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VOLUME 12

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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 4 In the Matter of: :
 :
 5 STATE OF ALASKA : Case No. 3ANS89-7217
 :
 6 versus : Case No. 3ANS89-7218
 :
 7 JOSEPH J. HAZELWOOD :
 :
 8 ----- :

Anchorage, Alaska

February 15, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:56 a.m. on February 15, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

BRENT COLE, Esq.

MARY ANN HENRY, Esq.

Assistant District Attorneys

On behalf of the Defendant:

DICK L. MADSON, Esq.

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WITNESSES:

STATE

James R. Kunkel

DIRECT CROSS REDIRECT RECROSS

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P R O C E E D I N G S

1
2 (Tape No. C-3619)

3 THE COURT: You may be seated.

4 Did you get the motion for expedited
5 consideration, counsel?

6 MR. MADSON: Yes.

7 MR. COLE: Yes.

8 THE COURT: All right. When did you plan on
9 calling Dr. Peat?

10 MR. COLE: This afternoon.

11 THE COURT: Are you going to be prepared to
12 address this with some authority by the time you call him?

13 MR. COLE: I don't know. We're going to try.
14 obviously, but I can't --

15 THE COURT: Might I suggest that you call him
16 tomorrow and maybe fill another witness in. Is that
17 possible?

18 MR. COLE: We'll try and do that.

19 THE COURT: Yeah. That would be the way to
20 handle it, and that way, tomorrow morning, that would give
21 you an opportunity to look into the authority, and we can
22 address it before his testimony tomorrow morning, and that
23 would give the defense some opportunity to get into it
24 tomorrow morning, too.

25 What time this afternoon had you planned on

1 calling him do you know? Approximately.

2 MR. COLE: Well, the order of witnesses that we
3 have today is Mr. Kunkel; Mr. Conners, who took the blood;
4 Mr. Stock, who took it from him; and Dr. Peat. So I was
5 believing he would be on around you know, 1:00 or 2:00
6 o'clock today.

7 THE COURT: All right. And if, during the lunch
8 hour, you can get together some authority, and we can
9 address this at 1:15, I'll do that. I don't expect it
10 should take very long, both we should get both sides up to
11 steam on this with some authority.

12 I'm assuming, Mr. Madson, that your position is
13 somewhat aligned with the motion, is that correct?

14 MR. MADSON: Your Honor, this is exactly what I
15 raised earlier, and I will have additional authority, I
16 think, along the same proposition.

17 MR. COLE: I am not familiar with the motions
18 that were raised earlier, because I was kept apart from
19 that. I'll have to have Mr. Linton look into it.

20 THE COURT: This particular motion was not raised
21 earlier, but there was an ancillary motion regarding the
22 blood alcohol that was raised earlier.

23 MR. MADSON: Your Honor, along with the motion to
24 dismiss for lack of jurisdiction, this motion was covered
25 by that. I mean, that motion covered this _____

1 condition, because my argument was that, since federal law
2 had pre-empted state law in this field, that obviously this
3 blood alcohol would be illegal if used in court.

4 THE COURT: I understand, Mr. Madson. There was
5 not a motion to quash Dr. Peat's testimony brought
6 earlier. I understand what you're saying now.

7 Mr. Cole, let me ask you a question. You say
8 you're not aware these things had been brought up earlier.
9 Are you still under that direction, not to become aware of
10 these things that have been brought up earlier?

11 MR. COLE: Judge, I had so much to review, that I
12 have not gone back and looked at anything that went on
13 before. I've just been concentrating on this case itself.
14 I have not gone back -- it's not under an order, or
15 anything like that.

16 THE COURT: Okay. Okay. If it was, I was going
17 to encourage you to get somebody who was familiar with it.
18 Maybe you can get Mr. Linton over here so you don't need to
19 get so familiar with it.

20 MR. COLE: Well, that's -- that's what my plans
21 were, to have Mr. Linton and Mr. (inaudible).

22 THE COURT: Let's see how it goes. If you get
23 something together by noon on this, or by 1:15, we can take
24 it up before resuming the jury proceeding.

25 MR. COLE: We are putting this a little out of

1 order at Dr. Peat's request -- in fact, that's what's kind
2 of ironic about this. He has a -- some type of meeting
3 that he wants to fly to Cincinnati to as soon as possible,
4 so I arranged to have him go a little out of order, and
5 then when I find out -- then I find out that they're going
6 to fight the whole thing. So --

7 THE COURT: Well, if you can fill in another
8 witness, I don't -- if he's been moved up to accommodate
9 him, and now he's filed a motion to quash the subpoena, I
10 don't have much hesitancy in putting this off until
11 tomorrow morning, and keeping him in overnight. But if we
12 can do it at 1:15, then that seems like it's going to solve
13 everybody's time problems. I'll do it whenever is
14 convenient to --

15 MR. COLE: We will do our best to have something
16 before you by this afternoon.

17 THE COURT: All right.

18 Anything else we can take up now? We have a
19 juror with the lights on on her car, and we've dispatched
20 security to go down there and to get into her car because
21 she locked her keys in, so it will be about ten, fifteen
22 more minutes. Is there anything that we can take up here
23 during that time, or do we just want to --

24 MR. MADSON: The only thing is, Your Honor, I
25 guess -- well, I suppose I could leave sometime today. If

1 the Court wanted to hear this thing, and it could be done,
2 let's say, at 1:15 or 1:30, the Court apparently wouldn't
3 have any objection if I left and worked on the motion?

4 THE COURT: No, sir.

5 MR. MADSON: All right.

6 THE COURT: No, sir, as long as Mr. Chalos is
7 here and ready, willing and able.

8 MR. CHALOS: Ready.

9 THE COURT: All right. We'll stand in recess.

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

12 (A recess was taken from 9:02 a.m. to 9:15 a.m.)

13 (Whereupon, the jury enters the courtroom.)

14 THE CLERK: -- Karl S. Johnstone is now in
15 session.

16 THE COURT: Thank you. You may be seated.
17 We'll resume with the cross-examination of Mr.
18 LeCain.

19 MR. MADSON: I had no other questions, Your
20 Honor.

21 MR. COLE: No questions.

22 THE COURT: Well, it looks like you're excused at
23 this time. May he be excused from any further
24 participation?

25 MR. COLE: Yes.

1 MR. CHALOS: Your Honor -- well, let's see.
2 Let's see. I don't believe so, Your Honor. He may be
3 excused.

4 THE COURT: He may be excused?

5 THE COURT: Yes.

6 You are excused from further participation, Mr.
7 LeCain.

8 MR. COLE: Your Honor, at this time, we would
9 call Mr. James Kunkel.

10 Whereupon,

11 JAMES R. KUNKEL

12 called as a witness by counsel for the State of Alaska, and
13 having been duly sworn by the Clerk, was examined and
14 testified as follows:

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

17 THE WITNESS: James R. Kunkel, K-u-n-k-e-l.

18 THE CLERK: And your current mailing address?

19 THE WITNESS: 5825 Stone Haven Drive, Kennesaw,
20 Georgia 30144.

21 THE CLERK: Could you spell the name of the town,
22 please?

23 THE WITNESS: K-e-n-n-e-s-a-w.

24 THE CLERK: And your current occupation, sir?

25 THE WITNESS: I sail as Chief Mate for Exxon

1 Shipping Company.

2 DIRECT EXAMINATION

3 BY MR. COLE:

4 Q Mr. Kunkel, would you tell the jury what your
5 position was on the Exxon Valdez the day it grounded last
6 year?

7 A I was the Chief Mate, or chief officer.

8 Q How long have you been in the Maritime Industry?

9 A I started at King's Point in 1970, went to school
10 for four years, and graduated in 1974 with a third mate's
11 license and a Bachelor of Science.

12 Q Would you tell the jury just briefly, give them a
13 history of what type of jobs you held in the maritime
14 industry?

15 A Well, when I got out of school, my first job was
16 on a tugboat as a third mate. I did that for a little over
17 a month. And then I worked for the Corps of Engineers on
18 what they call a hopper dredge for about a
19 year-and-a-half. And then I went on active duty with the
20 Coast Guard for three years as an ensign and then a
21 lieutenant, and in 1979, I got out of the Coast Guard and
22 took employment with Exxon Shipping Company.

23 Q Have you been working with them ever since?

24 A Yes.

25 Q What positions have you held with Exxon?

1 A Third mate, second mate, and chief mate.

2 Q When did you get your second mate's license?

3 A That would be hard. I mean, I can't --

4 Q Approximately?

5 A Approximately '78 or '79, I think.

6 Q And when did you get your chief mate's license?

7 A I believe '81 to '83, somewhere in that area. I
8 can't tell for sure.

9 Q When did you get your master's license?

10 A I believe it was in '87.

11 Q Would you -- have you worked on other ships since
12 the grounding?

13 A Yes, I have.

14 Q Could you give the jury an idea of how many, and
15 what positions you held there?

16 A I was chief mate on the Exxon Philadelphia, the
17 Exxon New Orleans, and the Exxon Jamestown since being
18 discharged from the Exxon Valdez.

19 Q Do you have any intentions of becoming a
20 master _____?

21 A That's always your ultimate goal, and if offered
22 the position, I would take it, yes.

23 Q Would you tell the jury what interests you about
24 being a master?

25 A Well, getting the command of the vessel, ship

1 handling, being overall in charge of the ship. Ideally,
2 that is what I've been preparing for in each phase of my
3 career, learning each and every aspect of the job with the
4 idea that eventually I would become master and know how to
5 do all the jobs underneath me.

6 Q Do your responsibilities increase at each level?

7 A Yes, they do.

8 Q Would you tell the jury what type of
9 responsibilities as master has?

10 A He is overall in charge of the ship, all aspects
11 of the vessel.

12 Q When you say "overall in charge of the ship," can
13 you break that down? Is there anything particular? Let me
14 ask it this way: is he in charge of the crew, the safety
15 of the crew members?

16 A Yes, he is.

17 Q And is he in charge of the safety of the ship
18 itself?

19 A Yes, he is.

20 Q And of the cargo?

21 A Yes.

22 Q Would he be in charge of how the ship is run?

23 A Yes.

24 Q Are there detrimental parts about being a master?

25 MR. CHALOS: Objection, Your Honor.

1 MR. COLE: I'll rephrase it. May I proceed?

2 THE COURT: Yes, sure. Go ahead and rephrase it.

3 BY MR. COLE: (Resuming)

4 Q Are there responsibilities -- why -- are you
5 interested in becoming a tanker captain, or would it make
6 any difference? There's other ships you could be a master
7 on.

8 A Well, that's a tough one to answer, you know. I
9 work for a company right now that has exclusively tankers,
10 so if I was to leave Exxon, then yes, I could seek
11 employment on other types of vessels. But if I continue
12 working at Exxon Shipping Company, then my option is to be
13 captain aboard a tanker.

14 Q Are there risks involved with being the master of
15 a tanker vessel.

16 MR. CHALOS: Objection, Your Honor.

17 THE COURT: You're going to have to give me more
18 than just an objection. What is your objection?

19 MR. CHALOS: There is no foundation for that
20 question, and -- about relevance.

21 THE COURT: I will let him answer the question.

22 BY MR. COLE: (Resuming)

23 Q Are there any increased risks of being a tanker
24 captain (inaudible)

25 A On a different ship? Is that what you're saying?

1 Q Yeah, versus a different ship, different type,
2 like a grain carrier.

3 A Uh-huh. Well, with a tanker, yes. There is
4 always the possibility of an oil spill, but you could also
5 have a spill on other ships. It could be a bunker tank
6 that punctures, maybe a double bottom that has some kind of
7 petroleum product. That's one of the aspects of it.

8 Q But it would be different than having a spill of
9 a grain ship?

10 MR. CHALOS: Your Honor, I object. No
11 foundation, no relevancy.

12 THE COURT: He can give his opinion. Objection
13 overruled.

14 BY MR. COLE: (Resuming)

15 Q Would it be different --

16 MR. COLE: I'll just withdraw the question.

17 BY MR. COLE: (Resuming)

18 Q do you have -- are you ware of pilotage
19 endorsement --

20 A Yes, I am.

21 Q -- requirements. Would you explain to the
22 jury --

23 A Wait, wait. You asked me two questions, sir.

24 Q Are you aware of pilotage endorsement
25 requirements in the Prince William Sound area?

1 A I'm aware that there is a requirement for an
2 endorsement there, yes.

3 Q Do you have one?

4 A No, I do not.

5 Q Why are there -- why is there a need for pilots?

6 A Well, because it's required by law.

7 Q Is there a reason for that, other than it's
8 provided by law? Do they provide any special services?

9 A Well, now, which pilot -- what are we talking
10 about? I mean, a state pilot, the service of a state
11 pilot, or the service of having an endorsement on my
12 license?

13 Q No, the pilot, the state pilot.

14 A Yes. Yes. They do provide a service that -- in
15 that they're to guarantee safe passage of the ship in an
16 area where it's been determined by the government that
17 local knowledge is important for the passage of the vessel.

18 Q Could you have gotten a pilotage endorsement for
19 the Prince William Sound area?

20 A I can get pilotage endorsement to anywhere if I
21 make enough trips to do it, and take the tests.

22 Q Is there a reason why you haven't gotten it, up
23 to this point?

24 A Well, the basic reason is I do not have enough
25 trips to be even considered for it yet.

1 Q And that would be trips at the helm, at -- on the
2 bridge?

3 A Yes, either as an observer, or the officer on
4 watch.

5 Q Have you received any specialized training since
6 being at -- working for Exxon, special courses that you've
7 been sent to?

8 A Yes, a number of courses.

9 Q Would you explain to the jury what those have
10 been?

11 A Well, they sent me one time to a simulator in
12 LaGuardia in New York. This was pre-exploration or
13 pre-opening of the Hondo Platform in Santa Barbara. They
14 sent me to a firefighting school in Texas, where we learned
15 for about a week basic firefighting techniques, and
16 actually put out fires that could have conceivably have
17 been started on a tanker.

18 And also I've been to a school in California
19 where we've -- it's called cargo handling school, where
20 they instructed us on the use if IG, inert gas, crude oil
21 washing, and loading and discharging tankers safely.

22 Q Do you have any yearly requirements for the
23 renewal of any of your licenses?

24 A Every five years you're required to renew your
25 license.

1 Q Would you tell the jury when you were assigned to
2 the Exxon Valdez?

3 A Well, let's see. I was assigned to the Valdez in
4 the fall of '88. That is when I was told that I would no
5 longer be on the ship that I had been on, which was the
6 Exxon Lexington, and that my new assignment would be on the
7 Exxon Valdez.

8 Q What position were you to hold when you were
9 assigned?

10 A Chief mate on that.

11 Q And was that a permanent or temporary assignment?

12 A Well, in this world, what's really permanent, you
13 know? I was told that that would be my permanent
14 assignment, yes.

15 Q How many assignments did you have on the Exxon
16 Valdez prior to the grounding?

17 A I had done one assignment, and that was in the
18 fall of '88.

19 Q How long had that assignment lasted?

20 A Approximately two months.

21 Q What runs was the Exxon Valdez making at that
22 time?

23 A Okay. At that time, when I was on there, it
24 strictly went to Valdez and San Francisco and maybe a trip
25 or two to LA. I'm not sure. However, the run still

1 consisted of going to the terminal in Panama. That -- at
2 that time, that was still in the vessel's run, although I,
3 personally, didn't make that run.

4 Q For the two months that you were aboard.

5 A Uh-huh.

6 Q Who were the captains of the Exxon Valdez during
7 the first assignment that you had aboard?

8 A I believe that Captain Stalzer was there for a
9 very short period of time, probably during the changeover
10 of the command, and then Captain Hazelwood.

11 Q Can you tell the jury when your second assignment
12 began?

13 A I believe I reported March 8th of 1989.

14 Q And who was in command of the Exxon Valdez at
15 that time?

16 A Captain Hazelwood.

17 Q Can you give the jury an idea of how many runs on
18 the Exxon Valdez you made into Prince William Sound during
19 the course -- in and out of the Port of Valdez during those
20 two assignments?

21 A Well, I probably -- probably four. Maybe five.

22 Q And have you been assigned to tankers from the
23 past, while you've been working for Exxon, that -- where
24 your assignment included going into and out of the Port of
25 Valdez?

1 A In 1979, I was on a ship that went there.

2 Q Approximately -- can you give us an idea of how
3 many runs you made that time?

4 A I really can't. I'm sorry. I can't remember
5 that one.

6 Q Of the four to five runs that you made on the
7 Exxon Valdez, would you tell the jury how many times you
8 would have been at the helm while you were going in and out
9 of Prince William Sound?

10 A Well, I was never at the helm.

11 Q I'm sorry. On the bridge.

12 A I was on the bridge oh, maybe three or four of
13 those times, in pieces of the transit, yes.

14 Q Okay. Is there a reason why chief mates don't
15 spend a lot of time on the bridge coming into and out of
16 Valdez?

17 A Well, on a number of occasions, the master will
18 take your watch so that you might rest, with the idea that
19 you'll be up most of the time during the load, and leaving,
20 you'll be pretty tired, and so on a number of occasions
21 I've -- Captain Hazelwood did take my watch a number of
22 times.

23 Q I'd like to talk for a little bit here about the
24 responsibilities that you had as a chief mate on board the
25 Exxon Valdez. Who were you responsible to?

1 A I was responsible to the captain.

2 Q Can you give the jury -- well, let's talk about
3 this period. While you are loading and unloading the
4 vessel, briefly, what are your responsibilities during that
5 time?

6 A All right. I would be -- it would be my
7 responsibility to plan the discharge of the ballast that's
8 on the ship -- that's the water that contains an oily
9 mixture -- and then plan the loading of the cargo. So
10 prior to even getting there, I've already got in my mind
11 what we're going to do, and I've written up orders to my
12 junior officers telling them how I want the job done.

13 Once we're alongside of the dock, normally I
14 would be there for the start of the dirty ballast and the
15 finish of the dirty ballast. In between time, perhaps a
16 junior officer, unless I was on watch, would be watching
17 that event.

18 Then it would be my job as --

19 Q Could we stop just right there for a minute?

20 A Okay.

21 Q Would you explain to the jury what you mean by
22 "dirty ballast"?

23 A All right. The -- a tanker has to take on water
24 in order to meet its stability and draft requirements,
25 especially for transit in the Gulf of Alaska, where it's

1 very rough.

2 Q What the water do? I mean, why does he take it
3 on?

4 A You take it on to bring the ship down, to give it
5 more draft and make it more stable. So the problem is now
6 is those tanks used to contain oil, and since -- so now you
7 can consider that water to be contaminated, and therefore,
8 it can't just be discharged to the sea, and when you get up
9 to the Alyeska terminal, they have tanks that are designed
10 to handle that water, so we give them that water. And now
11 the ship is empty, and ready to receive cargo.

12 Q And you oversee that loading process?

13 A Yes.

14 Q While docking and undocking, can you give the
15 jury an overview of what your responsibilities are on
16 that --

17 A On a three-mate ship, which is what we were, it
18 is normally -- the normal position for the chief mate would
19 be on the bridge, operating the telegraph, if it was an
20 older type vessel, or like on the Valdez, a more modern
21 vessel operating the throttle.

22 Q While at sea, do you have a shift that you have
23 to report for?

24 A Yeah. You have -- pretty much as the chief mate
25 you have a choice of which watch. It would either be the

1 4:00 to 8:00 or the 8:00 to 12:00. It depends basically on
2 the chief mate, and then also having a discussion with the
3 master, but basically it's one and the same. You work four
4 hours you're off eight hours; you work four hours and
5 you're off eight. That means you're on watch on those
6 four-hour periods of time.

7 Q When you say you're "on watch," what do you mean
8 by that?

9 A That means that you'd be on the bridge, and it's
10 your -- the navigation of the vessel is your
11 responsibility. It's your -- you must take the fixes, fill
12 in the log books, insure that the vessel stays on course
13 and doesn't hit anything.

14 Q Do you have people that assist you on your shift?

15 A You have two unlicensed sailors assigned to your
16 watch. They're ABs, is what they're called.

17 Q That would be short for able-bodied seaman?

18 A That's correct.

19 Q How important is it to know the capabilities of
20 the crew members, or the ABs, that you have working for
21 you?

22 A Well, you have to know -- have an idea of their
23 limitations as well as their capabilities.

24 Q Why is that?

25 A Well, you take for granted that if they have the

1 document and the company has assigned them there, they have
2 the capability to perform the job. But, like everybody and
3 every other individual in this world, some perform better
4 than others.

5 Q About knowing the capability, do you also oversee
6 the other licensed officers on board the ship?

7 A Yes. The second and third mate are technically
8 also under my jurisdiction. However, when it comes to the
9 navigation of the vessel, usually they report directly to
10 the captain.

11 Q Do you remember which shift you worked on the
12 Exxon Valdez?

13 A I was on the 4:00 to 8:00 watch.

14 Q And do you remember who the ABs that you had
15 assigned to you at that time?

16 A No, I sure don't.

17 Q If I showed you a crew list, would that refresh
18 your recollection?

19 A It probably would, yes.

20 (Pause)

21 MR. : (Inaudible).

22 THE WITNESS: Well, I'm sitting here -- does
23 Peacock sound like one, or somebody like that? I don't
24 know. I mean -- I know we had -- I can't -- I can't
25 recall.

1 BY MR. COLE: (Resuming)

2 Q Does that refresh your recollection?

3 A Okay. Let's see. It wasn't her. It wasn't
4 him. Okay. It would have to be -- yes, this guy Peacock,
5 John Peacock, and Carl Jones. Yeah. That was --

6 Q Were you familiar with any of the other
7 able-bodied seaman that were working on the Exxon Valdez at
8 that time?

9 A Well, you'll have to let me see the list again.
10 Okay.

11 To the best of my knowledge, the only person I
12 had ever sailed with before was Mr. Kagan, and the rest of
13 them, it was my first trip with them.

14 Q When had you sailed with Mr. Kagan before?

15 A I think it was in '84 or '85.

16 Q And what capacity was he working in at that time.

17 A He was what they call AB maintenance man, and I
18 think it was on the Exxon Lexington, and what his capacity
19 was, at sea he was a day working maintenance person, but in
20 port areas, he was AB helmsman.

21 Q And had you worked with Captain Hazelwood before
22 -- before coming on the Exxon Valdez?

23 A No, never.

24 Q Let me ask you this question. You talked about
25 someone's capability.

1 A Uh-huh.

2 Q You assume that they are capable, if they have an
3 AB license. Does that mean that, in every situation, they
4 are the right person to have at the helm?

5 (TAPE CHANGED TO 3620)

6 MR. CHALOS: Objection, Your Honor. No
7 foundation.

8 THE COURT: Objection overruled.

9 THE WITNESS: Okay, what does that mean?

10 MR. COLE: Okay. That means you can answer the
11 question.

12 THE WITNESS: Could you repeat the question,
13 then?

14 BY MR. COLE: (Resuming)

15 Q You indicated that you assume that a person is
16 capable if they have an AB license.

17 A Uh-huh.

18 Q Does that mean that that person should be at the
19 helm, is qualified to be at the helm at all times?

20 A That means he's qualified to be at the helm.

21 Q Okay. Does it mean that you would put him at the
22 helm in all situations?

23 A It means that I have the option, if I wanted to
24 change him, but if -- I've never -- if you're asking --
25 well, are you asking about Mr. Kagan?

1 Q Well, I'm just asking you broadly. first.

2 A Broadly? I've never had the occasion to remove
3 an AB from the wheel and replace him with another AB.

4 Q But you have that authority?

5 A I have that authority, yes.

6 Q Did you have any discussions with Captain
7 Hazelwood about Mr. Kagan?

8 A Yes. I did.

9 Q And what were those discussions about?

10 THE COURT: Give me a foundation, please. for
11 that.

12 BY MR. COLE: (Resuming)

13 Q When did you have the discussion with Captain
14 Hazelwood?

15 A I joined the ship in either LA -- I think it was
16 Los Angeles that I joined the ship -- and prior to leaving
17 San Francisco, I had a general discussion about Mr. Kagan
18 with Captain Hazelwood.

19 Q And what did you discuss?

20 A Basically, in my own words, I said, "Hey, Joe,
21 what's the story with Kagan?" He said, "Well, what do you
22 mean?" And I said, "Well, I had him before on the
23 Lexington and he needed a lot of practice steering. He was
24 okay following orders and doing what he was told to do.
25 How's he doing on here?"

1 And Captain Hazelwood's response was that he went
2 in and out last trip of Prince William Sound with no mishap
3 and did okay.

4 Q Do you remember writing an evaluation of Mr.
5 Kagan?

6 A yes, I do.

7 Q And in that evaluation, did you indicate at that
8 time that he was someone that needed to be --

9 MR. CHALOS: Objection, Your Honor. I think
10 we're getting into hearsay.

11 MR. COLE: It goes to his conversation with
12 Captain Hazelwood, Your Honor. His state of mind.

13 MR. CHALOS: Your Honor, unless Captain Hazelwood
14 saw that evaluation, or that evaluation was discussed with
15 him, it would be irrelevant, and hearsay.

16 THE COURT: It sounds like it's hearsay, Mr.
17 Cole, and it doesn't sound like it's an inconsistent
18 statement of this witness. Unless you can show me an
19 exception, the objection will stand.

20 BY MR. COLE: (Resuming)

21 Q Did you have any other discussions with Captain
22 Hazelwood about Mr. Kagan?

23 A Well, that's a tough one. You're always talking
24 with the captain about the other officers and the crew. I
25 -- you know, a captain is supposed to constantly get

1 feedback from his chief mate on how people are doing. I
2 never went to Mr. -- or Captain Hazelwood after that
3 conversation with any type of disciplinary action, or
4 feedback from my junior officers, that Mr. Kagan was not
5 doing his job.

6 Q Was Mr. Kagan a person a person that had to be
7 watched carefully while he was on the bridge -- at the
8 helm?

9 MR. CHALOS: Objection, Your Honor. This witness
10 didn't work with Mr. Kagan on the Exxon Valdez. If he's
11 talking about the Exxon Lexington, I would object.

12 THE COURT: Why don't you give us a foundation
13 for the times this witness may have observed Kagan, and
14 when he observed him.

15 BY MR. COLE: (Resuming)

16 Q Was Mr. Kagan at the helm at any time when you
17 were on -- the first mate on the Lexington?

18 A Yes.

19 Q And was he a person -- did you get a chance to
20 observe him?

21 A Yes.

22 Q And was he the type of person that you could rely
23 on, or did he have to be watched when you gave him turning
24 instructions?

25 MR. CHALOS: Objection, Your Honor. No

1 foundation. Watched in what situation?

2 THE COURT: Objection overruled.

3 BY MR. COLE: (Resuming)

4 Q Was he the type of person that you had to watch
5 when you gave turning instructions?

6 A It depends on what you mean by "turning
7 instructions." I mean, if I told him to take the rudder
8 and to put it someplace, he always did it; no problem. If
9 I told him, "Look, what I want you to do, Bob, is come to a
10 course," then, even if it was the best helmsman in the
11 fleet, I would have still stood there and watched him. Any
12 time they're coming to a course, I -- I find you have to
13 watch them.

14 Q Did you have any discussions with either Mr.
15 LeCain or Mr. Cousins about Mr. Kagan?

16 A Yes.

17 Q And what did you tell them?

18 A Well, it was a general -- almost like a BS
19 session during a morning coffee break. I don't know
20 specifically, but normally I took afternoon naps, so it had
21 to be in the morning, and it was just a general about him
22 as well as all the other ABs on the ship. I wanted their
23 feedback, if they had sailed with any of them, and I gave
24 them my feedback if I had sailed with them.

25 That was --

1 Q And did you give them any instructions about Mr.
2 Kagan?

3 A No. It wasn't my place to tell them how to run
4 their watch, only to provide them with any information that
5 I had.

6 Q Now, would you outline for the jury when you were
7 on the bridge, and on your four-hour shift, what -- what
8 would your responsibilities be at that time -- when you
9 were out at sea?

10 A Out at sea. All right.

11 When you -- well, what do you want to do? Walk
12 through a watch? I mean --

13 Q Yeah.

14 A You're called, probably about a half-hour, forty
15 minutes before the watch, depending on your preference.
16 You get up there usually about ten minutes before the watch
17 starts, and at that time, you should check the compasses,
18 make sure that the master gyro and the repeaters agree, the
19 course recorder, time and heading agree.

20 Try to get a position, if possible, to check your
21 satellite and Loran position with, perhaps, a radar fix if
22 you're close enough to get it. Try to find out what the
23 last -- what the -- what has happened on the last watch,
24 and what's ahead of you on your watch.

25 Then go in and have a talk with the mate on

1 watch, find out from him what's the current course, speed,
2 and, if any of the equipment is not working, or there are
3 any special orders that the captain has left that are not
4 already included in his night orders. And then you assume
5 the watch.

6 At sea, you're usually on the automatic pilot
7 with an AB up there, and you might tell that AB that A, I'm
8 going to be making a course change in an hour or so. Maybe
9 there's traffic in the area. You tell them, "Heads up.
10 There's possible fishing boats," or whatever.

11 Then it's your job, on the hour, usually, to put
12 a fix down, either by Loran or satellite, or celestial, if
13 you can get that. Gulf of Alaska, usually it's overcast,
14 in the wintertime.

15 And then towards the end of the watch, filling
16 out all of your paperwork as to how the watch went, if
17 there was any occurrences, like changing of a course, or a
18 sighting, or whatever. And then call the next watch.

19 Basically, don't hit anything and stay on the
20 line. That's what you're trying to do.

21 Q What type of navigational instruments were
22 available to you to do this? And you can refer, if you
23 like, to the exhibit there to your right, the bridge.

24 A Well, you had -- let's see. On her, you had --
25 I'm sure you had a SATNAV, which is an instrument that gets

1 fixes from satellites. You had a Loran-C, which takes its
2 fix from lines that are emitted from -- like almost like
3 radio beacons, basically, is what it boils down to.

4 They -- so that would be your main electronic
5 gear for getting a fix. To help you as far as seeing
6 further than your eye could see would be your two radars,
7 one on each side of the ring, number 11 and number 20 -- I
8 guess you call it 23.

9 Now -- and then, of course, on number 23, you've
10 got what they call an automatic plotting device and what it
11 does, it's got a computer in it, and if you have a target
12 out there, a ship or a boat or whatever, that will -- you
13 instruct it to pick it up, and it will plot it
14 electronically and tell you that ship's course and speed
15 and how close it's going to come to you, so that you can
16 avoid hitting that ship.

17 Q Does it have an alarm on it?

18 A Yes, it does.

19 Q How do you set the alarm?

20 A Well, I'd have to read the books to tell you the
21 exact procedure, but basically, you decide how big a CPA --
22 that's the closest point of approach you want -- this is
23 one of the alarms --

24 Q How close you want to get to --

25 A To the other ship, and then if, after plotting

1 it, you're going to come any closer than that, a little red
2 light -- I think, on this one; it might be another color --
3 will flash, and a little buzzer will go off.

4 Another set of alarms, you have what they call
5 the guardian rings, and you can put them so that, let's
6 say, that you didn't catch a target, but as it entered
7 those rings, it would pick it up by itself.

8 Q What kind of a heading indicator did you have?
9 Do you remember at all?

10 A Okay. On the steering stand itself -- that's
11 number 17 -- it's like a little TV screen, and that would
12 tell -- that's got numbers at the top of it, and that will
13 tell you what your heading is.

14 Also, I can't recall, but --

15 Q How about --

16 A I think there's another place, too, but I can't
17 recall on that steering stand.

18 Q On the steering stand itself?

19 A Yeah. Yeah. This thing here. Whoops.

20 Q Go ahead. (Inaudible) up there.

21 A Yeah. Right here, this is the steering stand.

22 I'm not sure, but like I think it's another
23 place, maybe here or something, that they got some
24 numbers. I'm not sure, though. But definitely on this
25 screen, here.

1 Then, of course, you've got your standard --
2 let's see, this guy right here. Okay. That -- there's
3 your heading of 163.8. Let's see. And I believe this here
4 is a repeater. I'm not sure. I'd have to look. Number
5 18.

6 Q Okay.

7 A So that would be where the number that you could
8 look at, your heading number.

9 Q And rates of turn?

10 A Okay. That -- let's see, I think on the screen
11 you get that read out. You also see this little display
12 moving right or left. And then this rate of turn indicator
13 here would show you your rate of turn.

14 Q And rudder angle?

15 A Okay. Rudder angle would normally be this guy
16 here, and then on the bridge of the Valdez, they've got
17 this thing that comes down over the overhead, and --

18 Q Around the area of number 22?

19 A Yeah. I guess that's where it is. Somewhere in
20 that -- somewhere up in here, there's a big thing that you
21 could be over here or here or here and see it.

22 Q Are there rudder indicators out on the -- outside
23 on the wings?

24 A Yeah. Just outside -- I don't know. It might be
25 here. Most of the ships are right in here, because it's

1 kind of protected. But I believe it's right in here. You
2 get a rudder angle indicator on this side, and also over
3 there.

4 Q How about the communication equipment that you
5 had on board the Exxon Valdez?

6 A Okay, internally, you could speak over what would
7 appear to most people to look like a normal telephone.

8 Q Would that go to all the rooms?

9 A That goes to all the rooms. I think it goes to
10 the engine room, and probably some of the -- the main work
11 areas, like the cargo control room. Then you have what
12 they call a sound-powered phone, and basically you crank it
13 and a bell rings at the station that you're trying to get
14 ahold of, and if there's somebody there, they'll hear it,
15 either a bell, or sometimes it's a warbling sound.

16 Then we had a PA type system, too, you know,
17 where you could have like an intercom type conversation.

18 Q And radios.

19 A Okay. I believe we had either two or three,
20 probably three, VHF radios, and that would be how we would
21 talk to other ships, Valdez traffic, the Coast Guard, what
22 have you. And -- yeah. That would be three VHF's, I think,
23 is what we have.

24 Q You can sit down. I'd like to talk a little bit
25 about coming into Prince William Sound on March 22, 1989.

1 Do you remember arriving from -- into the Prince
2 William Sound that day?

3 A Yes.

4 Q Where had you come from?

5 A We had come from San Francisco.

6 Q And were you laden or unladen at that time?

7 A We'd be unladen. We were in ballast.

8 Q What -- what -- do you remember at all
9 approximately what time you would have docked that evening?

10 A Well, you know, midnight sticks in my head,
11 something around there. 2300, 2400.

12 Q Would a deck log help you to remember?

13 A Sure.

14 Q Would you have been called to the bridge, then,
15 that evening, for docking?

16 A Yes.

17 Q And would you tell the jury, was there anything
18 eventful or uneventful that occurred that evening during
19 the docking?

20 A No, not that I'm aware of. No.

21 Q What would you have done, then, after the docking
22 of the Exxon Valdez in Valdez?

23 A Okay. Well, let's see. I never answered your
24 original question about what time did we dock. Do you
25 still want to know that?

1 Q Sure.

2 A We were finished, or what we call all fast, at
3 2336. That would be 11:36 p.m.

4 After that, I would -- my first contact would be
5 with some of the Alyeska personnel. They would be doing a
6 safety inspection of the ship. They would also be
7 connecting the chocks and arms -- the chocks
8 basically --

9 Q That's what?

10 A They're the arms that hook to the ship where the
11 oil comes from, so you've got to have a way to get the oil
12 from the land to the ship, and the arms -- like big hoses
13 made out of metal. Metal hoses is what they are. And they
14 come on board and put those -- put the chocks on.

15 In the meantime, there's a gauger on board whose
16 gauging out my tanks to see how much dirty ballast I have
17 on board and where it's at.

18 Q Okay. Would you explain how someone does that?

19 A Okay. The gaugers come aboard with what they
20 call an MMC. It's really -- that's a brand name for a
21 device that allows you to gauge the tanks when they're
22 closed. In the old days, you would open it and look down
23 in it. Nowadays, the cargo in the ship is protected by a
24 blanket of inert gas, and this gas is oxygen deficient,
25 which means it can't -- you can't have have fire.

1 Q Maybe if you could stand up and use that
2 blackboard -- I'll --

3 A Okay.

4 Q -- move this _____ more comfortable.

5 A Okay. That's one way to get me to talk.

6 Q Can you give us a cross-section of a cargo tank
7 that --

8 A Okay.

9 Q -- show the inert gas layer? Show how that is?
10 MR. CHALOS: Your Honor, I assume we're talking
11 about the Exxon Valdez here?

12 MR. COLE: Yes. We are talking about the Exxon
13 Valdez, aren't we?

14 THE WITNESS: Okay. This is the Exxon Valdez,
15 but by no means can I draw you a tank on the Exxon Valdez.

16 BY MR. COLE: (Resuming)

17 Q That's fine. I think Mr. Chalos will be happy if
18 you just draw that.

19 A All right.

20 This would be a tank, let's say, looking this
21 way, with the tank cut in half, and then you have liquid,
22 which in this case is water. At the top of the liquid is
23 floating a little oil.

24 All right. So the gauger would stand here with a
25 stand, which he can connect his device, basically like

1 this, with a tape that runs here, and then a little readout
2 window here, that electrically it works, and this is closed
3 so that it can't blow up. It has no spark-producing
4 capacity.

5 So the tape drops down, and on the end of the
6 tape is what they call a probe.

7 Q Where is the inert gas?

8 A Okay. This here would be IG. All right?
9 Actually, they call it IGS but, okay. Inert gas.

10 This probe is connected to a tape, and then as
11 it's going through the space of gas, there's no noise at
12 all. As soon as it hits this surface, it will start making
13 a sound. At that time, the gauger will read a number, and
14 he will be able to tell what this distance is here, okay.

15 Then he goes through the oil, maybe -- it might
16 be six inches thick, and that oil -- now the sound will
17 change, and he'll know he's hit water. So he'll get this
18 measurement now, if this was where the water began.

19 All right. And then he takes it all the way
20 down, and he gets the total measurement. So, by doing
21 that, he can say how much here is water, how much is water,
22 and then he has tables that he goes into with those numbers
23 and figures out how much is on the ship.

24 Now, if we were loaded, and the ship now is full
25 of oil, it would be the same process, only there might be a

1 little bit of water down here now. Oil floats on top of
2 the water. So now, all of this area here is oil.

3 The bob hits the oil and makes a noise. He goes
4 all the way down. It makes another noise when it hits the
5 water. He already knows how deep the tank is. Now he
6 knows how much oil is in that tank. He also takes a
7 temperature in the middle of the oil so that he can
8 determine, later on, working up what we call net numbers,
9 and --

10 Q Before you get into that, let me show you an
11 exhibit here. Maybe that will help you.

12 When he does it the first time with the
13 deballast, then you get these numbers and then you start to
14 unload the dirty ballast?

15 A Correct.

16 Q And when that is done, what do you do -- after
17 the dirty ballast is unloaded?

18 A After the ship is emptied to my satisfaction,
19 then the gauger will come aboard again, supposedly
20 independent of both the ship and shipping company and
21 Alyeska. And he will check the ship, or she will check the
22 ship, to see that indeed it is dry.

23 And it's never dry, dry, dry. There's always a
24 little bit left. So that has to be put into the
25 calculation later on, because you never did get rid of all

1 of that water.

2 Q After that calculation is done, then do you begin
3 to fill up the cargo tank?

4 A Yes. You would swing -- well, it's a process
5 which involves swinging the valves lining the vessel up
6 differently. You're no longer taking it out, now; you're
7 putting it in.

8 Q Where are you during this process? Where do you
9 work out of? Is there a particular --

10 A Normally, on a ship of this size, the Exxon
11 Valdez. I would be in the cargo control room.

12 Q And is that where you were on March 23rd --

13 A Yes.

14 Q -- when this was happening.

15 A Uh-huh.

16 Q Can you control the loading and offloading that
17 goes on from the cargo control room?

18 A Yes, you can.

19 Q And these exhibits here, can you, just briefly,
20 explain to the jury how you -- what this is, and how you
21 use it?

22 A All right.

23 Q You might have to hold it up and show them a
24 little bit.

25 A All right. Basically, this side here, as best as

1 I can recall -- it's been awhile since I've been on the
2 Valdez -- are your pump controls. You have a bump, which
3 is forward of the -- or in front of the cargo control room,
4 and you are able to control the speed of the pumps from
5 right here. You can make them go faster or slower, or shut
6 them down if you want to. Okay.

7 Now, over here, you have two functions, and that
8 is the board, that looks basically like a ship, and this
9 panel here, you control the valves to the individual
10 tanks. Here, you have gauges which are basically giving
11 you, by remote, the information that this gauger got with
12 the MMC stand.

13 So they've got -- on the Exxon Valdez, like a
14 little radar right here, and it -- it sends signals to the
15 fluid, and it bounces back -- that's my understanding of
16 the principle, anyway -- and it's able to measure the time
17 lag. It converts that, and sends me a little number up
18 here, and that's how I read it.

19 Then I know what level the oil is in that tank.

20 The big, round gauges here are what they
21 call _____ gauges, and they're more of a mechanical
22 piece of equipment. At the ballast tank, which is the only
23 place those are, is it goes -- it comes off a spool and it
24 hits the oil and there's a reading that you can look at
25 locally or by means of like a little motor. It sends that

1 same information to me in the cargo control room.

2 Q Now, the Exxon Valdez, can you -- can you give
3 the jury an idea of the layout, of the general layout, of
4 how these -- what were the ballast, and what were the
5 cargo --

6 A Well, I don't know here.

7 (Pause)

8 Q If you'd like to refer -- let me just ask if you
9 recognize what's been marked for identification as
10 Plaintiff's Exhibit Number 85?

11 A Okay. It appears to be a copy of the oil record
12 book for the Exxon Valdez.

13 Q And would you mind just briefly looking through
14 it, and see if it appears to you to be an accurate copy of
15 that?

16 (Pause)

17 A Yes. But I don't know -- something's missing
18 here.

19 Q Okay. But other than that, it appears to be an
20 accurate copy?

21 A Other than that, yes. It appears to be an
22 accurate --

23 MR. COLE: I would move for the admission of what
24 has been identified as --

25 MR. CHALOS: Your Honor, may I have a short voir

1 dire?

2 THE COURT: Yes.

3 VOIR DIRE EXAMINATION

4 BY MR. CHALOS:

5 Q Mr. Kunkel, you said something was missing.

6 What's missing from here?

7 A I'd have to look at it again.

8 Q All right, let me come --

9 (Pause)

10 A Well, it looks like on page 59, you know,
11 normally you would start an entry at the top and there's
12 nothing there, so I don't know what it is.

13 Q You mean something has been redacted?

14 A I don't know what that means, sir. Redacted is a
15 term I'm not familiar with.

16 Q Covered over.

17 A Well, possibly. I don't know. I'm just saying
18 that there's a space here from where -- normally, it would
19 start like that, right?

20 Q Yes.

21 A And there's a space, and then it starts.

22 MR. CHALOS: Your Honor, it seems that the
23 redaction I'm talking about is in the time period of the
24 vessel's grounding. May I approach the bench?

25 (The following was had at the bench:)

1 THE COURT: Wait until Mr. Cole gets here.

2 (Pause)

3 (Inaudible remarks).

4 MR. : Have you got the portion that
5 has _____.

6 MR. : (Inaudible).

7 (Inaudible remarks)

8 MR. COLE: Obviously, that's what it is. it was
9 screened. You'll _____ the information that
10 was _____ here anyway.

11 (Inaudible remarks)

12 (The following was had in open court:)

13 THE COURT: 85 is admitted, without objection.

14 (State's Exhibit 85 was
15 received in evidence.)

16 BY MR. COLE: (Resuming)

17 Q You can use this if you -- this might help you.

18 A Okay.

19 Q All right.

20 A So we're back to drawing a diagram?

21 Q Yeah just --

22 A Okay.

23 Q -- to give the jury an idea of what cargo tanks
24 look like on the Exxon --

25 THE COURT: It'll still work without that.

1 That's just a little _____ on the end of it.

2 THE WITNESS: Tearing it up --

3 THE COURT: We have a 50-cent microphone driving
4 this equipment.

5 THE WITNESS: All right.

6 Okay. Let's see. Well, let's call this the pump
7 room, so I don't get confused here.

8 (Pause)

9 BY MR. COLE: (Resuming)

10 Q Maybe just put a B on the ballast tanks.

11 A All right.

12 Q The B that you just placed up there, what is that
13 called?

14 A Okay. On this ship, on the Valdez, we had what
15 we call segregated clean ballast, and that means that there
16 are tanks on board here that are -- have the capability of
17 handling clean sea water. They have a system which is not
18 connected to the cargo system, which also does not run
19 through any cargo tanks.

20 Okay. That's the theory of clean ballast, that
21 it be dirty ballast on board the Exxon Valdez and clean
22 ballast.

23 Q And clean ballast, correct. So the B tanks are
24 tanks where only clean water can get into, providing
25 there's no problems, like a fractured bulk head or

1 something like that that's unforeseen.

2 Then there would you keep the dirty ballast?

3 A On this ship, I believe most of the time we kept
4 most of the dirty ballast here and here. I could look in
5 here to make sure, but I think that's where it was. Yeah.
6 The last time I was on there it was three and five, center.

7 Q And where would you keep the crude oil when you
8 were laden?

9 A All tanks except the B tanks.

10 Q Okay. So that would be both port and center and
11 starboard --

12 A Right. Here, here, here and here. Whoops.

13 Okay. Now, this tank also -- this ship has
14 little tanks here that they call slop tanks. They're
15 basically still cargo tanks.

16 Q Okay. And what do they carry, the slop tanks?

17 A Well, the ship itself will, at some time or
18 other, generates slop, and slop will be perhaps residues
19 that came out of the engine room bilges, that have been
20 tainted with oil, and may look just as clean as water to
21 you or I, but if it's been tainted, or remotely tainted,
22 we're not allowed to put it in the water.

23 So we immediately keep it here, and we'd send it
24 ashore with the dirty ballast.

25 Q And you noted the pump room. Would you tell the

1 jury what that is, what that area is?

2 A Okay. That's -- down inside there are the pumps
3 which I would use when I'm discharging cargo, or ballast,
4 to take the cargo out of the ship and send it to the
5 terminal.

6 Q And is it an open area where you can walk around?

7 A Yes.

8 Q And how do you get down to that area?

9 A Well, there's two ways. You can either walk down
10 the ladder, or you can ride the elevator, one of the fifty
11 elevators _____.

12 Q And where would the engine room be located?

13 A The engine room is back in here.

14 Q Okay. Thank you.

15 Now, would you explain to the jury some of your
16 concerns that you have while you're loading one of these
17 tankers? Are there any things that you have to be careful
18 of?

19 A Well, first of all, you have to be careful that
20 there's no leaks in the pipeline. You have to be careful
21 that you don't overflow a tank. You also want to be able
22 to make sure that you're not contaminating the ballast
23 system.

24 Overloading the ship, you say?

25 Q Yes.

1 A Okay. You're also concerned about the stability
2 -- not the stability, so much, but the stresses that you're
3 putting the ship, and --

4 Q Can you explain, just briefly, what stresses you
5 would put on a ship while you would be loading it?

6 A Well, you want to make sure that you're not
7 loading the ship in such a fashion that you're putting too
8 much weight, let's say, in one area. Or maybe, let's say
9 if I held all the ballast on the ship, I would still be
10 very heavy in the forward end, and if I started loading too
11 much up there, maybe that would give me too much stress up
12 there.

13 Q Do these ships actually bend?

14 A Yes.

15 Q Will you tell the jury a little bit about how
16 that occurs? Is that designed?

17 A Yes. They're designed to actually flex with the
18 seaway.

19 Q And when you talk about the -- not so much the
20 stability, but the bend and sheer, those concerns that you
21 have, can they be caused by putting too much oil on -- in
22 one tank too quickly?

23 A Yes.

24 Q What would happen, for instance, if you put all
25 of your -- you filled up your number three tanks first.

1 Could you -- could that cause problems?

2 A Well, I'd have to run it through but, you know,
3 the concept is, yes, that you would put too much in the
4 center of the ship and cause it to break.

5 Q Have you been aware of ships that have actually
6 broken apart --

7 A Yes.

8 Q -- while they were loading?

9 A Either ships or barges, I've read of them
10 happening. I've never experienced it.

11 Q So it is kind of a critical time, then, this
12 period when you're loading up these tankers?

13 A Yes.

14 Q Do you have any instruments that help you?
15 Besides the two photographs that you looked at, is there
16 anything else that helps you during this process?

17 A Well, these MMC stands. I'll have the ABs going
18 out there to, you know, cross-reference my gauges.

19 Q How about a computer. Do you have a computer
20 program on board?

21 A Yes, we have -- on the Valdez, we have what they
22 call the Load Master computer.

23 Q What -- how do you use the Load Master computer?
24 Well, first of all, where was it? Where was it located?

25 A It was right there in the cargo control room.

1 Q How would you use that Load Master program,
2 computer program?

3 A Well. I would use it to plan the load, and I
4 would also use it to -- during the load, to see, you know,
5 how the ship was doing, what kind of draft I was getting,
6 to check that. to make sure that the machine was working
7 properly. Then, at the end of the load, I would put in the
8 numbers that we actually ended up on the different tanks.
9 and use that to determine by calculation the draft. and
10 compared that to the actual draft that I see on the side of
11 the ship. And then also to examine the stress -- well, the
12 shear and bending moments. to see that they were within
13 allowable limits.

14 Q Now, my understanding is this -- this helps you
15 in a number of ways, then. It allows you to formulate a
16 plan for loading of the tanker, this program?

17 A That's correct.

18 Q And you do that by entering data as to which
19 tanks you intend to load. or how -- how does that help you
20 formulate your plan?

21 A Well, prior to getting alongside the dock, I'll
22 look at one of the pass loads, and I'll use that
23 temperature and gravity to determine the weight of the
24 cargo, and I'll do a load that way, and then when I get to
25 the dock, I'll get the actual weight and temperature of the

1 cargo and input that into the machine to see, you know,
2 what I'm going to end up -- and, to a T, it's always within
3 an inch or two of drafts.

4 Q And we're talking about -- how high are these
5 tanks?

6 A I believe these on the Valdez are like 90 feet,
7 or something like that.

8 Q So your computer is accurate to within an inch or
9 so?

10 A Well --

11 Q Within inches of how deep the oil will be when
12 you're through?

13 A Okay. The computer is only as accurate as the
14 numbers that I put in.

15 Q That you put into it. Okay.

16 The computer also tells you certain things about
17 stability and stress. Is that correct?

18 A Uh-huh.

19 Q And could you, just briefly -- is there a
20 prescribed limit with which you can sail out on the
21 ocean --

22 A Yes.

23 Q -- of these limits?

24 A Yes. The naval architects have decided what
25 stress numerals are allowable, and that's broken down into

1 shear and bending moments. And basically after I've loaded
2 the ship, the computer figures these out again and compares
3 the two.

4 Q Compares what?

5 A The bending and shear moments. After they've
6 compared it, they give me a percentage. The bottom line
7 is, as long as that percentage is plus or minus 100
8 percent, it says the vessel can go into a seaway, or
9 harbor, depending on what I've told it that I want it to
10 use, safely, and not crack or break apart.

11 The definition of seaway varies, but basically
12 it's out at sea.

13 Q Out at sea.

14 A I'm sure that, somewhere, there is a definition
15 of seaway.

16 Q But you check this before you leave the dock?

17 A That's one of the things I check, yes. The other
18 thing is what they call GM, and that's the metacetric (PH)
19 height, and basically, the naval architects, when they
20 design the vessels have established what is acceptable GM,
21 which is a measurement of stability, and what the vessel
22 does have in order to go to sea.

23 Q It's a number.

24 A It's a number. And, by me inputting different
25 ullages (PH) in the ship, that translates into different

1 weights. The weights are all over the place. They apply
2 moments to those weights. then they come up with a point
3 they call "G." the center of gravity. They compare that to
4 M, the metacenter -- GM, okay? And that's a distance, and
5 that distance must be a certain number, or the ship cannot
6 sail safely.

7 Q And that number is prescribed by naval
8 architects?

9 A Well, it's prescribed by the naval architects,
10 but it's mandated by regulations that the Coast Guard comes
11 up with. and they are basically not saying that the ship
12 would be unstable with a number that's less than that, but
13 that it does not meet the damage requirements that the
14 Coast Guard has prescribed.

15 Q There's a little bit of error?

16 A Right. It's designed so that if you hull a few
17 compartments, you'll list over, and the main deck will be
18 -- I think it's three inches, or something like that, above
19 the water. You won't sink -- quote.

20 Q Essentially then, you get a number for GM and you
21 compare it to what's required under law, and if you meet
22 that, you can sail?

23 A Correct.

24 Q And it's the same thing for the bend and shear?

25 A Correct.

1 Q You get a percentage, you meet that, and you can
2 sail?

3 A That is correct.

4 Q Now, on the day in question, did you do that?
5 Did you run those -- those tests before you left the --

6 A Yes.

7 Q And were there any problems?

8 A No. Leaving the dock?

9 Q Yes.

10 A No.

11 Q Now, I'd like to talk -- we just had started
12 getting into it when I kind of interrupted you again. What
13 -- how is the amount of oil measured, and do you receive
14 any documentation about that?

15 Let's start with a simple question. Is there any
16 documentation that you get concerning the amount of oil
17 that you have as cargo?

18 A Yes, I do.

19 Q And what's that called?

20 A Oh, a gauger's report? Is that the -- calibret
21 gaugers report.

22 Q Okay. You're looking at an exhibit there.

23 A Yes.

24 Q That exhibit is -- Well, it's been previously
25 admitted as Plaintiff's Exhibit Number 12.

1 Can you -- do you recognize this?

2 A Yes. This appears to be the gaugers report
3 alongside the dock at Alyeska just prior to leaving Valdez.

4 Q And what is this gaugers report -- what's the
5 bottom line of this report?

6 A Well, basically, they say I've got 1,286,738
7 barrels of something on the ship. 861 of those barrels is
8 water, therefore, 1,285,877 barrels on the ship is oil.

9 Q Okay. So they -- the first figure is just
10 gross --

11 A Gross liquid, or gross volume.

12 Q And then the second figure that would be on
13 there --

14 A Is the free water that they have found in the
15 tank.

16 Q And that would have been measured through the --
17 the little mechanism that you described.

18 A Uh-huh.

19 So then the next figure is what is called gross
20 oil. Now, the terms I'm using are the terms I would
21 normally use on the ship.

22 Q What are the terms that they have written?

23 A Like I say, gross observed volume, less free
24 water, then gross observed volume, GOV. The first one,
25 they call it is TOV, total observed volume.

1 Q Okay.

2 A Then they say, "Less free water." And then GOV.
3 gross overall volume.

4 Q And that tells you how much crude oil you have on
5 board the tanker?

6 A Correct.

7 Q Now, there are some calculations that go on after
8 that. Would you just briefly explain to the jury why -- or
9 what those calculations are?

10 A Okay. This is gross oil, and in the industry,
11 they've established a standard. They call that net. So
12 what has to be done now is so that everybody is talking the
13 same amount of oil. they want to reduce, or expand.
14 depending on the temperature, the volume to what it would
15 be at 60 degrees. So throughout the industry, 60 degrees
16 is the standard temperature for oil and oil expands and
17 contracts with temperature.

18 Q Is that kind of a standard so that everybody in
19 the market can know what they're getting?

20 A Exactly.

21 Q They convert it to one standard _____.

22 A This is true.

23 Q And that gives you a volume.

24 A Right, it's a --

25 Q That everybody can agree upon?

1 A That is correct.

2 So the terminal in the laboratory has come up
3 with, in this case, an API of 27.6. API, American
4 Petroleum Institute, they come up with tables, and they
5 basically say that, if you have an oil in one port with a
6 temperature of 104 degrees, and an API of 27.6, if you
7 multiply that volume times .98088, that will give you the
8 proper volume at 60 degrees.

9 So now, everybody is talking 60 degree volume,
10 and that's what this column is, and that's the next one
11 that they give you here..

12 Q Okay. So on this _____ you, after
13 determining what your gross oil volume, you just do a
14 little calculation that tells you what the industry
15 standard would be?

16 A Right.

17 Q Is that essentially it?

18 A Uh-huh. Then also, I think on these guys here.
19 they'll also convert it to weight.

20 Q They give you a weight.

21 A So they can now take a volume at a net
22 temperature, and convert that into weight.

23 Q And that's what this document was?

24 A Yes.

25 Q How much oil gross observed volume was on the

1 Exxon Valdez when you left port?

2 A According to this report, the gross observed
3 volume was 1,286,738 barrels.

4 Q Now, when you left -- when did you get done with
5 the loading on March 23rd?

6 A Okay. At 1924, we finished loading cargo on the
7 23rd.

8 Q What time were people to be back that evening?

9 A I believe the sailing board was set for ship to
10 sail -- 2100. Crew to be aboard, 2000.

11 Q 2100 would be what time in _____.

12 A Nine -- what?

13 Q Twelve hour time.

14 A Nine p.m.

15 Q Do you remember actually seeing the board that
16 day?

17 A What do you mean?

18 Q The sailing board. Do you remember actually
19 looking at it that day?

20 (Pause)

21 If I showed you a copy of it, would that refresh
22 your recollection?

23 A Yeah.

24 (Pause)

25 Okay, that looks like the sailing board on the

1 Exxon Valdez --

2 Q Does that look like the one that you saw on the
3 23rd?

4 MR. CHALOS: Your Honor --

5 THE WITNESS: I --

6 MR. CHALOS: I'm going to object, unless Mr. Cole
7 is speaking about the actual numbers, or just the board
8 itself.

9 MR. COLE: I'm speaking about the actual
10 numbers. I'm asking him the question: is that the one,
11 the way it looked on the 23rd?

12 THE WITNESS: All right. I mean, I cannot
13 recall --

14 BY MR. COLE: (Resuming)

15 Q Okay. All right.

16 A -- this board, but when I left to go check the
17 drafts, the board said something like this.

18 Q Do you remember --

19 A The times were this.

20 Q Do you remember if it said anything about Easter?

21 A No, I do not remember it saying Happy Easter.

22 Q Okay.

23 What time would you have, after completing the
24 loading process, what time would you have called the crew
25 out to start beginning the undocking process?

1 A Well, I believe we called them out, right, right
2 around the finish of the cargo time, maybe even a little
3 earlier.

4 Q And that would have been, again, what time?

5 A Twelve-hour time would be 7:24 p.m.

6 Q What did you do after finishing up the loading
7 process, then?

8 A When the cargo was finished, I was on the -- on
9 the dock, reading the drafts. After reading the drafts and
10 being, you know, content that they were exactly what I
11 wanted, I directed Mr. Cousins to close all the valves in
12 the control room, make sure they were closed; to call the
13 pumpman out to assist and to make sure that the chicksands
14 were being disconnected; and probably made a phonecall to
15 my wife while I was there at the dock to tell her we were
16 leaving and I'd talk to her in a couple of weeks, or a
17 couple of days.

18 Then I came back on board. They were still
19 disconnecting the chicksands. I asked the pumpman how it
20 was going, fine. I saw the ABs, and gave them a brief
21 description of what I wanted done in that, you know, we'd
22 be going out to the Gulf of Alaska, and it was March, and I
23 wanted as much of the loose gear, including some of the
24 hoses and stuff, put away.

25 And I also informed them that the pilot ladder

1 had been sitting there the whole time, exposed to snow and
2 ice, and I didn't want the pilot slipping and falling when
3 he departed. I wanted them to bring it up and make sure
4 there was no ice, et cetera.

5 Q Did that get cleaned off?

6 A Yes, it did. Okay, then I -- it didn't in my
7 presence, at that moment, but it was taken care of. Then I
8 went down into the pump room and looked around down there,
9 make sure that nothing had come loose and that everything
10 was still closed and sealed off. Then I went up to the
11 cargo control room, and examined all the valves, made sure
12 that they were closed, and I think at that time, I put some
13 numbers into the computer, just off of my gauges.

14 They weren't the calibret gauges, you know. They
15 were off of my gauges, to make sure -- at that time is when
16 I checked the stability and the stress factors on the ship.

17 And everything looked good, and the agent, I
18 think, came in there and wanted to see the log book, and I
19 told her it was gone, because Mr. Cousins, by that time,
20 had headed to the bridge to test the gear.

21 Q Did you ask him to test the gear then?

22 A Yes, I did.

23 Q And after the agent spoke with you, what happened
24 then?

25 A Well, I think the agent left to go look at the

1 log book, I assume, and the gauger was still working her
2 numbers, and -- I think it was female. I'm not sure what
3 gauger we had that day.

4 Anyway, I checked the -- I checked the numbers to
5 see that they, you know, agreed basically with my gauges,
6 plus or minus a few inches -- there's always going to be a
7 minor discrepancy -- and then I signed this sheet here.

8 Q After signing that sheet, did you get a copy of
9 it, or --

10 A Yes.

11 Q And where did you go after you had done that?

12 A Well, I imagine I went up to my room, threw some
13 water on my face, maybe had a cup of coffee, or what have
14 you, something along those lines. Eventually, I made my
15 way up to the bridge.

16 Q Do you remember what time you got to the bridge
17 that evening?

18 A At this moment in time, no, I don't.

19 Q Who was on the bridge when you got there?

20 A Mr. Cousins was up there. I think the pilot was
21 there, and the agent might have been there also.

22 Q Did you do any kind of a check of the equipment
23 that evening while you were on the bridge?

24 A I did a minor check, yes.

25 Q Would you tell the jury what you did?

1 A I physically turned the wheel to make sure that
2 the rudder was moving. I physically checked both radars.
3 I picked up a target on the APR just to see -- automatic
4 piloting -- just to see that it worked. And I think I --
5 well, I know. I also checked the gyro to make sure that it
6 agreed, the master gyro and the repeater.

7 Q When did the captain come onboard that evening?

8 A I don't know when he actually came aboard the
9 vessel.

10 Q Was it some time after you had done your tests
11 (inaudible).

12 A I don't know.

13 MR. CHALOS: Objection, Your Honor. The witness
14 said he didn't know.

15 THE COURT: Sustained.

16 BY MR. COLE: (Resuming)

17 Q Do you remember what he was dressed in when he
18 came up on the bridge?

19 A No, sir, I don't.

20 Q When did you undock that evening?

21 A Right around 2100. The captain came up to the
22 bridge, you know. That's all I know. I don't know when he
23 came onboard the ship.

24 Q What was your role, then, that evening in
25 undocking?

1 A I was at the telegraph -- or, excuse me, at the
2 throttle on this ship, and I was keeping the bell book, and
3 just overseeing, hearing, what was going on as far as the
4 undocking was going. Eventually, the quartermaster came up
5 there.

6 Q The quartermaster being the helmsman?

7 A The helmsman, or AB. And when he arrived on the
8 bridge, I would also be -- I was also watching that he was
9 performing whatever rudder commands the pilot or the
10 captain were giving.

11 Q Anything uneventful -- anything eventful about
12 the undocking process that evening?

13 A No, sir. There was nothing.

14 Q Did it go smoothly?

15 A I thought it went very smoothly, yes.

16 Q A routine undocking.

17 A Yes.

18 Q Were there any heavy winds or anything that
19 evening, or --

20 A No. There was no heavy winds. I believe it had
21 been snowing most of the day, but the visibility was
22 acceptable. We could see the other berths and everything.

23 THE COURT: Mr. Cole, would this be a good time
24 to take a break?

25 MR. COLE: Sure.

1 THE COURT: We'll take about a 15-minute break,
2 ladies and gentlemen. Don't discuss the matter among
3 yourselves -- I'm sure you're getting tired of hearing
4 this, but it's required to constantly remind you -- and
5 don't form or express another opinion.

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

8 (A recess was taken from 10:36 a.m. to 11:00
9 a.m.)

10 THE CLERK: This court now resumes its session.

11 BY MR. COLE: (Resuming)

12 Q Mr. Kunkel, before we get started, I'm showing
13 you what's been marked for identification as Plaintiff's
14 Exhibit Number 84. Do you recognize that?

15 A Okay. It looks like a copy of my present license
16 that I hold.

17 Q Is that your copy?

18 A It appears to be, yes.

19 MR. COLE: I would move the admission of what has
20 previously been identified as Plaintiff's Exhibit Number
21 84.

22 MR. CHALOS: No objection.

23 THE COURT: It's admitted.

24 (State's Exhibit 84 was
25 received in evidence.)

1 BY MR. COLE: (Resuming)

2 Q When you're on the ship, do you bring your
3 license on board with you?

4 A Yes, you do.

5 Q Where is that license placed when you're on
6 board?

7 A Normally they have a rack that's right outside,
8 or on the bridge itself, and you slide it in there so that
9 it can be read by the Coast Guard.

10 Q And do you look at those when you -- to see who
11 the people that are on board with you?

12 A Yes.

13 Q When we left, we were talking about maneuvering
14 out of -- off the dock. Where is the -- where are the
15 other mates during the unloading process -- the undocking
16 process?

17 A Normally, there is one mate on the bow, or the
18 front end of the ship, and there is another one on the
19 stern, the rear end of the ship, and they let go of the
20 lines, and they -- it's their function to direct the
21 unlicensed personnel in the letting go of the lines and to
22 singling up to the springs, is what we call, or the lines
23 that are pretty much right at the center of the ship,
24 facing fore and aft. They're used for positioning the
25 ship.

1 Q Now, that evening, after you had let the lines
2 go, were you replaced at some time?

3 A Yeah. Shortly after we were off the dock -- it
4 couldn't have been very far off -- Mr. Cousins had
5 completed taking care of his duties on deck, and came up to
6 the bridge to stand the rest of his watch, because he was
7 on the 8:00 to 12:00 watch.

8 Q What did you do when you were replaced?

9 A I went to my room, went to sleep.

10 Q Was there anything that you were aware of that
11 was wrong with the steering or the navigational instruments
12 or the communications instruments when you left?

13 A No. I was not aware of any equipment problems.

14 Q Where did you go after you left the bridge that
15 evening?

16 A I went to my room.

17 Q What happened then?

18 A Well, I took a shower, and then I went to bed.

19 Q How long had you been up that day?

20 A Well, that's a hard question to answer, you
21 know. I had been -- from the time we'd docked to the time
22 we'd let go, I'd stood my regular watch. I had been up for
23 the ballasting, the stripping of the ballast, the load --
24 started the load of the cargo. I stood my morning watch.

25 I had been up there when the 8:00 to 12:00 and

1 the 12:00 to 4:00 exchanged watches, just to make sure that
2 they understood how I wanted to load the ship. And then I
3 stood my 4:00 to 8:00 watch, and also went to 10:00 o'clock
4 at night. So there were periods of time in there when I'd
5 get maybe a two to three hour nap, and then I'd work for a
6 couple of hours, and then I'd get a two or three hour nap.

7 Q And when were you going to be scheduled to be
8 back on ship?

9 A My shift would start at 0400 again.

10 Q Were you awakened late that night, or early the
11 next morning?

12 A Apparently the ship was shuddering to the point
13 where I noticed something didn't seem correct, so I got up
14 to check it out and find out what was wrong. And I didn't
15 know it at the time, but apparently it was around midnight,
16 or a little after.

17 Q What did you think when you -- when you woke up?
18 What --

19 A Well, my first impression was that they were
20 making a turn, a hard turn. And then I started hearing a
21 clanking sound, and I thought perhaps that something had
22 gone wrong with the engine. The turbo mechanism may have
23 blown up, or malfunctioned. I had no idea what that would
24 sound like, but it -- it sounded like a mechanical noise,
25 something wrong mechanically.

1 Q Was it underneath you, or is that -- do you
2 remember any place in general where that --

3 A No. It was just pretty much permeating my room.

4 Q Where is your room located on the levels?

5 A Well, you have the bridge. You have the captain,
6 the Chief Engineer's deck. And then the next deck, I live
7 on that all the way on the starboard side, or righthand
8 side, of the ship.

9 Q What did you do then?

10 A Well, I put on a pair of coveralls, and I made my
11 way up to the bridge, and I entered the back of the bridge,
12 which is the chart room. And Mr. Cousins was coming into
13 the chart room, if I remember right. And he -- I asked
14 him, "What happened, Greg? Did the turbo go?" And he said
15 something to the effect that, "No. I think we're aground.
16 The old man knows."

17 Q Did you see Captain Hazelwood at that time?

18 A No, I did not.

19 Q What did you do then?

20 A I told Mr. Cousins that I was going to head down
21 below the cargo control room and see if I could ascertain
22 what was going -- what was going wrong -- if anything was
23 wrong.

24 Q You didn't -- did you know anything about the
25 condition of the ship at that time?

1 A I had no idea.

2 Q And did you go directly to the cargo control
3 room, or where did you go?

4 A No, I stopped off at my room first and grabbed my
5 survival suit. I had no idea -- you know, like I said, I
6 didn't know what was going on. I just knew we were aground
7 and I might be too busy to come back up there. That's what
8 was going through my mind.

9 I knocked on Mr. LeCain's door, the second mate
10 -- he's right next to me -- and I said, "Lloyd, you'd
11 better get up. It looks like we've got a problem." He
12 said, "How bad is it?" I said, "I don't know. It sounds
13 like it might be bad."

14 Because, in my mind, you're aground, you're in
15 Alaska. It's all rocky bottom, as far as I know. So I
16 figured we had problems.

17 Then I went down to the control room, and on the
18 way I -- right next to the control room is the pumpman's
19 room. I knocked on his door and I said, "Jack, I think
20 you'd better get up. We may have some problems here."
21 Then I went into the control room.

22 Q Had you ever been aground before then?

23 A I had been aground, I think one time, in the
24 Mississippi River, but for a very short period of time,
25 where we just kind of squirmed around a little bit and then

1 kept on going.

2 Q Is that -- when you say "squirmed around a little
3 bit," you just went forward and backward and kept going
4 ahead?

5 A Yeah. The ship was -- the ship hit some mud, and
6 we just went like this, slid around a little bit, and then
7 kept going. You know, I could tell the ship slowed down,
8 and then it -- it picked up speed, in the mud.

9 Q Is the Mississippi, is it a mud -- is it pretty
10 much mud at the bottom?

11 A Yes.

12 Q When you got to the cargo control room, what did
13 you see?

14 A I looked at the gauges that we described earlier,
15 and, on an average, the tanks had lost about ten feet of
16 oil, the cargo tanks.

17 Q Can you give the jury some kind of an idea of how
18 much oil that you're talking about?

19 A Somewhere in the 100,000 to 150,000 barrel
20 range. It was no longer where it was supposed to be.

21 Q What went through your mind right then?

22 A I went, "Well," I said, "We've really hit
23 something bad. A lot of oil has moved around. We've got a
24 big hole -- we've got holes in the ship." Not a big hole,
25 but I figured we had holes in the ship.

1 Q How could you tell that you had more than one
2 hole in the ship?

3 A Well, it's only my perception, because all of the
4 tanks showed this change. There were so many tanks, not
5 just one tank. All the center tanks, and all the starboard
6 tanks, showed some kind of movement, including the ballast
7 tanks, which, when we left, were empty. The starboard
8 ballast tanks were empty. And now they had something in
9 them.

10 Q Okay. Let me go back to this drawing you made
11 here.

12 (Pause)

13 Could you give the jury an idea with this
14 pointer, maybe -- (inaudible) standing up -- this tank, you
15 saw had been disturbed?

16 A Okay. I saw one, two, three, four, five center
17 all showed that something had come out of them. They're
18 oil tanks. I showed that one, three, and five port showed
19 that something had come out of them -- oil. I showed that
20 two starboard and four starboard, something now was in them
21 and it wasn't in them originally.

22 I also showed a little bit in the forepeak, but
23 the tape only showed about four or five feet in there, and
24 at that time, that could have very easily been just the
25 trim of the ship could have caused that, because you never

1 get it dry. So the fact that all these tapes were moving,
2 and this one was not, I could assume we had a little weight
3 in there but it may not have been hold.

4 Q And the condition of the portside tanks?

5 A All of these tanks appeared to be just as I left
6 them from leaving the dock in Valdez.

7 Q When you were on the -- going up and back to the
8 cargo control room, did you notice any kind of a list at
9 that time?

10 A When I got down to the cargo control room, she
11 was still apparently on an even keel. She was flat. She
12 did start taking a list later on, yes.

13 Q What did you do after you saw the instruments in
14 the cargo control room?

15 A I picked up the phone and I called the bridge and
16 I asked to speak to the captain. And when the captain came
17 on the phone, and I told -- he said, "How" -- something to
18 the effect of, "How bad is it?" And I said, "Captain,
19 we've got movement in all of the center tanks and all of
20 the starboard tanks."

21 Q Did you tell him anything else?

22 A No. Basically, we have movement in the tanks,
23 starboard -- center tanks and starboard tanks, so we're
24 definitely hold.

25 Q What did you do then after that?

1 A Then I went -- at his instructions, he said,
2 "Well, let's see if you can run -- whatever you've got, run
3 a program. Let's see what we've got." So I sat down on
4 that computer you've talked about, and I entered that the
5 vessel was aground. I assumed it was somewhere around the
6 middle of the ship. I didn't know.

7 Q Now, wait a minute. Would you explain to the
8 jury what you mean by "entered that it was aground?"

9 A All right. The computer has a program in it
10 which you can tell it that the ship is aground, and
11 therefore, it will use that information in determining the
12 stress -- the bending and stress moments on the ship.

13 Q Is there any instrumentation aboard the ship that
14 can tell you exactly what damage has been done to it at
15 that time?

16 A No. Not that I'm aware of.

17 Q So, do you know how the -- is the -- when you put
18 it in ground, is it assumed that the ship is still
19 structurally stable? I mean, is it intact, structurally
20 intact, or do you know?

21 A Yes.

22 Q It assumes that it's structurally intact.

23 A That's correct. It does.

24 Q When you -- what information did you put into the
25 computer at that time?

1 A I put in all of the ullages, which we -- what we
2 discussed before. They were now on the tanks. And I made
3 an assumption thaw we were about 5 foot draft.

4 Q When you say 50 foot draft, what do you mean?

5 A That's how deep the ship was.

6 Q In the -- in the bow or the stern?

7 A Both. I said they were both 50 foot. The
8 program will not work unless you input manually a draft.
9 Normally, the program will compute the draft for you, based
10 on the ullages, but a grounding means that the ship can't
11 seek its normal depth, so that's why I had to put in some
12 drafts.

13 I knew we'd left at 56. I said, 50 sounds good.
14 Let's try it.

15 Q Okay. What did you find out?

16 A At that time, it showed that the stability of the
17 vessel was still acceptable and that the bending and stress
18 moments had been exceeded.

19 Q And that is according to the grounded portion of
20 this program?

21 A That's correct.

22 Q And that's without taking into consideration any
23 structural damage that might have occurred?

24 A That is correct.

25 Q What did that information tell you?

1 A Well, on the -- on the surface, it told me that
2 the ship could not go out into a seaway based on its
3 current stress and bending moments. I took -- well, okay.
4 I made the printout of this and took it to the bridge and
5 showed it to the captain.

6 Q And did you explain to him that you had run it on
7 the grounded program?

8 A Yes.

9 Q And, as captain of the tanker, would he be aware
10 of how the computer system works?

11 MR. CHALOS: Objection, Your Honor.

12 THE COURT: Lay a little bit of foundation.

13 Objection sustained.

14 BY MR. COLE: (Resuming)

15 Q Is it one of the responsibilities of a master of
16 a ship to be aware, to be aware of how the cargo control
17 system works?

18 A Yes.

19 Q Would he -- would a master of a vessel be aware
20 of how the computer program aboard a tanker operates?

21 A The captain should be aware of how to work the
22 computer, yes.

23 Q If you were to get sick and not be available, who
24 would do the cargo control input and output?

25 A Well, it would probably be the second mate, if he

1 had the ability to do so. And if not, then the captain
2 would have to do it.

3 Q Was the captain -- so would -- you -- were you
4 aware that the -- I'll withdraw that.

5 When you got up to the bridge and you informed
6 the captain of this, what did he tell you?

7 A Well, something along the lines of -- let's see.
8 I explained to him that I, you know, obviously that we
9 should not be leaving the Prince William Sound based on
10 this data, and he looked it over and said, "Yeah, I agree
11 with you on that."

12 And I says, "Well, do you want me up here to
13 assist you?" And then he said, "No." He says, "I think
14 your best place would be to continue in the cargo control
15 room and also start examining the pump room and any of the
16 void spaces" -- in other words, start investigating as much
17 as I could what was going on.

18 He also said we'd better start thinking about
19 laying out firefighting gear, maybe lowering the life
20 boats, and somewhere along the lines -- I said, "Well, do
21 you want to ring the general alarm?" He said, "No, that
22 might cause panic, and we should get a much better
23 assessment of our situation before we fly off the handle."
24 Something to that effect.

25 So I left the bridge and went below.

1 Q How long -- what time did you read the bridge
2 with this report? Do you have any idea?

3 A Well, I'm -- you know, people have asked me that
4 a number of times, and I'm -- I'm assuming that it's
5 somewhere in the 12:30 area.

6 Q Did you tell the captain that the grounding
7 computer that you had used did not take into consideration
8 any structural damage?

9 A I did not specifically say that to him no.

10 Q When you left the bridge, where did you go?

11 A I think the first -- at this time, I went back to
12 the control room. By that time, the pumpman had come back
13 and informed me that he had made a tour around the ship,
14 that, you know, he could smell oil. And I said, "Yeah, I
15 can smell it too."

16 Q Did that smell concern you at all?

17 A Of course. Yes, it did.

18 Q Why?

19 A Well, it was -- there was so much of it. It was
20 very strong. But it dissipated rather rapidly.

21 Q When you were at the bridge the first time, do
22 you remember where the captain was when you talked with
23 him?

24 A If I recall, he was on the port side of the
25 bridge wing -- of the bridge; not the wing, but on the

1 bridge.

2 Q By the forward bulkhead?

3 A I can't say for sure.

4 Q Was the tanker being run at that time?

5 A I do not know the answer to that question.

6 Q Is there a danger of explosion or fires when you
7 have an oil spill such as this?

8 A Well, anytime you have hydrocarbon products in
9 the open atmosphere, there's the danger of an explosion.

10 Q What happened, then, when you got back to the
11 cargo control room?

12 A Well, if I recall, I believe the pumpman -- I
13 sent him down to check out the pump room. By then, the
14 second mate had come in and asked me how it was going, and
15 I told him that, obviously, we had had damage. I think
16 sometime around that area, I might have instructed -- no,
17 it would have been later, I think, when we finally started
18 putting gear out.

19 The second mate, I'm not really sure if he was
20 involved at that time with the life boat or not.
21 Basically, I was in the control room most of the time. The
22 engine room called me to inform me that the engine room
23 double bottoms were intact, which was -- which I can also
24 put into the computer, showing that there had been damage
25 in the engine room, but it appeared there wasn't.

1 And the chief engineer, I think, was going down
2 to the pump room with the pumpman to check the void space,
3 or double bottom space, under the pumpman to see if that
4 was okay.

5 Q When you got back to the cargo control room the
6 second time, what did the dials and information tell you
7 then?

8 A Well, I guess after a short period of time --
9 maybe twenty minutes or so, twenty-five minutes, more had
10 leaked out of the ship, or the gauges had changed. So I
11 sat down this time and tried to put it into the computer
12 again.

13 Q What happened?

14 A Well, it rejected it, for some reason, and went
15 blank. So I had to reboot up the computer, and when I did
16 this, it wouldn't allow me to enter a grounded state again.

17 Q Would you explain to the jury what it means to
18 "reboot" the computer?

19 A Well, basically, the computer is fed the
20 information off of a disk, and that information is the
21 loading program. Once it lost that, I had to put that back
22 in and tell the computer to get that back into its memory
23 so that I could use that information again?

24 Q How long would that have taken?

25 A Well, for me, it takes a little while. I'm not

1 computer literate, so it took me, I would say, three to
2 five minutes, maybe, to get everything going the way it's
3 supposed to.

4 Q And did you then, after -- you say you couldn't
5 get it to take the -- accept the grounded program?

6 A Uh-huh.

7 Q What did you do then?

8 A I put in the current ullages that the tanks were
9 now showing from my control station. And after getting out
10 this number, I went up to see the captain again.

11 Q Well, how did you -- how did you run the program
12 if you didn't have the grounding and not grounding part
13 available to you?

14 A I ran it as an intact program.

15 Q So you said --

16 A Everything is fine. What do I have?

17 Q And what was the result?

18 A The result was the ship was no longer meeting
19 required stability.

20 Q What about the stress levels?

21 A The stress levels were shown okay.

22 Q Now, when you say "no longer meeting the stress"
23 -- the stability requirements, does that mean that the ship
24 should have been put out to sea, or not?

25 A The ship should not go to sea.

1 Q Would the ship -- was there a concern at that
2 point that the ship would not float?

3 A That's correct.

4 Q And would, in fact, capsize or sink?

5 A That's correct.

6 Q And this is the computer program being with an
7 intact ship?

8 A Correct.

9 Q Which you knew wasn't probably the case.

10 A Which I knew was not the case.

11 Q What did you do with that information?

12 A I went up and saw the captain again.

13 Q What time would that have been?

14 A I think it's in the 1:00 o'clock area. It could
15 have been as late as 15 or 20 minutes after but, you know,
16 it had to be somewhere in the 1:00 o'clock area.

17 Q And what did you -- did you talk to the captain?

18 A Yes.

19 Q Where was he then?

20 A He was on the port side again, I believe.

21 Q And what did you tell him?

22 A I said that, based on this readout here, where we
23 are intact, no damage at all, we no longer meet required
24 stability. I recommend we don't go anywhere, and wait
25 until daylight.

1 Q And this would have bene right around 1:00
2 o'clock?

3 A To the best of my knowledge, in the 1:00 o'clock
4 area, yes.

5 Q Were you concerned for the safety of the ship at
6 this time?

7 A Yes.

8 Q Where did you go then, after that?

9 A I believe that he told me that -- well, that --
10 go down in the cargo control room and keep a monitor on
11 what's going on, and also let's see what we have available
12 to us. Let's start thinking along the lines of, can we
13 pump any of the tanks? Can we open and close certain
14 valves? Let's try to find out what our status is along
15 those lines.

16 And in the meantime, I believe somebody was
17 asking them for numbers. Quantity of oil that had escaped,
18 and that he asked me to also see if I could figure out some
19 numbers.

20 Q How much oil did the Exxon Valdez lose, that you
21 were aware of?

22 A Well, then or when I left the ship?

23 Q That morning. Did you give somebody any
24 indication?

25 A In the morning, I went -- within the few hours,

1 and somebody asked me what's the total, I showed about
2 138,000 barrels that I could not account for. And, that, I
3 believe -- I believe it was around 130,000 or so, 138 I
4 think is the number I gave -- from the best of my
5 recollection.

6 (TAPE CHANGED TO C-3621)

7 Q And after you had had a chance, several days
8 later, did you make a recalculation of how much oil?

9 A Well, there was recalculations going on every two
10 hours.

11 Q What was the final depth after (inaudible)?

12 A The final number, when I left the ship in the
13 middle of May, was 260,000 barrels.

14 Q

15 THE COURT: How many gallons is a barrel?

16 THE WITNESS: 42 gallons to a barrel, sir.

17 BY MR. COLE: (Resuming)

18 Q Did -- were you aware of what was going on up on
19 the bridge while you were down working in the cargo
20 control?

21 A Well, I don't know what you mean by "aware," sir.

22 Q Well, what were you -- what did you believe was
23 occurring up on the bridge while you were down in the cargo
24 control center that morning?

25 MR. CHALOS: Objection, Your Honor. It lacks

1 foundation.

2 THE COURT: Sustained.

3 BY MR. COLE: (Resuming)

4 Q Did you have any conversations with anyone about
5 what was going on up on the bridge?

6 A No, I did not.

7 Q Did you see the vessel being run at all while you
8 -- did you find out the vessel was being run at all?

9 A Not while I was in the cargo control room, no.

10 Q Where did you find that out?

11 A One of the investigators somewhere along the line
12 brought this to my attention.

13 MR. CHALOS: I move to strike that last

14 _____.

15 THE COURT: Mr. Cole?

16 MR. COLE: I have no response.

17 THE COURT: I'm going to overrule the objection.

18 (Pause)

19 BY MR. COLE: (Resuming)

20 Q Did you -- after that, can you give the jury any
21 idea -- do you know when the anchor was dropped?

22 A I don't know specifically. I don't know the
23 exact time the anchor went down, no.

24 Q Can you give the jury -- did it -- do you
25 remember when the Coast Guard came?

1 A I believe someone -- well, at that time, no. I
2 don't know when they came aboard.

3 Q Do you remember them coming?

4 A I remember them coming aboard, yes.

5 Q Did that happen before then, or after?

6 A I don't know -- I think the anchor went down
7 before the Coast Guard arrived.

8 Q Did you meet the Coast Guard when they came
9 aboard?

10 A Yes, I did.

11 Q And where did you meet them at?

12 A I believe I met them on the bridge. I can't -- I
13 did meet them but it was in the house somewhere.

14 Q And who did you deal with, then, with the Coast
15 Guard?

16 A Commander Falkenstein and I --

17 Q Was there any talk about having to abandon the
18 ship at any time?

19 A There was no talk about abandoning it. There was
20 the talk about being prepared as best we could if it became
21 necessary.

22 Q Did you later find out that the forepeak was
23 whole?

24 A Yes.

25 Q What significance was that, or would that have

1 been if you had known it?

2 A Well, it would have meant that we -- if the
3 vessel was damaged, we wouldn't even have any reserved
4 buoyancy up there.

5 Q And what would that mean?

6 A That would mean that any margin of safety of
7 having that empty and full of air -- buoyant -- was
8 removed.

9 Q What would that mean, as far as the safety or
10 stability of the vessel, if it had come off --

11 MR. CHALOS: Objection, Your Honor. No
12 foundation.

13 THE COURT: Objection overruled.

14 THE WITNESS: Okay. I would really have to put
15 that in the machine, to tell you the truth. I can only
16 make a general assumption that an empty tank will float
17 better than a full tank, but that's as far as I can go
18 without numbers.

19 BY MR. COLE: (Resuming)

20 Q Do you remember speaking with an NTSB
21 investigator about this?

22 A Yes.

23 Q If I showed you a copy of that, would it refresh
24 your recollection of what you told him?

25 A Uh-huh. Yes.

1 (Pause)

2 Q Just read that to yourself.

3 A Okay. Okay. Unfortunately, I believe if you
4 read my NTSB testimony, I remember distinctly telling them
5 this so-called summary was totally inaccurate, sir. So
6 that, right there, is not accurate.

7 The portion about the forepeak had to do with the
8 amount of oil in the forepeak, and that after finding the
9 tape was broken, that changed the amount of oil, because we
10 found the forepeak to be full of oil. And that's what the
11 forepeak conversation was about, to the best of my
12 knowledge.

13 Q Do you recall what the Exxon policy was as far as
14 alcohol use and possession?

15 A It's not allowed on the ships and the use is not
16 allowed.

17 Q What were the consequences?

18 A Well, you would suffer disciplinary action,
19 possibly up to termination. Fired, being fired.

20 Q Where you aware of any alcohol on board the Exxon
21 Valdez while you -- on March 23rd or March 24th?

22 A No, sir. I was not aware of any at all.

23 Q Were you aware -- you didn't have any, and no one
24 else had?

25 A Well, I don't know what anyone else had. I know

1 I didn't.

2 Q To your knowledge, no one else had any --

3 MR. CHALOS: Objection, Your Honor.

4 I think the witness answered the question. I
5 will withdraw my objection.

6 BY MR. COLE: (Resuming)

7 Q Now, I asked you a couple of questions about Mr.
8 Kagan and your evaluation of him.

9 A Uh-huh.

10 Q After evaluating him back in 1985, did you make
11 any special notations about the need to supervise him? Do
12 you remember?

13 A I sure don't remember.

14 Q If I showed you a copy of that, would that
15 refresh your recollection?

16 A Yes.

17 (Pause)

18 Okay. All right. Now what is it that you want
19 me to -- oh, read the whole thing?

20 (Pause)

21 Okay.

22 Q Do you remember how long you had an opportunity
23 to observe Mr. Kagan?

24 A Well, it looks like June of '85 to July of '85,
25 almost a full month -- over a month.

1 Q Okay. And do you remember noting whether or not
2 he needed any special attention?

3 A At that time, yes. I thought he needed special
4 attention -- in certain areas.

5 Q You indicated that he tended to drift off?

6 MR. CHALOS: Your Honor, I object. I think we're
7 getting far afield here. It's not relevant to what we're
8 talking about in this case, what he might have been
9 evaluated as in 1985.

10 THE COURT: Objection overruled.

11 BY MR. COLE: (Resuming)

12 Q You indicated he tended to drift off. Is that
13 correct?

14 A Yes.

15 Q And you indicated also that he needs extra
16 supervision, and you underlined that twice?

17 A Yes.

18 Q And that would have been based on your
19 observations of him for about a month?

20 A Yes.

21 Q Would those type of comments have been the things
22 that you had discussed with Captain Hazelwood, or the first
23 mates --

24 A No.

25 Q -- when you talked about him?

1 A Not necessarily. If I recall, I felt that Mr.
2 Kagan needed extra supervision when assigned a task to go
3 work. If I told him to go paint a bulkhead, normally you
4 can send a sailor to paint. Mr. Kagan, I'd have to make
5 sure he used the right paint, that he was applying it
6 properly, using the right brush, et cetera.

7 As far as his tendency to drift off, that's in
8 his steering ability, that, in my opinion, he needs -- he
9 needed practice in steering.

10 Q Did you mention any of that to the other people,
11 the mates or the captain, when you discussed Mr. Kagan's
12 performance?

13 A I mentioned to them that in '85 I -- that I had
14 sailed with him before, and at that time, I thought he
15 needed extra supervision in doing his normal maintenance
16 activities, and that his steering ability needed to be
17 watched and needed practice.

18 Q Would you have mentioned that also to Captain
19 Hazelwood?

20 A I don't know if I specifically mentioned it
21 exactly like that. I did mention to him I had sailed
22 before with him, that -- and Mr. Kagan needed practice
23 steering.

24 Q Now, were you asked to listen to a tape, a
25 recording of the outbound passage of the Exxon Valdez on

1 March 23rd?

2 A Yes.

3 Q And have you had a chance to review a transcript
4 of that tape?

5 A Yes.

6 Q And does the -- did you recognize any of the
7 voices in that tape?

8 A Yes.

9 Q Would you tell the jury who you recognized on
10 that tape?

11 A Well, there was two voices that came out, and
12 that was Captain Hazelwood's and Gregory Cousins' voice.

13 Q In the tape, is it at the beginning or at the end
14 where Mr. Cousins speaks?

15 A It seems like it's more towards the end, if I
16 recall.

17 Q And Captain Hazelwood's voice is a distinctive
18 voice?

19 A In the first part, yes. Right at the end is
20 where Cousins picks up.

21 Q And is that transcript a fair and accurate
22 representation of the tape that you heard?

23 A Yes, it is.

24 MR. COLE: Judge, I would to move to play, and
25 move for the admission of what's previously been identified

1 as Plaintiff's Exhibit Number 79.

2 MR. CHALOS: We objection, Your Honor, unless Mr.
3 Cole can show who made this tape, when it was made, what
4 machines were used, whether the machines -- whether this is
5 from the original, from a copy, at what speed it was
6 recorded, and who made the recording. We would object to
7 its introduction.

8 THE COURT: Objection overruled. It's admitted.

9 (State's Exhibit 79 was
10 received in evidence.)

11 MR. COLE: Judge, I would move to play that.

12 THE COURT: All right. (Inaudible).

13 (Pause)

14 MR. COLE: I have a matter that I'd like to take
15 up at the bench.

16 (The following was had at the bench:)

17 MR. COLE: Judge, I have a transcribed copy so
18 that someone can understand it --

19 THE COURT: You don't have to do that _____
20 . You can do it back there. It doesn't have to be
21 made _____. You can make application like any
22 other _____.

23 (The following was had in open court:)

24 MR. COLE: All right. Judge, I have transcribed
25 copies of this, and I would like to present them to the

1 jury and counsel.

2 MR. CHALOS: We object, Your Honor. We've looked
3 over the transcription, and they're not an accurate copy of
4 the tape. Specifically, the transcript -- the transcripts
5 that Mr. Cole has have included pauses that Captain
6 Hazelwood may have made in his transmissions, but they omit
7 pauses and people stumbling over their words of other
8 witnesses. So it's not a fair and accurate transcription,
9 so I would object on that basis.

10 THE COURT: Mr. Cole?

11 MR. COLE: Witnesses have testified -- we had
12 three witnesses come in here and say they've listened to
13 the tape. It's a fair and accurate representation. That's
14 Mr. Blandford, Mr. Taylor, Mr. Kunkel. This is not the
15 best evidence (inaudible) tape it, of course, _____
16 the jury in the past. This is being offered to assist the
17 jury in listening to the tape and helping them follow it.

18 THE COURT: I'm going to let the jury look at it,
19 Mr. Chalos.

20 MR. CHALOS: Yes. Just one more thing, Your
21 Honor. With respect to Mr. Blandford and Mr. Taylor, as
22 well, I take it, as Mr. Kunkel, there was never any
23 questions asked of them, or being represented with the
24 actual transcript, and being voir dired by me, as to
25 whether the pauses of other witnesses were included in the

1 transcript. So, for that purpose, I say it's not an
2 accurate transcript.

3 And, Your Honor, insofar as the tape itself, I --

4 THE COURT: I've ruled on the tape already, Mr.
5 Chalos.

6 Ladies and gentlemen, we're going to give you a
7 copy of what's been described as a transcript. That is not
8 the evidence in this case. The evidence is what you hear
9 on the tape recording. Any differences between what you
10 see in the transcript and what you hear should be resolved
11 in favor of what you hear. You should disregard any
12 differences that show up on the transcript.

13 The transcript is going to be given to you as
14 merely an aid to listen to the tape. Once again, I want to
15 stress that the transcript is not evidence. As soon as the
16 tape is completed, you're to return the transcript to the
17 front counter. They'll be retrieved by Mr. Cole.

18 Mr. Cole, you may distribute the -- and let's
19 mark one for identification as part of the record.

20 MR. CHALOS: Mr. Cole, may I see one?

21 THE COURT: Would you show Mr. Chalos the
22 transcripts? Thumb through there to make sure they're all
23 the same.

24 MR. CHALOS: Your Honor, I would like to bring to
25 the attention of the Court one thing. I'm not aware that

1 this tape has any times in it, but the transcript lists the
2 times. I don't know where these times come from, or
3 whether, in fact, these times are accurate or not -- which
4 is a further reason that I object to this transcript.

5 THE COURT: Mr. Cole?

6 MR. COLE: The times have been testified to by
7 the pilot, by the individuals with the Coast Guard.

8 MR. CHALOS: They haven't testified to all of the
9 times, Your Honor. I would ask that, if we're going to use
10 this as a transcript, that the times be eliminated
11 _____.

12 THE COURT: Ladies and gentlemen, disregard the
13 initials, which will be on the lefthand side, and disregard
14 the times which will be on the lefthand side. They're not
15 in evidence, as far as the tape is concerned.

16 You won't hear on the tape the times, and you won't
17 hear these initials. The only thing you'll hear are words
18 that might correspond to the words on the transcript.
19 Insofar as any discrepancy between what you hear and what
20 you read, disregard what you read.

21 MR. CHALOS: Your Honor, I would like to make an
22 application in that regard?

23 THE COURT: Mr. Chalos, you have made several
24 applications. I give you an opportunity to object. You
25 make your objection, and then I make a ruling and you

1 object some more. Now, you're going to have to get all
2 your reasons in before I make a ruling.

3 MR. CHALOS: Well, may I say --

4 THE COURT: Now, is this something different now,
5 other than what we have already discussed?

6 MR. CHALOS: I was going to make a suggestion to
7 the Court, Your Honor.

8 THE COURT: All right.

9 MR. CHALOS: Rather than hand to the jury the
10 document that has the times, even though you've instructed
11 them not to look at it, I can't see how -- they're not
12 going to be able to do that, or they won't do it.

13 So my suggestion would have been that perhaps we
14 break for lunch and have Mr. Cole copy this, eliminating
15 the times and the initials. This way we're assured that
16 the jury doesn't look at the times, and isn't influenced by
17 the times.

18 THE COURT: Mr. Cole, we're getting close to
19 lunch hour anyway. I doubt you'll be able to play this
20 tape before we normally take our lunch hour. So we will
21 take a break -- that's a good suggestion -- and you will
22 redact the portion of the transcript that has initials,
23 purporting to be who's speaking on the transcript, and also
24 the times. And you'll pass that by Mr. Chalos and by
25 myself, and then we'll take that up when we come back at

1 1:15.

2 MR. COLE: Okay, Judge. I --

3 THE COURT: Sir?

4 MR. COLE: I just request that once the jury is
5 dismissed, we bring something up.

6 THE COURT: All right.

7 We'll take a lunch break, ladies and gentlemen.
8 I'll let you out now. We'll come back at 1:15. We may be
9 taking a matter up at 1:15 and we may not. I don't know.
10 But to make sure that we're ready to go in the event that
11 we don't take the matter up, I'd like to have you here at
12 1:15.

13 Don't discuss this case among yourselves or with
14 any other person and don't form or express any opinions and
15 avoid the media, as per my earlier instructions. Have a
16 nice lunch. We'll see you back at 1:15..

17 (Whereupon, the jury leaves the courtroom.)

18 THE COURT: You may step down, Mr. Kunkel.

19 (Pause)

20 Would you close that door, please? Thank you.

21 All right.

22 MR. COLE: Judge, just as an offer of proof, we
23 have had the Coast Guard people testify that the names
24 here, VTC, correspond with them, that they were on duty
25 from -- Mr. Taylor was on duty up until midnight, and that

1 the VTC and that -- of the transcript corresponds with his
2 voice.

3 I can ask Mr. Kunkel one question, one or two
4 questions, if JH corresponds with Joseph Hazelwood's
5 statements.

6 Mr. Blandford came on and testified that his
7 names, where it says VTC after 12:00 o'clock is him. He
8 also testified that, if I remember correctly, that COTP is
9 Captain of the Port, who he identifies as Mr. McCall
10 testifying with Captain Hazelwood. And I can ask Mr.
11 Kunkel if G.C. is Mr. Cousins.

12 In addition to that, this tape was done by
13 Trooper Fox this past weekend, directly off the tape. The
14 tape runs continuously on the bands, as far as the times,
15 and Trooper Fox can testify to this, that it runs
16 continuously, that it's voice activated -- in other words,
17 the tape keeps running, but when a voice comes on Channel
18 13, it automatically picks it up, and that is how they get
19 these times along the lefthand side.

20 That is our offer of proof as to leaving the
21 times and the VTC initials that are on here.

22 THE COURT: All right, you may very well have
23 somebody who can testify to that. They haven't so far, and
24 there is no foundation for the times so far, and your offer
25 of proof, while made in good faith, is not supportive of

1 admitting this transcript with the times alongside of it.
2 You need to have a witness to lay this foundation.

3 And as far as the EVs and VTCs, I'm still
4 sustaining the objection. I'm going to -- that's part of
5 the evidence of this case. It's not a transcript, though.
6 The transcript is not evidence, and if you have witnesses
7 who have said this, you can get the witnesses to say it
8 again if necessary. Mr. Kunkel's here. You can keep him
9 on the stand, and you can ask him when the following words
10 were said, who was that? Things of that nature.

11 But I'm still going to order redaction of this
12 tape.

13 MR. COLE: That's fine.

14 THE COURT: All right. We'll come back at 1:15.

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

17 (Whereupon, a lunch recess was taken from 11:50
18 a.m. to 1:19 p.m.)

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AFTERNOON SESSION

(1:19 p.m.)

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

2
3 We have before the Court a motion for expedited
4 consideration filed by Mr. Feldman, attorney for Dr. M.A.
5 Peat who is -- expects to be called this afternoon, who may
6 not be called this afternoon, as the way things are going.
7 We're not going as fast as I think we thought we might.
8

9 However, Mr. Linton is in town, and there's a
10 motion for expedited consideration, and I've decided we can
11 hear it now.

12 Mr. Feldman is present on behalf of the proposed
13 witness, Michael A. Peat, M.D., and as is defense counsel,
14 Mr. Chalos. Mr. Linton is here on behalf of the State.
15 Mr. Cole is also in the court, although not sitting at
16 counsel table.

17 Mr. Feldman, is there anything you want to add to
18 your motion?

19 MR. FELDMAN: No. I mean, there are some -- it
20 was obviously done in some haste, because of the time
21 schedule we're on here, and there's probably more to be
22 said, and there are some additional regulations that are
23 probably pertinent but not discussed in the brief memo we
24 filed.

25 The point I'd like to, I suppose, make clear is

1 that, from the perspective of Dr. Peak, we seek guidance
2 from the Court so that he _____ know _____ follow
3 these regulations.

4 He's here, and if the Court determines that it's
5 proper for him to testify, and that there is no legal
6 reason why this information should not be obtained from
7 him, then he will, of course, comply with the Court's
8 order. And his principal concern, and that of his company,
9 is that he not run afoul of those regulations, that he not
10 abrogate any responsibility he has under the Federal law,
11 and that he not subject himself, or his company, to the
12 kinds of claims I suppose theoretically could be made if he
13 were to violate the law as established by Congress and the
14 Federal agency.

15 THE COURT: All right.

16 MR. FELDMAN: And that's the reason why we're
17 here.

18 THE COURT: Mr. Madson, on behalf of Defendant,
19 do you want to supplement this argument in any way?

20 MR. MADSON: I do, Your Honor, and under the
21 circumstances that's rather difficult, and I'll explain
22 why, but I would incorporate the arguments made by Mr.
23 Feldman in his memorandum as far as why the regulations do
24 not permit the disclosure of this information, but more
25 importantly, as the Court will note from my previous

1 notion, my distress -- the main point of my motion to
2 dismiss was based on not so much -- or encompassed and
3 included a violation of federal law by disclosing this
4 material. My feeling was that by the time it was at the
5 Coast Guard, that was -- my argument was directed toward
6 them and their obligation not to disclose it to state law
7 enforcement officials.

8 Mr. Feldman has since expanded that, as far as
9 the private employer is concerned, of the private
10 organization that did the testing, and certainly, I would
11 encompass the same arguments he made. However, I think my
12 main point was that we have no business doing this. The
13 State has no business doing this, because the federal
14 regulations and federal law has clearly pre-empted the
15 field.

16 Now, I've discussed CFR 95 before, where it
17 said: "The Coast Guard" -- said -- in the Coast Guard
18 regulations, it clearly states that it does not pre-empt --
19 these regulations do not pre-empt the State from enforcing
20 DWI laws regarding recreational vessels. They do, however,
21 make it very clear that the pre-empt appeal, commercial
22 navigation with regard to that -- and here's my problem.

23 I was downstairs earlier at the law library
24 trying to find Executive Order 12612. The reason for that
25 is, in Federal Register, Volume 53, Number 2 -- 24, dated

1 November 21, 1988, and that concerns these very rules and
2 regulations that we're talking about -- one of the things
3 they have to do is make a determination of what's called
4 federalism: that is, its application with regard to the
5 laws of the states or foreign countries. I think,
6 particularly here, it's just the law of the states.

7 And it says, this regulation -- speaking of the
8 drug and alcohol regulation -- "has been analyzed in
9 accordance with the principles and criteria contained in
10 Executive Order 12612, and it's been determined that the
11 proposed rulemaking" -- that's this rule -- this is the
12 commentary on it, by the way -- "does not have sufficient
13 federalism implications to warrant the preparation of a
14 federalism assessment" --

15 And here's the important part. "The rules affect
16 the safety of vessels in interstate and foreign commerce
17 and are directly related to the qualifications of personnel
18 licensed by the U.S. Coast Guard and their working
19 conditions on vessels. These are express statutory
20 responsibilities of the United States Coast Guard and there
21 are no similar state responsibilities or programs in these
22 areas."

23 Again, its emphasis on the pre-emption in this
24 particular field.

25 As I stated, I cannot find this order. I would

1 very much like to do that. And I would urge the Court to
2 wait and see if this order says what I think it does, but I
3 honestly don't know until I see it.

4 My guess would be in the context of this
5 commentary, is that it would be setting forth sufficient
6 reasons to pre-empt or not pre-empt state law, conflicting
7 law in the field. But what has been stated, again, it's in
8 Title 95, and I don't have the exact title, CFR -- 33 CFR
9 95.05 or something, 04. That's where the Coast Guard very
10 distinctly said: "These regulations pre-empt the field
11 except for recreational vessels."

12 And again, I've made that argument before, and I
13 just want to again try to emphasize why my position is that
14 this drug -- alcohol information should not be disclosed,
15 because simply the state has no business regulating it.
16 Thank you.

17 MR. LINTON: Judge, since Your Honor has
18 previously ruled on the _____, I'll address myself to
19 the statutory and regulatory _____ objections raised
20 by Mr. Feldman.

21 First, Judge, Dr. Peat has already testified to
22 these things in a public forum before the National
23 Transportation Safety Board. I have a copy of his
24 testimony that I ask be marked as an exhibit so we can have
25 it clear that he has before testified to the blood test --

1 to the blood test results of the tests of Captain
2 Hazelwood, specifically, and in fact, went beyond that,
3 beyond simply testifying to the test results, but went so
4 far as to project that at the time of the grounding, the
5 blood alcohol level would have been .22 rather than the .06
6 that was tested.

7 So his testimony has already been a matter of
8 public record in the public forum. If there's some privacy
9 regulation which the defense claims meant that this
10 shouldn't have been public at all, it is already in the
11 public forum.

12 Secondly, this is not that complicated an issue.
13 This is what happens all the time to hospitals who have
14 drivers who are involved in -- drunk drivers who are
15 involved in collisions. They're taken to a hospital. They
16 are treated medically.

17 In the course of medical treatment, they draw
18 blood alcohol to try to figure out whether the whooziness
19 that they see is a function of a bump on the head or a
20 function of intoxication. If it's a bump on the head, then
21 it may need medical treatment. If it's intoxication, it
22 may not.

23 And so hospitals draw and make such samples, and
24 when it comes time for the state to prosecute them, whether
25 it's for driving while intoxicated or manslaughter, the

1 state subpoenas the records of that individual at the
2 hospital.

3 The Defendant, then on trial, whose blood alcohol
4 was taken by the hospital, has standing to object to the
5 admission of the results, but the hospital itself has no
6 particular interest in the privacy rights of the Defendant,
7 and that's true of Dr. Peat and his laboratory here. They
8 have no particular privacy interest in Captain Hazelwood's
9 record. It is his interests -- or, perhaps, the Coast
10 Guard's interests, since they were the ones that sent the
11 test results there.

12 Let me address myself -- with those general
13 remarks, let me address myself to the specific
14 regulations. Let me start with the regulation applying to
15 vessel operation.

16 In the argument we've had before on these
17 _____ records, if I might approach the board here,
18 Judge, there is, in 33 CFR Section 95.035, a provision
19 which reads this way: "Only a law enforcement officer or a
20 marine employer may direct an individual operating a
21 vehicle to undergo a chemical test when reasonable cause
22 exists. Reasonable cause exists when the individual is
23 directly involved in the occurrence _____ casualty as
24 defined in the _____" -- et cetera, et cetera.

25 So in 33 CFR there is authority for both a law

1 enforcement officer and a marine employer to draw blood
2 samples. The record that's before Your Honor, Your Honor
3 could conclude that this was drawn by a law enforcement
4 officer, and actually law enforcement officer is defined in
5 part 95 to include a U.S. Coast Guard commissioned warrant
6 or petty officer (inaudible) Delozier is the one
7 who _____.

8 So this was actually a test drawn by a law
9 enforcement officer, not by a marine employer. A marine
10 employer means the owner, managing operator, charterer,
11 agent, master, or person in charge of a vessel other than a
12 recreational vessel. And underneath that, Exxon Shipping
13 Company, Captain Hazelwood would be a marine employer who
14 drew the sample. But CWO Delozier was not a marine
15 employer.

16 Now, the Coast Guard -- let me talk about the
17 scheme of the regulations of marine employer testing,
18 because that's the emphasis of the memorandum submitted by
19 Dr. Peat, and let me show you why that doesn't apply.

20 As set forth in the memorandum by Dr. Peak, in
21 enacting the regulations, the Coast Guard recognizes there
22 are going to be a lot of things that happen, marine
23 casualties that happen that they're not going to be able to
24 get to. There are just so many more people, so many more
25 of those than there are people in the Coast Guard to get to

1 them.

2 So the Coast Guard decided to impose, by
3 regulation, a requirement that marine employers take blood
4 samples for drug testing purposes under a number of
5 circumstances. The way they chose to define this in 46 CFR
6 Section 4.06 is they chose to say, if it's a serious marine
7 incident, then the employer is obliged to take the test, if
8 he wants.

9 Now, of course -- I'm just going to go down this
10 track to show you that even if Exxon Shipping Company had
11 done this, they would have been required to report it to
12 the Coast Guard and would have gotten to the same place we
13 are today, even if it had been a marine employer.

14 Actually, when the Coast Guard enacted the
15 regulation, they required the marine employer to do a
16 number of things. They required the marine employer. They
17 required the marine employer to take such samples when
18 there was a serious marine incident, but also, in the
19 regulations, _____ 16 required them to set up
20 pre-employment drug testing, periodic testing while
21 employers were -- employees were working -- and random
22 testing. And it was all a part of the regulatory scheme.

23 In fact, the pre-employment testing didn't come
24 into effect for large employers until June 1, 1989, after
25 Captain Hazelwood's matter, and for small employers, not

1 until December 21, 1989, and that -- but we're not talking
2 pre-employment, or periodic testing, or random testing
3 directly. I'll get to them in just a second. Let me focus
4 on the serious marine incident.

5 (Pause)

6 Judge, _____ copy of the _____
7 regulation 33 CFR 95.035. I'm handing a copy to Mr.
8 Feldman here so that you can see -- follow along with

9 _____
10 (Pause)

11 _____ have copies of part four of 46 CFR.
12 This is the section we talked about before. This is the
13 section which required Captain Hazelwood to report a marine
14 casualty, and you notice that as it existed at the time,
15 there was as 4.05 and then it skipped to a 4.07 -- that's
16 in the existing regs.

17 In the amendments that Mr. Feldman talks about,
18 they created a 4.06, and the 4.06 then falls in between the
19 Coast Guard investigation _____ Coast Guard
20 investigation, and what it does is, it imposes on the
21 marine employer when there is a serious marine incident, an
22 obligation to test.

23 And it defines marine casualty -- well, it
24 defines the circumstances which constitute a serious marine
25 incident. One is a marine casualty plus death or injury to

1 a person, or \$100,000.00 of damage. But most importantly,
2 in subsection (b), discharge of oil of one hundred -- ten
3 thousand gallons or more is a serious marine incident.

4 If you follow that along, you'll see that in --
5 ultimately in 4.06-60, the employer is required -- or the
6 testing laboratory is required to submit the test to a
7 medical review officer. The medical review officer, an
8 employee of the employer, then is required to submit that
9 test to the Coast Guard.

10 Strangely enough, even in these other cases, the
11 marine employer can be required to submit the test to the
12 Coast Guard under the regulation. That is, even under
13 these pre-employment tests, periodic testing, random
14 testing, in 16.380, the regulation provides that an
15 employer shall not release the results of these random
16 tests, or these periodic tests, or these pre-employment
17 tests, except pursuant to 4.06.60, that is, when there has
18 been a marine casualty and there is a need to know that
19 kind of information.

20 So what you have, Judge, is two different things
21 going on here. There is authority for the Coast Guard in
22 its function as an investigating agency to draw blood
23 samples and have them tested and get the results, so they
24 can use them in prosecutions of persons for license actions
25 or for criminal offenses.

1 There is also authority for marine employer to
2 get those in certain circumstances. This case happens to
3 correspond to one of those certain circumstances, and even
4 if this blood test had been taken by Exxon, the lab would
5 have been required to submit it to the employer, and the
6 employer to the U.S. Coast Guard. But we're in a situation
7 where either the Coast Guard would have had authority to
8 give it to the state, or -- via the employer, the Coast
9 Guard could have gotten it and then had authority to give
10 it to the state.

11 So it's clear that, having given it to the state,
12 the Coast Guard has no objection to the use of them. The
13 only person left who has any legitimate -- any grounds of
14 legitimate standing to say we object to them would be
15 Captain Hazelwood, and it's evidence that would be
16 admissible and -- _____ evidence of trial, and
17 therefore he has no privacy interests under these
18 circumstances.

19 This wasn't a random test. This wasn't a
20 pre-employment test. Then he might have had such rights,
21 had he not been involved in a marine casualty, or serious
22 marine incident. But he was, and by virtue of having been
23 involved in it, he doesn't have any privacy interests any
24 more.

25 There are citations by Dr. Peat to ceratin

1 provisions of the United States Code. There's a citation
2 to 5 USC Section 73.01. 5 USC Section 73.01 reads this
3 way:

4 "The President may prescribe regulations for the
5 conduct of its employees in the Executive Branch." Let me
6 show you -- the quotation that you see in the memorandum is
7 not actually a quotation of 5 USC Section 73.01. 5 USC
8 Section 73.01 simply says, the President can prescribe regs
9 for the Executive Branch, regs for employee conduct in the
10 Executive Branch.

11 Now, the provision that's actually quoted in the
12 brief there comes from a -- from a statute passed by
13 Congress, and the language appears, in the packet I've
14 handed you _____ --

15 (Pause)

16 MR. : I'm missing page 45.

17 MR. : (Inaudible).

18 THE COURT: You're missing 45? So am I. It
19 looks like it's probably the definition section.

20 MR. LINTON: The part that's quoted in there, in
21 the -- appears on -- actually, what came from the pocket
22 part, the last page of the -- of the documents I just
23 handed to you, it appears page 133 on the lower righthand
24 corner of the very last page. The quotation comes from the
25 statute, which actually starts getting quoted about two

1 pages back.

2 There was a bill passed by Congress to make funds
3 available, it says, pursuant to Executive Order number 155,
4 excuse me, 12564. That was the Executive Order enacted
5 pursuant to -- or it may have preceded, but it was the
6 Executive Order designed to implement any authority of the
7 President to regulate the conduct of employees of the
8 federal branch.

9 And in this bill funding that kind of thing, on
10 the very last page, is the language quoted by Dr. Peat in
11 his memorandum, Subsection (e). "The results of the drug
12 test of a federal employee may be disclosed without prior
13 written consent of such employee, unless this disclosure
14 would be" -- abadabadabadaba.

15 And so the -- it's clear that what language he's
16 picking on is the language from regulations having to do
17 with drug testing of federal employees, not someone in
18 Captain Hazelwood's position.

19 Now, these are relevant in one sense. That is,
20 such regulations are relevant in one sense, but only a very
21 limited sense.

22 When the Coast Guard went to enact regulations
23 that would tell employers how to conduct these tests, they
24 referred to some other tests. That is, they referred to
25 the testing procedures that are prescribed for federal

1 employees, and you can see in the preamble that the
2 regulations -- that the Coast Guard chose not to impose all
3 those on employers, marine employers, who were engaging in
4 drug testing under the regulations that they'd prescribed.

5 In the summary section, the very first page of 53
6 Federal Register 47002, "The Department of Transportation
7 is adopting a modification of the Department of Health and
8 Human Services' mandatory guidelines for federal workplace
9 programs. The purpose of the modification is to adapt the
10 procedures and safeguards developed by the Department of
11 Health and Human Services more closely to the circumstances
12 of drug testing programs in industries regulated by the
13 Department of Transportation."

14 So the answer is, yes, there is some relationship
15 in that when the Department of Transportation went to
16 prescribe workplace regulations -- not work -- drug testing
17 regulations for marine employers, they used one like those
18 for federal employees, but -- but they're different.

19 Now, these do contain provisions which, if you
20 look at them, they're saying, "Oh, you shouldn't tell
21 anybody about the results." For example -- on page 47.012
22 of the Federal Register, in section 40.33 up in the upper
23 righthand corner, there's reporting and review of results
24 that have come from employer testing. Medical review
25 officer's responsibility, positive test results.

1 It's actually in 40.35, protection of employee
2 records. "Employee contracts with laboratories shall
3 require the laboratories maintain employee test records in
4 confidence, as provided in DOT Agency regulations." So
5 this, this being one of the _____ federal regulations
6 cited by Dr. Peat in his memorandum simply refers you to
7 other Department of Transportation regulations for the
8 disclosure of those things, and there is express authority
9 in 4.06.60 for a laboratory like this to report it to a
10 medical review officer, and the medical review officer to
11 report it to the employee, and the employee right to the
12 Coast Guard.

13 So even if it had happened to have been Exxon
14 Shipping that ordered this, we'd be right in the same
15 position. But basically, Judge, it's just -- Dr. Peat is
16 in no different position than any hospital who treats
17 someone who's subsequently criminally prosecuted for an
18 offense which involves intoxication _____ when
19 appropriately subpoenaed, should come before the Court and
20 give the test results.

21 THE COURT: Mr. Feldman?

22 MR. FELDMAN: I don't think that I agree with Mr.
23 Linton's analysis of the interplay of these regulations,
24 and I'll just sort of briefly touch on the points he
25 raised, and tell you why.

1 First of all, the overall thrust of what Mr.
2 Linton, I think, argues to the Court is that because these
3 regulations contemplate that disclosure is going to be to
4 some people, or some agencies, or some authorities, for
5 some purposes, under some circumstances, there necessarily
6 would be regulations _____ is that everything will be
7 disclosed to everybody under all circumstances, and one
8 does obviously not logically follow -- the second does not
9 logically follow from the first.

10 The regulations were obviously enacted, adopted,
11 to fulfill the Congressional intent that this type of
12 testing occur specifically in marine casualty occasions.
13 So that a variety of public, you know, policies or rules
14 could be fulfilled.

15 Nowhere, in any of these regulations or statutes
16 does it suggest, or imply, or even hint that criminal
17 prosecution is one of those goals or policies -- in fact,
18 to the contrary. There are other goals and policies that
19 are mentioned, and criminal prosecution is not mentioned at
20 all, except to the extent that the notion, or the
21 possibility, of disclosure to law enforcement agencies was
22 explicitly mentioned, or raised as an issue, in the earlier
23 drafts of the regulations, and excluded from the final
24 regulations.

25 So one would logically think that the -- or

1 conclude that exclusion of that type of disclosure from the
2 final regulations enacted by the agencies, is indicative of
3 what the agencies intended to do here.

4 I think that Mr. Linton has missed the boat with
5 respect to the sequence of the adoption of these
6 regulations and how they relate to these other. What
7 happened first was the National Institute of Drug Abuse --
8 NIDA, which is a commission-type organization operating
9 under the Department of Health and Human Services? Is that
10 what it is now, now that Education is out? And they
11 adopted the first drug testing regulations, which Mr.
12 Linton has referred to, which I believe are 49 of the CFR.

13 And then when the Coast Guard got around to
14 enacting additional regulations thereafter, and it's clear
15 that the Coast Guard regulations are intended to apply not
16 only to federal employees and such, but to a whole host or
17 sort of category of private individuals who are -- who
18 could be involved in marine casualties -- such, as I
19 suppose, Captain Hazelwood.

20 And when the Coast Guard adopted those
21 provisions, it's absolutely clear that it enacted those
22 provisions and adopted by reference, or made reference to
23 and enacted, the companion regulations that had previously
24 been enacted by NIDA in Title XLIX of the code of federal
25 regulations.

1 And it seems inconceivable _____ that the
2 conclusion has to be that, in doing so, the Coast Guard
3 meant to include in the federal employee category, or to
4 afford the same protections as were afforded federal
5 employees in the NIDA regulations in 49 CFR, to a category
6 of private individuals who would fall within the Coast
7 Guard regulations.

8 And if that weren't obvious, just by reading the
9 regulations and seeing what they say, you know, I would
10 invite Mr. Linton to show where it is in the regulations
11 that says that that proposition is not correct? Where does
12 it state that federal -- that private individuals are not
13 treated like federal employees for that purpose?

14 Certainly the regulations makes specific
15 reference to the fact that procedures set out in the NIDA
16 regulations in 49 CFR apply to the testing procedures, or
17 testing programs, that are pursued pursuant to the Coast
18 Guard regulations.

19 So I think there's a link there made by the state
20 in terms of the interplay of these regulations and how
21 somehow this category of private individual falls outside
22 the regulations that I don't think is borne out by the
23 language of the regulations itself.

24 Let me just touch on this business of whether the
25 testing is made by the employer or by the Coast Guard.

1 Clearly, the regulations contemplate that employer testing,
2 the results of employer testing are to go to the Coast
3 Guard. In fact, the regulations identify a specific U.S.
4 Coast Guard form that is to be completed by the employer
5 and submitted in the aftermath of drug testing following
6 the marine casualty.

7 So there's no question of it but that the
8 information will go to the Coast Guard. That doesn't tell
9 us very much about what happens to that information after
10 it is disclosed to the Coast Guard, or what further use may
11 be made of it, and what the Coast Guard can do with it. I
12 mean, there's certainly no indication in the regulations
13 that, upon disclosure to the Coast Guard, that it
14 thereafter becomes usable for a whole host of other
15 purposes and, in fact, the regulations are rather partly
16 drawn to prevent widespread use of those -- of that
17 information.

18 But in any event, I have to ask a question. What
19 is the difference between what occurred here and a setting
20 in which the Coast Guard apparently ordered the tests to
21 occur, versus what would have occurred had, in fact, the
22 tests been ordered or performed by the employer directly,
23 and then the information provided to the Coast Guard
24 pursuant to the forum which the regulation specifically
25 required?

1 And the answer, it appeared to me is that there
2 really isn't any difference. I mean, the reality is that a
3 marine casualty occurred. A test was performed, and the
4 results were made known to the Coast Guard. All that, I
5 assume, is not in dispute.

6 And so whether the test was initiated, in the
7 first instance, by the employer or directly by the Coast
8 Guard would not seem to tell us very much about the extent
9 to which that information is or is not available under
10 these regulations.

11 I think it misposes the question, misraises the
12 issue, to suggest that this is already public information
13 and therefore why are we here at all? The question isn't
14 whether it's been disclosed in some other setting, because
15 clearly, the regulations contemplate that this information
16 is going to be disclosed in some settings, for some
17 purposes. It's not a question of whether it's been used or
18 made known to someone, like the NTSE, for example, or even
19 the public at large.

20 The question is what use can be made of this
21 information and, at least as pertains to my client, the
22 question that I'm concerned with is what authority does my
23 client have to disclose this information, or what
24 provisions of law exist that preclude my client from
25 disclosing this information?

1 And my client has no direct interest in the
2 outcome of this case, obviously, and I feel like I'm here
3 mostly as an amicus of the court, just to alert the Court
4 to these concerns, and have the issue ruled on. But I
5 think it's a more delicate balance that's being struck here
6 than the State's argument would suggest.

7 I don't think the hospital analogy is very
8 helpful. Hospitals are not subject to this kind of federal
9 regulations, so the fact that hospitals collect this
10 information and thereby have to give it up under certain
11 circumstances doesn't tell us very much. If regulations
12 like these existed, I assume that the hospitals would have
13 the same problems that my client has under these
14 circumstances.

15 THE COURT: Well, under your theory, is there any
16 authority to release it to the NTSB?

17 MR. FELDMAN: Well, yeah. This gets into an area
18 where my knowledge is a little bit fuzzy, because there is,
19 as I recall -- and there may be someone who knows more
20 about this than I do in this room. Perhaps, I'm not sure.
21 But, as I recall it, there was, at some point in time, an
22 issue that arose concerning whether it was the NTSB or the
23 Coast Guard that actually owned these samples, or had
24 custody of the samples.

25 The chain of custody, as I recall, was not

1 entirely clear as to whether the samples had come to the
2 laboratory by the NTSB or via the Coast Guard.

3 And in any event, the -- it's clear that this
4 information is useful for certain transportation -- for
5 Department of Transportation related purposes. So I'm not
6 sure that I can shed a lot of light on the NTSB use of it,
7 except that I think there are some facts that would shape
8 the impressions of that issue that I don't have, and I'm
9 not sure who else may have them at the present time.

10 THE COURT: Mr. Madson?

11 MR. MADSON: Yes, Your Honor. I do have a
12 comment or two.

13 First of all, with regard to the NTSB, I think
14 the Court has to understand that the purpose of that
15 particular forum was not to prosecute. It was simply to
16 find the cause of an accident, and to assist in preventing
17 marine disasters in the future. So there's a difference in
18 how these samples were used, assuming that it was used and
19 it was obtained lawfully for that particular hearing.

20 I think more importantly, though -- and by the
21 way, on that subject, Mr. Linton raised the question of --
22 in fact, said that this was a law enforcement officer that
23 took the sample and not a marine employer. Your Honor does
24 not have the testimony of Coast Guard Officer Delozier, and
25 I don't have it with me either, but my recollection of his

1 testimony -- and he was asked the question, "By what
2 authority did you take this sample?" -- he frankly didn't
3 know.

4 He at first, I think, indicated he was doing it
5 as an agent of the employer, and in fact, I believe
6 Commander Walburn, the Coast Guard commander, asked him
7 about these very regulations and asked him if he was
8 familiar with them, and he said no. He'd seen them come
9 across his desk, but he just thought he had the authority.
10 But at one point in time, he did stress that he thought he
11 was acting for the employer.

12 If the Court feels that's important -- and I
13 think it is. It may bear directly on this question that
14 Mr. Linton has raised, we could certainly obtain a copy of
15 that, and again, I'm only speaking from my memory of this,
16 and I hesitate to do it, but that is my recollection that
17 there was some real question as to what authority he
18 thought he had, and what he was acting under. If that
19 makes any difference.

20 But, for my purposes, if Mr. Linton is correct in
21 everything that he said -- and I certainly am not conceding
22 that he is -- but assuming that to be the case, what the
23 State is doing here under Title 33, part 95 of the
24 regulations, vessel operating regulations, this is called
25 -- they're picking and choosing. They're saying, "Well,

1 this applies: this doesn't apply: this applies, but this
2 doesn't. As the Court heard the other day, "Well, there's
3 a .04 figure under these regulations. We want to use
4 that."

5 I guess they would be able to use that. But this
6 other part about disclosure -- well, we don't think that
7 applies, so we don't use that.

8 Well, looking at it in the context of the overall
9 regulations, Your Honor, I would urge the Court to read --
10 and I have the proper cites here now -- 3395.001, under
11 purpose; 95.005, under applicability; and 95.025, adoption
12 of state standards.

13 Even if the state's argument is accepted 100
14 percent, it would require them to confine their law
15 enforcement activities to recreational vessels, because it
16 says: "This part does not pre-empt enforcement by a state
17 of its applicable laws" -- and that's what we're here. I
18 don't believe we're under any particular Coast Guard or
19 federal law violation -- "concerning operating a
20 recreational vessel while intoxicated."

21 Again, under adoption of state standards, the same
22 language is used. It said this section -- now, that's
23 state standards -- "applies to recreational vessels on
24 waters within the state," et cetera, et cetera.

25 I just don't know how we can just ignore the fact

1 that this isn't a recreational vessel, and they have simply
2 no business doing this.

3 THE COURT: Mr. Madson, I've ruled on the
4 pre-emption argument already. That's been ruled adverse to
5 your interests, and the Court of Appeals refused to take it
6 on the petition for review. I see no reason to change my
7 ruling on the pre-emption argument, which you've been
8 making again.

9 Release of this information is going to be
10 ordered by this court at this time. Dr. Peat will be
11 ordered to testify.

12 I have concluded looking at the documents -- and
13 I was _____ prepared when we came in here -- that this
14 was, in my opinion, taken by a law enforcement officer, and
15 even if it was an employer-required test that release under
16 the circumstances that exist in this case is authorized by
17 law. There's no right of confidentiality Captain Hazelwood
18 has in this case under these circumstances, so Dr. Peat
19 will be ordered to testify.

20 And your presence is no longer required, Mr.
21 Feldman.

22 MR. FELDMAN: Could I inquire what the schedule
23 is with respect to Dr. Peat's testimony _____?

24 THE COURT: Mr. Cole, are we going to be able to
25 get to Dr. Peat today?

1 MR. COLE: I just am not sure (inaudible).

2 THE COURT: Why don't you, through Ms. Henry, or
3 some other representative, keep in touch with Mr. Feldman
4 so --

5 MR. COLE: Okay.

6 THE COURT: -- he can be made available on short
7 notice.

8 Is Dr. Peat present in court?

9 MR. : (Inaudible).

10 MR. : Yes.

11 THE COURT: Did you understand the order, sir?

12 DR. PEAT: Yes. I did.

13 THE COURT: All right Thank you, sir.

14 Are we ready with the jury now? Let's get the
15 jury in, and we can round up Mr. Kunkel?

16 (Pause)

17 MR. COLE: Judge, we have to do one thing before
18 jury comes in.

19 THE COURT: Stop.

20 (Pause)

21 Court is still in session, ladies and gentlemen.
22 Thank you.

23 Yes, Mr. Cole?

24 MR. COLE: I want to make sure that there's no
25 confusion about what we're about to do. The transcript

1 that I had deleted, which by the Court's order, was done.
2 The transcript begins where this tape is set. Now, there
3 is information that is on the tape from when the ship left
4 the dock in Valdez prior to this, but we did not intend to
5 play that. That was testified about by Mr. Taylor.

6 But the transcript that I have that I've offered
7 for the jury begins with the part that we expected to play
8 for the jury, because I didn't feel that the Court would
9 want to have transcripts of something that wasn't going to
10 be played.

11 THE COURT: All right. It is my understanding --
12 and maybe I'm incorrect -- that the transcript, where it
13 starts out, "Yeah, Valdez Traffic. Exxon Valdez, over,"
14 that is what we're going to hear, the very first thing on
15 the tape. And the tape and the transcript are going to
16 correspond exactly throughout, and then when you come to
17 the end of the transcript, that will be the end of the
18 tape, or vice versa.

19 MR. COLE: That's correct, Your Honor.

20 THE COURT: All right. And you've redacted the
21 first two columns in the transcript, is that correct?

22 MR. COLE: Yes. Ms. Henry had it.

23 THE COURT: I would like a copy of it -- I have a
24 nonredacted copy here, so we'll mark that for
25 identification, and we'll also mark the redacted copy for

1 identification also, make it part of the record. But they
2 own't go -- neither one of them will go to the jury as
3 evidence, and only the redacted portion will go during the
4 playback.

5 _____ mark this as Court's exhibit. Is that
6 a redacted copy? Thank you.

7 Why don't you go ahead and put a note there on
8 the bench.

9 Is there anything else we need to do before we
10 get the jury now?

11 MS. : (Inaudible).

12 THE COURT: Why don't you hit it, just to make
13 sure.

14 (Sound)

15 THE COURT: All right. You can put it back.

16 (Sound)

17 THE COURT: All right. Bring the jury in now,
18 Scott.

19 (Whereupon, the jury enters the courtroom.)

20 MR. : (Inaudible).

21 (Pause)

22 THE WITNESS: (?) Do you want me to read this
23 now, or --

24 THE COURT: (?) We're on the record still.
25 Everything is being recorded, is what I'm saying.

1 THE WITNESS: Oh, well.

2 THE COURT: So don't say anything until you're
3 asked a question.

4 (Pause)

5 You'll notice in front of you there's a stack of
6 transcripts. If you'll pass that around so everybody has
7 one. If you don't get one raise your hand (inaudible).

8 (Pause)

9 All right. Does everyone have (inaudible).

10 MR. COLE: Judge, I would request to play the
11 tape.

12 THE COURT: Yes, sir.

13 (Tape recording played)

14 VOICE: Valdez Traffic, Exxon Valdez.

15 VOICE: Valdez Traffic.

16 VOICE: (Inaudible).

17 VOICE: Yes. We've departed the pilot --
18 disembarked the pilot, excuse me, and I'm _____ to sea
19 speed and ETA Naked Island, 0100. Over.

20 VOICE: _____ sir, request an updated
21 accupoint (?) when you get down _____.

22 VOICE: Okay, but _____ tell you that
23 judging by our radar, I will probably divert from TSS and
24 end up in the inbound lane if there's no conflicting
25 traffic. Over.

1 VOICE: _____ traffic. I've got the Chevron
2 California one hour out. And the Arco Alaska is right
3 behind them, but they're an hour out. _____ Captain
4 Hazelwood _____.

5 VOICE: That would be fine, yeah. We may end up
6 over in the inbound lane, outbound _____. We'll
7 notify you when we leave the TSS and cross over the
8 separation _____.

9 VOICE: Roger dodger. When you call us
10 _____.

11 VOICE: Okay. Exxon Valdez, over. Stand by
12 in _____.

13 (Pause)

14 VOICE: Valdez Traffic, Exxon Valdez, WHUB, over.

15 VOICE: Valdez Traffic, over.

16 VOICE: At the present time I've altered my
17 course to 200 and reduced speed to about 12 knots
18 to _____ through the ice and Naked Island ETA might be
19 a little out of whack, but once we're clear of the
20 ice, _____ will give you another shot, over.

21 VOICE: Roger dodger, _____. We'll be
22 waiting for your call _____.

23 (Pause)

24 (Sounds)

25 VOICE: Valdez Traffic, Chevron California.

1 (Pause)

2 VOICE: Chevron California, Valdez Traffic.

3 VOICE: Chevron California to Valdez Traffic,
4 abeam Captain Hazelwood at 0015. Estimated Naked Island
5 about 0200.

6 VOICE: Chevron California, Valdez Traffic.
7 Roger. We have the Exxon Valdez outbound estimated Naked
8 Island 0100 and he should be able to give you a pretty good
9 ice report. Over.

10 VOICE: (Inaudible) and thank you very much.

11 VOICE: Traffic.

12 (Pause)

13 VOICE: Valdez Traffic, Exxon Valdez. Over.

14 (Pause)

15 THE WITNESS: Exxon Valdez, Valdez Traffic.

16 VOICE: Yeah. Exxon Valdez. We -- we should be
17 on your radar there. We touched up hard aground north of
18 Goose Island off Bligh Reef and evidently leaking some oil,
19 and we're going to be here for awhile and (inaudible).

20 (Pause)

21 VOICE: Exxon Valdez, Valdez Traffic. Roger.
22 You're just about -- about a mile north of Bligh Reef?

23 VOICE: Yeah. That's correct, over.

24 VOICE: Roger.

25 VOICE: Okay. I'll give you a status report as

1 we ascertain the situation. Over.

2 VOICE: Standing by.

3 (Pause)

4 VOICE: (Inaudible) Valdez Traffic.

5 VOICE: _____ to Valdez Traffic. Go ahead.

6 VOICE: We have the Exxon Valdez aground at Bligh
7 Reef. Request you proceed for possible assist. Over.

8 VOICE: Roger roger. We'll be underway in just a
9 few minutes.

10 (Pause)

11 VOICE: Chevron California, Valdez Traffic.

12 VOICE: Chevron California, Valdez Traffic, over.

13 VOICE: Sir, good morning. Standing disposition
14 of the Exxon Valdez here _____ get his situation
15 resolved. The captain of the port has closed the port to
16 all traffic.

17 VOICE: Okay. Roger _____. _____ the
18 port _____.

19 VOICE: Not at this time. We'll have to get
20 some _____.

21 VOICE: Okay. Roger (inaudible) over towards
22 (inaudible).

23 (Pause)

24 VOICE: _____ to Valdez Traffic.

25 VOICE: Chevron California, Traffic.

1 VOICE: Chevron California. I just want to
2 confirm the port is closed and we are to proceed
3 to _____. Is that correct?

4 VOICE: Roger that.

5 VOICE: All right. (Inaudible) down there and
6 let you know when we get there.

7 VOICE: Roger that. Traffic out.

8 (Pause)

9 (Sounds)

10 VOICE: Yeah. Roger. Okay, we'll do that, and
11 because you can figure there's somebody in there within the
12 hour.

13 VOICE: Roger that. Thank you very much. We'll
14 be staying on 13 _____.

15 (Pause)

16 VOICE: (Inaudible).

17 VOICE: Exxon Valdez, this is the captain of the
18 port on channel 13. Over.

19 VOICE: _____. Over.

20 VOICE: Exxon Valdez, this is captain of the
21 port, Commander McCall. Good evening.

22 Do you have any more of an estimate of your
23 situation at this time? Over.

24 VOICE: Not at the present. The _____ a
25 little _____ with the third mate, but we're working

1 our way off the reef. The vessel has been holed, and we're
2 entertaining _____ off the reef and _____ as soon
3 as I can. Over.

4 VOICE: Roger. And I've got -- you know, we've
5 got a lot of _____ mechanisms _____ to give you
6 what assistance we can. Take it slow and easy and, you
7 know -- I'm telling you the obvious, but yeah, take it slow
8 and easy, and we're getting help out as fast as you can.

9 I appreciate when you can give me a fairly good
10 -- if you can give me an update as to _____ location,
11 where you suspect it might be, and the stability.

12 VOICE: Okay. We're in pretty good shape right
13 now, stabilitywise. We're trying to extract off the shoal
14 here. You can probably see me on your radar and, once I
15 get underway, I'll _____ to another damage control
16 assessment. Over.

17 VOICE: Roger, yeah. You know, again, before you
18 make any drastic attempt to get underway, you make sure you
19 don't, you know, any ripping. You've got a rising tide.
20 You've got about another hour-and-a-half worth of tide in
21 your favor. Once you hit that max, I wouldn't let
22 the _____ do much wiggling. Over.

23 VOICE: Okay. Yeah. The major damage has kind
24 of been done. _____ rock and rolled over it, and it's
25 just kind of _____ here which _____ get

1 back to you at full speed (inaudible).
2 VOICE: Captain of the port. Out.
3 (Pause)
4 VOICE: (Inaudible).
5 VOICE: _____ traffic.
6 VOICE: Yeah. How many personnel do you have
7 coming out?
8 VOICE: Two Coast Guard and one AB.
9 VOICE: Bearing traffic, Coast Guard _____
10 okay?
11 VOICE: _____, that will be just fine.
12 VOICE: (Inaudible).
13 (Pause)
14 VOICE: (Inaudible).
15 VOICE: (Inaudible) to Valdez Traffic.
16 VOICE: (Inaudible).
17 VOICE: Traffic _____.
18 VOICE: (Inaudible).
19 (Pause)
20 VOICE: (Inaudible).
21 VOICE: (Inaudible).
22 VOICE: (Inaudible) a mile away there and
23 (inaudible).
24 VOICE: Not at this time. I've got a
25 (inaudible). Over.

1 VOICE: Okay. (Inaudible).

2 VOICE: Okay. We'll be right on the port side,
3 over.

4 VOICE: (Inaudible).

5 VOICE: No. Not at this time. I do have the
6 pilotage for the area, but no pilot, southwest pilot, on
7 board. Over.

8 VOICE: (Inaudible) pilot on board (inaudible).

9 VOICE: Very well. Exxon Valdez. Stand by
10 (inaudible).

11 (Pause)

12 VOICE: Exxon Valdez, this is Valdez Traffic,
13 channel 13. Over.

14 VOICE: Valdez.

15 VOICE: Valdez, Exxon Valdez, Valdez Traffic.
16 Yeah. Any updates yet?

17 VOICE: We're still surveying tanks, trying to
18 assess the damage here.

19 VOICE: Roger. Do you have the capacity
20 _____ to internally transfer if you need to? Over.

21 VOICE: Yes, sir. We can do that.

22 VOICE: Okay. That's -- obviously, you know
23 better than I do, but that's highly recommended that once
24 you determine which tanks are holed to drop _____ if
25 you can. Over.

1 VOICE: Yes, Roger. Out.

2 VOICE: And you still _____ try to get
3 off _____.

4 VOICE: Our engines are stopped right now. We're
5 going to wait until _____ little more _____.

6 VOICE: Roger on that. (Inaudible).

7 VOICE: Valdez Traffic.

8 (Pause)

9 (Sounds)

10 (End of tape recording)

11 DIRECT EXAMINATION -- Resumed

12 BY MR. COLE:

13 Q Mr. Kunkel, the last exchange on the tape, do you
14 recognize who that crew member of the Exxon Valdez does?

15 A To the best of my knowledge, it sounded like Greg
16 Cousins.

17 Q I'm showing you -- you have in front of you what
18 has been marked for identification as Plaintiff's Exhibit
19 Number 14. Do you recognize that?

20 (Pause)

21 A Looks like a copy of the bridge organization
22 manual. It's issued by Exxon Shipping Company.

23 Q Is that carried on every shiop --

24 A Yes.

25 Q -- tankers?

1 A Yes, it is.

2 Q To the best of your knowledge, is that a fair and
3 accurate copy of the bridge manual?

4 A Well, just by rifling through, yes, I'd say it
5 looks like one.

6 Q And did you sign this, a copy of this manual?

7 A yes, I did.

8 Q And when would that have been?

9 A Looks like on 10/10/88, I said I certify I have
10 read and understood the contents of this manual, including
11 amendments and revisions.

12 MR. COLE: I would move for the admission of
13 what's previously been identified as Plaintiff's Exhibit
14 Number 14.

15 (Pause)

16 MR. CHALOS: Your Honor, we object to the
17 admission of this document without a foundation, because we
18 don't know what it's being offered for. These are just
19 company guidelines.

20 THE COURT: I'm going to admit it over your
21 objection to foundation. I assume there's some relevance
22 to that, but I'm assuming that Mr. Cole is going to tie it
23 up here, and --

24 MR. CHALOS: Yes. That was the second part of my
25 objection. We don't know what the relevance of this

1 document would be to what Captain Hazelwood is charged
2 with.

3 THE COURT: Are you going to tie this up somehow?

4 MR. COLE: Well, we've already discussed it as
5 far as the watch, Your Honor, with Mr. Cousins, and I do
6 plan on tying it up.

7 THE COURT: Objection overruled.

8 (State's Exhibit 14 was
9 received in evidence.)

10 MR. CHALOS: Your Honor, I would also add, for
11 the record, that Captain Hazelwood's signature does not
12 appear on the signature page.

13 THE COURT: You may proceed, Mr. Cole.

14 Disregard that last comment by Mr. Chalos, ladies
15 and gentlemen.

16 BY MR. COLE: (Resuming)

17 Q Is that a manual that the master of a tanker
18 ought to be familiar with before he steps on board the
19 tanker?

20 MR. CHALOS: Objection, Your Honor.

21 MR. COLE: That manual?

22 MR. CHALOS: Foundation. And relevance.

23 MR. COLE: I'll withdraw it.

24 BY MR. COLE: (Resuming)

25 Q Are masters required to read that manual also?

1 A It is my understanding that all deck officers are
2 required to read this manual.

3 Q And be familiar with it?

4 A And be familiar with its provisions.

5 MR. COLE: I have nothing further, Your Honor.

6 CROSS EXAMINATION

7 BY MR. CHALOS:

8 Q Good afternoon, Mr. Kunkel.

9 You are a Kings Point graduate, are you not?

10 A Yes, sir. I am.

11 Q King's Point is the United States Merchant Marine
12 Academy?

13 A Yes, sir.

14 Q It's a federal academy, like West Point and
15 Annapolis?

16 A Yes, sir.

17 Q Now, you said that you worked for the Corps of
18 Engineers for a period of time?

19 A Yes, I did.

20 Q What did you do for the Corps of Engineers?

21 A There I was a sort of mate on what they call a
22 seagoing hopper dredge.

23 Q Now, was that involved just in dredging, or in
24 salvage operations as well?

25 A Strictly in dredging.

1 Q You also worked for the Coast Guard?

2 A I did a tour of three years with the Coast Guard,
3 yes.

4 Q What did you do for the Coast Guard?

5 A I was called a marine inspector. The duties were
6 divided up in licensing, investigation, and in inspection.

7 Q Was that the marine safety office in New Orleans?

8 A At that time, it was called the Marine Inspection
9 Office, MIO. I think now they call it MSO, but I have no
10 idea how their infrastructure has changed.

11 Q Where you involved in any casualty
12 investigations?

13 (Pause)

14 A To the best of my knowledge, the only thing I
15 investigated was a grounding of a vessel in the Mississippi
16 River, but that really wasn't a -- I don't know whether
17 that would be considered an investigation, because I went
18 up there and made a report and turned it in to an
19 investigator. I was an inspector at the time. I was sent
20 --told to go up there to see if there was any damage or any
21 problems, and then to get a statement from the captain and
22 give that to a formal investigator.

23 My investigation in the Coast Guard was mainly
24 concerned with enforcement of Coast Guard regulations.

25 Q Now, you hold the master's license, do you not?

1 A Yes, I do.

2 Q But you've never sailed as a master?

3 A No, I have never sailed.

4 Q Is it a fair statement to say that a master of a
5 vessel is, in addition to being in overall charge, an
6 administrator on the vessel?

7 A Yes, he is.

8 Q Would he be akin to the chief executive officer
9 of a company?

10 A Yes.

11 MR. COLE: Objection. Foundation.

12 THE COURT: The objection is overruled. You've
13 had plenty of time to make it, Mr. Cole.

14 BY MR. CHALOS: (Resuming)

15 Q In your experience, a master has a lot of
16 paperwork to do as part of his job, does he not?

17 A Yes, sir.

18 Q It's also your experience, is it not, that
19 masters delegate a lot of the duties that they have to
20 their mates?

21 A Yes.

22 Q The chief mate, the second mate, the third mate,
23 the chief engineer?

24 A Yes.

25 Q Now, these particular mates, the deck mates, if

1 you will, are all licensed by the Coast Guard, are they
2 not?

3 A Yes, they are.

4 Q They've had to take tests to qualify?

5 A Yes.

6 Q And they have to serve for a period of time when
7 they want to move their licenses up, let's say from a third
8 mate to a second mate?

9 A Yes, sir.

10 Q And they have to exhibit a certain proficiency in
11 various matters --

12 A Yes.

13 Q Including navigation?

14 A Yes.

15 Q And the ability to read charts?

16 A Yes.

17 Q The ability to handle a radar?

18 A Yes.

19 Q To be able to plot?

20 A Yes.

21 Q To be able to identify targets on the radar?

22 A You'll have to make me understand what you mean
23 by "identify the targets."

24 Q Well, when -- have you taken your radar observer
25 test?

1 A Yeah. I mean, if you're telling me, "Identify
2 what the target is doing," yes. As to what the target
3 actually is, just on the radar, of course not.

4 Q Yes. I mean what the target is doing.

5 A Yes.

6 Q Now, your job as the chief mate of the Exxon
7 Valdez was both navigation while at sea --

8 A Yes.

9 Q -- and handling the cargo, loading and
10 discharging in port, am I correct?

11 A That's correct.

12 Q Incidentally, were you in a position where you
13 were akin to being the executive officer of the deck
14 department?

15 MR. COLE: Objection. Foundation.

16 BY MR. CHALOS: (Resuming)

17 Q Are you the second-ranking officer in the deck
18 department besides the master?

19 A Am I --

20 THE COURT: Well, that's another question.

21 MR. CHALOS: Let me withdraw the first one, Your
22 Honor, and ask the second.

23 THE COURT: All right.

24 BY MR. CHALOS: (Resuming)

25 Q Are you the second highest-ranking officer in the

1 deck department?

2 A I am the highest ranking officer in the deck
3 department.

4 Q Now, in carrying out your duties of cargo
5 handling, I believe you said your usual position is in the
6 cargo control room. Is that correct?

7 A That's correct.

8 Q But you do leave the cargo control room from time
9 to time?

10 A Yes.

11 Q When you leave the cargo control room during
12 cargo operations, you generally leave one of your other
13 mates behind, do you not?

14 A Yes.

15 Q You give them instructions as to what you want
16 to do?

17 A Yes.

18 Q And you expect them to carry it out?

19 A That's correct.

20 Q And sometimes there are pumpmen in there as well,
21 is that right?

22 A Yes, there is.

23 Q And if you left the mate and a pumpman in the
24 cargo control room during cargo operations, you would
25 expect the mate to keep an eye on the pumpman, I take it?

1 A Yes.

2 Q You know, you spoke about the Exxon Valdez being
3 a three-mate ship. In your experience, has the number of
4 crew members been reduced in recent years on Exxon vessels?

5 A Yes, they have.

6 Q How has that reduction affected the job that you
7 do?

8 A It depends. Now, if we were a four-mate ship, I
9 would not stand a watch, and that would mean that I could
10 dedicate my whole time, a work day, to the maintenance to
11 the vessel and the administration of the vessel, whereas
12 now I stand a watch, that means eight hours of my day is
13 used up being on the bridge, as a navigating officer.

14 To do that job properly, you shouldn't be
15 involved in too many other duties. And that -- that would
16 be the difference in there.

17 Q And as a result of that, does the captain have to
18 take on more of the administrative duties that you might be
19 doing on the four-man ship, four-mate ship?

20 A Well, I'm really not in a position to answer
21 that, because I really don't -- I don't have an idea of
22 what the master would have been doing when it was four
23 mates. In other words, I went almost straight to three
24 mates.

25 Q Fair enough.

1 Now, let's talk about the watch that you stand at
2 sea. You stand the 4:00 to 8:00 watch?

3 A On the Valdez, I stood the 4:00 to 8:00 watch.

4 Q And you mentioned that -- you gave us a list of
5 your duties. Can you tell us what your navigational duties
6 are?

7 A Wehn on te watch?

8 Q Yes.

9 A Durign -- okay. Basiclaly, to maintain a
10 position of the vessel.

11 Q How do you do that?

12 A Either electronically, with Loran, or satellite,
13 or during the day, celestial. I could use the sun, stars.

14 Q That's when you're out at sea?

15 A OPut at sea, right.

16 Q How about if you were in a place like Prince
17 William Sound?

18 A Well, there you would be relying heavily on
19 visual bearings, radar ranges and bearings.

20 Q Is it a difficult process to take a bearing, or
21 to take a fix, let's say, in Prince William Sound?

22 A No, sir.

23 Q It's just a matter of taking a range
24 and _____, isn't it?

25 A Well, it's a matter of knowing how to do it, and

1 if you do know how to do it, it's very simple. There are
2 plenty of landmarks in Prince William Sound to use.

3 Q Would you expect a third mate with several years
4 of experience to be able to do that with no problem?

5 A Yes, I would.

6 Q Now, with respect to the steering of this vessel,
7 as the mate on watch, what instruments do you have to tell
8 you what the vessel is steering and how the helm is being
9 handled?

10 A You have the rudder angle indicator, which would
11 give you an indication of where the rudder is at any time.
12 Then you also have the gyro repeaters, which would tell you
13 what course the vessel's on.

14 You also have a view screen in front of the
15 steering stand that tells you what the vessel is doing.

16 Q How many rudder indicators are there on the
17 bridge of this ship -- and by bridge, I mean even the
18 wings?

19 A Well, let's see. You know, I can't remember.

20 Q Yeah, you can come over --

21 MR. CHALOS: With your permission, Your Honor.

22 THE COURT: Sure.

23 BY MR. CHALOS: (Resuming)

24 Q Point out where they --

25 A Okay.

1 Q -- where they are.

2 A Rudder angle indicators.

3 Q Rudder angle indicators.

4 A Here.

5 Q That's one.

6 A Here -- you can see these from the outside.

7 Q Yes. If you're on the wing, you can see them.

8 A Right. You don't have to be inside. You could
9 be outside taking a bearing to get a position, just look
10 over your shoulder and see where the rudder is.

11 Then up here there's a rudder angle indicator
12 like this, so inside, you could just take a look and see
13 it. Then also, right here, the big round one that's lit
14 up, almost any angle on the bridge you can see that.

15 Q Is that the one overhead?

16 A That's the overhead, correct. So one, two,
17 three, four. Then also, there's one on the screen here
18 that you can see the little -- there's like a little
19 digital readout, and it moves back and forth and shows you
20 where the rudder is.

21 Q So if you wanted to see at any time where the
22 rudder angle is at that particular time, all you have to do
23 is glance up from anyplace on the bridge. Is that --

24 A That's what it's designed for, yes.

25 Q And that's all it is, is just a glance up?

1 A Yeah, look up and you'll see it.

2 Q No, how many gyro repeaters do you have?

3 A Okay. You have this one here, on the front of
4 the vessel, right up here, okay. On each wing, you have
5 one, so while you're out there taking a bearing you can
6 also look at the repeater and right at the front of the
7 ship there's a little line, so alls you have to do is
8 glance, and you'll see the number. That's your course.

9 So you can tell that on either wing of the
10 bridge. You can tell it by looking straight ahead of you
11 at this. Then the other one -- then there is one also on
12 the television screen here.

13 Plus, on both radars as you look down into the
14 radars, there's a gyro repeater on each one of these with a
15 heading flasher that tells you what direction you're
16 heading, and what that heading numeral is.

17 Q Let's talk about that a second. If you're the
18 mate on watch and you know of the course that you're on,
19 and you've just ordered a rudder change, you would expect
20 at some point the heading of the vessel to change. Am I
21 correct?

22 A Yes, sir.

23 Q Based on your experience with the Exxon Valdez,
24 if you put on 10 degrees of right rudder and you're drawing
25 57 feet, proceeding at 11.75 knots, how quickly after you

1 put the rudder over would you expect the heading to change?

2 A I would say in less than -- no longer than 30
3 seconds, something's going to happen.

4 Q So if you're a mate on a watch and you wanted to
5 check your ship's heading that's changed in response to a
6 ruddern command, all you have to do is look at any one of
7 the indicators --

8 A Right.

9 Q -- that you just told us about.

10 A And something should be happening.

11 Q You can look at the radar, and that would tell
12 you whether you're heading straight?

13 A Yes, sir. The little flasher will move.

14 Q There's also a trail, is there not, as the ship's
15 turning?

16 A Yes, but that would not always be there,
17 depending on the scale you're on.

18 Q And also, you can tell your heading change if
19 you're out on the wing by just looking at the repeaters?

20 A That's correct.

21 Q Mr. Kunkel, would you know how many degrees of
22 heading change you would expect in one minute's time if you
23 put the rudder over to 10 degrees and you were laden down
24 to 57 feet and you're travelling at 11.75 knots?

25 A No, sir, I don't.

1 Q Now, when a third mate stands a watch, a
2 navigation watch, are his duties basically the same duties
3 that you have?

4 A Yes, they are.

5 Q So whether you're standing teh watch or the third
6 mate is standing the watch, you're basically doing the same
7 thing?

8 A We're doing exactly the same thing on watch, on
9 the bridge.

10 Q And he's just as qualified as you are in respect
11 to the navigation of the vessel is he not?

12 A That's correct.

13 Q I'd like to ask you a little bit about your day
14 and -- your night and day in Valdez on the 22nd and 23rd.
15 You say you tied up somewhere around 10:00, 10:30 that
16 night. Is that correct?

17 A Uh --

18 Q I can show you the log book --

19 A I think it was -- didn't we say 11:30? I'm not
20 sure.

21 Q Okay. Let's say 11:30.

22 A Yeah.

23 Q Were you on the bridge at the time?

24 A Yes, I was.

25 Q Was Captain Hazelwood on the bridge?

1 A Yes.

2 Q Was he directing the docking of the vessel?

3 A Yes.

4 Q Did you hear him give orders at that time?

5 A Yes.

6 Q Did you observe his mannerisms?

7 A Yes.

8 Q You observed his demeanor?

9 A Well, what do you mean by that, sir? I mean --

10 Q Well, his demeanor as a captain giving orders.

11 A Yeah. I observed him giving orders. Correct.

12 Q Now, you stayed up until at least 4:00 in the
13 morning?

14 A Well, probably until about 8:00.

15 Q Until 8:00 in the morning?

16 A Uh-huh.

17 Q Then you took a short nap, you say?

18 A Yes.

19 Q Then you woke up, went on watch?

20 A Well, I took a little nap. I got up around noon,
21 checked things out, then kind of spent some time to myself,
22 took a nap, made a phonecall. And then 1600, went on
23 watch.

24 Q And then you stayed up until about 10:30 that
25 night, I think you said?

1 A Yeah.

2 Q Were you tired?

3 A Yes.

4 Q On the basis of your experience, does fatigue
5 play a factor in the operation of these vessels?

6 A Sometimes it can, yes.

7 Q In this particular case, you were due to come
8 back up at 4:00 o'clock in the morning?

9 A Correct.

10 Q Was it your perception that Captain Hazelwood --
11 MR. COLE: Objection, hearsay.

12 BY MR. CHALOS: (Resuming)

13 Q Was to take --

14 THE COURT: Let him finish the question, but
15 don't answer it.

16 BY MR. CHALOS: (Resuming)

17 Q Had any arrangements been made as to who would
18 take your watch at 4:00 in the morning?

19 THE COURT: _____ answer _____.

20 MR. COLE: Objection. Hearsay.

21 MR. CHALOS: Your Honor, I don't think this is
22 hearsay.

23 THE COURT: Overruled.

24 THE WITNESS: What does that mean?

25 MR. CHALOS: You can answer.

1 THE WITNESS: All right. Could you give me the
2 question again?

3 BY MR. CHALOS: (Resuming)

4 Q Yes. Had any arrangements been made as to who
5 would take your watch ast 4:00 a.m.

6 A Yes.

7 Q On the 24th?

8 What arrangements were made?

9 A Just as I was leaving the bridge, Captain
10 Hazelwood told me, "Don't worry about your watch. We've
11 got you covered. I'll stand it."

12 Q At about 4:00 o'clock on the 24th the vessel
13 would just be passing Hinchinbrook, or thereabouts? Am i
14 correct?

15 A I think it's a six-hour journey, yes, sir.

16 Q So sometime during that watch, it would have been
17 going out at Hinchinbrook?

18 A Uh-huh.

19 Q And it's customary, is it not, as you're leaving
20 Hinchinbrook to get out a bunch of messages, _____
21 messages?

22 A Usually there's a bunch of messages that the
23 captain sends, yes, and -- I'm not sure what they all are.
24 I know I supply him with numbers.

25 Q Now, I'd like to go back a little bit and bring

1 you back to the bridge at about 8:30 on the evening of the
2 23rd. Do you recall that? Just before you go on back?

3 A Okay. I'm on the bridge, the cargo's finished,
4 we're getting ready to let go.

5 Q Right. You did your checks, that you said.

6 A Okay.

7 Q The captain arrived on the bridge at some point?

8 A Yes, he did.

9 Q Did you have the opportunity to observe him?

10 A Yes.

11 Q Did you speak with him?

12 A Yes.

13 Q Did you smell any alcohol on his breath?

14 A No.

15 Q Did he appear to you to be in any way impaired?

16 A No.

17 Q Did he appear to you in any way to be under the
18 influence of alcohol?

19 A No.

20 Q Now, the captain directed the undocking, I take
21 it?

22 A Yes, he did.

23 Q Did you hear him give any orders?

24 A I heard all of his orders, via the radio.

25 Q Based on your experience in these matters, the

1 undocking matters, were his orders clear and correct?

2 A They were clear and in order.

3 Q Was the captain's demeanor on this particular
4 occasion the same as it had been the night before?

5 A Pretty much so, yeah.

6 Q Did you notice any change at all?

7 A No, not really.

8 Q Now, when the captain arrived on the bridge, he
9 asked you a series of questions, did he not?

10 A Yes.

11 Q What were you asked?

12 A He asked me --

13 MR. COLE: Objection, hearsay.

14 MR. CHALOS: No, Your Honor, it's not hearsay.

15 This is -- I'm laying a foundation for the actions which
16 this witness took, which is clearly not hearsay.

17 (The following was had at the bench:)

18 THE COURT: What is _____ to say?

19 MR. CHALOS: He's going to testify as to a series
20 of orders.

21 THE COURT: I understand. What _____.

22 MR. CHALOS: He will say that the captain asked
23 (inaudible).

24 THE COURT: (Inaudible). What things did he
25 ask _____?

1 MR. CHALOS: I think he told him that -- I have
2 it written down. Excuse me.

3 THE COURT: You have it written down?

4 MR. CHALOS: I have it written down.

5 THE COURT: Bring it up here and tell me.

6 (Pause)

7 THE COURT: (Inaudible).

8 MR. : (Inaudible).

9 THE COURT: Any objection?

10 MR. COLE: No, not if that's what he's going to
11 talk about.

12 THE COURT: All right.

13 MR. : (Inaudible).

14 THE COURT: Maybe we'd better cover all of those
15 outside the presence of the jury. You're going to be
16 (inaudible) of what the captain said as an
17 admission _____ admission by a (inaudible).

18 MR. : (Inaudible).

19 THE COURT: All right. Do you know what all
20 those questions might be at this time?

21 MR. CHALOS: No. It depends on the
22 answers _____, but --

23 THE COURT: Okay. Why don't you go ahead and
24 that -- you have to get in those _____ right now? Or
25 -- why don't you go ahead and finish this inquiry off and

1 then we'll take a break, and when we take a break we'll --
2 you go ahead and ask some more questions, and then we'll
3 take a break, and then we'll cover some of that.

4 MR. : Okay.

5 (The following was had in open court:)

6 THE COURT: You're withdrawing your objection to
7 this line of inquiry at this time?

8 MR. COLE: Yes.

9 THE COURT: All right. You may proceed.

10 BY MR. CHALOS: (Resuming)

11 Q Mr. Kunkel, do you recall what you were asked by
12 the captain when he came up on the bridge?

13 A Not the precise questions, but more or less, how
14 did the load go? What's the draft? How's the gear?
15 Everything ready to go?

16 Basically, it's my duty to turn the ship back
17 over to the captain, and he asked me questions about the
18 status of the vessel.

19 Q As the chief mate, you are in charge of the
20 loading operations, that the captain has nothing to do with
21 the actual loading or discharge operations. Am I correct?

22 A Well, no, not completely. I am in charge of the
23 loading operation, but prior to the loading, I always talk
24 to the captain about the load. He would still be
25 ultimately responsible for his ship, so I want him to know

1 what I'm doing.

2 Q Fair enough.

3 You had worked with Captain Hazelwood, you say,
4 back in the fall of 1988?

5 A Yes.

6 Q And that was for about two months?

7 A Approximately two months, correct.

8 Q So during that particular time, plus I think you
9 were on this ship for about fifteen days on this particular
10 occasion?

11 A Yes.

12 Q You had a chance to observe Captain Hazelwood, I
13 take it?

14 A Well -- yeah.

15 Q And you had a chance to listen to him speak?

16 A Yes.

17 Q Now, you said that you left the bridge at about
18 10:00 o'clock that night?

19 A Yes.

20 Q Was the captain on the bridge when you left?

21 A Yes.

22 Q Just turning to another subject for a second, is
23 it your understanding that the Coast Guard monitors the
24 movement of vessels such as the Exxon Valdez on their radar
25 down to Bligh Reef?

1 A It's my understanding that they monitor the ships
2 throughout Prince William Sound. As far as the range of
3 the radar, I'm not sure of --

4 Q Now, you do know that you are being monitored by
5 the Coast Guard on radar at some point, am I correct?

6 A Yes, and it's my understanding that it's
7 somewhere in the area where you're approaching the pilot,
8 which would be -- what, Rocky Point or something? But it's
9 before that. That's my understanding.

10 Q Okay.

11 Now, I'd like to direct your attention to the
12 point in time after the grounding. You said taht you came
13 up on the bridge?

14 A You'll have to be more specific.

15 Q After --

16 A Right, immediately?

17 Q Yes. The first time you came up on the bridge
18 after the grounding.

19 A Yes.

20 Q That's where you met Mr. Cousins?

21 A Yes.

22 Q And he told you that we're aground, and the
23 captain knows all about it?

24 A Right. Something to that effect.

25 Q All right. You were in the chart room at the

1 time, were you not?

2 A Yes.

3 Q You didn't go out onto the actual bridge, or to
4 any of the bridge wings?

5 A No, I did not.

6 Q So you don't know if Captain Hazelwood was on the
7 bridge or on one of the wings at that time?

8 A That's correct. I do not know.

9 Q You said you then went below and woke up the
10 second mate mate --

11 A Uh-huh.

12 Q And the pumpman?

13 A Right.

14 Q Who was the pumpman?

15 A Mr. Stewart, Jack Stewart.

16 Q And after that, you went into the cargo control
17 room?

18 A Yes.

19 Q What did you do there, specifically?

20 A Well, the first thing I did was look at the
21 gauges and, with a quick scan, based on the fact that I
22 just finished loading the ship about four or five hours
23 earlier, I knew where I had stopped the tanks, so just
24 looking at them, I could see that a lot of product had
25 escaped from the tanks. So I picked up the phone and

1 called the bridge.

2 Q Who answered the phone?

3 A I believe it was the third mate.

4 Q What was the purpose of your calling the bridge?

5 A To talk to the captain.

6 Q Did you talk to the captain?

7 A Right, yes. Right then.

8 Q What did you say to the captain?

9 A I said, "Captain, it looks like we have damage to
10 the vessel, and I have movement in the center tanks and all
11 the starboard tanks, and possibly the forepeak."

12 Q Did you receive any instructions from the
13 captain?

14 A Yes.

15 Q What were those instructions?

16 A He said, "Okay, Jim. Why don't you try to put
17 that into the computer and see if we can't find out what
18 our status is, stability and stresswise."

19 Q How did the captain sound on the phone?

20 A He sounded like the captain.

21 Q Just cool, calm, collected?

22 A Definitely.

23 Q Was it your perception that he was in command of
24 himself and his faculties?

25 A Yes.

1 Q Did you do what the captain told you to do?

2 A Yes, I did.

3 Q What did you do next?

4 A I took this printout that I got, and since I got
5 something on there that indicated possible danger to the
6 ship -- the stress was too high -- I walked it to the
7 bridge.

8 Q Let's stop a second. When you got the order from
9 the captain, I take it you went to your captain --

10 A Uh-huh.

11 Q -- and entered certain data?

12 A Right.

13 Q And that data dealt with the vessel being
14 aground?

15 A Correct.

16 Q A certain draft?

17 A Well, I went in there and I put the new ullages
18 that I had gotten off of the cargo console, and then to
19 enter a grounding, I had to estimate what I thought the
20 damage was, and I just said, okay, let's put it around the
21 middle of the ship. And I had to enter a forward and after
22 draft, and I think I put 50 feet. I'm not sure what I put
23 there.

24 Q When you say you had to estimate where the damage
25 was --

1 A Uh-huh?

2 Q What did that involve?

3 A Well, it just said "what compartments are
4 holed?" And I'm not sure exactly how many I put in there.
5 I may have put five, I might have put ten. I'm not sure.
6 But in other words, I had to tell the computer that there
7 were a number of holed compartments.

8 Q So you're telling the computer that we have holes
9 in each one of these compartments, and we're losing --

10 A Right.

11 Q -- cargo.

12 A Correct.

13 Q And you want him -- you want the computer to then
14 tell you what your stability and your stresses are?

15 A That's correct.

16 Q Okay. And you say you got a printout of that
17 information?

18 A Yes.

19 Q Just so we cover this again, the results of the
20 printout were that their stability was sufficient, but you
21 had certain stresses that were below acceptable levels. Am
22 I correct?

23 A That -- well, they were above acceptable levels.

24 Q Right.

25 A Too much stress.

1 Q Let's just talk about that a second. The numbers
2 that you used as a base against which you measure have a
3 certain safety factor built into them.

4 A That's correct.

5 Q And it doesn't necessarily mean that if you exceed
6 those factors that your ship is going to break in two?

7 A That's correct.

8 Q Or that it's going to crack in four or five
9 places?

10 A Correct.

11 Q Or even in one place?

12 A That's correct.

13 Q Now, what kind of stability were you reading?

14 A I believe it was just over one. It's a ratio of
15 what's required GM and what is actual GM, and the ratio was
16 greater than one.

17 Q Which means greater than 100 percent?

18 A Right, and it means acceptable.

19 Q Right.

20 Now, you took this particular tape and went up to
21 the bridge?

22 A Well, it was a printout, yes.

23 Q Did you walk up to the bridge?

24 A Yes.

25 Q What was the situation with respect to the fumes

1 at this time?

2 A Well, when I was walking up there, I recall that
3 the fumes seemed to be enough to smell, and I was wondering
4 if they were a little bit on the thick side.

5 Q Was that the first time you went up --

6 A Yes.

7 Q -- or the second time?

8 A The first time.

9 Q The first time, when you went to see the captain?

10 A No, no, no, wait. You've got me a little bit
11 confused.

12 Q Okay, so --

13 A You've got me doing a printout and going out to
14 the bridge, right?

15 Q Right.

16 A Well, the printout is like way after the first
17 time I go up on the bridge.

18 Q Well, when did you smell the fumes?

19 A This time. Carrying the printout up to the
20 bridge.

21 Q Okay. And the fumes are heavy at this time?

22 A In my estimation, yes. I thought that they were
23 heavy.

24 Q Okay.

25 A I'm breathing hard. I'm looking at data that

1 shows my ship is damaged and I'm trying to get to the
2 bridge as soon as I can to give it to the captain.

3 Q Are you breathing hard because of the fumes, or
4 because of the excitement?

5 A Well, probably more the excitement.

6 Q Okay. You're back up on the bridge now?

7 A Yes.

8 Q The captain is there?

9 A Yes.

10 Q Did you approach him with the figures?

11 A Yes, I did.

12 Q What did you tell him?

13 A I think he -- we brought it into the chart room
14 where there was a light, and he looked at it, and I brought
15 to his attention immediately where the bending and the
16 shear moments had been exceeded, and I also showed him the
17 stability part of it, and he looked at it, and I said,
18 "Looks like if we leave here, we may be exceeding the --
19 our stress limitations."

20 Q Okay, but let's just take this slowly. About
21 what time was this?

22 A I'm thinking that this is in the 12:30 area.

23 Q Okay.

24 A More or less.

25 Q Now, when you're in the chart room with the

1 captain and you have the light on, how close are you to
2 him?

3 A I guess like maybe you and your partner are,
4 something along those lines?

5 Q Mr. Madson?

6 A Yes.

7 Q About a foot or so away?

8 A Well, that looks more like three or four feet to
9 me. But -- yeah. Let's say three feet, all right?

10 Q I must be fatter than I thought.

11 (Laughter)

12 Q Okay. Did you smell any alcohol on --

13 A No, I didn't.

14 Q -- Captain Hazelwood's breath?

15 A No.

16 Q What was his demeanor at the time?

17 A It looked like he was real concerned about my
18 report and he was very calm, collected.

19 Q Did you tell him that, we have sufficient
20 stability, at this point?

21 A I told him that, according to this report, the
22 best data that I have available, it looks like we're still
23 stable.

24 Q And the captain had asked him to get him this
25 information, had he not?

1 A Yes, he had.

2 Q With respect to the -- exceeding the limits on
3 the stress, you said that you told the captain that we
4 shouldn't go to sea at this point. Is that correct?

5 A That's correct.

6 Q Were those -- the exceeded limits limits for the
7 vessel working in the seaway, outside Hinchinbrook?

8 A Yes.

9 Q You weren't talking about going off the reef, or
10 being in Prince William Sound. You were talking about
11 going to sea --

12 A I was talking about --

13 Q -- outside.

14 A Excuse me. I'm supposed to wait until you
15 finish.

16 Q Yes.

17 A I was talking about leaving Hinchinbrook, going
18 out to sea. That -- from inside Hinchinbrook, there's a
19 different set of numerals that's called harbor conditions.

20 Q Yes.

21 A And I was not talking about that. I was talking
22 about leaving Hinchinbrook, going to sea.

23 Q The stresses that would have been exceeded would
24 have been caused by waves and wind, I take it?

25 A That's my understanding of the stability program.

1 Q In Prince William Sound, the area was calm, was
2 it not? Those seas were calm?

3 A Yes.

4 Q So they wouldn't add any stress to the vessel,
5 would they?

6 A I don't think so.

7 Q Had you done a harbor condition run at that
8 point?

9 A No, not at that point, no.

10 Q What did -- what did the captain say when you
11 gave him this information?

12 A Well, I looked at him and I think I said
13 something along --

14 MR. COLE: Objection. Hearsay. Your Honor --

15 THE COURT: Let's take a break. We'll take this
16 up outside the presence of the jury.

17 Don't discuss what we're doing or speculate on
18 what we're doing, and don't discuss the matter among
19 yourselves or any other person, and don't form or express
20 any opinions. We'll call you back as soon as we can.

21 (Whereupon, the jury leaves the courtroom.)

22 THE COURT: We're still on the record. We might
23 as well take this up at this time.

24 Mr. Kunkel, you may have to stay here, sir.

25 THE WITNESS: Okay.

1 THE COURT: Mr. Chalos, Mr. Kunkel would like a
2 glass of water. Would you give him a glass?

3 MR. CHALOS: Oh, I'm sorry.

4 (Pause)

5 THE COURT: Ladies and gentlemen in the back,
6 we're still on the record. Unless we take a break, I'd
7 appreciate it if you'd keep the noise down. We're
8 recording everything. Unless you see me walk out, we're
9 generally still on the record.

10 All right, Mr. Chalos?

11 MR. CHALOS: Yes, Judge --

12 THE COURT: The objection is hearsay, and you can
13 address that now.

14 MR. CHALOS: I have several grounds why I think
15 that the question is not hearsay, or the answer won't be
16 hearsay.

17 THE COURT: What do you think the answer is going
18 to be? Let's get the answer first, and we can decide.

19 MR. CHALOS: Well, I think Mr. Kunkel will say
20 that the captain told him, once he gave him the
21 information, to go back down and do some additional
22 calculations to ascertain what -- how much oil had been
23 lost, to run some additional scenarios, and give him some
24 more information about the stability of the vessel.

25 THE COURT: All right. Do you still have an

1 objection, Mr. Cole?

2 (Pause)

3 MR. COLE: That's not hearsay. I understand.

4 THE COURT: Exactly.

5 MR. CHALOS: Well, that's precisely --

6 THE COURT: All right. That answer can come in.

7 Let's go through as many questions that require
8 an answer of what Captain Hazelwood said now, so we can
9 resolve most of it now.

10 MR. CHALOS: I think there's going to be a series
11 of questions where Mr. Kunkel said to the captain, captain,
12 I think we should ring the general alarm, and then I'm
13 going to ask him, of course, what did the captain respond,
14 and he's going to say, the captain told me to stay calm.
15 Let's not ring the general alarm. Let's not get everybody
16 excited. Instead, what I want you to do and get me some
17 more information. I've sent people around to wake up the
18 crew. Break out the lifeboats -- as he's already testified
19 -- and get the fire equipment ready, as well.

20 THE COURT: Do you have any objection to that?

21 MR. COLE: It's already been testified to.

22 THE COURT: There will be no objection, I take
23 it, then.

24 MR. CHALOS: Mr. Kunkel came back up some time,
25 he said, at around 1:00 o'clock. It could have been as

1 late as 1:20 or thereabouts. And --

2 THE COURT: It was 1:00 or 1:15, I think was his
3 testimony.

4 MR. CHALOS: Something like that. I want to
5 explore the time with him.

6 But at that point, they had another conversation
7 and presented Captain Hazelwood with some additional
8 information and, of course, there will be a series of
9 questions, "What did you tell the captain? What did the
10 captain say to you?"

11 THE COURT: Well, what do you think the captain
12 -- what do you think Mr. Kunkel is going to say. Or, Mr.
13 Kunkel, maybe you can tell us.

14 MR. COLE: I would prefer Mr. Kunkel say it.

15 THE COURT: Why don't you ask the question and
16 we'll see what the answer is.

17 BY MR. CHALOS: (Resuming)

18 Q Mr. Kunkel, when you came back up the second
19 time, to give some additional information to Captain
20 Hazelwood, you had another printout? Is that right?

21 A Yes.

22 Q What did you say to the captain at that point?

23 A I said that I'd just run another stability input
24 on the computer and I put in the new -- new ullages that
25 had taken place. We had lost more cargo and got more water

1 in the ballast tanks, and if the vessel was intact, and not
2 aground, we could not go to sea. We could not leave the
3 rock. We were, quote/unquote, beyond the safety factor of
4 stability, that we -- we had less GM than was required.

5 Q What did the captain say to you at that time?

6 A Sometime along the lines of, "I guess we're not
7 going anywhere." That's about this. Something like that.

8 Q Did he say anything about shutting down the
9 engines?

10 MR. COLE: Objection, Judge? I object to Mr. --

11 MR. CHALOS: Your Honor, we're trying to get the
12 questions out so we can see --

13 THE COURT: What is your objection? This is
14 outside the presence of the jury, Mr. Cole.

15 MR. COLE: Okay. I object to Mr. Chalos putting
16 words in Mr. --

17 MR. CHALOS: This is cross-examination, Your
18 Honor.

19 THE COURT: Objection is overruled. Go ahead.

20 THE WITNESS: The captain never said anything to
21 me at all about the engines.

22 BY MR. CHALOS: (Resuming)

23 Q When the captain told --

24 MR. CHALOS: Well, this is getting into the
25 examination areas that are not hearsay, Your Honor.

1 THE COURT: Okay. So the statement, "I guess
2 we're not going anywhere" is what Mr. Kunkel is going to
3 say Captain Hazelwood said. Is there objection to that?

4 MR. COLE: I don't have any objection to that.

5 THE COURT: So I guess we've resolved all the
6 hearsay questions.

7 MR. CHALOS: Well, I'm just going to ask him one
8 general question, then.

9 BY MR. CHALOS: (Resuming)

10 Q Did he say anything else?

11 A When? When I showed him the stability?

12 Q Yes, the second time.

13 A No. I asked him again, do you want me up here?
14 And he said, no, that your best position is down below.
15 And that was it, so I left.

16 Q The first time you came up and gave him the
17 calculations, when there was sufficient stability, aside
18 from the things that I said you were going to say, was
19 there anything else the captain said?

20 A All right. I've given him the first run. He's
21 taken a look at it. I've told him, I do not recommend we
22 go to sea, i.e., we do not leave Cape Hinchinbrook, and
23 now --

24 THE COURT: What did he say in response to that,
25 when you told him?

1 THE WITNESS: His response to that, okay, very
2 well. I asked him, "Do you want me up here?" He said,
3 "No." He said, "Why don't you go down below, get some more
4 scenarios. Let's find out what the pumpman looks like,
5 check your ballast tanks. Also, work up some options for
6 me."

7 And I asked -- and by that -- I believe I asked
8 him, "Well, what do you mean?" And he said, "Well, can we
9 ballast down? Don't open any valves," he told me, "on the
10 side of the ship," he says, "But let's find out what we can
11 and cannot do." Something along those lines.

12 THE COURT: Did he say anything else to you?

13 THE WITNESS: Well, that was the same -- that was
14 the time I said ring the general alarm bell. And he said,
15 No, let's not cause a panic. Let's get a better assessment
16 of the situation."

17 I mean, these aren't word for word, Your Honor.
18 I mean, something along those lines.

19 THE COURT: And did he not also say that he'd
20 sent somebody to go out and get (inaudible)? Is that what
21 you testified earlier?

22 THE WITNESS: I can't recall if he said that to
23 me at that time or not.

24 THE COURT: All right.

25 BY MR. CHALOS: (Resuming)

1 Q He did say something about the life boats, which
2 (inaudible).

3 A Yes, he did say to get the life boats to the
4 embarkation deck.

5 MR. CHALOS: Those are the questions, Your Honor.

6 THE COURT: Any problem, Mr. Cole?

7 MR. COLE: Nope.

8 THE COURT: Okay. Why don't we take our break
9 and come back in about ten minutes.

10 THE CLERK: Please rise. This court stands in
11 recess.

12 (Whereupon, a recess was taken from 3:06 p.m.
13 until 3:22 p.m.)

14 THE COURT: Back on the record. All right, Mr.
15 Chalos.

16 BY MR. CHALOS: (Resuming)

17 Q Mr. Kunkel, I'd like to direct your attention to
18 the first meeting that you had with Captain Hazelwood on
19 the bridge. This is when you came up with the computer
20 tape. Do you recall that?

21 A Yes.

22 Q And I believe when we left off, you said that the
23 computer tape that you showed Captain Hazelwood had certain
24 information?

25 A Yes.

1 Q And that information was that you were stable
2 enough -- that you had good stability, but that the bending
3 stresses, the shear stresses, were exceeded if the vessel
4 were to proceed beyond Cape Hinchinbrook? Am I correct?

5 A That's correct.

6 Q Now, what did Cape Hinchinbrook do after you gave
7 him this information?

8 A I think he told me, "Okay. I understand. We
9 can't go out to sea." I asked him, I believe it was then,
10 "Do you want to ring the general alarm?" And he said, "No,
11 that would perhaps create panic," or something, and "Let's
12 get a better assessment, or evaluation, of what our
13 situation really is."

14 Q Why did you suggest that the general alarm be
15 rang?

16 A I can only write it off to my experience level.
17 The ship has hit the rocks. It's the middle of the night,
18 maybe wake everybody up. But looking back on retrospect --
19 well, I don't know. In retrospect, I don't think it would
20 have been a good idea.

21 Q It would have been pretty dangerous to put men
22 into the water at that point in time, would it not?

23 A Well, at any time in Prince William Sound, it
24 would be very dangerous to put people in the water.

25 Q When the captain spoke to you at that particular

1 moment, were any anxieties or fears that you had eased?

2 A Yes.

3 Q Did the captain have a calming effect on you at
4 that point?

5 A Yes. He seemed like -- he gave me the impression
6 that he had command of the situation, and I felt
7 comfortable that he would be taking charge of it.

8 Q If you felt that the captain was intoxicated or
9 impaired, would your anxieties would be eased the way they
10 were?

11 A No. No.

12 Q Now, you mentioned something about the lifeboats
13 and the fire stations. What did the captain tell you in
14 that regard?

15 A Well, he told me that, don't go, don't get all
16 excited, but let's go ahead and get the lifeboats lowered
17 to the embarkation decks, and that would mean that it would
18 be quicker to get into them, if necessary. And also, the
19 fact that, you know, let's get a monitor to a point so we
20 can protect the house in case there was a fire, and, at my
21 earliest convenience, maybe the watch could start thinking
22 about bringing out all the gear that we had secured for the
23 Gulf of Alaska. We put it away so that it wouldn't get
24 washed overboard.

25 Q Now, this is what the captain is telling you at

1 12:30?

2 A Approximately that time, yes.

3 Q Did you consider the orders to be correct?

4 A Yes, I thought it sounded like a good idea.

5 THE COURT: Excuse me, a second. Mr. Chalos, Mr.

6 Cole, would you come up just a minute, please?

7 (The following was had at the bench:)

8 THE COURT: I just noticed that the

9 blackboard _____ material from our _____. I want
10 to remind you, and maybe you just want to turn it over.

11 MR. _____ : Sure.

12 (Pause)

13 THE COURT: All right.

14 (The following was had in open court:)

15 BY MR. CHALOS: (Resuming)

16 Q Now, you mentioned, in addition to those
17 instructions, the captain also told you to go back to the
18 -- strike that. Let me go back.

19 Were the captain's orders follows?

20 A Yes. Yes. I started implementing them.

21 Correct.

22 Q The boats were lowered --

23 A Yes.

24 Q -- to the debarkation deck. A monitor, a fire
25 monitor, was put out?

1 A Yes.

2 Q He also gave you some additional instructions
3 about the cargo control room, am I correct?

4 A Yes. I asked the captain, "Do you want me to
5 stay here and assist you?" And he said, "No, the best
6 place for you is in the cargo control room, to monitor the
7 situation," and also to get back to him as to whether --
8 what we could do, you know, with the ship. What did we
9 have available. Start investigating pump rooms, voids,
10 engine room bottoms, et cetera.

11 Q Did you, in fact, go back to the cargo control
12 room?

13 A Yes.

14 Q Did you start the investigation -- this was after
15 you started -- or you gave instructions for the lifeboats
16 and fire monitor?

17 A Yes.

18 Q And did you start that investigation that the
19 captain wanted?

20 A Yes, I did.

21 Q What specifically did you do?

22 A Well, I had the pumpman at that time go down to
23 the pump room and see that, in deed, that the pump room was
24 tight. There was no leaks in the pump room. And the
25 engine room, I called them, and they responded that they

1 had sounded some of the voids and the double bottoms, and
2 that all seemed to be well under the engine room.

3 Then I instructed the pumpman to find out if
4 there was -- if the double bottom under the pump room had
5 been damaged. So now I've got two hull protection for my
6 pump room.

7 I believe they also checked out a couple of the
8 voids and discovered that one of the starboard voids had
9 been -- this all didn't take place right then. In other
10 words, these actions -- I started them in motion.

11 Q Right. And I think you said that they took about
12 20, 25 minutes before you got back some information from
13 people?

14 A Yeah, about twenty minutes later, I got some
15 information, and I also had, again, started to go back into
16 the computer with another set of ullages.

17 Q Okay. Before you went back into the computer,
18 did you have any telephone conversations with the captain?

19 A If I did -- and I can't remember. I can't
20 remember if I did or not.

21 Q Okay.

22 A At some time, I did tell him about the -- that
23 the pump room was okay, but I don't recall when, and that
24 was via phone.

25 Q All right. Now, you started to put some

1 information into the computer, and the computer blanked
2 out.

3 A Correct.

4 Q Then you had to bring the screen back up, I take
5 it, and the program back up?

6 A Yes.

7 Q You said taht took you about five minutes, three
8 to five minutes?

9 A Three to five minutes, because I'm not really
10 that quick with it, and I also had to, you know, re-input
11 base figures in it, base data.

12 Q That could have taken you more than five minutes?

13 A I didn't -- I don't think so.

14 Q Now, at some point, you ran some additional
15 figures and you got some additional results. Is that
16 correct?

17 A Yes.

18 Q And then ultimately you went back up on the
19 bridge.

20 A Yes.

21 Q You said it was around the 1:00 o'clock hour. It
22 could have been 15, 20 minutes later. Isn't that correct?

23 A Well, I really -- you know, I would say no more
24 than 15 or 20 minutes.

25 Q So it could have been as late as 1:20?

1 A Yeah, that's a possibility.

2 Q Okay.

3 What did the figures tell you, the second set of
4 figures?

5 A The figures told me that if the vessel was intact
6 with no damage, she was not fit to proceed. She was not
7 fit to go to sea, or leave the dock -- by regulation. We
8 did not meet required GM.

9 Q You weren't able to put in the grounding program
10 at this point, is that correct?

11 A That's correct. For some reason it wouldn't take
12 it.

13 Q Do you have any reason to believe that the
14 information you were getting out of the computer might not
15 have been accurate at that point?

16 A No, I have no reason to believe that the computer
17 -- the information I gave it was the actual ullages on the
18 ship, and therefore, the information I got out of the
19 computer told me exactly, if the vessel was intact, she did
20 not meet required GM. I had no reason to doubt that.

21 Q All right. How far below the required GM was the
22 figure you were getting?

23 A Not much. Not much.

24 Q Just slightly?

25 A Slightly below it. It was less than one, maybe

1 point -- they make a ratio of required -- I think it's
2 actual versus required, okay? And it should always read
3 greater than one. I believe it read like .98 or something
4 like that.

5 Q .98?

6 A Uh-huh.

7 Q That's not much below the required.

8 A That's correct.

9 Q A reading of .98 does not necessarily mean that
10 the ship is so unstable that it's going to capsize, does
11 it?

12 A That's correct.

13 Q And it doesn't mean that it's going to break up?

14 A That's correct.

15 Q Or in any way sink.

16 A That's correct.

17 Q You gave this information to the captain?

18 A Yes.

19 Q What did you say to him?

20 A I said, "Captain, it looks like if the ship's
21 intact, we don't meet required stability. Therefore, I
22 recommend that we not move the ship until we get a better
23 assessment of her condition."

24 Q And what did the captain say to you?

25 A He said, very well, then. I guess we're not

1 going anywhere.

2 Q Did you take that to mean that the captain was
3 saying we're going to stay right where we are at this point
4 in time?

5 A Yes.

6 Q Now, I'd like to go back to the first time you
7 spoke with him, with Captain Hazelwood. You say, on the
8 way up, the fumes were kind of strong. How were they on
9 the way down?

10 A Hardly noticed them.

11 Q They had dissipated by that time?

12 A To my reckoning, yes.

13 Q Mr. Cole asked you some questions about the
14 danger of explosion at this particular time.

15 A Uh-huh.

16 Q It's correct is it not, that there's always a
17 danger of explosion during the loading and discharging
18 process of cargo?

19 A Sure. There's always a danger of it.

20 Q And it doesn't necessarily mean, because you have
21 the danger of explosion, that an explosion is going to
22 occur?

23 A That's correct.

24 Q Is smoking permitted in the quarters?

25 A Yes.

1 Q Is it permitted on the bridge?

2 A Yes.

3 Q Did the captain give you any other instructions
4 the second time you came up?

5 A Well, I believe I asked him again, do you want me
6 up here? He said, "No. Go ahead down below. Looks like
7 we're taking a list." And I believe at that time the tide
8 was changing, and he did tell me, "The best place for you
9 is in there now, and be aware that we may have to do
10 something."

11 So try to -- don't open any sea valves, or skin
12 valves, is what we would call him, but see if we have the
13 ability to put water in the ship and keep her there. In
14 other words, make her heavier.

15 Q That's what the captain told you?

16 A He told me, "Be sure that we can at least pump
17 water into two and four port so that the ship would be
18 heavier and stay where she was."

19 Q Now, again, you took that to mean that the
20 captain's intention was to keep the ship right on that
21 reef?

22 A At that point in time, yes. This is after I had
23 told him that we do not meet required stability.

24 Q What was the captain's demeanor the second time
25 you saw him?

1 A Pretty much the same as the first time I'd seen
2 him.

3 Q Still --

4 A Very sullen, but, you know, very -- all business
5 and cool, calm, in charge.

6 (Pause)

7 Q The captain, you say, told you not to touch any
8 of the overboard valves, or any of the valves?

9 A Well, he said don't exercise them, because we
10 never would know if we could close them again, okay? What
11 he wanted -- my perception of what he wanted me to do was
12 find out if he had the ability to put water into the tanks
13 and make the ship heavier without opening them to the sea.
14 In other words, a controlled -- a controlled ballasting
15 down in a controlled situation, versus just letting the
16 seawater run in, because we may not be able to close them
17 up again.

18 Q Did you consider his orders to be a good idea at
19 that time?

20 A At that time, I thought that was the only option
21 we had.

22 Q Did you consider the orders to be prudent?

23 A Yes.

24 Q There came a time, did there not, when the vessel
25 took a list to starboard and settled on the reef?

1 A Yes.

2 Q Was that shortly after this conversation --

3 A Yes.

4 Q -- that you had with the captain?

5 A That's correct.

6 Q Did you feel that once that maneuver took place,
7 that is the vessel settling on a reef, that the vessel was
8 -- that the danger of the vessel slipping off the reef had
9 diminished?

10 A Yes. I felt that after the ship had listed to
11 starboard, then we started -- it stopped listing. It
12 stayed that way for awhile and started to ease back to port
13 -- well, to zero list. I knew that we weren't going
14 anywhere until the next tide change, at the earliest.

15 Q The captain mentioned to you in the second
16 conversation about the tide coming in?

17 A Well, not specifically. He said we're -- that
18 something along the lines of, "Get down to the control
19 room, because things are changing. You may have
20 ballast _____ down." Ballast us down. I didn't find
21 until later that it was a tide change that was going on.

22 Q I see.

23 Now, did you have any further conversations with
24 the captain, after this second conversation?

25 A Well, let's see. Things settled down quite a

1 bit, now that we weren't going anywhere. I believe the
2 Coast Guard came onboard. Before they came on board -- no,
3 I didn't have any really specific conversations with the
4 captain except that everything here looks okay. We've you
5 know, checked out some other areas. They look all right.

6 And then, after the Coast Guard came aboard, that
7 was it. I basically never saw the captain again, except in
8 passing in the hallway. He was either talking to a Coast
9 Guard inspector or a lawyer.

10 Q I'd like to change subjects for a second. Is it
11 the practice and custom on vessels you've served on to take
12 the lookout and bring him back to the bridge wing once the
13 pilot is dropped off in Prince William Sound?

14 A It's my understanding that is the practice, yes.

15 Q Mr. Kunkel, do you know how helm watches are set
16 on the Exxon Valdez? That is the AB watches?

17 A Oh, yeah. Normally, I think they use -- it's
18 like an odd/even number, like on an odd day -- there's two
19 ABs, okay? If today is an odd day, I'm the helmsman, you're
20 the lookout first round; and then at the two-hour change
21 you switch. Tomorrow's an even day, so you've got the
22 first one, and I get the second one.

23 Q And when the ABs come up for watch, they know
24 which day they're on the helm first, and --

25 A Well, most of the time they do, but every so

1 often, as the officer, you've got to say, "Okay, guys,
2 remember what today is."

3 Q Okay.

4 Now, ABs in the Exxon fleet are assigned to the
5 vessels by the company, are they not?

6 A Yes, they are.

7 Q And the captain and the mates have to use the ABs
8 that are assigned to them at a particular time, do they
9 not?

10 A That's correct.

11 Q And ABs are certified by the Coast Guard, are
12 they not?

13 A That's correct.

14 Q And part of the certification is that they're
15 qualified helmsmen, as an AB?

16 A That's how they get their document, correct.

17 Q Is -- based on your experience, is a 10 degree
18 right rudder command a simple course order?

19 A Yes, very simple.

20 Q Is a course change involving a 10 degree right
21 rudder, a simple course change, for a mate to make?

22 A Yes.

23 Q Is that one of the simpler tasks that a mate
24 would have on watch?

25 A Well, I'm not sure what you'd want me to compare

1 it to, but it's a very simple task.

2 Q I'd like to talk about Mr. Kagan a second. You
3 had seen him steer before, did you not?

4 A Yes.

5 Q As a matter of fact, you had seen him steer in
6 the Houston ship channel?

7 A Yes.

8 Q In the Panama Canal?

9 A Yes.

10 Q Off the Santa Barbara channel?

11 A Yes.

12 Q Those are all fairly confined waters, are they
13 not?

14 A Yes.

15 Q How did he do on those occasions?

16 A He was acceptable.

17 Q Was he capable of following a rudder command?

18 A Yes.

19 Q Did you have any doubt that he could follow a
20 rudder command?

21 A I had no doubt he can follow a rudder command.

22 Q When you said that he needed supervision, you
23 were talking about what?

24 A Steering.

25 Q Okay. Can you describe what what you meant by

1 steering?

2 A Well, steering, in my estimation, is telling him
3 a course and having him hold that course, and then telling
4 him to come to another course and, using his own judgment
5 on the use of his rudder, or his own rudder commands, to
6 arrive at that course, and to do it in a smooth fashion.
7 And I did not feel at that time -- I don't know how he is
8 now -- but at that time, I do not feel Mr. Kagan did that
9 in a smooth manner, and needed practice.

10 Q You're not talking about a situation where you
11 tell him, "Come to 10 degrees right," or "Give me ten
12 degrees right rudder?"

13 A No.

14 Q Or twenty degrees right rudder?

15 A No. That's --

16 Q Those commands he would follow?

17 A Follow to the T. No problem.

18 Q You never relieved Mr. Kagan at the helm, did
19 you?

20 A No, I never did.

21 Q By that, I mean you never took him off and
22 replaced him with another AB?

23 A No, I never had to do that.

24 Q Mr. Cole asked you some questions about the 1985
25 evaluation of Mr. Kagan.

1 A Yes.

2 Q You never showed that evaluation to Captain
3 Hazelwood, did you?

4 A Or to Mr. Cousins?

5 Q No.

6 Q And you have no reason, sitting here today, to
7 believe that Kagan was incapable of following a simple
8 rudder command, do you?

9 A I have no reason to believe that.

10 Q Do you have any reason no believe that Captain
11 Hazelwood suspected that Kagan couldn't carry out a simple
12 rudder command?

13 MR. COLE: Objection. Speculation.

14 MR. CHALOS: I'm asking for his perception, Your
15 Honor, not --

16 THE COURT: It sounds like it might be based on
17 something he's heard.

18 MR. CHALOS: Or seen himself, Your Honor. That's
19 a possibility.

20 THE COURT: You can answer the question.

21 THE WITNESS: Okay, could you ask me that --

22 BY MR. CHALOS: (Resuming)

23 Q Yes. Do you have any reason to believe that
24 Captain Hazelwood suspected that Kagan couldn't carry out a
25 simple rudder command?

1 A No, I never suspected that.

2 Q Are you familiar with Gregory Cousins?

3 A This was the first time I'd ever met Gregory
4 Cousins.

5 Q Did you have an opportunity to observe him at all
6 in the carrying out of his duties?

7 A I only observed him in his cargo duties and in
8 his everyday collateral duties about the vessel.

9 Q Do you have an opinion as to his competence in
10 those duties?

11 A I thought it was exceptional.

12 Q Do you have any reason to believe that Captain
13 Hazelwood suspected that Gregory Cousins couldn't, or
14 wouldn't, throttle a simple order, course change order?

15 A No, I have nothing -- no reason to believe that.

16 Q Have you ever heard of a product called Moussy
17 beer?

18 A Yes.

19 Q Is Moussy beer permitted on the Exxon vessels?

20 A It's not any more, but it was.

21 Q At the time prior to the grounding?

22 A Yes.

23 Q Now, have you ever used the fedometer (PH) in
24 Prince William Sound for navigational purposes?

25 A Well, I've used the fedometer in many places. I

1 can't tell you for sure Prince William Sound, but I'm sure
2 that I have, since I always -- you know, I always have it
3 on inside.

4 Q What I'm talking about is, have you ever used a
5 fedometer to come to a certain fathom point on the chart
6 and make a maneuver?

7 A No.

8 Q Would a mariner customarily use a fathom point on
9 the chart to make a maneuver?

10 A No.

11 Q What would a mariner use to pinpoint his position
12 before starting the maneuver?

13 A Well, preferably, visual bearings. if not that,
14 radar rangings and bearings.

15 Q When you say visual bearings --

16 A -- and a combination.

17 Q -- you're talking about lights, buoys --

18 A Two lights -- two lights, get a bearing on each
19 one of them and draw an X as to where they are, then double
20 check it with your radar range.

21 Q Has anyone ever given you an order to turn at a
22 fathom mark on a chart?

23 A No.

24 Q Have you ever given anybody an order to turn on
25 the fathom mark?

1 A No.

2 Q Mr. Kunkel, we've listened to some tapes this
3 morning, or this afternoon, of transmissions that were made
4 by Captain Hazelwood just before and after the grounding.
5 You listened to those transmissions, did you not?

6 A Uh-huh.

7 Q Is that the way Captain Hazelwood normally
8 sounds?

9 A Yeah -- I can buy into he sounded normal. Yeah.

10 Q You didn't notice any difference from his normal
11 speech pattern, did you?

12 A No, not really.

13 Q In the first transmission that we heard, Captain
14 Hazelwood started, it appeared, to say, "Exxon Ba --" and
15 then he said the Exxon Valdez. Have you ever, in a radio
16 transmission, misidentified the ship you were on?

17 A Numerous times.

18 Q To your knowledge, has Captain Hazelwood served
19 as a master of the Exxon Baton Rouge?

20 A I didn't know that at the time, but yes, now I
21 understand that, yes, he did.

22 Q Had you ever, prior to listening to this tape,
23 ever heard Captain Hazelwood misidentified the ship on
24 which he was on in a radio transmission?

25 A Yes.

1 Q That's a common thing?

2 A It happens, and you always catch yourself, yeah.

3 Q Now, you're familiar with the Exxon Valdez
4 handling characteristics, are you not?

5 A I'm not an expert at it, no.

6 Q You've maneuvered the ship?

7 A I've maneuvered her a bit, yes.

8 Q Have you ever changed course with her?

9 A Yes.

10 Q Was she always responsive?

11 A Yes.

12 MR. CHALOS: Your Honor, may I approach the
13 witness and put a chart up?

14 THE COURT: Yes, sir.

15 (Pause)

16 BY MR. CHALOS: (Resuming)

17 Q Mr. Kunkel, I want you to assume for the moment
18 that a fix was taken off of Busby, about a mile off of
19 Busby, at 2355.

20 A Okay.

21 Q The vessel is laden to about 57 feet, and she's
22 travelling about 11.75 knots.

23 A Uh-huh.

24 Q And I want you to assume that, within a minute of
25 1155, ten degrees right rudder is applied to this vessel.

1 A Uh-huh.

2 Q On the basis of your knowledge of this ship,
3 should she have cleared Bligh Reef and gotten back into the
4 lanes with no problems?

5 A I would assume she'd do it with no problems at
6 all.

7 MR. COLE: Your Honor, could we approach the
8 bench here just briefly?

9 (The following was had at the bench:)

10 MR. COLE: Judge, I'm going to ask that counsel
11 just be a little bit more careful (inaudible) important
12 exhibit for the rest of the witnesses that are coming up
13 here, and I don't want to (inaudible).

14 THE COURT: You've made your point.

15 (The following was had in open court:)

16 BY MR. CHALOS: (Resuming)

17 Q Lastly, Mr. Kunkel, you were shown the Exxon
18 bridge organization manual.

19 A Yes.

20 Q Now, this manual is only for Exxon tankers, is it
21 not?

22 A Well, I know every Exxon tanker has one of these
23 on board.

24 Q Right. The point I'm making, it's not a Coast
25 Guard manual, it's not a federal regulation, it's not a

1 state regulation, it's just company in-house procedures.
2 Am I correct?

3 A That's correct.

4 MR. CHALOS: Your Honor, I have no further
5 questions at this time.

6 THE COURT: Mr. Cole, how long do you estimate
7 your redirect is going to take, and --

8 MR. COLE: It's going to be a little bit of time
9 because (inaudible).

10 THE COURT: Let's go ahead and recess for the
11 day. You'll have to come back tomorrow, Mr. Kunkel, at
12 8:30.

13 We will recess until 8:30 tomorrow morning.
14 Remember my instructions. Please don't form or express any
15 opinions, not to discuss this case among yourselves or any
16 other person, and remember my instruction regarding the
17 media _____. We'll see you back here at 8:30 tomorrow
18 morning.

19 (Whereupon, the jury leaves the courtroom.)

20 THE COURT: All right. We'll stay on the record
21 for just a couple of minutes.

22 You can step down. Thank you.

23 (Pause)

24 I assume that the Defendant has out-of-state
25 witnesses that they're going to be calling. Is that

1 correct?

2 MR. CHALOS: Right.

3 THE COURT: All right.

4 Mr. Cole, maybe by tomorrow morning you could
5 give us your best estimate of how long you expect the
6 State's case to take. That would be a courtesy to the
7 Defendant, to the jury, and to the Court. When you think
8 you might be closing, that way they can start lining their
9 witnesses up. We won't have any unnecessary delays.

10 MR. COLE: I think either the end of next week or
11 the beginning of the week following.

12 THE COURT: If your estimate changes at any time,
13 would you let us know?

14 Is there anything else we can take up?

15 MR. COLE: No. Nothing further, Your Honor.

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

18 (Whereupon, at 3:58 p.m., the hearing recessed.)

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SUPERIOR COURT
STATE OF ALASKA

} Case No. 3ANS89-7217
) Case No. 3ANS89-7218

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.

Alexandria Tomalonis
ALEXANDRA TOMALONIS

VOLUME 13

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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 :
 5 In the Matter of: :
 :
 6 STATE OF ALASKA : Case No. 3ANS89-7217
 :
 7 versus : Case No. 3ANS89-7218
 :
 8 JOSEPH J. HAZELWOOD :
 :
 9 -----x

Anchorage, Alaska

February 16, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:56 o'clock a.m., on February 16, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

On behalf of the State:

BRENT COLE, Assistant District Attorney
MARY ANN HENRY, Assistant District Attorney

On behalf of the Defendant:

RICHARD MADSON, Esq.
MICHAEL CHALOS, Esq.

C O N T E N T S

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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert Kunkel			4	9
			14	15
Scott M. Conner	17	33		
Gary J. Stock	52			
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Mark DeLozier	95	142	186	188
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P R O C E E D I N G S

(Start tape C-3623)

THE COURT: You may be seated.

We will start with the redirect of Mr. Kunkel, and Mr. Kunkel, you're still under oath.

Whereupon,

ROBERT KUNKEL

called as a witness by counsel for the State of Alaska, and having been previously duly sworn by the Clerk, was further examined and testified as follows:

REDIRECT EXAMINATION

BY MR. COLE:

Q Good morning, Mr. Kunkel.

A Good morning.

Q Are there any Coast Guard regulations that require you as the chief mate to be in the cargo control during the entire loading and unloading process in Valdez?

A I am required to monitor the loading when I am on watch, but no, I am not required to be in the cargo control room the whole time.

Q On the morning following the grounding, you indicated you had two conversations with Captain Hazelwood concerning the stability of the Exxon Valdez -- stability and stress factors of the Exxon Valdez.

A Correct.

1 Q And the first one would have taken -- can you give
2 the jury an estimate of how long that conversation would have
3 lasted?

4 A Probably three to five minutes at the most.

5 Q And the second one, how long would you estimate that
6 conversation to --

7 A Probably not too much longer.

8 Q And in response to Mr. Chalos's questions, you
9 indicated that it could have been as late as 1:20.

10 A Correct.

11 Q You have also said that it could have been as early
12 as 12:30, the second conversation.

13 A No, no. Well, if I did, then I stand corrected.
14 The first conversation took place at about 12:30. The second
15 conversation took place approximately 1:00 o'clock. I believe
16 those were my words.

17 Q And in either one of those conversations, did
18 Captain Hazelwood ever tell you that he was trying to stay on
19 the reef or get off the reef?

20 A He never indicated either one, sir.

21 Q So you really don't know what he was trying to do
22 from the time of the grounding until about 1:40 that morning?

23 A That's correct. I --

24 MR. COLE: May I approach the Clerk, your Honor?
25 Clerk, could I get one more sticker.

1 (State's Exhibit Number 86 was
2 marked for identification.)

3 BY MR. COLE: (Resuming)

4 Q I am going to place this on this diagram here, Mr.
5 Kunkel, and if you would -- again, you don't have to stand up
6 -- but if you would just look at that diagram and tell the
7 jury which holds -- which tanks again had been damaged, when
8 you came down at 12:15, 12:20 the first time to the cargo
9 control room.

10 MR. CHALOS: Objection, your Honor. It goes beyond
11 cross examination. I never asked about the holing of the
12 tanks. This was brought up on direct examination.

13 THE COURT: I think the scope of the cross was quite
14 broad. I am going to let it come in.

15 BY MR. COLE: (Resuming)

16 Q Just would you point to the tanks that you had saw -
17 - that you the first time that had sustained damage that
18 morning?

19 A Okay. Now by damage, what do you mean? I mean --

20 Q The tanks that you saw had lost oil.

21 A Okay.

22 The tanks that had lost oil were 1, 2, 3, 4 and 5
23 center. 1 starboard, 3 starboard, 5 starboard had lost oil.

24 Q And could you tell whether damage had been done to
25 the forepeak or the starboard bows tanks?

1 A The 2 starboard and the 4 starboard tank showed
2 something coming in.

3 Q Could you tell how fast that was coming in?

4 A Very fast. It was coming in very fast. The
5 forepeak showed, off the top of my head, five to eight feet of
6 something inside of it. But the tape had stopped, so it was
7 not showing movement like the rest of the tanks.

8 Q The tape stopped meaning it was not coming in or --

9 A Meaning the tape was stopped. That was my first
10 assessment.

11 Q And how much oil had you lost in the first twenty to
12 thirty minutes since the grounding? Would you write that on
13 that?

14 MR. CHALOS: You Honor, again, this was covered on
15 direct, asked and answered.

16 THE COURT: Mr. Cole, it sounds to me like it was on
17 direct.

18 MR. COLE: I can lay the foundation. I've got one
19 other question after this, Judge. I think it is pertinent to
20 the information that he passed along to Captain Hazelwood.
21 And that's what they have been -- gone into in their cross
22 examination.

23 THE COURT: All right. We'll proceed. I'll give
24 you an opportunity to tie it up with something new.

25 BY MR. COLE: (Resuming)

1 Q Would you write up there, yesterday you indicated it
2 was between a hundred and ten and a hundred and fifteen
3 thousand barrels?

4 A Okay.

5 MR. CHALOS: Your Honor, why does he need to write
6 it? Can't he just say it?

7 MR. COLE: Just, this is my redirect. I am just
8 asking him to place it up there so that he can show the jury
9 what was going on that morning to show why -- what information
10 he passed along to Captain Hazelwood.

11 THE COURT: Objection sustained.

12 BY MR. COLE: (Resuming)

13 Q How much oil was lost in the first twenty to thirty
14 minutes that morning?

15 A I do not know. How much was lost by means -- you
16 Honor, I am not sure if I understand his question. You can
17 say lost like over the side, or that I can't account for
18 looking at my numbers. I am not sure what you mean.

19 Q How much oil could you not account for?

20 A Okay.

21 I could not account for approximately one hundred
22 and ten to a hundred -- whatever my number was I gave you,
23 what was it, one ten to one twenty?

24 Q One fifteen. A hundred and fifteen thousand
25 barrels. Is that about right?

1 A Correct. About -- in the area of a hundred and
2 fifteen thousand barrels, I could not account for.

3 Q So at that time you didn't need a computer to tell
4 you that the Exxon Valdez had sustained serious damage that
5 morning, did you?

6 MR. CHALOS: Objection, your Honor. It's leading
7 and there is no foundation. And also argumentative.

8 THE COURT: It is leading. Maybe you can rephrase
9 your question, Mr. Cole.

10 MR. COLE: No, I have nothing further, your Honor.

11 MR. CHALOS: Your Honor, may we approach the Bench
12 for a second?

13 (An off the record bench conference was had.)

14 THE COURT: The defendant will be allowed to reopen
15 the cross for a couple of inquiries.

16 MR. COLE: Judge, I would move for the admission of
17 what has been identified as Plaintiff's Exhibit Number 84.

18 THE COURT: Any objection.

19 MR. COLE: Or 86, excuse me.

20 MR. CHALOS: No objection, your Honor.

21 THE COURT: 86 is admitted.

22 (State's Exhibit Number 86
23 was admitted in evidence.)

24 RE CROSS EXAMINATION

25 BY MR. CHALOS:

1 Q Good morning, Mr. Kunkel.

2 A Good morning.

3 Q I would like to ask you a questions about the
4 sailing board. You remember Mr. Cole asked you about it. You
5 said, at the time of sailing the sailing -- or somewhere near
6 sailing, the sailing board was a 2100, meaning that the ship
7 was leaving at 9:00 p.m.

8 A Correct.

9 Q Had that time been changed at all during the day?

10 A Yes.

11 Q To what time was it changed?

12 A There was an occasion where, on the 12:00 to 4:00
13 watch in the afternoon, it was put up to crew on board, 2100,
14 ship to sail, 2200.

15 Q Which means 10:00 o'clock?

16 A 10:00 o'clock; 10:00 p.m.

17 Q So if anyone checked in the afternoon to find out
18 what time the ship was leaving, they would have been told that
19 it was leaving at 10:00 o'clock?

20 A Correct.

21 Q I would like to ask you a little bit about the loss
22 of oil that Mr. Cole brought up. At the time -- at the time
23 that the grounding occurred, were your pressure vacuum valves
24 open or closed?

25 A Okay. On the grounding, just prior to the

1 grounding, the pressure vacuum valves are always in a closed
2 position.

3 Q After the grounding, did they open?

4 A Yes, they lifted.

5 Q Was that as a result of a grounding?

6 A Yes.

7 Q What is the effect of the pressure vacuum valves
8 opening?

9 A Well, the pressure vacuum valves relieve the
10 pressure in the individual tanks. And then, if the pressure
11 is too great, it would -- well, actually in this case we're
12 talking vacuum. The vacuum was too great. The liquid vacuum
13 breaker went, and that means there is a liquid seal that goes.
14 Now the system is basically to atmosphere.

15 Q Now is the effect of the vacuum breaking to cause
16 the oil to drop down?

17 A Yeah, that's what --

18 Q And push itself out of the ship?

19 A Well, as the oil is dropping down, it is pulling a
20 vacuum, just like -- well, that's what it's doing, it's
21 pulling a vacuum.

22 Q And at the same time I take it, the water is rushing
23 in, is it not?

24 In other words, the oil has been displaced by water?

25 A Probably so, yeah.

1 Q And the net effect of that is to make the ship
2 heavier, is it not?

3 A That's correct. That is my understanding.

4 Q If one wanted to make the ship lighter again, that
5 is, create the buoyancy that it had with the oil, what would
6 you do?

7 A Well, I would go around and close off the system.
8 The whole inert gas venting system, I would close and blank it
9 all off.

10 Q And if one wanted to cause the ship to rise, if you
11 will, as opposed to settling --

12 A Uh-huh.

13 Q Would you close the vents off?

14 A Yes.

15 Q Did Captain Hazelwood give you any orders to close
16 the vents at that time?

17 MR. COLE: Objection. Outside the scope.

18 THE COURT: Don't answer the question.

19 MR. CHALOS: Your Honor, this goes to the issue of
20 the oil being lost and how much oil was lost and how it
21 continued to be lost.

22 THE COURT: Mr. Cole, rather than require Mr. Kunkel
23 to be brought back up here for the defense case in chief, I am
24 going to allow the defendant to open it just for this limited
25 area of inquiry. Otherwise, you are going to have to bring

1 him back up.

2 MR. CHALOS: Thank you, your Honor.

3 BY MR. CHALOS: (Resuming)

4 Q Mr. Kunkel, did the Captain ever tell you to close
5 off the pressure vacuum valves?

6 A No, sir.

7 Q Now, you stated that you didn't know what the
8 Captain was doing between 12:30 and 1:40, is that correct?

9 A That's correct.

10 Q On the basis of the instructions and commands he was
11 giving to you -- remember, he gave you commands on two
12 separate occasions at least -- did you believe that the
13 Captain was trying to keep the vessel on the reef?

14 A Now, what time frame are we talking about, sir?

15 Q From 12:30 to 1:40.

16 A Well, after 12:30 to 1:40 -- okay.

17 (Pause.)

18 Q Could you, you know, give me that question again?

19 Q Yes. On the basis of the instructions the Captain
20 was giving to you and on the basis of what you observed when
21 you went to speak with him --

22 A Uh-huh.

23 Q -- did you believe at that time, even though the
24 Captain didn't tell you, that he was trying to keep the vessel
25 on the reef?

1 A At that time, no, I did not know.

2 Q Did you have any belief at all?

3 A I felt that perhaps we were trying to get off the
4 reef at the beginning.

5 Q And --

6 A Later on I realized he was trying -- by telling me
7 to ballast the ship down, and to -- that we -- well, we're
8 staying here. Those were indications that he was trying to
9 stay on the rock.

10 Q In any event, the Captain didn't tell you one way or
11 the other what he was doing?

12 A That's correct. He never told me one way or the
13 other.

14 Q Okay.

15 MR. CHALOS: I have no further questions, your
16 Honor.

17 THE COURT: Yes, sir.

18 RE CROSS EXAMINATION

19 BY MR. COLE:

20 Q Mr. Kunkel, do you remember speaking with the FBI
21 about this matter?

22 A Yes, I do.

23 Q Do you remember -- let me show you your statement at
24 page two of the statement of the FBI interview.

25 A Right here?

1 Q yes.

2 A Yes. Just as I just said, at first I thought that
3 he might be trying to get the ship off the reef.

4 Q If you read it it says -- doesn't it say, it is
5 Kunkel's assumption that the Captain on the bridge was
6 attempting to dislodge the vessel from the reef during the two
7 hours he was working on the scenarios.

8 A Well, I don't know what the exact question was when
9 this man asked me that, sir. I mean, this is a summary.

10 Q Is that what it says?

11 A That's what that says there, yes.

12 Q And did you say that or did you not say that?

13 A I don't know if I said that or not, sir. It's a
14 summary.

15 Q When the Captain told you to ballast the ship down,
16 that was later in the morning.

17 A Well, it was in that time period that you just asked
18 me about. He said to be ready to ballast her down.

19 Q In the two hour period?

20 A Yes.

21 Q To be ready to ballast her down?

22 A Correct.

23 MR. COLE: Nothing further.

24 RECROSS EXAMINATION

25 BY MR. CHALOS:

1 has to be disclosed. But if Mr. Cole wants to tell you,
2 that's okay. But not in front of the jury.

3 Let's call the next witness, please.

4 MR. COLE: Yes, your Honor.

5 At this time the State would call Mr. Scott Conner.
6 Whereupon,

7 SCOTT M. CONNER

8 called as a witness by counsel for the State of Alaska, had
9 having been duly sworn by the Clerk, was examined and
10 testified as follows:

11 THE CLERK: Sir, would you please state your full
12 name and then spell your last name?

13 THE WITNESS: Scott M. Conner, C-O-N-N-E-R.

14 THE CLERK: And your current mailing address, sir?

15 THE WITNESS: 3940 East 112th, Anchorage.

16 THE CLERK: And your current occupation, sir.

17 THE WITNESS: Health Services Technician, United
18 States Coast Guard.

19 THE CLERK: Thank you.

20 THE COURT: You may inquire.

21 DIRECT EXAMINATION

22 BY MR. COLE:

23 Q Mr. Connors, where do you live right now?

24 A In Anchorage.

25 Q And who do you work for?

1 A The U.S. Coast Guard.

2 Q How long have you worked for the Coast Guard?

3 A I have been in the Coast Guard fourteen years, two
4 months.

5 Q And what's your position there again?

6 A I'm the Coast Guard's medical liaison at Elmendorf
7 Air Force Base.

8 Q Would you tell the jury what that means? What's a
9 medical liaison?

10 A Well, I take care of all the Coast Guard personnel
11 throughout the State of Alaska that utilize Elmendorf
12 Hospital, which is the only full service military hospital in
13 the State.

14 Q Would you describe for the jury the training you had
15 to get to that position?

16 A I went to basic corpsman school in 1977, and after
17 that I went to laboratory technicians school during '77 and
18 1978. And then it has just been on the job training for years
19 after that, working independent duty and so on.

20 Q Has your position required you to draw blood or take
21 urine samples from people?

22 A Oh, yes.

23 Q Would you explain what training you have received in
24 that area as far as proper protocol?

25 A I was trained with the U.S. Navy at Oak Knoll Naval

1 Regional Medical Center in Oakland, California, in a seventeen
2 week laboratory technician program in 1977 and '78.

3 Q Can you give the jury an idea of how many times
4 you've been required to perform blood -- take blood samples?

5 A Thousands.

6 Q Do you remember being in Valdez in March of 1989?

7 A Yes, sir.

8 Q Would you tell the jury when you went out to Valdez
9 during that time?

10 A I arrived in Valdez around -- I believe the 20 --
11 21st. The incident was the 24th?

12 Q Well, just to the best of your recollection.

13 A Okay. I believe the 21st of March. And I routinely
14 go to Valdez to perform physicals, to update their medical
15 records and to assure that their medical health care contracts
16 are in order and they don't have any problems medically.

17 Q Is that what you did on this particular trip?

18 A Yes, sir.

19 Q Do you remember when you were scheduled to return to
20 Anchorage?

21 A I was scheduled to return that --

22 Q Well, let me ask you this, if you can't remember.
23 Were you at the airport getting ready to go when you were
24 given a call?

25 A I was departing the area when I was instructed to

1 return to the Marine Safety Office.

2 Q Do you remember when you were to leave that morning?
3 Where were you when you got the call?

4 A I was at the -- I was in the parking lot of the
5 airport when the Coast Guard vehicle from the station pulled
6 us over and directed me to return back to the base.

7 Q And --

8 A That was about 8:30 in the morning.

9 Q Who called you back?

10 A Commander McCall.

11 Q Where did you report back to?

12 A To his office.

13 Q And that would be where?

14 A In the Marine Safety Office in Valdez.

15 Q Why were you called back?

16 A I was -- I was called back to wait for his
17 instructions. The only thing I was told at the time was that
18 I had been recalled.

19 Q When did you find out what your instructions were
20 going to be?

21 A About a half hour later.

22 Q What were you told were your instructions?

23 A I was told that I would be flown out to the Exxon
24 Valdez to draw blood samples from the crew.

25 Q After finding out about that, what did you do?

1 A At that time I contacted the laboratory at Elmendorf
2 Hospital just to make sure that there wasn't any other types
3 of blood samples that I would need to draw, or specialized
4 blood drawing equipment. And then from there I went to the
5 Valdez Community Hospital and acquired the necessary equipment
6 to draw the specimens.

7 Q What did you have to get there?

8 A I picked up the vacutainer, venipuncture equipment,
9 along with --

10 Q Can you explain what that is for the jury?

11 A Sure. The plastics holders, blood tube holder and
12 the needles that screw in the front of them, and then also the
13 blood tubes for the exams that were going to be necessary.
14 Red topped tubes, which are empty, and are commonly called
15 clot tubes, and then also gray topped tubes which have sodium
16 fluoride in it, which stabilizes the blood when you're drawing
17 for alcohol levels.

18 Q Now, did you get anything else while you were there?

19 A No, just accompanying stuff, alcohol pads and
20 bandaids and stuff like that.

21 Q Now did you -- where did you go after you received
22 that stuff? After you got that stuff?

23 A I went back to the Marine Safety Office where they
24 outfitted me with a mustang suit.

25 Q When did you leave Valdez in the helicopter? Do you

1 have any idea?

2 A About 9:30, quarter of 10:00.

3 Q Where did you land when you got to the Exxon Valdez?

4 A On the deck of the ship, forward -- forward port
5 side.

6 Q Do you have any idea when you got to the tanker
7 itself?

8 A No. Didn't take very long to get out there.

9 Q Who did you report to when you got there?

10 A I was brought right up to the Captain's quarters,
11 and Mr. Delozier and Mr. Falkenstein were in the passageway
12 outside of his quarters.

13 Q What happened when you spoke with them?

14 A They just asked me if I had everything I needed.
15 Then Mr. Delozier brought me into the Captain's quarters.

16 Q Did you become aware at some point that there was
17 another toxicology kit on board the Exxon Valdez?

18 A Yes. As soon as I walked into the Captain's
19 quarters, Mr. Delozier had expressed to me that the urine
20 samples had already been taken, and showed me what -- what he
21 had that had already been on board the ship, pre-packaged
22 specimen kits.

23 Q Did you see the urine samples at that time?

24 A Yes.

25 Q And had they been marked?

1 A Yes.

2 Q And how were they marked?

3 A They were marked with a label on the side with the
4 individuals name.

5 Q And had they been sealed?

6 A I don't recall. I'm not sure.

7 Q Did you do anything with them after that? The urine
8 samples?

9 A I sealed them before the -- as I completed the blood
10 drawing on each individual, everything was sealed and packaged
11 and so on.

12 Q Now, you touched briefly about the other toxicology
13 kit. What happened when you learned about the other
14 toxicology kit?

15 A Well, I saw the other kit and I looked them over and
16 they were especially designed for mishap situations. And they
17 had both a red top tube, blood tube, and a gray top tube with
18 sodium fluoride in it, right in the box, and each container
19 came with security seals, a chain of custody form was adhered
20 to the cover of the box, and there was chain of custody
21 paperwork to be placed inside the box.

22 Q Had you ever done anything like this before?

23 A Yes, sir.

24 Q Would you explain what happened then?

25 A When it was done before?

1 Q Yes. Just briefly, how had you been involved in
2 something like this before?

3 MR. MADSON: Well, I would object, your Honor. I
4 believe it totally irrelevant. We don't know where, when, the
5 circumstances. He has already said he had prior experience.

6 MR. COLE: This goes to the procedure that he
7 followed, his concerns that he was involved -- what his
8 concerns were.

9 THE COURT: Okay, we'll let you try it. Go ahead.
10 Objection overruled.

11 BY MR. COLE: (Resuming)

12 Q Had you been involved in something like this prior?

13 A Well, not to this magnitude, but as far as security
14 of samples, yes. Multiple times throughout my career in the
15 Coast Guard. For mishaps that had occurred, be it a
16 helicopter crash or vehicle accident on the base or whatever.

17 Q And were you aware of the importance of a chain of
18 custody?

19 A Oh, yes, sir. That is part of law enforcement
20 training that you receive in all your correspondence courses
21 for advancement within the Coast Guard.

22 Q Would you explain to the jury what is meant by chain
23 of custody?

24 A Chain of custody is assurance by signature and in
25 person exchange of materials from one person to another.

1 Q And what does it assure?

2 A it assures that it hasn't been tampered with.

3 Q So that you have a pure sample?

4 A Yes, sir.

5 A Uh-huh.

6 Q What about the importance of obtaining a good
7 sample? Were you aware of that necessity?

8 A Yes, sir.

9 Q Now, when you -- after you decided to use the
10 toxicology test, who was the first person that was tested?

11 A Captain Hazelwood.

12 Q Would you describe for the jury what happened when
13 you asked to test him or he was asked to be tested?

14 A Well, after I put all the kits in order and laid
15 everything out and also I supplemented them with materials I
16 brought with me -- more tubes -- strictly because of the
17 nature of the incident. And I don't recall if Captain
18 Hazelwood was in his quarters at that moment or I believe I
19 told Mr. Delozier I was ready to draw the samples, and he got
20 Captain Hazelwood who was, I believe, just across the
21 passageway in another room. And he brought him in.

22 Captain Hazelwood sat down at his desk and I
23 proceeded to draw his blood. I explained --

24 Q Did he give you a sample before -- a urine sample
25 before drawing his blood?

1 A Yes. It was given to Mr. Delozier.

2 Q Was that -- were you watching that?

3 A No, I was -- I don't believe I was even on board the
4 vessel at that time.

5 Q Well, would you explain what procedure you used in
6 giving Captain Hazelwood the -- or obtaining the blood sample
7 from Captain Hazelwood?

8 A Sure. I asked Captain Hazelwood to place his arm on
9 the table where I applied a tourniquet to the upper arm, and I
10 bathed the antecubital space, or the inside of his arm with an
11 iodine solution, and I explained why it was brown, because we
12 were drawing for alcohol and I proceeded to draw the samples
13 of blood.

14 Q How many samples did you draw?

15 A Three.

16 Q Why did you draw three?

17 A You would normally draw two, one for drugs, which
18 would be the red top tube and the other for alcohol, which
19 would be the gray top tube. And I drew an additional gray top
20 tube because I was well aware of the nature of the mishap, and
21 that if a sample had been tested positive, that it would
22 probably be sent to another lab for confirmation, and I drew
23 an additional sample so that there would be a sample available
24 with a security seal in place.

25 Q After drawing this blood sample, did you seal these

1 tubes in any way?

2 A Yes. In each package, there was a strip of orange
3 security seals, and the individuals name and Social Security
4 number was placed on the label on the tube, and one of these
5 orange self destructing -- not quite self destructing, but one
6 of these orange seals was placed over the top of the tube.
7 And when all the tubes had been secure and there was a -- I
8 placed a security seal which I brought with me --

9 Q What do you mean by security seal?

10 A Well, it's just a -- it's a plastic strip that if
11 it's tampered with at all it just parts, much like you find on
12 a lot of over the counter drugs nowadays. If it's been
13 opened, the seal would be broke. And I placed all of these in
14 the container, a styrofoam container, the three blood samples
15 and the urine sample, and there was a sheet that came with it
16 with instructions and also there was places to sign and the
17 time that the samples were taken. And I signed this, Captain
18 Hazelwood signed this. This was placed inside the box. The
19 lid was put on the box, and additional seals were placed on
20 the outside of the box on each end, and there was a chain of
21 custody form that was adhered to the top of the styrofoam box
22 where the incident, the time, the place, the individuals name,
23 my name and I signed it and Captain Hazelwood signed it. And
24 also in there Mr. Delozier signed as witness.

25 Q What time did you draw the sample of blood from

1 Captain Hazelwood?

2 A I believe it was approximately 10:20 or 10:30,
3 somewhere around there.

4 Q Now, when you were speaking with Captain Hazelwood,
5 did you notice any signs of intoxication at that time?

6 A No, sir.

7 Q Did you complete all this securing of the sample
8 before you went on to the next individual?

9 A Yes, sir.

10 Q Who else did you administer these tests to?

11 A Gregory Cousins, Robert Kagan and Miss Jones --
12 Maureen Jones, I believe.

13 Q And were the steps that you took any different in
14 obtaining blood samples from those individuals than those that
15 you have described about for Captain Hazelwood?

16 A No, sir, not in obtaining the blood sample. In Miss
17 Jones sample, however, the urine container was not sealed
18 properly and had contaminated the inside of the packaging box.
19 And so we threw that out and a new urine sample was obtained
20 and everything was packaged up and sealed accordingly.

21 Q Was the blood and urine samples packaged up in each
22 individual package then?

23 A Yes, sir, they were in the same container.

24 Q For each person.

25 And how did you seal the urine samples?

1 A Well, I brought some seals with me, just some long
2 thin strips with adhesive on them that we utilize in the Coast
3 Guard for our drug testing program. And I just placed those
4 over the top and then I took the name label and put that
5 around so that the security seal went over the top and then
6 the name seal over the ends of that seal so it couldn't be
7 removed.

8 Q So at the end of this you have four individual
9 boxes?

10 A Yes, sir.

11 Q And each one is sealed with a chain of custody
12 notice on the front of it?

13 A On the inside and also adhered -- it was preadhered
14 to the surface of the container.

15 Q And you did what with those samples then?

16 A I -- there was another -- there was another form
17 that was filled out and they were all put in a large manila
18 envelope, and I placed them in the bag that I had with me, and
19 departed the ship.

20 Q Do you remember when you arrived back in Valdez?

21 A Shortly after noon, sir.

22 Q And that evening, did you spend the night in Valdez?

23 A Yes, sir.

24 Q Did you -- what did you do with the samples while
25 you were in Valdez that night?

1 A Well, I saw --

2 Q Did they stay in your possession?

3 A Most of the time, yes, sir, they were.

4 Q What did you do with them?

5 A Well, I held on to the samples for above an hour and
6 a half, two hours that afternoon at the MSO, and then it was
7 determined to draw the blood samples of the watch standers in
8 the Vessel Traffic Center. And I drew a blood sample and a
9 urine sample from Petty Officer Wideman who was the Coast
10 Guardsman on watch.

11 And after we received instructions from, I believe
12 the Department of Labor, I obtained a urine sample from Mr.
13 Blandford.

14 Q Then what did you do?

15 A Then I sat around for about an hour and a half --
16 another hour and a half. Nobody was quite sure what to do
17 with the specimens at that time. And I left the station and I
18 took the specimens with me, and I left to go get a hotel room
19 before they were all gone. And I got a hotel room at the
20 Village Inn. And I had them with me, I was in my room for
21 about an hour, maybe an hour and a half at the most, and I had
22 the specimens with me. And then -- and I changed and I left
23 and I went back to the Coast Guard office, and I had the
24 samples with me.

25 They did have a locked refrigerator at the Coast

1 Guard office. However, nobody had the key. The individual
2 that had the key was on the Coast Guard vessel which was out
3 on scene at the Exxon Valdez. And I sat around with them for
4 a while longer, and I put them in the station's refrigerator
5 in the kitchen, in the galley. I put them in the walk-in
6 refrigerator on the shelf. I placed them in a box and put
7 them in there on the shelf.

8 Q When did you come back and pick those up?

9 A Approximately 8:00 o'clock the next morning.

10 Q Were they in the same condition as when you had left
11 them?

12 A Yes, sir. I opened the box, took the bag out, went
13 through the containers. All the security seals were still in
14 place. They hadn't been tampered with and I don't believe
15 anybody even knew they were there except for myself. I did
16 not notify anybody that I put them there.

17 Q You specifically looked at each one of the packages
18 to make sure that they had not been tampered with?

19 A Yes, sir.

20 Q Where did you go from there?

21 A From there I got a ride out to the airport and I
22 took the next air flight out back to Anchorage.

23 Q And when you got to Anchorage, what happened?

24 A When I got to Anchorage, I went home. I put the
25 samples in my refrigerator, and I called my executive officer,

1 Commander Moraney, at the Marine Safety Office Anchorage, and
2 explained to him what I had in my possession. Because still
3 at that point nobody knew what to do with them. And he told
4 me to stand by and that he would get further instruction back
5 to me. And he called me back about a half hour later and
6 instructed me to meet Lieutenant Commander Stock at the Marine
7 Safety Office in the Federal Building.

8 Q Did you do that?

9 A Yes, sir, I did.

10 Q What happened when you got there?

11 A I got there, Mr. Stock was already in the office,
12 and I brought the samples over to him, showed him what I had.
13 I had repacked -- I repackaged the specimens from Mr.
14 Blandford and Petty Officer Wideman. I just placed them in
15 more stable containers, small boxes with padding material so
16 they wouldn't roll around. And Mr. Stock filled out a chain
17 of custody form which I signed, he signed, and he also signed
18 the top of each one of the containers from the crew members on
19 the vessel.

20 Q What was the condition of the containers containing
21 the crew members urine and blood samples at that time when you
22 handed them to Lieutenant Stock?

23 A They were the same. They hadn't been tampered with.
24 All seals were intact.

25 Q Seals of the boxes?

1 A Yes, sir.

2 MR. COLE: If I could just have one minute, your
3 Honor.

4 (Pause.)

5 No, I have nothing further.

6 Judge, can we take up one matter at the bench here?

7 (An off the record bench conference was had.)

8 CROSS EXAMINATION

9 BY MR. MADSON:

10 Q Good morning, Mr. Conner. It is Conner and not
11 Conners, is it?

12 A Yes, sir.

13 Q Okay, thanks.

14 You are normally stationed right here in Anchorage,
15 is that correct?

16 A Yes, sir.

17 Q And that's also true back in March of last year?
18 Your normal duty station was here?

19 A Yes, sir.

20 Q Why did you go to Valdez that time?

21 A I went down to finish up some occupational physicals
22 and to check on their medical contracts which were in place
23 because the -- there was that time, you start asking questions
24 and seeing if they have any problems with them because they
25 are to be all renegotiated during the summer. And just to

1 check their medical inventory, their aspirin and so --

2 Q Is this done on a routine basis?

3 A Yes, sir. I try to get there at least once a
4 quarter. I have been back twice since.

5 Q Do you notify anybody down there before you arrive
6 and tell them you're coming or do you just kind of pop in?

7 A No, sir, they know I'm coming. Sometimes they even
8 pay for the travel funding.

9 Q Who's the they? I mean --

10 A Well, I talk to Petty Officer Gonzales, he is the
11 yeoman in personnel there. And I usually talk to Mr.
12 Falkenstein and let him know I am coming, if there's anything
13 anybody needs me to bring or act as a courier from Anchorage
14 down to Valdez.

15 Q Do you believe that you would have done your normal
16 routine and let people know you were coming on this particular
17 event, or that time, rather, in March of last year?

18 A Oh, yes, yes.

19 Q Do you recall talking with Mr. Falkenstein? Or
20 Falkenstein?

21 A I'm sure I talked to him the preceding week, or
22 days, anyway.

23 Q So at the very least they knew you were coming and
24 what you would be doing?

25 A Oh, yes, sir.

1 Q So when you got there, what day did you arrive?

2 A Well, I arrived there two days prior to the
3 incident. If the incident was the 24th, I believe I got there
4 the 21st. So about three days. I either spent two or three
5 days there.

6 Q Did you talk to Mr. Falkenstein?

7 A When I got there?

8 Q Yeah.

9 A Yes, sir, I -- that's -- I check in with them to let
10 them know I am at their unit.

11 Q What about Mr. Delozier, do you know him?

12 A Oh, yes, sir, I have known Mr. Delozier for a couple
13 of years.

14 Q Did you talk to him when you arrived in Valdez?

15 A Yes, sir, just making rounds through the offices,
16 saying hi to everybody.

17 Q So he knew that you were there, too, right?

18 A Yes, sir.

19 Q So then on the morning, I believe you said, of the
20 24th now, you were leaving Valdez to fly back to Anchorage?

21 A Yes, sir.

22 Q I think you said that -- what time did the flight
23 leave, do you know?

24 A The flight I believe is scheduled to leave at 9:45.

25 Q And you were getting a ride from your duty station

1 out there to the airport?

2 A Yes, sir.

3 Q What time did you get there, then, to the station?

4 A About 8:00, quarter after 8:00.

5 Q At this time did you hear anything about the Exxon
6 Valdez and what was going on?

7 A Yes, sir.

8 Q I imagine that was pretty much a topic of
9 conversation at the, I think you call it the MSO?

10 A Yes, sir, the Marine Safety Office.

11 Q What is it?

12 A Marine Safety Office.

13 Q I mean, everybody was talking about it, right?

14 A Those that were there, yes, sir.

15 Q Did you know that Delozier and Falkenstein were out
16 on the vessel itself at that time?

17 A No, sir, I did not. I spent very little time at the
18 station. I was just looking for a ride.

19 Q And you got that ride, but you didn't get to the
20 airport, I take it. You were -- somebody stopped you?

21 A Got to the airport. Didn't get inside.

22 Q Let me go back to the night before. Did you have
23 any social contacts at all with any of the Coast Guard people
24 that knew you were staying overnight and where you were and
25 things like this?

1 A Yes, sir, I did.

2 Q Who was that?

3 A I saw Mr. Delozier after hours.

4 Q Where was that?

5 A I met him at the -- I met him at the Pipeline Club.

6 Q What time was that, do you recall?

7 A Oh, probably around 8:00 o'clock.

8 Q And did you drink any beer there?

9 A Yes, sir.

10 Q How about Mr. Delozier, did he have any beer?

11 A I know he had -- I think he had one beer, because I
12 think I bought it, and that was it.

13 Q He made have had other more beer, but you don't
14 recall?

15 A Not while I was there he didn't.

16 Q Did you leave first?

17 A No, sir, he left first.

18 Q Do you know what time he left?

19 A I'm going to believe it was around 9:30, 10:00
20 o'clock, but I'm not quite sure.

21 Q Stayed for a while, then?

22 A Oh, yes, sir.

23 Q You were off duty, right?

24 A Yes. And I travel to Valdez quite often. I know an
25 awful lot of the town people, and so you know, I saw them, and

1 we just talked, catching up.

2 Q It's a common place to go, to the Pipeline Club, is
3 it, just to socialize, have a few beers, few drinks?

4 A It's the center of town, sir.

5 Q Eventually you'll see everybody in there, right?

6 A Yes, sir.

7 Q I take it the next morning you were not feeling any
8 effects of the alcohol you consumed the night before?

9 A No, sir.

10 Q Didn't give yourself a blood test, did you?

11 A No, sir, that hurts.

12 Q Okay.

13 When you were stopped on the way to the airport, was
14 -- did anybody tell you what they wanted you for?

15 A I don't believe so, sir. No, they just told me that
16 I had been recalled to the Marine Safety Office and I inquired
17 by who, because it was highly irregular, and they told me I
18 had been recalled by Commander McCall and to report back to
19 the MSO and await outside his office.

20 Q And I think you said about a half hour later then
21 you were informed that you were going to fly out by helicopter
22 to the Exxon Valdez?

23 A Yes, sir.

24 Q And you were going to take some blood samples,
25 right?

1 A Yes, sir.

2 Q And this was about 9:30 or 9:45 that morning of the
3 24th?

4 A Yeah --

5 Q I'm not trying to pin you down with the exact
6 minutes, but I believe that is what you said to Mr. Cole.

7 A Right. Once I was told by Commander McCall, it
8 didn't take very long at all.

9 Q Did you know what time the accident occurred, the
10 vessel went aground?

11 A No, sir, not at that time.

12 Q When did you find that out?

13 A After I got back to the Marine Safety Office from
14 the ship and, you know, you just start asking questions.

15 Q Do you know why it took so long to get you out to
16 the Exxon Valdez?

17 MR. COLE: Objection, speculation

18 MR. MADSON: If he knows, your Honor.

19 THE COURT: Objection overruled. If you know. If
20 it is in your personal knowledge.

21 THE WITNESS: No, sir.

22 BY MR. MADSON: (Resuming)

23 Q When you came on board, I think you saw Delozier and
24 Falkenstein there, right?

25 A Yes, sir, I did.

1 Q Did you see a State Trooper there or somebody who
2 was --

3 A I don't think he was a State Trooper. I think he
4 was Fish and Wildlife, because he was dressed in brown.

5 Q Did he have a brown uniform on?

6 A I believe so, but I'm not sure. But I don't think
7 he was a State Trooper. He didn't act like one.

8 (Laughter.)

9 Q I'm not going to touch that.
10 This guy, do you recall his name, sir?

11 A No, sir.

12 Q Would you know him again if you saw him?

13 A Probably not.

14 Q Did you speak to him at all?

15 A Just cordially, hello, good morning. That was it.

16 Q He didn't shake hands, identify himself, or anything
17 like that?

18 A I'm sure he did. I'm sure he introduced himself.
19 And I did so in return. But --

20 Q Do you recall any orders, instructions or
21 suggestions that he may have given you in taking the samples
22 or in how to hold them for later use?

23 A Oh, no, sir.

24 Q Well, did you consider this to be a Coast Guard
25 investigation at the time you were out there? Or did you

1 know?

2 MR. COLE: Objection. Relevance.

3 THE COURT: Don't answer the question yet.

4 MR. MADSON: Well, you Honor, I think it is
5 appropriate to ask him why he's there, you know, what is he
6 doing it for. Was it the State requested him to or the Coast
7 Guard did.

8 THE COURT: Objection overruled.

9 BY MR. MADSON: (Resuming)

10 Q The Coast Guard officer Delozier or Falkenstein
11 requested you to come on and do this, right? Or somebody did
12 from the Coast Guard?

13 A Somebody must have contacted Commander McCall.

14 Q Oh, I see.

15 A Because he is the one that directed me to go out
16 there.

17 Q McCall is the Captain of the Port, is that his --

18 A Yes, sir.

19 Q And he obviously is with the Coast Guard?

20 A Yes, sir.

21 Q Getting back to my question, then, did Mr. Fox -- or
22 let's assume his name is Fox -- but the person you believed to
23 be a Fish and Wildlife officer, did he -- was he present when
24 you took the tests?

25 A I don't believe that he was in the room, in the

1 Captain's quarters, for the duration.

2 Q Do you recall if he explained to you at all why he
3 was there?

4 A No, sir.

5 Q Was it your understanding then that after these
6 tests were going to be taken, the blood samples were going to
7 be drawn, rather, that you were going to physically take them
8 and give them to somebody in the Coast Guard for whatever
9 purpose they want to use them for?

10 A Eventually, yes, sir.

11 Q Now, you said the tests were actually taken -- at
12 least the one on Captain Hazelwood was taken at about 10:20 or
13 10:30 that morning, is that right?

14 A I believe so, sir. All the times are marked on all
15 the containers.

16 Q Okay, they are marked on there, right?

17 A Yes, sir, the time is clearly marked on the front of
18 each container, along with the chain of custody.

19 Q So you are testifying to you best recollection,
20 right?

21 A Yes, sir.

22 Q Okay.

23 And I think you said the ones that were on board
24 were the ones that you actually used, right?

25 A Yes, sir.

1 Q Now you said that the ones in the kit, the ones that
2 were on board the vessel, had a red top container and a gray
3 top container?

4 A Yes, sir.

5 Q And in addition to the gray top container that was
6 in the kit, you used a second one. Where did that one come
7 from? Did you have it with you?

8 A I -- yes, sir, this is the material I brought with
9 me. I was not aware that these kits were on board the vessel.
10 And I acquired this equipment from the Valdez Community
11 Hospital.

12 Q And was it exactly the same, the gray top tube kit --
13 - or the tube that you brought on board, was it the same as
14 the one that was contained in the kit that was on board?

15 A No, sir.

16 Q Maybe I'm confused. Why -- you said it was a gray
17 top --

18 A The difference -- the difference -- well, they are
19 the same type of tube. They have the same function. However,
20 the one that was in the kit was a fifteen milliliter tube, and
21 the ones I brought with me were seven milliliter tubes.
22 That's the only difference was their size.

23 Q The size, right?

24 A Yes, sir.

25 Q What's the normal sample that you draw for blood for

1 testing?

2 A For blood alcohol? Seven milliliter is ample.

3 Q Can you explain how much that is to the jury in
4 terms of something we can relate to? A few drops or --

5 A Well, there's twenty-eight milliliters in an ounce.
6 So seven would be one quarter of an ounce, seven milliliters
7 would be a quarter of an ounce.

8 Q The urine samples that you testified to earlier, you
9 said those were already done, prepared, and sealed by the time
10 you got on board, right?

11 A They were taken and the names were affixed to each
12 one of them and I placed the seal over the top of the
13 containers.

14 Q Okay.

15 But you don't know when the samples were actually
16 taken?

17 A With the exception of Miss Jones, no, sir.

18 Q And at the time you took the sample from Captain
19 Hazelwood, you said that you saw no signs of intoxication at
20 all?

21 A No, sir.

22 Q Did you smell any alcohol on his breath?

23 A No, sir.

24 Q How close did you get to him? You obviously had to
25 be fairly close to take a sample, right?

1 A Right in his face.

2 Q Do you believe you are familiar with the smell of
3 alcohol on a person's breath, sir?

4 A Yes, sir.

5 Q And you're familiar with the signs of intoxication
6 on an individual?

7 A Yes, sir.

8 Q Was there some conversation that went on at this
9 time, or was it totally silent?

10 A There was very minimal conversation. Just explaining
11 what was to be done.

12 Q If I could describe the mood to you, if you will. I
13 assume it wasn't jovial?

14 A Oh, no, sir. No, sir.

15 Q I mean everybody was very serious, right?

16 A Oh, it was extremely depressed.

17 Q Everybody seem to feel the same way? Everybody was
18 down?

19 A All except for Mr. Delozier, Mr. Falkenstein and
20 myself. And the public safety official there.

21 Q You sealed the individual samples, then, correct?

22 A Yes, sir.

23 Q By that, if you got three tubes for each individual,
24 you put those in one container and then sealed the whole
25 container, or are we just talking about sealed each individual

1 tube?

2 A No, each individual tube was the -- the -- the seals
3 that I had were about one inch by maybe one and a half inches,
4 and I placed that over the top, over the rubber stopper on
5 each tube, and adhered the seal over the stopper and to the
6 glass sides of the tube. And they were placed in the
7 container and the container was sealed also.

8 Q Then you took the samples back to Valdez. I imagine
9 by the same helicopter that brought you out?

10 A Yes, sir.

11 Q And would have got there noon or shortly after?

12 A Sometime around then, yes, sir.

13 Q You went back to the MSO but you didn't know to do
14 with the samples, right?

15 A Nobody did, sir.

16 Q When you say nobody, did you ask a lot of people,
17 what I am going to do with these, right?

18 A I asked -- I asked people that were senior to me.

19 Q And they didn't know what to do with them either?

20 A Just hold on to them.

21 Q I mean, hold them. Did you just physically hold on
22 to them then?

23 A For quite a while, yes, sir.

24 Q I think you said you then went back to get a hotel
25 because the rooms were filling up rapidly?

1 A Yes, sir.

2 Q And you took them with you again, in your hand or
3 briefcase of something, right?

4 A Yes, sir.

5 Q And I think you said -- when you got back there, did
6 you do anything with them? What did you do at the hotel?

7 A I just -- I -- I put them -- I just put them up in
8 the window sill. It's just -- it's a common thing with
9 biological samples that you keep them cool. Regardless if
10 they need to be kept cool or not, you just --

11 Q So your intent in putting them in the window sill
12 was because of temperature, to keep them cool.

13 A Yes, sir, because the room was real hot.

14 Q Well, was it cool by the window?

15 A Yes, sir.

16 Q Was the window open?

17 A A little. About two inches, yes, sir.

18 Q Then you said you went back after about, oh, an
19 hour, hour and a half, back to the MSO, right?

20 A Yes, sir.

21 Q And I think at that time -- did you know -- you knew
22 there was a refrigerator there, but you couldn't get into it
23 because it was locked.

24 A That's correct, sir.

25 Q I assume by this time somebody had the key?

1 A No, sir.

2 Q Did you break it?

3 A No, sir. No, this is a small refrigerator that is
4 used for holding of urine samples when Coast Guard people are
5 -- Coast Guard personnel are tested on a periodic basis. And
6 it had a hasp and a lock on it. And this is not where I put
7 the samples. I put the samples in the galley reefer, the walk
8 in refrigerator right along side the carrots and the lettuce.

9 Q How about a six pack of beer?

10 A No, not in there, sir.

11 Q Maybe I'm confused, but the refrigerator that you
12 wanted to put them in that had the lock on it, that was a
13 separate special refrigerator just for this purpose? You lost
14 me on that.

15 A It wasn't designed for the purpose exactly at hand,
16 sir. When Coast Guard personnel are randomly selected for
17 drug testing, two samples are drawn. One sent to the lab and
18 another is held in house. And those are to be in a locked,
19 refrigerated container. And every Coast Guard unit has one of
20 these. And there's somebody that has the key. However, the
21 person with the key was not there.

22 Q Okay.

23 So then you used the galley refrigerator, the big
24 one?

25 A Yes, sir, uh-huh.

1 Q Where they keep the food and the lettuce and all
2 that stuff, right?

3 A Yes, sir.

4 Q And was that -- well, were you present at the
5 station at all times then, while the samples were in the
6 refrigerator?

7 A No, sir.

8 Q Was it locked?

9 A Normally it is, however I did not go back after
10 hours to see if it was lock. I am going to speculate that it
11 was not locked during the evening due to the increase of
12 activity and the galley being open 24 hours for the crews that
13 were coming and going.

14 Q So you left them there, then went back to the
15 Village Inn, stayed overnight, picked them up the next
16 morning, right?

17 A Yes, sir.

18 Q I think you also said in response to Mr. Cole's
19 question, that you were also asked to take samples from the
20 Coast Guard -- or the watch standers, right?

21 A Yes, sir.

22 Q I think you said you took -- but you took only a
23 urine sample from Mr. Blandford, is that correct?

24 A Yes, sir.

25 Q Why only a urine sample?

1 A That's what I was instructed.

2 Q You don't know the reason, you just were told just
3 take the urine sample.

4 A No, sir. Just that's what I was instructed.

5 Q You got back to Anchorage, I think you said the same
6 thing occurred there as far as what to do with the samples.
7 There was some indecision, if I could use that word, about
8 what to do with them?

9 A Well, no, not once I was in Anchorage. There wasn't
10 any indecision. It was -- I spoke with the executive officer
11 and he told me just to stand by. And I don't believe that was
12 indecisive, it was just --

13 Q He wanted to find out what to do or what the next --

14 A Well, no, sir. I believe he just wanted to contact
15 one of his investigating officers to take care of this.

16 Q And of course you gave them to Mr. Stock who is also
17 a Coast Guard officer, right?

18 A Yes, sir.

19 Q Is he your next in line or your superior or --

20 A Well, he is one of my -- one of my superiors, sir.

21 MR. MADSON: Thank you. I don't have any other
22 questions.

23 MR. COLE: Judge, I have no further questions of Mr.
24 Conner.

25 THE COURT: May this witness be excused from further

1 participation?

2 MR. COLE: Yes, he may.

3 MR. MADSON: I have no objection.

4 THE COURT: Okay, you are excused.

5 (The witness is excused.)

6 THE COURT: Call your next witness.

7 MR. COLE: At this time we would call Lieutenant
8 Stock.

9 Whereupon,

10 GARY J. STOCK

11 called as a witness by counsel for the State of Alaska, and
12 having been duly sworn by the Clerk, was examined and
13 testified as follows:

14 THE CLERK:

15 MR. ADAMS: Sir, would you please state your full
16 name and spell your last name?

17 THE WITNESS: My name is Gary John Stock, last name,
18 S-T-O-C-K.

19 THE CLERK: And your current mailing address?

20 THE WITNESS: Is in care of the U.S. Coast Guard
21 Marine Safety Office, 222 West 7th, P. O. Box 17, Anchorage,
22 Alaska. The zip is 99513.

23 THE CLERK: And your current occupation, sir?

24 THE WITNESS: Senior investigating officer for Coast
25 Guard Marine Safety Office, Anchorage.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. COLE:

4 Q Lieutenant Stock, do you remember when you contacted
5 Mr. Conners?

6 A As I recall, I was contacted first by my executive
7 officer. I believe I got a phone call -- actually I believe I
8 was beeped. I had the duty and I was on the beeper and I was
9 beeped and I was told by the duty officer to call the EXO and
10 I did and he told me to get ahold of, I believe, Scott Conner,
11 at the time.

12 Q Would you -- what -- did you get ahold of him then?

13 A Yes, I did. He and I spoke over the phone and he
14 told me what he had and I told him to meet me at the office,
15 at our office in the Federal building and we would exchange
16 the samples and I would deal with them.

17 Q When was this?

18 A It was, I believe, as I recall, the 25th of March,
19 about 2:30 or 3:00 o'clock in the afternoon -- Saturday, I
20 believe.

21 Q Did you take possession of the -- of the package
22 that he delivered to you?

23 A Yes, I did.

24 Q And did you examine those packages?

25 A Yes, I did. I examined the samples individually to

1 ensure that the sample lids were intact and that the safety
2 seals were intact and I went through them individually with
3 Petty Officer Conners just to ensure that I knew what samples
4 were what and that kind of thing. And I broke them down
5 individually and logged them in on our custody forms.

6 Q And what -- were any of them -- had any of them been
7 tampered with?

8 A Not that I could see. I specifically looked at that
9 to see if any had been tampered with or the seals broken
10 inadvertently, and there was no appearance that they were.

11 (State's Exhibit Number 87
12 was marked for identification.)

13 Q What did you do with the samples then?

14 A Well, once Petty Officer Conners signed them over to
15 me on our custody forms, I took possession of them and he left
16 and I put them in a box, and I contacted our unit urinalysis
17 coordinator, who's Chief Warrant Officer Gearhauser, to get
18 custody of the key and pad lock for our refrigerator in the
19 warehouse where we store our personnel urinalysis samples.

20 Q Now, would you tell the jury what samples you --
21 what were the samples that you actually had in your
22 possession?

23 A Well, I had a number of samples. There were some
24 blood and urine samples from six or seven individuals. I can
25 recall the names of the majority of them. I may miss one.

1 But I remember Captain Hazelwood was one. Maureen Jones, I
2 believe, was the lookout. Mr. Blandford, which I believe was
3 the Coast Guard civilian watch stander in the Vessel Traffic
4 Center. I don't have the, you know, the file with me, but if
5 I had the file I could go through them individually.

6 Q If I showed you some custody -- chain of custody
7 packages, might that refresh your recollection?

8 A Sure; sure.

9 (Pause.)

10 Yes, okay. I did have one from the mate, Gregory
11 Cousins. And this is my chain of custody form with my name on
12 it.

13 Q You have already spoken about that?

14 A Yes, Mr. Blandford. And also, yes, mr. Weedman. I
15 don't know who that individual was; I don't recall. And
16 that's right, Mr. Kagan. Right; uh-huh.

17 Q Would those have been the packages that you had?

18 A Yes, that's correct.

19 Q So what then did you do with those packaged samples?

20 A Well, like I say, I contacted our coordinator to --
21 to obtain access to our refrigerator in the warehouse. And I
22 got the padlock from him and the only key to that padlock that
23 he has, he gave to me, and I put the samples in the
24 refrigerator over the weekend.

25 Prior to doing that, I contacted the doctor who

1 represents the Chemwest laboratory that I was going to send
2 them to, to talk to -- and I believe her name was Dr. Jill
3 Henes, I believe, as I recall. I believe she was in North
4 Carolina at the time. She called me and we spoke, and I asked
5 her if it was all right to store the samples in the
6 refrigerator over the weekend because there was nobody at the
7 lab in Sacramento to accept them, and also there was no
8 Federal Express airplane going out of Anchorage that weekend.
9 So I had kind of a problem with that. So I wanted to just
10 ensure that there was no problems in storing the samples over
11 the weekend in a refrigerator, and she assured me that there
12 was no problem with that at all.

13 Q What did you do with the samples?

14 A I personally took them to our warehouse down on King
15 Street and placed them in the refrigerator, locked the
16 refrigerator -- it has a hasp and lock on it, and I was the
17 only one that had a key to that padlock, and I placed them in
18 there over the weekend. And Monday morning, I contacted a
19 packaging outfit -- I believe it is called Ace Parcel, and
20 told them that I would be bringing the samples to them that
21 morning. And I went down to the warehouse, took the samples
22 out, took them down to the packaging outfit, and I believe the
23 gentleman's name was Hank Schwab. I signed -- or I gave the
24 samples to him. They were signed over to him on the custody
25 form and packaged and they were Federal Expressed to Chemwest

1 Laboratory in Sacramento, California.

2 Q Now, when you got the samples out of the locker at
3 the Coast Guard storage locker, what condition were they in at
4 that time?

5 A They were in the same condition that I -- they were
6 when I put them in there that Saturday afternoon.

7 Q So that would have been Monday you looked at them?

8 A That's correct.

9 Q I am showing you what has been marked for
10 identification as Plaintiff's Exhibit Number 87. Do you
11 recognize that document?

12 A Yes. That's the receipt that I received from the
13 packaging outfit that was a Federal Express receipt to
14 Chemwest from me, and my signature appears in the lower
15 lefthand corner.

16 Q Is that an accurate copy of the receipt you received
17 that day?

18 A Yes, sir, it is.

19 MR. COLE: I would move for the admission of what's
20 previously been identified as Plaintiff's Exhibit Number 87.

21 MR. MADSON: No objection.

22 THE COURT: It's admitted.

23 BY MR. COLE: (Resuming)

24 Q And where did you have this sent to?

25 A I sent it to Chemwest address, 600 West North Market

1 Boulevard in Sacramento, California.

2 Q And that was on what day?

3 A 27 March 1989.

4 Q And the packages when you last saw them were in the
5 same condition as when you had received them from MEDTEC Mr.
6 Conner?

7 A The Coast Guard.

8 Q The Coast Guard.

9 A Right. Yes, sir, that's correct.

10 MR. COLE: I have nothing further, your Honor.

11 MR. MADSON: I have no questions, your Honor.

12 THE COURT: May the witness be excused from further
13 participation?

14 MR. COLE: Yes.

15 THE COURT: You are excused.

16 (The witness is excused.)

17 MR. COLE: Could we possibly take a break at this
18 time, your Honor?

19 THE COURT: All right. We'll take about a fifteen
20 minute break. Ladies and gentlemen, remember the instructions
21 not to discuss the matter among yourselves or any other
22 person, not form or express any opinions.

23 (Whereupon, the jury left the Courtroom.)

24 THE CLERK: Please rise. This Court stands in
25 recess subject to call.

1 (The Court stood in recess from 10:13 o'clock a.m.
2 until 10:35 o'clock a.m.)

3 THE COURT: You may be seated.

4 Mr. Madson, do you need to take something up?

5 MR. MADSON: Yeah, I thought maybe it's best at this
6 time, your Honor, rather than have the jury come in here and
7 just be interrupted because the objection I would make would
8 take a little time, and we would probably just have to start
9 over.

10 Mr. Cole told me that Mr. Peat is the next witness,
11 the one who did the testing. That's fine. But he also told
12 me that he is going to testify apparently regarding the
13 analysis of a urine sample that was given by Captain
14 Hazelwood. The problem with that is, your Honor, is that
15 these -- the results of these tests are being introduced into
16 evidence because of the Courts ruling that they were taken
17 lawfully, pursuant to a Coast Guard authority. That's fine,
18 I'm not raising that now. I am just saying that if that's the
19 case, the Coast Guard regulations then are important as to
20 what -- why a urine sample is taken and its purpose. It's
21 purpose is nothing to do with intoxication. The purpose of
22 taking the urine sample under the Coast Guard regs -- and
23 that's I believe part -- 49 CFR Part 40 -- that's for the
24 purpose of testing for drugs other than alcohol. That was
25 apparently done and it was negative. But that isn't even

1 relevant to this case.

2 The operating regulations -- and that's 33 CFR 95 --
3 strictly -- very clearly says that it is a blood analysis
4 that determines whether a person is intoxicated or not. So
5 the results of a urine test are absolutely irrelevant to this.
6 They are not meaningful at all, because the Coast Guard regs
7 acknowledge that a urine test is meaningless by itself. That
8 doesn't mean anything. And they clearly say --

9 THE COURT: Where do the regs say that a urine test
10 that discloses alcohol is meaningless?

11 MR. MADSON: Well, I think it is meaningless because
12 here for the very reason, your Honor, they say an alcohol
13 concentration of .10 percent by weight or more in their blood,
14 not urine. I mean, that -- the urine analysis is totally
15 irrelevant because it does not relate to blood alcohol. It
16 has nothing to do with it. And I think any expert will
17 acknowledge that that by itself doesn't mean anything. It
18 means simply that it has passed through the system, but it is
19 not blood alcohol and it does not relate to any standard of
20 intoxication regarding blood alcohol.

21 The purpose of the urine test was to test for drugs
22 other than alcohol because apparently they remain in the
23 system longer or something. I don't know why -- the reason
24 is. But to get into that raises another whole issue which is
25 going to totally confuse the jury, requiring more expert

1 testimony, and lengthen the case -- the trial of this case
2 because of what is a totally irrelevant number.

3 THE COURT: Let me make sure I understand. You
4 foresee Dr. Peat testifying that he tested a urine sample --

5 MR. MADSON: That's right.

6 THE COURT: -- and that his test disclosed some
7 alcohol content in the urine.

8 MR. MADSON: That's right. Which we think will show
9 that it is higher than the blood alcohol. The State is going
10 to use that in some type of argument to confuse the jury, if
11 nothing else to say, look, this number's higher than the blood
12 alcohol.

13 You know, there is no -- here again it gets
14 confusing, your Honor, because we're in State Court, and under
15 State Court there may be evidence of urine -- alcohol in the
16 urine for certain limited purposes. But not under the Coast
17 Guard regulations. It just gets extremely confusing. I mean,
18 we run into two different things. We're running down two
19 divergent paths here. But you know, it just raises again I
20 think what is a totally confusing, unnecessary issue here,
21 that has nothing to do -- I mean nobody can take that number,
22 the urine blood alcohol and say, yes, based on this he has or
23 has or had at that time, X percentage of alcohol in his blood,
24 which is the requirement under the regulations or under our
25 statute.

1 THE COURT: But doesn't it go to show that he had
2 some alcohol in his system?

3 MR. MADSON: That's the purpose of the blood test,
4 your Honor.

5 THE COURT: But isn't that also the purpose of the
6 urine test, to show that he had some alcohol in his system,
7 otherwise how did it get there?

8 MR. MADSON: Well, the purpose of the urine test
9 according to the Coast Guard, is a test for drugs. Because
10 they very clearly separate the two. The urine is for drugs,
11 blood is for alcohol.

12 THE COURT: Okay.

13 Mr. Cole?

14 MR. COLE: Judge, I don't know what Mr. Madson's
15 experts have told him about urine and blood, but my
16 understanding in the cases that I've done -- and I know Mr.
17 Madson has done a tremendous number of DWI's -- is that it is
18 not uncommon for urine to be about 1. -- the level of urine --
19 the alcohol in urine to be about 1.3 times greater than the
20 amount of alcohol that is found in the blood.

21 THE COURT: Well, is this going to be in the form of
22 testimony? Is this an offer of proof of what's going to
23 happen?

24 MR. COLE: Yes.

25 THE COURT: Okay.

1 MR. COLE: And this evidence of the urine is going
2 to, number one, confirm that alcohol was in Mr. Hazelwood --
3 Captain Hazelwood's system, and number two, going to be used
4 to confirm the accuracy of the blood test. I think it is
5 relevant. If Mr. Madson is objecting on the grounds of
6 relevance, which he seems to be, it is relevant to confirm the
7 blood sample and to show the presence -- the amount and to
8 show the presence of alcohol in the system.

9 THE COURT: I have assumed your objection was
10 relevance. Now am I correct in that assumption?

11 MR. MADSON: Well, that's in addition to the obvious
12 other objections I made, your Honor. I'm not waiving --

13 THE COURT: I understand, but your current is
14 relevance. There's no other objection that we are talking
15 about now?

16 MR. MADSON: It would tend to mislead and confuse
17 the jury and raise unnecessary issues.

18 Now, what Mr. Cole said is a little bit different
19 than what I thought he was going to understand the witness is
20 going to say. Maybe not this witness, but -- let me just ask.
21 Is this witness only going to testify as to results?

22 MR. COLE: That is correct.

23 MR. MADSON: I still object to the result coming in,
24 your Honor, on the grounds of relevance. We could probably
25 argue that later.

1 THE COURT: This witness is not going to testify --
2 relate that back to a little after midnight?

3 MR. COLE: Not the purpose of him being called. His
4 purpose is to bring in the blood test that was taken and the
5 analysis that was done. Of the crew members.

6 THE COURT: And this witness is not going to relate
7 between the two, one being higher than the other, or taken
8 earlier, showing no alcohol taken between the two tests or
9 anything like that. There is no evidence like that going to
10 be suggested by this witness.

11 MR. COLE: All I was going to ask him is when you
12 saw the blood -- the results of the blood sample and when you
13 saw the result of the urine, did that concern you as to the
14 validity of the blood test.

15 THE COURT: He is going to testify about results and
16 results only, is that right? Is that correct? Okay.

17 MR. COLE: Unless -- you know, unless they open up
18 the door.

19 THE COURT: Depends on what happens on cross. Okay.
20 Your objection is overruled, Mr. Madson.

21 MR. MADSON: Your Honor, perhaps this would be the
22 best time to take this other matter up, too, as long as we're
23 here. And I guess the Court -- i don't know if the Court has
24 got a copy of the State's notice of expert that we receive
25 this morning.

1 THE COURT: Yes, I just got it.

2 MR. MADSON: Well, we did too. This raises a whole
3 new issue, obviously. And all I can say, your Honor, is if
4 the State wants to use an expert such as this at this time,
5 first of all, we strenuously object at this stage of the
6 trial, with maybe one week of the State's witnesses coming in,
7 to come in with somebody totally different, off the wall. We
8 had no idea in the world they were going to have anybody like
9 this. We obviously cannot be prepared to meet this if this is
10 allowed.

11 Now, I understand what the law is, that normally --
12 I say normally when you're surprised with late discovery,
13 things like this, the testimony is usually allowed, but at the
14 very least the defense has a right to have a sufficient length
15 of time, a continuance to be able to meet this, to get another
16 expert. Frankly, I don't even know if this sort of stuff
17 meets the Fry Test of scientific reliability. It seems a
18 little farfetched.

19 But in any event, if this is allowed, your Honor,
20 we're going to have to have at least thirty days to try to,
21 you know, find an expert, come up with -- we have to get the
22 same tapes they used, get them to them, let them listen to
23 them, come up with their conclusions. We have no idea what
24 this is going to do.

25 THE COURT: When might you be calling Keith Johnson,

1 Ph.D., Speech Research Laboratory, and David B. Pisani, a
2 Ph.D. in psychology? When might you be calling these
3 witnesses?

4 MR. COLE: When might we? We might call them a week
5 from Monday, end of next week. But I would think later.

6 THE COURT: Have you spoken with either of these
7 individuals?

8 MR. COLE: Mr. Adams has, yes.

9 THE COURT: All right. Have you been in
10 correspondence with these individuals?

11 MR. COLE: We made first correspondence about it
12 yesterday, I believe. We found out about it on Tuesday
13 afternoon. Wednesday is when we were first made aware of
14 these reports.

15 THE COURT: When would you know if you are going to
16 call these witnesses for sure? And maybe you could tell me
17 why you haven't made that decision by now?

18 MR. COLE: Well, the reason is that it primarily
19 came up in Mr. Chalos's cross examination of Mr. Kunkel
20 yesterday when he asked Mr. Kunkel after he heard the tape of
21 Captain Hazelwood, is that the voice of Captain Hazelwood, and
22 Mr. Kunkel said yes, that's him. Is that, you know, the way
23 he normally sounds. This evidence is going to be offered to
24 show that isn't the way he normally sounds. I think we will
25 make the decision by Monday. I mean, I need to talk --

1 THE COURT: I think the question that was asked of
2 him was did he sound any different than he did earlier, and
3 the answer was not really. And that wasn't explored, the
4 answer not really, wasn't explored on cross examination. That
5 answer would suggest there might be something, but it wasn't
6 explored. And it's been several witnesses testify that the
7 Captain spoke with a slow, deliberate, with pause type effect.
8 This is not really new, his mannerism of speech. We have
9 heard witnesses testify about it.

10 MR. COLE: We have also heard a number of witnesses
11 that Mr. Chalos has asked, you saw him on -- you heard him on
12 the 22nd, is there anything different from the way he appeared
13 on the 22nd, the way he talked, as to when you saw and heard
14 of him on the 23rd.

15 THE COURT: Okay.

16 Well, let's flesh it out as much as we can right
17 now, Mr. Cole. What would you be intending to call these
18 witnesses for. And I think the defendant has a right to know
19 this at this time, as early as possible, so we won't have to
20 grant an unusually long continuance because of the surprise
21 nature of your witnesses.

22 Have you provided them with anything besides the
23 notice of expert?

24 MR. COLE: I have provided them with a package. It
25 is the curricula vitae of the two individuals, an article

1 dated July and August of 1989 in the Alcoholism clinical and
2 experimental research done by these individuals, by one of
3 these individuals. It is volume 13 of number 4.

4 I have also provided them with a research on speech
5 perception by the Indiana University. It is a report to the
6 NTSB of analysis of speech produced by the Captain of the
7 Exxon Valdez. In it it sets out exactly what steps and what
8 analysis these individuals took. It is like about a ten to
9 fifteen page report to the NTSB. That was all given to them.

10 THE COURT: When.

11 MR. COLE: Today

12 THE COURT: Okay.

13 MR. COLE: We received it yesterday.

14 THE COURT: Well, I would suggest if you actually
15 intend on trying to get these witnesses to testify, that you
16 make anything available that you get from them, including
17 summaries of your conversations with them, to the defense
18 counsel. Captain Hazelwood's speech should have been known to
19 you to be an issue in this, because that is evidence of
20 intoxication, how a person slurs his words or doesn't slur his
21 words, before and after, and the comparison between known
22 sobriety and somebody who may have had something to drink.
23 This should not be brought up at such a late date. So if you
24 intend on trying to get them in evidence, and I am by no means
25 suggesting you will at this late date, I would suggest you get

1 as much information to defense counsel as you can.

2 MR. COLE: Yes, sir.

3 THE COURT: Okay, can we bring the jury in?

4 (Start tape C-3624)

5 MR. MADSON: Oh, your Honor, one other thing very
6 quickly. We've asked that Mr. Kunkel not be released from his
7 subpoena, your Honor. Just -- we don't know what's going to
8 happen today. The State requested it be until noon. We'd
9 just like to leave it in effect for longer, just to make sure.

10 THE COURT: Why don't you --

11 MR. MADSON: Just subject to recall, you know.

12 THE COURT: As I understand, Mr. Kunkel is from
13 outside the State, and he's under State subpoena, is that
14 correct?

15 MR. COLE: That's correct.

16 THE COURT: Well, when you release him -- you let me
17 know when you're ready to release him, and then the burden at
18 that time for housing him and for taking care of his fees will
19 rest on the defendant. You let us know at that time. And let
20 Mr. Kunkel know when you're going to need him.

21 MR. MADSON: That's right, your Honor. We're not
22 thinking of needing him right today or tomorrow or next week,
23 but just so he remains under subpoena so if he leaves,
24 obviously he is still subpoenaed, but we'll have to pay his
25 transportation back, of course.

1 THE COURT: Fine.

2 MR. COLE: No problem with that.

3 THE COURT: Okay. Let's get the jury in.

4 (Whereupon, the jury entered the Courtroom.)

5 THE COURT: Thank you for your patience, ladies and
6 gentlemen. Sometimes we don't come back in ten or fifteen
7 minutes like I say, and the reason we don't is that we're
8 taking up some matters outside your presence to speed up the
9 matter when you do come back in so we don't have to interrupt
10 unnecessarily. Don't speculate on what we're doing, but just
11 keep in mind we are working.

12 Call you next witness.

13 MR. COLE: Your Honor, at this time the State would
14 call to the stand Dr. Michael Peat.

15 Whereupon,

16 MICHAEL A. PEAT

17 called as a witness by counsel for the State of Alaska, and
18 having been duly affirmed by the Clerk, was examined and
19 testified as follows:

20 THE CLERK: Sir, would you please state your full
21 name and then spell your last name?

22 THE WITNESS: Michael Alan Peat, P-E-A-T.

23 THE CLERK: And your current mailing address?

24 THE WITNESS: 600 W North Market Boulevard,
25 Sacramento, California 95834.

1 THE CLERK: And your current occupation?

2 THE WITNESS: Forensic toxicologist.

3 THE CLERK: Thank you.

4 THE COURT: All right.

5 MR. COLE: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. COLE:

8 Q Dr. Peat, were you asked to -- was your chemical lab
9 asked to test several blood sample back in March of 1989?

10 A Yes, we were.

11 Q And was that out of the Exxon Valdez grounding?

12 A Correct.

13 Q Would you explain to the jury what your present
14 position is?

15 A My present position is as vice president of
16 toxicology for Compuchem Laboratories.

17 Q Where do you live right now?

18 A In Sacramento, California.

19 Q Would you describe for the jury your undergraduate
20 education?

21 A Yes. I have an undergraduate degree in chemistry
22 which I obtain from Oxford Polytechnic in England in 1969.

23 Q And your graduate degree?

24 A I have a doctorate degree in pharmacology which I
25 obtained from the University of Utah in 1982.

1 Q Would you describe for the jury what your employment
2 has been since 1969 when you graduated?

3 A Yes.

4 I was first employed by the Metropolitan Police
5 forensic science laboratory attached to New Scotland Yard in
6 London. I worked there from 1969 to 1974. From 1974 until
7 1976, I worked with the University of London at Charring Cross
8 Hospital Medical School where I directed a forensic and
9 clinical toxicology laboratory. In October of 1976, I moved
10 to the United States, and was employed by the Center for Human
11 Toxicology at the University of Utah from 1976 until 1984.
12 From 1984 until about October of 1986, I was with Chemical
13 Toxicology Institute in Foster City, California. And in 1986,
14 October, I joined Compuchem Laboratories.

15 Q And during this time have you also been a teacher in
16 various institutions, or a professor?

17 A Both at the University of London and at the Center
18 for Human Toxicology at the University of Utah I had a faculty
19 position.

20 Q Would you explain to the jury -- you work for
21 Compuchem, is that correct?

22 A That's correct.

23 Q Would you explain to the jury what Chemwest is?

24 A Chemwest is a subsidiary -- totally owned subsidiary
25 of Compuchem, based in Sacramento, California.

1 Q And where is Compuchem's other headquarters located?

2 A In Research Triangle Park, North Carolina.

3 Q Would you tell the jury what the address of
4 Compuchem is in Sacramento?

5 A It is 600 W North Market Boulevard.

6 Q And do you know a woman by the name of Dr. Jill
7 Henes?

8 A Yes, I do.

9 Q Who is she?

10 A Dr. Henes is the technical director of the
11 environmental testing group in Sacramento.

12 Q Does Compuchem -- Chemwest in Sacramento have any
13 type of certification?

14 A On the drug analysis side of the business, yes. It
15 is certified by the National Institute on Drug Abuse, the
16 national laboratory certification program organized by that
17 institute.

18 Q And what does that allow you to do?

19 A It allows us to test urine samples for Federal
20 employees and for Federally mandated drug testing programs for
21 the presence of drugs of abuse.

22 Q Is that -- are there rigorous -- are their standards
23 that must be upheld in order to get a certification of that
24 type?

25 A Yes, there are.

1 Q Would you explain to the jury what those would be?

2 A Yes. The initial program is that you are shipped
3 three sets of samples to analyze over a period of three to
4 four months. You have to pass those samples -- at least, you
5 have to get them correct. If you do that you are then
6 inspected by a team of three inspectors for two days. That
7 team of inspectors will inspect your facilities, your records,
8 your staff, your chain of custody procedures, and other
9 procedures within the laboratory.

10 If you pass all those criteria, you are then
11 certified by the NIDA program. To maintain certification you
12 have to, every two months, do a series of performance testing
13 samples, pass those, and every six months have to undergo
14 another two day inspection.

15 Q Getting back to your qualifications, do you have any
16 professional certification?

17 A Yes. I am board certified in forensic toxicology.

18 Q And who would that be by?

19 A By the American Board of Forensic Toxicology.

20 Q When did you become certified?

21 A I believe in 1981.

22 Q Do you have any state licenses?

23 A I am licensed as a laboratory director by the states
24 of California, New York, and Maine.

25 Q Are you involved in the membership of any societies

1 in your field?

2 A Yes, I am.

3 Q Would you tell the jury about those?

4 A I am a member of the American Academy of Forensic
5 Sciences, the Society of Forensic Toxicologists, the
6 International Association of Forensic Toxicologists, the Royal
7 Chemical Society, and the California Association of
8 Toxicologists, amongst others.

9 Q Have you ever had any editorial board appointments?

10 A Yes. I serve on the editorial board of the Journal
11 of _____ Toxicology, the Journal of Forensic Sciences,
12 and Forensic Sciences Review.

13 Q Have you been called upon to be a reviewer of
14 national standards in any area?

15 A Yes, I have.

16 Q Would you explain that?

17 A I am a member of the advisory board of the National
18 Institute on Drug Abuse, which oversees their laboratory
19 accreditation program.

20 Q For laboratories throughout the United States?

21 A That's correct.

22 I am also a member of the toxicology resource
23 committee of the College of American Pathologists, which
24 oversees their accreditation program.

25 Q Have you ever been -- do you have any appointments

1 to any professional organizations?

2 A Yes. I have served in various elected positions for
3 a number of organizations.

4 Q Could you briefly describe what those are?

5 A Yes. I am currently program chairman of the
6 American Academy of Forensic Sciences meeting. I have served
7 as President of the California Association of Toxicologists.
8 I served as chairman of the toxicology section of the American
9 Academy of Forensic Sciences. And on numerous committees for
10 the organizations that I mentioned about.

11 Q Do you -- how do you keep updated in the field of
12 toxicology now, today?

13 A Primarily by a review of the literature and books
14 that are published, and by attendance at both national and
15 international meetings.

16 Q And do you -- have you written any publications
17 yourself?

18 A Yes. I have authored or coauthored I believe about
19 forty publications including articles and book chapters.

20 Q And have those dealt with the use of gas liquid
21 chromatography, is that correct?

22 A Certainly that has been part of some of those
23 publications, yes.

24 Q Would you give the jury an idea of how many times
25 you have been -- you personally have been requested to test

1 blood samples for the presence of drugs and alcohol?

2 A It is certainly in the thousands that I myself or
3 the laboratory -- the laboratories that I have directed have
4 been asked to do that.

5 Q How about urine tests for the presence of alcohol or
6 drugs?

7 A Again those tests are in the thousands.

8 (State's Exhibit Numbers 88, 89,
9 90 and 91 were marked for
10 identification.

11 Q Have you been called upon to testify as an expert
12 witness in the past?

13 A Yes, I have.

14 Q Can you give the jury an idea of how many times you
15 have been called upon as an expert witness?

16 A I have testified as an expert witness on over a
17 hundred occasions.

18 Q And have -- would you give the jury an idea of where
19 in the country you've testified as an expert?

20 A I have testified in a number of states, probably
21 half the states in the United States. And also in courts in
22 Great Britain and Canada.

23 Q Now, I'd like to focus for a minute on the procedure
24 that you use on your laboratory for -- the standard procedure
25 for drawing blood. Do you receive out of state samples at

1 your laboratory?

2 A Yes, we do.

3 Q And is there any sort of standard procedure for
4 drawing blood in the community?

5 A Certainly if we are contacted prior to the drawing
6 of a blood specimen, we'll recommend the use of gray stopper
7 tubes.

8 Q What is -- what do you mean by gray stoppers?

9 A Gray stopper tubes are a blood tube that contain
10 potassium oxalate and sodium fluoride. The oxalate acts as an
11 anticoagulant and the fluoride is an anti -- or an enzyme
12 inhibitor.

13 Q Essentially what does that substance do? What does
14 it protect?

15 A It protects the breakdown of some drugs that are
16 metabolized by enzymes, and also inhibits enzymes that may
17 undergo chemical reactions to produce some compounds including
18 alcohol.

19 Q And how do you receive these samples generally, from
20 out of state?

21 A Generally they are received by some sort of
22 overnight delivery service such as Federal Express or Airborne
23 or the U.S. Mail.

24 Q Would you describe the procedure that your
25 laboratory uses when it receives samples like this?

1 A Yes. The samples are received in a secured
2 receiving area. That area of the laboratory is separated from
3 the rest of the laboratory and only people who work in it and
4 some management staff are allowed access. Access is
5 restricted by electronic card keys. Once the sample is
6 received in there, the shipment container is first inspected
7 to ensure that it has not been damaged in shipment, there's no
8 obvious breakage of the seals if there are seals on the
9 shipment container. If that's the case, then the shipment
10 container itself is opened and depending what the samples are,
11 they are inspected directly to make sure the evidence seals
12 are intact. Or if they are in separate boxes, then again
13 those separate boxes are inspected to make sure the seals are
14 intact.

15 Q What would happen if there was something that was
16 wrong? A sample had been tampered with. What would your --
17 the people that you work for do?

18 A The operating procedure is to note that on the
19 receipt chain of custody. For example, if a bottle is
20 received with the seal broken, that will be noted on the chain
21 of custody. On -- for some of our analyses, that matter is
22 then brought to the attention of the director or the manager,
23 and the client or the person shipping the specimen is
24 contacted directly.

25 Q And are these records kept in the ordinary course of

1 your business there?

2 A Yes, they are.

3 Q And would these notations be noted immediately after
4 observing the problem?

5 A They would be noted upon receipt.

6 Q Now, after you have determined that there has been
7 no contamination or no breaking of the seals, what does your
8 business do with the samples?

9 A The samples are then transferred to temporary
10 storage, which is a refrigerator -- a locked refrigerator in a
11 secure area. And then they are analyzed for whatever the
12 particular request is. Their handling within the laboratory
13 is then documented on an internal chain of custody form. The
14 internal chain of custody form documents who handled the
15 specimen at what date and what time.

16 Q Do the individual blood samples -- the samples that
17 you receive, do they -- do you give them numbers?

18 A Yes. They are allocated a CW number, they were at
19 the time of the receipt of these specimens. That CW number is
20 a sequential number that relates to the year. For example,
21 CW-1-89 through CW-300 or 400-89.

22 Q And does that number follow -- is there a file
23 created at that point?

24 A Yes. There is a file created for that set of
25 specimens. So if we receive a blood and urine from an

1 individual, they are both given the same CW number, and both
2 the blood and urine, chain of custodies, etc., go into the
3 same file.

4 Q And is that file then kept with the samples as they
5 are transferred from person to person?

6 A No. The file itself is kept in the secure area,
7 away -- separated from the samples. It is retrieved from the
8 secure file area when the samples are handled and the chain of
9 custody filled in. It is the chain of custody that
10 accompanies the specimens, not the original file.

11 Q And when the samples are taken for testing, would
12 you describe briefly how you test that blood sample that you
13 receive? How was it tested in your laboratory?

14 A Yes. The blood samples are retrieved from the
15 temporary storage in the refrigerator, and they are lined up
16 and the chain of custodies and the files are obtained and the
17 chain of custodies are annotated by the person who retrieved
18 the blood specimens.

19 All the blood specimens in a particular batch or a
20 particular run are retrieved together, and each one has its
21 unique CW number. For alcohol analysis, for example, a line
22 of tubes -- separate tubes, clean tubes, is lined up next to
23 the blood tubes and each of those is given a CW number. the
24 blood specimen from the blood tube is then transferred, or a
25 portion of that blood specimen is then transferred to this

1 pre-numbered clean tube for analysis.

2 Q And how does that analysis occur?

3 A For alcohol, that analysis occurs by gas liquid
4 chromatography.

5 Q And do you have ways of testing the accuracy of your
6 gas chromatography equipment?

7 A Yes. The chromatography equipment is calibrated
8 prior to the analysis of unknown specimens or specimens we
9 don't know the alcohol concentration for. Calibration occurs
10 by the injection of three solutions of known concentration of
11 alcohol.

12 Q And is there a variation range by -- within which
13 you must obtain before you can say that that's a calibrated
14 instrument and is ready to compare -- ready to test the
15 samples.

16 A The calibration occurs by what we call linear
17 regression, which is a ratio of the response of the alcohol in
18 the known calibrator to a peak area ratio. And then we run
19 periodically throughout the year, external proficiency testing
20 samples and controls, and generally they -- their variance is
21 within five percent.

22 Q Now, how is a urine sample tested?

23 A In exactly the same manner, except in that case the
24 urine containers are removed. Again, they have a unique
25 Chemwest number, and again, transferred to tubes, pre-labeled,

1 prenumbered tubes for analysis.

2 Q And at the conclusion of this, is it your practice
3 to write reports?

4 A The -- the conclusion of the analysis, there is a
5 review by either the manager or the director of the
6 laboratory, and then the manager or the director will prepare
7 a report for issuance to the requesting agency.

8 Q And would you be the person that signed that review
9 back in March of 1989?

10 A In this case, yes.

11 Q Now, I would like to direct your attention to March
12 -- late March of last year. Did you or your laboratory
13 receive a phone call to conduct blood and urine testing in
14 this matter?

15 A From memory, a Dr. Jill Henes received a phone call
16 over the weekend from the Alaska -- or the U.S Coast Guard in
17 Alaska relating to this incident. I was away from office and
18 home that weekend. I was notified about it on the Monday. On
19 the Monday I had several conversations with the Coast Guard in
20 Alaska.

21 Q And when did you -- when did your laboratory receive
22 the samples from the U.S. Coast Guard?

23 A On March 28th, 1989.

24 Q Would you tell the jury who in your office received
25 that -- those packages?

1 A The packages were received by a Karen Metcalf.
2 Karen is the supervisor of the receiving area.

3 Q That you discussed earlier? That's what you
4 discussed about earlier?

5 A Yes.

6 Q And were there any problems with the condition of
7 the packages that you received on that day?

8 A Can I consult?

9 Q Sure.

10 (Pause.)

11 A Each of the packages were received on that day
12 indicated that the shipment containers themselves were sealed
13 and that the specimen containers were both sealed and labeled.
14 No problems were noted on the initial receipt chain of
15 custodies for any of those specimens.

16 Q Would you describe for the jury then where -- when --
17 -- which -- can I get you a glass of water?

18 A Yes, that would be fine.

19 (Pause.)

20 Q From whom did you receive samples then?

21 A The specimens were received from Federal Express.

22 Q And did you receive samples from -- did you open up
23 files for Captain Hazelwood and Maureen Jones and Greg Cousins
24 and Mr. Kagan?

25 A Yes, we did.

1 Q And you received a couple other ones also?

2 A Yes.

3 Q Now, starting with Captain Hazelwood's samples,
4 where did they go after the receiving of them?

5 A They never have -- in fact, they are still in the
6 secure receiving area.

7 Q When they -- they are still there right now?

8 A Correct.

9 Q After you received them on March 28th, where did
10 they go?

11 A They were transferred to the temporary storage
12 refrigerator in the receiving area.

13 Q And is that a secured area?

14 A Yes, that is a locked refrigerator within the
15 secured receiving area.

16 Q And from there where were they taken? Captain
17 Hazelwood's?

18 A Captain Hazelwood's specimens are still in fact in a
19 long term freezer storage in that area. Allocations or portions
20 thereof were removed for analysis and transferred to the
21 laboratory.

22 Q Would you describe when they were tested then, these
23 portions of Captain Hazelwood's sample.

24 A They were tested on March -- portions of the samples
25 were tested for alcohol on March 28.

1 Q And were you present during the testing that
2 occurred that day?

3 A I was present in the laboratory. I was not present
4 all of the time as specimens were being tested.

5 Q Did you review the testing and the procedures that
6 were done that day?

7 A Yes, I did.

8 Q And did you review the calibration that was done
9 that day of the instruments that were used?

10 A Yes.

11 Q Were there any reasons why -- let me rephrase that.
12 Were there any problems with the calibrations prior to the
13 samples -- the testing of those samples, the blood samples?

14 A No. The analysis was preformed under our normal
15 operating procedure, and the results were satisfactory.

16 Q Speaking first to the blood sample that was tested
17 that day, for Captain Hazelwood, was there -- was there found
18 the presence of alcohol in that blood sample?

19 A Yes, there was.

20 Q And would you tell the jury what that result was?

21 A The blood was found to contain 0.061 percent weight
22 per volume of alcohol.

23 Q And did you also test Captain Hazelwood's urine
24 sample that day?

25 A Yes.

1 Q And did you determine -- did you find the presence
2 of alcohol in that?

3 A Yes.

4 Q And would you explain to the jury what the results
5 of that was?

6 A That was found to contain 0.094 percent weight per
7 volume of alcohol.

8 Q And I am showing you what has been marked for
9 identification as Plaintiff's Exhibit Number 88. Do you
10 recognize that document?

11 A Yes. That is a copy of the report I issued on March
12 29th, 1989.

13 Q And is that a fair and accurate representation of
14 that report that you did for Captain Hazelwood's blood and
15 urine samples?

16 A Yes, it is.

17 MR. COLE: I would move for the admission of what
18 has previously been identified as Plaintiff's Exhibit Number
19 88.

20 THE COURT: Reserving your earlier objections, any
21 other objections?

22 MR. MADSON: That's correct; nothing else in
23 addition, your Honor.

24 THE COURT: Okay. It's admitted.

25 (State's Exhibit Number 88

1 was received in evidence.)

2 BY MR. COLE: (Resuming)

3 Q Now, Dr. Peat, there is a difference between the
4 blood and urine results that were achieved in this sample.
5 Would you explain that difference to the jury?

6 A Yes. Alcohol, as with any other drug, is excreted
7 through the kidney into the urine which is stored in the
8 bladder. The urine alcohol reading then represents an average
9 of the blood readings, if I can call it that, over a number of
10 hours or the number of minutes that the urine has been
11 excreted by the kidneys into the bladder. It can be higher,
12 it can be lower than the blood reading. But there is no
13 reason to expect it would be the same as the blood reading.

14 Q And generally what is the -- is there a number that
15 is the difference between blood and urine?

16 A Under some very controlled circumstances, there is a
17 ratio that can be used to back calculate urine to blood.

18 Q Okay, urine to blood. Okay.

19 A But only under very controlled circumstances.

20 Q Now, turning your attention to the tests that were
21 done for Mr. Kagan. When was his blood and urine sample
22 received in your office?

23 A On March 28th, 1989.

24 Q And were there any discrepancies in the shipping of
25 the package that were noted at that time?

1 (Pause.)

2 A No, there were not.

3 Q And when were samples of Mr. Kagan's blood and urine
4 tested for alcohol?

5 A On March 28th.

6 Q And did you review the testing that was done that
7 day?

8 A Yes, I did.

9 Q And did you sign your name to a report in that
10 matter also?

11 A Yes. Issued on March 29th.

12 Q And was there any blood -- was there any alcohol
13 detected in the blood or urine of Mr. Kagan?

14 A No, there was not.

15 Q I am showing you what has been identified as
16 Plaintiff's Exhibit Number 89. Do you recognize that
17 document?

18 A Yes. it is a copy of a report issued over my
19 signature on March 29th.

20 Q Is that a fair and accurate copy of the report that
21 you did?

22 A Yes, it is.

23 MR. COLE: I would move for the admission of what
24 has previously been identified as Plaintiff's Exhibit Number
25 89.

1 MR. MADSON: No objection other than previously
2 noted, your Honor.

3 THE COURT: It is admitted.

4 (State's Exhibit Number 89
5 was admitted in evidence.)

6 BY MR. COLE: (Resuming)

7 Q Now, would you explain to the jury when you received
8 a report from Mr. Cousins?

9 A We received sample --

10 Q Received a sample from Mr. Cousins?

11 A On March -- on March 28th, 1989.

12 Q And were there any problems noted with the samples
13 that you received from Mr. Cousins?

14 (Pause.)

15 A No, there was not.

16 Q And when was samples of Mr. Cousins urine and blood
17 tested for alcohol?

18 A On March 28th.

19 Q And did you sign a report in that matter also?

20 A Yes, I did.

21 Q Were the -- was there any alcohol detected in his
22 blood or urine?

23 A No, there was no.

24 Q I am showing you what has been identified as
25 Plaintiff's Exhibit Number 90. Do you recognize that report?

1 tested by your laboratories?

2 A On March 28th, 1989.

3 Q And did you prepare a report in that matter?

4 A Yes, I did.

5 Q Was there any ethyl -- was there any alcohol
6 detected in Miss Jones blood or urine?

7 A No, there was not.

8 Q I am showing you what has been marked for
9 identification as Plaintiff's Exhibit Number 91. Do you
10 recognize that document?

11 A Yes. It is a copy of a report issued over my
12 signature on March 29, 1989.

13 Q And is it a fair and accurate representation --
14 representation of that report?

15 A Yes, it is.

16 MR. COLE: I would move for the admission of what
17 has been identified as Plaintiff's Exhibit Number 91.

18 MR. MADSON: Same as previous objection, your Honor.

19 THE COURT: It's admitted.

20 (State's Exhibit Number 91
21 was admitted in evidence.)

22 BY MR. COLE: (Resuming)

23 Q Now, Dr. Peat, you also tested the urine for several
24 drugs in the course of this examination, is that correct?

25 A Yes.

1 Q And were any of these drug factors -- was there
2 presence of any of those in any of the reports?

3 A No. The presence of the common drugs of abuse was
4 ruled out in the four people indicated.

5 Q Now briefly I would ask you, you talked about a five
6 percent verification. Would you explain to the jury what you
7 mean by that? And if you would, let me put Captain
8 Hazelwood's blood alcohol results on the board. Would you
9 explain to them what five percent variation means?

10 A Yes. That means that if that sample has been tested
11 -- in fact it was tested in duplicate on that particular day.
12 If it was tested over a number of assays throughout that day,
13 it would vary five percent either way for acceptability. So
14 it would be .058 to .064 would be the range that you would
15 expect for that specimen when tested on that day.

16 MR. COLE: Thank you, Dr. Peat. I have nothing
17 further.

18 CROSS EXAMINATION

19 BY MR. MADSON:

20 Q Good morning, sir.

21 A Good morning.

22 Q You testified that you are the director of the
23 laboratory, is that correct?

24 A Correct.

25 Q By director that means you are in charge of the

1 entire facility.

2 A Yes.

3 Q I assume you report to somebody else?

4 A Yes.

5 Q Who would that be?

6 A The president and CEO of the corporation.

7 Q So you are at least upper management level if not
8 middle management at least?

9 A Correct.

10 Q Now, you indicated that you reviewed the reports and
11 signed off on these. But is it correct then that you did not
12 personally do these laboratory tests?

13 A That's correct.

14 Q Is it fair to say then, sir, that you rely on the
15 people under you to do a competent and proper job?

16 A Yes.

17 MR. MADSON: I don't believe I have any other
18 questions. Thank you.

19 Oh, excuse me, I do, too.

20 BY MR. MADSON: (Resuming)

21 Q You said you were asked to perform these tests at
22 the request of the United States Coast Guard, correct?

23 A Yes.

24 Q You were never asked to do this by the State of
25 Alaska, is that right?

1 MR. COLE: Your Honor, at this time the State would
2 call Mr. Mark DeLozier.

3 Whereupon,

4 MARK J. DELOZIER

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 CLERK: Sir, would you please state your full
9 name and spell your last name.

10 THE WITNESS: It's Mark James DeLozier, D-E, capital
11 L-O-Z-I-E-R.

12 THE CLERK: And your current mailing address?

13 THE WITNESS: Post Office Box 1934, Valdez, Alaska.

14 THE CLERK: And your current occupation, sir?

15 THE WITNESS: I am a vessel supervisor.

16 THE CLERK: Excuse me?

17 THE WITNESS: Vessel supervisor.

18 THE CLERK: Thank you.

19 THE COURT: Would you try to speak up a little bit,
20 please.

21 THE WITNESS: Uh-huh.

22 DIRECT EXAMINATION

23 BY MR. COLE:

24 Q Good morning, Mr. DeLozier, how are you today?

25 A Fine.

1 Q Would you tell the jury where you live -- where you
2 live now?

3 A In Valdez, Alaska.

4 Q How long have you lived there?

5 A Three -- three years.

6 Q And what brought you to Valdez?

7 A I asked to come up to Valdez with the Coast Guard.

8 Q Who is your wife?

9 A Jamie DeLozier.

10 Q And what brought -- you came up from -- with the
11 Coast Guard three years ago. What was your position when you
12 came up to Alaska?

13 A I was a marine inspector, marine investigator.

14 Q And when did you leave the Coast Guard?

15 A I departed work on August 15th, '89, and was
16 detached from the Coast Guard, retired, on November 1st, '89.

17 Q Where do you work right now?

18 A I work for North Employment Agency.

19 Q And what are you doing for them now?

20 A I am a vessel supervisor, escorting laden tankers
21 out of Prince William Sound.

22 Q Now, back in March 1989, what was your position at
23 that time?

24 A I was the chief of marine safety department at the
25 Marine Safety Office in Valdez, Alaska. Combined duties were

1 marine inspection, marine casualty investigation, pollution
2 investigation and environmental protection.

3 Q Who was your immediate superior there in Valdez?

4 A I reported directly to the executive officer,
5 Lieutenant Commander Tom Falkenstein, and then to the
6 Commanding Officer, Commander McCall.

7 Q And how long had you held that position?

8 A For the entire time I was there.

9 Q Would you briefly describe for the jury -- you've
10 given them an idea -- give them an idea, what things you did
11 while you were at that job. Did you fill out investigation
12 reports if oil was spilled in the harbor or what was it that
13 you did?

14 A Well, primarily for the pollution investigation, I
15 had a team of petty officers that completed those tasks. I
16 was overall in charge of it and they would turn in their
17 reports, investigation reports to me and then they would be
18 passed up to my boss.

19 As far as the marine inspection and marine casualty
20 investigation, I completed all that myself.

21 Q Would you tell the jury, were you working on March
22 23rd, 1989?

23 A Yes, I was.

24 Q What time would you have gotten off work that day?

25 A I worked an 8:00 to 4:00 daily, Monday through

1 Friday, and alternate a week on, a week off, with after hour
2 duty with another warrant officer that's stationed at the
3 office.

4 Q Would you have been on duty that evening?

5 A On duty?

6 Q The off week duty?

7 A I -- I alternate with the duty inspector, duty
8 investigator, with another warrant officer, and I do not
9 believe I was on duty that particular night. However, I am
10 the department head of that -- at the office and I do feel a
11 responsibility to try to keep apprised of everything that
12 goes on, whether I'm on duty or whether I'm not.

13 Q What did you do after work then that day? Do you
14 recall that?

15 A I went home, got the kids settled. I helped my wife
16 prepare dinner. She was leaving at approximately 7:30.
17 Thursday nights are ladies dart nights, and she left at 7:30.
18 I finished preparing the dinner, getting the kids all settled,
19 watched the news, sat back. Around 8:00 o'clock I went over
20 to the Pipeline Club to watch her play darts.

21 Q What was your wife doing when you got there?

22 A Playing darts.

23 Q How long did you stay at the Pipeline Club?

24 A About two hours.

25 Q Did you have anything to drink there?

1 A Yes, I did.

2 Q Would you -- how much -- what did you have to drink?

3 A I had two Miller Lites.

4 Q Did you see anyone you recognized while you were at
5 the Pipeline Club that evening?

6 A Certainly.

7 Q That would have been people that were playing with
8 your wife?

9 A Yes.

10 Q Any other -- anybody else that came to mind?

11 A Valdez is a small town. You know almost everyone
12 there.

13 Q And after the -- you got done at the Pipeline Club,
14 where did you go to?

15 A I went home.

16 Q And who was with you when you went home?

17 A My children.

18 Q Who went with you home from the Pipeline Club?

19 A No one went with me. My wife drove herself to the
20 Pipeline Club and I came up an hour or half an hour later or
21 so in my own car. I also left alone. She came home
22 afterwards.

23 Q When you got home do you remember going to sleep
24 that evening?

25 A Sure.

1 Q What time would you have gone to sleep?

2 A Not later than 10:30.

3 Q Do you recall being awaked early that morning?

4 A Yeah.

5 Q Would you explain to the jury what happened then?

6 A The phone rang, my daughter picked up the phone
7 because the phone is out in the living room. She answered it,
8 came in and woke me up and told me the phone was ringing, told
9 me it was for me. I went and answered the phone. They told
10 me the Exxon Valdez was hard aground and leaking oil. I said
11 okay, I'll be in in a moment.

12 Q What did you do then?

13 A Put on my clothes and went in the office.

14 Q Do you remember what time you would have arrived at
15 the VTC center that day?

16 A I suppose it was about a quarter to 1:00.

17 Q Who was there when you got there?

18 A Commander McCall, Lieutenant Commander Falkenstein,
19 Bruce Blandford, a radio watch stander that I don't recall who
20 it was, and -- then everyone started showing up.

21 Q Would you tell the jury who Commander McCall is?

22 A He is the commanding officer of the Marine Safety
23 Office in Valdez, or former commanding officer.

24 Q The would have been the head, then, of the Valdez --
25

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

2 Q Was a plan devised as to the Coast Guard's response
3 to the Exxon oil spill there that morning?

4 A Was there a what?

5 Q A plan devised that morning for your initial
6 response as to the Exxon Valdez?

7 A Yes.

8 Q What was that to be?

9 A That myself and Lieutenant Commander Falkenstein
10 would head on out and see the Exxon Valdez by way of the pilot
11 launch and assess the situation.

12 Q Was there anyone that was to go with you at that
13 time?

14 A Yes. The DEC representative who would have Dan
15 Lawn, that's who it was.

16 Q What vessel did you take when you left the harbor
17 that evening?

18 A The Silver Bullet.

19 Q Do you recall when you left that morning?

20 A Just about 2:15, 2:30, somewhere around there.

21 Q How long does it normally take to get out to Bligh
22 Reef?

23 A Depends on how fast the boat is.

24 Q In that vessel?

25 A That vessel? I'd say about forty-five minutes to an

1 hour, maybe a little longer.

2 Q When you got out to the Exxon Valdez, what could you
3 see?

4 A I could see the ship off in the distance. The deck
5 was lit. I saw a tugboat off the bow. As we approached
6 closer, I saw the other pilot launch, the Cherkoff, was
7 standing by. As we got within I'd say about five hundred
8 yards you could see oil spreading from the vessel all around.

9 Q Could you -- did you have any difficulty or any
10 problems getting on board the Exxon Valdez that night?

11 A I didn't. I was a little bit fearful for the person
12 in front of me and myself.

13 Q Let me rephrase that question. Did you remain on
14 the Silver Bullet to go along side the Exxon Valdez?

15 A No, we didn't.

16 Q What happened?

17 A We were transferred to the Cherkoff. Apparently the
18 Cherkoff had already been in the oil, so her hull was dirty.
19 The Silver Bullet was not dirty, so instead of having both
20 vessels dirty, then we transferred to the Cherkoff.

21 Q And where did you go from there on the Cherkoff?

22 A We went around to the port side of the vessel --
23 that's where the pilot ladder was -- and we took a look at the
24 situation. The oil was too thick and spread out over the
25 area, to great or too large an area. So we asked the vessel

1 to move the pilot ladder over to the starboard because it
2 wasn't as thick over there. Or wasn't -- it wasn't right at
3 the section where the pilot ladder was lowered.

4 Q When you got over to the starboard side, could you
5 see the oil coming out of the Exxon Valdez?

6 A Oh, absolutely.

7 Q Could you describe what you saw to the jury?

8 A The oil was coming out of the vessel at a very
9 intense rate. I remember observing right at the waterline,
10 where the hull meets the waterline, the oil was bubbling up
11 into the air. Sometimes it was bubbling up sixteen, eighteen,
12 twenty inches high. The thickness of the oil spread out
13 approximately a hundred, two hundred yards away from the
14 vessel. This is on the starboard side. And then up around
15 the bow. The farther you got out into the slick, the thinner
16 it got, but up against the hull, I would estimate it to be a
17 foot, foot and a half deep.

18 Q Were there any fumes in the area?

19 A Yes, there were.

20 Q In your opinion, was there a danger of explosion at
21 that time?

22 A Yes.

23 MR. CHALOS: Objection, your Honor. No foundation
24 for that question.

25 THE COURT: Mr. Cole, the answer came in awfully

1 fast. I'll let the objection stand. He can argue at this
2 time.

3 MR. COLE: Based on common sense and experience.

4 THE COURT: Okay. I'm going to rule the objection -
5 - I know it's hard to make these objections because the
6 question and the answer happened so quickly and if you can't
7 make it in time, I won't deem it being waived in the future.

8 Go ahead.

9 BY MR. COLE: (Resuming)

10 Q Now, in the boarding process, who boarded the vessel
11 with you that morning?

12 A Commander Falkenstein went up the ladder first, Stan
13 Lawn went up second, and I went up third.

14 Q How long had you been in the water awaiting to
15 arrive -- awaiting -- how long had you been sitting along side
16 the Exxon Valdez or just right a short distance away before
17 you were actually able to board the vessel?

18 A Oh, ten minutes, I would say. Maybe a little
19 longer.

20 Q What time did you actually get up on the bridge of
21 the -- on the deck of the Exxon Valdez?

22 A I don't recall, but I read numerous reports that I
23 arrived at around 3:30.

24 Q And does that seem about correct to you?

25 A Yes.

1 Q When you went on board the Exxon Valdez that
2 morning, what was your purpose? What was the purpose of the
3 Coast Guard's presence?

4 A To assess the situation.

5 Q Did you have any concerns about the safety of the
6 crew members and the stability of the vessel?

7 A Absolutely.

8 Q And were those your primary concerns or secondary
9 concerns or --

10 A That was my primary concerns.

11 Q And Commander Falkenstein? Do you know what his
12 concerns were?

13 A I know him well enough to say that would be his
14 prime concern also.

15 Q Who were you met by when you got up on board, do you
16 recall?

17 A I believe it was one of the AB's.

18 Q And where did you go from there?

19 A Walked across the deck, across the cargo piping,
20 down the port side into the house, into the elevator, and up
21 to the master's deck, walked up to the wheelhouse and met
22 Captain Hazelwood up on the port side up on the -- by the
23 forward windshield.

24 Q While you were going across the deck, did you notice
25 any signs of oil on the deck?

1 A While I was boarding the vessel I saw two patches of
2 oil that had -- was dribbling down the side of the vessel.
3 The one on the aft starboard side was about twenty-five foot
4 wide and extended from the main deck down to the waterline.
5 The one up on the bow, next to the number one tanks, was about
6 ten to fifteen foot wide, and extended from the main deck down
7 to the waterline. As I crossed the main deck I also observed
8 oil running down the fishplate on the starboard side and then
9 --

10 Q What did you say, the fishplate?

11 A Fishplate.

12 Q What's that?

13 A That's a piece of steel that's welded to the side of
14 the main deck that goes around the perimeter of the vessel.

15 Q Okay.

16 Who was on the bridge when you got up there?

17 A Maureen Jones, Greg Cousins, and that's all that I
18 can recall. Now this is -- well, and Captain Hazelwood and
19 then the three people that boarded the vessel, myself, Mr.
20 Lawn and Falkenstein. And obviously the AB who assisted us up
21 there.

22 Q Where was Captain Hazelwood put -- let me -- let me
23 get a diagram.

24 (Pause.)

25 Would you use that pointer to show the jury where

1 Captain Hazelwood was.

2 A He was standing right up there next to that window.

3 Q Was he standing there or leaning there or how was he

4 --

5 A He was leaning up against the window with his elbow
6 on the window sill and his other hand -- or actually his elbow
7 on the window sill and his hand over his mouth like this.

8 Q Did you go over and talk to him at that time?

9 A Yes.

10 Q What was your purpose in talking to him at that
11 time?

12 A Well, my boss was there, Lieutenant Commander
13 Falkenstein, and him being the senior officer, I followed his
14 suit. In other words, I allowed him the opportunity to talk
15 first. My purpose for being there would have been to delve
16 into the investigation and also to ascertain any structural
17 problems or anything of this nature that we may be of help
18 about.

19 Q When you say investigation, do you mean figure out
20 why the Exxon Valdez was sitting on Bligh Reef?

21 A That would have been one of my duties, but that
22 wouldn't be the prime purpose for me being at that particular
23 place at that moment.

24 Q How far away from you were you -- were you from
25 Captain Hazelwood when this initial conversation occurred?

1 A I personally was about four foot away, and then I
2 stepped closer.

3 Q Did you notice any signs of intoxication from
4 Captain Hazelwood at that time?

5 A Yes.

6 Q What did you notice?

7 A I smelled alcohol on Captain Hazelwood.

8 Q And would you characterize this as a slight or an
9 obvious odor of alcohol that you smelled on him?

10 A It was a very intense and very obvious.

11 Q Did you notice whether Captain Hazelwood made any
12 attempts to cover this up?

13 A It was my impression that he was attempting to cover
14 it up by putting his hand over his mouth and also by drinking
15 coffee.

16 Q Why do you say that?

17 A It is just my impression.

18 Q Well, what would the purpose have been of doing
19 that?

20 MR. CHALOS: Objection, your Honor. Is he asking
21 what was Captain Hazelwood's purpose. How would this witness
22 know.

23 MR. COLE: His impressions.

24 THE COURT: Objection sustained.

25 BY MR. COLE: (Resuming)

1 Q Was he smoking at that time?

2 MR. CHALOS: Objection, your Honor. May we approach
3 the bench?

4 THE COURT: All right.

5 (An off the record bench conference was had.)

6 BY MR. COLE: (Resuming)

7 Q Was Captain Hazelwood smoking then when you saw him
8 then?

9 A Yes.

10 Q And --

11 (Pause.)

12 What did you do then after you determined that --
13 did you make a determination that there might be some problems
14 with this?

15 A With what?

16 Q With the presence of alcohol on Captain Hazelwood's
17 breath?

18 A Well, first I was standing about four foot away,
19 like I said, and I detected the odor of alcohol. To be sure -
20 - I was a little bit amazed, to start with, and to be sure I
21 stepped closer to within a distance of about two foot to make
22 sure that that is exactly what I smelled and where it was
23 coming from. And as I stepped closer, I was positive at that
24 point that that was exactly what I smelled. I waited for the
25 discussion to terminate between Falkenstein, Dan Lawn, and

1 Captain Hazelwood, and myself, and after I had a moment with -
2 - or after they broke away, I grabbed Tom Falkenstein and said
3 come on outside the bridge wing, we need to talk.

4 Q Which bridge wing did you go out of?

5 A To the starboard bridge wing.

6 Q And what did you tell Lieutenant Commander
7 Falkenstein then?

8 A I asked him if he smelled the same thing that I
9 smelled and he indicated to me --

10 MR. CHALOS: Your Honor.

11 THE COURT: Just a minute; just a minute.

12 MR. CHALOS: I believe the witness is going to get
13 into hearsay.

14 THE COURT: Mr. Cole?

15 MR. COLE: You Honor, this is not being offered --
16 this is being offered to show what he did after that.

17 THE COURT: Objection sustained.

18 BY MR. COLE: (Resuming)

19 Q After you spoke with him about this, what did you
20 do?

21 A I pulled out my radio and we called the Marine
22 Safety Office on Channel 81 and we informed them that we
23 should get the commanding officer and advise him that we were
24 going to make a phone call to him momentarily.

25 Q Were you directed to do that or did you take that

1 step?

2 A I gave the radio to Falkenstein, he didn't know how
3 to operate it properly, so I switched it to the proper channel
4 and then I called.

5 Q At that time you indicated you wanted to speak to
6 the commanding officer, is that right?

7 A No. I said that to relay to the commanding officer
8 to be prepared for a phone call. We would be calling him
9 momentarily.

10 Q How did you intend to talk to the commander?

11 A By the on board telephone system.

12 Q Would that be the MARISAT telephone?

13 A Yes.

14 Q Were you aware at that time of any equipment that
15 was on board for taking blood and urine tests?

16 A No, I wasn't.

17 Q Where did you go then after that?

18 A Went down to the radio room.

19 Q And what did you do while you were down there? What
20 happened when you were there?

21 A The radio operator assisted Falkenstein in making
22 the connection by MARISAT telephone to the station. And they
23 had a discussion on the telephone and I was sitting right next
24 to him and as he was talking to the commanding officer, I
25 would be, you know, listening, observing what he was saying,

1 and if I had any input or anything to add, then I would inform
2 him and he would relay it to the commanding officer.

3 Q What steps did you take in the course of that
4 conversation to try and confirm your suspicions of Captain
5 Hazelwood's drinking?

6 MR. CHALOS: Objection, your Honor.

7 MR. COLE: I'll withdraw it.

8 BY MR. COLE: (Resuming)

9 Q What -- did you ask for testing equipment be sent
10 out to test Captain Hazelwood?

11 MR. CHALOS: Objection, your Honor. I think the
12 witness said that Mr. Falkenstein had the conversation. I
13 don't think this witness said he made the call to the
14 commander, and Mr. Falkenstein will testify here I am sure.

15 THE COURT: Are you asking him if he asked?

16 MR. COLE: Yes, I am asking him if he --

17 THE COURT: On the MARISAT radio?

18 MR. COLE: Uh-huh.

19 THE COURT: Did you talk on the radio, on the
20 telephone?

21 THE WITNESS: At that particular moment, no, I did
22 not. However, I did make the request to Falkenstein.

23 THE COURT: Okay to Falkenstein, not on the radio.
24 Okay.

25 BY MR. COLE: (Resuming)

1 Q Did you make a request of Lieutenant Commander
2 Falkenstein to have something sent out to test Captain
3 Hazelwood's breath at that time?

4 A Yes, I did.

5 Q What did you tell him?

6 A I informed Lieutenant Commander Falkenstein that we
7 needed to contact the commanding officer so that he could make
8 some arrangements in town to have some sort of a law
9 enforcement person, medical person, a doctor, or something of
10 that nature, to come out with either a breathalyzer equipment
11 or equipment to take blood and urine tests. We -- I told me
12 that they should make the arrangements to have this stuff sent
13 out to us.

14 Q Now, did you make these -- your intentions -- the
15 information that you had just provided to Lieutenant Commander
16 Falkenstein, did you tell anybody else on the Exxon Valdez
17 what you intended to do?

18 A No, it was between myself and Falkenstein.

19 THE COURT: Mr. Cole, this would be a good time for
20 us to take our lunch break.

21 MR. COLE: Sure.

22 THE COURT: We'll come back at approximately 1:15,
23 and we'll get started. I'd like to have you folks back about
24 then. Don't discuss the matter and don't form or express any
25 opinion.

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

(Defendant's Exhibit Numbers L, M, N and O were marked for identification.)

(State's Exhibit Numbers 92 and 93 were marked for identification.)

(Whereupon, at 11:54 o'clock a.m., the Court stood in recess.)

A F T E R N O O N S E S S I O N

(1:23 o'clock p.m.)

1
2
3 THE COURT: We'll recess a little early today,
4 ladies and gentlemen, and get you a little jump on the
5 traffic. We are going to recess at 3:30 today. Those of you
6 who are a little bit out of town can get a little earlier
7 start.

8 You may proceed.

9 MR. COLE: May I resume, your Honor?

10 THE COURT: Yes.

11 DIRECT EXAMINATION (Resumed)

12 BY MR. COLE: (Resuming)

13 Q Mr. DeLozier, when we stopped, when we finished we
14 were talking about the first phone call. Why didn't you ask
15 Captain Hazelwood to remove himself as captain of the Exxon
16 Valdez after you smelled alcohol on his breath?

17 A Would you repeat that question?

18 Q Why didn't you ask Captain Hazelwood to remove
19 himself as master of the Exxon Valdez after you smelled
20 alcohol on his breath the initial time?

21 A I think things were well in hand and he did not seem
22 to be creating any problems with the vessel upon our arrival.

23 MR. CHALOS: I'm sorry, your Honor, I didn't hear
24 that answer.

25 THE COURT: I'm having a real hard time hearing you,

1 too, and I know you can talk louder, and we'll do the best we
2 can with the amplifier. You try to talk up and we'll turn it
3 up, too.

4 THE WITNESS: Okay.

5 BY MR. COLE: (Resuming)

6 Q Could you repeat that again, why was it that you
7 didn't have him removed?

8 A it was not my responsibility to remove him. There
9 was a more senior person on board, and secondly, I personally
10 didn't feel as though that he was creating any nuisance or
11 problem with the vessel.

12 Q Who did you feel was the most knowledgeable person
13 about the -- knowledgeable person about the Exxon Valdez at
14 the time you initially boarded?

15 A Regarding what?

16 Q The characteristics of the vessel and how it was to
17 be run?

18 A Can you define that better?

19 Q Well, I'll just withdraw the question.

20 Do you remember, you indicated that the -- you had
21 your initial phone conversation, you and Mr. -- Lieutenant
22 Commander Falkenstein, had your initial phone conversation
23 with the Coast Guard. Do you remember what number you would
24 have been calling that morning?

25 A Yes.

1 Q Would you tell the jury what that number was?

2 A 835-4791.

3 Q After the initial phone call, did you and Lieutenant
4 Commander Falkenstein divide up the responsibilities that the
5 two of you would be assuming that morning?

6 A Yes, we did.

7 Q Would you explain to the jury how that division of
8 responsibility was made?

9 A I believe it was just prior to the phone call that
10 we decided that we should start in different directions,
11 whereas Mr. Falkenstein would go about and take care of the
12 problems with the vessel itself and I would take care of any
13 matters pertaining to the investigation of the casualty.

14 Q What did you do then after you made the initial
15 phone call to Commander -- who would that have been, McCall?

16 A McCall.

17 Q What did you do then next?

18 A Went back up to the wheelhouse and observed the crew
19 member's actions. Went back to the chart table and was
20 looking at different documents and charts and navigational
21 aids and so forth, around the wheelhouse. Trying to keep an
22 eye on Captain Hazelwood.

23 Q Why were you trying to keep an eye on Captain
24 Hazelwood?

25 A I felt as though it would be a good thing to do.

1 Q Were you able to keep an eye on Captain Hazelwood
2 throughout the morning?

3 A Pretty much so.

4 Q What periods were you not able to keep an eye on
5 Captain Hazelwood? Let's begin with -- were there any
6 substantial periods when you were not able to keep an eye on
7 Captain Hazelwood?

8 A Can you define substantial?

9 Q More than a half an hour.

10 A Yes, there was.

11 Q When did that occur?

12 A Around 4:30, maybe around 5:00 o'clock in the
13 morning, he asked me if he could retire to his cabin for a
14 quick catnap, at which time he did and I said it was okay with
15 me, and he went into his room and took a catnap for, I'd say
16 about forty-five minutes to an hour, maybe.

17 Q Where were you during that time?

18 A I was mainly in the radio room, in his office, and
19 in the wheelhouse.

20 Q Had he given you permission to use his office at
21 that point?

22 A He invited us into his office. He did not actually
23 say that, you know, we could use it, in those words.

24 Q Do you recall a representative from the State of
25 Alaska, Department of Fish and Game, arriving that morning?

1 A Yes, I do.

2 Q When would that have occurred?

3 A I believe that was around 6:00 a.m. or 7:00 a.m.

4 Q What happened -- who would that have been?

5 A Trooper Mike Fox.

6 Q What happened when he arrived?

7 A I met him on the port bridge wing. He had come up.
8 And he was sent out to the vessel by the commanding officer,
9 Commander McCall, as per our request to conduct a -- in our
10 opinion it was to be a test for alcohol. Upon his arrival I
11 indicated to him what we had, and he was under the impression
12 that he was supposed to come out to the ship to take ahold of
13 an unruly drunk, and I said no, that's not what we have here.
14 I said we have an indication that there has been some alcohol
15 involved in this casualty, and we need to take either a blood,
16 urine or breathalyzer test. And he said he was not prepared
17 to do that.

18 Q Had you contacted the Coast Guard prior -- between
19 the time you initially made the phone call to Commander McCall
20 and the time that Trooper Fox arrived?

21 A Yes.

22 Q What had -- who -- had you been the one that
23 contacted Commander McCall?

24 A I was with Commander Falkenstein both times that he
25 made the phone call. He personally made the phone call and I

1 sat in on the conversation with him, only hearing one side of
2 the conversation.

3 Q Now, after Trooper Fox arrived -- was he in a
4 uniform, by any chance?

5 A His usual uniform.

6 Q Which would be -- was it -- what color was it?

7 A I believe it was khaki.

8 Q What did you do then after receiving this
9 information from Trooper Fox?

10 A I was disgusted at the fact that we had already
11 waited a couple of hours and he was supposed to be our relief,
12 and upon his arrival when I found out that he was going to be
13 of no use to us, I was disgusted and went back down and talked
14 to Commander Falkenstein again and at that time we made
15 another phone call back to the office and displayed our
16 anxieties about it, and further requested a specific person
17 that was capable and qualified to conduct a urine and blood
18 test.

19 Q Why were you un happy about the set of occurrences
20 that had gone on up to that point?

21 A Well, because I realized that with time, if there is
22 any suspicion of alcohol in your blood, that it will dissipate
23 over time. And I was anxious to, you know, conduct the test
24 and in a timely manner.

25 Q Who did you understand was responsible for getting

1 someone out to the ship, the Exxon Valdez, for the purpose of
2 conducting this test?

3 A Well, it was myself and Commander Falkenstein who
4 made the request to the office, and that was made directly to
5 Commander McCall.

6 Q So was it your understanding that Commander McCall
7 would be taking care of this?

8 A Absolutely.

9 Q And did you inform him of who you wanted the test
10 conducted of? What particular person?

11 A Yes.

12 Q Did you call him -- did you tell him by name, that
13 it was Captain Joseph Hazelwood?

14 A Well, we said the master.

15 Q Did he know it to be Captain Hazelwood?

16 A Did who?

17 Q Commander McCall?

18 MR. CHALOS: Objection, your Honor. He's asking for
19 what Captain McCall knows or doesn't know.

20 MR. COLE: Only if he knows, Judge.

21 THE COURT: Overrule your objection. If you have
22 personal knowledge that he knew who you were talking about.

23 THE WITNESS: Yes, he knew.

24 BY MR. COLE: (Resuming)

25 Q That it was Captain Hazelwood?

1 A Yes.

2 Q When did it come to your attention that there might
3 be a means of testing people for alcohol aboard the Exxon
4 Valdez?

5 A After Mike Fox arrived and we made the third phone
6 call to the office, Commander McCall suggested that -- I don't
7 know where he got the suggestion or the thought, but he
8 suggested to us that there was a possibility that there would
9 be test kits aboard the vessel. I -- I informed Commander
10 Falkenstein and Commander McCall that -- that the possibility
11 of those -- of that test kit being aboard was slim being as
12 though it was under my impression that the requirement to have
13 that equipment on board was not mandatory at that particular
14 time.

15 After that conversation on the telephone there I
16 went and asked Captain Hazelwood if he had -- if he indeed had
17 test kits aboard and he acknowledged that he did.

18 Q What did you do once you learned about these
19 toxicology test kits?

20 A I asked him if he would break them out so that we
21 could start conducting tests on the individuals that I had
22 pointed out.

23 (Pause.)

24 Q Where did you have these kits taken to? What place
25 on the ship?

1 A Captain Hazelwood went to a storeroom which was, I
2 believe, on the port side of the same level that his cabin was
3 on, and he retrieved the kits and brought them into his
4 office, at which time he informed me that there was a company
5 policy regarding drawing blood samples or crew members or
6 employees of Exxon, and that it was only to be done by a
7 qualified medical person for the purpose of drawing blood
8 samples.

9 I reviewed the company policy that he handed to me
10 and I wasn't prepared to take any blood samples using those
11 kits anyway. I was more interested in taking urine samples.
12 So after him and i conferred about the blood samples, I asked
13 him, I said, well, let's just go ahead and start taking the
14 urine samples. And he called the other crew members, and one
15 by one we took the urine samples.

16 Q When did you indicate to him that he was going to
17 have to give a sample also.

18 A After completing the urine samples of the other
19 persons.

20 Q Now, one of the individuals that you tested was --
21 you asked to do that was Maureen Jones, is that correct?

22 A That's correct.

23 Q Did you take any special procedures in acquiring her
24 urine sample?

25 A Special in which way?

1 Q Did anybody help her?

2 A I did not personally witness her drawing the sample.

3 Q How was it done?

4 A There was a female third assistant engineer on board
5 and I asked her to come up, broke out the bottle -- the sample
6 bottle and discussed the instructions on how to do it. She
7 and Miss Jones then went into the captain's head and closed
8 the door behind them and she came out with the sample and
9 handed it to me.

10 Q After you got these three samples, how did you keep
11 track of who's sample was whose?

12 A Captain Hazelwood was the one who actually took
13 possession of the urine samples and I would go into the
14 lavatory with the person, witness the urine being drawn. Come
15 out with the bottle, they would hand it to me and I in turn
16 would hand it to Captain Hazelwood. He would then seal it up
17 and put the appropriate dates and signatures and written work
18 that needs to be done on those.

19 Q And when it came time for Captain Hazelwood to give
20 his urine sample, what happened?

21 MR. CHALOS: Objection, your Honor. Can we approach
22 the Bench?

23 (An off the record bench conference was had.)

24 THE COURT: We need to take up a matter outside your
25 presence, ladies and gentlemen. We'll call you back as soon

1 as we can. Please don't discuss the case and don't form or
2 express any opinions.

3 (Whereupon, the jury left the Courtroom.)

4 THE COURT: All right, you may make your objection
5 and articulate it. The case that you have given me is Burnett
6 versus Municipality of Anchorage. It is a Court of Appeals of
7 Alaska 1984 case, found at 678 Pacific 2nd at 1364.

8 MR. CHALOS: Yes, your Honor. My objection goes to
9 this. On the basis of what Mr. DeLozier has testified at the
10 NTSB, and I think it was in one of the police reports, I
11 believe the answer he will give to the question posed by Mr.
12 Cole is that the Captain told him at the time that he asked
13 him...

14 (Start tape C-3625)

15 ...that he asked him for a urine sample, that he was unable to
16 urinate. Our objection is that on the basis of that case,
17 that kind of information is inadmissible. Captain Hazelwood
18 was not in custody at the time. He was not being searched.
19 And the fact that he said he could not urinate at that time is
20 not relevant or probative, and it's prejudicial value far
21 outweighs any probative value that it might have.

22 THE COURT: All right. Mr. Cole?

23 MR. COLE: Well, I haven't seen the case, so I can't
24 really address that case, but it seems to me that Captain
25 Hazelwood's attempts to avoid giving a sample are relevant to

1 the issues in this case. He's already -- the officer has
2 already testified as to Captain Hazelwood's attempts, in his
3 mind, to cover up the breath, the officer -- keep the officers
4 from obtaining a breath sample.

5 Without -- you know, when you just spring something
6 on me, I think that it is material, I think that is the test,
7 and I believe it's relevant to show that Captain Hazelwood
8 initially refused. In addition to that, it goes to show what
9 happened when he was showed the blood sample -- when he was
10 shown the blood kit, and it explains the testimony in that
11 respect.

12 THE COURT: Why don't you just take a minute here
13 and we'll go over the case together.

14 (Pause.)

15 MR. COLE: I think it would be helpful if Mr. Chalos
16 could point out what section he believes is applicable to this
17 case.

18 THE COURT: As I understand it from Mr. Chalos
19 offered it sidebar, he expects that the witness, if asked,
20 will state that Captain Hazelwood appeared reluctant to or was
21 unable to give a urine sample. Is that correct, Mr. Cole, is
22 that what you expect the witness to say?

23 MR. COLE: Yes.

24 THE COURT: Is that about right, Mr. DeLozier? Was
25 Captain Hazelwood unable to give a urine sample or reluctant

1 in any way?

2 THE WITNESS: Yes.

3 THE COURT: How would you describe it? I asked you
4 two questions there. Why don't you -- was he reluctant in
5 your opinion in any way?

6 THE WITNESS: He said that he could not provide a
7 urine sample to me at that time.

8 THE COURT: Did he tell you why he could not?

9 THE WITNESS: No.

10 THE COURT: He just could not give you a urine
11 sample. That was his answer.

12 THE WITNESS: That's correct.

13 THE COURT: And was he able to give you a urine
14 sample at that time?

15 THE WITNESS: At that time?

16 THE COURT: Yes.

17 THE WITNESS: No.

18 THE COURT: How long after that before you got one
19 from him?

20 THE WITNESS: An hour.

21 THE COURT: An hour. And did you ask him at that
22 time for a urine sample?

23 THE WITNESS: An hour later? Well, after I found
24 out he was unable to provide a urine sample to me, an hour --
25 approximately an hour had gone by and then Petty Officer

1 Conner showed up with the blood sampling kits where he was a
2 qualified technician to draw blood. So in lieu of taking the
3 urine, I opted to take the blood samples.

4 THE COURT: Did you ever take a urine sample of
5 Captain Hazelwood.

6 THE WITNESS: Yes. As soon as I indicated to
7 Captain Hazelwood that we were prepared to take a blood
8 sample, that's when he said -- well, he just grabbed a bottle
9 and said, well, I'll give you a urine sample, too.

10 THE COURT: Okay.

11 MR. COLE: The other question I think the Court
12 should ask him is whether he viewed that as an attempt -- an
13 evasive attempt to keep from giving a blood -- a urine sample,
14 his initial denial.

15 THE COURT: We can ask that now.

16 Did you view it, based on the circumstances as you
17 saw, that he was intentionally evading giving the urine
18 sample?

19 THE WITNESS: That was my impression, yes.

20 THE COURT: And what was that impression based on?

21 THE WITNESS: Based on the fact that when I first
22 observed him and I felt as though he was covering up his
23 breath, and -- and then when I found out that the tox kits
24 were on board, and I told him whom I wanted to have the urine
25 tests conducted by, or for, then he ended up being last in

1 line. There was a reluctance to me. And then finally when he
2 said that he could not urinate.

3 THE COURT: So it's clear that the thrust here, Mr.
4 Cole, in my opinion, is to -- offer this evidence to show
5 reluctance or an intentional attempt by Captain Hazelwood to
6 evade giving the urine sample. Is that a fair
7 characterization of what it's being offered for?

8 MR. COLE: Yes.

9 THE COURT: Okay.

10 MR. COLE: Now, Mr. Madson has pointed out what he
11 believes to be the applicable part of this Burnett decision,
12 which is really the Ellison decision. And the language, he
13 says, in contrast, the admission of an individuals refusal to
14 consent to a legal search in one case may inhibit individuals
15 from exercising the right. Is this what you're --

16 MR. MADSON: No, no, it's not at all.

17 MR. COLE: That's what you pointed to right there.

18 MR. MADSON: Go on to the next sentence.

19 MR. COLE: Evidence -- therefore hold that evidence
20 of a refusal to consent to a search is inadmissible regardless
21 of the legality of the search.

22 Now, Judge, in a DWI, evidence that somebody resists
23 giving a breath sample is -- my experience has been that
24 that's admissible.

25 THE COURT: You have an implied consent law that

1 applies in DWI, Mr. Cole. It doesn't seem like that applies
2 in this case. Implied consent for motor vehicle operation on
3 the highway.

4 MR. COLE: The same law exists for the Coast Guard,
5 your Honor. There is a Coast Guard regulation that says if
6 you refuse, that evidence may be used against you. And that's
7 found in -- I don't have the section, but it's in the same
8 3395.

9 MR. MADSON: We'd be glad to find that, your Honor.
10 It says, may be used in an administrative proceeding. That's
11 all it can be used for.

12 MR. CHALOS: For license revocation or suspension
13 only.

14 THE COURT: How much longer do you expect this
15 witness will take? And I know there is going to be some
16 cross. Perhaps you can withhold this question and we can give
17 you an opportunity to do some research on it.

18 My inclination, Mr. Cole, is that this is a
19 legitimate objection that you should be prepared to meet at
20 some time, and if you want a ruling at this point, my ruling
21 would be to sustain the objection without prejudice, for you
22 to look at that case and maybe do some research on it and be
23 able to bring it up during redirect.

24 MR. MADSON: And for Mr. Cole's assistance, I would
25 cite 33 CFR Section 95.040, which makes it clear it can be

1 used only in an administrative license action, refusal, that
2 is.

3 MR. COLE: Does the Court mind if I just take these
4 two cites down real quick.

5 THE COURT: Sure, go ahead. I want to give you an
6 opportunity to meet this objection.

7 MR. COLE: I apologize for not being better
8 prepared, Judge.

9 (Pause.)

10 Judge, and I don't mean to question the Court, but I
11 would just like a little bit of clarification. May I ask Mr.
12 DeLozier if a sample was obtained at that time from Captain
13 Hazelwood and am I permitted to ask at a later time were you
14 able to obtain, without going into his impressions.

15 THE COURT: Do you wish to be heard?

16 MR. CHALOS: Your Honor, I think that that's the
17 same thing. It implies that there was some sort of reason why
18 the sample wasn't given earlier and I think the inference is
19 that perhaps Captain Hazelwood was unable or reluctant to
20 give. I think it goes into the same objection.

21 THE COURT: I don't see that there would be any harm
22 in keeping you away from that area entirely as to whether he
23 was able to get a sample at that time. You can go into when
24 he was able to get a sample, without an inference that Captain
25 Hazelwood refused, because that is the thrust of what you're

1 trying to get across here, is that he refused. And I want to
2 avoid that impression being given to the jury until we've had
3 an opportunity to argue this.

4 MR. COLE: I do need to ask him when he got samples
5 from the other crew members.

6 THE COURT: That's fine. I don't want the jury to
7 be left with any impression, though, that Captain Hazelwood
8 refused, because there is a -- there is a constitutional
9 privilege here that we're dealing with.

10 MR. COLE: I understand. Mr. DeLozier understands
11 that, I assume, now, too. We're only going to ask when you
12 got the samples from the three crew members, and then we're
13 going to go to the time period where you took the other
14 samples, the blood, and Captain Hazelwood's urine at that time

15 THE COURT: Think you're clear on that?

16 THE WITNESS: Yeah.

17 THE COURT: We'll get the jury back in.

18 Thank you.

19 (Whereupon, the jury entered the Courtroom.)

20 THE COURT: Mr. DeLozier, would you like a glass of
21 water?

22 THE WITNESS: No, thank you, sir.

23 BY MR. COLE: (Resuming)

24 Q Now Mr. DeLozier, you indicated you received urine
25 samples from the three crew members, is that correct?

1 A That's correct.

2 Q What time were those urine samples collected?

3 A I believe it was about 9:30.

4 Q What happened then -- what did you do then after --
5 no, let me rephrase that. Did you end up making another
6 phone call to the Coast Guard after collecting the urine
7 samples?

8 A No.

9 Q What did you do then after you collected the urine
10 samples?

11 A I stood by waiting for the medical technician to
12 come out so that he could draw blood samples.

13 Q And when did that occur?

14 A I believe it was about 10:00 o'clock or 10:30.

15 (Pause.)

16 Q Explain where you were when he came on board, when
17 you first heard that he was on board.

18 A Who was on board?

19 Q Mr. Conners.

20 A I was in the radio room. Mr. Conners walked past
21 the doorway to the radio room and I was surprised to see him,
22 because I did not expect him to show up. I expected probably
23 a local medical type person or a law enforcement type. And as
24 soon as I saw him I went out and greeted him and told him that
25 his purpose here was to draw blood samples off of the four

1 crew members that I designated and that we would start with
2 Captain Hazelwood.

3 Q Where did you go then?

4 A Into Captain Hazelwood's office.

5 Q And what happened? Was Captain Hazelwood in there?

6 A Yes, he was.

7 Q What happened when you asked him to give a blood
8 sample?

9 A Asked Captain Hazelwood to give a blood sample?

10 Q Uh-huh.

11 (Pause.)

12 Did he give a urine sample?

13 A When?

14 Q At that time?

15 A Yes, he did.

16 Q What happened? How did that occur at that time?

17 A Well, Petty Officer Conners and myself walked into
18 his office. I said, Captain, I said, this is Petty Officer
19 Conners. He's a medical technician and he is qualified to
20 draw blood samples. I said he is here for the purpose of
21 drawing the blood samples off of the four persons, and I said,
22 and we will start with you.

23 At that particular moment Captain Hazelwood stood
24 up, he grabbed the urine sample off the desk -- the urine
25 sample bottle, walked into the bathroom, I followed. And

1 well, he said, as he picked up the urine sample, he said,
2 well, I will give you a urine sample now. So he walked on
3 into the bathroom and provided the sample, came out, sealed up
4 the jar, and then he sat down and Petty Officer Connors
5 commenced to draw blood.

6 Q What time did that occur?

7 A I believe it was around 10:30, 10:45, somewhere in
8 that --

9 Q Where did you stay while these blood samples were
10 being taken?

11 A Right there in the office.

12 Q And you watched and observed them?

13 A Uh-huh.

14 Q And did you help Mr. Conner in packaging up the
15 material at all?

16 A Yes. I witnessed the -- the kits require that the
17 sample be drawn and that the sample bottles be sealed with a -
18 - with an adhesive seal, and each one of the seals have to be
19 dated and initialed and then witnessed and then I think there
20 is a record of all the samples that were taken which goes all
21 together in a box. Once all the samples were completed and
22 the appropriate initials and so forth was placed on them, and
23 the containers were sealed up and set aside.

24 Q Now, after -- did you have anything more to do with
25 the keeping possession of those samples that were drawn?

1 A After all the samples were complete and all the
2 boxes were sealed up. I then informed Petty Officer Conners
3 that he was directed to -- by me, to take possession of these
4 things and to leave them in his possession until they were
5 turned over to a proper custodian, which in turn would see to
6 it that they were taken to the lab to be analyzed.

7 Q Did you interview any of the crew members after
8 that?

9 A Yes, I did.

10 Q Would one of those people have been Greg Cousins?

11 A No.

12 Q When was he interviewed?

13 A He was interviewed before the tests were taken.

14 Q And at the conclusion of that interview, did you ask
15 him to take you up to the chart room and point out some
16 positions on the chart?

17 A Yes, I did.

18 Q Do you remember which chart that would have been?
19 Would it have been 16708?

20 A Yes.

21 (Pause.)

22 Q Did you ask him to point where he was instructed --
23 MR. COLE: Judge, may I inquire if the glare is --
24 if people can see with the glare?

25 THE COURT: Can you see it okay? We may not be

1 A After all the samples were complete and all the
2 boxes were sealed up. I then informed Petty Officer Conners
3 that he was directed to -- by me, to take possession of these
4 things and to leave them in his possession until they were
5 turned over to a proper custodian, which in turn would see to
6 it that they were taken to the lab to be analyzed.

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8 that?

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13 A He was interviewed before the tests were taken.

14 Q And at the conclusion of that interview, did you ask
15 him to take you up to the chart room and point out some
16 positions on the chart?

17 A Yes, I did.

18 Q Do you remember which chart that would have been?
19 Would it have been 16708?

20 A Yes.

21 (Pause.)

22 Q Did you ask him to point where he was instructed --
23 MR. COLE: Judge, may I inquire if the glare is --
24 if people can see with the glare?

25 THE COURT: Can you see it okay? We may not be

1 able to get the glare all the way off this. With the overlay
2 off, can you all see it now without a glare? Okay.

3 BY MR. COLE: (Resuming)

4 Q Where did he point on the chart?

5 MR. CHALOS: Objection, your Honor. Hearsay.

6 MR. COLE: I don't believe it's testimonial in
7 nature.

8 THE COURT: Objection sustained. It is testimonial
9 under 801. It's 801.A, Mr. Cole.

10 BY MR. COLE: (Resuming)

11 Q At some point did you ask Captain Hazelwood to come
12 up to the chart room?

13 A No. He was already up there.

14 Q Was he up there at the same time?

15 A The same time as Mr. Cousins?

16 Q Uh-huh.

17 A No.

18 Q Did you ask him to point out where he instructed Mr.
19 Cousins to turn?

20 A Did I ask Captain Hazelwood?

21 Q Yes.

22 A Could you rephrase that? Not rephrase it, restate
23 it?

24 Q Did you ask Captain Hazelwood to point out on that
25 chart where he instructed Mr. Cousins to turn the vessel that

1 evening?

2 A Yes.

3 Q And would you show the jury were on that chart he
4 pointed to?

5 A The 38 fathom mark just below the 55 fathom mark,
6 which is south of Busby Island light, right there.

7 Q And I am showing you what has been marked for
8 identification as -- already admitted as Plaintiff's Exhibit
9 Number 30 and Number 29. Do you recognize those photographs?

10 A Yes.

11 Q Now, these are photographs, are they not, of the
12 chart that you saw that morning?

13 A Of the navigational chart that was present in the
14 wheel house, is that what you're talking about?

15 Q Yes.

16 A Yes, they are.

17 Q And would you notice -- would you tell the jury --
18 would you point out to the jury on what has been marked as
19 Plaintiff's Exhibit Number 30, which 38 fathom mark Captain
20 Hazelwood pointed to?

21 A It's this one right here with the circle around it.

22 Q And is that where the scratch mark is also?

23 A Yes; yes.

24 Q And did Captain Hazelwood take a pencil -- how did
25 he mark it?

1 A He marked it with a lead pencil.

2 Q And is that circle area the pencil mark that he
3 placed there?

4 A Yes.

5 Q Now, after this was done, or during the course of
6 your investigation, did you seize any documents per the Coast
7 Guard?

8 A Yes.

9 Q And I am showing you what has been marked for
10 identification as Plaintiff's Exhibit Number 93. Do you
11 recognize that document?

12 A Yes.

13 Q What is that?

14 A It is a copy of Captain Hazelwood's Coast Guard
15 license.

16 Q And is that a fair and accurate copy of the license
17 that you saw on board the Exxon Valdez that morning?

18 A Yes.

19 MR. COLE: I would move for the admission of what
20 has been identified as Plaintiff's Exhibit Number 93.

21 MR. CHALOS: No objection.

22 THE COURT: It's admitted.

23 (State's Exhibit Number 93
24 was admitted in evidence.)

25 BY MR. COLE: (Resuming)

1 Q Where did you get that exhibit? Where did you see
2 that exhibit?

3 A It was posted under glass outside of Captain
4 Hazelwood's office. I asked him to provide me copies of all
5 the licensed officers on board and sometime during that day or
6 the following day, he provided the -- these to me.

7 Q And would you read the second and third lines of
8 that license to the jury, please?

9 A This section here?

10 Q Yes.

11 MR. CHALOS: Your Honor, I am going to object. The
12 document speaks for itself.

13 THE COURT: Objection overruled.

14 BY MR. COLE: (Resuming)

15 Q Go ahead.

16 A Starting with first?

17 Q Uh-huh.

18 A First class pilot of steam or motor vessels of any
19 gross tons upon the waters of Prince William Sound from
20 Hinchinbrook entrance to Rocky Point, Alaska.

21 Q Thank you.

22 Now, did you, in the course of your investigation
23 seize a bell logger from the Exxon Valdez?

24 A Yes, I did.

25 Q And is Plaintiff's Exhibit Number 3 that bell logger

1 that you seized?

2 A This is a copy of it, yes.

3 Q And I am showing you what has been marked for
4 identification as Plaintiff's Exhibit Number 92. Do you
5 recognize that document?

6 A This one?

7 Q Yes.

8 A Yes.

9 Q What is that?

10 A That's a copy of this.

11 Q Is there any difference between that copy and that
12 copy that you have? Let me withdraw that. Is this an
13 accurate representation of that copy less the stamp overlaying
14 the numbers?

15 A And the written in --

16 Q Up on top?

17 A On top.

18 Q But the numbers on the 24th are accurate?

19 (Pause.)

20 A Yes, it's the same.

21 MR. COLE: I would move for the admission of what's
22 been identified as Plaintiff's Exhibit Number 92.

23 MR. CHALOS: No objection.

24 THE COURT: Admitted.

25 (Pause.)

1 BY MR. COLE: (Resuming)

2 Q And the samples that were taken of the -- the blood
3 samples that were taken of the crew members, were those all
4 taken after Captain Hazelwood?

5 A After Captain Hazelwood's blood sample?

6 Q Was drawn?

7 A Yes.

8 Q Now in the course of this investigation did you open
9 up a bottle or a can of Moussey?

10 A Open it up?

11 Q Yeah.

12 A No. Oh, subsequent to or during the investigation?

13 Q Yeah. During the investigation at all?

14 A Yeah, I believe I did.

15 Q Why did you do that?

16 A I believe I did it a few weeks after the casualty,
17 and I was trying to determine along with another person what
18 it smelled like. I think we were curious.

19 MR. COLE: Judge, I have nothing further.

20 CROSS EXAMINATION

21 BY MR. CHALOS:

22 Q Good afternoon, Mr. DeLozier.

23 A Good afternoon.

24 Q Sir, what documents did you review before coming
25 here today?

1 A I reviewed a transcript of the tape interview that I
2 did with Captain Hazelwood on the 24th of March, 1989. I
3 reviewed the interview -- not interview, but the questioning
4 that i participated in of the National Transportation Safety
5 Board open hearing.

6 Q That's your testimony you mean?

7 A My testimony, uh-huh.

8 I saw copies of the exhibits that you just posed to
9 me here. I believe there was another interview that I did
10 also. Oh, it was an interview with State Trooper Paul Burke.

11 Q You were recently interviewed by State Trooper
12 Stogsdill? Do you recall that?

13 A No.

14 Q You don't recall being interviewed by State Trooper
15 Stogsdill?

16 A Interviewed?

17 Q Yes.

18 A Recently?

19 Q Yes.

20 You don't recall on February 1st, 1990, being
21 interviewed by Mr. Stogsdill at the DA's office?

22 A I talked to him.

23 Q What do you mean you talked to him?

24 A He called me in and he talked to me. I didn't
25 believe it was an interview.

1 Q Let's not fight about semantics. You do recall
2 speaking with the State Trooper, do you not?

3 A I talked with him, yes, sir.

4 Q And you covered basically the testimony that you
5 gave here today?

6 A Not -- somewhat, yeah.

7 Q Did you cover the events of your participation in
8 the investigation of the grounding?

9 A Ever so briefly.

10 Q Let me ask you this, Mr. DeLozier, do you hold any
11 merchant mariners licenses?

12 A Document.

13 Q What document?

14 A Merchant Mariners Document.

15 Q Which one?

16 A The Z card.

17 Q Is it for ordinary seamen?

18 A Tankerman.

19 Q Tankerman?

20 A Uh-huh.

21 Q You don't hold an AB's ticket?

22 A No.

23 Q You don't hold a third mate's license?

24 A That's correct.

25 Q You don't hold any mate's license, is that right?

1 A None whatsoever.

2 Q And you haven't sailed, have you, as a merchant
3 mariner?

4 A About sixteen years in the Coast Guard.

5 Q In the course of the Coast Guard, have you ever been
6 on cargo ships?

7 A The Coast Guard does not have cargo ships.

8 Q Right. Have you ever been on a --

9 MR. COLE: Objection, your Honor. I object to Mr.
10 Chalos's comment on the witnesses statement.

11 MR. CHALOS: I'll be careful in the future on that.

12 BY MR. CHALOS: (Resuming)

13 Q I take it you have never sailed on a tanker?

14 A You take it wrong.

15 Q You have sailed on tankers?

16 A Yes.

17 Q When?

18 A Port Arthur, Texas.

19 Q When?

20 A In 1983.

21 Q For how long?

22 A Just a few days.

23 Q Now, one of the documents that you seized from the
24 Exxon Valdez was a crew list, was it not?

25 A That's correct.

1 Q Do you recall the number of crew members on the ship
2 at the time of the casualty?

3 A At the time of the casualty I recalled; right now I
4 don't.

5 Q Whatever number that was would be on the crew list,
6 am I correct?

7 A I believe you're correct.

8 Q Incidentally, the company that you work for
9 presently, is that owned by Alyeska?

10 A No.

11 Q It's not?

12 A No.

13 Q Are you contracted to Alyeska?

14 MR. COLE: Objection; relevance.

15 THE WITNESS: No, I am not.

16 BY MR. CHALOS: (Resuming)

17 Q I mean your company?

18 MR. COLE: Objection.

19 THE WITNESS: I don't know.

20 THE COURT: Just a minute, Mr. DeLozier. When you
21 hear an objection, just don't answer.

22 THE WITNESS: Oh, okay; sorry.

23 MR. CHALOS: Your Honor, I am only asking this as
24 background.

25 THE COURT: Will counsel approach.

1 (An off the record bench conference was had.)

2 BY MR. CHALOS: (Resuming)

3 Q Mr. DeLozier, is your company contracted to Alyeska?

4 A I don't know.

5 Q Mr. DeLozier, the Coast Guard initially started the
6 investigation into the grounding, did they not? I mean, they
7 were the first governmental agency assigned to the
8 investigation?

9 A That's correct.

10 Q And within a day or so the Coast Guard was relieved
11 of responsibilities, were they not?

12 A I don't know that to be a fact.

13 Q Do you remember testifying or giving a statement to
14 the State Troopers that you -- your particular involvement was
15 turned over to the NTSB within a day of the grounding?

16 A The Coast Guard has the prime jurisdiction to
17 investigation all marine casualties. This particular casualty
18 was serious enough to require the Commandant of the Coast
19 Guard to turn over the investigation to the NTSB. I was
20 directed to assist in any way possible.

21 Q Do you know whether the reason --

22 MR. COLE: Objection.

23 MR. CHALOS: I'm sorry.

24 BY MR. CHALOS: (Resuming)

25 Q Do you know what the reason was for the NTSB taking

1 over the investigation?

2 MR. COLE: Objection; relevance.

3 MR. CHALOS: You Honor, this goes to the area that
4 we covered with the watch standers. If you recall about the
5 possibility that --

6 THE COURT: All right, I'll let you explore it for a
7 few questions, just a couple of questions. If you don't get
8 there then you'll have to move on.

9 BY MR. CHALOS: (Resuming)

10 Q Do you remember my question?

11 A No, would you repeat it?

12 Q Yes.

13 Do you know the reason why the NTSB was put in
14 charge of the investigation?

15 A I don't know the reason, no.

16 Q Has -- strike that.

17 Did you ever learn that the reason was because of
18 the possible involvement of the Coast Guard involvement of the
19 Coast Guard in the grounding as being the reason for the NTSB
20 taking over?

21 MR. COLE: Your Honor, may we approach the Bench?

22 THE COURT: You've got an objection?

23 MR. COLE: Yes.

24 THE COURT: Okay. He already answered he didn't
25 know and I'm going to sustain the objection. Go on to another

1 area at this time.

2 BY MR. CHALOS: (Resuming)

3 Q Mr. DeLozier, in response to Mr. Cole's question,
4 you said you didn't know if you were on duty on the evening of
5 the 23rd, you didn't believe you were. You recall that?

6 A Uh-huh.

7 Q Are there logs at the Coast Guard base that would
8 tell us whether you were on duty or not?

9 A There was a watch list that's printed, yeah.

10 Q Does the Coast Guard maintain that watch list for a
11 period of time?

12 A Not to my knowledge.

13 Q If we were to -- are there any records that we could
14 check to find out whether you were on duty on the evening of
15 the 23rd?

16 A It's possible.

17 Q Do you recall whether you were on duty or not?

18 A No, I don't specifically recall whether I was
19 actually the duty investigator on that particular day; no, I
20 don't.

21 Q Now, you told us that on the evening of the 23rd you
22 were in the Pipeline Club around 8:00 o'clock?

23 A Uh-huh.

24 Q Is that the time you arrived, about 8:00 o'clock?

25 A I said about 8:00 o'clock, uh-huh.

1 Q And you had what to drink?

2 A Two Miller Lites.

3 Q You remember that distinctly, that it was two Miller
4 Lites.

5 A That's what I said.

6 Q Could it have been more?

7 A Nope.

8 Q How do you remember that it was two?

9 A Because I counted them.

10 Q You were keeping track of how much you drank?

11 A Uh-huh.

12 Q Are you a frequent visitor to the Pipeline Club?

13 A Yes.

14 Q You drink when you go there?

15 A Occasionally.

16 Q Now, you say you left about what time?

17 A Left where?

18 Q The Pipeline Club.

19 A I left at about 10:00 o'clock.

20 Q So in two hours time you had two beers?

21 A Two beers, that's right.

22 Q Did you discuss your wife's testimony with her
23 before you came here today?

24 A No.

25 Q You had no discussions at all?

1 A No.

2 Q If your wife testified that she -- you left alone, I
3 take it?

4 A Uh-huh.

5 Q If your wife testified that she left with you --

6 A Uh-huh.

7 Q -- together --

8 A Uh-huh.

9 Q -- at 10:30, would she be mistaken?

10 A Yes.

11 Q Now, do you remember testifying before the NTSB back
12 in mid-May?

13 A Yes.

14 Q Do you remember being asked where you were at the
15 time that you received the call from the Coast Guard base?

16 A You mean at the time of the casualty?

17 Q Yes.

18 A Do I remember where I was?

19 Q No, do you remember being asked the question, where
20 you were -- were you at the time that you got the call from
21 the Coast Guard base?

22 A I believe so, yes.

23 Q And you said you were home in bed, you remember
24 that?

25 A Yeah.

1 Q And they asked you how long had you been in bed.

2 A Uh-huh.

3 Q And do you remember your answer?

4 A No, I don't.

5 Q You said four hours.

6 So if you got called at 12:30 --

7 A Uh-huh.

8 Q -- if you were in bed for four hours, you would have
9 bene in bed by 8:30, wouldn't you?

10 A That computes, uh-huh.

11 Q So when you told them you were in bed for four
12 hours, that wasn't true?

13 A Well, did I say about four hours or did I say
14 precisely four hours or did I say around four hours?

15 Q Well, I can tell you exactly what you said.

16 (Pause.)

17 It's page 667, your Honor, of the NTSB testimony.
18 You can look over my shoulder.

19 MR. COLE: The official transcript or the
20 unofficial?

21 MR. CHALOS: Well, I think -- the Midnight Sun Court
22 Reporters transcript. But you can follow along with me.

23 BY MR. CHALOS: (Resuming)

24 Q You remember being asked this question: Mr.
25 DeLozier, where were you when you got the call to come -- to

1 go out to the Valdez?

2 Answer: I was home in bed.

3 Question: How much sleep had you had at that point
4 when you were -- when you got called?

5 Answer: I had approximately -- one zero zero --
6 four hours maybe.

7 Do you remember that?

8 A Well, I remember the testimony, yeah. I don't
9 remember it verbatim.

10 Q You never told the NTSB, did you, that you had been
11 out that night in a bar drinking?

12 A I only answered the questions that they asked
13 questions to.

14 Q If your wife said in her testimony that you arrived
15 home somewhere between 10:30 and 11:00 o'clock, that would be
16 a mistake, would it not?

17 MR. COLE: Judge, asked and answered.

18 THE COURT: Objection overruled.

19 THE WITNESS: Say again?

20 BY MR. CHALOS: (Resuming)

21 Q If your wife testified under oath that you got home
22 somewhere between 10:30 and 11:00 o'clock that night, you are
23 saying that would be a mistake?

24 A No, she said what she said.

25 Q Well, that's not correct, though.

1 A That's her opinion, that's her recollection of what
2 she remembers.

3 Q I see.

4 But based on your recollection, that's not correct?

5 A That's correct.

6 Q Now do you remember telling State Trooper Stogsdill
7 that you thought you saw Captain Hazelwood in the Pipeline
8 Club around 8:00 o'clock the night of the 23rd?

9 A Uh-huh.

10 Q Is that correct?

11 A Is that correct what?

12 Q That he was in there at 8:00 o'clock?

13 MR. COLE: Judge, I would ask that Mr. Chalos be
14 required to read the whole thing under rule 106.

15 MR. CHALOS: All right.

16 I will read, your Honor, from the notes.

17 MR. COLE: If he asking -- I think he first has to
18 ask the proper foundation questions. If he is using that as
19 impeachment, he has to give the witness an opportunity to look
20 at it, to explain it. If he is using it to refresh his
21 recollection, he needs to show it to him. But he cannot just
22 read this into the record.

23 THE COURT: It's hearsay the way you're doing it,
24 Mr. Chalos.

25 MR. CHALOS: Yes, your Honor. I'll read it from

1 here.

2 THE COURT: You have to ask him first of all if he
3 saw Captain Hazelwood in there and if he says yes, then you
4 don't get to use that under any circumstances. If he says no,
5 then you might be able to use that. But there's no
6 foundational question. That question wasn't asked by Mr.
7 Cole, that I recall, nor by you so far.

8 MR. CHALOS: I'll withdraw the question.

9 THE COURT: Okay.

10 BY MR. CHALOS: (Resuming)

11 Q Mr. DeLozier, I'd like to switch gears now and get
12 you on that pilot boat going out to the ship. Do you remember
13 the visibility that night?

14 A Uh-huh.

15 Q What was the visibility?

16 A Where?

17 Q Going out to the ship?

18 A Where?

19 Q Around the ship?

20 A Around the ship? Appeared to me like it was about
21 ten miles.

22 Q I believe you have also previously said that you
23 didn't see any ice around the ship, is that correct?

24 A When did I say this?

25 MR. COLE: Objection; objection. I object to him

1 saying that.

2 MR. CHALOS: All right, let me -- I'll rephrase it.

3 THE COURT: His objection as to the form of the
4 question is sustained.

5 MR. CHALOS: I'll rephrase it.

6 BY MR. CHALOS: (Resuming)

7 Q When you were going out to the ship, did you see any
8 ice?

9 A Yes, going out to the ship I did see ice.

10 Q What -- how far north of the ship did you see the
11 ice?

12 A We encountered ice at the entrance to Tititlett
13 Narrows.

14 Q Would you point to that on the chart, please?

15 A It was out in this area.

16 Q And where was the ship at the time?

17 A The ship was on Bligh Reef.

18 Q Well, would you point to that for the jury?

19 Did you see any ice at all around the ship?

20 A When we were approaching?

21 Q Yes.

22 A No, I did not.

23 Q Now, when you got to the ship about, I think you
24 said 3:40 in the morning, were the engines stopped?

25 A Engine?

1 Q Engines?

2 A Engines? To my knowledge they only had one engine,
3 main engine.

4 Q Was it stopped?

5 A I didn't go down and physically look at it, but I
6 assume it was. I did see any sidewash.

7 Q Could you see any propwash?

8 A No, I did not.

9 Q Was the vessel hard aground at this point?

10 A I take it to be hard aground.

11 Q Did you notice the vessel listing slightly to
12 starboard when you got on board?

13 A Not at that time, no.

14 Q With respect to the fumes that you smelled, you said
15 there was a heavy concentration of fumes. Do you recall that?

16 A Uh-huh.

17 Q Where was that?

18 A Where was it?

19 Q Yeah, that you smelled the heavy concentration of
20 fumes.

21 A All over.

22 Q Down at the water line?

23 A Uh-huh.

24 Q Going up the gangway?

25 A Uh-huh.

1 Q In the house?

2 A Uh-huh.

3 Q Up on the bridge?

4 A Yes.

5 Q Heavy concentrations of fumes on the bridge?

6 A Not as heavy as it was closer to the surface of the
7 water, but there was fumes present.

8 Q Did it affect your sense of smell at that point?

9 A Not at all.

10 Q Now, when you got on board, did you got directly to
11 the bridge?

12 A I think I already described my efforts in getting up
13 on the ship. Do you want me to repeat that?

14 Q Yes, please.

15 A I went up the starboard ladder, crossed the main
16 deck, over the cargo piping, down the port side into the
17 house, up the elevator, up to the captain's deck, and then up
18 into the wheelhouse.

19 Q And that's where you saw Captain Hazelwood?

20 A That's where he was standing.

21 Q For the first time?

22 A That's right.

23 Q You didn't see him in any passageways down below
24 anywhere did you, as you were going up?

25 A No, because he was up in the wheelhouse.

1 Q Right.

2 MR. COLE: Objection, your Honor.

3 MR. CHALOS: I'm sorry, Mr. Cole.

4 BY MR. CHALOS: (Resuming)

5 Q Now, Mr. Lawn was with you along with Commander
6 Falkenstein, am I correct?

7 A Mr. Lawn?

8 Q Lawn?

9 A Yes.

10 Q And all three of you approached the Captain on the
11 bridge?

12 A Yes.

13 Q And the Captain was standing off to the port side of
14 the bridge, you say?

15 A Yes.

16 Q And did all three of you go close to him at that
17 time?

18 A I think Dan Lawn stayed back a few paces.

19 Q And it was then that you smelled what you said was a
20 strong smell of alcohol?

21 A Within about the first five minutes.

22 Q And it was at that point that you saw Captain
23 Hazelwood with his hand over his mouth?

24 MR. CHALOS: Your Honor, may I approach the witness,
25 please?

1 THE COURT: Yes, sir.

2 BY MR. CHALOS: (Resuming)

3 Q And you took the action of putting his hand over his
4 mouth as an attempt on his part to somehow hide the fact that
5 he might have had alcohol, is that right?

6 A That's correct.

7 Q I want to show you a series of photographs which we
8 marked as Defendant's Exhibit L, M, N, and O for
9 identification, and ask you do you recognize these pictures as
10 pictures of Captain Hazelwood?

11 MR. CHALOS: Your Honor, I offer these pictures into
12 evidence at this time.

13 MR. COLE: I don't have any objection.

14 THE COURT: All right, they are admitted, L, M, N,
15 and O.

16 (Defendant's Exhibit Numbers
17 L, M, N, and O were received as
18 evidence.)

19 BY MR. CHALOS: (Resuming)

20 Q Mr. DeLozier, when Captain Hazelwood was covering
21 his mouth, was he using the two finger cover-up?

22 A No.

23 Q Was -- this is a two finger and a hand cover-up,
24 Exhibit L.

25 A Umm.

1 Q Was he using just the two finger cover-up, Exhibit
2 N?

3 A No.

4 Q Was he using perhaps the one finger cover-up,
5 Exhibit O?

6 A No.

7 Q Was he using the hand cover-up, M?

8 A Similar.

9 Q Did it ever occur to you, Mr. DeLozier, that perhaps
10 the covering of Captain Hazelwood's mouth is a habit rather
11 than an attempt to conceal alcohol?

12 A I didn't think about that at the time.

13 Q How about now?

14 MR. COLE: Objection; relevance.

15 BY MR. CHALOS: (Resuming)

16 Q You think maybe it's a habit?

17 THE COURT: Objection overruled.

18 THE WITNESS: Do I think it is a habit? I don't
19 have any opinion at all.

20 BY MR. CHALOS: (Resuming)

21 Q Mr. DeLozier, when you say you smelled alcohol on
22 Captain Hazelwood's breath, are you sure you weren't smelling
23 your own breath?

24 A One hundred percent sure.

25 Q But you had been drinking?

1 A I had two Miller Lites.

2 Q That beer, I take it, from your experience, lingers
3 on the breath, does it not?

4 A Sometimes.

5 Q Now, you say after that you called Commander
6 Falkenstein to the bridge wing?

7 A Starboard bridge wing.

8 Q To the starboard bridge wing. To tell him about
9 what you had just smelled, is that right?

10 A Observed.

11 Q Was it you telling him that I think I smell alcohol
12 on this guys breath?

13 A No, I asked him if he smelled what I smelled.

14 Q Just stepping back for a moment, you say that when
15 you came up on the ship, you saw several patches of oil on the
16 deck, you remember that?

17 A Uh-huh.

18 Q You didn't mention that fact to any of the
19 interviewers, State Troopers, or the NTSB before have you?

20 A Sure have.

21 MR. COLE: Objection.

22 MR. CHALOS: I'll withdraw the question.

23 THE COURT: The question has been withdrawn.

24 MR. CHALOS: Your Honor, I have a special request
25 from Mr. Madson for a break, with the Court's permission.

1 THE COURT: Sure; sure. We'll take a break, ladies
2 and gentlemen. I'm going to let you go at 3:30 one way or the
3 other, so you can plan on that. In the meantime, don't
4 discuss this case among yourselves or with any other person
5 and don't form or express any opinions, and I'll take up
6 matter with counsel after you've taken your break, Mr. Madson.

7 (Whereupon, the jury left the Courtroom.)

8 THE CLERK: Please rise. This Court stands in
9 recess subject to call.

10 (The Court stood in recess from 2:37 o'clock p.m. un
11 til 2:47 o'clock p.m.)

12 THE COURT: You may be seated.

13 Let's take up the evidence matter now. Mr. Cole,
14 are you ready to go? I think you're getting close to the end
15 of this witness, and this is as good a time as any.

16 MR. COLE: I'm not going to go into it.

17 THE COURT: Okay. You're not going to ask the
18 question whether Captain Hazelwood could or could not. This
19 is the urine sample.

20 MR. COLE: Right.

21 THE COURT: Okay.

22 MR. COLE: I would like to ask when he was placed on
23 notice that he was going to have to give a sample. I think
24 that is important and I don't think that in any way affects
25 the privilege. But I do think that that's important for

1 relevance purposes to show that a person who is placed on
2 notice that he is going to have to give one would not have
3 anything to drink.

4 THE COURT: No, that's not going to come in. You
5 got as much out on that as you're going to. And in case you
6 change your mind, I am going to rule in favor of the defendant
7 on this. And I am not going to go into the constitutional
8 reasons, but I don't know how this witness can give an opinion
9 whether or not Captain Hazelwood saying I can't give one is
10 the same as I won't give one. It is not like a blood sample
11 where you can take one involuntary. If you can't go, you
12 can't go, and I think there is a real problem with the
13 probative value on that being outweighed by its undue
14 prejudicial effect.

15 So are we ready for the jury now?

16 MR. COLE: Ready.

17 THE COURT: Okay. Let's go.

18 (Whereupon, the jury enters the Courtroom.)

19 THE COURT: Are we going to finish up with this
20 witness today?

21 MR. CHALOS: We're going until 3:30, your Honor?

22 THE COURT: 3:30.

23 MR. CHALOS: I'm going to do my best.

24 THE COURT: Okay.

25 (Pause.)

1 THE COURT: Thank you. Mr. Chalos?

2 BY MR. CHALOS: (Resuming)

3 Q Mr. DeLozier, in response to Mr. Cole, you said the
4 only sign of intoxication that you saw around 3:40, 3:45, was
5 the smell of alcohol, am I correct?

6 A That's correct.

7 Q When you came out of the Pipeline Club after having
8 two beers, did you consider yourself intoxicated?

9 A None whatsoever.

10 Q In your opinion, if someone smelled your breath at
11 that time, would they smell the beer on your breath?

12 A Probably.

13 Q Now, did you see any signs on impairment on Captain
14 Hazelwood? Was he slurring his speech? Were his movements
15 unsteady?

16 A No.

17 Q Was Captain Hazelwood issuing orders during the time
18 that you saw him on the bridge?

19 A No.

20 Q Now, your job and Mr. Falkenstein's job when you
21 went out to the ship was to ensure the safety of -- of the
22 crew's life, was it not?

23 A Somewhat.

24 Q And also to make sure that the safety of the ship
25 was looked after?

1 A Somewhat.

2 Q If you believed that the Captain was impaired or
3 intoxicated, you had the authority to relieve him, did you
4 not? When I say you, I am talking now about the Coast Guard?

5 A Coast Guard, yes.

6 Q And the Coast Guard being you and Mr. Falkenstein at
7 that time?

8 A That's right.

9 Q But you didn't take any such action, did you?

10 A The vessel was aground; it wasn't going anywhere.

11 Q I take it then you didn't think there was any
12 impending danger then?

13 A There was impending danger to the vessel in my
14 opinion.

15 Q But you didn't relieve Captain Hazelwood?

16 A He wasn't doing anything.

17 Q He was still the captain of the ship, was he not?

18 A Yes, but he wasn't contributing much.

19 Q I take it the Coast Guard didn't take command of the
20 ship when you came on board?

21 A That's correct.

22 Q So Captain Hazelwood was still in charge?

23 A Still the master.

24 Q And the captain gave you no reason to believe that
25 he was incapable of carrying out his duties as a captain, did

1 he?

2 A Only for the fact that I smelled alcohol on his
3 breath.

4 Q Other than that, you had no reason to believe that
5 he was incapable of carrying out his duties?

6 A That's correct.

7 Q Now, you say that Captain Hazelwood asked you if he
8 could go below for about an hour or so to take a nap, is that
9 right, about 5:00 o'clock in the morning?

10 A Somewhere about that time.

11 Q And he did leave for about an hour you say?

12 A Yes.

13 Q Had you searched his room prior to his going down
14 there to take a nap?

15 A No.

16 Q Had you told him that you suspected him of having
17 been drinking at that time?

18 A No.

19 Q Did you tell him that you wanted to do any alcohol
20 test on him or the crew?

21 A No.

22 Q Is there a particular reason why you didn't say
23 anything to him then?

24 A Yes.

25 Q What was the reason?

1 A I didn't want to alarm their suspicion, possibly try
2 to do something before we were able to actually complete a
3 test?

4 Q What would he do at that point in time?

5 A Barf.

6 Q What was that?

7 A Probably go in the bathroom, barf, wash his mouth
8 out or --

9 Q And you think that would have affected his blood
10 alcohol level?

11 A It's possible.

12 Q Do you have any training in blood alcohol readings?

13 A No.

14 Q Now, I take it you don't know what Captain Hazelwood
15 did in his cabin at that point in time?

16 A He said he was going in there to take a nap.

17 Q Other than what he told you, you don't know what
18 else he might have done?

19 A That's correct.

20 Q Now, is there a particular reason why you didn't
21 search the captain's cabin before he went down to take a nap?

22 A Uh-huh.

23 Q What's the reason?

24 A I don't know of any laws on the books that says you
25 can't have alcohol on a vessel.

1 Q In fact, alcohol under the Coast Guard regulations,
2 is permitted on board vessels, are they not?

3 A No, I didn't say it was permitted. I said I don't
4 know of any laws that says that they cannot have it on board.

5 Q So if he had alcohol on board the vessel, he would
6 not be in violation of any Coast Guard regulations?

7 A If he consumed alcohol and if he had an blood
8 alcohol content above .04 then --

9 MR. CHALOS: Your Honor, I move to strike. Non-
10 responsive to my question.

11 THE COURT: Mr. DeLozier, did you not understand the
12 question? If you don't understand the question, tell him you
13 don't understand it, but don't go beyond the scope of the
14 question.

15 THE WITNESS: Repeat the question.

16 BY MR. CHALOS: (Resuming)

17 Q The question is that if Captain Hazelwood had
18 alcohol on board the vessel in his cabin, that would not be in
19 violation of any Coast Guard regulations, would it?

20 A That's correct.

21 Q Now, Trooper -- let me take that back; I don't think
22 he's a Trooper.

23 Fish and Wildlife -- is he a Trooper? Officer --
24 Mr. Fox came on board about 6:30?

25 A Somewhere about that.

1 Q Was the Captain back on the bridge by now?

2 A I believe he was getting up at about that time.

3 Q When -- I believe that you said that you saw Trooper
4 Fox or Game Warden Fox on the bridge?

5 A Uh-huh.

6 Q And he thought he was coming on board to wrestle a
7 drunk, is that right?

8 A To take care of an unruly drunk, right.

9 Q Does that in anyway refresh your recollection as to
10 where the Captain was? Was he there when Fox came on board?

11 A He wasn't present when I was in person with Mr. Fox.

12 Q Now, did Mr. Fox -- strike that, we'll go back.

13 You had -- or Mr. Falkenstein had called for someone
14 to come out with a breathalyzer kit, is that right?

15 A Uh-huh.

16 Q And when Mr. Fox showed up, he didn't have such a
17 kit?

18 A That's correct.

19 Q All he came out with was his handcuffs, I take it,
20 and a billy club?

21 A And his pistol.

22 Q And his pistol.

23 Now, did Mr. Fox suggest to you that there may be
24 some tests you could do short of the breathalyzer test?

25 A Short of the breathalyzer test?

1 Q Yeah, he didn't have a breathalyzer with him. Did
2 he suggest any sort of sobriety test that could be done?

3 A Yeah, he said he could do a field sobriety test.

4 Q Are you familiar with a field sobriety test?

5 A Yes.

6 Q What does that involve?

7 A Walking a straight line, hand-eye coordination --

8 Q Touching your nose?

9 A Yes.

10 Q Counting backwards?

11 A Uh-huh.

12 Q Walking backwards?

13 A Uh-huh.

14 Q You -- when Mr. Fox suggested that test, what did
15 you say?

16 A I said I didn't think that would be useful.

17 Q And the reason for that was because you thought
18 Captain Hazelwood would pass that test, did you not?

19 A No, I didn't think it would be useful. Because in
20 order for him to be in violation of our regulations, which
21 would be .04, I think we were approaching the time frame in
22 which his blood alcohol level was probably low enough were any
23 type of hand-eye coordination test would not be useful at all.

24 Q Well, how would you know that? You didn't know the
25 last time he drank, did you?

1 A No, I didn't know when he drank.

2 Q I mean he could have drank in his cabin when he went
3 down below, right?

4 A I didn't know that he drank at all.

5 Q Except for the smell of alcohol?

6 A That's right.

7 Q So you suspected he was drinking?

8 A I suspected he was --

9 Q And you didn't know when he had his last drink?

10 A That's right; I didn't know whether he had one at
11 all.

12 Q Do you remember when you were asked these questions
13 at the NTSB you said that the reason you didn't do the field
14 sobriety test was because Captain Hazelwood's hand-eye
15 coordination was good at that time, based on your
16 observations?

17 A I don't recall that, but I do recall, you know, the
18 --

19 MR. COLE: I'd like to see that statement before he
20 impeaches the witness.

21 MR. CHALOS: Shall I read the question and answer
22 into the record, your Honor?

23 THE COURT: Just a minute, please. Just a moment.

24 MR. CHALOS: Question: --

25 THE COURT: Just a minute, please.

1 (Pause.)

2 MR. COLE: Judge, can we approach the Bench?

3 THE COURT: All right.

4 (An off the record bench conference was had.)

5 MR. CHALOS: Your Honor, I'll withdraw my previous
6 question.

7 THE COURT: All right.

8 BY MR. CHALOS: (Resuming)

9 Q Mr. DeLozier, was there anything in Captain
10 Hazelwood's behavior at the time Mr. Fox suggested the field
11 sobriety test that would lead you to believe that he wouldn't
12 be able to pass that test?

13 A No.

14 Q Did Mr. Fox make any suggestions to you --

15 MR. COLE: Objection; hearsay.

16 THE COURT: Before you answer the question, let's
17 hear all the question. But don't answer it, Mr. DeLozier.
18 We'll see.

19 MR. CHALOS: If I may rephrase it, your Honor, I'll
20 withdraw it and start another question.

21 THE COURT: All right.

22 BY MR. CHALOS: (Resuming)

23 Q Was there any suggestion made by anyone that a blood
24 test rather than a breathalyzer test be taken?

25 A Yes.

1 Q Who made that suggestion?

2 A Mr. Fox made that suggestion.

3 Q Did you and Mr. Fox discuss the possibility of
4 taking Captain Hazelwood into town to have a test performed?

5 A Yes.

6 Q Who suggested that?

7 A I don't recall specifically who suggested it.

8 Q Was there any reason why that wasn't done?

9 A Yes. After we conferred with Mr. Falkenstein and
10 then a conference with Commander McCall, it was being
11 considered as an alternative. But it turns out that we were
12 able to get someone out before we had to actually remove him.

13 Q Did you know that at that time there were people in
14 the local hospital who could perform blood tests if one was
15 required?

16 A Yes.

17 Q Was there any thought given to taking Captain
18 Hazelwood off the ship at that time and bringing him to the
19 hospital to do a blood test?

20 A Yes.

21 Q Why was -- why wasn't that done?

22 A Couldn't get a taxicab out there.

23 Q Taxi to what?

24 A Out to the vessel.

25 Q Weren't there pilot vessels standing by?

1 A Yes.

2 Q Why wasn't one of the pilot boats used to bring you
3 back to Valdez?

4 A Probably because they were dirty.

5 Q Your -- you came out on which boat?

6 A Silver Bullet.

7 Q And that was maintained off to the side of the ship,
8 wasn't it?

9 A I don't recall. I believe she went back in.

10 Q What would have been the problem with one of the --
11 one of the boats going back to the harbor?

12 A Probably wouldn't have been no problem. It was
13 considered.

14 Q But not done?

15 A No, it wasn't done.

16 (Pause.)

17 Q The night before the 24th, you had been out drinking
18 with Scott Conner, did you not?

19 A No, I wasn't out drinking with Scott Conners.

20 Q You weren't drinking with Mr. Conner?

21 A No, I was not out drinking with Scott Conners.

22 Q Did you see him at the Pipeline Club that night?

23 A Yes, I did see him at the Pipeline Club.

24 Q Did he buy you a beer?

25 A Yes.

1 Q He did?

2 A Yes.

3 Q But you don't consider having been out with Mr.
4 Conners then?

5 A I didn't specifically go out with Mr. Conners. Mr.
6 Conners came in while I was already there. He was selling his
7 dart supplies.

8 Q At 5:30 in the morning, I take it, you knew that Mr.
9 Conner was in town, did you not?

10 A Yes.

11 Q Why didn't you consider bringing him out to the ship
12 at the point to do a blood test?

13 A He's not a regularly assigned person from that
14 station.

15 Q But you knew he was in town?

16 A I didn't know if he was still in town or not.

17 Q Are there any flights that leave Valdez after, let's
18 say, 10:00 o'clock at night?

19 A I don't keep track of the flights.

20 Q Are there any flights that leave before 5:00 o'clock
21 in the morning?

22 A I don't know.

23 Q But you testified that you were really anxious about
24 the passage of time between the time you smelled the alcohol
25 and whenever the test would be done, right?

1 A Uh-huh.

2 Q Now, prior to your asking Captain Hazelwood for a
3 blood sample or to give blood, which I think you said was
4 somewhere around 10:30, had you told him that you wanted to
5 take blood from him?

6 A Yes.

7 Q When was the first time you told him you wanted to
8 take blood from him?

9 A I said earlier in the morning when I asked him about
10 if he had the tox kits aboard, at that time is when I
11 mentioned to him that I needed to take both blood and urine
12 tests from the specific people.

13 Q At what time did you ask him for the tox kits?

14 A I think it was about 9:30, 9:00 o'clock.

15 Q Prior to that time did you mention to him that you
16 wanted to take blood from anyone?

17 A No.

18 Q Now, at the time that blood was taken from Captain
19 Hazelwood, were you in the room?

20 A Yes.

21 Q That was in the captain's stateroom?

22 A Office.

23 Q Office. How close were you to Captain Hazelwood?

24 A He was sitting at the desk, I was sitting right in
25 front -- or standing right in front of the desk.

1 Q What would be the distance?

2 A If that's the desk and Captain Hazelwood is sitting
3 where he is right now, I was standing right in front of it,
4 approximately three foot.

5 Q Did you have occasion to smell his breath at that
6 time?

7 A Yes.

8 Q Did you smell alcohol on his breath at that time?

9 A No.

10 Q Do you remember --

11 MR. CHALOS: Your Honor, may I have a minute?

12 (Pause.)

13 BY MR. CHALOS: (Resuming)

14 Q Mr. DeLozier, do you remember --

15 MR. COLE: Could I see a cite, please?

16 MR. CHALOS: Page 40.

17 (Pause.)

18 BY MR. CHALOS: (Resuming)

19 Q Do you remember giving the NTSB an interview?

20 A Yes.

21 Q Let me show you page four of a summary of that
22 interview and ask you if this is what you said to them. The
23 master's blood sample was taken and he also was able to
24 provide a urine sample at that time. The master still smelled
25 of alcohol. Is that correct?

1 A Is what correct?

2 Q That that's what you told the NTSB?

3 A Isn't that a summary of what I said?

4 Q Well, having shown you this, is your answer that he
5 smelled of alcohol, or that he hadn't smelled of alcohol?

6 A Right now I don't believe I remember that he smelled
7 of alcohol during the blood test.

8 Q When you gave this interview to the NTSB on March
9 31st, 1989, was your memory fresher then than it is today?

10 A It was probably fresher, yes.

11 Q So if you had told them that at the time that the
12 blood test was taken he smelled of alcohol then, your memory
13 would be much better than it is today, would it not?

14 A Certainly.

15 Q Now this test that you did of the crew, the blood
16 and urine test, you would have done that regardless of whether
17 you smelled alcohol on Captain Hazelwood's breath, is that
18 right?

19 A Eventually, yes.

20 Q Do you remember searching the Captain's room at some
21 point?

22 A Yes.

23 Q What did you find when you searched the room?

24 A I found two bottles of empty Moussey beer in his
25 trash can in his stateroom, and he has a small refrigerator

1 that was stocked with soda and there was also some Moussey
2 beer in that.

3 Q Is that when you opened a Moussey beer to smell?

4 A I don't believe so, no.

5 Q You had done that previously?

6 A No. No. I believe I opened the Moussey beer
7 probably two or three weeks after I got off the vessel.

8 Q And what was the smell that you smelled in the
9 Moussey beer? Was that the same as a regular beer? Same
10 smell?

11 A It smelled stale, kind of like an import beer.

12 Q Is that the kind of smell you smelled on Captain
13 Hazelwood's breath?

14 A No, not at all.

15 Q A different smell?

16 A A different smell.

17 Q Now, when you looked in the captain's cabin,
18 stateroom, I take it you didn't look in his closet?

19 A No, I did not.

20 Q You didn't look in any of the drawers?

21 A No.

22 (Start Tape C-3626)

23 Q But you did look in the cabinet adjacent to the
24 refrigerator though, right?

25 A To my knowledge right now, there is a refrigerator

1 and then adjacent to that there was a door, open up the door
2 and I believe that is where his safe was, and I just closed it
3 back up and that was it.

4 Q I'd like to turn to another subject now. You
5 testified that the Captain went over to the chart and placed a
6 circle at a particular spot, in lead pencil, am I correct?

7 A Uh-huh.

8 Q You took that original chart off the ship, didn't
9 you?

10 A Yes.

11 Q You confiscated the chart as part of your
12 investigation?

13 A Yes.

14 Q Where is the original chart now?

15 A Well, I turned it over to the Coast Guard.

16 Q Have you had an opportunity to look at the chart
17 since you took it off the ship?

18 A Oh, yeah.

19 Q You have?

20 A Uh-huh.

21 Q And did you look to see if there was a pencil mark
22 at the 38 fathom mark?

23 A Yes.

24 Q And what did you find?

25 A That there was a pencil mark at the 38 fathom mark.

1 Q Are you sure it was a pencil mark and not two
2 scratches?

3 A Yes.

4 Q A pencil mark?

5 A Yes.

6 Q Distinct?

7 A Distinct.

8 MR. CHALOS: Your Honor, may I pick up an exhibit
9 there?

10 BY MR. CHALOS: (Resuming)

11 Q I am going to place before you what's been marked as
12 evidence as Exhibit 15, and ask you, is this a copy of the
13 original chart that you took off the vessel?

14 A Yes; uh-huh.

15 Q You have to say yes or no.

16 A Yes.

17 Q I show you on this chart a fix of 2339 and a circle.
18 You see that?

19 A Yes.

20 Q That's pretty distinct, right?

21 A Uh-huh.

22 Q Pencil mark and a circle.

23 A No, that's ink.

24 Q Ink?

25 A I believe it is.

1 Q Is it your testimony that the vessel's chart is kept
2 in ink?

3 A No. I am saying I think that is ink there.

4 Q Are you familiar with plotting at sea?

5 A Yes.

6 Q You are also familiar that charts are kept in pencil
7 so they could be erased, are you not?

8 A Yes.

9 Q But you think that was in ink?

10 A It appears to be in ink right now.

11 Q You can tell that from the copy?

12 A Well, it's darker.

13 Q Look at the fix at 2355.

14 A Uh-huh.

15 Q That has got a circle as well, right?

16 A Uh-huh.

17 Q Pretty distinct as well?

18 A Uh-huh.

19 Q And look at the fix at 004. See this fix here?

20 A Uh-huh.

21 Q That's pretty distinct as well.

22 A Uh-huh.

23 Q Where is the circle at the 38 fathom mark that
24 you're talking about?

25 A This chart is a reproduction, but it's right around

1 the 38 fathom mark right there.

2 Q But there's no mark there, is there?

3 A Well, i can still see it.

4 Q Where do you see it, sir?

5 A Around the 38 fathom mark.

6 Q Do you see a distinct pencil mark there, circle,
7 anything?

8 A On this particular reproduction I see a faint
9 portion of the circle which was drawn by Captain Hazelwood
10 when I questioned him about the position and which he was --
11 he instructed Mr. Cousins to turn.

12 Q Didn't you just testify that the mark he put on was
13 a very distinct mark?

14 A On the original chart, uh-huh.

15 MR. CHALOS: You Honor, at this point I would call
16 for the original, because it is my recollection --

17 THE COURT: We'll take that up outside the presence
18 of the jury.

19 BY MR. CHALOS: (Resuming)

20 Q Certainly on this chart there is no distinct mark,
21 is there, at the 38 fathom mark?

22 A Right.

23 Q The answer is there is not?

24 A That's correct.

25 Q Sir, you were on board this vessel until Sunday, the

1 26th?

2 A That's correct.

3 Q During that period of time the weather was fairly
4 calm, was it not?

5 A Uh-huh.

6 Q And the oil that had come out of the ship for the
7 most part was in the area of the ship, was it not?

8 A Yes.

9 Q Were you on board when the storm came up on that
10 Sunday?

11 A We left as it was -- well, it was windy, yes. We
12 had a heck of a time getting off.

13 Q Lastly, Mr. DeLozier, did you ever express an
14 opinion as to what could be done to minimize these type of
15 accidents?

16 MR. COLE: Objection; relevance.

17 MR. CHALOS: Your Honor, he was there. He saw the
18 casualty. He expressed an opinion. I just would like to
19 explore it.

20 THE COURT: Objection sustained. Also as to the
21 form of the question.

22 BY MR. CHALOS: (Resuming)

23 Q Mr. DeLozier, did you have an opportunity to compare
24 the ships clock to whatever time you used to measure?

25 Let me withdraw that. That's a horrible question.

1 Did you have an opportunity to observe the accuracy
2 of the ships clocks?

3 A Yes.

4 Q And you found them to be accurate, did you not?

5 A I believe one of them was not accurate, either mine
6 or his.

7 Q But you do recall doing a time check and finding the
8 ships clocks to be accurate... Do you recall that?

9 A Again, I don't know which one was accurate.

10 MR. CHALOS: Your Honor, I have no further questions
11 at this time.

12 MR. COLE: Judge, I would ask that Mr. DeLozier be
13 allowed to approach the jury and point out something on this
14 photograph.

15 THE COURT: That is in evidence, isn't it?

16 MR. COLE: Yes.

17 THE COURT: Okay.

18 MR. COLE: Mr. DeLozier, if you could come out from
19 behind there --

20 THE COURT: And you can just take that -- okay, I
21 think the cord is now long enough.

22 (Pause.)

23 REDIRECT EXAMINATION

24 BY MR. COLE:

25 Q Would you point to the jury where Captain Hazelwood

1 circled with a pencil?

2 A This faint circle made with a lead pencil which goes
3 around the 38 fathom mark with the right hand side goes
4 through the 8 and then the circle extends around up through
5 the 50 and tails up to the 55.

6 Q Thank you. You can take your seat.

7 When you returned home from the Pipeline Club, did
8 you get ready for bed that evening?

9 A Uh-huh; yes.

10 Q Was one of the things you did, did you brush your
11 teeth?

12 A Yes.

13 (Pause.)

14 Q When you looked through Captain Hazelwood's room,
15 you said that you found two Moussey cans. Did you seize those
16 items?

17 A Two Moussey bottles.

18 Q Bottles.

19 A Yes.

20 Q You seized them?

21 A Yes.

22 Q The empty ones?

23 A Yes.

24 Q What was done with those?

25 A They were turned over to the NTSB and they didn't

1 have a need for them and within the next four weeks after the
2 casualty I was involved in making duplicate of much of the
3 evidence and the empty bottles -- well, they could not be
4 reproduced and the State had already come aboard and obtained,
5 I don't know, a couple of cases of Moussey beer, I believe,
6 and we just didn't feel as though there was a need to hang on
7 to those. I don't know what ultimately happened to them.

8 MR. COLE: I have nothing further, your Honor.

9 MR. CHALOS: Your Honor, may I have Mr. DeLozier
10 approach the jury?

11 THE COURT: Yes.

12 RE CROSS EXAMINATION

13 BY MR. CHALOS:

14 Q Mr. DeLozier, would you show the jury please where
15 the 2355 fix was on this chart, at Busby?

16 A Right there.

17 Q The circle here and the time 2355?

18 A Right. The dot is the position.

19 Q And you say the point where the Captain drew with
20 his lead pencil a distinct mark is just below it here at the
21 38 fathom mark?

22 A Right here.

23 Q This one right here?

24 A Uh-huh.

25 Q And this is what you call a distinct mark on this

1 blown up photograph.

2 MR. CHALOS: Your Honor, may I approach the jury?

3 THE COURT: All right.

4 MR. CHALOS: May I hand it to the jury?

5 THE COURT: We'll pass it around this time. That'll
6 be the only one we pass around without application.

7 Pardon me? What number is it?

8 VOICE: _____ (Inaudible).

9 THE COURT: Don't discuss it ladies and gentlemen of
10 the jury. You're just supposed to look at it.

11 BY MR. CHALOS: (Resuming)

12 Q Mr. DeLozier, you stated that you reviewed a copy of
13 the interview that you conducted with Captain Hazelwood before
14 coming here today?

15 MR. COLE: Objection; outside the scope.

16 MR. CHALOS: We can call him back, I suppose, your
17 Honor. It's just one or two questions on that.

18 THE COURT: I want to release this jury in the next
19 two or three minutes.

20 MR. CHALOS: Two more questions and I am done.

21 THE COURT: Okay. I am going to let him reopen if
22 you need to.

23 BY MR. CHALOS: (Resuming)

24 Q Do you remember reviewing a copy of the interview?

25 A Yes, sir.

1 Q It's true, is it not, that there is no mention in
2 that interview of a 38 fathom mark?

3 A That's true.

4 MR. CHALOS: No further questions, your Honor.

5 THE COURT: Anything further?

6 REDIRECT EXAMINATION

7 BY MR. COLE:

8 Q When was that interview done, before or after you
9 looked at the charts? The interview with Captain Hazelwood.

10 A Captain Hazelwood's interview was done at around
11 1300. The interview with Mr. Cousins was done I believe
12 around 7:00 o'clock, 7:00 or 8:00 o'clock in the morning. I
13 didn't -- or Mr. Hazelwood didn't circle it until after the
14 interview that I conducted with him.

15 MR. COLE: Thank you.

16 RECROSS EXAMINATION

17 BY MR. CHALOS:

18 Q Mr. DeLozier, you have me confused. I thought you
19 told us before that the chart was circled at the time that you
20 were interviewing the third mate?

21 A Say again?

22 Q I thought you told us earlier that the chart was
23 circled by the Captain, as you said, at the time that you were
24 interviewing the third mate.

25 A No, I didn't say that.

1 Q You say that the Captain circled this when?

2 A After my interview with him.

3 Q You're absolutely certain about that?

4 A Quite.

5 MR. CHALOS: Your Honor, may I have just one minute
6 here?

7 (Pause.)

8 Your Honor, I would like to show the witness a
9 series of questions and answers that he gave at the NTSB and
10 ask him just one or two more questions about that.

11 THE COURT: Show them to Mr. Cole first. At least
12 give him the pages.

13 MR. CHALOS: Page 658 and 659 in my transcript.

14 (Pause.)

15 THE COURT: Let's proceed, please. If you have an
16 objection you can make it, but don't engage in colloquy, Mr.
17 Cole.

18 BY MR. CHALOS: (Resuming)

19 Q Let me show you on page 658 and 659 of your NTSB
20 testimony and ask you to read to yourself, starting here, the
21 question about Mr. Woody, going down to about here.

22 (Pause.)

23 A Okay.

24 Q See that?

25 A Yes.

1 Q Okay.

2 Now this indicates that the captain pointed to the
3 38 fathom mark after you had your interview with the third
4 mate, did it not?

5 A That's correct.

6 Q And your interview with the third mate was what,
7 about 7:00 o'clock in the morning?

8 A About that, yeah.

9 MR. CHALOS: No further questions.

10 THE COURT: This is it, so make it good.

11 REDIRECT EXAMINATION

12 BY MR COLE:

13 Q When you said after -- you had Captain Hazelwood
14 point out this point after Mr. Cousins' interview, were you
15 referring to the time after -- at 1:00 -- after you'd
16 interviewed him at 1:00 o'clock?

17 MR. CHALOS: Objection, your Honor. Leading.

18 THE COURT: Overruled.

19 BY MR. COLE: (Resuming)

20 Q Let me show you your statement. What did you mean
21 by, after the interview with the third mate, I interviewed or
22 talked to the master about the subject, at which time he said,
23 yes, this is it. When were you referring to as after the
24 interview?

25 A After the third -- after Cousins' interview.

1 Q Okay. And would that have been when you had the
2 master point this out on the bridge?

3 A This is after his interview, yes.

4 MR. COLE: Thank you.

5 THE COURT: All right. Can the witness be excused
6 from further participation?

7 MR. CHALOS: Your Honor, after everyone leaves I
8 would like to make an application for the original chart --

9 THE COURT: Okay.

10 MR. CHALOS: -- and I would reserve my right to
11 bring him back.

12 THE COURT: Very well.

13 Okay, I am going to let you go home. As I indicated
14 earlier, this is a three day weekend for you folks. You don't
15 have to come back until Tuesday morning at 8:30. We are going
16 to get started at 8:30, at least I am going to set that as my
17 goal, with you folks in the jury box at 8:30. So if you would
18 come back to your jury room at 8:15, that would give us enough
19 lead time. In the meantime, don't discuss the case among
20 yourselves or any other person. You might find an item of
21 evidence interesting, you find some testimony interesting, you
22 might be inclined to say something. Even if you -- and I
23 didn't mean to be so abrupt, but even if you point out
24 something like on that picture, that's discussing the case.
25 So don't even think about discussing with anybody, and don't

1 form or express any opinions. Avoid the media. There's media
2 around about this case, and I think I have told you that. And
3 I have been assured by your silence that you haven't been
4 exposed to it. And I want to continue to get that assurance
5 from your folks.

6 So i'll see you next Tuesday at 8:15. And be safe.

7 (Whereupon, the jury leaves the Courtroom.)

8 THE COURT: Mr. Chalos?

9 MR. CHALOS: Your Honor, Mr. DeLozier has testified
10 that the Captain put a distinct pencil mark at the 38 fathom
11 mark of the chart. I have personally gone over to the Coast
12 Guard office around the time of the NTSB hearings and looked
13 at the original chart. There was no pencil mark. There are
14 what appear to be scratch marks, which is what Mr. Cousins
15 testified to, but there is no distinct pencil mark. If Mr.
16 Cole is going to insist that these are pencil marks or that
17 this is a mark that Captain Hazelwood put on, then I would
18 call for the original of the Coast Guard document. Because I
19 think now the marking on the document has become an issue.

20 THE COURT: Mr. Cole?

21 MR. COLE: If Mr. Chalos has an objection -- I don't
22 know what the authority of this Court has over the U.S. Coast
23 Guard or whoever has this, but if Mr. Chalos has an objection
24 to that, he can send someone over like we have and have them
25 look at the chart. And they can come in here and testify and

1 say I have looked at the original, I didn't see a mark there.
2 That's what we're going to do.

3 THE COURT: The big chart's not in evidence yet. It
4 hasn't been offered yet.

5 MR. CHALOS: Exhibit 15 is not in evidence?

6 THE COURT: That's what my clerk says.

7 MR. CHALOS: You Honor, I would like to offer it in
8 evidence at this time.

9 THE COURT: Okay, Number 15. Any objection?

10 It is admitted. 15 is admitted.

11 (State's Exhibit Number 15
12 was admitted as evidence.)

13 THE COURT: I don't know what to tell you,
14 Mr. Chalos, about your application. I'll issue a subpoena to
15 pick it up. I don't know if it will be honored or not. If
16 you think you need it and you want to get a subpoena duces
17 tecum to get somebody to bring it over, I'll do what I can.
18 If Mr. Cole has access to it and they will voluntarily give it
19 to him, then I would expect Mr. Cole, as an officer of the
20 Court, to obtain that from the Coast Guard.

21 MR. COLE: I can't get it, Judge. I have already
22 requested it.

23 THE COURT: It seems to me -- but there's been no
24 objection. It seems to me that the authenticity of the
25 document that has been placed in evidence is somewhat in

1 question based on the testimony of this witness. However,
2 they are in evidence and the only thing we can do is try to
3 get the original now. So I'll do what I can and if you want
4 to send somebody over there to view it, I don't think you want
5 to make yourself a witness at this time, Mr. Chalos, so you --

6
7 MR. CHALOS: No, I don't. I'll send someone over if
8 that is the only way we can do it. But we'll prepare a
9 subpoena for your Honor's signature and see if they'll produce
10 it.

11 THE COURT: Sure. Okay.

12 Is there anything else we can do now before Tuesday
13 morning at 8:30?

14 MR. MADSON: I don't believe so, your Honor.

15 MR. COLE: The only thing that would be helpful,
16 Judge, is that in the transcripts, if there's going to be --
17 they have a different transcript. It was a transcript of the
18 NTSB that was done by Exxon and by the U.S. government the day
19 -- they were done immediately. We have the official copy of
20 the NTSB and we have such a difficult time. Could they either
21 use this one that we have or give us a copy of their's?

22 THE COURT: That sounds like a fair request. You
23 should get together and both be using the same one if you can
24 if that is possible because it would be a lot easier --

25 MR. CHALOS: I don't think we have the official

1 transcript your Honor, but whatever I intend to use in the
2 future, I'll make extra copies and give them to Mr. Cole.

3 THE COURT: Yes, but that's not the point. The
4 point is he wants to compare it with the official and he has
5 the official.

6 MR. COLE: I have a copy of the official transcript
7 that can I provide for the defense over the weekend.

8 THE COURT: Well, that would be nice. Why don't you
9 do that then.

10 And we're going to start our new schedule, 8:30 to
11 1:30 next week. I've got 2:30 and 3:30 hearings, and we won't
12 have a luncheon break during that schedule.

13 We stand in recess.

14 Oh, by the way, now is the witness free to leave?

15 MR. CHALOS: Your Honor, I would like to reserve my
16 right to bring him back if we get the original chart.

17 THE COURT: All right. Do you expect to be out of
18 the State? You're going to go back to Valdez?

19 THE WITNESS: I'll be going back to Valdez and go
20 back to work on Thursday morning.

21 THE COURT: Next Thursday meaning a week?

22 THE WITNESS: Next Thursday morning.

23 THE COURT: So until then, like Tuesday and
24 Wednesday, you'd be available if necessary?

25 THE WITNESS: Provided I could get back to go to

1 work.

2 THE COURT: Pardon?

3 THE WITNESS: Provided I can get back to go to work
4 by Thursday morning.

5 THE COURT: And what do you have to do on Thursday
6 morning? What kind of work? Are you taking a ship out or
7 something?

8 THE WITNESS: Yes.

9 THE COURT: Well, will we know by Tuesday or
10 Wednesday, then?

11 MR. CHALOS: Well, we will get the subpoena drawn up
12 over the weekend and we will try and serve it on them first
13 thing Tuesday morning.

14 THE COURT: Okay.

15 THE CLERK: This Court stands in recess.

16 (Whereupon, at 3:41 o'clock p.m., the Court was
17 recessed>)

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SUPERIOR COURT

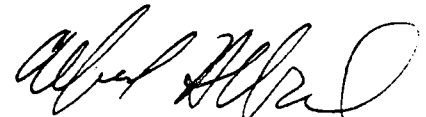
STATE OF ALASKA

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Case No. 3ANS89-7217

Case No. 3ANS89-7218

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.


ALFRED H. WARD
