your  
5 questions"?

6 A They didn't give me negatives. They said, "Do  
7 this. Interview the people and find out, question the  
8 inevitable line, 'When would you have found this out?'  
9 'When, in fact, did you find it out?' 'How would it have  
10 been different if you hadn't heard it on the news,'" that  
11 sort of thing. Those were the instructions that I  
12 received.

13 Q And how many witnesses did you interview?

14 A Mr. Berodikin, Mr. Lindennow and Mr. Heston. And  
15 I talked to Mr. Brady, Fish and Game biologist, and found  
16 out that he didn't have a flight scheduled that day, so  
17 there wasn't --

18 Q Did you do any further investigation, other than  
19 what you just described, on the inevitable discovery issue?

20 A Well, I sure can't remember it.

21 Q Thank you, Trooper Fox. I don't have any other  
22 questions.

23 MR. LINTON: Call Mark Delozier in.

24 Whereupon,

25 MARK D. DELOZIER

1 having been called as a witness by Counsel for the State,  
2 and having been duly sworn by the Clerk, was examined and  
3 testified as follows:

4 THE CLERK: Sir, would you please state your full  
5 name and spell your last name?

6 THE WITNESS: It's Mark James Delozier,  
7 D-e-l-o-z-i-e-r.

8 THE CLERK: Your current address?

9 THE WITNESS: Post Office Box 1934, Valdez,  
10 Alaska.

11 THE CLERK: Current occupation?

12 THE WITNESS: Vessel supervisor.

13 DIRECT EXAMINATION

14 BY MR. LINTON:

15 Q Who do you work for now?

16 A North Employment Agency.

17 Q And what type of work do you do?

18 A Escort laden tankers outside of Prince William  
19 Sound.

20 Q Were you in the Coast Guard?

21 A Yes.

22 Q How long were you in the Coast Guard?

23 A 21 years.

24 Q When did you get out of the Coast Guard?

25 A November 1st of this year.

1 Q 27 days ago?

2 A Yes.

3 Q As of March 23d and 24th, 1989, where were you  
4 stationed, sir?

5 A At the Marine Safety Office in Valdez, Alaska.

6 Q How long were you stationed there all together?

7 A Since June 15th, 1987.

8 Q What were your duties at the Coast Guard station?

9 A I was chief of the Marine Safety Department.

10 Q What does the chief of the Marine Safety  
11 Department do?

12 A Overall in charge of marine casualty  
13 investigations, oil pollution investigations and structural  
14 inspections of vessels.

15 Q How many years had you been doing marine  
16 investigation work?

17 A Since '83.

18 Q In that space of time, how many different marine  
19 casualties had you investigated?

20 A Around 200, a ball park figure, I'd say.

21 Q Did any of them involve large tankers?

22 A About half of those would be tankers or large  
23 vessels.

24 Q On March 24th, 1989, did you get a call at home  
25 about the Exxon Valdez?

1           A     Yes, I did.

2           Q     Would you tell the judge where you got that -- who  
3 the call came from and what you learned in that call?

4           A     I was at home, in bed. I received a phone call  
5 from our duty watch stander at the Coast Guard base.

6           Q     Who was that?

7           A     I don't recall who exactly it was. I know it was  
8 the radio operator that was on watch at the time, but I  
9 don't know who it was. He informed me that the Exxon  
10 Valdez was hard aground on Bligh Reef and that everyone was  
11 being recalled to the station. I said okay and hung up,  
12 got dressed and came into the station.

13          Q     What time did you get the call?

14          A     Around I'd say about 20 minutes before 1:00.

15          Q     What time did you get to the station?

16          A     About ten minutes later.

17          Q     Tell the judge what happened when you got to the  
18 station.

19          A     I walked upstairs and met in the hallway with  
20 Commander McCall and Commander Falkenstein.

21          Q     Who is Commander McCall?

22          A     He's the commanding officer of the Marine Safety  
23 Office now, overall in charge.

24          Q     And who is Commander Falkenstein?

25          A     He's the executive officer, executive in charge at



1 the station.

2 Q What did you talk about?

3 A Just discussed the fact that what was learned at  
4 that time was that the vessel was aground at Bligh Reef and  
5 we were pooling our thoughts for what we should do.

6 Q What are the responsibilities of Commander McCall  
7 in the overall operation? What are his responsibilities at  
8 the Marine Safety, at the Valdez station?

9 A He's overall in charge of the whole operation.

10 Q And Commander Falkenstein is what?

11 A He's second in charge.

12 Q And who, if anyone, was in charge of casualty  
13 investigations?

14 A I was.

15 Q Was a decision made that someone would go to the  
16 ship, the Exxon Valdez?

17 A Yes.

18 Q How did that decision come about?

19 A Among the -- during the initial discussions with  
20 myself and Falkenstein and Commander McCall, we discussed  
21 what we should do and I suggested that it's imperative that  
22 we try to make immediate arrangements to visit the vessel.

23 Q At the time you suggested to them that it as  
24 imperative that you make arrangements to get out to the  
25 vessel, what was your understanding of what the situation

1 was at the vessel?

2 A The understanding was that she was hard aground  
3 and hard aground for a vessel of that size or any vessel  
4 means that there is more than likely structural damage to  
5 the vessel. Structural damage does mean that there is a  
6 possibility for loss of life or property.

7 Q Did you know that there was a report of leaking  
8 oil?

9 A On the telephone notification, I was informed that  
10 she was hard aground. I did not know that there was oil in  
11 the water at that time. Upon arrival at the station and  
12 after the discussions with the CO and XO, we weren't  
13 certain whether there was oil in the water. We had not  
14 received any quantities that had been released, although I  
15 do believe that, at that moment, they did realize there was  
16 oil in the water, but we did not know how much or to what  
17 extent there was.

18 Q Would you have made the decision to go out --  
19 well, was a decision made to go out as a result of this  
20 discussion?

21 A Yes.

22 Q Would the decision to go out have been made, even  
23 if there had been no report of leaking oil?

24 A Yes.

25 Q Explain why, please.

1           A     Well, the vessel was in distress. There was a  
2 problem with the vessel. In our zone of responsibility,  
3 it's our responsibility to check into these types of  
4 things. They had a serious problem there, whether or not  
5 there was oil in the water. The vessel being aground is a  
6 serious problem.

7           Q     Does the master of a vessel have an obligation to  
8 report marine casualties?

9           A     Yes, he does.

10          Q     Does that include groundings?

11          A     Yes, it does.

12          Q     Did the Coast Guard station to which you were  
13 assigned -- what's the proper lingo, Coast Guard Marine  
14 Safety Office?

15          A     Marine Safety Office.

16          Q     -- the Marine Safety Office have a responsibility  
17 to investigate marine casualties?

18          A     Yes.

19          Q     Does it have a responsibility to collect  
20 documentary evidence?

21          A     Yes, it's part of the investigation, yes.

22          Q     What time did you leave to go to the ship?

23          A     I think it was around quarter to 2:00.

24          Q     What time did you arrive at the ship?

25          A     I believe it was around 3:40 in the morning.

1 Q What did you do when you arrived there?

2 A Climbed the ladder on the starboard side, came up  
3 to the main deck, walked across the deck, up to the house,  
4 ordered the elevator and made our way up to the wheelhouse,  
5 entered the wheelhouse and walked up to the port side up by  
6 the windshield there and met with Captain Hazelwood.

7 Q Did you detect an odor of alcohol on him?

8 A Yes.

9 Q Tell the judge what you observed about him and  
10 what you could detect.

11 A As I approached Captain Hazelwood, he was standing  
12 at the forward part of the wheelhouse on the port side and  
13 Commander Falkenstein and Dan Lawn were in our group, along  
14 with a crew member that escorted us up to Captain  
15 Hazelwood. The crew member introduced us to Captain  
16 Hazelwood and Commander Falkenstein had a couple of brief  
17 words with him. And then we slowly started to discuss the  
18 nature of what types of information had been developed at  
19 that time, as far as the safety of the vessel, how she's  
20 sitting, if any tanks are breached, et cetera. And during  
21 those moments of about ten or 15 minutes is when I observed  
22 a strong odor or alcohol coming from Captain Hazelwood.

23 Q While you were on board, did you and Commander  
24 Falkenstein share responsibilities or did you have them  
25 divided somehow?

1 A Yes, we divided responsibilities.

2 Q Explain what the division was.

3 A After we discovered the extent of the casualty and  
4 it would be more than just one person could handle, even  
5 though he is my superior officer, we decided to break it up  
6 so that he would be in charge of the marine salvage and oil  
7 pollution aspect and then I would take over the  
8 investigation of the casualty.

9 Q Would you tell the judge what you went through,  
10 then, while you were on board to investigate the marine  
11 casualty?

12 A Well, at that particular point there, I was  
13 concerned with fulfilling my job, but I was also concerned  
14 with not interfering with the safety of the vessel. And I  
15 knew that Captain Hazelwood and the rest of his crew  
16 members and everyone else would need to devote their time  
17 and energy to insuring that the vessel remained in a safe  
18 condition. So I didn't want to interfere with them by  
19 drawing them over to a corner and questioning them and so  
20 forth, so I kind of just wandered around, observed, looked  
21 at documents that were readily available in the wheelhouse  
22 and the charts. And when I had an opportunity, then I  
23 asked Captain Hazelwood for permission to start  
24 interviewing people, the crew members.

25 Q Mr. Delozier, I show you what's been marked as

1 State's Exhibit 1, NOA Chart 16708. Do you recognize the  
2 area of the \_\_\_\_\_ on the chart?

3 A I recognize the chart, yes, I do.

4 Q And the geographic area illustrated on the chart?

5 A Yes, yes, I do.

6 Q Is the location in which you found the Exxon  
7 Valdez shown on the chart?

8 A Yes.

9 Q Would you point it out for the Court? I'll hand  
10 you a red pen and would you just put an X at that location  
11 and write your initials by it so we know what the location  
12 (inaudible).

13 MR. LINTON: (Inaudible.)

14 JUDGE JOHNSTONE: Mr. Friedman, any objection to  
15 Exhibit 1?

16 MR. FRIEDMAN: No, Your Honor.

17 JUDGE JOHNSTONE: It's admitted.

18 (State's Exhibit 1 was  
19 received in evidence.)

20 BY MR. LINTON: (Resuming)

21 Q Mr. Delozier, I show you the next documents marked  
22 Exhibits 3, 4, 5, 6, 7, 8 and 9.

23 MR. LINTON: And so the record is clear, Your  
24 Honor, these also bear Grand Jury exhibit numbers and at  
25 this point, then, let the record state that Exhibit

1 Number 3 is also marked Grand Jury Exhibit 15. Number 4 is  
2 Grand Jury Exhibit 19. Number 5 is Grand Jury Exhibit 18.  
3 Number 6, Grand Jury Exhibit 22. Number 7, Grand Jury  
4 Exhibit 20. Number 8, Grand Jury Exhibit 16 and Number 9,  
5 Grand Jury Exhibit 21.

6 BY MR. LINTON: (Resuming)

7 Q Do you recognize those documents you got from on  
8 board the Exxon Valdez while you were on board, conducting  
9 your investigation?

10 A Yes, sir.

11 Q You've told us that you looked around at some  
12 point while you were on board and would you explain fully  
13 when and under what circumstances you took the documents  
14 which we've just referred to from the Exxon Valdez?

15 A Well, it's customary in a casualty investigation,  
16 from the Coast Guard's aspect, first of all, to ascertain  
17 whether the vessel comes under Coast Guard jurisdiction.  
18 So thereby you need to gather certain documents, for  
19 instance, their certificate of inspection, the names of the  
20 persons on board, the licenses that the persons on board  
21 are operating under, et cetera. So during the course of  
22 this period after arrival is when I started to look around  
23 and make a mental list of which documents I would need in  
24 order to proceed for a Coast Guard casualty investigation.

25 The crew list is one and the licenses are another,

1 the log book entries, things of this nature.

2 Q Let's interrupt for a second. The crew list is  
3 Grand Jury -- excuse me, is State's Exhibit 7. That was  
4 one of the documents you found.

5 A Yes.

6 Q In the form in which it is before the jury, there  
7 is -- as it was before the Grand Jury and is before the  
8 Court, there is a stamp which says, "I have seen the  
9 original and compared the copy with it and found it to be a  
10 true copy. Mark J. Delozier, CW03, USCG, Marine  
11 Investigator/Inspector, Marine Safety Office, Valdez,  
12 Alaska, USCG, dated 26 March . . .," Mar, ". . . 1989."  
13 What is that stamp?

14 A It's a stamp that I put on anything that I  
15 duplicate after I've seen the original. The original in  
16 this case was a -- off of a computer printout and I copied  
17 this (inaudible).

18 Q And that was one of the documents that you found  
19 on board the vessel.

20 A Yes, it is.

21 Q Is it one of the documents which is required by  
22 Coast Guard regulations to be maintained on board a vessel?

23 A Yes, it is.

24 Q And (unintelligible) for a period of at least 30  
25 days after a marine casualty?



1 A A list of the crew is required to be kept on  
2 board, yes.

3 Q For a period of 30 days?

4 A For a period of 30 days? I don't know.

5 Q But required to be kept on board.

6 A Yes.

7 Q How about the licenses, those are \_\_\_\_\_, they  
8 are exhibits?

9 A All the officers that are required to be on board  
10 as per their certificate of inspection are required to  
11 carry -- have these posted in a conspicuous place on board  
12 the vessel on which they're serving.

13 Q Have you ever heard of a Prince William Sound  
14 endorsement for such certificates?

15 A Yes.

16 Q Does it appear on any of the certificates in the  
17 packet of exhibits you're holding?

18 A Yes, it does.

19 Q Would you read what language on the certificate  
20 and then point it out so the judge can see the language?

21 A Captain Hazelwood has a license here. He's  
22 licensed to be a master of motor vessels and steam vessels  
23 of any gross tonnage on the oceans, et cetera. In addition  
24 to that, he also has a first-class pilot of steam and motor  
25 vessels of any gross tons upon waters of Prince William

1 Sound from Hinchinbrook Entrance to Rocky Point. These are  
2 the \_\_\_\_\_ here.

3 Q What is the practice with more and more  
4 (inaudible) with respect to the possession and display of  
5 such licenses?

6 A The display is that they are required to be  
7 displayed.

8 Q And did you find those displayed on board the  
9 Exxon Valdez?

10 A Yes, I did.

11 Q And it was from there that you got those copies?

12 A I saw them displayed and I do believe that they  
13 were under lock and key and that's when I asked Captain  
14 Hazelwood to provide them for me. And I believe that he  
15 had his chief mate or one of his other officers do that for  
16 him.

17 Q You indicated that in order to determine Coast  
18 Guard jurisdiction, you had to find certain documents. You  
19 indicated the certificate of inspection. Did you in fact  
20 find the certificate of inspection?

21 A Oh, yes.

22 Q Are there others, besides that, which are required  
23 to -- which you had to find before you could be sure that  
24 you had Coast Guard jurisdiction over the vessel?

25 A Well, it's not that they're required. It's that

1 the more documents you have, the easier it is to prove the  
2 case. So, yes, I did pursue and find whatever documents I  
3 felt was necessary.

4 MR. LINTON: The crew list is Number 7. Your  
5 Honor, I move for the admission of Number 7.

6 MR. FRIEDMAN: No objection.

7 JUDGE JOHNSTONE: Received.

8 (State's Exhibit 7 was  
9 received in evidence.)

10 MR. LINTON: (Inaudible.) I move for the  
11 admission of 4, also.

12 MR. FRIEDMAN: No objection.

13 (State's Exhibit 4 was  
14 received in evidence.)

15 MR. LINTON: Let's try to get back in order.  
16 Let's go to Exhibit 3.

17 BY MR. LINTON: (Resuming)

18 Q What is Exhibit 3, sir?

19 A This is a copy of the engine room bell logger.

20 Q Tell the judge what (inaudible).

21 A On this particular vessel here, it's a tape which  
22 is run in the engine room, control room, and for every  
23 order that the control room receives for the engine, it  
24 will display it on a running tape.

25 MR. LINTON: I move the admission of 3, Your

1 Honor.

2 MR. FRIEDMAN: No objection.

3 JUDGE JOHNSTONE: Admitted.

4 (States Exhibit 3 was  
5 received in evidence.)

6 BY MR. LINTON: (Resuming)

7 Q This was, again, one of the documents you found on  
8 board the vessel.

9 A Yes, it is.

10 Q Let's go to 5. Is Exhibit 5 one of the documents  
11 you found on board the vessel?

12 A Yes, it is.

13 Q What is Exhibit 5?

14 A Exhibit 5 is a copy of the course recorder of the  
15 wheelhouse.

16 Q Explain what a course recorder is, please.

17 A A course recorder is a tape, also, which is run.  
18 It has time increments on it and it has heading increments  
19 on it and it prints out, on a graphic form, the movements  
20 of the rudder of the ship as she swings from side to side.

21 Q Is time recorded in some fashion?

22 A Yes, it is.

23 Q How is time recorded?

24 A On one side here, it's incremented in time and  
25 then it is calibrated prior to -- well, in this case, prior

1 to departure.

2 Q What do you mean by calibrated prior to departure?

3 A Well, you take a look at the chart and you match  
4 it up to the time where the needle sits versus the time on  
5 the graph here and look at your watch or your ship's clock  
6 and assure that both of them are the same and you note it.

7 MR. LINTON: I move the admission of Exhibit 5,  
8 Your Honor.

9 MR. FRIEDMAN: No objection.

10 JUDGE JOHNSTONE: Are these courses that are  
11 (inaudible)?

12 THE WITNESS: I don't (inaudible).

13 JUDGE JOHNSTONE: 5 is admitted.

14 (State's Exhibit 5 was  
15 received in evidence.)

16 MR. LINTON: Judge, I don't know whether I moved  
17 for the admission of 3 or not. I'd do so at this time if I  
18 neglected to do that.

19 JUDGE JOHNSTONE: 3 has been admitted.

20 MR. LINTON: Let's go to Exhibit 6.

21 BY MR. LINTON: (Resuming)

22 Q Explain what Exhibit 6 is.

23 A Exhibit 6 is a copy of the bell book which is a  
24 handwritten log which is kept in the wheelhouse of this  
25 particular vessel and it is used by the mate on watch to

1 log the geographic locations and bell orders.

2 Q What do you mean by bell orders?

3 A Okay, bell orders are commands that are given to  
4 the engines.

5 Q Give me an example?

6 A Ahead, astern, ahead one-third, two-thirds,  
7 et cetera. And then, also, it's got the geographic  
8 location, where they've passed, what they're doing at  
9 specific times.

10 Q Does the law require that the vessel keep such  
11 records?

12 A I'm not certain on that.

13 Q Was it one of the records that you found on board  
14 the vessel while you were on board?

15 A Yes, it was.

16 MR. LINTON: I move the admission of 6, Your  
17 Honor.

18 MR. FRIEDMAN: No objection.

19 JUDGE JOHNSTONE: Admitted.

20 (State's Exhibit 6 was  
21 received in evidence.)

22 BY MR. LINTON: (Resuming)

23 Q On Exhibit 6, how are the notations of the various  
24 speeds recorded?

25 A They have a check mark. I'm not absolutely

1 certain how to decipher their --

2 Q Readings or recordings?

3 A -- readings and recordings, yes. But, generally,  
4 most navigators or officers do it the same way, from my  
5 understanding.

6 Q Let's go to Exhibit 16.

7 A 16?

8 Q Yes, sir. I'm sorry, that's the Grand Jury  
9 number. Eight. What is Exhibit 8?

10 A This is a copy of the original chart which was  
11 used by the Exxon Valdez while navigating Prince William  
12 Sound on March 24th.

13 Q And was it one of the documents that you took with  
14 you when you left the vessel?

15 A Yes, it was.

16 Q Was it identified in some manner to you as the  
17 chart that had been used by some person?

18 A Could you repeat that?

19 Q Was the chart identified as the one that had been  
20 used that day by some person.

21 A Yes.

22 Q Who?

23 A It was identified by Third Mate Cousins and, also,  
24 during the course of the -- from the time I arrived until  
25 approximately 2:00 o'clock the next afternoon, at some

1 point during that period, I had discussed it with Captain  
2 Hazelwood and he acknowledged that that was also the chart  
3 that was used.

4 MR. LINTON: I move the admission of Exhibit 8,  
5 Your Honor.

6 MR. FRIEDMAN: No objection.

7 JUDGE JOHNSTONE: Admitted.

8 (State's Exhibit 8 was  
9 received in evidence.)

10 BY MR. LINTON: (Resuming)

11 Q Referring to Exhibit 8, there are on the exhibit  
12 figures located near or on the Z in Valdez arm and Figure  
13 12339 and then there's a Figure written just west of Busby  
14 Island, 2355. Both have a circle and a dot beside them,  
15 that is the 2339 and the 2355. Was that handwriting on the  
16 chart at the time you took it?

17 A Yes, it was.

18 Q Let's go to Exhibit 9. What is Exhibit 9?

19 A Nine is a copy of the deck log book of the Exxon  
20 Valdez.

21 Q What's recorded in that book?

22 A Events that occur daily on board the vessel, such  
23 as who's on watch, the lookouts, helmsmen, mates, weather,  
24 sea conditions and end remarks, also any tests of  
25 electronics or safety gear, unusual events or just events



1 that they want to have noted throughout the log book.

2 Q Was that one of the documents that you took with  
3 you when you left the vessel?

4 A Yes, it was.

5 Q In each of these instances of these exhibits,  
6 beginning with 3 and including 4, 5, 6, 7, 8 and 9, are  
7 they documents ordinarily kept on board in the ordinary  
8 course of business in the operation of a ship, in your  
9 experience?

10 A Yes, they are.

11 MR. LINTON: I ask that this be marked as the next  
12 exhibit.

13 (State's Exhibit 14 was  
14 marked for identification.)

15 BY MR. LINTON: (Resuming)

16 Q What's been marked as Exhibit 14, do you recognize  
17 that as the subpoena you prepared and left with the vessel  
18 when you took the documents we've just been referring to?

19 A This is a copy of the subpoena that I issued to  
20 Captain Hazelwood.

21 MR. LINTON: I move the admission of Exhibit 14.

22 MR. FRIEDMAN: Excuse me, could I see that one  
23 more minute?

24 MR. LINTON: Sure.

25 MR. FRIEDMAN: Your Honor, I wonder if I could

1 take just a brief voir dire as to the date.

2 JUDGE JOHNSTONE: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Mr. Delozier, am I understanding correctly that  
6 you gave this to Captain Hazelwood on the 24th?

7 A I gave that to Captain Hazelwood between the time  
8 I arrived and the time I departed. I departed Sunday  
9 evening, the 26th. I do believe I gave it to him some time  
10 on the morning of the 26th. During that period of time, we  
11 had been -- he had been gathering up the list of material  
12 that I had already requested.

13 Q And you stayed on the ship from the 24th until the  
14 26th.

15 A Yes.

16 Q Okay, thank you.

17 JUDGE JOHNSTONE: Any objection to 14?

18 MR. FRIEDMAN: No, Your Honor.

19 JUDGE JOHNSTONE: It's admitted.

20 (State's Exhibit 14 was  
21 received in evidence.)

22 BY MR. LINTON: (Resuming)

23 Q There is a line at the bottom, "I hereby accept  
24 service of the subpoena on the Exxon Valdez, 3/26/89,  
25 William J. Debby.

A That's correct.

1 Q Who is he?

2 A Mr. Debby was the relief master of the Exxon  
3 Valdez. I gave the subpoena to Captain Hazelwood and  
4 during the period just prior to my departure, Captain  
5 Hazelwood was getting very busy. There were a lot of Exxon  
6 people coming aboard and I believe it was handed over to  
7 Captain Debby who, in turn, acknowledged receipt of the  
8 subpoena.

9 Q When was it, then, that you physically took the  
10 documents off the vessel?

11 A That evening, March 26th, around 18, 1900.

12 Q I show you now four exhibits, numbered 10, 11, 12  
13 and 13.

14 (States Exhibits 10, 11, 12  
15 and 13 were marked for  
16 identification.)

17 BY MR. LINTON: (Resuming)

18 Q Do you recognize those as statements in your  
19 handwriting that you took from various people on board the  
20 Exxon Valdez on March 24th, 1989?

21 A These are notes of interviews which I conducted  
22 with these individuals.

23 Q In your handwriting?

24 A In my handwriting.

25 Q Filled out when?

1           A     Numbers 10 and 11 were filled out approximately  
2 14, 1500 on the 24th and Number 12 and 13 -- Number 13 was  
3 filled out Saturday evening, the 25th, and Number 12 was  
4 filled out the 24th, late on the 24th.

5           Q     You're saying those from your recollection?

6           A     Yes.

7           Q     Is there something on the documents which tells  
8 you when you conducted the interviews which are reflected  
9 by the those documents?

10          A     Yes.

11          Q     As to Exhibit 10, how can you tell when it was  
12 taken?

13          A     It's got the date and the time, 24, 0737, March  
14 '89, 24 being the date, 0737 being the time.

15          Q     And Exhibit 10 is the notes of the interview with  
16 that person.

17          A     Right.

18          Q     And that was whom?

19          A     That was with Kagan, Robert Kagan.

20                MR. LINTON: Move the admission of 10, Your Honor.

21                MR. FRIEDMAN: No objection.

22                JUDGE JOHNSTONE: Admitted.

23                                (State's Exhibit 10 was  
24                                received in evidence.)

25                BY MR. LINTON: (Resuming)

1 Q 0737 means 7:37 in the morning.

2 A Right, a.m.

3 Q A.m. With respect to Exhibit 11, what time did  
4 that interview take place?

5 A 1000 in the morning, 10:00 a.m.

6 Q 10:00 a.m. on the 24th of Gregory P. Cousins?

7 A Yes.

8 MR. LINTON: Move the admission of 11, Your Honor.

9 MR. FRIEDMAN: No objection.

10 JUDGE JOHNSTONE: Admitted.

11 (State's Exhibit 11 was  
12 received in evidence.)

13 BY MR. LINTON: (Resuming)

14 Q Exhibit 12 is an interview at 1315, 1:15 p.m. on  
15 March 24th, 1989, of Joseph J. Hazelwood.

16 A That's correct.

17 MR. LINTON: Move the admission of 12, Your Honor.

18 MR. FRIEDMAN: No objection.

19 JUDGE JOHNSTONE: Admitted.

20 (State's Exhibit 12 was  
21 received in evidence.)

22 BY MR. LINTON: (Resuming)

23 Q And 13, with respect to the date, the 25th, at  
24 1600, an interview with Jerzi Glowacki, G-l-o-w-a-c-k-i.

25 A That's correct.

1 MR. LINTON: I move the admission of 13, Your  
2 Honor.

3 MR. FRIEDMAN: No objection.

4 JUDGE JOHNSTONE: Admitted.

5 (State's Exhibit 13 was  
6 received in evidence.)

7 BY MR. LINTON: (Resuming)

8 Q Would you show the judge where the times are so  
9 that he knows where to look for those?

10 A The very top line, right next to the date there.

11 Q On all of them?

12 A On all of them, yes.

13 Q Mr. Delozier, at some point on March 24th, once  
14 you had gone on board the vessel, did you make a  
15 determination in your investigation that it would be  
16 appropriate to determine the blood alcohol of certain  
17 people on board the vessel?

18 A Yes.

19 Q Does the Coast Guard have authority to do that  
20 without a search warrant?

21 A To the best of my knowledge, we do.

22 Q What steps did you take to try to get blood  
23 alcohol drawn?

24 A I notified my boss, who was Commander Falkenstein,  
25 who was on board the vessel, informed him that we needed to

1 make such arrangements for someone to come out to the  
2 vessel to conduct such a test and that when he next makes  
3 his phone call back to the main office to Commander McCall  
4 that he should relay our desires to make arrangements for  
5 someone to come out to the vessel.

6 Q Do you recall what time you communicated that to  
7 Commander Falkenstein?

8 A It was at our first -- it was just prior to the  
9 first phone call off the vessel, so it had to be somewhere  
10 around 4:00 a.m. in the morning that I relayed it to  
11 Commander Falkenstein and the phone call was made somewhere  
12 around 4:10 a.m.

13 Q Did you specify who you wanted to come out when  
14 you made the request of Commander Falkenstein yourself?

15 A We specified that we needed either a medical type  
16 person, qualified person, or a law enforcement type person  
17 to come out to conduct such a test.

18 Q After you made that communication, were you aware  
19 of what efforts were made on the Valdez end of the line to  
20 get such a person?

21 A At that time?

22 Q At that time.

23 A I was not aware of what methods they were going  
24 through at that time, but I did find out later, during the  
25 course of the investigation.

1 Q That day?

2 A No, after I returned back to Valdez.

3 Q Later that day, what did you find happened as a  
4 result of your request for such help?

5 A Well, the message was relayed to Commander  
6 McCall. Commander McCall was extremely busy because of the  
7 nature of the casualty, to begin with, and he either  
8 relayed the request to a subordinate of his back at the  
9 office or he did it himself. But he made contact with the  
10 local state police, looking for Trooper Alexander. Trooper  
11 Alexander was apparently on leave or not in town at the  
12 time, so the local office referred us to Trooper Fox.

13 Trooper Fox apparently was contacted by Commander  
14 McCall and the request was relayed to him. The  
15 arrangements were transferred to him for him to head on  
16 down to the Coast Guard dock for transportation out to the  
17 Valdez. And Trooper Fox arrived somewhere about 7:00 a.m.,  
18 in the morning.

19 Q Sometime thereafter, did you have to make  
20 arrangements again for someone to come out to help with  
21 blood?

22 A Yes. Apparently, the word wasn't totally relayed  
23 to Trooper Fox that we needed someone to come out and  
24 actually take a blood alcohol test or a Breathalyzer test.  
25 He was -- when he arrived, he was under the impression that



1 he was dispatched to come out here to take an unruly  
2 intoxicated person off the vessel and he was prepared with  
3 his handcuffs and his sidearm to do such.

4           Upon his arrival, I indicated to him that there  
5 was no need for anything of that nature and that what we  
6 did need was a qualified person to take either a  
7 Breathalyzer test or a blood alcohol test. So his arrival  
8 at that time was not helpful.

9           Q     Did you try again?

10          A     Yes. As soon as I discovered that he was going to  
11 be of no help, I got back together with my boss and, once  
12 again, we relayed the request back to our office. They  
13 took steps to get ahold of a Coast Guard medical technician  
14 that had been in town, a TAV. They rounded him up and put  
15 him on a helicopter, flew him out to the vessel.

16          Q     What time did -- you met him at some point, then?

17          A     Yes, he arrived I believe it was around 9:30,  
18 somewhere around 9:30.

19          Q     And were you with him when he began to draw  
20 samples from people on board the vessel?

21          A     Yes, I was already in process of -- from the time  
22 that Mr. Fox arrived and I realized that he was not going  
23 to be of any help to the time that the Coast Guard  
24 technician arrived is when I found out that Exxon Company  
25 had sample kits on board the vessel, which consisted of a

1 sample bottle for the taking of urine and tubes for the  
2 taking of blood, syringes, et cetera. These all came  
3 prepackaged in a kit.

4 I talked with Captain Hazelwood. He informed me  
5 that, yes, they did have these on board. And I was getting  
6 a bit impatient at this time here, so I asked him if we  
7 could proceed and draw urine from the crew members that  
8 were on watch. We proceeded and conducted the urine test  
9 with Captain Hazelwood being last. And just before --  
10 actually, Captain Hazelwood could not fill the urine bottle  
11 at that time, so I had finished the other three or four  
12 crew members and that's when the Coast Guard technician  
13 arrived. At that time, that's when we started to commence  
14 to take the blood samples from the same persons that I had  
15 already taken urine specimens from.

16 Q And did you witness the corpsman taking the blood  
17 samples from crew members?

18 A Yes, I did.

19 Q And who were blood samples taken from?

20 A They were taken from Captain Hazelwood first, AB  
21 Kagan, AB Maureen Jones and Mr. Cousins.

22 Q What time were these taken?

23 A The urine tests were taken between 8:30 and 9:30  
24 and the blood tests commenced at 9:30 and I believe they  
25 were finished at around 11:30. It was quite an extensive

1 ordeal, not to draw the blood, but to seal all the  
2 specimens, witness them, sign them, initial them and so  
3 forth.

4 JUDGE JOHNSTONE: Excuse me. Did you say that  
5 Captain Hazelwood did give a urine sample or did not?

6 THE WITNESS: Captain Hazelwood -- I started in  
7 sequence with the ABM watch and worked on through. Captain  
8 Hazelwood was supposed to be last. I asked him if he could  
9 give me a urine sample and he informed me that he was  
10 unable to go at that time, so I waited around for a few  
11 moments and that's when the Coast Guard corpsman arrived.  
12 So when he arrived, I talked to him and said that we needed  
13 to take blood samples and that because I was unable to take  
14 a urine sample from Captain Hazelwood, I would like to  
15 start taking a blood sample from him first, which he did.  
16 Moments before we took his blood sample was when Captain  
17 Hazelwood walked up and said that he could then give me a  
18 urine sample, which he did provide both a urine sample and  
19 a blood sample at the same time or back to back.

20 BY MR. LINTON: (Resuming)

21 Q Did I understand you to say that you would have  
22 gone to the Exxon Valdez even if it had only been reported  
23 that the Exxon Valdez was hard aground on Bligh Reef?

24 A Absolutely.

25 Q Is one of your reasons related to the nature of

1 the bottom in Prince William Sound?

2 A Well, yes.

3 Q Explain that, please.

4 A The rocky bottom.

5 Q What does that mean for why you would have gone  
6 out?

7 A If you aground on rocks, it's going to be more  
8 detrimental to the hold than if you went aground on soft  
9 mud, silt in some cases.

10 Q Did you have responsibility with respect to  
11 determining whether there was a danger to life?

12 A Yes.

13 Q Was the grounding a major event in the work that  
14 you had done there, in Valdez?

15 A Was the ground a major event?

16 Q Yes, alone.

17 A I don't understand.

18 Q Had you ever, in the course of your roughly  
19 hundred casualty investigations, had you ever had one with  
20 ship as large in such peril before?

21 A Yes.

22 Q When was that?

23 A '84, the tanker Alvenus.

24 Q I can't hear you. What did you say, the day  
25 before?

1 A No, in 1984, I believe it was in '84, somewhere  
2 around there, either '84 or '85, in the Gulf of Mexico, the  
3 tanker, Alvenus, had ran aground outside of Cameron,  
4 Louisiana.

5 Q Did you go to the scene of that one?

6 A Yes.

7 MR. LINTON: Nothing further, Your Honor.

8 JUDGE JOHNSTONE: Let's take a break, about ten or  
9 15 minutes.

10 THE CLERK: Please rise. The Court stands  
11 recessed.

12 (Whereupon, at 2:57 p.m., a recess was taken.)

13 JUDGE JOHNSTONE: Mr. Friedman.

14 MR. FRIEDMAN: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. FRIEDMAN:

17 Q Mr. Delozier, just as a point of clarification,  
18 would it be fair to say that the urine test given by  
19 Captain Hazelwood was approximately 50 minutes before the  
20 blood test?

21 A That would be hard to say.

22 Q Now would it be accurate to say that you were, for  
23 the Coast Guard, the chief investigator of this incident?

24 A That would be fair to say.

25 Q And when you got the initial call regarding this

1 incident, you were told that not only was the vessel  
2 aground, but that it was leaking oil, is that correct?

3 A I don't recall.

4 JUDGE JOHNSTONE: Mr. Delozier, do you want to  
5 move that microphone up a little higher? I'm told that you  
6 get a better recording if you do that. That's good,  
7 thanks.

8 BY MR. FRIEDMAN: (Resuming)

9 Q Mr. Delozier, I'm showing you page 639 of your  
10 NTSB testimony and what I'd like to ask you is whether at  
11 the NTSB, you testified, "It was relayed to me, both over  
12 the telephone on the initial contact that the Exxon Valdez  
13 was hard aground on Bligh Reef and she was leaking oil."

14 A What is your question?

15 Q Is that what you told the NTSB during your  
16 testimony?

17 A If the court reporter wrote that down, then I  
18 assume I said that.

19 Q And was your recollection of that first telephone  
20 call clearer back when you testified at the NTSB than it is  
21 today?

22 A More than likely, it would have been, yes.

23 Q When you arrived at the Coast Guard station, you  
24 told Commander McCall that it would be advisable to call in  
25 the strike force?

1           A     I said I would make arrangements to have the  
2 national strike force called in, yes -- not called in, but  
3 placed on alert and notified.

4           Q     What does it mean to place them on alert?

5           A     So they can start rounding up their folks and  
6 being prepared, as prepared as they can to make a quick and  
7 fast flight to Valdez.

8           Q     Is that because you anticipated a major oil spill  
9 or oil leak?

10          A     I anticipated a problem with the vessel. A vessel  
11 this size that is aground is a problem which we would more  
12 than likely need some assistance from the strike force.

13          Q     Now when you arrived at the Coast Guard station,  
14 you discussed the problem with Commander McCall and  
15 Lieutenant Falkenstein, is that right?

16          A     I listed in to their conversations. I was  
17 incorporated into them. But, mostly, I was a listener,  
18 trying to observe and trying to find out what they knew to  
19 make determinations as to what I should do.

20          Q     Did you listen in on any radio communication  
21 between either Commander McCall or Lieutenant Falkenstein  
22 and the Exxon Valdez?

23          A     Yes, I did.

24          Q     Did you listen in on the transmission with Captain  
25 Hazelwood in which he indicated he was going to try to get

1 the vessel off the reef?

2 A I believe so.

3 Q In that transmission, did you overhear Captain  
4 Hazelwood report that, "Major damage has been done"?

5 A I don't recall.

6 Q In discussing this with Commander McCall at this  
7 first meeting, did -- I'm sorry, let me take that back.  
8 When you listened to this conversation between Captain  
9 Hazelwood and Commander McCall, did you hear Captain  
10 Hazelwood say, "A little problem with the third mate"?

11 A Yes, I do recall that.

12 Q So at the time you went out to the vessel, you  
13 were aware that Captain Hazelwood thought there had been a  
14 little trouble with the third mate and that he had tried or  
15 was going to try to get the vessel off the reef.

16 A I don't recall listening to the conversation in  
17 which Captain Hazelwood said he was going to try to get the  
18 vessel off the reef, but I do recall him saying that he had  
19 a problem with the third mate.

20 Q Let me show you -- Mr. Delozier, I'm showing you  
21 this just to see if this jogs your memory about what you  
22 heard of the transmission, if you'll just read this section  
23 in yellow.

24 A What is your question?

25 Q Whether you recall any transmission from Captain



1 Hazelwood indicating attempts to get the vessel off the  
2 reef.

3 A I don't recall.

4 Q Do you recall a discussion with Commander McCall  
5 about whether attempts should be made to get the vessel off  
6 the reef or keep it on the reef or things of that nature?

7 A Yes, I do.

8 Q Okay, could you tell us, just in general terms,  
9 what was discussed?

10 A Commander McCall was opposed to trying to maneuver  
11 the vessel off the reef if it meant sustaining any  
12 additional damage.

13 MR. LINTON: Excuse me. Just so the record is  
14 clear, could we have him state how he knows that? I mean  
15 did he hear that tape afterwards or was he on the vessel  
16 when he heard it or was he in the Coast Guard station when  
17 he heard it, so we know what --

18 JUDGE JOHNSTONE: It would be helpful to me if,  
19 when we have these discussions, if we can lay a foundation  
20 for them, as well.

21 BY MR. FRIEDMAN: (Resuming)

22 Q Mr. Delozier, I'd like to focus still on you at  
23 the Coast Guard station before you leave to go out to the  
24 Exxon Valdez. Did you discuss with Commander McCall the  
25 issue of whether the ship should be moved from the reef or

1 not?

2 A No, I did not.

3 Q Okay, did you discuss that with Lieutenant  
4 Falkenstein either -- well, first, while you -- before you  
5 left the Coast Guard station?

6 A No, I did not.

7 Q Did you discuss it with him on the way out to the  
8 vessel?

9 A No, I did not.

10 Q Did you discuss it with him while you were on the  
11 vessel?

12 A I don't -- in so many words, I don't believe we  
13 did, but I would like to elaborate a little bit.

14 Q Okay, what -- did you say you would like to  
15 elaborate?

16 A Yes, I would.

17 Q Sure, go ahead.

18 A I believe it was both apparent to myself and  
19 Commander Falkenstein that it would not be a prudent thing  
20 to do, to try to drive the vessel off the reef, upon our  
21 arrival.

22 Q Okay, upon your arrival, did you see any  
23 indication that Captain Hazelwood was trying to do that,  
24 that is drive it off the reef?

25 A Upon my arrival?

1 Q Right.

2 A You mean in the wheelhouse --

3 Q Right.

4 A -- of the vessel?

5 Q Right.

6 A Yes, I did see an indication that that had been  
7 done.

8 Q Okay, my question was more specific. When you got  
9 there, did it seem like he was trying to take it off the  
10 reef at that time?

11 A No, when I arrived at the vessel, Captain  
12 Hazelwood was on the port side of the bridge and nowhere  
13 near the controls for the vessel.

14 Q Now as the Coast Guard's chief investigator, did  
15 you consider it significant that Captain Hazelwood  
16 indicated that there had been a problem with the third  
17 mate?

18 A I thought it was significant to look into, yes.

19 Q What did you do to look into that issue?

20 A I didn't narrow myself to any particular lead for  
21 the purpose of coming to a conclusion of this particular  
22 casualty.

23 (Tape Changed to C-3502.)

24 Q I'm not trying to put you on the spot in that  
25 way. I'm just asking what did you do to pursue this lead.

1           A     Nothing specifically, as far as to pursue that  
2 lead.

3           Q     Are you telling us that although you considered  
4 the lead significant, once you got on the boat, you didn't  
5 pursue it?

6           A     No, I'm not saying that at all.

7           Q     What did you do to pursue that lead?

8           A     I did exactly the same thing that I did with all  
9 other assumptions or leads or things that may or may not  
10 have caused this casualty.

11          Q     And what were things that you thought would be  
12 helpful in pursuing this lead that you actually did do?

13          A     To question the principals, to gather evidence, to  
14 gather documents, to find out all the facts that I could.

15          Q     Likewise, did you think it was significant when  
16 you smelled alcohol on Captain Hazelwood's breath?

17          A     Yes, likewise.

18          Q     And after smelling it on his breath, did you talk  
19 to Lieutenant Falkenstein about that?

20          A     Yes, I did.

21          Q     And did you try to get someone out to the ship who  
22 could do an alcohol test?

23          A     Yes, I did.

24          Q     Do you know who actually called Mr. Conner? Is it  
25 Conner or Connors?

1 A Conner.

2 Q Do you know who actually called Mr. Conner?

3 A No, I don't.

4 Q You, also in response to smelling alcohol on  
5 Captain Hazelwood's breath, you interviewed people and  
6 asked them about his alcohol usage that day or the day  
7 before?

8 A Yes, I did.

9 Q Did you look through Captain Hazelwood's cabin to  
10 see if there was any evidence of drinking?

11 A Yes, I did.

12 Q On April 3d, did you meet with investigators Burke  
13 and Grimes from the Alaska State Troopers?

14 A I've met with those individuals, but I don't  
15 recall the dates.

16 JUDGE JOHNSTONE: Mr. Friedman, Mr. Purden has  
17 indicated to me that we're having a problem with this  
18 record. There's a constant hum and there's no way of  
19 knowing if we're making a good record unless we play it  
20 back, so I think we're going to have to test this now  
21 before we go any further. So let's do a test on it to make  
22 sure and if we have to go off the record to get another  
23 machine, we'll do so.

24 (Recording interruption.)

25 JUDGE JOHNSTONE: It looks like we're doing okay

1 with the record. Sorry for the interruption.

2 BY MR. FRIEDMAN: (Resuming)

3 Q In any event, when you met with Investigators  
4 Burke and Grimes from the state troopers, did you give them  
5 the information you had obtained about where the captain  
6 had been the day before, meaning the 23d?

7 A I don't recall.

8 Q At some point, did you also arrange for your wife  
9 to be interviewed by the state troopers?

10 A Yes, I did.

11 Q And was that because she had information you  
12 thought was relevant to the alcohol issue?

13 A That's correct.

14 Q Was there some reluctance on her part to grant an  
15 interview to the troopers?

16 A Yes, there was.

17 Q And what was the basis for that reluctance?

18 A She didn't want to get involved in it.

19 Q Okay, anything else?

20 A That's it.

21 Q As the chief investigator for the Coast Guard, did  
22 you give the state copies of the records you seized from  
23 the vessel?

24 A Eventually, yes.

25 Q And did you give them access to the interviews you

1 conducted on the vessel on the 24th?

2 A I believe eventually I did, yes.

3 Q What did you do after let's say March 25th in  
4 terms of your investigation of this case?

5 A It was late on the 25th that I was informed that  
6 the Commandant of the Coast Guard had delegated the  
7 investigative powers to the NTSB for them to complete the  
8 casualty investigation, that I was to continue to do a  
9 collateral investigation along with them, but that I would  
10 also be at their call in case they were to need for  
11 anything at all. I would be working for them until I was  
12 properly relieved.

13 Q Let me ask you this. After you left the vessel on  
14 the 26th, did you conduct any independent interviews, that  
15 is interviews just with you, where you asked the questions  
16 of the witnesses?

17 A Yes.

18 Q Okay, can you give me an idea of who you  
19 interviewed?

20 A The cab driver, Ron French. Most of these were  
21 conducted in the presence of the NTSB.

22 Q Sort of a joint venture?

23 A On occasion, there were other investigators  
24 present, also.

25 Q Would those interviews be reflected as NTSB

1 interviews or investigations or would you have a separate  
2 set of Coast Guard investigative reports?

3 A They were NTSB interviews.

4 Q Have you ever talked to Trooper Stogsdill about  
5 this case?

6 A I don't recall the name.

7 Q You testified that a captain has an obligation to  
8 report casualties such as groundings, is that correct?

9 A That's correct.

10 Q Does the captain also have an obligation to report  
11 an oil spill?

12 A If he's the polluter.

13 Q If he's in charge of the facility that is spilling  
14 oil, he has an obligation to report it.

15 A If he's the person in charge of -- I would -- yes.

16 Q And it's a crime not to do that, isn't it, not to  
17 report?

18 A I'm not certain on that, I believe it is.

19 Q The Grand Jury exhibits that have now been marked  
20 as exhibits in this hearing, were those all seized by you  
21 on either the 24th, 25th or 26th?

22 A Seized?

23 Q Accumulated, accumulated.

24 A Accumulated? I requested them from Captain  
25 Hazelwood and he provided them for me, yes.



1 Q On what of those three days?

2 A All of those.

3 Q You can look at them again, if you like.

4 A Just let me see the subpoena. This was a list of  
5 items that I had officially subpoenaed. Some of these  
6 items I obtained on the 24th, the 25th and the 26th and  
7 some of these items didn't come until a few days later.

8 Q I see. What would be the longest in terms of days  
9 later before you had gotten all of these documents?

10 A The report of morning of the casualty I believe  
11 was the latest one and that came approximately a week and a  
12 half to two weeks later.

13 Q Mr. Delozier, would it be accurate to say that at  
14 approximately 3:35, you were on the bridge with the captain  
15 and Investigator Falkenstein?

16 A I believe the record book indicated 3:40.

17 Q 3:40, okay. And at the time, I think you said  
18 within a few minutes or a few moments, you smelled alcohol  
19 on his breath, is that correct?

20 A That's correct.

21 Q Also at that time, you felt he was exhibiting  
22 guilty behaviors or behaviors indicating he was trying to  
23 cover up alcohol on his breath, is that correct?

24 A That's correct.

25 Q Okay. Now later on that day, you questioned the

1 master, Captain Hazelwood, about what he'd done the day  
2 before?

3 A That's correct.

4 Q And one of the things you were interested in when  
5 you questioned him was to try to see whether there was any  
6 basis or any more evidence regarding alcohol consumption.

7 A That's one of the things, yes.

8 Q On the 24th, also, at approximately 4:00 o'clock  
9 p.m., did you question Mr. Glowacki?

10 A No.

11 Q You did not question Mr. Glowacki.

12 A Not on the 24th.

13 Q Okay, what date did you question him?

14 A I believe it's indicated on the interview sheet  
15 there. It's over there.

16 Q The 25th?

17 A The 25th.

18 Q And at what time is that?

19 A 1600.

20 Q Is that the first time you questioned Mr.  
21 Glowacki?

22 A I believe so.

23 MR. FRIEDMAN: Could I have just a minute, Your  
24 Honor, I'm sorry? Thank you, Your Honor, I'm sorry for the  
25 delay.

1 BY MR. FRIEDMAN: (Resuming)

2 Q So, Mr. Delozier, this interview was on the 25th?

3 A Yes, sir.

4 Q On the 24th, did you question Helmsman Kagan?

5 A Yes.

6 Q And did you ask him questions about who was on the  
7 conn at the time of the grounding?

8 A Yes.

9 Q And was it some time after that that you knew --  
10 took possession of the various records we've been talking  
11 about, the ones that have been made exhibits?

12 A I believe there's a few of those that I obtained  
13 prior to Kagan's interview.

14 Q Okay, so some of them may have been obtained up  
15 here --

16 A Yes.

17 Q -- and some of them below.

18 A Yes.

19 Q Then at 8:43 on the 24th, you questioned the third  
20 mater, Mr. Cousins?

21 A That's correct.

22 Q You also asked him questions about who was on the  
23 bridge and what the problem was?

24 A Yes.

25 Q Did you ask Mr. Cousins any questions about

1 whether he had endorsement for operation of the vessel in  
2 the Prince William Sound area?

3 A I don't believe I did.

4 Q Did you participate in either of the searches of  
5 the vessel that were conducted in April?

6 A By whom?

7 Q By the troopers.

8 A No.

9 Q Mr. Delozier, can you tell us your understanding  
10 of the requirement that a captain in charge of a vessel  
11 leaking oil report to the Coast Guard? What is he required  
12 to report?

13 A It is my understanding that a person who causes a  
14 sheen on waters that come under the jurisdiction of the  
15 U.S., that person has a responsibility to report that he  
16 created pollution to the U.S. Coast Guard. Along with that  
17 reporting requirement, I do believe that there are specific  
18 items which the Coast Guard is looking for, namely, the  
19 type of pollutant, the quantity, location, time,  
20 description and so forth.

21 Q Some of the surrounding circumstances as to the  
22 pollution.

23 A That's correct.

24 MR. FRIEDMAN: Thank you, I don't have any other  
25 questions. Oh, excuse me just a second.

1 BY MR. FRIEDMAN: (Resuming)

2 Q I do have a couple of other questions, Mr.  
3 Delozier, relating to your comment about how it appeared  
4 that Trooper Fox would not be much help in getting the  
5 blood test issue taken care of. He came out, he didn't  
6 bring a blood test kit with him. And did you ask his  
7 assistance in locating someone with the Police Department  
8 or the trooper's office who might be able to do a test?

9 A Yes.

10 Q And what did he tell you?

11 A He said that the local Police Department did not  
12 have a portable Breathalyzer to be used and he suggested  
13 that the best thing at this particular time, being as  
14 though it was late after the incident, would be a blood  
15 test.

16 Q And did he suggest that he could get somebody from  
17 the hospital or some other place to perform that test?

18 A No, he suggested the lab technicians at the  
19 hospital.

20 Q Did you make any effort to get those people to the  
21 vessel?

22 A Yes.

23 Q Is that the corpsman?

24 A No, when I got back on -- not me, but Commander  
25 Falkenstein, when I relayed the information back to

1 Commander Falkenstein, Commander Falkenstein got back on  
2 the telephone and called up the office and informed them at  
3 that time that Trooper Fox was unable to fulfill our needs  
4 and that we needed to have a medical technician come out,  
5 capable of drawing blood samples. And we suggested at that  
6 time to look at the local hospital for either a lab  
7 technician, a local doctor or a paramedic of some sort. We  
8 did not tell them to look for the Coast Guard medical  
9 person.

10 Q So, in essence, Trooper Fox said that the police  
11 couldn't be any help because they didn't have the portable  
12 unit and that you might try the hospital. And that was the  
13 extent of his ability to assist you in getting the blood  
14 test taken. Is that a fair recap?

15 A He did say that many of the members of the local  
16 Police Department are qualified EMTs and they were capable  
17 of drawing blood.

18 MR. FRIEDMAN: Okay, thank you. I don't have any  
19 other questions.

20 REDIRECT EXAMINATION

21 BY MR. LINTON: (Resuming)

22 Q Mr. Delozier, did you take these documents from  
23 the ship because of an interview or was it something you  
24 would have taken in any event (inaudible)?

25 A Did I take those because of what?

\*

1 Q Because of the interviews with that person,  
2 because Glowacki said, "I've got this document," or,  
3 "Because Cousins said this, I went and got that document"?

4 A Yes.

5 Q Which instances were those?

6 A The engine room bell logger which is this one  
7 right here. I actually was not aware that the engine room  
8 had a bell logger and it was the chief engineer who  
9 indicated to me that there was one in existence and then I  
10 asked him to provide that, which he did.

11 Q How about the others? You've got the deck log.

12 A Well, I knew about the deck log. I knew about the  
13 charts. But I needed to get ahold of Third Mate Cousins  
14 and Captain Hazelwood to pinpoint exactly which chart was  
15 used. Incidentally, there was another chart that went with  
16 that one. And this is only a small portion of what I did  
17 gather.

18 Q The documents you have here are just a small  
19 portion of what you did get.

20 A Yes.

21 Q When Mr. Friedman asked you whether you had any  
22 indication that the ship had been run after it was aground,  
23 you said that there was an indication, once you got on  
24 board the vessel.

25 A Yes.

1 Q Was the engine running at that point?

2 A No, the engine was not running at that point.

3 Q What was it that led you to -- you indicated there  
4 was an indication that the vessel had been run after it was  
5 aground.

6 A It was written in the log.

7 Q Which document are you referring to there?

8 A That one that you have in your hand.

9 Q The thing that has \_\_\_\_\_, Exhibit 6?

10 A Yes.

11 Q What did you find there?

12 A "004, grounded, reef island." It's got a written  
13 position. Then you have, up above it, you have 035, you've  
14 got an engine order. 038, another engine order. 047,  
15 another engine order. 0139, another engine order.

16 Q Would you point those out to the judge so that he  
17 can see what it is that you're referring to that indicated  
18 to you that the engine had been run after it ran aground?

19 A Okay, next to the last page, in the middle of the  
20 page, you'll see, "Grounded, reef island, 004," and then  
21 above that, you have 035, 038, 047, and these marks next to  
22 it reflect an engine order. The 004 entry was made after,  
23 in the past tense, after the actual time.

24 Q When you say 004 was past time, what do you mean,  
25 sir?



1           A     It means that someone apparently failed to log it  
2 at the moment that the vessel actually went aground and  
3 then some engine orders were commanded. Time elapsed and  
4 then it was recalled that, "We need to make an entry in the  
5 log book that the vessel actually went aground at such and  
6 such a time." So then, at that point, it was entered.

7           Q     So that the time before that, was it 137, for  
8 example --

9           A     136.

10          Q     Excuse me, start with 0035 --

11          A     Right.

12          Q     -- would have been after.

13          A     Right.

14          Q     0038 would have been after.

15          A     Right.

16          Q     0047 would have been after.

17          A     Right.

18          Q     0139 would have been after.

19          A     Right.

20          Q     And that indicates what to you?

21          A     That indicated to me that someone had attempted to  
22 maneuver the vessel off after the grounding.

23          Q     When did you figure that out? When did you look  
24 at that document to figure that out?

25          A     It was after the first phone call, so it would

1 have to have been about 4:30, between 4:30 and 5:30.

2 Q Before you had interviewed any of the crew?

3 A Yes.

4 Q Tell us about your wife's situation. You were on  
5 board the vessel until the 26th.

6 A That's correct.

7 Q And so the first time you got home, then, was on  
8 the 26th.

9 A Late, midnight, on the 26th.

10 Q Had you talked to her since you had been out of  
11 the vessel?

12 A I talked to her twice by telephone while I was on  
13 board the vessel.

14 Q And what did you tell her about what was going on  
15 with the vessel?

16 A I told her that I'd be home as quickly as I could  
17 and not to worry.

18 Q When you got home, how did you find out that she  
19 might know something about the case?

20 A It wasn't until about a week or so later and  
21 Captain Hazelwood's picture appeared in the local newspaper  
22 or the Anchorage paper. And she, one evening when I did  
23 get to come home, she said, "I saw that guy in the Pipeline  
24 Club." And then at that time, she said, "I could tell you  
25 everything that he did." And I really didn't know what to

1 do at that time.

2 Q Had you told her about alcohol?

3 A I wasn't discussing too much about the case with  
4 anyone. I don't believe I did.

5 Q It's just something she brought up by having seen  
6 the picture in the paper.

7 A Yes.

8 Q Then she told you something about what she had  
9 seen of his drinking that day.

10 A That's correct.

11 Q And then sometime thereafter, when troopers came  
12 to talk to you, you told them about what your wife had told  
13 you and suggested that they talk to her or that they might  
14 want to talk to her.

15 A She was reluctant, extremely reluctant to get  
16 involved, being as though I was already involved. Two  
17 persons from the same family in a case of this magnitude  
18 would have been a little bit more than stressful for both  
19 of us. I knew that her knowledge would be useful for the  
20 case. Yet, again, I didn't know how to pursue it because  
21 it may, for some reason, become a conflict between myself  
22 and her. So at that point, I told my Coast Guard people,  
23 informed the NTSB and then an interview was set up with the  
24 troopers and my wife and I.

25 JUDGE JOHNSTONE: Before we get off that subject,

1 when was it that she had mentioned to you she had seen the  
2 Defendant in the paper?

3 THE WITNESS: When did she mention to me that she  
4 saw him or when did she see him?

5 JUDGE JOHNSTONE: No, when did she mention to you  
6 that she saw him?

7 THE WITNESS: To the best of my knowledge, it had  
8 to be somewhere around Thursday or Friday, about a week  
9 after the incident.

10 JUDGE JOHNSTONE: Thank you.

11 BY MR. FRIEDMAN: (Resuming)

12 Q You mentioned that some time after the 26th, you  
13 conducted interviews with some witnesses when you were  
14 working, I take it, at that time in conjunction with the  
15 National Transportation Safety Board. One of them was Ron  
16 French, a cab driver.

17 A Yes.

18 Q Where did you get the name, Ron French?

19 A Well, we started the investigation with what  
20 information and documents and evidence we could gather up  
21 from the vessel. And then, from that, we found out that  
22 there had been some activity prior to the vessel  
23 departing. So we started with the Alyeska security  
24 documents, check-in and checkout at the gate, which led us  
25 to specific times that the crew members departed the

1 terminal and specific times at which they returned and how  
2 they returned. And from that, we found out that Captain  
3 Hazelwood and his other officers that were with him  
4 returned by way of a Yellow Cab which was driven by Ron  
5 French.

6 Q Were you working in conjunction with the state  
7 investigators at all at that time?

8 A No, not at that particular time, no.

9 Q Had you gotten the name, the cab company name or  
10 Ron French's name, from them, as far as you know.

11 A Well, let me see, let me back it up. We were  
12 somewhat working with the state from the moment that  
13 Trooper Fox arrived on board. And he had gone off, by  
14 telephone, to his people and had pursued certain inquiries  
15 and he informed me a couple of times which was he was going  
16 and I was doing it mutually. Then the NTSB was there. We  
17 all kind of worked together there, also. So, yes, we were  
18 somewhat working together, but somewhat independent, too.

19 Q Do you know whether the lines of investigation  
20 were separate or were crossed, to get the Ron French name  
21 particularly?

22 A I believe they were --

23 Q Do you understand the question? In other words,  
24 did you get the Ron French name from a state investigator  
25 or did you give the Ron French name to the state

1 investigator?

2           A     I believe I got the Ron French name from Chief  
3 Peterson who works for me at the Coast Guard office. While  
4 I was on board the vessel, I asked him to get ahold of the  
5 Alyeska security records and to try to track down the names  
6 of the three individuals from the ship as to their  
7 whereabouts prior to departure. And I do believe that it  
8 was he that first came to Ron French's name.

9           Q     Before this case came up, did you know that people  
10 who left the vessels or were reentering the terminal to get  
11 back on the vessels went through a security gate?

12          A     Oh, yes.

13          Q     And did you know that they were checked in or at  
14 least checked by security people for alcohol or any  
15 contraband?

16          A     Yes, I did.

17          Q     And did you know that that brought them into some  
18 kind of close distance to the guards at the gate in the  
19 course of that leaving or entering the terminal?

20          A     Yes, I did.

21          Q     You knew all that before.

22          A     Yes.

23          Q     So then the idea of calling the Alyeska people,  
24 the Alyeska gate people to find out what time somebody had  
25 come or what time they had gone or how they got there or

1 what condition they were in wasn't something that you  
2 wouldn't already think of as a reasonably intelligent  
3 investigator.

4 A That's right.

5 MR. LINTON: Nothing further, Judge.

6 RE CROSS EXAMINATION

7 BY MR. FRIEDMAN: (Resuming)

8 Q Mr. Delozier, you were talking to the chief  
9 engineer and learned that there was a bell logger on the  
10 vessel.

11 A Yes, sir.

12 Q And you then asked him to get it for you?

13 A Well, I asked him during the interview if he would  
14 provide it to me and he said he would. He did not  
15 immediately get up and go and get it.

16 Q Given that the vessel log indicated that after the  
17 grounding, the engines were run ahead, why did that  
18 indicate to you an attempt to get off the reef?

19 A Well, if you're aground on a reef, there's only  
20 one motive for running the engines after you're aground,  
21 being though it's a direct drive vessel, and that's to get  
22 off.

23 Q Were you looking for indications that Captain  
24 Hazelwood had tried to get off the reef?

25 A No, I wasn't.

1 Q Were you looking for indications as to how he  
2 operated the vessel, once the vessel came aground?

3 A Not specifically, no.

4 Q You said something about your investigation of the  
5 alcohol that I want to clarify. You didn't find any  
6 documents on the vessel that led you to people who maybe  
7 observed Captain Hazelwood at restaurants or bars, did you?

8 A Any documents?

9 Q That's right.

10 A No, I don't believe I have.

11 Q Primarily, the investigation of his activities  
12 during the 23d was conducted by tracing the people that he  
13 had had contact with on that date, is that right?

14 A Yes, and himself, also.

15 Q Right. In other words, through real people, not  
16 through documents is the point I'm making.

17 A Right.

18 Q Okay. And what you were trying to track down was  
19 people who could have observed him at different times  
20 during the day to see whether he was drinking or appeared  
21 under the influence, is that correct?

22 A I was trying to determine anything that I possibly  
23 could that would be helpful for this investigation.

24 Q And one of the things you thought would be helpful  
25 was to try to determine whether he had been drinking that



1 day, wasn't it?

2 A I think that would have been a good thing to know.

3 MR. FRIEDMAN: Thank you, I don't have any other  
4 questions.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. LINTON: (Resuming)

7 Q Is there a relationship between the documents in  
8 Exhibit 3 -- what's the correct term for that?

9 A Engine bell logger.

10 Q -- engine bell logger, and Exhibit 6?

11 A Is there a relationship?

12 Q Yes.

13 A Yes, there is.

14 Q Explain what the relationship is, please.

15 A The Exhibit 6 is a written log completed by the  
16 person in the wheelhouse. In most instances, it's the mate  
17 on watch, the person who has to conn, and he writes in his  
18 commands that he gives to the engine.

19 Q How does he make the commands?

20 A He issues the commands or he is issued the command  
21 by some higher authority.

22 Q How does he then communicate them to the engine  
23 room?

24 A With the engine order telegraph.

25 Q What is an engine order telegraph?

1           A     It's like a gas pedal.

2           Q     Could you describe it, please?

3           A     It's a control on the bridge and you put it ahead  
4 one notch and it will propel the vessel ahead in that  
5 specified rpms a little farther, a little quicker rpms,  
6 et cetera. You can go astern or be aft of the neutral  
7 position there and it will do the same thing, only astern.

8           Q     The signal that is indicated by moving that handle  
9 forward, is it transmitted some place?

10          A     Yes, it is.

11          Q     Where?

12          A     Down to the engine room.

13          Q     And what happens when the signal is received in  
14 the engine room?

15          A     I'm not certain on this particular vessel, but I  
16 believe it was in engine -- or in bridge control, which  
17 meant the bridge had total control over the engine. Any  
18 time the bridge gave a command, the engine would  
19 automatically respond. Once the engine responded or the  
20 command was received by the engine, then it would be  
21 recorded on the bell logger.

22          Q     So is there another way for it to work, besides  
23 having direct connection between the bridge and the engine,  
24 itself?

25          A     Yes, you can be on engine control.

1 Q What's that?

2 A You use the same control up in the wheelhouse, but  
3 for every movement that you put the engine into, it sends a  
4 signal down to the engine control room, at which time the  
5 watch stander in the engine room will then command the  
6 engine to do the order which it gave it.

7 Q So you have somebody up on the bridge signalling.  
8 The person down at the bottom would read the signal --

9 A Right.

10 Q -- and take the action to change the engine in  
11 accordance with the order.

12 A Right.

13 Q Other times, it's hooked up directly to the engine  
14 from the bridge.

15 A Correct.

16 Q What is Exhibit 3?

17 A That's the engine bell logger.

18 Q Now one of the documents that -- let me show you  
19 Coast Guard Regulation Section 4.05-15, Voyage Records  
20 (unintelligible), "The owner, agent, master or person in  
21 charge of any vessel involved in a marine casualty shall  
22 retain such voyage records as are maintained by the vessel,  
23 such as both rough and smooth deck and engine room logs,  
24 bell books, navigational charts, navigational work books,  
25 compass deviation cards, gyro records, stowage plans,

1 records of draft, aids to mariners, night order books,  
2 radiograms sent and received, radio logs, crew and  
3 passenger lists, articles of shipments, official logs and  
4 other material which might be of assistance in  
5 investigating and determining the cause of the casualty."

6 What is an engine room log, sir?

7 A An engine room log is very similar to the deck log  
8 that you have right here. The deck log is maintained by  
9 the deck officers and the engine log is very similar, is  
10 kept in the engine room and is maintained by the engine  
11 room officers.

12 Q And did you find such a document, seize such a  
13 document?

14 A Yes, I did.

15 Q Did it contain signals as to what had been  
16 received as to engine orders down in the engine room?

17 A No.

18 Q What record was there in the engine room as to  
19 what signals had been received down in the engine room?

20 A The bell log.

21 Q That's Exhibit --

22 A Exhibit 3.

23 Q -- Exhibit 3. So the only record down in the  
24 engine room that you found as to what would be signals to  
25 the engine room side of things was Exhibit 3.

1 A That's correct.

2 Q And you found that because Mr. Glowacki said that  
3 there was such a thing?

4 A That's correct.

5 Q You didn't know there was before.

6 A I am aware that these exist on some vessels, but I  
7 was not aware that it existed on the Exxon Valdez.

8 Q So in some investigations you've worked, there  
9 were such records and some there weren't.

10 A That's correct.

11 Q In the ordinary course of business, would you get  
12 whatever form there was down in the engine room as to the  
13 signal procedure?

14 A Yes, I would.

15 Q Whether Mr. Glowacki told you it came in the form  
16 of a log or in the form of a computer printout like that.

17 A That's correct.

18 Q So it wasn't because Mr. Glowacki told you that  
19 you happened to get it. You were going to get whatever was  
20 there. He just told you it was in that form.

21 A He had informed me first. I would have found out  
22 anyway.

23 MR. LINTON: Okay, nothing further, Judge.

24 JUDGE JOHNSTONE: When you look at Exhibit 6 and  
25 you see those times, 0035, 0038, 47 and 0139, there are

1 some checks alongside of them. The first one is a check  
2 with what looks like a little D or something above it.  
3 That's for 0035. Do you know what that means, that check?

4 THE WITNESS: The check is a command that's given  
5 to the engine. I don't specifically know what that command  
6 is.

7 JUDGE JOHNSTONE: Okay, and then on 003, there's  
8 another check. That's another command?

9 THE WITNESS: Right.

10 JUDGE JOHNSTONE: And then 0047, there's a check  
11 with a slash through the check. Does that have any  
12 significance?

13 THE WITNESS: Yes, it does.

14 JUDGE JOHNSTONE: What is that?

15 THE WITNESS: I don't know exactly what it means,  
16 though. I believe the check means ahead and then a check  
17 with a slash means ahead either a third or a half or  
18 something of that nature, but I'm not certain.

19 JUDGE JOHNSTONE: 0139 has a circle with an X  
20 through it. Do you have any idea what that means?

21 THE WITNESS: I believe that means all stop.

22 JUDGE JOHNSTONE: Okay, now, is there any  
23 correlation that those checks and those times might have on  
24 Exhibit 6 to Exhibit 3, the bell logger? Would it tell you  
25 what those mean?

1 THE WITNESS: Yes, it would.

2 JUDGE JOHNSTONE: What do they mean? Why don't  
3 you tie it up? The 0035, let's start with that one.

4 THE WITNESS: Well, it's hard to locate the exact  
5 point here on this exhibit. This is written in Alaska  
6 Standard Time. This is written in Greenwich Mean Time.

7 JUDGE JOHNSTONE: So it would have been about a  
8 ten-hour difference on the times?

9 THE WITNESS: There again, I'm not certain, sir.  
10 It's on here, I have seen it, but I cannot pinpoint it at  
11 the moment. Leave me \_\_\_\_\_ and work upwards. I'm not  
12 certain, sir. I know that it's on here, I've seen it  
13 before, but I cannot pinpoint it for you right now.

14 JUDGE JOHNSTONE: You indicated earlier that this  
15 was ahead, the engine's command was ahead, which I guess  
16 means forward. Is there anything on Exhibit 6 that  
17 suggests that it's ahead and not in reverse, for example?

18 THE WITNESS: I'm not certain, sir. I don't know  
19 what their code is for writing down their commands.

20 JUDGE JOHNSTONE: So when you said ahead, you  
21 didn't know if it was ahead or behind; it could have been  
22 the stern.

23 THE WITNESS: That's correct, me, personally. I  
24 do know that they are commands, but I don't know what  
25 commands they are.

1 JUDGE JOHNSTONE: And is that the sole basis for  
2 your opinion that the Defendant was trying to get off the  
3 reef? Is there anything else that forms a basis for that  
4 opinion, other than that, those entries in Exhibit 6 --

5 THE WITNESS: That there were commands after the  
6 vessel was aground indicates to me that there was an  
7 attempt to either drive ahead or drive astern, off towards  
8 -- to position the vessel on the reef. But at some point  
9 in time, because there are commands here, there was engine  
10 orders given to either move the vessel in one way or the  
11 other.

12 JUDGE JOHNSTONE: That's all the questions I  
13 have. Is there anything further because of those  
14 questions?

15 MR. FRIEDMAN: No, Your Honor.

16 MR. LINTON: No, Your Honor.

17 JUDGE JOHNSTONE: Okay, step down. Thank you. I  
18 think we've had enough for today. Perhaps would it be  
19 possible to get a copy of this exhibit for Mr. Linton, so  
20 he doesn't have to come over and sit so close?

21 MR. FRIEDMAN: Yes, we'll have that tomorrow  
22 morning.

23 JUDGE JOHNSTONE: Okay, and if you would get one  
24 for me, I'd appreciate it, too. We can only go until 1:30  
25 tomorrow with breaks, but not for lunch. And then I have



1 full days available on Wednesday and Thursday, it turns  
2 out, so we can do what we did today on those days. And I  
3 have a full calendar on Friday for sentencings and other  
4 things, so we won't be able to do anything on Friday.

5 MR. FRIEDMAN: Your Honor, I had a request. I  
6 wonder if it would be possible for us to end at 1:20  
7 tomorrow. I've got another hearing starting in another  
8 case almost immediately afterwards.

9 JUDGE JOHNSTONE: Sure, we'll stop at 1:20.  
10 Anything further.

11 MR. LINTON: Nothing further.

12 MR. FRIEDMAN: No, Your Honor.

13 JUDGE JOHNSTONE: We'll stand at recess.

14 THE CLERK: All rise.

15 JUDGE JOHNSTONE: Let's stay on the record for a  
16 minute. Would Counsel approach the bench? Why don't you  
17 come over hear on this side.

18 (Bench conference -- inaudible recording.)

19 JUDGE JOHNSTONE: Okay, we're going to recess  
20 now. Off the record.

21 THE CLERK: The Court stands at recess.

22 (Whereupon, at 4:30 p.m., the hearing adjourned.)

23

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24

25

1 SUPERIOR COURT )  
2 STATE OF ALASKA ) Case No. 3AN589-7217 17218

3 I do hereby certify that the foregoing transcript  
4 was typed by me and that said transcript is a true record  
5 of the recorded proceedings to the best of my ability.

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*Doris A. Cutler*  
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DORIS A. CUTLER

VOLUME 2

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STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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: In the Matter of: :  
: STATE OF ALASKA : Case No. 3ANS89-7217  
: versus : Case No. 3ANS89-7218  
: JOSEPH J. HAZELWOOD :  
: ----- :

Anchorage, Alaska

November 28, 1989

The above-entitled matter came on for omnibus hearing before the Honorable Karl S. Johnstone, commencing at 8:40 a.m. on November 28, 1989. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

LEONARD M. LINTON, JR., Esq.

On behalf of the Defendant:

RICHARD H. FRIEDMAN, Esq.

DICK L. MADSON, Esq.

C O N T E N T S

WITNESSES:

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<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Steven A. McCall	007 018	010 019		
Eric R. Dohm	023	040		
Gary Graham	043	052		
Mary Ann Henry	054	077	115	120
Michael Opalka	124	127		
Brent Cole	128			

E X H I B I T S

	<u>STATE'S</u>	<u>IDENTIFICATION IN EVIDENCE</u>	
1			
2			
3	2	-	26
4	15	57	63
5	16	57	63
6	17	57	63
7	18	57	63
8	19	57	63
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10	21	57	63
11	22	57	63
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P R O C E E D I N G S

1  
2 (Tape No. C-3499)

3 THE COURT: Mr. Linton?

4 MR. LINTON: Your Honor, I'd ask to have the  
5 permission of the Court to have the next witness, Commander  
6 Steven McCall, testify telephonically. He's standing by a  
7 phone in St. Louis, Missouri where he is assigned to a  
8 Marine Safety Office now.

9 THE COURT: That's where he's stationed now?

10 MR. LINTON: Yes, sir.

11 THE COURT: Any objection from the defense?

12 MR. : No, Your Honor.

13 THE COURT: All right. In the absent of  
14 objection and given that he's stationed in St. Louis and  
15 this is an omnibus hearing, I'll go ahead with it. It's  
16 generally my practice to do no telephonic witness  
17 testimony, but under the circumstances, I'll go ahead with  
18 it this time.

19 We'll see if we can reach him. Have you given  
20 Mr. Purden the telephone number?

21 MR. : I stuck it somewhere. Yes, sir.

22 THE COURT: Let's get ahold of him, and -- Just  
23 a second. Is this going to be calling collect? How do we  
24 handle this? Is he --

25 MR. : (Inaudible).

1 THE COURT: We'll charge it to the District  
2 Attorney's office. When you call it, charge it to the  
3 District Attorney's office.

4 How long do you expect this witness might be? He  
5 might be an hour or two?

6 MR. LINTON: I would guess more like twenty  
7 minutes, a half hour.

8 THE COURT: All right.

9 (Off-mike remarks)

10 THE COURT: Is he still titled Commander?

11 MR. LINTON: Yes, Your Honor.

12 THE COURT: Commander McCall, this is Judge  
13 Johnstone. Can you hear me all right?

14 Commander McCall, this is Judge Johnstone. Can  
15 you hear me?

16 MR. : Commander McCall, can you hear  
17 him over the line?

18 THE COURT: Commander McCall, can you hear me  
19 okay?

20 COMMANDER McCALL: Yes, sir. I can.

21 THE COURT: Okay. Let's turn the volume up on  
22 him.

23 This is Judge Johnstone, Commander McCall. The  
24 State is calling you as their next witness, and before you  
25 testify, Mr. Purden, our in-court deputy, is going to swear

1 you in.

2 Whereupon,

3 STEVEN McCALL

4 called as a witness by counsel for the State of Alaska, and  
5 having been duly sworn by the Clerk, was examined and  
6 testified as follows:

7 THE CLERK: You may be seated. Would you please  
8 state your full name, and then spell your last name?

9 THE WITNESS: My full name is Steven Alexander  
10 McCall. M-little C-capital C-a-l-l.

11 THE CLERK: And your current mailing address?

12 THE WITNESS: Current mailing address? Office  
13 mailing address is Commander, Second Coast Guard District,  
14 1430 Olive Street, St. Louis, Missouri 63103.

15 THE CLERK: And your current occupation?

16 THE WITNESS: My current occupation is U.S. Coast  
17 Guard Officer.

18 THE CLERK: Thank you.

19 THE COURT: Before we inquire, Commander, I'm  
20 going to see if we can turn this volume up. Will it go up  
21 any higher?

22 Can you still hear me, Commander?

23 THE WITNESS: Yes, I can.

24 THE COURT: Would you give us a short count to  
25 five, please?



1 THE WITNESS: One, two, three, four, five, four,  
2 three, two, one.

3 THE COURT: All right, thank you. We've got a  
4 volume we can live with, I think. Mr. Linton will inquire  
5 at this time.

6 DIRECT EXAMINATION

7 BY MR. LINTON:

8 Q What rank do you hold in the U.S. Coast Guard?

9 A I'm a Commander in the U.S. Coast Guard.

10 Q How long have you been in the U.S. Coast Guard?

11 A Twenty years.

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

13 A I was assigned as the commanding officer, officer  
14 in charge marine inspection, and captain of the port for  
15 the Port of Valdez, Alaska.

16 Q Sometime on the morning of March 24, 1989, did  
17 you receive a telephone call about the Exxon Valdez?

18 A Yes. At home, approximately 12:30 or so Friday  
19 morning, March 24th, I received a call at home when I was  
20 in bed.

21 Q What were you told by the person who called you?

22 A The person who called me was Mr. Bruce Blandford,  
23 one of my watch standers, \_\_\_\_\_ Traffic Service watch  
24 standers, and he informed me that the Exxon Valdez had run  
25 aground on Bligh Reef.

1 Q In that initial telephone conversation from Mr.  
2 Blandford, did he tell you whether or not the vessel  
3 reported leaking some oil?

4 A I believe he did. I believe he mentioned that  
5 the ship was aground and was leaking oil.

6 Q Having received the telephone conversation, that  
7 telephone call, what did you do?

8 A I think I asked him, "Has the Exec been notified  
9 yet? -- that's Lieutenant Commander Falkenstein -- and I  
10 believe he said no, and I told him, "Fine. Notify the ExO  
11 and tell the ExO and tell the ExO that I'll swing by his  
12 house and pick him up on the way in." We only lived about  
13 -- oh, not even 50 yards away from each other.

14 Q After the telephone call, did you do that?

15 A Yes, I did. I hung up the phone, got dressed,  
16 met the Exec, and he and I, I believe in his vehicle, went  
17 into the office and arrived there within five, ten minutes  
18 or so after the phone conversation.

19 Q Once you had arrived at the Coast Guard Station  
20 Marine Safety Office, did you and Lieutenant Falkenstein  
21 meet with Chief Warrant Officer Mark Delozier?

22 A Yes. Mark Delozier was called in and, you know,  
23 he arrived at the office after we did, but yes, we met and  
24 spoke with Mr. Delozier.

25 Q And were you later joined by Dan Lawn of the

1 Alaska Department of Environmental Conservation?

2 A Yes, we were. I phoned Dan and advised him of  
3 what had happened and told him that we were getting ready  
4 to go out to the ship, and if he wanted to come along with  
5 us, we had the pilot boat getting lined up to take us out.  
6 And he said yes, he would want to come.

7 Q Was it under your direction that Lieutenant  
8 Commander Falkenstein and Chief Warrant Officer Delozier  
9 went to the Exxon Valdez?

10 A Yes, it was.

11 Q Would you have exercised that authority to send a  
12 Coast Guard investigator the Exxon Valdez even if it had  
13 only been reported that the Exxon Valdez was hard aground  
14 on Bligh Reef?

15 A Yes, I would.

16 Q Would you explain your reasons, sir?

17 A Well, as far as my recollection goes, there's  
18 never been a grounding of an oil tanker in Prince William  
19 Sound, so just by that sheer fact alone, the tanker being  
20 aground in Prince William Sound outbound -- in other words,  
21 loaded -- we would have responded to investigate the  
22 casualties.

23 Q Casualty defined as grounding?

24 A Yes, casualty as defined in grounding. Also, to  
25 verify that there was no pollution. Even if there was

1 minor amount of pollution, it was dark, it was evening --  
2 it was early morning -- we would have sent someone out to  
3 investigate that, and to confirm that there was no danger  
4 to life. And, you know, also when we do the casualty  
5 investigation, we would be reviewing these vessel documents  
6 and chart recorders and interviewing personnel to find out  
7 what actually went on, what happened?

8 Q Was this the kind of event that attracted more  
9 attention than usual in your work?

10 A Yes, sir. A grounding of any vessel draws a  
11 certain amount of interest, but particularly the grounding  
12 of an oil tanker would generate substantial interest in the  
13 local news media, at least.

14 MR. LINTON: No further questions, Your Honor.

15 THE COURT: Commander McCall, Mr. Friedman will  
16 be cross-examining you now.

17 THE WITNESS: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. FRIEDMAN:

20 Q Commander, my name is Rick Friedman. I'm one of  
21 Mr. Hazelwood's attorneys. Can you hear me all right?

22 A Yes, sir. I can hear you fine.

23 Q Okay. Can you tell me what you and Lieutenant  
24 Falkenstein talked about when you first arrived at the  
25 Coast Guard station?

1           A     I can't say for sure, but obviously I'd say -- I  
2 believe we were discussing the fact of amazement,  
3 initially, that the ship had run aground, and where it ran  
4 aground, and actions to be taken. Who was going to do  
5 what, who would go where, and just organize the initial  
6 response to both the casualty and the reported pollution.

7           Q     Now, shortly after you arrived at the station,  
8 you initiated a radio call to Captain Hazelwood, is that  
9 correct?

10          A     Yes, sir, I did.

11          Q     And that was to receive information on the spill  
12 and the grounding?

13          A     Yes, sir. To receive information on the spill  
14 and the grounding, to find out what the status of the  
15 vessel was that the Master could advise me, and I believe  
16 up until that time that I spoke on the phone, I didn't  
17 realize, or know, who the Master was, but when we spoke on  
18 the radio, Mr. Hazelwood identified himself, and you know,  
19 I had spoken to Mr. Hazelwood previously, like I have many  
20 of the Masters that come in and out of Valdez, and in  
21 addition, he's an alumni of the same college that I went  
22 to, so we knew each other a little bit.

23          Q     Okay. And on this radio call, Mr. Hazelwood told  
24 you to the effect, or said to you to the effect, that there  
25 had been a problem with the third mate and that they were

1 working their way off the reef. Is that correct?

2 A Yes, sir.

3 Q Okay. Did you, as the person in charge of the  
4 Coast Guard response at this time, consider those two  
5 pieces of information to be significant?

6 A Yes, sir, I did. Let me take this separately.

7 The comment about working his way off the reef, I  
8 believe I commented about words to the effect of, you know,  
9 "Don't do anything you can't undo. Don't do a lot of  
10 wiggling." That was from, again, based on experience with  
11 other casualties, but also realizing that I really didn't  
12 feel I needed to tell the Master of a large supertanker  
13 with a lot of experience how to do his job, it was more of  
14 a memory refresher, I guess, or just stating what I felt I  
15 had to say.

16 Q Right.

17 A The other aspect of his comment concerning the  
18 third mate, that perplexed me a little bit, because I  
19 didn't know the details, obviously, that I know now, but my  
20 concern was maybe, you know, the Master was expressing that  
21 the third mate was having some problems of an emotional  
22 nature and maybe, you know, I didn't want to distract the  
23 Master from doing his job maintaining control of the bridge  
24 and looking to the safety and the seaworthiness of his  
25 vessel.

1 Q Now, when you listened to, or when you had this  
2 radio conversation with the Captain, was Lieutenant  
3 Falkenstein present?

4 A Yes, the radio conversation, Lieutenant Commander  
5 Falkenstein was in the radio room with me, along with Mr.  
6 Blandford, and I forget who the other -- the Petty Officer  
7 on our radio room side was, but I believe there were at  
8 least four persons in the office. I don't think Mr.  
9 Delozier had arrived on scene yet.

10 Q All right. After your radio call with the  
11 Captain, did you discuss with Mr. Delozier and Lieutenant  
12 Commander Falkenstein what you expected them to do out on  
13 the ship?

14 A Yes, I did. Lieutenant Commander Falkenstein and  
15 I had discussed -- one of the things we discussed on the  
16 way in, and then in the office, was that I wanted him to go  
17 out to the vessel to act as my eyes and ears and report  
18 back to me on the seaworthiness of the vessel and the  
19 pollution, the rate of pollution and how bad a situation we  
20 had.

21 I wanted Mr. Delozier to go out to concentrate on  
22 the casualty investigation, you now, gathering information  
23 and assessing the situation from the casualty side early  
24 on, and I felt my job was (inaudible) the effort would be  
25 best served by me coordinating over the phone with the

1 chain of command from the Coast Guard side initiating the  
2 response from Alyeska and fielding the other calls that I  
3 knew would be coming in from concerned citizens and the  
4 news media.

5 Q Did you discuss with Mr. Delozier and Lieutenant  
6 Commander Falkenstein the issue or problem of the Captain  
7 trying to get the vessel off the reef?

8 A I think in those early hours, that was not a  
9 concern, and I think that was basically the feeling that,  
10 from my experience in working with the Masters of those  
11 vessels, whether they were Exxon, Arco or whomever, meeting  
12 with a lot of them, they all struck me as being experienced  
13 and in control and relating to the position they were in,  
14 where I didn't feel I need to tell the Master how to do his  
15 job.

16 Q Yeah. I guess maybe I didn't phrase the  
17 question. Let me go back a step.

18 Without reading back to you the transcript of  
19 your conversation with Captain Hazelwood, it sounds as  
20 though you did express some concerns to Captain Hazelwood  
21 about how he should handle the vessel -- and I'm not  
22 implying that you were telling him what to do, but you did  
23 have some concerns that you expressed to him over the  
24 radio. Is that correct?

25 A Yes.



1 Q Okay, and my question was simply, when Mr.  
2 Delozier went out to the vessel, and Lieutenant Commander  
3 Falkenstein went out to the vessel, had you discussed this  
4 issue with them? Not in the sense of, "I want you to go  
5 out and tell the Captain what to do," but in the sense of,  
6 "We should keep track of what's going on?"

7 A I can't recall. That was probably implied, but I  
8 can't recall specifically talking about that issue.

9 Q Okay. Can you recall whether you talked to them  
10 about the problem with the third mate issue?

11 A Yes. Just basically reiterating that, you know,  
12 basically you guys heard the radio conversation, the  
13 Master's got a concern with the third mate, you know. Just  
14 be aware of it, and look into it.

15 Q Okay.

16 Commander McCall, were you aware at the time you  
17 received this radio call that the Master of a vessel  
18 leaking oil had a legal obligation to report that to the  
19 Coast Guard?

20 A Yes, sir.

21 Q Do you feel that Captain Hazelwood's calls to you  
22 complied with that requirement?

23 A Yes, sir.

24 Q Thank you.

25 MR. FRIEDMAN: I don't have any other questions.

1 MR. LINTON: Nothing further, Your Honor.

2 THE COURT: I have a couple for the Commander.  
3 Commander McCall, this is Judge Johnstone.

4 THE WITNESS: Yes, sir.

5 THE COURT: I want to ask some questions about  
6 the facilities available to the Coast Guard and the Valdez  
7 and the surrounding areas, specifically radar facilities.  
8 Does the Coast Guard have radar facilities available that  
9 could detect an outgoing tanker outbound from Valdez?

10 THE WITNESS: As a general answer, I'd have to  
11 say yes, but the coverage of the radar varies with weather  
12 conditions, atmospheric conditions, and we've had -- that  
13 radar that's in place there, I think the radar in question,  
14 the one at Potato Point, since the casualty, at the request  
15 of the STSB, we have done some evaluation of the range in  
16 plotting outgoing tankers, and I believe the figures for  
17 the month of April that they asked us to look into showed  
18 that we covered, on an occasion, covered a tanker out to  
19 approximately the 30-mile bar, and on other occasions, we  
20 lost it at about the four-and-a-half, five-mile bar.

21 THE COURT: On March 24th of this year, when the  
22 Exxon Valdez went aground at Bligh Reef, was there radar  
23 available to the Coast Guard to show that grounding at the  
24 time?

25 THE WITNESS: Oh, yes, sir. When we -- when I

1 arrived at the office, I could see on our radar the broad  
2 side view of the Exxon Valdez in a position on the radar  
3 scope approximating, you know, in the vicinity of Bligh  
4 Reef buoy.

5 THE COURT: All right. Is there any policy,  
6 either by Coast Guard policy rule or federal regulation  
7 that requires reporting of outbound tankers at designated  
8 points?

9 THE WITNESS: Yes. The vessel traffic rules for  
10 the operation of the vessel traffic system require various  
11 contact points, when they're entering the system at --  
12 well, even, hours out from \_\_\_\_\_ and when they are  
13 departing, departing Valdez, entering the narrows,  
14 departing the narrows, dropping the pilot, and, you know,  
15 clearing certain lets on their way out.

16 THE COURT: What policy, if any, or rules on  
17 March 24th was the Coast Guard required to follow if an  
18 outbound tanker required to report, of abeam Naked Island,  
19 and did not do so when he was supposed to?

20 THE WITNESS: Had the vessel not with a -- you  
21 know, just with a fair amount of time allotted, had the  
22 vessel not reported his position off of Naked Island, we  
23 would have attempted to establish radio contact with that  
24 vessel determining where it's position was, you know, if it  
25 had slowed down, or if it had a problem, or you know, what

1 was causing it to be late in arriving at its checkpoint.

2 THE COURT: Would the operator of the radar,  
3 would he be involved in trying to locate the vessel if it  
4 not report?

5 THE WITNESS: Out to Naked Island, we  
6 historically have not plotted vessels out that far, at  
7 least not since the 1980, '82 timeframe. It's a radio  
8 communication network basically past Bligh Reef buoy  
9 point. We would have expected and would have called back  
10 if the vessel had not made transmission in the vicinity of  
11 Naked Island or, later on, in the vicinity of Cape  
12 Hinchinbrook while departing the system.

13 THE COURT: Are vessels required to maintain  
14 two-way radio communication when they're outbound?

15 THE WITNESS: Outbound and inbound. Yes, sir.

16 THE COURT: All right. That's all the questions  
17 I have of Commander McCall. If that opened up any other  
18 avenues that counsel wished to inquire, they can do so.  
19 Mr. Linton?

20 FURTHER DIRECT EXAMINATION

21 BY MR. LINTON:

22 Q Is Naked Island one of the required reporting  
23 points?

24 A Yes, sir.

25 MR. LINTON: Nothing further, Your Honor.

1 THE COURT: Mr. Friedman?

2 FURTHER CROSS EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Commander McCall, do I understand correctly that  
5 the radars in use at the time -- that is, on the 24th of  
6 March -- had several different settings for different  
7 ranges?

8 A Yes, sir. There were different scales on the  
9 radar: three mile, six mile, twelve mile.

10 Q And which scale did you have the radar on when  
11 you were able to see the ship when you arrived at the  
12 station?

13 A I believe it was on twelve mile scale, but I -- I  
14 can't be sure.

15 Q Do you know what scale the radar was on at the  
16 time of the grounding?

17 A I believe it was on the six mile scale with an  
18 offset so it could -- could potentially cover the Naked --  
19 Bligh Reef position.

20 Q If Mr. Blandford were to say it was on the three  
21 mile scale at the time of the grounding, would you have any  
22 reason to doubt that?

23 A Well, we've got two radars so, you know, we've  
24 got two radar repeaters that are operating out at the  
25 Potato Point radar sight. So one of those could be on the

1 three mile scale for the narrows, and one of them could  
2 have been on the six mile scale.

3 The way the system was set up prior to the  
4 casualties, you could use both of those TPIs -- in other  
5 words, the scopes in the office, in the VTS room -- with  
6 one on the three mile and one on the six mile, but you  
7 couldn't have one on the three and one on the twelve.  
8 You'd get feedback and distortion of the radar image.

9 So the radar -- if one of them was on three, the  
10 other one would have more than likely been on six, but one  
11 could have been on six with the other one on twelve.

12 Am I making myself clear, or --

13 Q I think so.

14 And do I understand correctly that when a tanker  
15 reaches Naked Island there's a Coast Guard regulation that  
16 requires them to report to the Coast Guard station?

17 A Yeah. They call in and let us know when they  
18 came abeam of Naked Island.

19 Q Okay. And what regulation is that?

20 A It's in the vessel traffic rules, 33

21 CFR \_\_\_\_\_ 151 -- oh, boy. I --

22 Q That's all right. I didn't mean to -- if you  
23 have it at the tip of your tongue, fine. So it's in the  
24 CFR?

25 A The VTS rules for Prince William Sound, yeah.

1 Q All right.

2 A Various checkpoints.

3 Q If a vessel came abeam of Naked Island and did  
4 not call, is there some set procedure at the Coast Guard  
5 station as to how that situation will be handled?

6 A I don't believe that specific scenario in the  
7 Vessel Traffic Service operator's guide that we have in the  
8 office, operations manual, but general scenarios similar to  
9 that are in there.

10 Q Okay. And so it would be up to Mr. Blandford to  
11 decide how to handle it? And would it be Mr. Blandford who  
12 would make the decision on how to handle it if he receives  
13 no radio transmission from the vessel as it reached Naked  
14 Island?

15 A Yes. It would be the watch stander, in this  
16 case, this evening, Mr. Blandford, yes, who would initiate  
17 contact with the vessel and, depending on the response of  
18 the vessel, could possibly notify his superiors, the  
19 officer of the day, the Exec, or myself, depending on what  
20 the conditions were.

21 Q Okay.

22 A If the vessel was just delayed because he was  
23 slowing down for ice, or slowed down for whatever reason,  
24 you know, he would be later, and he would explain that, and  
25 that would be it. If he was having mechanical

1 difficulties, mechanical problems that were recorded, the  
2 watch standard -- Mr. Blandford in this case -- would pass  
3 it up the line.

4 Q Okay.

5 MR. FRIEDMAN: Your Honor, could I have just a  
6 minute?

7 Commander, I'll be back to you in just a second,  
8 if you could just hold the line.

9 THE WITNESS: Okay.

10 (Pause)

11 MR. FRIEDMAN: Thank you, Commander. I don't  
12 have any other questions.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Linton, do you have any further  
15 questions?

16 MR. LINTON: No, Your Honor.

17 THE COURT: That completes your testimony,  
18 Commander McCall. Thank you for standing by. We're going  
19 to ring off now.

20 THE WITNESS: Okay. You're welcome.

21 (The witness was excused.)

22 THE COURT: You may call your next witness.

23 MR. LINTON: I call Eric Dohm, Your Honor.

24 (Pause)

25 Whereupon,



1 ERIC R. DOHM

2 called as a witness by counsel for the State of Alaska, and  
3 having been duly sworn by the Clerk, was examined and  
4 testified as follows:

5 THE CLERK: Sir, could you please state your full  
6 name, and spell your last name?

7 THE WITNESS: My name is Eric Raymond Dohm.

8 THE CLERK: And your current mailing address?

9 THE WITNESS: 555 Market Street, San Francisco,  
10 California 94105.

11 THE CLERK: And your current occupation?

12 THE WITNESS: Ship's master.

13 DIRECT EXAMINATION

14 BY MR. LINTON:

15 Q Would you tell us your educational background,  
16 please, sir?

17 A Through high school, and then I graduated from  
18 the California Maritime Academy in 1970.

19 Q And would you tell us, give us an overview of  
20 your work history, please?

21 A I've been employed, almost exclusively, with  
22 Chevron Shipping company since that time, starting as a  
23 rank of able seaman, working up through third mate, second  
24 mate, chief mate and Master.

25 Q When did you receive your Master's license?

1 A My Master's license? In 1978.

2 Q At that time, did you begin serving as a Master?

3 A I started serving as Master in February of 1980.

4 Q And since that time, you have served as a Master  
5 of various vessels for Exxon?

6 A For Chevron.

7 Q Chevron Shipping Company?

8 A That is correct.

9 Q Would you explain what size of vessels, and what  
10 services you have served, sir?

11 A Currently, Chevron Shipping Company has two size  
12 vessels: 39,000 ton tankers and 70,000 ton tankers,  
13 deadweight ton tankers. Mostly, predominantly in the West  
14 Coast trade, Alaska, Hawaii and the U.S. West Coast, with  
15 some trade to the East Coast.

16 Q And you've served on all of those?

17 A Yes, I have.

18 Q On March 23rd and 24th of 1989, were you on board  
19 a vessel bound to Valdez, Alaska?

20 A That is correct.

21 Q Would you explain where you were coming from and  
22 what vessel you were in, please?

23 A I was aboard the Chevron California at the time.  
24 We were in bound from Barber's Point, Hawaii to Valdez.

25 Q As you came to the approach to Prince William

1 Sound, were there reports that you made in accordance with  
2 Coast Guard regulations for the Vessel Traffic System  
3 entering Prince William Sound?

4 A That is correct.

5 Q And would you tell the Judge briefly what those  
6 reports are, as you're approaching the entrance to Prince  
7 William Sound, at Hinchinbrook entrance?

8 A On the approach to Prince William Sound, there's  
9 a required three hour precall prior to reaching Cape  
10 Hinchinbrook, and then followed by a one-hour precall, and  
11 then reporting abeam Cape Hinchinbrook on the way in.

12 Q On your way in to Valdez, Alaska, is there some  
13 communication with the Alyeska terminal as to where --  
14 whether you made -- whether the terminal is ready to  
15 receive the vessel, and load your vessel?

16 A Currently, at that time, the -- at that time, the  
17 communication with the terminal was through Valdez  
18 traffic. We didn't have any direct link with the terminal.

19 Q Explain to the Judge what inquiries you would  
20 make, and what responses you would receive in the ordinary  
21 course of business?

22 A Usually, on the three hour precall, we give the  
23 information of the vessel, the draft, and when we'll be  
24 abeam Cape Hinchinbrook, what -- if we're carrying any  
25 cargo, and the required report, and we ask at that time,

1 usually, if there is a berth available, and what our berth  
2 assignment will be, and then they will -- the Coast Guard  
3 will notify the terminal and receive any information as to  
4 berthing instructions.

5 THE COURT: Where does that -- where does the  
6 three hour precall take place?

7 THE WITNESS: Three hours would be three hours  
8 outside Cape Hinchinbrook, approximately 50 miles outside  
9 Cape Hinchinbrook.

10 MR. LINTON: Judge, the Captain was pointing out  
11 -- I'll move Plaintiff's Exhibit 1 --

12 THE WITNESS: We were upbound from Hawaii, out in  
13 this area, so the three hour precall would be down in this  
14 area, somewhere in there.

15 BY MR. LINTON: (Resuming)

16 Q Referring to Plaintiff's Exhibit 2, to an area  
17 roughly 5940 north and --

18 THE COURT: Abeam Middleton Island, out there  
19 someplace?

20 THE WITNESS: Approximately, yes, sir.

21 THE COURT: Okay.

22 MR. LINTON: Judge, I move the admission of  
23 Exhibit 2 that he's referred to.

24 MR. : No objection.

25 (State's Exhibit 2 was

1 received in evidence.)

2 BY MR. LINTON: (Resuming)

3 Q What kind of response would you be expecting once  
4 you communicated with the terminal? I mean, in the event  
5 they had a berth, what would ordinarily happen?

6 A They would tell us what the berth assignment was  
7 and we would proceed in, you know, to Cape Hinchinbrook,  
8 making the required reports, and --

9 Q Go right on in to Valdez?

10 A Go right on in to Valdez, yes, sir.

11 Q Suppose that no berth was available? What would  
12 happen?

13 A We'd be directed to proceed to Knoll's Head  
14 anchorage, to anchor and await berth.

15 Q You referred to a point as Cape Hinchinbrook.  
16 Was that one of the required reporting points?

17 A Yes, it is.

18 Q And would you show the Judge the location of Cape  
19 Hinchinbrook?

20 A Cape Hinchinbrook is located on this area right  
21 here.

22 Q And so marked on the chart?

23 A Yes, sir.

24 Q And you're pointing to it?

25 A (Inaudible).

1 Q That's Cape Hinchinbrook. Okay.

2 And you referred to the Knoll's Head, an  
3 anchorage you would go to --

4 A Yes, sir.

5 Q -- in the event that there was no berth  
6 available. Is that shown on the chart?

7 A Yes, sir. That is in this area up here, marked  
8 the area. The anchorage area is marked.

9 Q And it's marked by a --

10 A Purple line.

11 Q Purple quadrangle, saying anchorage area.

12 A Yes, sir.

13 Q 110.223, see note A.

14 A Correct.

15 Q Just south of Knoll's Head?

16 A Yes, sir.

17 Q In the course of an ordinary transit from  
18 Hinchinbrook Island into Valdez Harbor, are there required  
19 reporting points?

20 A Yes, sir. You report in abeam Cape Hinchinbrook,  
21 and then abeam Naked Island, and then at -- picking up the  
22 pilot approximately at Rocky Point.

23 Q Would you point Naked Island?

24 A Naked Island is right here, passing abeam right  
25 up there.

1 Q And it is so marked on the chart?

2 A Yes, sir.

3 Q And there was another reporting point you  
4 referred to?

5 A Rocky Point was the pilot's station at the time,  
6 which is at the terminus to the traffic lane at the  
7 northern end.

8 Q And could you point that out for the Judge,  
9 please?

10 A It's right here.

11 Q -- at the end of the pink -- pink line?

12 A Just out there,, yes, sir.

13 Q And it is so marked on the chart as Rocky Point.

14 There is illustrated on Plaintiff's Exhibit 2 a  
15 purple line, which I was just referring to, from basically  
16 the area of Cape Hinchinbrook to the area of Prince -- of  
17 Rocky Point. There's a solid -- I guess it's a magenta  
18 line, a dotted magenta line on either side of it. Do you  
19 know what that describes?

20 A That's the traffic separation scheme for Prince  
21 William Sound.

22 Q Explain the parts of that to the Judge, please.

23 A The shaded purple area in the middle is a  
24 separation zone, with the area between the shaded and the  
25 righthand side being the inbound lane, and the shaded area

1 and the dotted purple line on the lefthand side would be  
2 the southbound, outbound traffic lane.

3 Q And those three areas, inbound lane, outbound  
4 lane and separation zone, are so marked on --

5 A Yes, sir.

6 Q -- on the chart?

7 A Yes, sir.

8 Q In the course of the transit, then, beyond that  
9 point -- that is, beyond Rocky Point into Valdez Harbor,  
10 what rules of reporting are there?

11 A You reported abeam Cape Hinchinbrook at Rocky  
12 Point and you will board a pilot at that time, and then you  
13 report entering the narrows, and at the entrance island on  
14 the far side of the narrows. It's usually -- reports up  
15 there are taken care of by the pilot, traditionally.

16 Q At that point, the vessel would be -- the pilot  
17 would be on board, and reports would not be made by the  
18 Master or other officer --

19 A They would be directed by the pilot.

20 Q They would be directed.

21 A Yes, sir.

22 Q Is the entrance island shown on --

23 A Yes, sir. Entrance island is where this line is  
24 here. It's very small there.

25 Q What you see is a light marked QG7M. Is that the



1 designation?

2 A Yes, sir. That's the navigation aid.

3 Q (Inaudible) Exhibit 1, 16708 Noah Chart. Is  
4 Entrance Island -- excuse me. The point you were referring  
5 to --

6 A Entrance Island, yes, sir. It's marked right  
7 here.

8 Q It's marked as --

9 A Entrance Island.

10 Q On the northwest tip of the mainland at the  
11 entrance to Valdez?

12 A It's at the northern end of the one way zone in  
13 Valdez narrows.

14 Q Thank you.

15 Captain, on March 24, 1989, were you on the  
16 bridge of the Chevron California as it got to Hinchinbrook  
17 Island?

18 A Yes, I was.

19 Q And what time was the vessel abeam Cape  
20 Hinchinbrook?

21 A We reported abeam Cape Hinchinbrook at 0015 on  
22 the 24th.

23 Q Did you estimate a time of arrival at Naked  
24 Island?

25 A 0200.

1 Q And that was as part of the regular reporting  
2 process --

3 A Yes, sir.

4 Q -- estimating that time?

5 What is the distance from -- let's go back to  
6 Exhibit 2. What is the distance from the point abeam Cape  
7 Hinchinbrook -- maybe you could point out where a reporting  
8 point abeam Cape Hinchinbrook would be?

9 A In this instance, we were abeam approximately  
10 about here, and it's approximately 27 miles to abeam Naked  
11 Island.

12 Q Okay. You're pointing to the H in -- second H in  
13 Hinchinbrook entrance?

14 A We're approximately two miles off Cape  
15 Hinchinbrook.

16 Q And then to a position abeam Naked Island, would  
17 you point to that on the chart?

18 A There.

19 Q And that distance, you say, is approximately --

20 A Approximately 27 miles, yes, sir.

21 Q At what speed would your vessel ordinarily be  
22 travelling?

23 A It's normally 16 knots.

24 Q And therefore what time period would it take for  
25 the vessel to transit it from Cape Hinchinbrook to a point

1 abeam Naked Island?

2 A Approximately an hour and forty-five minutes.

3 Q So that -- it was on that basis that you  
4 estimated your 2:00 o'clock position?

5 A Yes, sir.

6 Q At that -- let me refer now to a point on Exhibit  
7 1 which is marked with an X and MJD on it, and I would like  
8 for you to identify for yourself a point that is closest,  
9 that is in the northbound traffic lane, and closest to the  
10 point with the red x on it, which would be, I take it,  
11 roughly somewhere in the area of the arrow with 15 -- the  
12 32 155, \_\_\_\_\_ underneath it.

13 A Uh-huh.

14 Q What distance is that from a position abeam Naked  
15 Island?

16 A Approximately 13 miles.

17 Q How can one determine that from a nautical chart?

18 A Measuring with the latitude scale on the side of  
19 the chart.

20 Q Each minute of latitude equals a nautical mile?

21 A Yes, sir.

22 Q How long would it have taken your vessel to  
23 travel that distance?

24 A From Naked Island to --

25 Q Abeam Naked Island to a point identified as the

1 point within the traffic lane, but closest to the red X on  
2 Plaintiff's Exhibit 1.

3 A Oh, approximately 50 minutes.

4 Q And, therefore, you estimate that the vessel  
5 would have been there at 2:50 a.m.?

6 A Yes, sir.

7 Q In the course of the transit, did you expect to  
8 communicate with the Exxon Valdez?

9 A Yes, sir.

10 Q Would you explain to the Judge why?

11 A We were -- in communicating with Valdez traffic,  
12 we were inquiring as to the ice conditions, and we were  
13 informed that the Exxon Valdez was outbound and would be  
14 able to provide an updated ice report later on the transit.

15 Q And it was in anticipation of speaking to them  
16 about that, about the ice conditions --

17 A Yes.

18 Q -- that you were expecting to communicate with  
19 them.

20 Where would you have expected -- where, in the  
21 course of your transit, would you have expected to engage  
22 in that communication?

23 A Somewhere in the vicinity of Naked Island, or a  
24 little south of Naked Island.

25 Q Now, when one is meeting a vessel, and one is

1 exiting form Valdez and meeting a vessel inbound -- vice  
2 versa, you were inbound and exiting -- is there a practice  
3 to watch for and communicate, and/or communicate with the  
4 inbound or outbound vessel, the vessel coming the other  
5 way?

6 A I don't quite understand the question.

7 Q When you're inbound, or outbound in the traffic  
8 system, and there is traffic coming the other way, is there  
9 any practice to communicate with, or look for the vessel,  
10 the traffic coming the other way?

11 A Yes, sir. You will keep track, visually on  
12 radar, the vessels coming the other way. Normally  
13 communication usually is not necessary because both vessels  
14 are reporting to Valdez traffic, and the situation is  
15 reported through the traffic system.

16 Q Do they customarily use the same frequency?

17 A Yes, sir.

18 Q And how is that identified, the frequency?

19 A VHF channel 13 is the working frequency.

20 Q And so the inbound traffic and the outbound  
21 traffic would be monitoring that station?

22 A That is correct.

23 Q Which is the station which they would use to  
24 communicate with the Coast Guard?

25 A Yes, sir.

1 Q Did you have radar on board the Chevron  
2 California which enable you to have seen traffic which were  
3 meeting, coming the other way, whether inbound or outbound?

4 A Yes, sir.

5 Q Would you tell the Judge how many such units you  
6 had, and what ranges they are capable of operating on, and  
7 normally operated on?

8 A The vessel was equipped with two Raytheon  
9 pathfinder radar. One's a ten centimeter, one's a three  
10 centimeter radar. They're capable of operating up to 64  
11 miles, or with a normal operation in this area would be in  
12 the 12 to 24 mile scale.

13 Q Would you be able to identify, on those radars, a  
14 vessel of the size of the Exxon Valdez at the 12 to 24 mile  
15 ranges respectively?

16 A You would be able to pick up the target, not  
17 specifically identifying the ship.

18 THE COURT: At 24 miles, you can --

19 THE WITNESS: In some cases, not in all cases.

20 BY MR. LINTON: (Resuming)

21 Q Explain briefly. What cases --

22 A Well, depending on surrounding conditions and the  
23 location of the vessels and the atmospheric conditions.  
24 Sometimes the vessels aren't detected as far as 24 miles.

25 Q What do you recall the atmospheric conditions

1 were in the part of Prince William Sound that you transited  
2 that night?

3 A They were --

4 THE COURT: Excuse me. I think you've got a  
5 witness that just came in.

6 (Pause)

7 BY MR. LINTON: (Resuming)

8 Q I'm sorry. You were describing the conditions as  
9 you recalled them.

10 A I recall the atmospheric conditions were fairly  
11 -- fairly clear.

12 Q In the course of an ordinary transit, are you  
13 able to see the vessels in the opposite traffic lane as  
14 they go out?

15 A Yes, sir.

16 Q Could you describe the lengths of the -- the  
17 widths of the various parts of the traffic separation  
18 scheme so we know what -- over what distance one would be  
19 looking when the --

20 A The separation zone, I believe, is approximately  
21 two miles wide, so vessels would be three to  
22 three-and-a-half miles apart.

23 Q How wide are the lanes themselves?

24 A I believe they are just under two miles.

25 Q And ordinarily, are you able to see traffic the

1 size of the Exxon Valdez when it's basically abeam your  
2 position, or thereabouts?

3 A In clear weather conditions, yes, sir.

4 Q At night, do ships carry lights which would  
5 assist in identifying a vessel at night?

6 A Yes, sir.

7 Q And are there standard patterns of lighting that  
8 enable you to identify not only that there is a vessel  
9 there, but what relative position you bear to the vessel?

10 A Yes, sir.

11 Q Describe that briefly to the Judge?

12 A The general navigation lights consist of two  
13 forward-facing range lights, the aft one being higher than  
14 the forward one, to give a perspective, port and starboard  
15 side lights, and a stern light.

16 Q Are those lights commonly visible at a distance  
17 that corresponds to the maximum width of the vessel traffic  
18 system?

19 A The range lights are six mile visibility lights  
20 required.

21 Q Besides expecting to receive a radio  
22 communication from the Exxon Valdez about ice, did you  
23 expect to meet it and -- in the course of its outbound  
24 transit and your inbound transit?

25 A I expected to pass the ship, yes, sir.



1 Q Did you have some idea of where that -- where you  
2 expected that to occur?

3 A Somewhere south of Naked Island.

4 Q In fact, did you receive any such ice report from  
5 the Exxon Valdez, or did you pass it?

6 A Yes, sir.

7 Q Explain what happened?

8 A To the best of my recollection, inbound at Cape  
9 Hinchinbrook when we passed about -- oh, it was sometime  
10 after passing Cape Hinchinbrook, we heard what was the  
11 Valdez reporting to the Vessel Traffic Center, but we did  
12 not hear the full context of the conversation. Shortly  
13 after that, approximately 0043 or 45, I believe, we were  
14 contacted by the Vessel Traffic System to notify us that  
15 the port was closed and to proceed to Knoll's Head  
16 anchorage.

17 Q What does the closing of a port mean?

18 A In this instance, they -- the Coast Guard did not  
19 want us to transit into the Port of Valdez. I called for a  
20 reconfirmation of that, and confirmed that we should  
21 proceed to Knoll's Head anchorage.

22 Q And, on Plaintiff's Exhibit 1, the chart -- is  
23 the anchorage shown there, as well?

24 A Yes, sir. It's on -- it's right here.

25 Q And is it so marked with Anchorage Area 110.233?

1 A That is correct.

2 Q And did you go there?

3 A Yes, sir.

4 Q And anchor there?

5 A Yes, sir.

6 Q How long did you stay there?

7 A We were there for approximately six-and-a-half  
8 days.

9 Q Until the port was open?

10 A Yes, sir.

11 MR. LINTON: Nothing further, Your Honor.

12 THE COURT: Mr. Friedman?

13 MR. FRIEDMAN: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. FRIEDMAN:

16 Q Captain, why didn't you hear the full  
17 conversation between the Exxon Valdez and the traffic  
18 control center?

19 A I think partly due to the transmission power of  
20 his VHS radio or my receiver. I just didn't quite get the  
21 full conversation, although also I wasn't standing right  
22 next to the radio, so by the time I heard it, I heard some  
23 reference to what was happening, but I wasn't clear on the  
24 context of the conversation. But the conversation wasn't  
25 directed at me, so I just -- I did not respond.

1 Q Okay. But do you recall, was there -- was it a  
2 faint signal?

3 A It seemed like it wasn't fully clear. I don't  
4 recall if the signal was good or -- I just don't remember  
5 catching the full context of the conversation.

6 Q Okay.

7 If you have a report of ice in the channel --  
8 well, let me ask you this, first of all. At any point  
9 going into Valdez, do you ordinarily slow the tanker down?

10 A On approach to the pilot's station, yes, sir.

11 Q Okay. And would you, on occasion, slow it down  
12 before then if you had reports of ice in the traffic lanes?

13 A Yes, sir.

14 Q If, on this evening, you had -- well, you already  
15 had reports on ice in the traffic lane.

16 A Yes, sir.

17 Q Ordinarily, how much would you slow down in  
18 response to that?

19 A It depends on the existing conditions, the  
20 visibility, how much ice was being picked up by radar, what  
21 was reported to me. It would vary.

22 Q Now, if you slowed down in the traffic lane, that  
23 would put your -- you gave us an estimated time at -- I  
24 think it's the red cross, at 0250. If you slowed down, it  
25 would be some time later than that, isn't that correct?



1 MR. LINTON: Not from my standpoint.

2 MR. FRIEDMAN: No.

3 Whereupon,

4 GARY GRAHAM

5 called as a witness by counsel for the State of Alaska, and  
6 having been duly sworn by the Clerk, was examined and  
7 testified as follows:

8 THE WITNESS: Good morning, Your Honor.

9 THE CLERK: Please state your full name, and  
10 spell your last name?

11 THE WITNESS: My name is Gary E. Graham,  
12 G-r-a-h-a-m.

13 THE CLERK: And your current mailing address?

14 THE WITNESS: P.O. Box 731, Cordova, Alaska,  
15 99574.

16 THE CLERK: And your current occupation?

17 THE WITNESS: I'm an air taxi operator. I'm a  
18 pilot.

19 THE COURT: Just for the record, since it didn't  
20 bother you, I want to state that my knowledge of Mr. Graham  
21 won't affect my ability to hear his testimony impartially.  
22 You may proceed.

23 DIRECT EXAMINATION

24 BY MR. LINTON:

25 Q How long have you lived in Cordova, sir?

1 A At this time, for about three-and-a-half.

2 Q And some time before that, as well?

3 A Yes, on and off as a pilot. I've lived there on  
4 and off, working different jobs in Cordova.

5 Q And would you describe your business, please?

6 A I own an air taxi operation. We operate seven  
7 flow planes and two wheel planes.

8 Q In Cordova?

9 A Yes, sir.

10 Q Do you have routes which take you to Tatitlek?

11 A Yes, I do.

12 Q There is, off to your left there, a chart  
13 (inaudible). On what's been marked as Plaintiff's Exhibit  
14 2, would you point out the location of the town of Cordova?

15 A Cordova is right down here on the \_\_\_\_\_ Lake  
16 and \_\_\_\_\_ Inlet.

17 Q So marked. And would you point out the location  
18 of the village of Tatitlek?

19 A Tatitlek is right here.

20 Q And it is so marked there, as well?

21 A Yes, it is.

22 Q Just to the east of Bligh Reef?

23 A Yes, it is.

24 Q Do you have regular routes that you fly in your  
25 business?

1 A Yes, sir, I do.

2 Q Would you explain where you -- what regular  
3 routes you fly to?

4 A Well, we have the U.S. Postal Service contract  
5 that takes us, on Tuesdays and Fridays, to Tatitlek and  
6 Ellamar -- Ellamar, which is just a little bit north of  
7 Tatitlek on the Bay.

8 Q Is there an airstrip at Tatitlek or at Ellamar?

9 A There's an airstrip at Tatitlek and we land at  
10 Ellamar in a float plane.

11 Q Do you customarily go to Tatitlek on a float  
12 plane as well?

13 A Sometimes. It depends on whether we're going to  
14 Ellamar that day or not.

15 Q On Friday, March 24, 1989, were you scheduled to  
16 fly such a route?

17 A Yes, sir, we were.

18 Q First, was it a scheduled route that you went  
19 every time, the same each time, on Tuesdays and Fridays?

20 A Yes, sir.

21 Q Is that required by contract with the Postal  
22 Service?

23 A Yes, sir, it is.

24 Q And at what time on March 24, 1989 were you  
25 scheduled to make a flight to Tatitlek?

1           A     Our schedule normally calls for us to depart  
2 Cordova around 9:00 a.m., in the morning.

3           Q     What is the travel time of the average flight  
4 from -- well, first, do you first, do you fly those routes  
5 yourself?

6           A     Yes, sir, I do.

7           Q     And were you scheduled to actually fly this route  
8 yourself on March 24, 1989?

9           A     Yes, I was.

10          Q     What is the time of a flight from Cordova to the  
11 village of Tatitlek?

12          A     In a wheel plane, it's about 15 minutes; in a  
13 float plane, it's about 20 to 25 minutes.

14          Q     Which were you scheduled to fly that day?

15          A     The wheel plane that day.

16          Q     The landing strip at Tatitlek is in what  
17 direction, or directions?

18          A     It lies in a northwesterly, southeasterly  
19 direction.

20          Q     And does the traffic pattern -- do you recall  
21 which direction the traffic pattern at the strip lay that  
22 day?

23          A     That day, the traffic pattern would have been a  
24 righthand traffic pattern out over Tatitlek narrows, coming  
25 back around and landing to the southeast.



1 Q Is the traffic pattern set up so that aircraft  
2 stay to the west of the landing strip?

3 A Normally, sir, yes.

4 Q Is the location of the landing strip -- would you  
5 describe where, with respect to the village of Tatitlek,  
6 the landing strip you're referring to is?

7 A The landing strip is adjacent to the village,  
8 approximately a quarter of a mile down the hill from where  
9 the village, the village proper, lies.

10 Q Is that to the south, north, east, west --

11 A West.

12 Q -- of the village?

13 A West.

14 Q West of the village.

15 There is, on Plaintiff's Exhibit 1 a red X marked  
16 MJB, located roughly ten miles, nautical miles, west of the  
17 cupula in Tatitlek. Would you tell us, estimate for us  
18 with respect to the cupula marked at the village in  
19 Tatitlek, where the air strip is and what the distance  
20 would be from the airstrip to the MJB red X that you see  
21 marked on Exhibit 1, please?

22 A The air strip would be -- would you like me to --

23 Q Yeah.

24 A -- show you in a direct --

25 Q That's right.

1           A     The air strip runs this direction, right here,  
2 and it's approximately -- I didn't think it was ten miles.  
3 I'd estimated it somewhere between six and seven miles.  
4 But I suppose it is ten.

5           Q     Roughly, just draw in the location of the air  
6 strip and put your initials by it, and identify that line  
7 as that the air strip.

8                     (Pause)

9           Q     Did you fly the route that day?

10          A     Yes, sir, I did.

11          Q     And do you recall which direction the winds were  
12 so that you know what kind of an approach you made to get  
13 into the traffic pattern?

14          A     I do recall. There was no wind that day, and  
15 normally, when we're landing there, the strip runs in an up  
16 hill -- has a little bit of an up hill gradient landing to  
17 the northwest, but if there's any kind of a wind at all,  
18 we'll land into the wind, but if there's no wind and the  
19 runway is not icy, we'll normally land downhill to keep  
20 from having to make a 180-degree turn on the runway. And I  
21 did, that day, make my approach out over Tatitlek narrows,  
22 over Ellamar, and come back on around and land to the  
23 southeast.

24          Q     In the ordinary course of such an approach, would  
25 you have had a view of the location of the red X with the

1 MJB beside it?

2 A Yes, sir. I would.

3 Q When you flew the route that day, did you see  
4 anything in the location of the red X at MJB?

5 A Yes, sir, I did.

6 Q What did you see?

7 A A tanker.

8 Q Was that the first time that day you'd seen it?

9 A No, sir, it wasn't. I had been out earlier in  
10 the day when we heard about the tanker aground, we  
11 immediately jumped in an aircraft and went out to see how  
12 bad it was.

13 Q Could you explain to the Judge how you heard  
14 about it, and what you mean when you say you jumped in an  
15 aircraft -- was that business, or was that just curiosity?

16 A Well, it was actually business. We had -- well,  
17 it was more curiosity. I'll back that up a little bit.  
18 I'll have to admit that it was -- I was very curious,  
19 because we're all kind of afraid of it. But I woke up --  
20 normally, at that time of year, it's kind of a laid back  
21 time of year for us. We're getting ready for the herring  
22 season to start, and woke up at 6:00 o'clock in the morning  
23 to the news that there was a tanker aground, and  
24 immediately flew out of bed, went down, and we usually keep  
25 an airplane fueled and on the dock or in the hangar,

1 normally keep an airplane fueled in case there's an  
2 emergency Medivac or something of this nature that we had  
3 to jump in and go, and we immediately jumped in the  
4 aircraft and went out and saw the tanker.

5 Q What time was it that you saw the tanker?

6 A About 6:45. Between 6:45 and 7:00 o'clock.

7 Q Was the sun up at that point, that time of year?

8 A The sun wasn't up, but there was sufficient  
9 daylight to see it.

10 Q Could you tell whether it was leaking oil?

11 A It was obvious that it was leaking oil.

12 Q Could you discern a pattern of oil in the water?

13 A Yes, sir, I could.

14 Q Could you show us where, or describe for us  
15 where, it was with respect to the vessel?

16 A The pattern of the oil was extending out in this  
17 direction from the tanker.

18 Q So it was (inaudible) and describe it for the  
19 Judge?

20 (Pause)

21 Put your initials by it to identify it, sir.

22 A Yes, I did. Yes, I did.

23 Q Were you out by yourself?

24 A No, we had some fisherman friends that --  
25 everybody was obviously concerned about this because of the

1 upcoming fishing season, and we had some fisherman friends  
2 that wanted to jump on the airplane, so we had a load of  
3 fishermen on the aircraft.

4 Q What was their concern?

5 A With the upcoming fishing season, whether or not  
6 we were going to have it.

7 Q That it might be closed, the period might be  
8 closed --

9 A Yes, sir.

10 Q -- closed by the Department of Fish and Game.

11 A Yes, sir.

12 Q Had they come to you that morning with such a  
13 request that you fly such a flight?

14 A Two of them had, and I called another two of them  
15 that hadn't heard about it yet and asked them if they'd  
16 like to get on the aircraft and go out with us. There was  
17 a lot of concern about what was going to happen, what the  
18 impact would be on the fisheries.

19 I mean, Cordova's a fishing town, and we don't  
20 have any other source of income but fisheries, and  
21 everybody was very concerned.

22 Q Did you say the 7:15 time was the time you  
23 departed from Cordova, or the time you were in the vicinity  
24 of the --

25 A I don't remember the exact time, but we were in

1 the vicinity somewhere around 7:00 o'clock or 7:15.

2 Q Had you not been aware that the vessel's  
3 situation there on the rocks was already known publicly by  
4 having heard it broadcast over the radio, would you have  
5 told somebody that you had seen it?

6 A Oh, yes, sir. I would have. I've been watching  
7 those tankers -- can I say something? I've been watching  
8 those tankers for a lot of years, and everybody knows where  
9 the tanker lanes are at and where those tankers belong and  
10 where they don't belong, and that's -- everybody knows  
11 where Bligh Reef is at, and knows the rocky areas in  
12 there. There's been a lot of ships over the last hundred  
13 years that have gone down or run aground on those reefs.

14 If I had seen that there, and it hadn't been  
15 obvious, I would have known.

16 Q And reported it?

17 A Yes, sir.

18 MR. LINTON: Nothing further, Your Honor.

19 CROSS EXAMINATION

20 BY MR. FRIEDMAN:

21 Q Mr. Graham, when was your scheduled Post Office  
22 flight?

23 A I'm sorry. I didn't catch that.

24 Q As I understand it, you've got a Post Office  
25 contract --

1 A Yes, sir, I do.

2 Q -- to deliver mail that had you not heard of the  
3 tanker grounding, you would have gotten up in the morning  
4 and eventually gone to do the postal route. Is that right?

5 A Yes, I would.

6 Q And when would you have actually flown that  
7 route?

8 A Normally, we're able to pick the mail up from the  
9 Post Office at 8:00 o'clock, and the Tatitlek and Ellamar  
10 mail is normally our first run of the day. We have other  
11 Postal contracts, but normally on the Friday we run the  
12 Tatitlek-Ellamar mail first and then continue on around the  
13 Sound with the rest of the mail at a later time.

14 Q Okay. So what is your best estimate as to when  
15 you would have seen the tanker?

16 A Between 8:30 and 9:00 o'clock.

17 Q All right.

18 MR. FRIEDMAN: Thank you. I don't have any other  
19 questions.

20 THE COURT: Anything further?

21 MR. LINTON: Nothing further, Your Honor.

22 THE COURT: Thank you, Mr. Graham. You may step  
23 down. You are excused.

24 Let's take a little break.

25 THE CLERK: Please rise. This Court stands in

1 recess until the call.

2 (A recess was taken from 9:50 a.m. to 10:08 a.m.)

3 THE COURT: Call your next witness.

4 MR. LINTON: I call Mary Ann Henry.

5 Whereupon,

6 MARY ANN HENRY

7 called as a witness by counsel for the State of Alaska, and

8 having been duly sworn by the Clerk, was examined and

9 testified as follows:

10 THE CLERK: Please state your full name, and  
11 spell your last name?

12 THE WITNESS: My name is Mary Ann Henry. My last  
13 name is spelled H-e-n-r-y.

14 THE CLERK: And your current business mailing  
15 address?

16 THE WITNESS: 1031 West 4th, Suite 520.

17 THE CLERK: And your current occupation?

18 THE WITNESS: Assistant District Attorney.

19 THE COURT: You may inquire. I was advised that  
20 the audio pick up is picking up your voices when you're  
21 whispering back and forth, so you might want to watch that.

22 MR. : Thank you.

23 THE COURT: All right.

24 DIRECT EXAMINATION

25 BY MR. LINTON:



1 Q Tell us your educational background, please?

2 A I graduated from \_\_\_\_\_ University with a  
3 degree in mathematics, and then I graduated from Harvard  
4 Law School with a J.D. in 1976.

5 Q And where are you admitted to practice law?

6 A In the state of Alaska.

7 Q How long have you been admitted to practice in  
8 the state of Alaska?

9 A Thirteen-and-a-half years.

10 Q And how long have you been employed by the  
11 District Attorney's office?

12 A Thirteen-and-a-half years.

13 Q And would you tell the Judge where you've worked  
14 and in what capacities with the state department of law?

15 A I have been an Assistant District Attorney in the  
16 Anchorage District Attorney's office for five years, and  
17 then I transferred to Ketchikan, where I was the District  
18 Attorney for five-and-a-half years, and then more recently  
19 I've been reassigned to the Anchorage office again.

20 Q Did you prepare an affidavit in support of an  
21 answer to a motion to dismiss and suppress evidence on the  
22 grounds of federal immunity?

23 A Yes, I did.

24 MR. LINTON: Judge, would the Court -- if I could  
25 just show that to you -- Judge, I'd ask that that be

1 accepted as part of her direct testimony in these  
2 proceedings, and I would ask a few more questions now.

3 THE COURT: I have the affidavit attached to the  
4 answer to the motion?

5 MR. LINTON: That is correct.

6 THE COURT: I have that. And you wish to have  
7 that stand --

8 MR. LINTON: Adopted by --

9 THE COURT: -- stand as direct testimony subject  
10 to cross-examination?

11 MR. LINTON: Yes, sir. (Inaudible).

12 THE COURT: And, for the record, that's an  
13 affidavit, five-page affidavit, sworn before a Notary  
14 Public on the 30th day of October at Anchorage, Alaska.

15 THE WITNESS: Perhaps I should clarify. I did  
16 two affidavits. One was in support of the opposition to  
17 the motion to dismiss for failure to present exculpatory  
18 evidence. That's another issue.

19 THE COURT: Was that a difference date than the  
20 30th, or the same date? The one I have is a five-page  
21 affidavit --

22 THE WITNESS: I believe that was a different  
23 date.

24 THE COURT: Yes. In paragraph two, it says, "In  
25 April 1989, I was assigned responsibility for determining

1 whether felony charges should be brought against Captain  
2 Joseph Hazelwood."

3 THE WITNESS: Yes, Your Honor, the one dated the  
4 30th, the five-page one, is the one that refers to this  
5 hearing.

6 THE COURT: We'll accept it as testimony at this  
7 time.

8 MR. LINTON: Judge, I have a copy (inaudible) for  
9 the record (inaudible).

10 THE COURT: 15 is admitted, subject to  
11 cross-examination.

12 (State's Exhibit 15 was  
13 marked for identification and  
14 was received in evidence.)

15 MR. LINTON: Judge, along the same administrative  
16 lines, I'm going to be asking questions from the Grand Jury  
17 transcript. I'm trying to think what is the best way to  
18 make that part of the record, and to make sure we're all  
19 operating from the same set of documents. I have had some  
20 indications that perhaps the defense's references are  
21 different than my references to the Grand Jury and --

22 THE COURT: I have a two-volume transcript of  
23 what I believe to be the Grand Jury proceedings. These are  
24 the originals, received August 18th. Is that the --

25 MR. FRIEDMAN: We have two different ones, Your

1 Honor. Maybe we could take a page at random and compare  
2 and see which one the Court has.

3 THE COURT: The one I have is a little over 500  
4 pages.

5 MR. FRIEDMAN: I have 503 pages, Your Honor,  
6 total.

7 THE COURT: Grand Juror's decisions and  
8 deliberations on 502. The first witness was William Edward  
9 Murphy.

10 MR. LINTON: Yes, I was afraid that -- mine goes  
11 up to -- the final attestation is on 671 in mine. That's  
12 -- I thought there might be that problem. Rats.

13 THE COURT: I think I have the original. Perhaps  
14 we should proceed on the basis of the original. If it is  
15 numbered differently, it might be a little hard to follow.  
16 It sounds like Mr. Friedman and mine do not correspond.

17 MR. LINTON: Two out of three wins.

18 THE COURT: Two out of three wins.

19 MR. LINTON: Right.

20 THE COURT: All right.

21 MR. LINTON: With the Court's permission, then,  
22 if I need to refer to it, perhaps I can use the Court's  
23 copy.

24 THE COURT: If you're going to refer to it, go  
25 ahead.

1 MR. LINTON: Thank you, sir.

2 (Pause)

3 BY MR. LINTON: (Resuming)

4 Q Miss Henry, referring to the Grand Jury  
5 transcript, you were responsible for the presentation of  
6 the witnesses that are listed in the Grand Jury  
7 transcripts?

8 A That is correct.

9 Q Brent Cole was not responsible for presenting any  
10 of the witnesses who testified?

11 A He was not responsible. As it turned out, he did  
12 present one witness, because I started choking.

13 Q At the time you decided which witnesses to call  
14 for the Grand Jury, had you received certain reports that  
15 had been identified to you as having been screened by --

16 A At the time, I decided -- or at the time I put  
17 out a subpoena list, I did not have any reports. At the  
18 time I presented the witnesses on May 1st, 2nd and 3rd, I  
19 had some reports, and then I got additional reports later,  
20 before I presented witnesses on the 17th and the 22nd.

21 Q On what basis did you then decide who to subpoena  
22 to the Jury?

23 A I was give the names, or at least the occupation,  
24 of proposed witnesses from Larry Weeks.

25 Q Can you list the witnesses who he proposed that

1 you call, and directed that you issue subpoenas for?

2 A Yes. Mr. Delozier from the Coast Guard; Trooper  
3 Fox; Mrs. Delozier, Mr. Delozier's wife; a pilot by the  
4 name of Murphy -- Mr. Weeks did not know his first name; a  
5 taxicab driver, name unknown; two Alyeska security guards;  
6 Mr. LeBeau. I believe those are the only names I got from  
7 Mr. Weeks. If I can just refer to the list for a moment.

8 Oh, Ms. Caples. He just said the ship's agent.  
9 He did not know her name. And Mr. Beevers.

10 Those were the names that I got, or the  
11 occupations that I got, from Mr. Weeks.

12 The intent was that Dean Guaneli was to obtain  
13 witnesses for me who would testify about damages, but I  
14 didn't have any names initially.

15 Q Tell me what you mean by testify about damages?

16 A Certain witnesses, particularly from Fish and  
17 Game and from DEC who had made observations of damages to  
18 wildlife and also to the beaches, and who protected the  
19 hatcheries, that would be testifying as to the costs of  
20 clean up, the costs of protecting the hatcheries, and just  
21 generally damages that they observed.

22 Q But the witnesses who were to testify to that  
23 would be supplied at a later point by Mr. Guaneli?

24 A That's correct.

25 Q Prior to Grand Jury, did you receive -- well,

1 first, did Michael Fox testify at Grand Jury?

2 A No, he did not.

3 Q Have you ever received any statements from  
4 Michael Fox to be used in preparation for the case?

5 A No. I think one statement where he interviewed  
6 somebody else, but I had nothing where Mr. Fox had any  
7 information to give me.

8 Q Do you recall who that witness was?

9 A No, I don't.

10 (Pause)

11 Q Was it a witness that you called at Grand Jury?

12 A That I don't remember either.

13 Q Let's go through the list of the witnesses who  
14 appeared at Grand Jury and tell us whether you have --

15 MR. LINTON: Well, first, may I have the series  
16 of documents marked as the next State's Exhibit (inaudible)  
17 right on down the list, I think (inaudible).

18 (State's Exhibits 16 through  
19 30 were marked for  
20 identification.)

21 (Pause)

22 (Tape changed to C-3503)

23 (Pause)

24 BY MR. LINTON: (Resuming)

25 Q I (inaudible) exhibits 16, 17, 18, 19, 20, 21,

1 22, 23, 24, 25, 26, 27, 28, 29, and 30, and I ask you  
2 whether you recognize them?

3 A Yes, I do.

4 Q Could you explain to the Judge what they are?

5 A Setting aside Plaintiff's Exhibit for a moment,  
6 the rest of the exhibits, 16 through 29, are transcripts of  
7 interviews with witnesses, the interviews being conducted  
8 by one of various state troopers.

9 The Plaintiff's Exhibit Number 30 is a group of  
10 documents of interviews, not transcripts, but summaries of  
11 interviews, of witnesses again, these interviews being  
12 conducted by one of two FBI agents.

13 Q Did you have any of those prior to your  
14 presentation of witnesses to the Grand Jury?

15 A I had all of them prior to each individual  
16 witness testifying. So, for instance, I had Mr. Delozier  
17 before he testified -- I mean, Mr. Murphy's before he  
18 testified -- but I didn't have the FBI interviews until  
19 later. But I had them before those witnesses testified.

20 Q Did you have one for Mr. Delozier?

21 A I don't think I did. I had one for his wife.  
22 No, I don't believe I did. All I used him for was to  
23 introduce some documents, so --

24 Q One of those (inaudible).

25 A Those --



1 Q (Inaudible) to refresh your recollection about  
2 the Mr. Fox that you were referring to, Mr. Fox?

3 A Yes. The interview with Sergeant Michael Craig  
4 of the Alyeska Guards, Sergeant McGee apparently  
5 interviewed him, but Trooper Fox was present. That is the  
6 only one where Trooper Fox was apparently present.

7 MR. LINTON: I move admission (inaudible) 16  
8 through 29, Your Honor.

9 MR. LINTON: No objection.

10 THE COURT: 16 through 29 are admitted.

11 (State Exhibits 16 through 29  
12 were admitted into evidence.)

13 BY MR. LINTON: (Resuming)

14 Q Explain Exhibit 30, please.

15 A Exhibit 30, once again, is several documents  
16 which are summaries of interviews of witnesses, those  
17 interviews being conducted by either Special Agent Don  
18 Steele or Special Agent Don McMullen.

19 Q And they are interviews of what persons?

20 A Do you want me to go through every one?

21 Q Yes, let's go through every one.

22 A Okay. They appear to be mostly the employees of  
23 Exxon. The first one is Mr. Claar. The second is Mr.  
24 Radkey. Mr. Kunkel. Mr. LeCain. Mr. Roberson. Mr.  
25 Peacock. Carl Jones. Maureen Jones. Mr. Kagan. Mr.

1 Glowack. Ray Jones. Mr. Oldham. Ms. Haven. Mr. John  
2 Stewart. Mr. Boyle. Mr. Enou, or Ennow (PH). Mr.  
3 Nanensus (PH) and Ms. Wright.

4 Q Let's compare Exhibit 30 to Exhibit 7, the crew  
5 list. With respect to the first individual, Mr. Claar, was  
6 he a crew member?

7 A Yes, he was, on the Exxon Valdez.

8 Q And the next individual?

9 A Mr. Radkey -- should be there. Yes, he is. Do  
10 you want me again to go through these?

11 Q Yes.

12 A Okay. Mr. Kunkel --

13 Q Is?

14 A -- is on the crew list.

15 Q Mr. LeCain is on the crew list. Mr. Roberson is  
16 there. Mr. Peacock, yes, he's there. Let's see. Mr. Carl  
17 Jones is there. Maureen Jones is there.

18 Mr. Kagan is there. Mr. Glowacki is there. Ray  
19 Jones is there. Graham Oldham is there. Ms. Haven is  
20 there. John Stewart is there.

21 Q (Inaudible).

22 A Francis Boyle is there. Michael Ennow is there.  
23 Mr. Nanensus is there, and Ms. Wright is there.

24 Q So the report that you had at the time of your  
25 presentation (inaudible) individual to wasn't listed on the

1 crew?

2 A Yes, that's correct.

3 Q Did Mr. Fox testify before the Grand Jury?

4 A No, he did not.

5 Q Explain why?

6 A I was told that he was -- he had information that  
7 I was not permitted to have, and that, in fact, he had  
8 nothing that he could tell the Grand Jury. So I excused  
9 him. I met him in the front office -- the reception area  
10 of our office and apologized for bringing him up and told  
11 him that I wasn't going to be calling him.

12 Q When you say he had nothing he could tell the  
13 Grand Jury, do you mean to say that he did not have any  
14 information about the circumstances of the grounding and  
15 oil spill, or that there was something else which  
16 \_\_\_\_\_ no information?

17 A I was informed that he had nothing that he could  
18 tell the Grand Jury that would be permitted to be presented  
19 under the Grand Jury.

20 Q Permitted under the guidelines set forth in your  
21 affidavit?

22 A That is correct.

23 Q How about Mr. Delozier?

24 A Mr. Delozier did testify.

25 Q Did he testify about anything other than -- other

1 than to identify records that he had seized from the ship?

2 A As best I recall, that's all he testified about.  
3 That was my only intent, was for him to identify records,  
4 documents. As I recall, that's all he testified to.

5 Q Did you interview him, or otherwise gain  
6 information from him about what he had observed while he  
7 was onboard the ship, apart from records?

8 A No.

9 Q I'd like to go through the witnesses, then, who  
10 appeared before the Grand Jury as it appears on the face of  
11 the Grand Jury transcript. The witnesses for the plaintiff  
12 number one were William Edward Murphy. Did you have a  
13 statement from another interview concerning an interview  
14 with William Edward Murphy?

15 A I did.

16 Q Could you identify the exhibit number  
17 (inaudible)?

18 A It's Plaintiff's Exhibit Number 27. It's a  
19 draft. It's not on final Trooper paper. That's all I had  
20 at the time.

21 Q An interview conducted on what date, according  
22 to \_\_\_\_\_?

23 A April 4, 1989.

24 Q The next witness was a Patricia Caples. Did you  
25 have a statement from her?

1           A     I don't recall if I did. Yes, I did. That's  
2 Plaintiff's Exhibit 22.

3           Q     And it's dated --

4           A     March 28, '89.

5           Q     Next, Michael Edward Craig.

6           A     I had an interview with Sergeant Craig.  
7 Plaintiff's Exhibit 23, dated March 27, 1989.

8           Q     Richard L. Wade?

9           A     No, I did not have an interview with him.

10          Q     John R. Hillsinger.

11          A     I had no interview with him.

12          Q     James F. Haden.

13          A     I had no interview with him.

14          Q     Mark James Delozier.

15          A     I had no interview with him.

16          Q     Robert A. Beevers.

17          A     I had no interview with him. I did talk to him,  
18 however, prior to his transcript.

19          Q     Thomas Michael Kron.

20          A     I had no interview with him.

21          Q     Joseph LeBeau.

22          A     No interview.

23          Q     Bruce Suzumoto.

24          A     I had no interview with him.

25          Q     James F. Haden.

1           A     This is the second time he's testified, still no  
2 interview with him.

3           Q     Jerzy Glowacki.

4           A     Yes, I had one with him. That's Plaintiff's  
5 Exhibit 25, dated March 30, 1989.

6           Q     Floyd LeCain.

7           A     Mr. LeCain's interview is Plaintiff's Exhibit  
8 Number 16, dated March 30, 1989.

9           Q     Paul R. Radkey?

10          A     Mr. Radkey's interview is Plaintiff's Exhibit  
11 Number 21, dated March 30, 1989.

12          Q     Harry Claar, C-l-a-r-r. C-l-a-a-r.

13          A     Mr. Claar's interview is Plaintiff's Exhibit 24,  
14 dated March 30, 1989.

15          Q     James R. Kunkel, K-u-n-k-e-l.

16          A     Mr. Kunkel's interview is Plaintiff's Exhibit  
17 Number 19, dated March 30, 1989.

18          Q     Robert M. Kagan.

19          A     Mr. Kagan's interview is Plaintiff's Exhibit  
20 Number 20, dated March 30, 1989.

21          Q     Maureen L. Jones.

22          A     Ms. Jones' interview is Plaintiff's Exhibit  
23 Number 17, dated March 30, 1989.

24          Q     Gordon Paul Taylor.

25          A     I did not have an interview with Mr. Taylor.

1 Q Robert A. Beevers.

2 A Again, no interview with him, although I did talk  
3 to him before he testified.

4 Q What I'd like to do now is go through the same  
5 list --

6 A Excuse me. It looks like we have some duplicates  
7 here.

8 Q Mr. Kagan?

9 A Two of Mr. Kagan, yes. One is Plaintiff's  
10 Exhibit 20 and one is Plaintiff's Exhibit 19. They're both  
11 interviews with Mr. Kagan, and they appear to be  
12 duplicates.

13 THE COURT: 19 and 20, you say?

14 THE WITNESS: 18 and 20.

15 THE COURT: 18 and 20.

16 BY MR. LINTON: (Resuming)

17 Q With respect to William Edward Murphy, did you  
18 tell me you had a statement that was a basis for your  
19 question (inaudible)?

20 A That is correct.

21 Q As to Ms. Patricia Caples, you had a statement  
22 which was the basis for questioning him before the Grand  
23 Jury.

24 A For questioning her, yes.

25 Q For questioning -- and as to Michael Edward

1 Craig, you had a statement from him which was the basis for  
2 questioning him before the Grand Jury.

3 A That is correct.

4 Q Before meeting him (inaudible) questioning when  
5 he appeared before the Grand Jury?

6 A That is correct.

7 Q Okay.

8 Richard L. Wade. Did you have a statement from  
9 him beforehand?

10 A No, I did not. Sergeant Stogsdill did interview  
11 him prior to his taking the stand.

12 Q Could you tell us briefly what Richard L. Wade  
13 had testified on?

14 A Mr. Wade owns a diving business in Valdez, and he  
15 is one of the persons who dove underneath the Exxon Valdez  
16 for several days, I believe, after the grounding and the  
17 spill. The purpose of his testimony was to introduce a  
18 diagram that he had done showing the damages he observed as  
19 he dove under the Exxon Valdez.

20 Q Where did you find his name to call him to the  
21 Grand Jury?

22 A I was provided his name by Mr. LeBeau.

23 Q And Mr. LeBeau is who?

24 A He works for DEC, and I think he was temporarily  
25 assigned in the Valdez area during this time period.



1 Q John R. Hillsinger. Did you have a statement  
2 from him?

3 A No, I did not.

4 Q Where did you get the name, John R. Hillsinger,  
5 H-i-l-l-s-i-n-g-e-r?

6 A From Dean Guaneli.

7 Q Would you explain the circumstances under which  
8 that arrangement -- that was made (inaudible)?

9 A Again, when I was initially assigned to this  
10 case, Dean Guaneli was assigned to provide me with  
11 witnesses who would testify as to damage for purposes of  
12 Grand Jury, and Mr. Guaneli sent me a memo giving me some  
13 names with a summary of what he expected they might say if  
14 I called him, and I believe Mr. Hillsinger was on that  
15 memo.

16 Mr. Hillsinger may have given me that name  
17 orally, I'm not sure, but I think he was on the memo.

18 Q The next name.

19 A The next name is Mr. Haden.

20 Q Did you have a statement from him beforehand?

21 A No, I did not.

22 Q Where did you get his name?

23 A From Mr. LeBeau again, from DEC.

24 Q Had you made a request from Mr. LeBeau that  
25 caused him to do that?

1           A     I did. I told Mr. LeBeau that I needed someone  
2 from DEC who could testify generally about the costs of  
3 cleanup, and also who could testify about the efforts to  
4 save those hatcheries and the costs of those efforts, and  
5 Mr. LeBeau told me that Mr. Haden was apparently  
6 responsible for a lot of the hatchery protection, and also  
7 was responsible for keeping track of the bills to turn over  
8 to Exxon.

9           Q     The next name.

10          A     That's Mr. Delozier from the Coast Guard. That  
11 name I got from Mr. Weeks.

12          Q     The next name.

13          A     Mr. Beevers. That name I got -- I also got from  
14 Mr. Weeks.

15          Q     The next name?

16               MR.               : I'm sorry. Excuse me. I missed  
17 that last name?

18               THE WITNESS: Mr. Beevers.

19               MR.               : Thank you.

20               THE WITNESS: The next name is Thomas Kron,  
21 K-r-o-n. I got that name from Mr. Guaneli. He was another  
22 damage witness.

23               Joe LeBeau from DEC, I got his name from Mr.  
24 Weeks.

25               BY MR. LINTON: (Resuming)

1 Q Did you have any statements from Joe LeBeau at  
2 the time you called him to testify?

3 A I did not.

4 Q What was the purpose of calling him, now?

5 A He had taken some video film of the oil on the  
6 beaches, and also picking up some of the wildlife, and I  
7 wanted to present that videotape to the Grand Jury.  
8 Additionally, he had collected aerial photographs -- I  
9 believe -- I'm not sure if he took them or not, but he was  
10 present when some aerial photographs were taken which  
11 showed some of the extent of the spill; and he also had  
12 some computer graphics, which again showed the extent of  
13 the spill over a period of time; and finally, he brought in  
14 a sample of oil.

15 Q A sample that he had taken at some point.

16 A A sample he had taken off one of the beaches.

17 Q At the time he appeared before the Grand Jury,  
18 did you know whether or not he had been present on the  
19 Exxon Valdez on March 24, 1989?

20 A I don't know if I knew that at that point or not.

21 Q Did you ask him any questions about whether he  
22 had been on board?

23 A No.

24 Q And did you utilize any testimony from him about  
25 his observations on board on March 24, 1989?

1 A As far as I can remember, I don't think I did.

2 Q The next name.

3 A Bruce Suzumoto. I received his name from Dean  
4 Guaneli.

5 Q The next name.

6 A The next name is again Mr. James Haden, who had  
7 already testified.

8 The next name is Jerzy Glowacki. We're now  
9 starting members of the crew of the Exxon Valdez. I got  
10 Mr. Glowacki's name from the police report, specifically  
11 from a trooper interview, and also from an FBI interview.

12 Q Continue.

13 A Mr. LeCain, again an employee on the Exxon  
14 Valdez. I got his name from the police reports.

15 Q Continue.

16 A Mr. Radkey, also an employee. I got his name  
17 from the police reports.

18 Mr. Claar, I got his name from the police  
19 reports.

20 Mr. Kunkel, I got his name from the police  
21 reports.

22 Mr. Kagan, same thing, from the police reports.

23 And Ms. Jones, I got her name from the police  
24 reports.

25 The next witness is Gordon Paul Taylor who, if I

1 recall, is a civilian employed for the Coast Guard. What  
2 happened there is I had received from you an edited tape of  
3 a conversation partly between Mr. Hazelwood and the Coast  
4 Guard, and I wanted someone to introduce that tape. So I  
5 advised Miss Robinson, the paralegal, that she should find  
6 out who, from the Coast Guard's, voice was on that tape and  
7 to bring him in. It turned out to be Mr. Taylor.

8 Q Other than to have him authenticate that tape,  
9 did you elicit any other testimony?

10 A I don't believe so. I might have asked him a  
11 little bit of background about his responsibilities and  
12 perhaps some discussion of things that may have occurred  
13 before the tape, but then it was basically, "Do you  
14 recognize your voice on this tape?"

15 Q Feel free to \_\_\_\_\_ the Grand Jury \_\_\_\_\_  
16 if that helps.

17 (Pause)

18 A Yes. His testimony was very short. I asked him  
19 what his responsibilities were. I asked him what his shift  
20 was on the 23rd of March, and I asked him if he had  
21 listened to a portion of the tape, which he said he had. I  
22 asked him if he recognized it, and I played the tape, and  
23 opened it up to the Grand Jury for questions. That's all.

24 Q What did he tell you about what shift he worked?  
25 What did he tell the Grand Jury about what shift he worked?

1           A     Well, what he said was rotational 8:00 to 4:00,  
2 4:00 to midnight, and midnight to 8:00. Those were the  
3 rotations of the shift, and that was in response to my  
4 question, "What shift did you work?" So I'm not sure which  
5 shift he did work.

6           Q     Presenting the matters to the Grand Jury, did you  
7 have any statement of Gregory Cousins?

8           A     No, I didn't.

9           Q     Did you have a statement of Joseph J. Hazelwood?

10          A     No, I didn't.

11          Q     At the time that your presentation to the Grand  
12 Jury occurred -- or some of the presentation -- had there  
13 been hearings from the National Transportation -- had  
14 hearings of the National Transportation Safety Board been  
15 held in Anchorage?

16          A     Yes. I believe they began on the 15th or 16th of  
17 May. One day of Grand Jury presentation in this case was  
18 May 17th so yes, they were going on during that time.

19          Q     Did you listen to any of the testimony before the  
20 National Transportation Safety Board, or receive any --

21          A     No, I did not.

22          Q     Okay.

23                   (Pause)

24           MR. LINTON: Nothing further, Your Honor.

25           THE COURT: Mr. Friedman?

## CROSS EXAMINATION

1  
2 BY MR. FRIEDMAN:

3 Q Ms. Henry, you indicated that you received a memo  
4 from Mr. Guaneli outlining the damages witnesses that you  
5 thought might be available to you. Is that right?

6 A That is correct.

7 Q Did he indicate what those witnesses -- what  
8 areas they'd be able to testify to?

9 A Yes, he did.

10 Q Okay. As to the witnesses whose names were given  
11 to you by Larry Weeks, did you also get a memo from him  
12 outlining who they were and what they would be able to  
13 provide?

14 A No, I didn't. He just gave me the names over the  
15 phone.

16 Q Okay. And, just for the record, who is Mr.  
17 Guaneli?

18 A Mr. Guaneli is an Assistant Attorney General  
19 working in the central office in Juneau.

20 Q And what role did he play -- let me step back for  
21 a second. Let me think for a second here.

22 Would it be accurate to say that you viewed your  
23 role as taking the information that other people in the  
24 department passed on to you and not going beyond that in  
25 terms of searching for other information?

1           A     Essentially, that was my role, however, there  
2 were some things that I felt I wanted to present to the  
3 Grand Jury \_\_\_\_\_. For instance, I'm the one that  
4 asked Mr. LeBeau about a witness that turned out to be Mr.  
5 Haden, and also, I believe it was my idea to call the  
6 diver, too.

7           Q     Okay. You outlined in your affidavit and Mr.  
8 Linton has outlined in his affidavit how he would pass  
9 information on to you. Were there other people within the  
10 Department of Law, other than Mr. Guaneli and Mr. Weeks,  
11 who would pass on factual information to you regarding this  
12 case?

13          A     No.

14          Q     Okay. And other than passing on information  
15 relating to potential damages witnesses, did Mr. Guaneli  
16 pass any other factual information on to you?

17          A     Not that I recall. Part of his job also was to  
18 communicate with Exxon and the attorneys for Exxon, trying  
19 to get documents from them, so I might have gotten a little  
20 bit of information regarding documents, but it was  
21 generally Mr. Guaneli was keeping me advised as to his  
22 success, or lack of success, in getting documents from  
23 them.

24          Q     Okay. That's a specific answer to my specific  
25 question. I'd like to now ask a more general question.



1 What is -- what was, and what is, your understanding about  
2 Mr. Guaneli's role in Captain Hazelwood's prosecution?  
3 Does it go at all beyond just providing the damages  
4 witnesses and the documents that you discussed?

5 A I would view his role also as being sort of the  
6 liaison between the Department of Law and the attorneys for  
7 Exxon. For instance, he's the one who arranged us to be  
8 able to reboard the Exxon Valdez.

9 Q Okay. Now, the same question for Mr. Weeks.  
10 First of all, could you identify for the record who he is?

11 A Mr. Weeks is also in the central office. He is  
12 Chief of Criminal Prosecutions for the state.

13 Q All right. And can you describe for us your  
14 understanding of his role with regard to Captain  
15 Hazelwood's prosecution?

16 A My understanding is that he is simply my  
17 supervisor in this area. He is the one that decided I  
18 would be the person assigned to the case. He gave me the  
19 initial witness list, and then other than that, it's just  
20 been making decisions about the case, as opposed to doing  
21 any kind of investigative or court work.

22 Q Okay.

23 Do you have with you the memo that you received  
24 from Mr. Guaneli?

25 A I don't have it with me, but I do have it

1 available.

2 MR. FRIEDMAN: Your Honor, I wonder if it would  
3 be appropriate to take a break at this time so that I could  
4 take a quick look at that memo?

5 THE COURT: Do you have other -- any other  
6 documents you wish this witness to produce that you can get  
7 to during the break?

8 BY MR. FRIEDMAN: (Resuming)

9 Q Ms. Henry, just to make sure I understand, you  
10 received no other memos from Mr. Weeks or Mr. Guaneli  
11 regarding this case, other than what we've just discussed?

12 A I did receive a copy of Mr. Guaneli's letter to  
13 the Exxon attorneys making certain requests, and the  
14 subpoena duces tecum that he served on them.

15 Q Okay.

16 A During the break I can check, but that's all I  
17 can remember.

18 Q Okay.

19 MR. FRIEDMAN: There would be no other --

20 THE COURT: How long will it take you to get  
21 it \_\_\_\_\_?

22 THE WITNESS: They're just in the conference room  
23 across the hall.

24 THE COURT: Well, we'll just stay in place, and  
25 why don't you go and go get it.

1 (Pause)

2 Thank you, Ms. Henry. The record will reflect  
3 Ms. Henry's given these documents to both Mr. Friedman and  
4 Mr. Linton.

5 MR. FRIEDMAN: Your Honor, there's about four  
6 typed pages. I wonder if I could just have a minute.

7 (Pause)

8 THE COURT: If you think you need a break, we can  
9 take one.

10 MR. FRIEDMAN: Okay. If that would be all  
11 right --

12 THE COURT: Sure, we have lots of time.

13 MR. FRIEDMAN: -- and then I would be able to  
14 just go straight through.

15 THE COURT: That's not a problem.

16 MR. FRIEDMAN: Thank you.

17 THE COURT: We'll take a break.

18 THE CLERK: Please rise. This court stands in  
19 recess until the call.

20 (A recess was taken from 10:57 a.m. until 11:10  
21 a.m.)

22 THE CLERK: Be seated.

23 THE COURT: Ready to go?

24 MR. FRIEDMAN: Yes.

25 THE COURT: All right?

1 MR. FRIEDMAN: Thank you, Your Honor.

2 BY MR. FRIEDMAN: (Resuming)

3 Q Ms. Henry, when did you first learn that you  
4 might be assigned to this case?

5 A April 12th.

6 Q Okay. And how did you learn that?

7 A DeWayne McConnell, the District Attorney, called  
8 me into his office.

9 Q And what did he tell you?

10 A He said that Larry Weeks wanted me to take over  
11 the preliminary investigation of the case and determine  
12 whether it should be presented to the Grand Jury.

13 Q And did he tell you why?

14 A Why me?

15 Q Well, why you, and did he also tell you whether  
16 there were any restrictions on what you could or couldn't  
17 do?

18 A He told me that Mr. Linton, who had been in  
19 Valdez for the initial investigation, was not going to be  
20 able to present the case to the Grand Jury because of some  
21 problems. That's all he told me.

22 At that point, later on that day, we had a  
23 conference call with Larry Weeks and Larry Weeks explained  
24 it in more detail.

25 Q Okay. And at that point, in the first

1 conversation with Mr. McConnell, did he tell you whether  
2 they were getting limitations on what you could or couldn't  
3 do in terms of investigating or presenting the case?

4 A I don't believe so.

5 Q Okay. And at that point, did he tell you what  
6 charges were being considered by the office, or what  
7 charges they wanted you to consider presenting to the Grand  
8 Jury?

9 A No.

10 Q Was your next conversation about the case the one  
11 that took place on a conference call with Mr. Weeks?

12 A That is correct.

13 Q Okay. And who was involved in that call?

14 A Mr. McConnell; Mr. Linton, briefly; and then by  
15 phone from Juneau, Larry Weeks, Dean Guaneli and Lori Otto.

16 Q Who is Lori Otto?

17 A She is in the office of the Assistant Attorney  
18 General in the chief office.

19 Q In the Juneau office?

20 A Central office. Central office, sorry.

21 Q All right. And that means the Juneau office?

22 A Yes.

23 Q All right.

24 Can you basically recount for us what took place  
25 in that conversation?

1           A     Larry Weeks told me that he wanted me to look  
2 into the case and see if we had sufficient evidence to  
3 present it to the Grand Jury. At that point, he told me  
4 that they were looking at potential charges of felony  
5 criminal mischief.

6                     He also explained that the problem with Mr.  
7 Linton was that he had received some information that he  
8 could not use, and so that we were going to be building up  
9 what he called a Chinese wall where Mr. Linton would screen  
10 information and give it to me, and then from there I could  
11 make decisions.

12           Q     Did the topic of immunity ever come up?

13           A     I don't think that word was used.

14           Q     All right.

15                     Were you told what Mr. Weeks' involvement had  
16 been up to that point in terms of the case?

17           A     No, I wasn't.

18           Q     Were you told what Mr. Guaneli's involvement had  
19 been up to that point?

20           A     No.

21           Q     And did you say this was April 12th --

22           A     Yes.

23           Q     When this conversation took place?

24                     All right. And were you told whether or not you  
25 would be doing anything other than considering the case for

1 Grand Jury?

2 A That's all I was supposed to be doing. I would  
3 not be handling the trial.

4 Q And you were told this on April 12th?

5 A Yes.

6 Q All right. Were you told who would be handling  
7 the trial?

8 A No.

9 Q And you were told that one person who would be  
10 giving you information was Mr. Linton, is that correct?

11 A Yes, n-t-o-n.

12 Q L-i-n.

13 A N-t.

14 Q Close enough.

15 All right. And then you subsequently received  
16 information from Mr. Guaneli about potential witnesses?

17 A Yes, on the damage witnesses by that memo.

18 Q Right. Okay. Thank you. I know I don't know  
19 how to spell that.

20 A G-u-a-n-e-l-i.

21 Q All right. And you received information from Mr.  
22 Weeks regarding information that you could present -- or  
23 regarding witnesses who would have information for the  
24 Grand Jury.

25 A Yes. Just the witness name or their occupation,

1 not what they would say.

2 Q Okay. Do you know how he got those names?

3 A No, I don't.

4 Q Did he give you -- if April 12th is the time you  
5 were first given the case, can you give us an estimate, or  
6 exact date, as to when Mr. Weeks would have given you the  
7 names for Grand Jury?

8 A During that conference call.

9 Q Okay. And did he tell you whether you were  
10 limited in any way in what you could say to these  
11 witnesses, or do with these witnesses?

12 A He did say that there were going to be  
13 limitations on what I could do, and suggested that, for  
14 some of the witnesses, that Mr. Linton talk to them first  
15 and caution them as to certain things they could not say to  
16 me.

17 Q Okay. Did he restrict you in any way in terms of  
18 what you could ask them about?

19 A At that initial conference call, no, he did not,  
20 because I still didn't understand exactly what the problem  
21 was. It wasn't until a day or two later when I was told  
22 there was a statute, and then I was told that I could not  
23 try to elicit any information regarding the report of the  
24 spill. In fact, it expanded to -- within several hours, or  
25 -- I think it was a day after the spill.



1 Q And that's a conversation you had several days  
2 after the April 12th date?

3 A It was still that -- it was either Thursday or  
4 Friday. The 12th was Wednesday, and it was either the next  
5 day or the day after that.

6 Q Okay. And who did you receive the information  
7 about the statute from?

8 A It was either Mr. Linton or Lori Otto.

9 Q Okay. And what were you told, other than that  
10 there was this -- were you told about the immunity, and  
11 were you given the statutory citation?

12 A I wasn't given the statutory citation. I was  
13 simply told that there's a statute that provides we cannot  
14 use information derived from the report of an oil spill.

15 Q Uh-huh. Okay.

16 At that point, you were told not to elicit  
17 information regarding the report, and then you said it  
18 expanded to -- to what?

19 A Essentially, I was told that I would not be able  
20 to receive any information from investigators from the time  
21 of the oil spill until, I believe, the next 24 hours. I  
22 wasn't sure of it. I was just told that that's -- there  
23 was about a day after the report, I was not to receive any  
24 information.

25 Q Okay.

1           Did you -- on April 12th, do you recall whether  
2 the information had been filed at that point?

3           A     The misdemeanor information?

4           Q     Right.

5           A     Yes, it had been.

6           Q     Okay. And were you allowed to look at that?

7           A     I was only allowed to look at a portion of it.

8           Mr. Linton whited out the probable cause portion of it and  
9 only gave me the charging section.

10          Q     All right. And have you ever seen the probable  
11 cause portion?

12          A     No, I haven't.

13          Q     Did you attend the misdemeanor arraignment for  
14 Captain Hazelwood?

15          A     I did.

16          Q     And what was your role in that hearing?

17          A     As the assistant for the state.

18          Q     Okay. And at that hearing, were you required, or  
19 did you address, the issue of bail?

20          A     Yes, I did.

21          Q     And do you recall what your recommendation to the  
22 judge was regarding bail?

23          A     My recommendation was that bail be set at  
24 \$50,000.00 which, it is my understanding, Mr. Hazelwood had  
25 already posted in New York, and also the same conditions

1 that have been imposed there. I believe that's all I  
2 requested. Judge Stuart, I think, added a couple of  
3 conditions.

4 Q Okay. Was there any discussion of the probable  
5 cause statement at that hearing?

6 A No. Not that I recall.

7 Q Did you ever talk to Mr. Linton about the scope  
8 of the criminal mischief in the second degree statute, and  
9 whether it applied to the facts of this case?

10 A No, I did not.

11 Q Did you ever discuss that with Mr. Weeks, Mr.  
12 Guaneli, or Lori Otto?

13 A I'm sure I discussed it with Mr. Weeks.

14 Q Okay. You indicated that -- I think you  
15 indicated -- that he had suggested that that was one thing  
16 that the office was considering, or would like you to  
17 consider?

18 A That is correct.

19 Q Okay. Did the discussion go beyond that?

20 A No, un-nuh.

21 Q Okay. Now, I think in your affidavit, you  
22 indicated that you were told not to approach -- let me get  
23 the exact wording -- you said, "I was told that I should  
24 not, and I did not, approach any of the investigators who  
25 had been working on the case more than" -- I'm not sure

1 what that refers to -- "namely, Sergeant John McGee,  
2 Sergeant Chris Stockard, Trooper Julia Grimes, Trooper Paul  
3 Burke, Fish and Wildlife Trooper Michael Fox, Trooper  
4 Michael Alexander, and Gail (inaudible)." Is that correct?

5 A That is correct. Although Trooper Fox's name was  
6 on the witness list, so that would be in there. I was told  
7 of the other witnesses, though, Sergeant McGee and the  
8 other ones, and I was told not to approach them.

9 Q Okay. And you did not approach them?

10 A I did not approach them. I did have a couple of  
11 phone conversations with Sergeant McGee, complaining about  
12 the fact that I wasn't getting any police reports, and I  
13 had asked Mr. Linton about that and he had said that he  
14 hadn't received them from Mr. McGee, and so when Sergeant  
15 McGee called for something else, I picked up the phone and  
16 I said, "Will you please get on this."

17 Q Okay. But other than that, you didn't talk to  
18 him?

19 A No.

20 Q Okay. And you didn't talk to the other  
21 investigators?

22 A No, I didn't.

23 Q Okay.

24 A And Trooper Fox, just to apologize and let him  
25 go.

1 Q Okay.

2 Who is Gale Savage?

3 A I believe he's an investigator with the  
4 Department of Law working in the civil division.

5 Q Okay.

6 Now, what was your understanding as to why you  
7 were not to approach these investigators?

8 A Because they had information that I was not  
9 permitted to have.

10 Q All right.

11 And if you could just define for us -- I think  
12 you really have, but just so it is explicit, what was your  
13 understanding as to the information you were not to have?

14 A Information that would have been directly derived  
15 from the report of an oil spill. We just shortened it to  
16 tainted evidence.

17 Q Right. Okay.

18 Now, when Mr. Linton would give you a particular  
19 report, a particular piece of information, you, yourself,  
20 would have no way of determining whether that was derived  
21 from the original report or not, would you?

22 A I wouldn't have any idea.

23 Q Okay. And even today, you wouldn't have any idea  
24 of that, would you?

25 A No.

1 Q Just as an example, you don't know how  
2 investigators Burke, Grimes, the FBI investigators, how  
3 they may have decided to formulate their questions of the  
4 crew members?

5 A I do not know that.

6 Q Okay. And you don't know how they even located  
7 some of the witnesses?

8 A I don't know that, either.

9 Q You indicated that you were told by Mr. Weeks  
10 that there was a ship's agent who you might want to call at  
11 Grand Jury.

12 A Yes. That's how he referred to her.

13 Q Okay. And you had no police report for that  
14 ship's agent?

15 A At that point, no.

16 Q How did you locate that ship's agent?

17 A I don't remember if it was as a result of  
18 receiving her interview, or if I simply told the paralegal,  
19 Miss Robinson, to locate the ship's agent and have her  
20 subpoenaed.

21 Q All right. Once you located the ship's agent,  
22 how did you know what questions you wanted to ask her at  
23 Grand Jury?

24 A That was based upon her interview.

25 Q So before you actually presented her to the Grand

1 Jury, you had the interview?

2 A Yes, I did.

3 Q Now, I think you were aware that Mr. Delozier had  
4 been on the ship the night of the grounding. Is that  
5 right?

6 A At some point I became aware of that. I'm not  
7 sure when.

8 Q Okay. And you were also aware that he had  
9 records that he wanted to present to the Grand Jury?

10 A I was aware of that, yes.

11 Q Did you know whether or not he seized them the  
12 night of the grounding?

13 A I did not know that, although I think he dated  
14 the documents as to when he seized them. I just never  
15 looked.

16 Q Okay. Now, you had -- I think you told us that  
17 you had no interview from Mr. Wade. Is that correct?

18 A is that --

19 Q The diver?

20 A That is correct. I know I didn't have one when  
21 he testified.

22 Q Right. How did you know what to ask him?

23 A His name was given to me as one of the divers,  
24 pursuant to my request, so essentially Sergeant Stogsdill  
25 sat down with him in our office and asked him to draw a

1 diagram of the damages that he observed on the bottom of  
2 the Exxon Valdez, and then once Sergeant Stogsdill finished  
3 interviewing Mr. Wade, Sergeant Stogsdill told me a brief  
4 summary of what he said, and then I put him on.

5           There was another diver who was called, and I  
6 can't remember his name. Sergeant Stogsdill also  
7 interviewed him and decided -- determined that he wasn't  
8 going to be much help, so he was excused.

9           Q     In the beginning of your answer just then, you  
10 made some comment about -- I forget what you said exactly,  
11 but could you tell us how you located Mr. Wade? Was he one  
12 of the names that was given to you by Mr. Weeks?

13           A     No. He was given -- his name was given to me by  
14 Mr. LeBeau. I told Mr. LeBeau I needed one of the divers  
15 to testify about the damage that he observed.

16           Q     What was your understanding about Mr. LeBeau's  
17 involvement in the case, in terms of when he got involved  
18 and what he had done?

19           A     I don't know when he got involved, and I'm not  
20 sure exactly what he did initially. I know that he did go  
21 onto the beaches and take photographs. I also know that he  
22 did have tainted information.

23           Q     Okay. He provided you with Mr. Wade. Did he  
24 provide you with other information?

25           A     Mr. Haden's name, also.



1 Q Okay. How did you know that Mr. LeBeau had  
2 tainted information?

3 A Mr. Linton told me.

4 Q Okay. Did Mr. Linton tell you what you could and  
5 couldn't talk to Mr. LeBeau about?

6 A Yes, he did, and he also -- before I talked to  
7 Mr. LeBeau, he had Mr. LeBeau in his office for quite  
8 awhile, and I assume the intent was to explain it to Mr.  
9 LeBeau.

10 Q Okay. What were you told by Mr. Linton about  
11 what you could ask or couldn't ask Mr. LeBeau?

12 A Mr. Linton basically told me, "The only thing you  
13 should be asking Mr. LeBeau is to explain the videotape,  
14 the photographs, and the oil that he seized from the  
15 beaches."

16 Q All right. But it sounds like you went beyond  
17 that, at least in terms of getting Mr. Wade to talk about  
18 damage to the vessel.

19 A With Mr. LeBeau?

20 Q Yes.

21 A I --

22 Q In other words, you asked Mr. LeBeau for  
23 something other than what's in -- what you just described.

24 A That is correct. I did say to him that I was  
25 looking for a witness who could testify about the damage to

1 the vessel, and he said, "Well, I know that two divers went  
2 down, and this -- these are their names."

3 Q Okay. Do you know how he knew that?

4 A No, I don't.

5 Q You indicated in your direct exam that you had  
6 talked to Mr. Beevers?

7 A Yes.

8 Q Could you tell the judge who Mr. Beevers is?

9 A Mr. Beevers is a former Master, Captain, who is  
10 now retired, who was hired, I believe by Mr. Linton, to  
11 assist in the investigation. I was to use him to interpret  
12 documents for me.

13 Q Was he going to interpret documents other than  
14 what Mr. Delozier introduced to the Grand Jury?

15 A Yes, he was. He was going to basically explain  
16 what the bridge of the Exxon Valdez looked like, and  
17 explain certain instruments and how they worked. Also,  
18 just explain some of the rules of the sea, I guess. And  
19 then also the documents.

20 Q Were you aware of whether or not Mr. Beevers had  
21 been on the Exxon Valdez?

22 A Yes. I was aware that he was on the Exxon  
23 Valdez.

24 Q How were you aware of that?

25 A Mr. Linton told me.

1 Q All right. What else were you told about Mr.  
2 Beevers and how you could use him?

3 A I was told that he was also tainted, and Mr.  
4 Linton talked to him the day before I talked to Mr.  
5 Beevers, and I was told I should use him for purposes of  
6 interpreting documents, also use him as an expert to  
7 explain generally what happens on a tanker like this, and  
8 what each crew member's responsibilities are, specifically  
9 -- particularly the Master's.

10 Q Okay. Did you know how Mr. Beevers came to be on  
11 the Exxon Valdez?

12 A No, I don't.

13 Q You had an expert named Mr. Greiner. Did you  
14 ever talk to him?

15 A Mr. Riener?

16 Q Greiner.

17 A Greiner?

18 Q Yes.

19 A Yes, I did. I -- yes.

20 Q Okay. Can you tell me how you learned about him,  
21 and then what you talked with him about?

22 A I don't -- I don't remember how I learned about  
23 him. I know that Mr. Cole was the one who actually set up,  
24 or wanted to talk to, Mr. Greiner. Oh, that's right. Mr.  
25 Linton was talking to Mr. Greiner on the phone and came in

1 and said, "Mr. Greiner's on the phone. Do you want to talk  
2 to him?" And Mr. Cole did, and so we talked to him briefly  
3 over the phone.

4 Q By that point in time, Mr. Cole had been assigned  
5 as the chief trial attorney?

6 A Yes.

7 Q All right. And what did you talk to Mr. Greiner  
8 about?

9 A We talked to him about what help he might be in  
10 the presentation of the case to the jury, to the trial  
11 jury.

12 Q Were you aware of whether or not he was  
13 considered tainted?

14 A I was aware that he had received some tainted  
15 information. I'm also aware that he was told to seal it,  
16 and not look at it, and he told us over the phone that's  
17 what he'd done.

18 Q All right. Do you know whether he'd ever been on  
19 the Exxon Valdez?

20 A I believe he -- he did reboard it when it was in  
21 San Diego. I don't know of any other -- he might have been  
22 on it before that. I don't know.

23 Q Were you aware of whether either of these experts  
24 had participated in any search of the Exxon Valdez?

25 A I believe I was aware that Mr. Beevers had been

1 -- I know he'd been on there. I'm not sure if he  
2 searched. He was part of the search of the Exxon Valdez  
3 when Mr. Cole got a search warrant, whenever that was.

4 Q Okay. What about before that?

5 A I'm pretty sure I knew he had been on there. I'm  
6 not sure if I knew that -- I don't think I knew he had  
7 participated in a search.

8 Q Okay. Were you aware of the searches of the  
9 Exxon Valdez prior to the time Mr. Cole conducted his  
10 search?

11 A I knew that search warrants had been executed.

12 Q Okay. Were you given access to either the  
13 warrants or the transcripts of the hearing, or the hearing  
14 itself?

15 A No.

16 Q Were you aware of what was obtained in those  
17 searches -- that is the ones prior to Mr. Cole's search?

18 A I'm not aware of what was obtained. I may have  
19 received some of the things that were obtained, but I don't  
20 -- I wouldn't have been told that's where they were  
21 obtained.

22 Q Okay.

23 (Pause)

24 You were allowed to get information from Mr.  
25 Stogsdill, weren't you?

1 A Yes.

2 Q Okay. What was your understanding of what Mr.  
3 Stogsdill was allowed to do?

4 A He was limited in the same way that I was  
5 limited. At the first conference call on April 12th, Larry  
6 Weeks told me that I should try to find an investigator who  
7 was not tainted, and so I called Sergeant Stogsdill, who is  
8 out of the Soldotna post, and asked him if he, you know,  
9 had been down in Valdez, or was tainted at all.

10 And from what -- my brief discussion with him, it  
11 was pretty clear to me that he was not tainted, so I asked  
12 him if he would be interested in helping me, and he said  
13 yes. I then explained to him what our limitations were.

14 Q What did you explain to him?

15 A I told him that we would not be permitted to use  
16 any information directly derived from the report of the oil  
17 spill and that, in fact, everything we got would be  
18 screened by Mr. Linton first.

19 Q All right. But Mr. Stogsdill as an investigator,  
20 was he allowed to go interview people himself?

21 A Yes, he was.

22 Q Just as an example, you understood that Mr.  
23 Delozier was a tainted witness.

24 A That is correct.

25 Q Was Mr. Stogsdill allowed to -- under the rules

1 imposed, was he allowed to go interview Mr. Delozier based  
2 on what information you had, to see what else was out  
3 there?

4 A Not until more recently. During the Grand Jury  
5 portion of this, he was -- he did not interview Mr.  
6 Delozier, except to go over documents that Mr. Delozier,  
7 except to go over documents that Mr. Delozier was going to  
8 introduce.

9 I believe after the Grand Jury indictment,  
10 Sergeant Stogsdill once or twice about things that had  
11 happened since the Grand Jury.

12 Q Things that had happened since. Do you know what  
13 those were?

14 A I don't know.

15 Q Okay.

16 Under the rules that were imposed -- I guess what  
17 I'm having trouble with is the concept of an investigator  
18 who is supposed to investigate the cause of this accident,  
19 was he allowed to do anything, really, in terms of  
20 unearthing new facts?

21 A Yes, he was, to a certain extent. Again, under  
22 the understanding that he could not ask a witness, for  
23 instance, "Did you hear Captain Hazelwood talking to the  
24 Coast Guard?" He couldn't ask that, but he could ask, say,  
25 a crewman what was happening after the grounding, as far

1 as, you know, "What did you observe? Were you on the  
2 helm?" That sort of thing.

3 Q So could he ask -- let's assume Mr. Delozier went  
4 out to the vessel right after the grounding. Could he ask  
5 Mr. Delozier, "What did you see when you got there?"

6 A I would say he could probably ask him -- well, he  
7 couldn't.

8 Q And why is that?

9 A Because, it would be my understanding the only  
10 reason Mr. Delozier would have been there is because of the  
11 report of the spill, as opposed to crewmen, who would  
12 already be there anyway. So he could talk to crew, who  
13 would be present on the Exxon Valdez, not as the result of  
14 a spill, but because of their job.

15 Q Could Mr. Stogsdill ask, let's say, bar or  
16 restaurant people whether they had seen Captain Hazelwood  
17 on the 23rd?

18 A Yes.

19 Q Okay. And he could ask them whether they saw  
20 Captain Hazelwood drinking alcohol, correct?

21 A Yes. Or before that, also.

22 Q Could he ask crew members whether there were any  
23 efforts to get the ship off the rocks?

24 A Yes.

25 Q Could he ask crew members whether -- I'm sorry.



1     Could he ask crew members who had been on the conn at the  
2     time of the grounding?

3             A     Yes.

4             Q     The diagram that Mr. Wade gave to you which was  
5     then presented to the Grand Jury, do you know when Mr. Wade  
6     made the observations which he incorporated in that  
7     diagram?

8             A     I think he was called out at 4:00 p.m..

9             Q     On which day?

10            A     On the day of the spill, the spill shortly after  
11     midnight, so then 4:00 p.m., he was called out. I don't  
12     know when he actually got into the water and began diving,  
13     but sometime after that.

14            Q     And I take it Mr. Stogsdill would be allowed to  
15     ask Mr. Wade what he saw at 4:00 p.m. and what was  
16     happening at that point in time?

17            A     Yes. It was my understanding that, by then, we  
18     would have known about the spill, if it had been reported  
19     or not.

20            Q     Okay. What was your understanding about where  
21     the line was being drawn in terms of what Mr. Stogsdill  
22     could ask about it -- the chronological line where he --

23            A     My understanding was that as long as it was  
24     inevitable discovery, that is, that if we -- if it was  
25     something where we knew that we -- someone would have known

1 about the spill anyway, we could go into that area. My  
2 understanding is Mr. Linton's line was a little bit more  
3 conservative than that, and simply took in the whole  
4 24-hour period.

5 Q Which line were you trying to follow?

6 A Well, I was trying, as much as I could, to follow  
7 Mr. Linton's, but there were -- for instance, Mr. Wade, I  
8 discovered after the fact, actually had started his  
9 investigation that same day.

10 Q Okay. Mr. Mr. LeBeau, what was your  
11 understanding about what Mr. Stogsdill could ask him, in  
12 terms of time, again?

13 A Anything that occurred after the 24-hour period.

14 Q All right.

15 Now, we talked about Mr. Delozier, Mr. LeBeau,  
16 Mr. Beevers, Mr. Greiner, as being -- shorthand expression  
17 -- tainted witnesses. What was your understanding as to  
18 who the tainted witnesses were that you were going to have  
19 contact with?

20 A I can't think of anybody offhand that I would  
21 have contact with. Of course, I was told about Trooper  
22 Fox, that I shouldn't have any more contact with him, and  
23 then the other --

24 Q That's the same with all the troopers, right?

25 A And all the troopers. If you gave me a name, I

1 might be able to tell you, but I can't think of anybody.

2 Q Okay. How about Pat Caples? Would you have an  
3 idea as to whether she was tainted or not?

4 A My impression was that she was not tainted.

5 Q Okay. How about Pilot Murphy?

6 A Same thing; not tainted.

7 Q Did you know whether or not any blood or urine  
8 tests had been performed on Captain Hazelwood?

9 A I know an alcohol test was performed. I didn't  
10 know what the method was, if it was blood or urine, or  
11 what.

12 Q Sorry.

13 A Okay.

14 Q How were you aware that such a test was  
15 performed?

16 A I knew that from information that I received  
17 prior to being assigned to the case, and I can't recall. I  
18 assume it was a radio broadcast, or something, on the news.

19 Q Okay.

20 Now, were you aware that the NTSB hearings were  
21 being conducted at approximately the same time as the Grand  
22 Jury you were conducting?

23 A I was aware of that, yes.

24 Q And how were you aware of that?

25 A Because we were trying to work out bringing

1 witnesses up for Grand Jury who -- the crew witnesses, the  
2 people that worked on the Exxon Valdez. We were trying to  
3 arrange them up to testify, and I don't remember who told  
4 me, but someone told me, "Well, they're going to be in  
5 Anchorage anyway, to testify at the NTSB hearings during  
6 this given week. Would you be able to put them on the  
7 Grand Jury at the same time?" And I said yes, so that's  
8 how we arranged it.

9 Q Who is Kelly Mitchell? State employee who works  
10 -- I'm not sure what department --

11 A That -- I don't know.

12 Q Mr. Linton told me he works for the  
13 Alaska \_\_\_\_\_ Highway System. Does that refresh your  
14 memory in any way?

15 A No.

16 Q Okay.

17 When you presented the case to the Grand Jury, or  
18 began the Grand Jury proceedings, did you have in mind that  
19 there was sufficient evidence to justify an indictment for  
20 criminal mischief in the second degree?

21 A Yes, I did.

22 Q Okay. And what was your legal theory? What did  
23 you feel established the elements of criminal mischief?

24 A Well, the element of risk of damage of over  
25 \$100,000.00 was pretty easy. Widely dangerous means, the

1 theory, although oil spill was not in the definition, in my  
2 reading of the definition, it looked like oil spill would  
3 be considered widely dangerous means.

4 And then the only other element, basically, would  
5 be the recklessness, and that was based upon the -- mostly  
6 on Mr. Beevers' interpretation on what occurred, his  
7 reading of the course recorder and the bell logger, and  
8 explaining to me what occurred.

9 It was mostly on that, you know, how the ship was  
10 handled before the grounding and after the grounding.

11 Q Okay. Well, if you were talking to the jury, but  
12 saying it shorter than you would say to the jury, what acts  
13 were there of recklessness, as you understood it?

14 A My understanding in this -- I don't want to be  
15 limited, because this is off the top of my head --

16 Q Sure.

17 A -- but from the fact that Mr. Hazelwood had been  
18 drinking prior to going to work, had left Mr. Murphy alone  
19 on the bridge while he was piloting it to Pilot Point, or  
20 Rocky Point, and was not supposed to leave the bridge, it  
21 was my understanding, and Mr. Murphy also told me that a  
22 Master usually never leaves the bridge while he's on the  
23 bridge.

24 The fact that Mr. Hazelwood left Mr. Cousins  
25 alone on the bridge during an important period of time.

1 The fact that, although they were trying, apparently, to  
2 avoid ice, that instead of slowing down to avoid the ice,  
3 they were still going full speed ahead, and although they  
4 had permission to divert their course, they didn't have  
5 permission to continue diverting it. They should have  
6 changed course again once they got into the outbound --  
7 inbound lane.

8 The fact that Mr. Cousins was not qualified to be  
9 in charge while the tanker was in those waters; and then,  
10 after the grounding, various actions by Mr. Hazelwood,  
11 which included being full speed ahead for a long period of  
12 time, and also ordering the helmsman to jockey the rudder  
13 several times.

14 Q What was the conclusion about -- on that latter  
15 point, the conclusion about what that indicated, the going  
16 full speed ahead while the vessel was on the reef?

17 A That he was causing more damage.

18 Q Was there -- I think it was in the Grand Jury  
19 where I saw the suggestion that he was trying to get it off  
20 the reef as a result of --

21 A I believe Maureen Jones said that it was her  
22 impression he was trying to get it off the reef. I'm not  
23 sure what he was doing, if he was trying to get it off, or  
24 not.

25 And also, the other thing that I forgot is having

1 it on auto pilot in those waters prior to the grounding.

2 Q You are not aware of how the issue of Captain  
3 Hazelwood's drinking first became a subject of  
4 investigation, are you?

5 A No.

6 Q You are not aware of how the issue of him leaving  
7 the bridge, or leaving Mr. Cousins in charge, first became  
8 an issue for investigation, are you?

9 A I'm not aware how it first became an issue. I  
10 still don't even know how it happened, if he announced it,  
11 or he just left, or what.

12 Q Uh-huh.

13 A But I knew that he was not on the bridge at the  
14 time of the grounding.

15 Q Right. But the point I'm making is, you're not  
16 aware of how the authorities began investigating that  
17 issue?

18 A No, un-nuh.

19 Q Likewise, you're not aware of how they began  
20 investigating the issue of whether or not Mr. Cousins was  
21 qualified to be operating the vessel in those waters?

22 A I'm not aware of how that came up initially.

23 (Pause)

24 Q After presenting the case to the Grand Jury, had  
25 you had any involvement with it, up until today?

1 A Yes, I have.

2 Q Can you tell us the nature of that involvement?

3 A All right. After the indictment was handed down,  
4 on the 22nd, I believe, of May, I worked with Mr. Cole in  
5 trying to basically educate him as to what I knew so far,  
6 and we also tried organizing all the paperwork that we had  
7 received from Mr. Linton.

8 We also had some brainstorming sessions, I guess  
9 you'd call it. That would be with Mr. Cole, myself and  
10 Sergeant Stogsdill, as to where to go from here.

11 I continued doing that until my vacation on June  
12 2nd, and then when I returned from vacation, essentially I  
13 haven't really been working on the case, although I'm  
14 available in case Mr. Cole or Mr. Stogsdill want to talk to  
15 me.

16 Q Are any other lawyers in the Department of Law  
17 consulted about the progress -- obviously, the case has  
18 been separated, in a sense, into two teams, if you will,  
19 and Mr. Linton is handling the legal litigation related to  
20 the immunity issues. Let's put that aside.

21 A Okay.

22 Q In the area that you've been involved in, have  
23 any other attorneys with the Department of Law been  
24 consulted, other than Mr. Cole, yourself, and Mr. Adams, as  
25 the case has progressed?



1 A As far as information to gather or preparing for  
2 trial?

3 Q Either one, right.

4 A Not that I can think of, except Mr. Weeks did  
5 advise us that Mr. Cousins apparently was available for an  
6 interview if we wanted to talk to him. But basically we've  
7 pretty well limited it to the three of us.

8 Q And did you talk to Mr. Cousins?

9 A No.

10 Q When were you informed that he was available?

11 A I would say within the last three weeks.

12 Q Okay.

13 Without discussing the substance of it, have you  
14 been privy to any discussions regarding potential  
15 settlement or resolution of this case short of trial?

16 A Yes, I have.

17 Q And who did you --

18 MR. LINTON: May we approach the bench, Your  
19 Honor?

20 THE COURT: Yes. Come on up.

21 Come over here and take this microphone.

22 (The following was had at the bench.)

23 MR. LINTON (?): (Inaudible). Mr. Friedman  
24 (inaudible).

25 MR. FRIEDMAN: \_\_\_\_\_ I asked her not to

1 reveal the substance, and all I wanted to ask was who she's  
2 talked to about it. In other words, I think if Mr. Guaneli  
3 was \_\_\_\_\_ involved in that issue.

4 MR. : (Inaudible).

5 THE COURT: So why don't you just step back  
6 (inaudible) the substance of it.

7 MR. FRIEDMAN: All I'm going to do is ask her  
8 about who she talked to.

9 THE COURT: (Inaudible).

10 MR. : (Inaudible).

11 MR. : Several cases that say the  
12 state's not to use (inaudible) in any way, and one of the  
13 ways they talked about is to use them in terms of whether  
14 to enter into discussions or decisions made in these  
15 discussions.

16 MR. : (Inaudible).

17 MR. : I think we want it (inaudible).

18 (The following was said in open court.)

19 BY MR. FRIEDMAN: (Resuming)

20 Q Again, Ms. Henry, without discussing what was  
21 said, can you tell me what people did you discuss that  
22 issue with?

23 A Mr. Linton, Mr. Cole, Mr. McConnell, and Mr. --  
24 Mr. Weeks, yes.

25 Q Thank you.

1 (Tape changed to C-3505)

2 Do you anticipate that you would be available to  
3 talk to Mr. Cole during the trial and presentation of the  
4 case at trial?

5 A Yes. One of the goals, I guess, or purposes in  
6 making sure that I remain untainted is that I would be  
7 available to discuss things with Mr. Cole, or even assist  
8 in the trial.

9 Q All right. You indicated that you had made the  
10 decision not to interview, or talk to Mr. Cousins. Why was  
11 that decision made?

12 A To me, it is still not clear as to what  
13 information we -- or how the interview could be set up so  
14 that we do not become tainted, and the other problem is  
15 that -- and this attorney's name -- I've lost it.  
16 Richmond. Mr. Richmond told us that he did not want us to  
17 do a complete interview, but only ask questions, you know,  
18 specific questions.

19 The problem is, since we haven't seen any of Mr.  
20 Cousins' statements, we can't ask just a couple of  
21 questions. We would have to go through the whole thing.  
22 And Mr. Richmond is not willing to have us do that.

23 Q Okay.

24 Back for a moment to the issue of you attending  
25 the arraignment. At the time that you did that, did you

1 have any conversations with Mr. Guaneli or Mr. Weeks about  
2 how they wanted that handled?

3 A Yes, I did.

4 Q And who did you talk to?

5 A Mr. Weeks.

6 Q And what did he tell you?

7 A Well, actually it was a mutual type of  
8 discussion. We were discussing whether or not we should  
9 offer our services, or the trooper's services, for  
10 protection, and if we should have the media courtroom, if I  
11 should set it up that way, and also talked to Mr. Dennis,  
12 who was then local counsel for Mr. Hazelwood to arrange  
13 when he would fly in, and if he could fly out again.

14 Q Okay. Was Mr. Guaneli in Anchorage at that  
15 time? In other words, did you talk to him in person?

16 A I don't recall talking to him in person.

17 Q Okay.

18 A I don't recall talking to him, actually, about  
19 this issue. It's possible, but I don't recall.

20 Q I'm sorry. You said Mr. Weeks, that's right.

21 A Right.

22 Q Was Mr. Weeks in Juneau then?

23 A Yes, he was in Juneau.

24 Q Okay. So you talked with him over the phone?

25 A Yes.

1 MR. FRIEDMAN: If I could have just a minute,  
2 Your Honor, I think I'm --

3 (Pause)

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

5 REDIRECT EXAMINATION

6 BY MR. LINTON:

7 Q Could you help me locate Mr. Beever's testimony  
8 in this Grand Jury transcript (inaudible).

9 (Pause)

10 A It begins at page 134, Volume 1.

11 Q (Inaudible).

12 (Pause)

13 It's \_\_\_\_\_ pages in on my version. Let's  
14 try -- you said 134?

15 A Yeah.

16 (Pause)

17 Q (Inaudible).

18 A Yep. Which exhibit were you looking for?

19 Q I was looking for --

20 (Pause)

21 The bell logger, which was Exhibit 15.

22 (Pause)

23 A Exhibit 15?

24 Q Yes, Grand Jury Exhibit 15. Exhibit 3 in this  
25 proceedings.

1 (Pause)

2 A I --

3 Q (Inaudible).

4 (Pause)

5 A Oh, here -- all right. It was before the

6 \_\_\_\_\_.

7 (Pause)

8 Exhibit 15?

9 Q Okay. (Inaudible).

10 A Where do you want to start?

11 Q (Inaudible).

12 Okay. When you had Captain Beevers appear before  
13 the Grand Jury, did you ask him about a series of documents  
14 which have been marked as \_\_\_\_\_ -- as Exhibits 3, 6,  
15 and 5?

16 A Yes, I did.

17 Q Those were exhibits which had been introduced by  
18 Mark Delozier as things he'd taken from the vessel?

19 A Yes, they are.

20 Q And in reaching what opinions and conclusions he  
21 had before the Grand Jury, it was the documents that were  
22 the source of those conclusions, as far as you know?

23 A Yes. As far as his conclusions of the route of  
24 the Exxon Valdez, he also, in general, conclusions and  
25 opinions also included his own experiences.

1 Q Okay. On what page does he begin his discussion,  
2 then, of the first of those --

3 A I believe that would be page 159 of the first  
4 volume. Actually, I think before that.

5 (Pause)

6 All right. At page 156 and 157, he starts  
7 talking about the course recorder and the bell logger, and  
8 then I start asking him what those are.

9 Q And the bell logger is which document?

10 A I believe -- I got them mixed up, but I believe  
11 it's exhibit, which is the printout of the bells.

12 Q Computertype printout.

13 A The computer printout, as opposed to the written  
14 log.

15 Q Which is Exhibit 6.

16 A Which is Exhibit 6.

17 Q Is there a relationship between them?

18 A It's my understanding that there is a  
19 relationship. The computer obviously does it at the time  
20 that a bell occurs. The handwritten document, Exhibit 6 --  
21 it's my understanding they attempt to enter those, that  
22 information, near the time that it occurs. Sometimes they  
23 may have to go back and fill in.

24 Q And in the course of his presentation, did he  
25 explain how to interpret the bell log, or the computer

1 printout?

2 A Yes, he did.

3 Q And did he explain the course of the -- the  
4 document that has tally book on the front, Exhibit 6?

5 A Yes, he did.

6 Q And how to interpret that?

7 A Yes.

8 Q And did he explain the course recorder, which  
9 is --

10 A Plaintiff's Exhibit 6?

11 Q 5? He explained that?

12 A Yes, he did.

13 MR. LINTON: Judge, at this point, perhaps rather  
14 than belaboring the point with the witness, let me make a  
15 request. In questioning a witness yesterday, Your Honor  
16 asked Mark Delozier how to interpret checkmarks in the  
17 book, specifically the checkmarks in the tally book,  
18 (inaudible) before the entry about the grounding, but which  
19 chronologically fell afterwards.

20 THE COURT: I remember them.

21 MR. LINTON: There is a point in the Grand Jury  
22 transcript where Mr. Beevers explains those. I guess the  
23 question is, assuming that the Grand Jury is -- proceedings  
24 are before the Court, whether Your Honor takes that --  
25 those explanations as admissible in these proceedings.



1 MR. : I don't have any problem with  
2 the truth of those.

3 THE COURT: We don't need to call in an expert  
4 witness in this proceeding?

5 MR. FRIEDMAN: Well, as to that issue.

6 THE COURT: Right, as to just that issue --

7 MR. FRIEDMAN: Right.

8 THE COURT: -- of marks on the log.

9 Okay. \_\_\_\_\_ to accept that, and that starts at page  
10 156, through what page?

11 MR. LINTON: He actually goes through each of the  
12 three documents to which I refer, so he goes through the  
13 computer printout, he goes through the course recorder, and  
14 he goes through the tally \_\_\_\_\_, the hand -- Exhibit 6  
15 that I have \_\_\_\_\_ hand it to Your Honor.

16 THE COURT: Any objection to using that as a part  
17 of the evidence in this proceeding?

18 MR. FRIEDMAN: No, Your Honor.

19 THE COURT: All right. (Inaudible).

20 (Pause)

21 MR. LINTON: Nothing further, Your Honor. Oh,  
22 excuse me. Yes, there was one other line of questioning,  
23 if I may.

24 I ask that this be marked as the next State's  
25 Exhibit, please.

1 (State's Exhibit 31 was  
2 marked for identification.)

3 BY MR. LINTON: (Resuming)

4 Q Do you recognize Exhibit 31 as a document -- as  
5 having been screened by me before your presentation to the  
6 Grand Jury? Not necessarily the whole presentation, but  
7 some portion of (inaudible).

8 A I do recognize the document and I know that I got  
9 it from you. I just -- I'm not sure when I got it.

10 Q Before Grand Jury, or after Grand Jury? Do you  
11 recall? Specifically, the Grand Jury testimony of Mr.  
12 Wade?

13 A It seems to me that I did have this during the  
14 Grand Jury presentation. I don't recall -- this is like  
15 the diagram that he drew, so I can't remember if I knew it  
16 from the diagram he drew or from this.

17 MR. LINTON: Nothing further, Your Honor.

18 I ask that it be admitted -- or at least  
19 identified -- admitted, even with that foundation, that she  
20 doesn't know whether she saw it or not.

21 MR. FRIEDMAN: That's fine.

22 THE COURT: All right. Without objection, 31 is  
23 admitted.

24 REDIRECT EXAMINATION

25 BY MR. FRIEDMAN:

1 Q Ms. Henry, your understanding was that Mr.  
2 Beevers testified -- gave his opinions to the Grand Jury  
3 based upon the documents he presented to them, and his own  
4 past experiences. Is that correct?

5 A That is my understanding, yes.

6 Q You don't know to what extent, if any, he may  
7 have relied upon searches of the vessel he participated in,  
8 do you?

9 A I know that he would have relied upon his own  
10 observation of the bridge of the Exxon Valdez, because he  
11 said that there were some changes since he was a Captain.  
12 So I know that he included that.

13 Q But beyond that, you don't know to what -- again,  
14 I don't want to taint you, but assuming Mr. Beevers did  
15 participate in a search of the vessel which can be  
16 considered a tainted search, you don't know to what extent  
17 he may have relied upon what he learned in that search for  
18 reaching certain conclusions or opinions, do you?

19 A I don't know that. He was well aware of the  
20 taint-untaint problem --

21 Q Uh-huh.

22 A But I don't know -- I can't tell you what he --  
23 whether, in addition, he relied on from whatever I told  
24 you.

25 Q Okay.

1                   Just one other question. Was it your  
2 understanding that Mr. Stogsdill could get leads from the  
3 Coast Guard investigators? In other words, he could talk  
4 to the Coast Guard investigators about what they had found?

5           A        To a limited extent, I think he could have. He  
6 -- it was clear to him that he couldn't talk to, or get  
7 leads from, the investigators who had received information  
8 during that time period.

9           Q        I guess what I'm getting at is for the troopers,  
10 you said he was not to talk to any troopers who'd been  
11 working on the investigation up until the time you got  
12 involved. Was that same restriction placed on him with  
13 regard to U.S. Coast Guard people? In other words, any  
14 U.S. Coast Guard investigators who'd worked on the case up  
15 until April 12th -- or up through April 12th?

16          A        It was my understanding that he could not talk to  
17 anyone who had information in that 24 hour period. now, I  
18 don't know if there were other Coast Guard people that came  
19 into the investigation after that time, or not.

20          Q        Okay.

21                   Let me make sure I understand. So if there was a  
22 U.S. Coast Guard investigator who had information about  
23 that initial 24-hour period -- who was on the scene, or had  
24 done something in that initial 24-hour period, Mr.  
25 Stogsdill was not to contact that person?

1           A     No. He could contact him. He had to just make  
2 sure to limit his contact. For instance, Mr. Delozier.

3           Q     Uh-huh.

4           A     We knew that Mr. Delozier had tainted  
5 information, and I assumed it was based upon initial  
6 investigation. However, Mr. Stogsdill could talk to Mr.  
7 Delozier, as long as they didn't talk about that 24 hour  
8 period.

9           Q     Okay. But the rule as to the troopers was  
10 broader than that?

11          A     Yes.

12          Q     You couldn't talk to the troopers at all?

13          A     That's correct.

14          Q     Who had been working --

15          A     That is correct.

16          Q     Okay.

17                 Was the rule, then, the same for an NTSB  
18 investigators and the DEC investigators as it was for the  
19 Coast Guard investigators?

20          A     Yes. He could contact them, but it had to be  
21 limited.

22          Q     Okay. And did you have any understanding as to  
23 why the rule was more restrictive as to the troopers than  
24 as to these other investigators?

25          A     Yes, because we viewed the Coast Guard people and

1 the DEC people not as investigators, but as potential  
2 witnesses, and it was important that we talk to them as  
3 potential witnesses, whereas we didn't really need to talk  
4 to the troopers, because they weren't witnesses, they were  
5 simply asking witnesses questions. That was my  
6 understanding. So that was the difference.

7 Q Did you know whether any of those troopers were  
8 witnesses themselves?

9 A Not that I know of.

10 Q Okay.

11 MR. FRIEDMAN: Thank you. I don't have any other  
12 questions.

13 MR. LINTON: Nothing further.

14 THE COURT: You may step down. You're excused.

15 (The witness was excused.)

16 THE COURT: Let's take what will probably be our  
17 last break of the day.

18 THE CLERK: Please rise. This court stands in  
19 recess until the call.

20 (A recess was taken from 12:19 p.m. until 12:35  
21 p.m.)

22 THE COURT: Please call your next witness.

23 Whereupon,

24 MICHAEL OPALKA

25 called as a witness by counsel for the State of Alaska, and

1 having been duly sworn by the Clerk, was examined and  
2 testified as follows:

3 THE CLERK: Please state your full name, and  
4 spell your last name?

5 THE WITNESS: Michael James Opalka, O-p-a-l-k-a.

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

8 THE WITNESS: P.O. Box 777, Girdwood, Alaska.

9 THE CLERK: And your current occupation?

10 THE WITNESS: Alaska State Troopers.

11 DIRECT EXAMINATION

12 BY MR. LINTON:

13 Q How long have you been a state trooper, sir?

14 A Approximately ten years.

15 Q And earlier this year, were you assigned to be  
16 present at the National Transportation Safety Board  
17 hearings in the Cook Hotel -- they were in the Captain Cook  
18 Hotel here in Anchorage?

19 A Yes, I was.

20 Q What was your purpose in being there?

21 A To be present during the hearings as a  
22 representative of the state and, if need be, take any kind  
23 of security measures necessary outside the realm of the  
24 private security that was hired.

25 Q Was such a thing required of you at any time

1 while you were --

2 A There was one incident, yes.

3 Q Were you assigned responsibilities for listening  
4 to and recording the testimony of -- in some fashion -- of  
5 any of the witnesses there?

6 A Not particularly that, no. I did, out of my own  
7 edification.

8 Q Out of your own -- for your own interests?

9 A Yes.

10 Q Did you transmit that information to anybody  
11 else?

12 A No, I did not.

13 Q More specifically, did you transmit it to any  
14 other troopers whom you knew to be working on the Exxon  
15 Valdez oil spill case, or Captain Hazelwood's case?

16 A I relayed some information relevant to the -- my  
17 position, or our position, to the next troopers that were  
18 -- the other trooper that was supposed to relieve me after  
19 a couple of days, yes.

20 Q Who was that?

21 A Hans Rolly.

22 Q And his function was what?

23 A Essentially the same as mine.

24 Q But neither of you had any responsibility for  
25 engaging in gathering information and submitting it to



1 troopers assigned responsibility for the case?

2 A No, sir.

3 MR. LINTON: Nothing further, Judge.

4 THE COURT: Mr. Friedman?

5 CROSS EXAMINATION

6 BY MR. FRIEDMAN:

7 Q Do you recall what time period you were at the  
8 hearings?

9 A It was Monday and Tuesday, and the time was from  
10 the time it commenced -- I think it was around 8:00 o'clock  
11 -- until 7:00 or 8:00 in the evening. It was a rather  
12 lengthy process each day.

13 Q Okay. And you were there in the first two days?

14 A Yes.

15 Q And no other times?

16 A No other times.

17 Q Thank you. I don't have -- and I think you said  
18 that you did listen to what was going on?

19 A Yes.

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

21 MR. LINTON: Nothing further.

22 THE COURT: You're excused.

23 (The witness was excused.)

24 MR. LINTON: I call Brent Cole, Your Honor.

25 Whereupon,

1 BRENT COLE

2 called as a witness by counsel for the State of Alaska, and  
3 having been duly sworn by the Clerk, was examined and  
4 testified as follows:

5 THE CLERK: Please state your full name, and  
6 spell your last name?

7 THE WITNESS: My name is Brent Cole, C-o-l-e.

8 THE CLERK: Your current business mailing  
9 address?

10 THE WITNESS: 1031 West 4th Avenue, Suite 520.

11 THE CLERK: And your current occupation, sir?

12 THE WITNESS: Assistant District Attorney.

13 MR. LINTON: Judge, I'd ask that the affidavit be  
14 marked as the next State's Exhibit.

15 (State's Exhibit 32 was  
16 marked for identification.)

17 THE COURT: The same use as Mary Ann Henry's?

18 MR. LINTON: Please, Your Honor.

19 THE COURT: Any objection?

20 MR. FRIEDMAN: No, Your Honor.

21 THE COURT: 32, is it?

22 MR. LINTON: Yes, Your Honor.

23 THE COURT: It's admitted.

24 (State Exhibit No. 32 was  
25 received in evidence.)

## 1 DIRECT EXAMINATION

2 BY MR. LINTON:

3 Q Explain what exposure you might have had to the  
4 case prior to being assigned to work on the prosecution of  
5 Captain Hazelwood on April 28, 1989?6 MR. FRIEDMAN: Excuse me, Your Honor. I  
7 neglected to bring something up when Miss Henry finished  
8 testifying. I just needed to get it on the record and make  
9 sure it's not going to present a problem.10 Mr. Linton and I talked about this this morning.  
11 There may be some trooper notebooks which have not been  
12 turned over to the defense, and it's not clear yet. He and  
13 I have an agreement that if there are other trooper  
14 notebooks, and after reviewing them this evening I wished  
15 to recall Miss Henry and Mr. Cole to ask about things in  
16 those notebooks, that the state would have no objection.17 I guess what I'm asking for is permission from  
18 the Court that the Court will honor that agreement so that  
19 I don't have to ask for a continuance now, or something of  
20 the kind.

21 MR. LINTON: I agree. I agree.

22 THE COURT: I'll accept that.

23 MR. LINTON: I think we've given everything, but  
24 I agree to check one more time and if there's something  
25 new, I agree that it's appropriate.

1 THE COURT: (Inaudible) you may reopen the  
2 argument and call them back, sure.

3 BY MR. LINTON: (Resuming)

4 Q Tell us about your exposure, please.

5 A Judge, I was involved in the trial of the state  
6 of Alaska versus Dan Finnegan and George Miller, as I set  
7 out in my affidavit, from March 2nd through April 5th of  
8 1989.

9 It was a complicated robbery case, many  
10 witnesses, a lot of immunity. I was -- it was a case that,  
11 at the time of the oil spill, was right when we were at the  
12 end of it, or getting close, somewhere in there, in the  
13 middle of it, we -- my exposure was not that great, because  
14 I wasn't reading the newspaper. I was working until 10:00  
15 or 11:00 at night, getting up early, coming in at 6:00 in  
16 the morning, preparing the case, working in court until  
17 2:00 o'clock, 1:00 o'clock, something like that.

18 There were a couple of incidents that occurred  
19 before I went on vacation. I think only one that I  
20 remember.

21 I distinctly remember being in Judge Rowland's  
22 courtroom -- or not his courtroom, in his office, and Mr.  
23 Shapiro, who was representing Mr. Miller, and Mr. Diani,  
24 who was representing Mr. Finnegan, and the Judge and I were  
25 there, and we were talking about something, and it had to

1 do with the trial.

2           And at that time, Judge Souter walked into the  
3 office and Judge Souter said something to the effect of,  
4 there was a blood test taken. I don't remember if it was  
5 mentioned what the result was. I don't remember anything  
6 more than that, and my -- my feelings are that it was  
7 indicated that he had been drinking, and that there was  
8 some proof -- I don't know when the blood test was taken.  
9 I didn't -- it wasn't said.

10           That is all I can remember as far as any exposure  
11 prior to me going on vacation on the 7th. I believe I read  
12 some of the newspapers -- I find it hard to believe that I  
13 didn't. I grew up in Alaska. But I don't remember  
14 anything that was involved.

15           I was in the office about 9:00 o'clock or 10:00  
16 o'clock one night. I received a phone call from Mr.  
17 Linton, who was in Valdez, and I knew he was in Valdez. My  
18 -- we started talking, and he needed some help, and he said  
19 -- I said, "Well, how are things going?" and he generally  
20 told me that things were pretty screwed up, but the civil  
21 attorneys didn't seem to know how to do a case and build a  
22 case. He was helping them with getting evidence of  
23 damages, because I remember he was -- he told me that he  
24 had the camera people go out ahead of the oil that was  
25 travelling so that they could get footage of the areas and

1 how they looked before the oil hit, before the oil came.

2 He asked me to have Anita, who is his secretary,  
3 start collecting all of the daily news matter, Anchorage  
4 Times papers, the Wall Street Journal, as I remember, and  
5 the New York Times papers. He asked me to pass that  
6 message along.

7 THE COURT: When was this call to you, Mr. Cole?

8 THE WITNESS: Judge, it was some time several  
9 days after Mr. Linton had gone to Valdez. I assume it was  
10 one of the nights -- it had to be between the 24th when  
11 this occurred and -- well, actually, it had to be between  
12 the time Mr. Linton went to Valdez and the 5th, when my  
13 case ended. Because I was working on the George Miller and  
14 Finnegan trial at that time.

15 That's all we talked about, that I can remember.

16 I, then, on Friday the 7th, when I had planned to  
17 take an expedition on Mount Bona, which is in the Wrangell  
18 Mountains, I took that Friday off. We gathered gear, got  
19 our stuff ready, and we left for McCar -- Chitna (PH).

20 And we drove all day, got up early in the morning  
21 Saturday, drove, and flew into a camp called the  
22 Ultimatooli (PH) Lodge, which is passed McCarthy, about 60  
23 miles where some people there are hunting guides, and they  
24 also fly parties in to do mountaineering expeditions.

25 When we were there, there were no newspapers, no

1 TV, and we were only in camp for about a day, but there was  
2 a shortwave radio, and you could pick up boats that were  
3 out in Prince William Sound, and I'm not really sure how  
4 that happens, but I do remember that there were  
5 communications on the radio about some of the cleanup  
6 activities, and as I remember, some boat had capsized.

7 I don't remember talking about anything in the  
8 case then.

9 We then climbed -- we were taken up the next day  
10 to -- I can't even remember the name of the glacier. We  
11 stayed there until the 22nd. It was two weeks that we were  
12 without communication with anybody. During that time we  
13 had one tran -- radio, but it was just for jets that were  
14 flying above. If we had any safety problems, we could  
15 contact them.

16 We came out on the 22nd, arrived in Anchorage on  
17 the 22nd, the night of the 22nd, and between then and the  
18 time that I was asked to try this case, I remember one  
19 other incident, and that was I happened to be either -- I  
20 can't remember if I was driving to work, whether I was  
21 watching the news, but I remember hearing a tape recording  
22 of a voice that I was, as I remember, was told was Captain  
23 Hazelwood's. I don't remember what was said. I don't  
24 remember in what context it was.

25 I was contacted on a Friday, I believe it was

1 April 28th in the afternoon by Mr. McConnell. He asked me  
2 if I was going to be in the DA's office for the next six to  
3 eight months, whether I would be interested in handling  
4 this case. I expressed an interest in doing it, and then,  
5 at that time, received instructions about how I would be  
6 proceeding as per Mr. Linton's plan.

7 BY MR. LINTON: (Resuming)

8 Q What were you told?

9 A I was told that I was not to read the  
10 newspapers. I was told that I was not to listen to the  
11 news. I was told -- well, let me -- I need to qualify  
12 that.

13 I was not to listen to the news or read the  
14 newspapers about anything that concerned the Exxon Valdez  
15 -- the Exxon Valdez oil spill. I was explained the reasons  
16 behind that and I was told that I was not to meet with --  
17 talk to other people about it.

18 I was told that I was not supposed to talk with  
19 any of the attorneys in our office. in fact, there was a  
20 memo that was sent around that I saw from Mr. Linton that  
21 essentially stated that -- I'm sorry -- Miss Henry, myself,  
22 Sergeant Stogsdill, I guess -- I believe Sam Adams' name  
23 was on that also, or it was added later. We were not to --  
24 the attorneys in the office were not to contact us, or talk  
25 to us, about this case.



1 I was told that I was not supposed to talk with  
2 other people who came up and talked to me about the facts  
3 of this case.

4 Q Tell us what you had to do, if anything, with the  
5 presentation of the case to the Grand Jury?

6 A I got assigned the case on April 28th. Certain  
7 parts of the Grand Jury proceeding happened almost  
8 immediately after that, and my involvement in that was  
9 minimal. I spoke with Bob Beevers, the expert that Mr.  
10 Linton had talked to.

11 I have to explain to you a little bit, I grew up  
12 in Fairbanks. I had never been near water. I had -- knew  
13 nothing about the tanker industry, didn't know the  
14 difference between a chart and a map, and so I sat down  
15 with Mr. Beevers and said, "Listen. You need to explain  
16 this to me, because I don't understand what's going on at  
17 all."

18 That was pretty much all I did for the initial  
19 part.

20 The second part of the Grand Jury proceeding, in  
21 my mind, is the part where the tanker captains -- or the  
22 NTSB hearings were coming up, and I helped coordinate the  
23 witnesses that were going to be called in our case. In  
24 fact, Mary Ann Henry and I split up the duties, where I  
25 said I'll take these witnesses and draw up the questions

1 for them for you, and you take these witnesses and you draw  
2 up those questions, and then we'll criss-cross, see if  
3 there's anything that we need, we think we're forgetting.

4 BY MR. LINTON: (Resuming)

5 Q These witnesses were crew members of the Exxon  
6 Valdez?

7 A Crew members of the Exxon Valdez.

8 Q Continue, please.

9 A I can't remember if I received permission -- I  
10 believe I did -- from Judge Shortell to sit in on the Grand  
11 Jury presentation, the second part, which I believe was the  
12 17th. My memory is that it happened on a Mon -- that  
13 Monday, witnesses started coming in.

14 We -- and Tuesday, the NTSB hearings started.  
15 Monday night, I went to the Captain Cook with Sergeant  
16 Stogsdill and he was going to be handing the subpoenas --  
17 we had worked out an arrangement with Exxon to -- that they  
18 would make these people available to us, and so he was  
19 going to be handing them both a Grand Jury subpoena and a  
20 trial subpoena.

21 I was also going to be introduced to the people  
22 so that I could have a feeling of, you know, who they were,  
23 they would know who I was, and so we went up to the floor  
24 -- I can't remember which one it was in the Captain Cook.  
25 They -- the security guy, person for the Exxon -- for Exxon

1 -- was a man by the name of Jim Sturdivant, I believe. He  
2 would -- we would say, "We would like to give this person  
3 their subpoena." He'd walk down the hall, pick up that  
4 person, come in.

5 An attorney by the name of Dagle was in the  
6 room. He represented Exxon and he seemed to represent  
7 these people, too. He was kind of a person that helped  
8 them out.

9 What we would do is they would come in, I would  
10 just stand there, Sergeant Stogsdill would hand them a  
11 subpoena, explain to them what it meant, ask them to  
12 contact us on Tuesday, pick up their statement so they  
13 could reread it, indicated to them that we were interested  
14 in interviewing them before they testified, and we did that  
15 for a number of the witnesses, and I can't remember which  
16 ones we actually ended up serving that night.

17 The next day, none of the witnesses agreed to  
18 talk with us, except for Mr. Kagan, who was represented by  
19 an attorney from Louisiana, and I can't remember his name,  
20 and Mr. Hensley from -- he used to be a public defender  
21 here, and that's how I knew him.

22 We went over in the afternoon to speak with Mr.  
23 Kagan, and it was Mr. Hensley, the attorney from Louisiana,  
24 Mr. Kagan, Sergeant Stogsdill and myself. The NTSB  
25 hearings were playing at that time, and we started talking

1 -- in fact, they were on the TV, and we started -- and I  
2 informed the attorney that I -- that we couldn't hear what  
3 was going on, and we asked them to turn it off.

4 We spoke with Mr. Kagan for a short time there.

5 The next day, I received permission from Judge  
6 Shortell, I believe, to sit in on the Grand Jury  
7 proceeding. That was a Wednesday, and that was when the  
8 crew members were called, except for maybe one or two other  
9 people.

10 THE COURT: Were these the individuals that  
11 refused to be interviewed, the crew members?

12 THE WITNESS: Yeah.

13 THE COURT: All right.

14 THE WITNESS: They -- essentially -- yeah. I  
15 didn't get a chance to interview them at all. We -- I just  
16 sat in the courtroom in the back.

17 At one point, Miss Henry -- I can't remember if  
18 she start -- I think she started coughing, and couldn't  
19 stop, and so I said, "Well, why don't you let me take  
20 over," and it was Mr. Claar, and I did the testimony of Mr.  
21 Claar.

22 I was involved in some of the decision-making  
23 involving the indictment, and sat in on the last day when  
24 it was the next hearing, which was the next week. It was  
25 like next Tuesday, the Tuesday following that.

1 And that was my involvement in the Grand Jury.

2 BY MR. LINTON: (Resuming)

3 Q What did you, or Mary Ann Henry, have to work  
4 with by way of reports or documents to know who to call, or  
5 to prepare witnesses for the Grand Jury?

6 A Well, who to call, for me, I was not really  
7 involved -- I wasn't involved in the first part of it, who  
8 was called in the first couple of days. Who was called in  
9 the second part, the crew members, I was involved in to the  
10 extent, and we were limited by, who Exxon had flown up for  
11 the NTSB. Those were the only people that we called.

12 What we had to work with was trooper interview.  
13 We received an FBI interviews, either the day before, on  
14 Monday, or Friday. It was -- I can't remember if it was  
15 Monday or Friday, but it was right before the Grand Jury.

16 We had various documents from the Exxon Valdez  
17 itself, course recorders, log books, bell loggers. We had  
18 maps -- charts, excuse me.

19 We had -- I spoke with Mr. Beevers as I talked to  
20 you -- told you before.

21 The other things that we had were discussions  
22 between myself and Sergeant Stogsdill, and discussions  
23 between Mary Ann Henry and myself, and the three of us.

24 Q I meant the question to apply to information, or  
25 police reports furnished, as things that you had -- when

1 you say you had conversations with them, what do you mean?

2 Describe what you mean?

3 A Well, we just shot around and did a lot of  
4 hypotheticals. What if.

5 Q Explain -- explain why you had to do  
6 hypotheticals?

7 A Well, one of the critical periods is the period  
8 between the time Captain Hazelwood left the bridge -- first  
9 of all, we had no statements from Captain Hazelwood, so  
10 we're trying to figure out what was going through his mind.

11 We had -- what we did have is the statements from  
12 Radkey, who was out on the bow. We had Claar's  
13 statements. We had Kagan's statements, and Maureen Jones.  
14 Those four people, that told us what went on -- oh, and we  
15 also had Murphy -- who told us what went on on the bridge  
16 that evening.

17 If you read -- there's two characters missing.  
18 We knew that Captain Hazelwood was up there for awhile, and  
19 we knew Greg Cousins was there. We didn't have anything  
20 from Greg Cousins. We didn't have anything from Captain  
21 Hazelwood, and if you read Mr. Kagan's interview, it has --  
22 you have a hard time picturing what's going on on the  
23 bridge.

24 So we sat around and tried to figure out what was  
25 going through these two guy's minds when this ship turned

1 and went 180 degrees on a heading of 180 degrees.

2 We had no statements of what happened after the  
3 ship went aground, except we had a brief statement by  
4 Maureen Jones, and a brief statement by Kagan, and we have  
5 the course recorder that shows the twisting, and we've got  
6 the instrument that shows the tanker being put full ahead.  
7 But we don't have any reasons for that.

8 So we sat back there and brought up hypotheticals  
9 of, "Well, maybe he was trying to do this," or "Maybe he  
10 was trying to do that."

11 That's what I mean by sitting with Mary Ann Henry  
12 and with Sergeant Stogsdill.

13 There's a couple of things that go on in this  
14 thing. Mr. Linton had not allowed us to talk with any  
15 attorneys. One of the things that we do in the District  
16 Attorney's office is when we have cases, we sit there and  
17 we talk.

18 "Well, I got this problem. What do you think  
19 about this?" Well, it's not uncommon, after work, to sit  
20 around and say, "This is an issue that we have, or I have.  
21 How would you do this?" or "How would you have done this  
22 better?" or "How do I present this?"

23 So we really were narrowed down into who we could  
24 talk to. We couldn't talk to Mr. Linton, we couldn't talk  
25 to anybody else, so it was just Mary Ann Henry, myself, Jim

1 Stogsdill and then, a little bit after that, Sam Adams.

2 All we had, as far as police report, were the  
3 interviews by the troopers of the crew members and the FBI  
4 interviews. That's what I remember.

5 Q Have there been other aspects to this unusual  
6 nature of the case, like what you're describing, the  
7 situation you've been placed in by the restrictions placed  
8 on you?

9 A You mean how it's affected how I've dealt with  
10 this case?

11 Q How you -- Yes.

12 A Sure. A number of things.

13 Whenever you get assigned to a case, particularly  
14 of this magnitude, publicity, I've had friends from back  
15 east that I went to college with send me letters to my home  
16 address with clippings. When I open up the letter, I see  
17 the clipping, I take it, fold it up and put it in an  
18 envelope.

19 My folks -- my Dad's an attorney in Fairbanks, my  
20 uncle's an attorney in Fairbanks. They ask me questions.  
21 My Mom asks me questions. My Mom sends me clippings from  
22 what's going on in Fairbanks. I had to tell her to stop.

23 I really didn't talk with the case much about  
24 her, though. I did talk a little bit with my Dad, just to  
25 explain the immunity issue, because I can explain these



1 things to him and he understands -- not that my Mom doesn't  
2 understand, but it would take for -- it would take longer,  
3 and I can tell my Dad about immunity, and independent  
4 source, and things like that. I'm probably going to get in  
5 trouble for this.

6 But -- so in that respect, it was always telling  
7 him what we were doing, but it was never -- when he would  
8 ever ask about -- I just told him from the beginning, I  
9 can't have you tell me anything about the case. I can tell  
10 you what I'm doing, and what steps we're taking and why  
11 we're taking them, and I would explain that to him.

12 People in town, as it became apparent that I was  
13 the one that had been assigned the trial in this case, you  
14 don't -- can't help but have people come up to you and  
15 start talking to you about it. I basically told those  
16 people, "Look, I just can't talk about it for reasons that  
17 will become apparent later."

18 Newspapers. I didn't -- I bought a new house in  
19 July. I don't get any newspapers. I read papers during  
20 that time, but every time I would look at a paper, if the  
21 headline looked like it had anything to do with the oil  
22 spill, I just didn't read it. I just went on.

23 I've had a couple of roommates during this time.  
24 Explain to them, if we were watching the news, or something  
25 like that, if something about this case came up, I would

1 have to walk out of the room, or they would go up and turn  
2 the volume down until the thing got taken care of.

3 That's how I've had to isolate myself against  
4 other people.

5 It's caused a little bit of dissension in the  
6 office. Mr. Linton and I, on several occasions, have had  
7 some real heated arguments -- I would call them arguments  
8 -- about turning over the NTSB hearing stuff. When we were  
9 preparing for the Grand Jury. we learned that there was  
10 going to be a representative from the state of Alaska there  
11 who was not going to be an attorney, and that there was  
12 going to be an attorney there, and my feeling was, we  
13 should have somebody there. This is going to be a great  
14 opportunity to find out, because we didn't have statements  
15 of Mr. Cousins, and we didn't know whether Mr. Hazelwood  
16 was going to testify or not -- at least at the beginning.

17 And so we said, "Well, we should draw up  
18 questions for the state attorney to ask the crew members,  
19 and we should have somebody there, either Mr. Linton or  
20 another attorney, and we were just told, "You will not go  
21 near the NTSB hearings. You will not be there. You will  
22 not ask anybody any questions. You will not contact the  
23 state attorney that's dealing with the matter."

24 And that caused some real problems for me,  
25 because I looked at the NTSB as something independent, and

1 Mr. Linton didn't.

2 We then were contacted at one point by the  
3 Department of Justice, two attorneys -- Mark Nagle, or --  
4 is it Mark Nagle? Mr. Nagle and Mr. Harman. They were  
5 looking at an investigation into this incident. They were  
6 conducting an investigation.

7 We had a meeting with them, Mary Ann Henry,  
8 myself, those two individuals and an FBI agent named  
9 Steele, and when we first met, I remember one of the -- one  
10 of our big concerns was that this hearing was not going to  
11 take place, and we didn't know whether we should raise a  
12 Criminal Rule 16 discovery motion that Mr. Linton should  
13 write it, to you, or to whoever the assigned Judge was,  
14 asking that the information that we had not received, or  
15 that we knew was out there, we suspected was out there,  
16 whatever way you want to put it, would get turned over to  
17 us, because we weren't sure that the defense was going to  
18 raise this.

19 So when I went over and talked with these two  
20 people, the first thing I said was, have you guys ever done  
21 this before? And they told us about a case down in  
22 Arkansas, or Alabama, down south where a tanker farm had  
23 burst, and there was a huge, but oil spill, and they -- but  
24 their facts were a little bit different, because they had  
25 independent people calling up authorities saying, "Look,

1 this tanker had been -- you know, there's oil going all  
2 over, so they had easily -- it was easy to determine that  
3 an independent source. We didn't have that in this case.

4 So what we did then is the first -- after they  
5 said, "Well, the defense really didn't raise this issue in  
6 that hearing, except right up -- right at the end, right  
7 before the case ended up settling." And I said, "Well, how  
8 do we do this? Do we wait for a motion to come in, a  
9 motion to dismiss, a motion to suppress, or do we file our  
10 own -- what I would call a Criminal Rule 16 motion to turn  
11 over the documents to our attorneys, the NTSB stuff, things  
12 like that?"

13 And they assured us that they thought it would  
14 come up in motion work before that happened.

15 We then sat down and they asked us what we had,  
16 what type of information we had reviewed, and when we told  
17 them that we had not reviewed any of the NTSB information,  
18 and that we couldn't hear anything about the NTSB, they  
19 were a little shocked, because at this time, they wanted to  
20 know what our plans were with Greg Cousins, and they wanted  
21 to us to listen to the NTSB hearings on Greg Cousins'  
22 testimony.

23 MR. : Who's they?

24 THE WITNESS: The two attorneys of the Department  
25 of Justice.

1           So they encouraged us to get the NTSB  
2 transcripts, and review his testimony, and then get back  
3 with them on what our plans were.

4           I ended up getting a copy of the NTSB stuff from  
5 Midnight Sun court reporters. It was sent to our office  
6 with two disks. I turned it over to Mr. Linton, which was  
7 our standard procedure.

8           I also received a package from the Department of  
9 Justice containing the NTSB material and all the exhibits,  
10 which I never looked in. I just handed it to Mr. Linton.

11           At one point, we had been assured that the NTSB  
12 stuff was being screened, or had been screened, and we  
13 would receive portions of it that were somebody else had  
14 decided were not tainted. That didn't happen.

15           Bob Maynard was supposed to do that. He ended up  
16 -- there was a mix up in communication. He ended up not  
17 doing it. Mr. Linton went on vacation. So we didn't get  
18 it then.

19           We've never seen the NTSB. About three weeks, a  
20 month ago, we raised the issue again, because we're looking  
21 at experts to come in and tell us certain things about what  
22 was going on when it -- just before the tanker hit, and --  
23 oh, I have to backtrack.

24           We then entered into negotiations, or I had a lot  
25 of conversations with a gentleman by the name of John Clow

1 (PH), who's an attorney down in Juneau, and he was  
2 representing Exxon. And we asked him, we made a huge list  
3 of what things we wanted from Exxon, and he went back and  
4 came back to us and essentially said, "We're not going to  
5 allow you to interview any more of these witnesses.  
6 They've already testified at NTSB, or they've given  
7 depositions, and what we'll do is we'll turn over to you  
8 the NTSB stuff."

9 We also had asked for a lot of the information  
10 about how the ship was sitting on the rock, or on Bligh  
11 Reef, or however you want to characterize it. The angles,  
12 whether it was listing, the underwater topography, and he  
13 told us that he -- that that information had been provided  
14 to the NTSB and that they would be sending that to us.

15 He did end up doing that. That information I  
16 gave also to Mr. Linton and haven't seen.

17 The experts that we've contacted need that  
18 information. I've continued to hound Mr. Linton and, for  
19 lack of a better word, trying to get that turned over to  
20 us, and then about three to four weeks ago, we had another  
21 meeting where it was decided that we would wait until after  
22 this.

23 So it's made it very difficult for us to hire any  
24 experts without the information.

25 THE COURT: What difference does it make that you

1 wait until after this proceeding? How will that affect  
2 decision?

3 THE WITNESS: Well, our feeling has been that  
4 after -- we -- when we were looking at this, we felt that  
5 what would happen -- again, we didn't know how this was  
6 going to proceed, so what we did is, we felt that what  
7 would happen is, that they would have this hearing, and if  
8 it was -- if there was a sufficient basis for determining  
9 -- see, Mr. Linton apparently cut off the information we  
10 received for the full day of the 24th. And there were  
11 things that were done on the 24th, there were pictures that  
12 were taken on the 24th, there were interviews that were  
13 conducted on the 24th, there were measurements taken,  
14 things that we needed.

15 And we figured that what would happen is we would  
16 put on evidence that this would have been discovered way  
17 before the cut-off date that Mr. Linton arbitrarily set,  
18 and I --

19 THE COURT: I understand.

20 THE WITNESS: And therefore, we figured that when  
21 the Court made a ruling on when -- if we won, and the Court  
22 makes an independent ruling on that, then he could turn  
23 over the stuff that he had kept from us.

24 We also felt that, once and for all, we could  
25 take care of this whether or not the NTSB was a tainted

1 hearing. I mean, we just had real different philosophies  
2 on whether or not that was, and it really -- on top of  
3 that, here the Department of Justice, who had done things  
4 like this before, had turned -- had screened it, had turned  
5 it over, and I just could not understand why we couldn't do  
6 it in this case.

7 That's why we did that.

8 THE COURT: Okay. Before we go any further, did  
9 you want to break at 1:20 today?

10 MR. FRIEDMAN: Yes, Your Honor, and -- I had an  
11 issue I thought maybe I should bring up at this time, and  
12 the Court, if that's appropriate.

13 THE COURT: Okay. Sure we can do that. You  
14 wanted to break at 1:20, and if you have got time --

15 MR. FRIEDMAN: That's what I -- I thought I would  
16 at least raise the issue --

17 THE COURT: All right, Mr. Cole, I'm going to  
18 excuse me right now. You may step outside, and we'll  
19 resume your testimony tomorrow at 8:30.

20 THE WITNESS: Okay.

21 (The witness stood aside.)

22 MR. FRIEDMAN: Your Honor, the point I'm bringing  
23 up, I guess, is a legal point, it's a procedural point, and  
24 it's also a factual point, and they all kind of intersect  
25 around Mr. Cole, and rather than kind of spring it on him



1 -- and I don't have any reason to think he even is aware of  
2 it -- I thought I would raise it now, and maybe we could  
3 decide how you want to approach it.

4 The cases say that at a castigor (?) hearing, the  
5 state has the burden of presenting to the Court each piece  
6 of evidence it plans to use at trial, and showing how that  
7 piece of evidence is untainted -- I'll use that shorthand  
8 phrase. So my expectation tomorrow would be to ask Mr.  
9 Cole, tell us each piece of evidence you plan to introduce  
10 at trial, and I presume we'll have a list of ten, twenty,  
11 thirty pieces of evidence.

12 I assume that later, then, Mr. Linton will get on  
13 the stand and say, "Here are additional pieces of evidence  
14 we wish to present at trial," and then -- we will then have  
15 a master list, and we will argue over whether it's tainted  
16 or not when this is all done.

17 THE COURT: Mr. Friedman, that could happen, if  
18 there is a trial, all the way up through trial, too, could  
19 it not?

20 MR. FRIEDMAN: I'm sorry?

21 THE COURT: It could happen all the way through  
22 trial, too, could it now? If they think of some more  
23 evidence that might be relevant they want to produce, they  
24 would have to go through the same procedure.

25 MR. FRIEDMAN: That's exactly right --

1 THE COURT: -- before producing that.

2 MR. FRIEDMAN: I think that's exactly right, and  
3 I guess I just didn't think it was going to be fair to Mr.  
4 Cole to say, "Okay. Tell us, while you're sitting there,  
5 cold, every piece of evidence you want to present at  
6 trial." And so I wanted to give his warning, maybe through  
7 Mr. Linton, and I guess also make sure as to whether we're  
8 on the same wavelength as to that's what we're doing here,  
9 as to that's what -- in other words, that the state does  
10 intend to present that sort of evidence.

11 We don't have the burden, but I think it would  
12 help if we were all kind of here for the same reason in  
13 that sense.

14 THE COURT: I'm not sure that we all are on the  
15 same wavelength. It seems like it's turning into that. At  
16 least we've heard some testimony about the Grand Jury  
17 presentation and what was presented, who was presented, and  
18 evidence tending to show lack of taint. I didn't know if  
19 we were turning it into a trial castigor proceeding as  
20 well.

21 Was that your intention at this time to do that,  
22 or was it your intention to get over, one way or the other,  
23 the immunity hurdles and then go to a castigor hearing?  
24 What was your intention, Mr. Linton?

25 MR. LINTON: I wish I'd done a few more of these

1 before I tried to answer that question.

2 THE COURT: You and I have done just the same  
3 number, I think, before this.

4 MR. LINTON: I was a witness in one seventeen  
5 years ago, but -- I'm not sure I can answer the question in  
6 the time we've got left here.

7 THE COURT: All right. Well, let's not worry  
8 about it, then. We can worry about it tomorrow.

9 But you're put on notice there may be some  
10 questions here, and there are a lot of issues we're going  
11 to have to take up. It seems to me that there's always a  
12 possibility of putting off the -- that portion of castigor  
13 to a later date and get directly to the immunity issue, but  
14 I don't mind doing it tomorrow and continue on through.

15 MR. FRIEDMAN: But the problem I see, Your Honor,  
16 is I'm not sure there is a difference between the castigor  
17 issue and the immunity issue. In other words, once we  
18 raise the claim of immunity, the state has the burden of  
19 presenting untainted evidence, and I think they acknowledge  
20 that. They're saying our evidence is untainted because of  
21 inevitable discovery, or what have you. That's one route  
22 to clear the evidence, if you accept that as an appropriate  
23 vehicle.

24 But if we are not trying to find out what's  
25 tainted and what isn't tainted, then I -- this is sort of

1 like what I brought up at the beginning of a hearing, is it  
2 seems to me that there's all kinds of possibilities of us  
3 going off in different directions, and if we're -- if Mr.  
4 Linton isn't trying to show us his untainted evidence and  
5 how his evidence is untainted, then it's not clear to me  
6 what he is trying to show, I guess is my --

7 THE COURT: Well, it would be nice if I could  
8 come up with some sort of a solution and say, "Okay, as of  
9 a certain time, it would have been inevitably discovered  
10 and that doctrine applies to Fifth Amendment rights." It  
11 would be nice if I could come up with that.

12 I can't do that right now until I hear more, and  
13 it's going to take me a little research and study to come  
14 up with some findings.

15 MR. FRIEDMAN: I understand.

16 THE COURT: Even if I did come up with a time  
17 like that, there might be some evidence that was discovered  
18 or produced after that cut-off time, but was somehow  
19 connected with information supplied before the cut-off  
20 time. And your analogy of the blood test. That might be  
21 an example. I don't know.

22 But I can't come up with a solution right now, so  
23 I think we have to hear it all, either that or go in the  
24 direction of the inevitable discovery, or the independent  
25 source, and then stop and wait for me to come up with a

1 decision, and then come back in, but that seems to be  
2 breaking it up.

3 We could do that for just about every motion. We  
4 could see how you fare on those motions and come back in  
5 and take another shot.

6 And I'd rather just do it all at once. And if we  
7 can do all the taint evidence in this hearing, I'd like to  
8 do it, as much as we can. And it -- I think it is a  
9 legitimate burden the state bears, and if you want to let  
10 Mr. Friedman ask those questions, I suppose that's up to  
11 you, but that's a little different than you normally would  
12 proceed, I suppose.

13 MR. FRIEDMAN: I just wanted to make it clear  
14 that I was going to go down that road unless somebody told  
15 me to stop.

16 THE COURT: Well, I think you've put everybody on  
17 notice on what you intend -- maybe Mr. Linton will go down  
18 the road and will plow it for you a little bit.

19 MR. FRIEDMAN: Fair enough.

20 THE COURT: Anything else?

21 MR. FRIEDMAN: No. Thank you, Your Honor.

22 MR. LINTON: Nothing further, Your Honor.

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

25 (Whereupon, at 1:27 p.m., the hearing recessed.)

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