

INDEX  
HAZELWOOD TRIAL TRANSCRIPTS

VOLUME NUMBERS

PAGE RANGES

5	1 - 197
6	1 - 217
7	1 - 112
8	1 - 190
9	1 - 222
10	1 - 173
11	1 - 211
12	1 - 205
13	1 - 199
14	1 - 174
15	1 - 193
16	1 - 164
17	1 - 166
18	1 - 165
19	1 - 153
20	1 - 118
21	1 - 189
22	1 - 146
23	1 - 155
24	1 - 160
25	1 - 189
26	1 - 162
27	1 - 199
28	1 - 193
29	1 - 196
30	1 - 222
31	1 - 75
32	1 - 66
33	1 - 214
34	1 - 13
35	1 - 15

Box - 3

SPEC COLL  
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1552  
P75  
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1  
2  
3  
4  
5  
6  
7  
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10  
11  
12  
13  
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23  
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VOLUME 14

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

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

Anchorage, Alaska

February 20, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:35 a.m. on February 20, 1990. This transcript was prepared from tapes recorded by the Court.

APPEARANCES:

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C O N T E N T SWITNESSES

<u>STATE'S</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Daniel J. Lawn	7	24	36	37
William J. Deppe	40	62	82	100
	-	-	106	-
Stanley P. Andresen	110	130	-	-
Karl W. Groth	140	142	143	-
Michael A. Stalzer	144	-	-	-

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E X H I B I T S

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

STATE'S

IDENTIFICATION      IN EVIDENCE

13	-	153
94	10	16
95	18	54
96	18	129
97	108	112
98	108	114
99	108	113
100	108	130
101	108	117

DEFENDANT'S

P	77	77
---	----	----

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P R O C E E D I N G S

1  
2 (Tape C-3626)

3 THE CLERK: -- Karl S. Johnstone presiding is now  
4 in session.

5 JUDGE JOHNSTONE: You may be seated. Was there a  
6 short matter that needed to be taken up before the jury  
7 came in?

8 MR. MADSON: Your Honor, the only thing I wanted  
9 to bring the Court's attention to, to make sure it was all  
10 right, is we have an expert witness, Mr. Joe Weiner, who we  
11 intend or would like to have remain in the courtroom to  
12 hear testimony. It's been my experience that experts can  
13 be allowed to be in to listen to other testimony, that it  
14 aids or assists in evaluating their opinion, but I wanted  
15 to make sure that would be okay.

16 JUDGE JOHNSTONE: What's the next evidence going  
17 to be?

18 MR. COLE: A tape and Captain Deppe and Captain  
19 Stalzer, who are Exxon officials. I don't think he's going  
20 to -- we're going to put on any experts today.

21 JUDGE JOHNSTONE: Since there's no experts, what's  
22 the need for the expert to be in here today? First of all,  
23 is there objection to this expert being in here?

24 MR. COLE: No, I don't know what he's an expert on  
25 or anything, but --

1 JUDGE JOHNSTONE: Why don't you tell us?

2 MR. MADSON: Naval architecture,, Your Honor.

3 JUDGE JOHNSTONE: Okay, is there going to be any  
4 evidence on naval architecture during the next three  
5 witnesses or --

6 MR. COLE: There might be with Captain Deppe,  
7 describing what's going on when he comes on board the  
8 vessel that evening.

9 JUDGE JOHNSTONE: I don't mind experts sitting in  
10 while other experts are testifying so they can understand  
11 what the testimony is in preparation for it. But is it  
12 just to let him sit in here and watch the trial, is that  
13 the purpose of his presence now?

14 MR. MADSON: Well, we didn't think, since other  
15 testimony is going to matter in his opinion one way or the  
16 other, it shouldn't affect it at all. I think it would be  
17 incidental and it certainly wouldn't be prejudicial in any  
18 way that I can see, the fact that he's in here, listening  
19 to them testifying on other matters. It's your Court, Your  
20 Honor, so --

21 JUDGE JOHNSTONE: I understand that. There's no  
22 objection. I don't mind him sitting in here. I generally  
23 exclude witnesses so they didn't listen to testimony in  
24 order to rebut it, except for experts. I just don't want  
25 to get into a situation where I have to make that decision

1 for every witness who comes in and wants to watch the  
2 trial.

3 MR. MADSON: I can't imagine a situation of that  
4 happening.

5 JUDGE JOHNSTONE: Okay, any problem with this  
6 witness? Okay, are we ready now for the jury?

7 MR. COLE: Yes.

8 JUDGE JOHNSTONE: Okay.

9 (Whereupon, the jury enters the courtroom.)

10 JUDGE JOHNSTONE: Good morning, ladies and  
11 gentlemen. I understand that one of you got a call saying  
12 that somebody saw you on CNN. I'm sure that was an  
13 inadvertent coverage by the jury of media people and I'm  
14 sure that won't happen again. I apologize for that  
15 intrusion, if you consider it an intrusion.

16 Mr. Cole, are you ready to proceed?

17 MR. COLE: Yes.

18 MS HENRY: The United States' next witness is Dan  
19 Law. Sir, would you step forward?

20 Whereupon,

21 DANIEL J. LAWN  
22 having been called as a witness by Counsel for the State,  
23 and having been duly sworn by the Clerk, was examined and  
24 testified as follows:

25 THE CLERK: Sir, would you please state your full

1 name and then spell your last name?

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

3 THE CLERK: Your current mailing address:

4 THE WITNESS: Post Office Box 1483, Valdez, Alaska  
5 99686.

6 THE CLERK: And your current occupation?

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

9 THE CLERK: Thank you.

10 JUDGE JOHNSTONE: Ms. Henry.

11 DIRECT EXAMINATION

12 BY MS. HENRY:

13 Q Sir, how long have you worked for the Department  
14 of Environmental Conservation?

15 A Oh, since approximately August of '77.

16 Q And can you just briefly explain your career with  
17 DEC?

18 A I was hired to, at the time of the tanker  
19 inspection program, to put together that program, dealt  
20 with the tankers in the terminal, oil pollution and other  
21 duties since that time.

22 Q During that period of time, how often were you  
23 working out of the Valdez Office?

24 A I've always worked out of the Valdez Office.

25 Q And you currently work out of the Valdez Office?



1 A That's correct.

2 Q Pointing specifically to March of 1989, what were  
3 your specific duties with DEC at that time period?

4 A I was still an environmental engineer, also  
5 assigned duties as district engineer and district manager.

6 Q What sort of things did you do?

7 A Reviewed contingency plans, dealt with oil spills,  
8 drinking water, waste water, solid waste, all the programs  
9 that the Department administers.

10 Q As part of that last area, did you run tests on  
11 water and that type of thing?

12 A We took samples and sent the samples to a  
13 certified lab., depending on the nature of the sample.

14 Q Okay, pointing specifically to the morning of  
15 March the 24th of last year, did you receive a phone call  
16 early that morning?

17 A Yes, I did.

18 Q And who was the phone call from?

19 A At approximately 1:00 a.m., give or take a few  
20 minutes, the Operation Control Center at the terminal  
21 phoned me and notified me that the Exxon Valdez had run  
22 aground in Valdez Arm.

23 Q What did you do then?

24 A Since they didn't have really much information, I  
25 immediately called the Coast Guard and talked to Captain

1 McCall.

2 Q And so you spoke to Captain McCall over the phone?

3 A That's correct.

4 Q Did you advise him what you intended to do?

5 A We discussed the situation and what plan of action  
6 we would take. He advised me that he would be sending a  
7 boat and asked me if I wanted to go and I replied in the  
8 affirmative and I told him I'd be down at the station as  
9 soon as I could get there.

10 Q All right, do you remember approximately what time  
11 it was that you got down to the station?

12 A Well, it was probably around 2:00. I had to make  
13 a call to my supervisor first and then go to the office and  
14 pick up equipment and make some more phone calls and then  
15 go to the Coast Guard station.

16 Q What sort of equipment did you pick up at the  
17 office?

18 A Video camera, 35 millimeter camera, tape recorder,  
19 some field notes, that type books.

20 Q All right. Now I take it you eventually then took  
21 a pilot boat out to the Exxon Valdez, is that correct?

22 A That's correct.

23 Q Who all was with you on the pilot boat, if you  
24 recall?

25 A There was two -- there were two crew people on

1 board and the executive officer of the Coast Guard, Mr.  
2 Falkenstein, and Mark Delozier and myself.

3 Q And when you say two crew people, you mean crew  
4 from the pilot boat?

5 A Yes.

6 Q And at some point en route to the Exxon Valdez,  
7 did you begin taking a film?

8 A Yes, I did.

9 Q And after you had boarded the Exxon Valdez, did  
10 you continue taking a film?

11 A Periodically, yes.

12 Q And have you had an opportunity to review a copy  
13 of the film that you took that night and early morning?

14 A Yes, I have.

15 MS HENRY: May I approach the Clerk, Your Honor?

16 BY MS. HENRY: (Resuming)

17 (State's Exhibit Number 94 was  
18 marked for identification.)

19 Q I'm showing you what's been marked as Plaintiff's  
20 Exhibit Number 94 for identification. Do you recognize  
21 that exhibit, sir?

22 A This is marked duplicate or a double of the film  
23 that I took.

24 Q And did we review this actual copy in my office  
25 last week?

1 A Yes.

2 Q Okay. After reviewing that copy, is that copy an  
3 accurate representation of what you filmed that night and  
4 early morning?

5 A To my recollection.

6 Q And the sound on that copy, is that your voice  
7 speaking?

8 A Yes.

9 Q And the purpose of -- what's the purpose of you  
10 speaking on the tape?

11 A Well, when we take videotape, we talk and describe  
12 what it is we're seeing and it's mental note taking and  
13 it's with the best information we have at the time.

14 Q All right. And on the videotape, in the corner,  
15 there appears to be a date and a time printed on the film.  
16 Is the date and time accurate?

17 A Within a few minutes, yes.

18 Q The date's accurate, but the time may be off a  
19 couple of minutes?

20 A Yes, might be off.

21 MS HENRY: Your Honor, at this time, the State  
22 would move into evidence Plaintiff's Exhibit Number 94.

23 MR. MADSON: Your Honor, I have no objection to  
24 playing the tape and the admission of the tape. However, I  
25 do object to the narration or any sound that's on it, the

1 voices, because this is hearsay. I think it's  
2 objectionable on that basis.

3 MS HENRY: Your Honor, most of the narration on  
4 the tape is Mr. Lawn identifying what we're seeing on the  
5 tape, which is something that could be done when we're  
6 showing still photographs. There are two exceptions. Mr.  
7 Lawn indicates at one point the tanks that are hauled,  
8 which is information he got from the Coast Guard through  
9 the chief mate. And one time, he indicates the amount of  
10 oil that has been lost; he got that from the same  
11 information. That information has already been testified  
12 to by Officer Kunkel -- Chief Mate Kunkel. And so I would  
13 request we be able to play the tape in its entirety with  
14 the voice-over because those are the only hearsay  
15 exceptions.

16 MR. MADSON: Well, I think the easy solution to  
17 this, Your Honor, is to just leave the sound off and he can  
18 certainly explain what's happening at the time the tape is  
19 played. But to allow testimony, hearsay testimony, that  
20 remains locked forever on a piece of tape that becomes part  
21 of an exhibit I think would be erroneous. I think that is  
22 clearly hearsay. But he can testify as to what he did,  
23 what he saw, certainly.

24 JUDGE JOHNSTONE: Counsel approach the bench.  
25 (The following was said at the bench.)

1 JUDGE JOHNSTONE: The fact that something has  
2 already been testified to doesn't give an exception to the  
3 hearsay rule, you're well aware of. That's an objection,  
4 which I'll sustain, as it has been as to the holes and the  
5 other matters that don't concern what he's viewing -- what  
6 he's viewing. It seems to me, Mr. Madson, if we go along  
7 with your proposal, we'd have to stop the tape every three  
8 or four minutes to ask questions.

9 MR. MADSON: Why don't we just have him do -- yes,  
10 I think that would be correct, we could stop it any time  
11 and he'd explain it.

12 JUDGE JOHNSTONE: And will he be explaining  
13 exactly what he explained, as he did on the tape?

14 MS HENRY: Yes. For instance, he'll say, "You're  
15 seeing Naked Island," "You're seeing . . .," (inaudible).

16 JUDGE JOHNSTONE: How long is the tape?

17 MS HENRY: The tape is 26 minutes, but I was only  
18 going to play about 15 or 20 minutes.

19 JUDGE JOHNSTONE: Are you prepared or in a  
20 position where you can turn the volume down when he starts  
21 to talk about things that I've determined are hearsay?  
22 There's no exception to -- at least, so far, you've not  
23 given me an exception.

24 MS HENRY: There's no exception. I was just  
25 indicating that it wouldn't be prejudicial because it's

1 already been heard.

2 JUDGE JOHNSTONE: It may or may not be, but it's  
3 an objection that's been made.

4 MS HENRY: I'm not prepared because, you know, I'm  
5 not sure -- you know, I know what happens, but I can't say  
6 exactly when it happens.

7 JUDGE JOHNSTONE: Tell me again what it is that  
8 he's going to say about the tanks and the holes in them.

9 MS HENRY: He's going to say something like  
10 (inaudible) and then he'll say -- at one point, he says  
11 that, so far, it's 115,000 -- oil. He says that a couple  
12 of times and he's showing where the tank is.

13 JUDGE JOHNSTONE: Okay. Now the rest of it is  
14 just pointing out the buoy or pointing out the reef or an  
15 island, he's pointing out things?

16 MS HENRY: I think so, yes.

17 JUDGE JOHNSTONE: Okay. Okay, step back.

18 (The following was said in open Court.)

19 JUDGE JOHNSTONE: Mr. Madson, have you had access  
20 to this tape?

21 MR. MADSON: I think I saw it on Connie Chung.

22 JUDGE JOHNSTONE: Have you had access to this  
23 tape?

24 MR. MADSON: Yes, we've had access to it, Your  
25 Honor, probably not this copy, but I'm sure we've had

1 access to a similar tape.

2 JUDGE JOHNSTONE: Have you had access to what's  
3 depicted on this tape?

4 MR. MADSON: I would say yes, Your Honor,  
5 certainly.

6 JUDGE JOHNSTONE: Okay. All right, how long have  
7 you had access to it, Mr. Madson?

8 MR. MADSON: I think since last week, last  
9 Thursday.

10 JUDGE JOHNSTONE: Is that right, Mr. Cole?

11 MS HENRY: Your Honor, I know that just in a bout  
12 of caution, I made another copy and gave it to them last  
13 Thursday. They have had the notes of Officer Lawn which  
14 indicate what he says on the video for quite awhile, I'd  
15 say at least a month.

16 JUDGE JOHNSTONE: Mr. Madson, is there any dispute  
17 as to what the witness is going to point out when he points  
18 out, for example, Naked Island? Is there a genuine dispute  
19 that he's pointing out Naked Island or a buoy or something  
20 of that nature?

21 MR. MADSON: No, no, not at all.

22 JUDGE JOHNSTONE: Okay, I'm going to let the tape  
23 in with the words on the tape. It seems to me that you've  
24 had adequate time to prepare to meet this and if there's no  
25 genuine dispute as to what the words are, it appears to me



1 that the general purpose of the rules and the interests of  
2 justice would best be served by the admission of the tape  
3 and the accompanying words in evidence. Under the general  
4 catchall, Other Exceptions, under 8023, I'm going to admit  
5 it in. I will give you an opportunity to cross the examine  
6 the witness while he's here today on such statements he  
7 made on tape. What is the exhibit?

8 MS HENRY: 94.

9 JUDGE JOHNSTONE: Okay, we'll let it in. The  
10 words will be played.

11 (State's Exhibit Number 94  
12 was received in evidence.)

13 MS HENRY: Thank you.

14 BY MS. HENRY: (Resuming)

15 Q Before I play it, Mr. Lawn, on the tape, you refer  
16 to numbers. Every once in a while, you'll say, "Number 5"  
17 or "Number 4," as you're pointing out something. What are  
18 you referring to?

19 A I'm referring to the approximate location of  
20 certain tanks.

21 Q Oh, so Tank Number 5 or --

22 A Tank Number 3, 4, 5.

23 Q Okay. Also during part of the video, you show the  
24 Exxon Baton Rouge and it appears that it's deballasting.  
25 Can you explain that?

1           A     Yes, the Exxon Baton Rouge was going to be the  
2 primary ship for lightering purposes. We had to make that  
3 ship as light as possible, so the Coast Guard and I had  
4 made a decision that we'd give the ship permission to  
5 deballast its dirty ballast to get it lighter so that it  
6 could come up alongside and take more oil off the Valdez.

7           Q     So, ordinarily, they're not allowed to deballast  
8 dirty ballast into the ocean or into the Prince William  
9 Sound.

10          A     That's correct.

11          Q     But in this case, you permitted them to do that?

12          A     Yes.

13               MS HENRY: All right, at this time, I'd ask to be  
14 able to play the tape now.

15               JUDGE JOHNSTONE: All right. If you want to move  
16 it up a little closer, you can do so. I'd like to see it,  
17 also, and, Mr. Madson, you're welcome to sit over there if  
18 you'd like.

19               MS HENRY: Do you want me to --

20               JUDGE JOHNSTONE: Just slightly, just a little  
21 more towards me, closer to the jury if you want.

22               THE WITNESS: Should I be in a position to see it?

23               JUDGE JOHNSTONE: Do you want Mr. Lawn to be able  
24 to see it, also?

25               MS HENRY: Yes.

1 JUDGE JOHNSTONE: Okay, you can step over here if  
2 you want to. Stand right about here and you won't be in  
3 anybody's way, I don't think.

4 (State's Exhibits Numbers  
5 95 and 96 were marked  
6 for identification.)

7 (Whereupon, the videotape was played for the Court  
8 with the audio as follows.)

9 "THE WITNESS: We're approaching the tanker and if  
10 I slow down through the ice field here, you really  
11 can't see anything.

12 "We're approaching the Exxon Valdez. She's hard  
13 aground. She's got the starboard slop tank, the  
14 starboard wing tank and possible five  
15 (unintelligible)."

16 JUDGE JOHNSTONE: (Unintelligible.)

17 "THE WITNESS: The ship is doing a damage  
18 assessment. We've just come through quite a bit of  
19 ice, had to \_\_\_\_\_ to get through it. The door  
20 guards and pilot boat are laying here, alongside the  
21 vessel. (Unintelligible.)

22 "We're shifting. This is the port side of the  
23 vessel. We're at her stern. You can smell oil over  
24 here on this side, on the down wind side and they're  
25 shifting the boarding ladder to the starboard side so

1 we can try and get aboard without going in the oil.

2 "We're looking at the hull of the ship. You can  
3 see a black oil line right here. The vessel has lost  
4 105,000 barrels of oil so far. There's oil on the deck  
5 of the ship, oil in the water.

6 "That's Glacier Island off the bow there. The  
7 Glacier Island Light is about bearing 280 degrees,  
8 which puts it about a point off the port bow. You can  
9 see oil escaping the vessel at this time or at least at  
10 5:00 o'clock this morning, it had lost about 210,000  
11 barrels of oil.

12 "In the background here, zooming up now is Buoy  
13 Number 6, right there, which is about a mile, a mile  
14 and a half away. Oil appears to be drifting to the  
15 buoy. Here's another vantage point. That's Naked  
16 Island in the background. Oil in the water. A small  
17 iceberg. There is a little bit of ice out here, you  
18 can see. The chunks that you see in the oil slick are  
19 icebergs. There's a buoy. There's some ice.

20 "Swinging back to the north here, you see ice.  
21 There's Glacier Island in the background. There's  
22 Columbia Bay right over there, ice in the background.  
23 You can see ice. There's the (unintelligible), ice,  
24 too.

25 "There's the vessel, the Exxon Valdez, hard

1        aground. Reef Island right here, on the starboard side  
2        of the vessel. Looking at the oil in the water on the  
3        side of the vessel, very thick here, the starboard side  
4        of the vessel. There's the stern. The Narrows in the  
5        background here, the \_\_\_\_\_ Narrows.

6        "We've got a boat here, a 32-footer. It's trying  
7        to survey the edge of the oil to see whether it --  
8        where it goes. That iceberg, as far as size is  
9        concerned, it's the size of a large conference table.  
10       It looks like most of the heavy oil is coming out on  
11       the starboard side, which is also indicated by  
12       the \_\_\_\_\_ soundings in the tanks, and it looks  
13       like it's just drifting around the bow and the stern of  
14       the tanker and moving on down wind. You can see it  
15       leaking there by five \_\_\_\_\_. It's leaking all  
16       over the starboard side of the vessel, which is what's  
17       indicated by the soundings.

18       "There's the buoy where the oil goes out past it.  
19       You can see the oil still bubbling out here on the side  
20       of the ship. That's about five or so, four or five,  
21       about five right here. This is four here. That's  
22       really bubbling up. That's a little bit towards three,  
23       three, the bow of the ship where these folks are  
24       standing. Right about there at midships; that's about  
25       three. You can see it bubbling up there, also.

1           "(Unintelligible.) The Valdez Narrows, a small  
2 chunk of ice. That chunk of ice there is probably 20  
3 feet long or so.

4           "(Unintelligible.) It appears now that there's an  
5 awful lot of \_\_\_\_\_. There's a little bit here, by  
6 four, but nothing like it was, and it probably just  
7 looks like (unintelligible) up to about three is still  
8 leaking. The starboard side of the vessel, the water  
9 is relatively clean here.

10           "And the Exxon Baton Rouge is out here, about  
11 abeam of Naked Island. There's Naked island. Should  
12 be here in about an hour, an hour and 15 minutes. One  
13 tug standing by here to assist her. The second tug  
14 will be out soon. The Exxon Baton Rouge deballasting  
15 into clean water her dirty water ballast, getting as  
16 light as possible, because she can only draw 30 feet of  
17 water next to us."

18           (Whereupon, the videotape was stopped.)

19           BY MS. HENRY: (Resuming)

20           Q     Sir, is it fair to say that the tape continues  
21 with you doing more panoramics throughout the rest of the  
22 day?

23           A     That's correct.

24           Q     And you indicated there, towards the end, that the  
25 Exxon Baton Rouge had to deballast and it talks about the

1 draft, is that correct?

2 A That's correct.

3 Q Were soundings made to make sure that if she came  
4 close to the Exxon Valdez, she would not ground?

5 A Yes, we originally thought that the water was  
6 deeper on the starboard side, but the Coast Guard had the  
7 pilot boat do soundings on the port side and it was  
8 determined that there was more water on the port side.

9 Q Do you know approximately when that was that the  
10 pilot boat did those soundings?

11 A I think it was probably at about the time the tape  
12 ends or a little time after.

13 Q So late morning some time?

14 A Yes.

15 Q Now even after the Exxon Baton Rouge deballasted  
16 the dirty ballast and the soundings were made, she was not  
17 permitted to come up alongside the Exxon Valdez for quite  
18 awhile, is that correct?

19 A That's correct. Early on, the primary concern  
20 that we had was trying to get the oil -- the rest, the  
21 remaining oil off of the Exxon Valdez because it lost about  
22 20 percent of its cargo and we were concerned about the  
23 other 80 percent. And as time went on, there became  
24 increasing concern about the spilling of the vessel. And  
25 we, the Coast Guard primarily, decided not to have the ship

1 come on board, alongside until an analysis could be made  
2 and an unloading plan developed. To my recollection, some  
3 of that information had to be generated or assisted with  
4 computer help from Houston.

5 Q So they didn't use solely the computer on the  
6 Exxon Valdez?

7 A I believe it was used, but as I recall, there was  
8 some -- there was not a great level of comfort in the  
9 numbers they were getting out of the onboard computer and  
10 so they asked for help.

11 MR. MADSON: Your Honor, excuse me, but I'm going  
12 to object to the hearsay that he's testifying to here.  
13 It's way beyond his knowledge or expertise, certainly.

14 JUDGE JOHNSTONE: They asked for help and the  
15 other is hearsay, Ms. Henry. Is there any exception you  
16 can find for this?

17 MS HENRY: Let me rephrase the question, Your  
18 Honor.

19 JUDGE JOHNSTONE: Okay, disregard the last answer,  
20 ladies and gentlemen.

21 BY MS. HENRY: (Resuming)

22 Q Based upon your information, the Exxon Baton Rouge  
23 then did not come close to the Exxon Valdez and begin the  
24 lightering process for quite awhile, is that correct?

25 A That's correct.



1 Q Also, you can't really see it on the tape, in the  
2 dark portion of it, but you made a comment about the ice  
3 that you're going through in the pilot boat at 3:30 in the  
4 morning as you're approaching the Exxon Valdez, is that  
5 correct?

6 A Yes. Well, it was about 3:18. My impression  
7 before I went out there was there was a lot of ice and I  
8 had been told that the Exxon Valdez had diverted to out of  
9 the tanker lanes to stay out of the ice. When we were in a  
10 small boat in the neighborhood of 20 or so feet long,  
11 slightly larger, we came up on a large piece of ice.  
12 Relative to the size of the boat, it was a big deal. And  
13 as daylight broke and as I panned around, there was very  
14 little ice in the vicinity of the Exxon Valdez. Most of  
15 the ice that would have been a problem was a lot farther to  
16 the west, in the outbound tanker lanes.

17 Q Okay, but pointing specifically to that time that  
18 you were approaching the Exxon Valdez when it was dark,  
19 were you able to see very much ice?

20 A I saw one piece of ice.

21 Q All right, but it was dark, is that correct?

22 A That's correct.

23 Q Thank you, sir, that's all the questions I have.

24 CROSS EXAMINATION

25 BY MR. MADSON:

1 Q Good morning, Mr. Lawn. Let me ask you again what  
2 your function was in Valdez at the time of the grounding.

3 A As I said earlier, since joining the Department,  
4 I've been an environmental engineer and had other duties,  
5 which included supervision of the office and district  
6 engineer functions.

7 Q Did you have any authority over the Coast Guard or  
8 the operation of the port or the VTS system at all?

9 A No.

10 Q Were you aware of the problems that tanker  
11 captains were having regarding the increased ice calving  
12 from Columbia Glacier and the need to divert around the  
13 ice?

14 A I was aware that that was one option. The other  
15 option was to slow down and go through the ice.

16 Q You were aware of the options, right?

17 A Those are the options as I know them.

18 Q Did you ever discuss with Captain McCall, the  
19 commander of the port, the need perhaps to shut down the  
20 port for say nighttime transits?

21 A I don't believe I ever had that conversation with  
22 him.

23 Q When you went out there in the boat with Mr.  
24 Delozier and Falkenstein, the Coast Guard investigators --  
25 right?

1 A Correct.

2 Q -- you arrived out there about 3:30 a.m.?

3 A In that neighborhood, yes.

4 Q And you indicated on the tape and again here today  
5 that you said you saw some ice, at least one or two pieces,  
6 in the vicinity of the Exxon Valdez before you got there?

7 A One piece, as I recall.

8 Q And of course it was dark at this point, right?

9 A That's correct.

10 Q You don't know what the condition of the ice was  
11 to the north of the Exxon Valdez, or northwest let's say at  
12 that time, in the dark?

13 A Just the area that we had come through because we  
14 had approached the Valdez from the north.

15 Q Do you know, sir, from your knowledge, whether or  
16 not the ice position will change with respect to the  
17 incoming or outgoing tides?

18 A I don't know that answer.

19 Q Had you been out there at all before on the nature  
20 of your business, in the course of your business, in that  
21 area?

22 A Yes, for the preceding years, in past times, we've  
23 done a lot of aerial surveillance and looked at ice, also.

24 Q For what period of time?

25 A That was several years before that where we were

1 doing weekly aerial surveillance.

2 Q For the purpose of determining how much ice there  
3 was?

4 A No, we were out there, just watching the tankers,  
5 looking for pollution landing on beaches and taking samples  
6 of oil that were approaching. But as we did that, we had  
7 the occasion to see, note where the ice was.

8 Q When you arrived out there, from the tape, it  
9 appears the seas were calm, there was no wind, very little  
10 wind, right?

11 A That's correct.

12 Q The oil seemed to be staying in the vicinity of  
13 the Exxon Valdez, rather than being dispersed rapidly by  
14 wind and waves.

15 A It was, at the time, it appeared to be going  
16 around the ship, as I mentioned on the tape, and moving to  
17 the south, but at a slow rate.

18 Q Were you there -- obviously, as a representative  
19 of the state Department of Environmental Conservation, but  
20 did you have any power or authority over what was to be  
21 done next, as far as preventing additional oil release or  
22 cleanup or anything like that?

23 A Well, that's a pretty broad question. The answer  
24 to part of it is yes; the answer to part of it is no.

25 Q Which part is yes?

1 A Oil spill cleanup.

2 Q But by cleanup, did that, for instance, include  
3 the use of dispersants or burning or anything like that?  
4 Could you make that decision I guess is what I'm --

5 MS HENRY: Objection, irrelevant and beyond scope  
6 of direct.

7 MR. MADSON: Your Honor, could we approach the  
8 bench at this time?

9 JUDGE JOHNSTONE: All right.

10 (The following was said at the bench.)

11 MR. MADSON: It's my belief that the State is  
12 going to show the cost of the cleanup (inaudible) because I  
13 think that's the situation. If I'm wrong, then I won't ask  
14 the question, but if that's part of the game, then I think  
15 I'd like to go into this to show there's other factors  
16 involved as far as the additional cost of cleanup is  
17 concerned.

18 JUDGE JOHNSTONE: Well, we don't know if you'll be  
19 able to do that or not, but certainly that's not in the  
20 scope of his direct testimony that's been given. You may  
21 have to call this witness back. I'm going to sustain the  
22 objection.

23 (The following was said in open Court.)

24 JUDGE JOHNSTONE: Objection sustained.

25 BY MR. MADSON: (Resuming)

1 Q Mr. Lawn, when you got on board the Exxon Valdez,  
2 did you see the captain at all?

3 A Yes, I did.

4 Q Where was that, sir?

5 A He was on the bridge up near the windows on the  
6 forward portion of the bridge, the port side.

7 Q Did you have a conversation with him?

8 A I spoke very briefly, identified myself and dealt  
9 with the chief mate.

10 Q Is it true, sir, you did not smell any alcohol  
11 beverages about his breath or person at that time?

12 A That's correct.

13 Q Is it also true you did not notice any signs of  
14 impairment at all at that hour, at that time?

15 A It was difficult to make that determination in a  
16 brief conversation.

17 Q My question, then, is you did not see any signs of  
18 impairment. Whether it was difficult or not, you didn't  
19 see any, right?

20 A No, that's correct.

21 Q Did you see him again later on?

22 A Yes.

23 Q What time was that?

24 A I saw him periodically throughout the next several  
25 hours.

1 Q When you say periodically, what was he doing,  
2 walking down a passageway or on the bridge or just what?

3 A Sometimes he was on the bridge, standing, looking  
4 forward. Once, I passed him in the stairway from the  
5 bridge down to the next level.

6 Q You mean he was coming down as you were going up?

7 A No, I was going down as he was coming up.

8 Q Oh, okay. On any of these occasions, isn't it  
9 correct that you did not observe any signs of impairment,  
10 that is his motor coordination, ability to walk or anything  
11 like that?

12 A Not that I recall.

13 Q Did you smell any smell that you associated with  
14 alcoholic beverages at a later time, now?

15 A Yes, at the time that we passed in the stairwell,  
16 I noticed a smell similar to alcohol.

17 Q What time was this?

18 A I would say it was mid-morning.

19 Q Can we narrow it down any more than that?

20 A Between 9:00 and 11:00.

21 Q Okay. You believed it was like a beer smell, is  
22 that what you thought it was?

23 A It resembled beer or stale beer.

24 Q That was the only thing that you saw or observed  
25 that would give you some indication that Captain Hazelwood

1 may have consumed an alcoholic beverage.

2 A That was the only time I was close enough to him  
3 to make any determination about that.

4 Q When you say close enough, you were -- by smell,  
5 is that what you're talking about/

6 A Yes.

7 Q But you were close enough to see the way he  
8 walked, the way he moved, things like this, the way he  
9 stood?

10 A My focus was on the oil pollution and dealing with  
11 the chief mate and I really had very little contact and  
12 very little opportunity to observe Captain Hazelwood.

13 Q All right, sir, I agree. But considering the  
14 limited opportunities you had, you didn't observe anything  
15 that would indicate signs of impairment.

16 A That's correct.

17 Q You also indicated that there was some concern  
18 over the stability of the ship by the Coast Guard, correct?

19 A That's what they told me, yes.

20 Q On the tape, you mention at least twice that the  
21 Exxon Valdez was hard aground.

22 A That's correct.

23 Q During the time that you were there until -- well,  
24 were you there when the vessel was actually removed from  
25 the reef, taken from the reef, itself?



1 A Not on board the vessel. I was in a helicopter.

2 Q When was this? When was it actually taken off?

3 A I don't recall the date, but it was several days  
4 later.

5 Q Also, during the daylight hours when you were  
6 taping, was that the day, the 24th, when you made this tape  
7 and the --

8 A Yes.

9 Q After it got light, right?

10 A Correct.

11 Q During that taping at all, during that time, was  
12 there any Alyeska equipment around at all, starting to  
13 clean up or anything like that?

14 MS HENRY: Objection, beyond the scope.

15 JUDGE JOHNSTONE: Don't answer the question. It  
16 sounds like the same inquiry you were making before. Are  
17 there additional reasons for this? And if there are, you  
18 can approach the bench and tell me. If there are not, I'll  
19 make the same ruling.

20 MR. MADSON: Only what was on the tape, Your  
21 Honor. I'm just asking questions about what he taped and  
22 what was there and what wasn't.

23 JUDGE JOHNSTONE: Okay, objection sustained.

24 BY MR. MADSON: (Resuming)

25 Q Now you also indicated that the Exxon Baton Rouge

1 had dumped its oily ballast in order to lighten the draft  
2 or shorten the draft so it could come on up alongside,  
3 right?

4 A That's correct.

5 Q You said it took some time before they could do  
6 that because there was some concern about the stability of  
7 the ship and the water was deeper along one side than the  
8 other, right?

9 A That's correct.

10 Q Is it also true that there were no fenders, in  
11 other words, to put between the two vessels, so that caused  
12 additional delay?

13 A At that time, there were no fenders. I'm not --  
14 there was never a discussion in my presence that that was a  
15 problem for the delay.

16 Q But there were no fenders.

17 A At that time.

18 Q Were fenders eventually used to put between the  
19 two vessels?

20 A Yes, they were.

21 Q Do you know where they came from?

22 A Yes.

23 Q Where?

24 A Alyeska.

25 Q Do you know -- from the Port of Valdez?

1 A That's correct.

2 Q Do you know when they cam on board.

3 MS HENRY: Objection again, Your Honor, beyond the  
4 scope and irrelevant.

5 MR. MADSON: I think this is very relevant, Your  
6 Honor. He's talking about the delay in getting the Baton  
7 Rouge alongside the Exxon Valdez and I think that can go  
8 into facts of why it was a delay, if that's one of them.  
9 If it isn't, it isn't. But I think I can ask questions  
10 about it.

11 JUDGE JOHNSTONE: I don't think it goes beyond the  
12 scope. You opened that up with how long it took to get  
13 there. Objection overruled.

14 BY MR. MADSON: (Resuming)

15 Q Did you notice at what time the fenders came on  
16 board?

17 A I believe it was early afternoon.

18 Q Of the 24th?

19 A That's correct.

20 Q Now fenders, for those who may not be acquainted  
21 with the term, are kind of absorbent cushions, if you will,  
22 to put between two boats so they don't bang together --

23 A That's correct.

24 Q -- and a dock and a vessel, things like this. Now  
25 when you said the vessel was eventually taken off the reef,

1 that was some two or three days later?

2 A Several days later.

3 Q Several days later, okay. And you're unsure of  
4 just how many, I take it.

5 A Yes, I haven't reviewed that portion of my notes.

6 Q Isn't it true, sir, they had to, or they did pump  
7 out all the remaining oil, 80 percent of the oil, which was  
8 the cargo of the Exxon Valdez before the vessel was moved  
9 from the reef?

10 A That's correct, as much as they were able to get  
11 out at that time.

12 Q This certainly would make the draft less. In  
13 other words, the ship would not be as low in the water,  
14 correct, by taking the cargo off?

15 A It depends on how you unload it. The information  
16 I have is as they pump oil out, they pump water in to keep  
17 the ship stable.

18 Q Did they move it off with tugs or under its own  
19 power, do you know?

20 A I believe it was with tugs.

21 Q And I take it, sir, you don't have any expertise  
22 in this area, removing vessels from reefs or tugboats or  
23 things like this.

24 A Very little.

25 Q So I take it you don't know or can't form an

1 opinion as to whether the vessel was even capable of being  
2 removed from the reef under its own power or needed the  
3 assistance of tugs.

4 A That's a broad question.

5 Q Well, if you can't answer it --

6 A Well, there are several answers that you can give,  
7 depending on which portion of the question you're referring  
8 to.

9 Q My question to you, sir, is do you think you have  
10 enough expertise and knowledge to form an opinion on this,  
11 first of all?

12 A It was capable for the ship to put itself in a  
13 position so that it could raise off the rock. Whether it  
14 was able to move under its own power or with tug escorts,  
15 that is another matter.

16 Q Okay, so that's -- you know it could raise itself  
17 by pumping or lightening its cargo, right?

18 A That's correct.

19 Q But whether even that would cause the vessel to be  
20 able to move by itself, you can't answer, you don't know.

21 A It would move by just the fact that it was light  
22 and floating around in the water.

23 Q Yes, but that would depend on the tide, how hard  
24 it's aground and the power available and a number of other  
25 factors, correct?

1 A Yes..

2 Q I believe that's all I have, thank you.

3 REDIRECT EXAMINATION

4 BY MS. HENRY: (Resuming)

5 Q What was the delay in lightering the Exxon Valdez  
6 of its cargo onto the Exxon Baton Rouge?

7 A Well, there are a lot of factors that went into  
8 the delay process. Part of that was the concern that the  
9 people that were going to move the cargo weren't happy with  
10 the numbers the computers were giving them, also, that the  
11 vessel had quit leaking for the most part around 9:30 in  
12 the morning.

13 Q All right, were the availability or lack of  
14 availability of the fenders a cause of the delay, in your  
15 opinion?

16 A To my recollection, that was never discussed as  
17 being a major concern.

18 Q When you initially had contact with Captain  
19 Hazelwood on the bridge, was there any particular reason  
20 that you were unable to smell alcohol on his breath?

21 A I was probably ten feet away from him.

22 Q Thank you, sir.

23 RECROSS EXAMINATION

24 BY MR. MADSON: (Resuming)

25 Q Well, Mr. Lawn, when you say it was never

1 discussed with you or in your presence the delay in getting  
2 that Exxon Baton Rouge alongside, that wasn't something  
3 that -- or was it something that you were involved with  
4 with the Coast Guard as to how to get it there and what to  
5 do, or was that strictly a Coast Guard operation?

6 A There were discussions. The function that -- when  
7 we were on board the ship, the Coast Guard dealt with the  
8 marine casualty, I dealt with the oil pollution and  
9 minimization of oil pollution. So one of the ways that you  
10 deal with an oil spill is you stop the leak or you prevent  
11 further leakage. So in that context, it was discussed  
12 about lightering the Exxon Valdez and what vessel you would  
13 use and when that would occur.

14 Q But no Coast Guard person, Mr. Falkenstein, McCall  
15 or Delozier, came to you and said words to the effect,  
16 "Gee, we ought to delay here because we've got to get  
17 fenders."

18 MS HENRY: Objection, hearsay.

19 JUDGE JOHNSTONE: Pardon me?

20 MS HENRY: Hearsay.

21 MR. MADSON: I'm just asking if any such  
22 discussion occurred, Your Honor.

23 JUDGE JOHNSTONE: Objection sustained.

24 BY MR. MADSON: (Resuming)

25 Q Well, you testified that there were no discussions

1 in your presence earlier, sir, that any such conversation  
2 occurred, right?

3 A That's my recollection.

4 Q Thank you, I don't have any further questions.

5 MS HENRY: I have no further questions, Your  
6 Honor.

7 JUDGE JOHNSTONE: May the witness be excused from  
8 participation?

9 MR. MADSON: I have no objection.

10 MS HENRY: Yes, Your Honor.

11 MR. MADSON: Well, just one second, Your Honor.

12 Your Honor, I request that he remain under subpoena,  
13 although we have no need for him to stay here.

14 JUDGE JOHNSTONE: All right, I'll leave it up to  
15 you. You'll still be under subpoena. I'll leave it up to  
16 you to notify Mr. Lawn when and if you need him and tender  
17 such witness expenses that are necessary.

18 MR. MADSON: That will be fine, Your Honor.

19 JUDGE JOHNSTONE: You're excused for the day then,  
20 at least, and he'll notify you when and if he needs you.

21 MR. COLE: Your Honor, at this time, the State  
22 would call Captain Deppe.

23 Whereupon,

24 WILLIAM J. DEPPE

25 having been called as a witness by Counsel for the State,



1 and having been duly sworn by the Clerk, was examined and  
2 testified as follows:

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

5 THE WITNESS: My name is William James Deppe and  
6 my last name is D-e-p-p-e.

7 THE CLERK: T?

8 THE WITNESS: No, P, as in Peter.

9 THE CLERK: Your current mailing address, sir?

10 THE WITNESS: 2536 Via Verde, V-i-a V-e-r-d-e,  
11 Walnut Creek, California.

12 THE CLERK: Your current occupation, sir?

13 THE WITNESS: Ship crew coordinator.

14 THE CLERK: Thank you.

15 JUDGE JOHNSTONE: All right.

16 DIRECT EXAMINATION

17 BY MR. COLE:

18 Q Captain Deppe, how long have you worked in the  
19 maritime industry?

20 A Since 1972.

21 Q What licenses do you hold?

22 A A master's license on limited tonnage.

23 Q And when did you obtain that?

24 A I believe 1980.

25 Q Would you tell the jury how long you've worked for

1 Exxon Shipping Company?

2 A Since 1972, September of 1972.

3 Q What positions have you held -- at some point, you  
4 were assigned to the shore or contingency. Is there a  
5 distinction between people who work for Exxon Shipping that  
6 work as a captain and people that work on shore?

7 A No. Right now, I'm not a temporary shore  
8 assignment for Exxon. And I went to work in September of  
9 1987 in our West Coast Office as port captain on a  
10 temporary basis and it was a two-year assignment, which has  
11 been stretched into a third year now and I'm still there.  
12 I have a different title now. I'm a ship crew coordinator  
13 at present.

14 Q Would you explain to the jury how your -- what  
15 your responsibilities are, then, as this -- on your shore  
16 assignment, presently.

17 A Presently, okay. As ship crew coordinator,  
18 there's three ships that I am in charge of, you might say.  
19 The direct line of relationship is there's an operations  
20 manager and I report to him and the captains and chief  
21 engineers on those three ships report to me.

22 Q And prior to your temporary port assignment, what  
23 were your responsibilities in that position?

24 A As port captain, I was more like a professional --  
25 I had no line assignment or responsibilities with the

1 captains. That's more like an advisor type position.

2 Q For who?

3 A For the fleet manager.

4 Q And what's a fleet manager?

5 A The fleet manager, prior to our recent  
6 reorganization, the fleet manager was Harvey Borgen and we  
7 had an office on the West Coast, a West Coast office, and  
8 he was the manager of the West Coast Office and he had --  
9 the captains and chief engineers on the West Coast reported  
10 to him.

11 Q So that would be the captains and chief engineers  
12 that were involved in West Coast trade.

13 A Right.

14 (Tape changed to C-3627)

15 Q That would primarily be between Valdez and where?

16 A Valdez and Panama or the West Coast ports.

17 Q Now were you at all involved in -- well, let me  
18 ask you this. What was the Exxon Shipping Company's policy  
19 on alcohol possession on board their tankers?

20 A Alcohol was forbidden to be on board our vessels.

21 Q And what about its use, did you have a policy on  
22 alcohol use on board the vessels?

23 A Alcohol use was forbidden, also, except for  
24 holiday meals, three times a year, which I believe that  
25 policy changed in 1988, also.

1 Q The alcohol that you're talking about was wine  
2 that was served at the holidays.

3 A Right.

4 Q How were employees informed of this policy, these  
5 policies?

6 A We've had so many policy changes lately in drug  
7 and alcohol, it's kind of confusing. But we would talk  
8 about it at conferences and there would be letters that  
9 would go out to the fleet at different times that would  
10 announce different changes or different laws that were in  
11 effect, as they did change.

12 Q Were these policies that you've just discussed  
13 applicable to masters, as well as crew members?

14 A Yes.

15 Q Were there any requirements that these be posted,  
16 these requirements be posted on the tanker, itself?

17 A There are a list of posted offenses that were  
18 required to be posted and they were reasons for  
19 disciplinary action if you violated any of those offenses.

20 Q Was that your alcohol policy, one of the --

21 MR. CHALOS: Your Honor, I've permitted Mr. Cole  
22 to go ahead with leading questions, but I think now he's  
23 starting every question with a leading question, so I  
24 object.

25 MR. COLE: I'll rephrase the question, Your Honor.

1 BY MR. COLE: (Resuming)

2 Q Where were these notices posted?

3 A Various places.

4 Q Now were there toxicology kits that were placed on  
5 the tankers, the Exxon Shipping Company tankers at some  
6 point?

7 A Yes; I believe in 1988, the fall of 1988 or early  
8 1989, we placed toxicology kits on all the vessels.

9 Q Why were these placed on the tankers?

10 A There were some new Coast Guard laws that had just  
11 come into effect which required, I believe, if my  
12 recollection is right, that required if certain events  
13 occurred that a test would have to be taken by the  
14 individuals involved in that event.

15 Q Who was expected to administer those tests if that  
16 occurred?

17 MR. CHALOS: Your Honor, I object, no foundation.  
18 Mr. Cole hasn't established when those rules went into  
19 effect, when the test kits were required to be on board and  
20 what role the various people on the ship had to play.

21 JUDGE JOHNSTONE: Objection as to foundation is  
22 sustained, Mr. Cole.

23 BY MR. COLE: (Resuming)

24 Q Well, you talked about certain people that would  
25 have to be tested. Who were those people who would have to

1 be tested?

2 MR. CHALOS: Again, Your Honor, objection, no  
3 foundation.

4 JUDGE JOHNSTONE: Sustained.

5 BY MR. COLE: (Resuming)

6 Q Was information regarding these toxicology kits  
7 made available to tanker captains?

8 A I don't recall.

9 Q Would you give the jury an idea of how many trips  
10 you've sailed on as master of an Exxon tanker?

11 MR. CHALOS: Objection, Your Honor, relevancy.

12 JUDGE JOHNSTONE: Are you going to tie it up with  
13 some further questioning?

14 MR. COLE: Yes.

15 JUDGE JOHNSTONE: Go ahead, objection overruled.

16 THE WITNESS: That's like asking how many times  
17 you drove to work last year.

18 BY MR. COLE: (Resuming)

19 Q Just give us a ball park figure.

20 A Oh, I'm guessing several hundred.

21 Q Did you attend any kind of a maritime school?

22 A Yes.

23 Q Which one did you attend?

24 A New York State Maritime.

25 Q And did you attend that with any other crew

1 members of the Exxon Valdez?

2 A The chief engineer was a classmate of mine.  
3 Captain Hazelwood was there two years before I graduated.  
4 I don't think there was anyone else there that I can  
5 recall.

6 Q Are you aware of any Coast Guard officials in  
7 Valdez that also attended that maritime --

8 MR. CHALOS: Your Honor, I object. What's the  
9 relevancy of this?

10 JUDGE JOHNSTONE: I'll give Mr. Cole a little  
11 latitude here to tie it up, assuming he's going to.  
12 Objection overruled.

13 THE WITNESS: As far as I know, Commander McCall  
14 was a graduate Port Schuyler, also.

15 BY MR. COLE: (Resuming)

16 Q That's Commander McCall, the commander of the Port  
17 in Valdez at the time of the grounding?

18 A That's correct.

19 Q And when -- was he a member there when you were  
20 there?

21 A He was a graduate of the Class of '69; I was in  
22 the Class of '70.

23 Q And that was a four-year school?

24 A Yes.

25 Q Now your trips -- were you required, as a master,

1 to go to the Port of Valdez?

2 A I've been up there several times as master, yes.

3 Q Did you have pilotage endorsement --

4 A No, I did not.

5 Q -- when you traveled? How did you travel from  
6 Hinchinbrook into the pilot station when you traveled as a  
7 tanker captain?

8 MR. CHALOS: Objection as to form, Your Honor.

9 MR. COLE: Well, let me rephrase that.

10 BY MR. COLE: (Resuming)

11 Q If you didn't have pilotage endorsement, were  
12 there other crew members on board that did?

13 A There were several trips that the chief mate had  
14 pilotage and there were several trips when there was no one  
15 on board with pilotage.

16 Q And when no one on board had pilotage, how did you  
17 -- where were you required to pick up the pilot?

18 A My understanding of the rules was that the -- when  
19 we didn't have pilotage, that we were required to pick up a  
20 pilot in the Bligh Reef vicinity.

21 Q Is that what happened on those occasions?

22 A Yes.

23 Q I'd like to ask you some questions about Exxon  
24 procedure. What would a tanker captain do if he was in  
25 Valdez and was captain of a tanker vessel that was laden



1 and he felt it was unsafe to proceed out past the Narrows?

2 MR. CHALOS: Your Honor, I object, no foundation.

3 JUDGE JOHNSTONE: Mr. Cole, you have to tie this  
4 up to make it relevant and the foundation is where you do  
5 that, so I'm going to sustain the objection.

6 BY MR. COLE: (Resuming)

7 Q Are you aware of the Exxon policy for what tanker  
8 captains should do in case they feel that it's dangerous to  
9 proceed out further from Valdez?

10 MR. CHALOS: Your Honor, I'm going to object.  
11 There hasn't been established that a policy existed and  
12 that's the basis of my foundation objection.

13 MR. COLE: And that's why I just asked that  
14 question.

15 MR. CHALOS: I think the way it was phrased, it  
16 implied there was a policy.

17 JUDGE JOHNSTONE: Why don't you lay the predicate?

18 BY MR. COLE: (Resuming)

19 Q Are you aware of a policy concerning what -- an  
20 Exxon policy concerning what, if anything, a tanker captain  
21 would do if he felt it was dangerous to proceed outside the  
22 Narrows?

23 A A policy is a formal written thing that usually  
24 holds true in almost all cases. There's no policy, but  
25 there's been verbal communication to the captains in our

1 fleet that any time they feel that it's unsafe to proceed  
2 that they've got the authority not to and there won't be  
3 any pressure put on them to proceed. And it's not only in  
4 Valdez, but it's any port that we go to.

5 Q Who would make the ultimate decision on whether or  
6 not a tanker would proceed out of Valdez?

7 MR. CHALOS: Objection, Your Honor, foundation  
8 again.

9 JUDGE JOHNSTONE: Mr. Cole.

10 MR. COLE: I don't see how I have not laid a  
11 foundation.

12 JUDGE JOHNSTONE: When are you talking about? Are  
13 you talking about 1989 or about 1979? What are you talking  
14 about, Mr. Cole? Let's lay a foundation to these  
15 questions.

16 BY MR. COLE: (Resuming)

17 Q I'd like to go to the time period of 1989. If a  
18 tanker captain wanted to ask -- wanted to -- felt there was  
19 a danger, who would make the ultimate decision? Would he  
20 make the ultimate decision on whether the tanker would  
21 proceed or would Exxon Shipping Company?

22 MR. CHALOS: Your Honor, I hate to keep  
23 interrupting here, but there really is no foundation. What  
24 kind of dangerous situation are we talking about? Are we  
25 talking about a ship overladen? Are we talking about

1 weather conditions? Are we talking about ice conditions?  
2 Are we talking about wind and seas outside of  
3 Hinchinbrook? That's the basis of my objection.

4 JUDGE JOHNSTONE: Mr. Cole.

5 MR. COLE: I'll with -- I can --

6 JUDGE JOHNSTONE: Do you want to respond to the  
7 objection?

8 MR. COLE: No.

9 JUDGE JOHNSTONE: Okay, I'm going to sustain the  
10 objection. I think you can narrow this down to have some  
11 meaning.

12 BY MR. COLE: (Resuming)

13 Q Would ice be considered, ice across the traffic  
14 lanes be considered a type of hazard that might cause a  
15 tanker captain to not leave the Port of Valdez?

16 A There's many things that could cause that and I  
17 imagine ice could be one of them, yes.

18 Q And in 1989, if a tanker captain felt that by  
19 proceeding out through the Narrows and encountering a large  
20 amount of ice would endanger the tanker, the safety of the  
21 tanker and the crew, who would make the ultimate decision  
22 on whether or not that tanker proceeded out of Valdez?

23 A It would be the master.

24 Q Are you aware of any situations where Exxon  
25 Shipping Company tankers remained in Valdez because of

1 hazardous conditions outside the Arm? When I say hazardous  
2 conditions, bad weather or ice or anything like that.

3 A I've heard of times that people have stayed in --

4 MR. CHALOS: Your Honor, it's going to be  
5 hearsay. JUDGE JOHNSTONE: Objection overruled.

6 BY MR. COLE: (Resuming)

7 Q Go ahead.

8 A I've heard of cases where people have turned their  
9 vessels around and not sailed because of bad weather. I've  
10 not heard of anyone stay in port for ice.

11 Q Would you explain to the jury what type of paper  
12 work a tanker captain is required to fill out on a voyage  
13 from Valdez to San Francisco?

14 A There's payroll type information, crew  
15 information. There's a whole myriad of administrative type  
16 things that we're responsible for, communications to and  
17 from the office. There's evaluations of personnel,  
18 requisitions for stores, an awful lot of -- a lot of  
19 administrative type details that have to be taken care of.

20 Q And is the master of a ship that has to fill that  
21 out, is he told when, what particular time this paper work  
22 has to be filled out, when he has to fill it out?

23 A There's a few things that are more critical. Some  
24 of the communications things are critical and have to be  
25 sent in relatively in a timely fashion. Most of the other

1 stuff can be done when you can schedule it into your day.

2 Q Were you called out to the Exxon Valdez on  
3 March 24th, 1989?

4 A Yes.

5 Q Where did you -- when were you asked to come to  
6 Valdez?

7 A I got a call in the morning, I think it was around  
8 8:00 o'clock in the morning or so, and told to get to an  
9 airport as quickly as I could and fly to Alaska.

10 Q Where did you fly from?

11 A Oakland, California.

12 Q When did you arrive on the tanker that evening?

13 A I believe it was between 9:00 and 10:00 o'clock,  
14 I'm not positive.

15 Q What was your purpose in going aboard the tanker  
16 that evening?

17 A There were some questions about the whole accident  
18 that were going to require Captain Hazelwood to be ashore  
19 to get answers for, so I was sent to relieve Captain  
20 Hazelwood on the vessel.

21 Q When did you relieve Captain Hazelwood on the  
22 vessel?

23 A I believe he left around midnight, but again I'm  
24 not sure about the time.

25 Q How long have you known Captain Hazelwood?

1           A     22 years.

2           MR. COLE: Your Honor, may I approach the Clerk?

3           JUDGE JOHNSTONE: Yes.

4           BY MR. COLE: (Resuming)

5           Q     What information was -- did you ask for  
6 information about the stability of the vessel when you came  
7 on board that evening?

8           A     I talked to the chief mate about that and I also  
9 contacted our naval architect in Houston and talked to him  
10 about it.

11          Q     I'm showing you what's been marked for  
12 identification as Plaintiff's Exhibit Number 95. Do you  
13 recognize that?

14          A     Yes.

15          Q     What is that?

16          A     Several days after the Exxon Baton Rouge was  
17 alongside of us and we were getting ready to undock the  
18 Exxon Baton Rouge, there were some concerns about how much  
19 water there was on the Exxon Baton Rouge side of the Exxon  
20 Valdez and this is just soundings that were taken off of  
21 the Baton Rouge to make sure they could get away without  
22 going aground.

23          Q     And is that a fair and accurate copy of the  
24 document you remember seeing?

25          A     Yes, I think it is.

1 MR. COLE: I would move for the admission of what  
2 has been identified as Plaintiff's Exhibit Number 95.

3 MR. CHALOS: No objection, Your Honor.

4 JUDGE JOHNSTONE: Admitted.

5 (State's Exhibit 95 was  
6 received in evidence.)

7 BY MR. COLE: (Resuming)

8 Q Were you concerned about the stability of the  
9 Exxon Valdez that evening when you came aboard?

10 A Well, I think we were in a stable condition. I  
11 was concerned that the condition could deteriorate if any  
12 further damage occurred to the vessel, but I felt that the  
13 ship was stable the way we were at the moment.

14 Q Were you prepared at that time to take any action  
15 if the ship began to deteriorate?

16 A The only action we could have taken was to save  
17 lives as best we could and prepare people to get off the  
18 vessel. Most of the steps that -- the ship was prepared  
19 when I got there for those eventualities. I didn't have to  
20 do anything immediately when I got on board.

21 Q But if something had happened, would you have been  
22 the one to give the order?

23 A Yes.

24 Q Based on the -- you didn't take any action as far  
25 as attempting to move the ship, then, while you were on

1 board.

2 A I was there for two weeks and towards the end of  
3 the two weeks, there was a lot of action that was taken,  
4 preparing to -- for the salvage operation.

5 Q But prior to the salvage operation, you didn't  
6 attempt to move the vessel from the reef by yourself.

7 A No.

8 Q Would you describe -- did you walk out on the deck  
9 that evening when you got on the Exxon Valdez?

10 A Yes.

11 Q Would you describe for the jury what you heard  
12 while you were walking out on deck?

13 A Occasionally, through the whole two weeks that we  
14 were there, on the main deck level, there were -- you could  
15 feel steel working and, occasionally, there would be a very  
16 loud bang that would make the whole ship shake and it would  
17 be -- we were assuming that it was a piece of steel that  
18 was letting go down in the lower part of the vessel. And  
19 that was, at times, very trying for the whole crew and the  
20 people out there working, not knowing what was occurring  
21 down below.

22 Q Were these noises things that you could hear  
23 clearly?

24 A Occasionally, you could hear one, but generally it  
25 was -- you could feel them more than hear them. There



1 would be a vibration through the vessel.

2 Q Where was the tanker hung up? Was it at midships  
3 or towards the bow or towards the stern?

4 A At first, we really didn't know where it was hung  
5 up exactly. There was some conflicting divers' report that  
6 came in. They didn't get very good information at first.  
7 Later on, we found out, as we got more -- as we got better  
8 information, that it was hung up on the starboard side by  
9 Tanks Number 2 and 3, I believe.

10 Q Did you have indications that it was hung up on  
11 the stern?

12 MR. CHALOS: Objection, Your Honor, at what point  
13 in time?

14 BY MR. COLE: (Resuming)

15 Q At any of this time.

16 A No. The initial divers' reports didn't say  
17 anything about it being hung up on the stern. We just knew  
18 it was towards the midships area that it was hung up.

19 Q Captain Deppe, have you ever been involved in  
20 groundings while you were the captain or on the bridge,  
21 while you've been a tanker captain, while you've worked on  
22 tankers?

23 A Excluding the Valdez, I was involved in a  
24 grounding case on the Exxon Houston where I came to the  
25 vessel after it was aground, once again, when it was in

1 Hawaii. When I was a second mate, the Exxon Chester went  
2 aground off of Florida and I was on board then. In the  
3 Mississippi River, I've been aground several times.

4 Q The times -- what is at the bottom of the  
5 Mississippi River.

6 A Mud.

7 Q The two times -- describe for the jury the two  
8 times that you were aground on the Mississippi River, what  
9 happened?

10 MR. CHALOS: Your Honor, there's no relevancy.  
11 Mr. Cole has already made the point that the bottoms were  
12 different, so it would be irrelevant to this particular  
13 case.

14 JUDGE JOHNSTONE: Mr. Cole?

15 MR. COLE: Mr. Glowacki testified about this. He  
16 said that vessels went astern. I'm going to show -- I  
17 believe Captain Deppe is going to say that's not the only  
18 way people got off on groundings in mud. And I think that  
19 his explanation will be relevant to this case.

20 MR. CHALOS: Your Honor, getting off a strand in  
21 mud and getting off a strand when you're hard aground on  
22 rock I think are two different procedures and unless he can  
23 establish that foundation, I would object.

24 JUDGE JOHNSTONE: We'll let the jury sort through  
25 that. I'm going to overrule the objection.

1 BY MR. COLE: (Resuming)

2 Q Would you explain the two occasions that you got  
3 stuck in the mud in the Mississippi River and what  
4 happened?

5 A One time, we -- I was third mate and the ship was  
6 coming downbound to load it and we hit a mud shoal, you  
7 might say, and the ship just turned around automatically.  
8 We were headed back up the river, turned around again, came  
9 down and made it over the second time and there was no  
10 stopping.

11 Another time we stopped and we weren't -- well,  
12 the vessel did stop and by applying more engine power and  
13 using the rudder, we wiggled kind of over the soft spot and  
14 made it up through the channel.

15 Q Would you describe it as a motion like this, going  
16 forward?

17 A Well, I wouldn't say that -- the heading of the  
18 ship changed slightly and we managed to get through.

19 Q Did you have to use the command astern, throttle  
20 command astern, to get off?

21 A Well, in the Mississippi River, going astern could  
22 be pretty dangerous. It's -- you've got -- if you ended up  
23 with stern away in a high river, you could -- you'd have  
24 very little control over the vessel and you could end up in  
25 a more dangerous situation, so the preferred procedure in a

1 place like the river is to go ahead if you can, if you're  
2 not really hard aground.

3 MR. COLE: I need an exhibit.

4 BY MR. COLE: (Resuming)

5 Q Captain Deppe, you might want to stand up and make  
6 sure you can see that real well. Do you recognize that  
7 chart?

8 A Yes.

9 Q Have you used that chart before in your travels in  
10 and out of Valdez?

11 A Yes.

12 Q Captain Deppe, I'd like to give you a  
13 hypothetical. I would like you to assume that you are the  
14 captain on the Exxon Valdez, that it's March 23d, 1989, and  
15 that it is 11:30. You are fully laden with drafts of  
16 approximately 56 feet on the Exxon Valdez. You personally  
17 have pilotage endorsement for the Prince William Sound and  
18 you are the only person aboard that tanker that has this  
19 pilotage endorsement. You have dropped off the pilot at  
20 Rocky Point. Let's say it's 20 minutes earlier, so it's  
21 11:50, 11:45. You have placed the tanker on full ahead 20  
22 minutes prior, after the pilot has been left off, dropped  
23 off the bridge. You have changed your course heading from  
24 219 to 180 degrees and then -- to 200 and then to 180 and  
25 are proceeding directly toward Bligh Reef. So you're

1 proceeding here and you change to 180 degrees, going right  
2 there, past Busby. On a 180 degrees, your course will take  
3 you within one mile of Busby Island.

4 I would like you to assume that you have made  
5 these course corrections to avoid ice that has drawn in, as  
6 that is. Now it's not a solid sheet, but it's ice that  
7 you've chosen to get around.

8 Would you -- your vessel -- you've also pushed up  
9 -- pushed on the load-up program to sea speed. Would you  
10 describe for the jury if you were right here, heading on  
11 180 degrees with Busby Island off to your left, with this  
12 ice here and with Bligh Island right here and your vessel  
13 is traveling right here, where you are physically on this  
14 vessel? Where would you be?

15 MR. CHALOS: I would object to this line of  
16 questioning. I think it's irrelevant as to what Captain  
17 Deppe would have done and there hasn't been a foundation  
18 laid as to whether Captain Deppe ever sailed through ice.  
19 So what he would have done in a hypothetical with that  
20 background is irrelevant and certainly not probative of  
21 anything.

22 JUDGE JOHNSTONE: Objection overruled.

23 BY MR. COLE: (Resuming)

24 Q Let me ask again. Captain Deppe, you are right  
25 here and this is in front of you. Where are you,

1 physically, on this vessel?

2 A There's many, many circumstances which would have  
3 to come into play for me to make decisions on where I would  
4 be on the vessel at any one time. If -- the way you laid  
5 it out to me right here, if I had to answer that question,  
6 I'd say I would probably be on the bridge.

7 Q You are abeam of Busby Island; you are 1.1 mile  
8 off and the situation has not changed. You are still  
9 heading 180 degrees. Where would you be, physically, on  
10 this vessel?

11 MR. CHALOS: Same objection, Your Honor.

12 JUDGE JOHNSTONE: Same ruling, overruled.

13 THE WITNESS: In this hypothetical situation  
14 you're putting me in, I would most likely be on the bridge.

15 BY MR. COLE: (Resuming)

16 Q Your vessel is now starting to make a right turn,  
17 the starboard side, and you are going to attempt to shoot  
18 this .9 mile gap between the leading edge of the ice and  
19 Bligh Reef, Bligh buoy -- Bligh Reef. Where would you be  
20 on that vessel?

21 MR. CHALOS: Objection, Your Honor, the same as  
22 before.

23 JUDGE JOHNSTONE: Overruled.

24 THE WITNESS: I would be on the bridge.

25 BY MR. COLE: (Resuming)

1 Q You are now abeam of the .9 mile area that you've  
2 been attempting to shoot. Where would you be on that  
3 vessel?

4 A Same answer, on the bridge.

5 MR. COLE: I have nothing further, Your Honor.

6 JUDGE JOHNSTONE: Let's take our break at this  
7 time, Mr. Chalos. Remember my instructions, ladies and  
8 gentlemen, not to discuss this matter among yourselves or  
9 with any other person and not to form or express any  
10 opinions. We'll call you back.

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

13 (Whereupon, the jury leaves the courtroom.)

14 (Whereupon, at 10:05 a.m., a recess is taken.)

15 (Whereupon, the jury enters the courtroom.)

16 THE CLERK: This Court is now in session.

17 CROSS EXAMINATION

18 BY MR. CHALOS:

19 Q Good morning, Captain Deppe. On direct  
20 examination, you stated that you're the ship crew  
21 coordinator for Exxon at the present time.

22 A I'm one of four at present.

23 Q That's a shoreside position?

24 A Yes.

25 Q Management position?

1           A     Coordinator level, but I'm not considered a  
2 manger, but I'm -- I guess you could call it a management  
3 position.

4           Q     Now you acted as Exxon's representative before the  
5 National Transportation Safety Board, did you not?

6           A     Yes.

7           Q     You were there for the hearings and you did the  
8 questioning on behalf of Exxon?

9           A     Yes.

10          Q     And you were also involved with the NTSB  
11 investigation of the grounding, are you not, on behalf of  
12 Exxon?

13          A     Yes.

14               MR. COLE:  Objection, relevancy.

15               JUDGE JOHNSTONE:  Just one moment.  The answer  
16 came in.

17               MR. COLE:  I object to this line of questioning,  
18 relevancy.

19               MR. CHALOS:  Your Honor, it goes to possible bias.

20               JUDGE JOHNSTONE:  Do you plan on following up with  
21 this line of inquiry about his participation in NTSB?

22               MR. CHALOS:  No, it was just for that purpose.

23               JUDGE JOHNSTONE:  Okay, let's go on.

24               BY MR. CHALOS:  (Resuming)

25          Q     Captain Deppe, you've been called by the State,



1 have you not, to testify against Captain Hazelwood?

2 A Yes.

3 Q You haven't been to Prince William Sound, as I  
4 understood your testimony, since 1987, other than the time  
5 you came on board after the grounding, is that correct?

6 A That's correct.

7 Q I'd like to turn now for a second to Exxon's  
8 alcohol policy. Did I understand you correctly that the  
9 policy changed and evolved many times in the past?

10 A The federal laws have changed dramatically over  
11 the last few years which has caused the communications to  
12 the fleet to be more involved and to try to get these new  
13 rules out to them. Exxon's policy has basically been the  
14 same which has been a prohibition against alcohol or  
15 drunkenness aboard the vessels for quite a few years.

16 Q So it has been Exxon's policy in the past to  
17 permit Moussy Beer on board, has it not?

18 A Yes, Moussy Beer.

19 Q Yes, Moussy Beer, I'm sorry. And it also had been  
20 Exxon's policy to permit wine I think you said with holiday  
21 meals.

22 A That's correct.

23 Q Now you're not aware of any Coast Guard  
24 regulations that prohibit the use of alcohol on board --  
25 the possession on board the vessels, are you?

1 A No, none that prohibit possession, no.

2 Q Mr. Cole asked you about some toxicology kits, do  
3 you recall that?

4 A Yes.

5 Q You are aware, are you not, that the toxicology  
6 kits were not required to be on board the vessels,  
7 commercial vessels, until December 1989?

8 A I think -- I believe that's correct.

9 Q You spoke about the trips that you made up to  
10 Valdez. How many trips did you make where you did not have  
11 someone with pilotage on board?

12 A I believe there might have been two.

13 Q It's true, is it not, that you've never sailed  
14 through ice in Prince William Sound?

15 A I believe there are two trips when we left that  
16 there was ice present in the lanes.

17 Q When you were the captain?

18 A Yes.

19 Q Did you -- in those instances, was the ice  
20 sufficient enough to cause you to deviate out of the lanes?

21 A One time, we deviated into the separation area.

22 Q You mentioned in response to Mr. Cole's question  
23 that Exxon does not exert pressure on its masters to sail  
24 if they deem it inadvisable, is that correct?

25 A That's correct.

1 Q Would you agree that even though the pressure may  
2 not be overt, that there is a certain subtle pressure on  
3 the masters to sail?

4 A I think anyone who goes to sea for a living has a  
5 can-do type feeling about themselves and they try to solve  
6 problems and put the pressure upon themselves to sail or to  
7 accomplish what they're there to do, is to move the ship  
8 from Point A to Point B. So I believe there's a pressure  
9 that's internal, more than external.

10 Q I take it that Exxon doesn't discourage that kind  
11 of thinking.

12 A They don't discourage it or encourage it.

13 Q Captain Deppe, just turning back to ice for a  
14 second, it's true, is it not, that even though you might  
15 have some reports of ice, it's not until you get down near  
16 the ice that you can really tell what the consistency is,  
17 the makeup, the extent and so on? Am I correct in that?

18 A That's correct.

19 Q So by that time, you've already sailed.

20 A That's correct.

21 Q In those times that you encountered ice, was that  
22 in the daytime?

23 A Yes.

24 Q The answer is yes?

25 A Yes.

1 Q I'd like to ask you about when you arrived on the  
2 vessel on that Friday evening, the 24th of March.

3 A Okay.

4 Q Did you come up originally as a representative of  
5 the company, rather than as a relief master for Captain  
6 Hazelwood?

7 A Yes. When I left home that day, it was just as  
8 representative of the company.

9 Q So you weren't coming up for the express purpose  
10 of relieving Captain Hazelwood.

11 A No.

12 Q That was done because Captain Hazelwood was needed  
13 ashore at some point.

14 A That was done, to the best of my knowledge,  
15 because there were some questions that had to be answered  
16 ashore and they needed someone out there to take his place.

17 Q With the lawyers and the NTSB, is that what you  
18 understood?

19 A Well, the NTSB wasn't there at the time and I  
20 wasn't privy to those decisions. I was just told where to  
21 go.

22 Q Captain Deppe, when you came on board the ship,  
23 she was hard aground at that time, was she not?

24 A Yes.

25 Q And she was stable, I think you said.

1 A Yes.

2 Q And all precautions had been taken to make sure  
3 that the safety of the ship and the crew were taken care  
4 of?

5 A As far as I could tell, yes.

6 Q You mentioned that certain things had been done by  
7 the time you got on board to insure the safety of the  
8 crew. Can you tell us what those things were?

9 A I know that the life boats had been put into the  
10 ready position by the embarkation decks. I believe that  
11 the whole crew had been told of the situation and they  
12 weren't in any immediate danger, but to be prepared for the  
13 worst eventualities, but anything --

14 Q Were the fire monitors prepared and ready to go?

15 A I don't recall.

16 Q Captain, when you came on board, were the pressure  
17 vacuum valves open or closed?

18 A They don't open or -- you can't open or close  
19 them. They lift by pressure and they were in their normal  
20 position. There had been nothing done to them, as far as I  
21 can recall.

22 Q In other words, they had lifted up.

23 A Well, they lift by pressure and then they reset  
24 again, once the pressure's relieved. I believe that the  
25 system was in its normal operating positions when I got

1 there. There's only several pressure vacuum valves on the  
2 main line. Each tank does not have one. And as far as I  
3 know, nothing had been done to those, to the pressure  
4 vacuum valves.

5 Q If one wanted to secure the valves so they didn't  
6 open up as a result of pressure, what could be done?

7 A You could -- there's an isolation valve on each  
8 one of the tanks on the inert gas main that you could close  
9 the isolation valve or you could artificially put some  
10 extra weight on top of the valve so it wouldn't lift under  
11 the normal pressure it would lift at. Or you could  
12 probably tie a plastic bag over it or something like that,  
13 which would keep it from lifting at its normal pressures.

14 Q In what condition were the inert gas gates when  
15 you came on board?

16 A I believe they were open.

17 Q Would you explain to the jury what the inert gas  
18 system does, what the open gates mean?

19 A The inert gas -- every tanker that carries crude  
20 oil nowadays has an inert gas system on board. When you  
21 pump out the crude oil, you displace the atmosphere in the  
22 tank with inert gas, which doesn't have a -- it's got a  
23 very low oxygen level and it -- so when the tanker is  
24 empty, the tank is full of inert gas and it can't explode,  
25 theoretically. Each tank has got this -- well, this inert

1 gas system has got a main that runs down the length of the  
2 deck. It's like an artery, a big artery in our body. And  
3 it's got a bunch of feeder lines that come off of the  
4 main. Each one of these feeder lines goes to an individual  
5 tank. These valves that Mr. Chalos mentioned are valves  
6 that isolate each individual tank from the main of the  
7 inert gas system. And if you had to go in a tank to do  
8 some work on it or you wanted to isolate a tank for any  
9 reason, you could close one of these valves and that would  
10 isolate that one tank from the rest of the inert gas  
11 system.

12 Q Captain, if one wanted to make this ship more  
13 buoyant, would it -- one of the procedures you would use,  
14 would that be to close down the pressure vacuum valves and  
15 the inert gas system?

16 A It wouldn't make it more buoyant. It would keep  
17 the buoyancy that you had at the time, or some of the  
18 buoyancy you had at the time that you closed them. It  
19 wouldn't become more buoyant, but you wouldn't lose any  
20 buoyancy.

21 Q Conversely, if you left them open, if oil was  
22 coming out of the ship, that oil would be displaced by  
23 water, would it not?

24 A If you left them open, the level of product in the  
25 tank would increase and decrease as the tides rose and

1 fell.

2 Q Right. So as the tide came in, there was a rising  
3 tide, if the tide came in, water would displace the oil  
4 going out, would it not?

5 A There would just become more water in the tank and  
6 the oil would be on top of the water, so you'd end up with  
7 more water in the high tide and you'd have less water in  
8 low tide.

9 Q And the net effect of that would be to make the  
10 ship heavier, would it not?

11 A The net effect you'd get from that is that the  
12 ship's position would stay the same. It would not float;  
13 it would stay where it was. Instead of floating -- as the  
14 level of water came up, the ship would stay in the exact  
15 relative position to the ground, rather than to the water.

16 Q That's by keeping the valves -- I understand what  
17 you're saying.

18 A Yes.

19 Q That's by keeping the valves open. Whereas if you  
20 close the valves and close the inert gas system, it would  
21 have the effect of keeping the buoyancy and lifting the  
22 ship up, am I correct?

23 A If you had -- that's exactly how we refloated the  
24 vessel when we salvaged it. We sealed up the whole deck of  
25 the vessel and closed up the inert gas system and



1    pressurized some tanks, increased the pressure a little bit  
2    in there, and didn't allow the water to come into the tanks  
3    as the tide came up. And by doing that, the vessel  
4    refloated by itself at high tide.

5           Q     In any event, when you got on the ship, Captain  
6    Hazelwood had the valves completely open, not closed..

7           A     I believe they were, yes.

8           Q     I'd like to --

9           MR. CHALOS: Your Honor, may I approach the  
10   witness, please?

11           JUDGE JOHNSTONE: Yes.

12           BY MR. CHALOS: (Resuming)

13           Q     I'd like to show you what's been marked and in  
14   evidence as Exhibit 95, which are the soundings that were  
15   taken several days after the ship -- after the Baton Rouge  
16   got alongside.

17           A     Yes.

18           Q     Do you know what the state of the tide was at the  
19   time?

20           A     No.

21           Q     I'd like you to focus your attention on the  
22   soundings aft of the Valdez, the Exxon Valdez. Do you see  
23   those?

24           A     Yes.

25           Q     Those are all fairly large soundings. In other

1 words, there was plenty of water aft of the ship, am I  
2 correct?

3 A Yes.

4 Q Certainly there was more water behind the ship  
5 than the draft of the ship, was there not?

6 A It appears to be, yes.

7 Q Captain, did you have an opportunity to review the  
8 charts of this vessel when you got on board?

9 A I looked at where we were. I didn't really look  
10 into the accident or ask any questions about positions.

11 Q No, you understood my question. Did you identify  
12 the position the vessel was in when she ran aground?

13 A I looked at the chart and saw where we were  
14 charted to be, yes.

15 Q Did you take bearings in the following days,  
16 ranges on bearings, to ascertain your position?

17 A We made sure that we kept a very close watch on  
18 where we were to make sure that we didn't move.

19 Q It's true, is it not, that the ship did not move  
20 from the original grounding position, on the basis of what  
21 bearings and ranges you took?

22 A The only time the vessel moved was -- I think it  
23 was the Sunday night of Easter Sunday or Saturday night, I  
24 can't remember which, but the wind picked up to 70 knots  
25 and we started to pivot on the point where we were

1 grounded. But as far as we could tell, we never actually  
2 moved from that point. We pivoted a little bit.

3 Q When you say you pivoted, you pivoted sort of side  
4 to side?

5 A The ship changed heading about ten degrees before  
6 we had a tug boat start pushing on us and to check the  
7 movement. And since the tug boat pushed, we stopped the  
8 movement and we basically stayed status quo from that point  
9 on.

10 Q You didn't move forward at all?

11 A As far as I know, the ship didn't move the whole  
12 time I was there.

13 Q Now I'd like to ask you a little bit about the  
14 working of the vessel as a result of tide and wind  
15 changes. Aside from this pivoting that you got, was the  
16 vessel working when the tide was coming in and out?

17 A At each change of tide, we would -- at high tide,  
18 the vessel would take on about a four- to six-degree list  
19 to starboard and at low tide, we stayed pretty much either  
20 at even keel or maybe a degree to starboard and the shipped  
21 worked at each tide in that manner. It listed to starboard  
22 as high tide approached.

23 Q When the ship worked, was some of the metal along  
24 the turn of the bilge being washed away or ground out?

25 A Would you like me to draw a picture of what --

1 Q Yes, do you mind?

2 (Witness draws on the document.)

3 THE WITNESS: First, if you looked at -- I'm not a  
4 very good artist, so you're going to have to bear with me  
5 on this, but all these tanks right here were damaged for  
6 the most part. All these tanks were damaged and they had  
7 free communication with the water. So if you looked at a  
8 side view of the ship and these are the portside tanks  
9 here, these are the center tanks and these are the  
10 starboard tanks --

11 MR. CHALOS: We're looking from the aft, forward.

12 THE WITNESS: Aft, forward. These tanks here were  
13 damaged, these tanks were not damaged and these tanks  
14 pretty much had their buoyancy that they would have under  
15 normal conditions. These tanks had no buoyancy. So as the  
16 tide came in or went out, the water level in these tanks  
17 changed and the oil level changed as the tide came in.

18 When the ship was aground over here, basically in  
19 this area right here let's say, and as the tide came in --  
20 that's the water level outside -- as the tide rose, this  
21 tank kept its buoyancy, so this tank would float up and it  
22 would force the ship over to the starboard side. It was  
23 stay on this rock right here. But as the ship came over to  
24 the starboard side, what was happening, it was reported by  
25 the divers that this burn of the bilge right here started

1 to flatten out. As the days progressed, it started to get  
2 flatter like this and the metal over here was starting to  
3 break and it was being compressed in that side. So as the  
4 ship listed to starboard, it was putting pressure -- the  
5 rocks were putting pressure on that part and causing it to  
6 flatten out.

7 (Witness completes the drawing.)

8 BY MR. CHALOS: (Resuming)

9 Q At this point in time, I take it the oil in that  
10 tank had gone out or was there still a --

11 A Well, no. What we had done, if this was the --  
12 when we got there, there might have been oil up to this  
13 level here and there was water down in the -- well, there  
14 was water down at the very bottom. We had submerged pumps  
15 into the oil from the top and the pumps were pumping oil  
16 through the top. And as the pumps were pumping the oil  
17 out, water would take its place, so that the level of  
18 liquid in the tanks stayed the same, but the oil level  
19 interfaced and became -- or the oil level became smaller.  
20 And the interface between the oil and the water came closer  
21 to the deck all the time.

22 Q Okay.

23 MR. CHALOS: Your Honor, I would like to mark this  
24 chart for identification and then offer it into evidence.

25 JUDGE JOHNSTONE: Any objection.

1 MR. COLE: No.

2 JUDGE JOHNSTONE: P, it'll be P.

3 MR. CHALOS: I offer P into evidence, Your Honor.

4 JUDGE JOHNSTONE: Okay, it'll be admitted and you  
5 can put the sticker on at a later time.

6 (Defendant's Exhibit P was  
7 marked for identification and  
8 was received in evidence.)

9 BY MR. CHALOS: (Resuming)

10 Q Captain, you said when you came on board, you  
11 didn't know where the ship was hung up and you couldn't  
12 tell from standing on the bridge whether she was hung up  
13 forward or aft, is that correct?

14 A No, I couldn't tell where it was grounded.

15 Q And it was only after several conflicting reports  
16 that you got from the divers that it was finally  
17 ascertained that the vessel was hung up forward.

18 A The going assumption was that it was hung up  
19 somewhere forward of the engine room, but the conflicting  
20 reports caused some confusion at first whether it was more  
21 towards the midships point or not. At first, we thought we  
22 were aground more towards the midships of the ship, rather  
23 than the starboard side.

24 Q When you say forward of the engine room, you're  
25 talking about anywhere from here up forward, is that right?

1           A     That's correct.

2           Q     Did the storm, the Sunday storm, in your opinion,  
3 cause any more damage to the vessel, to the bottom of the  
4 vessel?

5           A     If it was, I believe it was insignificant. I  
6 don't think there was anything major that occurred in the  
7 storm.

8           Q     Captain, I'd like to ask you about your  
9 experiences of being aground in the Mississippi. I think  
10 you told us in both instances that you were aground, you  
11 were a third mate or a second mate?

12          A     I've been aground there as captain, but we've  
13 never stopped --

14          Q     Just went over it in the mud.

15          A     -- just we've kept going, yes.

16          Q     Would you agree that being aground in mud is  
17 different than being hard aground on rocks?

18          A     Yes.

19          Q     And would you also agree that the strategy for  
20 extricating yourself from being aground in mud, as opposed  
21 to extricating yourself from being aground on rocks, would  
22 be different?

23          A     I think the strategy for any grounding is  
24 different.

25          Q     It depends on the situation, depends on the

1 circumstances.

2 A That's correct.

3 Q Captain, I'd like to give you a hypothetical now.  
4 If you were on a ship like the Exxon Valdez, traveling at  
5 11.75 knots, laden down to 57 feet, and your vessel was  
6 stopped, dead stopped at 11.75 knots to hard aground at  
7 about 500 feet, would you say that that was a hard  
8 grounding?

9 A Yes.

10 Q If you were the master of that ship -- and I'd  
11 like to give you some more information. You know you just  
12 stopped within the distance of 500 feet from 11.75 knots.  
13 Your chief mate comes up --

14 MR. COLE: Your Honor, I object to the reference  
15 of 500 feet. There's been no testimony about 500 feet.

16 MR. CHALOS: Your Honor, I think the testimony has  
17 been that there was one grounding, that there was some  
18 rumbling that lasted ten to 15 seconds and they can't get  
19 off.

20 JUDGE JOHNSTONE: He's talking about the 500 feet  
21 of water. Is that what you're talking about?

22 MR. COLE: Well, I didn't know whether he was  
23 referring --

24 MR. CHALOS: No, I'm talking about the length  
25 because we know how far the damage was, which was about 500



1 feet and there's been evidence of that.

2 JUDGE JOHNSTONE: I'm going to let the question be  
3 asked, so far, subject to further objection.

4 BY MR. CHALOS: (Resuming)

5 Q Now, Captain, your vessel is hard aground at this  
6 point. Your chief mate comes up and tells you that the  
7 vessel is stable, he's run some stability calculations and  
8 she's stable. You also know that the tide is coming in on  
9 you, in about an hour and a half or so, it's going to reach  
10 high tide. If you wanted to get this ship off the strand,  
11 what would you do with respect to your pressure vacuum  
12 valves and your IG system, inert gas system?

13 A To salvage a vessel, one of the strategies you can  
14 use is to secure the inert gas system to keep the pressure  
15 in the tanks to give you more buoyancy.

16 Q By securing, you mean you close down the valves  
17 and you close down -- you tie down the pressure vacuum  
18 valves, is that right?

19 A You secure all -- you secure the openings into the  
20 tanks of the vessel so that none of the atmosphere in those  
21 tanks can escape. That's one of the strategies you could  
22 use to give you more buoyancy.

23 Q Now you know at this point in time that you came  
24 in to the grounding from deep water because you were  
25 sailing in deep water. What would you do with your engine

1 at that point if you wanted to try and get off the strand?

2 A In a hypothetical case, there's two things you can  
3 do with your engine. You can either go ahead or astern and  
4 whatever works, I would use.

5 Q How about if you go up ahead and you don't come  
6 off the strand, would you go in reverse?

7 A If I was trying to get off, I would go both ways.

8 Q And if you were trying to secure the vessel onto  
9 the reef, knowing that the tide was coming in, would you  
10 only go ahead?

11 A Depending on the circumstances, I might go either  
12 way, depending where I was aground and where the reef was.  
13 But I would think if I was aground in the forward part of  
14 the vessel and I knew there as shallow water there, I would  
15 probably go ahead if I was going to try to stay where I  
16 was.

17 Q And you'd keep your inert gas valves and your  
18 pressure vacuum valves open, would you not?

19 A Yes.

20 Q Captain, I'd like to give you one more  
21 hypothetical. Would you agree that a ten-degree right  
22 rudder command is a simple command?

23 A Yes.

24 Q Would you expect your mates to be able to carry  
25 out that command without too much trouble?

1 A Yes.

2 Q Assume for the moment that you're abeam of Busby  
3 Island Light at 11:55 p.m. You're doing 11.75 knots and  
4 you've got 57 feet of draft on the vessel. Incidentally,  
5 you are familiar with the handling characteristics of the  
6 Exxon Valdez, are you not?

7 A I was familiar with the Exxon Long Beach.

8 Q Which is a sister ship?

9 A Sister ship.

10 Q You would expect them to behave in the same way --

11 A Yes.

12 Q -- under similar conditions?

13 A Yes.

14 Q Okay, back to my hypothetical. You're abeam of  
15 Busby, about a mile off. You're traveling at 11.75 knots  
16 and you've got 57 foot of draft. If the command was to  
17 place ten degrees of right rudder on the vessel at that  
18 point, would you expect her to miss Bligh Reef?

19 A Yes.

20 Q And that would be true if the ten-degrees right  
21 rudder was put on at 11:56, as opposed to 11:55, is that  
22 correct, just a minute later?

23 A In that area, I would expect it to miss Bligh  
24 Reef, yes.

25 Q Captain, I have no further questions, thank you.

## REDIRECT EXAMINATION

1  
2 BY MR. COLE: (Resuming)

3 Q Captain Deppe, how would you be able to tell  
4 whether or not your vessel was going to miss Bligh Reef if  
5 you were not on the bridge, but rather you were in your  
6 cabin?

7 MR. CHALOS: Objection, Your Honor, no foundation.

8 JUDGE JOHNSTONE: Objection overruled.

9 MR. CHALOS: Are we using the same assumptions,  
10 Your Honor, that I --

11 BY MR. COLE: (Resuming)

12 Q The same assumptions that Mr. Chalos just gave  
13 you. How would you be able to tell whether or not you're  
14 actually going to miss Bligh Reef if you were in your cabin  
15 and not on the bridge?

16 A One of the responsibilities a master has on board  
17 a vessel is to delegate a lot of responsibilities to other  
18 people. There's a lot of actions that take place on board  
19 a ship that other people take with my authority, with me  
20 not being present. And if I have an officer that I have  
21 confidence in to carry out a command or to perform some  
22 maneuvers when I'm not there, I would assume, and I'd have  
23 to assume because I can't be up 24 hours a day, that the  
24 actions he takes are going to be safe actions. If I was in  
25 my cabin and a person went to do a maneuver and he was

1 ordered to do that maneuver, I would have to assume that he  
2 would carry that out correctly.

3 Q How would you be able to tell whether or not you  
4 were going to hit Bligh Reef? I don't want you to assume.  
5 I want you to be able to tell the jury what you would be  
6 able to -- how would you be able to tell that it was not  
7 going to --

8 MR. CHALOS: Your Honor, I believe the question  
9 was argumentative. This is Mr. Cole's witness and I think  
10 he answered the question and Mr. Cole is trying to get a  
11 different answer.

12 JUDGE JOHNSTONE: Mr. Cole?

13 MR. COLE: Judge, I'm just asking a question and  
14 he did not respond in his answer, so I'm asking again. He  
15 said -- I asked him personally how he would be able to tell  
16 and he said something to the effect that, "I would  
17 assume." Now I would rather know what it is in the chart  
18 room that allows him to assume.

19 JUDGE JOHNSTONE: All right, Captain, you can  
20 answer the question.

21 THE WITNESS: Any time I'm not on the bridge,  
22 there's no way that I can tell if any action taken is going  
23 to have the required or would have the desired effect.

24 BY MR. COLE: (Resuming)

25 Q Are there any rudder orders or rudder angle

1 indicators in the captain's bridge -- in the captain's  
2 office?

3 A No, no.

4 Q Is there any gyro repeaters in the captain's  
5 office?

6 A No.

7 Q Now in the hypothetical Mr. Chalos gave with this  
8 situation, ice in front of you like that, is that the kind  
9 of situation that you would entrust to a mate and leave the  
10 bridge?

11 MR. CHALOS: Objection, Your Honor.

12 JUDGE JOHNSTONE: Without further -- you have to  
13 announce your objection.

14 MR. CHALOS: Yes, a foundational objection.

15 JUDGE JOHNSTONE: I think the foundation has been  
16 laid throughout the question and I think everybody knows  
17 what the foundation is now. Objection overruled.

18 THE WITNESS: Repeat the question, please.

19 BY MR. COLE: (Resuming)

20 Q Is the situation that Mr. Chalos discussed, the  
21 right turn, is that the kind of situation where you would  
22 leave the bridge with the conn and the third mate?

23 MR. CHALOS: I object now, Your Honor, on the  
24 basis of relevance.

25 JUDGE JOHNSTONE: Objection overruled.

1 THE WITNESS: Under the circumstances the way  
2 they've been described to me that night, I probably would  
3 have been on the bridge, I would not have left the third  
4 mate by himself.

5 BY MR. COLE: (Resuming)

6 Q Now, Captain Deppe, you answered Mr. Chalos'  
7 question about whether or not the Exxon Valdez would have  
8 hit Bligh Reef. I'd like to show you another diagram here,  
9 what's been marked for identification -- we can do it from  
10 this one right here. Looking at the same diagram, do you  
11 see the 3855 fathom marker right there?

12 A Yes.

13 Q If the Exxon Valdez was traveling according to Mr.  
14 Chalos' hypothetical of 11.75 knots with 57-foot drafts and  
15 it was heading at a 180 degrees, if it had -- would it have  
16 made Bligh Reef if it turned ten degrees at that point?

17 A How far is that position from Bligh Reef?

18 Q I think we ought to \_\_\_\_\_, let me check it.

19 MR. CHALOS: Your Honor, may I approach the chart  
20 to look, as well?

21 JUDGE JOHNSTONE: Mr. Chalos, would you try to  
22 avoid standing between the jury --

23 THE WITNESS: At that point, if rud. 10 was put on  
24 -- we don't have any maneuvering information for those  
25 kinds of course changes or angles without those graphs.

1 I'm not sure whether -- I think it would make it, but I  
2 don't know whether I would give that command. I think I  
3 would probably give more rudder than right ten at that  
4 point, myself. But I think there's a -- I can't say for  
5 sure whether it would make it or not, but I think it would.

6 BY MR. COLE: (Resuming)

7 Q Okay. Do you remember testifying in front of the  
8 NTSB?

9 A Yes.

10 Q And do you remember being asked the question I  
11 just put to you at the NTSB hearing?

12 A I was asked some hypothetical ABs, I believe, or  
13 Cs.

14 Q And can we be --

15 MR. CHALOS: Your Honor, may we approach the  
16 bench?

17 JUDGE JOHNSTONE: All right.

18 (The following was said at the bench.)

19 MR. CHALOS: Your Honor, what happened at the NTSB  
20 was Mr. Delozier (inaudible).

21 JUDGE JOHNSTONE: (Inaudible.)

22 MR. CHALOS: (Inaudible.)

23 JUDGE JOHNSTONE: Are you going to do that on  
24 cross examination?

25 MR. CHALOS: (Inaudible.)



1 JUDGE JOHNSTONE: (Inaudible.)

2 (The following was said in open Court.)

3 BY MR. COLE: (Resuming)

4 Q The 3855 fathom marker is how far from Bligh Reef?

5 A About a mile and a half.

6 Q Now as far as the pressure vacuum valves and the  
7 IG system that you talked about with Mr. Chalos, would you  
8 have known whether or not those were sealed off at any time  
9 earlier or not?

10 A .No, I wouldn't.

11 Q When -- in your experience as a captain in the  
12 limited number of times you've encountered ice, you talked  
13 about the fact that it's difficult to tell the extent of  
14 the ice until you get right up on it, is that correct?

15 A That's correct.

16 Q Is the ice -- is an ice hazard something that you  
17 should exercise more caution and prudence in approaching  
18 and --

19 MR. CHALOS: Objection -- sorry.

20 BY MR. COLE: (Resuming)

21 Q Does it call for a greater exercise of caution by  
22 a master?

23 MR. CHALOS: Objection, Your Honor, no  
24 foundation. As opposed to what?

25 MR. COLE: Normal operating procedure without any

1 ice.

2 THE WITNESS: Can you repeat the question again?

3 BY MR. COLE: (Resuming)

4 Q What -- does encountering ice cause a greater  
5 responsibility on the part of a master that if you do not  
6 encounter ice in the traffic lanes?

7 MR. CHALOS: Objection, Your Honor, foundation,  
8 relevance.

9 THE WITNESS: The responsibility of the master is  
10 to take every situation that he encounters and make the  
11 decisions that are required, based upon those  
12 circumstances. If there was ice present or it's not  
13 present -- you might handle things differently with ice  
14 present than not present or if it's windy or if it's cold  
15 or if it's fresh water versus salt water or if it's shallow  
16 water or if it's shoal water. There's a lot of  
17 circumstances that come into play almost every time you do  
18 something and any one of those things can cause you to  
19 handle things differently and think of things differently.  
20 So ice would require me to do things differently than no  
21 ice, yes. There would be different circumstances.

22 BY MR. COLE: (Resuming)

23 Q I'd like you to look at what's been marked  
24 Plaintiff's Exhibit Number 29. Do you recognize that  
25 photograph?

1           A       It looks like a reproduction of the chart from the  
2 Exxon Valdez.

3           Q       And would you describe for the jury, if I hold it  
4 up, where you understood the Exxon Valdez to be aground  
5 when you arrived on the vessel?

6           A       Just about that 004 area.

7           Q       No, actually, can you -- would you point to it and  
8 tell the jury where you understood it to be?

9           A       Well, I don't know exactly, the exact spot that I  
10 thought it to be. We had it marked on the chart and that's  
11 the marker that was on the chart when I arrived. That's  
12 where --

13          Q       Which mark is it?

14          A       I really don't know.

15          Q       You don't remember or you don't know?

16          A       I don't know.

17          Q       You indicated that during the next couple of days,  
18 you were afraid of the vessel moving while you -- after the  
19 first couple of days you came on the vessel. Do you  
20 remember talking about that?

21          A       We were -- yes, we were concerned that if we had  
22 changed the balance of cargo or changed the buoyancy of the  
23 vessel that the vessel could move or if an unusually high  
24 tide came or the wind changed, it somehow could slide off  
25 the perch it's on and end up into deep water which could

1 have been disastrous.

2 Q Why could that have been disastrous?

3 A Well, the initial reports we had from our naval  
4 architects were that with the types of damage that the  
5 bottom had sustained, he wasn't sure whether the vessel  
6 would capsize or not if we were not perched on the rock.

7 Q Was that information consistent with the  
8 information you received from the chief mate when you came  
9 on board?

10 A Yes, it was.

11 Q Now you talked with Mr. Chalos about the damage  
12 and where the ship was holed. Was the discussion as to  
13 where the it was holed related to whether it was done at  
14 the hole at the aft or astern or whether it was holed in  
15 the center or on the starboard side?

16 A I don't understand the question.

17 Q Where was the concern -- where was the  
18 misunderstanding as to where this vessel was actually  
19 holed?

20 A No, there was no misunderstanding about where --  
21 I'm sorry.

22 MR. CHALOS: Yes, my objection was Mr. Cole  
23 mischaracterizing the witness' testimony.

24 JUDGE JOHNSTONE: Well, we'll let the question  
25 stand if you can answer that.

1 THE WITNESS: There was no question about where  
2 the vessel was holed. We knew where we had holes in the  
3 vessel. It was where the vessel was aground.

4 BY MR. COLE: (Resuming)

5 Q Okay, I misspoke. Was it -- what was the concern  
6 about where it was grounded?

7 A The concern was if that -- if it was grounded in  
8 the center part of the vessel here, which was some of the  
9 initial reports, that as the buoyancy from the port side or  
10 as the vessel came up on the port side, it might somehow  
11 slide off that point if it wasn't grounded real firmly right  
12 there, but that was proved to be a wrong report in the  
13 beginning.

14 Q Where would the -- was there ever any evidence  
15 that this vessel was grounded astern?

16 A None that I know of.

17 Q And the only controversy was whether it was  
18 grounded in the center or on the starboard side.

19 A That's correct.

20 Q You talked about different strategies for  
21 extricating yourself from mud and extricating yourself from  
22 rock. Does Exxon Company have a policy or a strategy for  
23 extricating -- for a master extricating his vessel from  
24 rock, once it's grounded?

25 A There's no policy on that.

1 Q What type of -- Mr. Chalos gave you a hypothetical  
2 about traveling at 11.75 knots and coming to a stop at 500  
3 feet. I'd like to extend that hypothetical just a second.

4 I'd like you to assume that you're the captain of  
5 the Exxon Valdez and that you left the bridge while you  
6 were in the area of Bligh Reef and when you were away, the  
7 vessel was grounded on Bligh Reef. What information would  
8 you want to know before attempting to remove that vessel  
9 from the reef?

10 A The most important information would be what  
11 damage the vessel's -- what damages occurred to the vessel  
12 from the grounding, what kind of stability I could expect  
13 from the vessel and whether I might do further damage to  
14 the vessel if I tried to get it off and create a bigger  
15 problem. My biggest concern would be for the safety of the  
16 crew on board the vessel, that would be my number one  
17 concern.

18 Q What would you do to insure the safety of the crew  
19 on the vessel?

20 A It depends on the circumstances. There have been  
21 cases where the whole crew stayed on board and there's been  
22 cases where the crew has been evacuated. I'd say,  
23 generally, as long as you're in a stable condition, the  
24 crew of the vessel would stay on board.

25 Q If you were told the following, what would do?

1 "The engine room is intact and there's no damage. There is  
2 no damage to the engine or propeller and the engine can be  
3 run at your command. The pump room has been checked and is  
4 not breached. The double bottom in the pump room has been  
5 sounded and there's no trouble."

6           You receive a call from your chief mate who is in  
7 the cargo control room and he tells you that the center  
8 cargo tanks one, two, three, four and five have been  
9 damaged and oil cannot be accounted for in these tanks. He  
10 tells you that the starboard cargo tanks one, three and  
11 five have been damaged and oil cannot be accounted for in  
12 these tanks. He tells you that starboard tanks two and  
13 four have been breached and there's some liquid in them.  
14 Those were your ballast tanks. And he tells you he cannot  
15 account for between 100,000 and and 115 barrels of oil

16           What does this tell you about the extent of the  
17 damage that's been done to your ship?

18           A     That we've got a lot of cargo tanks that have been  
19 breached.

20           Q     What does that tell you about the stability of  
21 your ship?

22           A     I'd have to have more information and a computer  
23 to figure that out.

24           Q     What type of computer would figure that out for  
25 you?

1           A       I don't know if the load master that's on board  
2 the tanker is able to computer those kinds of calculations  
3 or not. I know that our naval architects used a  
4 shore-based computer to do their calculations on  
5 stability. I'm not quite sure whether our computer on  
6 board could handle that or not.

7           Q       Would that be something you'd want to know before  
8 you made any attempts to take the vessel off the reef?

9           A       Depending on the circumstances, I would say yes.

10          Q       How about how the vessel is sitting on the reef,  
11 would that be a concern to you?

12          A       There's all kinds of things that would be of  
13 concern to me.

14          Q       How about the vessel sitting on the reef, how it's  
15 sitting on the reef, would that be something that concerns  
16 you?

17          A       Yes.

18          Q       How would you determine that?

19          A       You can sometimes determine it by the list of the  
20 vessel, turn of the vessel, the way the vessel would move  
21 in the -- with rudder applied to it in one direction or the  
22 other and by sending divers down, by getting soundings  
23 of --

24          Q       How do you take soundings?

25          A       Just drop a line over the side with a weight on



1 it.

2 Q Could a crew member do that?

3 A Yes.

4 Q How would he do that?

5 A He would take a line, put it over the side of the  
6 vessel and measure the depth of the water.

7 Q And would he do it in one spot or how many times  
8 would he do it?

9 A Depending on the circumstances, it could be many  
10 times, just one spot.

11 Q Would that be information that you'd want to know  
12 before making the decision as to whether or not to remove  
13 the tanker from the reef?

14 A It's possible.

15 Q Now I'd like you to assume that, five minutes  
16 later, your chief mate comes up to the bridge and presents  
17 you with a printout of the ocean motions program.

18 MR. CHALOS: Objection, Your Honor. The evidence  
19 isn't five minutes later.

20 MR. COLE: Several minutes later.

21 MR. CHALOS: Objection again, Your Honor. The  
22 evidence was a half-hour to 50 minutes later.

23 JUDGE JOHNSTONE: Mr. Cole, is this the --

24 MR. COLE: First time.

25 JUDGE JOHNSTONE: The first time from the start of

1 the --

2 MR. CHALOS: As I recall the evidence, Your Honor,  
3 the chief mate came up at 12:30, gave the information the  
4 vessel was stable. And then he said he came up between  
5 1:00 o'clock and 1:20 and said the vessel wasn't stable.  
6 So that's 30 to 50 minutes.

7 MR. COLE: I'm just talking about the first time  
8 that he came to the bridge.

9 JUDGE JOHNSTONE: Well, in order to make this  
10 meaningful, you're going to have to give us a foundation  
11 that's somewhat similar to the scenario that's been  
12 testified to and make it clear enough to the witness so  
13 that the jury can be assisted somewhat by your question.

14 BY MR. COLE: (Resuming)

15 Q Five minutes after the chief mate had told you the  
16 information I've just described to you -- at about 12:30 in  
17 the morning, he comes up to the bridge and presents you  
18 with a printout of the ocean motion and he tells you that  
19 he's inputted that the vessel was grounded, that the vessel  
20 had drafts of 50 feet and that it had been holed in the  
21 stern, that he's put in the new ullages that he's been  
22 provided and run the program and the results are that the  
23 stability meets GM, marginally, but that the stress is not  
24 within limits, the stress then.

25 MR. CHALOS: Your Honor, I object to the

1 mischaracterization of the chief mate's testimony. The  
2 chief mate said that the GM was exceeded by a hundred  
3 percent; that's not marginally.

4 JUDGE JOHNSTONE: I don't remember the term  
5 marginal being used, Mr. Cole, but maybe you can just use  
6 the exact testimony if you're going to use this type of  
7 hypothetical question based on evidence.

8 MR. COLE: I'll just say that it exceeded GM.

9 JUDGE JOHNSTONE: All right.

10 BY MR. COLE: (Resuming)

11 Q Would you attempt to remove this vessel from the  
12 reef, given this information?

13 A It's hard to say what I would have done that  
14 night. I wasn't there and it's very difficult to say what  
15 I would have done if I had all the information and had been  
16 involved in the whole situation. The little bit of  
17 information you're giving me there doesn't give me enough  
18 to make a decision on what I'd do.

19 Q Let's say you decide to remove the vessel at 12:38  
20 that evening and you start up the engines. By 12:51,  
21 you're at full ahead. At around 1:00 o'clock, a.m., your  
22 chief mate comes in and tells you he has rerun the same  
23 ocean motions computer program, that he has not been able  
24 to program in the grounded mode, but rather has assumed  
25 only that the program -- run the program, assuming that the

1 vessel is completely intact, no damage, no grounding.

2 MR. CHALOS: Objection, Your Honor. The last  
3 statement, intact, doesn't mean no holes, no grounding.  
4 That's a mischaracterization.

5 MR. COLE: The computer program he ran assumed  
6 that the vessel was intact, and that's what Mr. Kunkel  
7 testified to.

8 MR. CHALOS: I have no problem with that. I just  
9 had a problem with the explanation of what intact means.

10 JUDGE JOHNSTONE: Okay, just intact, leave out the  
11 no holes, no grounding, because I believe that's what the  
12 testimony was.

13 (Tape changed to C3628)

14 BY MR. COLE: (Resuming)

15 Q That the vessel had not met the required stability  
16 requirements, GM, and that the vessel did meet the stress  
17 requirements and that the chief mate advised you at that  
18 time that you should not leave the area, that you should  
19 stay where you are. What would you do at that point?

20 A Would you repeat the question again?

21 Q Do you want me to tell you all the hypotheticals?

22 A No, no, just the question.

23 Q The engine is running full ahead at this point and  
24 you're giving rudder commands left and right and you are  
25 provided with this information by the chief mate at 1:00

1 o'clock. What would you do at this point?

2 A It's very difficult for me to say what I would do,  
3 not having been there. I'd probably -- if I had advice  
4 from people telling me that the vessel was unstable and I  
5 was trying to extricate it from the reef, I would stop  
6 extricating it from the reef, if that's the assumption  
7 we're making.

8 Q Thank you, I have no further questions.

9 RE CROSS EXAMINATION

10 BY MR. CHALOS: (Resuming)

11 Q Captain Deppe, in response to Mr. Cole's question  
12 about what you might have done if you were on the bridge  
13 off of Busby Island Light and seen the ice and so on and so  
14 forth, you say you probably would have stayed on the  
15 bridge. I take it you're saying that in hindsight now,  
16 knowing what's happening, am I correct?

17 A Well, I believe I would have been on the bridge  
18 for the transit out of Prince William Sound. That's  
19 generally how I would handle my operation out there.

20 Q Okay. You don't know, though, what was in Captain  
21 Hazelwood's mind on that particular night, do you?

22 A No, I don't.

23 Q You don't know what he was looking at on his radar  
24 screen, what he was looking at in terms of the ice  
25 condition.

1 A That's correct.

2 Q And certainly you don't know what his experience  
3 with his mate's ability was, do you?

4 A No, I don't.

5 Q And certainly the simplicity of the command that  
6 one would give would play a role in what a captain would do  
7 at any time, would it not?

8 A The complexity of an order would sometimes require  
9 a captain to be present. If it's a simple order, maybe he  
10 would not be, that's correct.

11 Q You said in response to Mr. Cole's question that  
12 there are no rudder indicators in your stateroom or your  
13 office, but certainly there are telephones, aren't there?

14 A Yes.

15 Q And it's a standing order of captains on these  
16 ships to their mates on watch that, "If you have any doubts  
17 at all, if you feel in any way uncomfortable, give me a  
18 call," isn't that correct?

19 A That's general practice, yes.

20 Q And you were on the Long Beach, which is a sister  
21 ship. Your room was just one deck down, am I correct?

22 A That's correct.

23 Q If you had to get back up to the bridge, you could  
24 do it in ten, 15 seconds, could you not?

25 A Less than that.

1 Q Now, captain, have you ever given anybody an  
2 order, any of your mates an order to turn at a particular  
3 fathom mark in Prince William Sound?

4 A No.

5 Q It's true, is it not, that mariners don't navigate  
6 and make turns on the basis of fathom markings?

7 A That's not the general way we do things, no.

8 Q And certainly not in an area where you have  
9 navigational aids all over the place.

10 A No.

11 Q In response to Mr. Cole's question about ice, you  
12 said that you wouldn't know the ice conditions until you  
13 were right on top of them. You don't mean that, do you?  
14 What you're talking about is you --

15 MR. COLE: Objection. It's argumentative.

16 JUDGE JOHNSTONE: Maybe you can rephrase that.

17 MR. CHALOS: I'll rephrase it.

18 BY MR. CHALOS: (Resuming)

19 Q When you talked about seeing the ice conditions  
20 firsthand, you weren't talking about being on top of the  
21 ice, were you?

22 A Well, what I meant by being on top of it was that  
23 you had already taken departure from the dock and you were  
24 transiting the sound and within -- unless you had gotten  
25 past a vessel that had been through that area just

1 recently, you probably wouldn't -- and during the daytime,  
2 you might see it quite a ways, but if it was nighttime, on  
3 radar, it might be just six or seven miles that you might  
4 be able to see some of the ice..

5 Q Now turning to another subject, you said that when  
6 you spoke with the naval architect several days after you  
7 got on board, at that particular time, they still weren't  
8 sure if the vessel had come off the reef whether she would  
9 capsize, isn't that correct?

10 A His advice to me was that it's a possibility that  
11 it could and to keep the vessel where it was, not to change  
12 any of the drafts or the trim of the vessel or the list  
13 conditions of the vessel. He didn't tell me what the  
14 chances were that we'd capsize. He just said we were in a  
15 precarious position and not to change things if we could  
16 avoid it.

17 Q And this information came to you after the naval  
18 architect had done a lot of fancy computer analysis and  
19 divers had been down below and they ascertained the  
20 situation, ascertained the damage, and he still gave you  
21 that -- he gave you that advice after all of that.

22 A The initial advice came the first few hours I was  
23 on board and it never changed the whole time I was there.

24 Q Was there a naval architect on board when you  
25 first got on?



1 A No.

2 Q So the advice from the naval architect came later.

3 A We called them on the satellite telephone several  
4 -- well, within about an hour after I boarded the vessel.

5 Q Now Mr. Cole gave you a hypothetical about what  
6 you would do with certain information from the chief mate  
7 and knowing the fact that you had holes in several tanks  
8 and you got stability information from the chief mate at  
9 that particular time. And he concluded by saying all that  
10 information would lead you to conclude that you stay on the  
11 reef. Do you remember that?

12 A Yes.

13 Q If that's true, all that information would lead  
14 you to conclude that you stay on the reef, you wouldn't go  
15 astern, would you? If your purpose was to stay on the  
16 reef, you wouldn't run your engines astern.

17 A That's correct.

18 Q In response to another question from Mr. Cole, you  
19 said that in trying to ascertain what your position was on  
20 the reef, you might use the rudder to try and see how the  
21 ship laid, is that correct?

22 A In a general sense, that's one way you might be  
23 able to tell if the vessel was aground. I wasn't using it  
24 for this particular case.

25 Q But the use of a rudder after a grounding to

1 ascertain how you're aground is a common practice, is it  
2 not?

3 A I don't have that much experience in groundings,  
4 but that's one way that I would use to ascertain our  
5 position.

6 Q Now Mr. Cole, in his hypothetical, said the  
7 engines were put at full ahead. There is a difference, is  
8 there not, between full ahead maneuvering speed and full  
9 ahead sea speed?

10 A Yes.

11 Q Captain, if your purpose was to keep the vessel on  
12 the reef and you knew the tide was coming in on you, which  
13 would have the effect of lifting your vessel up, if your  
14 chief mate told you at some particular point in time that  
15 your stability was marginal and you wanted to make sure you  
16 stayed on the reef, would you continue doing whatever  
17 maneuvers you had been doing up until that time to insure  
18 that the vessel stayed where it was?

19 A It depends upon the circumstances of the case.  
20 There could be many things I would do. If what I was doing  
21 was successful at the time, I might continue doing that, or  
22 do nothing, I don't know.

23 Q If you were running your engines ahead for the  
24 purpose of stabilizing the vessel and making sure that she  
25 stayed on the reef, would you continue running those

1 engines until you felt comfortable and assured that you  
2 were on the reef?

3 A That's possible.

4 Q I have no further questions, thank you.

5 MR. COLE: Two.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. COLE: (Resuming)

8 Q You talked about how using the rudder to see how a  
9 ship laid if it was grounded -- do you remember talking  
10 about that?

11 A Yes.

12 Q What speed would you place the vessel on in order  
13 to test it?

14 A I'd have to have a whole lot of circumstances and  
15 I said that would be one of the ways that I could tell,  
16 possibly, how the vessel was grounded, by seeing whether it  
17 would turn or where the vessel turned or whether it could  
18 turn at all. But that's -- I'm not saying I would do that  
19 every time I was on a ship that was grounded.

20 Q But to do that, you could put it on dead slow  
21 ahead if you wanted to.

22 MR. CHALOS: Objection, Your Honor, leading.

23 THE WITNESS: I could put it on any speed, yes.

24 BY MR. COLE: (Resuming)

25 Q Okay, the second -- I'm sorry. I'd like you to

1 explain how running a vessel full ahead on a rising tide  
2 will keep it on a rock.

3 MR. CHALOS: Your Honor, I think there's been a  
4 distinction made between full ahead maneuvering and full  
5 ahead sea speed. Now I don't know what Mr. Cole means when  
6 he says full ahead.

7 BY MR. COLE: (Resuming)

8 Q Full ahead maneuvering speed.

9 A In any circumstances, the minimum speed that you  
10 could effectively perform the maneuver would be the speed I  
11 would use. Not being there, I don't know the minimum speed  
12 I would have used under the circumstances.

13 Q Here's your tanker bottom and you've got a rock  
14 that's sticking up and let's say that that is two feet,  
15 okay? And you've got a rising tide that's going to take  
16 you -- that's going to go up three feet. How does going  
17 ahead, full ahead, keep you off -- keep you on that rock?

18 MR. CHALOS: Your Honor, I object, unless this is  
19 simply a hypothetical, because there hasn't been any  
20 evidence of two feet of the rock or three feet of the tide.

21 MR. COLE: It's simply a hypothetical.

22 THE WITNESS: If you're just talking about a  
23 generic ship that is sitting on a rock right there, there's  
24 so many circumstances that could come into play and we'd  
25 have to lay out the whole scenario, where we were, what

1 draft we were, what trim we were, what --

2 BY MR. COLE: (Resuming)

3 Q Well, let's say that this tanker was going to rise  
4 three feet with the tide. How would going full ahead keep  
5 you on that rock if the rock only went up two feet into  
6 your hole?

7 A If I was on a generic ship and it was going to  
8 float free from this position right there and I didn't want  
9 to float free, I wanted to stay there, I would probably  
10 just drop my anchors and not use the engine.

11 MR. COLE: Nothing further, Your Honor.

12 JUDGE JOHNSTONE: Anything further need for this  
13 witness?

14 MR. CHALOS: None for me, Your Honor.

15 JUDGE JOHNSTONE: Okay, you're excused from  
16 further participation. We'll take another break about this  
17 time. Ladies and gentlemen, remember my instructions;  
18 don't discuss the matter or form or express any opinions.

19 THE CLERK: Please rise. This Court stands at  
20 recess.

21 (Whereupon, the jury leaves the courtroom.)

22 (Whereupon, at 11:29 a.m., a recess is taken.)

23 (State's Exhibits 97, 98, 99,  
24 100 and 101 were marked for  
25 identification.)

1 (Whereupon, the jury enters the courtroom.)

2 THE CLERK: This Court now resumes its session.

3 JUDGE JOHNSTONE: Call your next witness, Mr.

4 Cole.

5 MR. COLE: Yes, at this time, the State would call  
6 Stan Andresen, Your Honor. Mr. Andresen, step up here and  
7 attach the microphone to your jacket and remain standing  
8 for the Clerk.

9 Whereupon,

10 STANLEY P. ANDRESEN

11 having been called as a witness by Counsel for the State,  
12 and having been duly sworn by the Clerk, was examined and  
13 testified as follows:

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

16 THE WITNESS: Stanley Paul Andresen,  
17 A-n-d-r-e-s-e-n.

18 THE CLERK: And your current mailing address, sir?

19 THE WITNESS: 240 Shade Lane, Vallejo, California.

20 THE CLERK: Spell that.

21 THE WITNESS: V-a-l-l-e-j-o.

22 THE CLERK: And your current occupation, sir?

23 THE WITNESS: Marine service engineer.

24 THE CLERK: Thank you.

25 MR. COLE: Thank you, Your Honor.

## DIRECT EXAMINATION

1  
2 BY MR. COLE:

3 Q Mr. Andresen -- is it Andreesen or Andrason?

4 A Andrason.

5 Q Andrason. Who do you work for?

6 A Sperry Marine, Incorporated.

7 Q And how long have you worked for them?

8 A It will be 11 years in a couple of days.

9 Q And what type of -- what does your job entail?  
10 What do you do for Sperry Marine?

11 A As a marine service engineer, I'm responsible to  
12 service and install products manufactured by my company.

13 Q And does Sperry Marine manufacture products for  
14 tankers?

15 A Yes, we do.

16 Q Can you give the jury an idea of the type of  
17 instruments that Sperry Marine manufactures?

18 A We manufacture steering control systems, ship  
19 radars, doppler sonars, speed logs, satellite  
20 communications, doppler docking systems.

21 Q Are you ever asked to go out and repair or  
22 evaluate the working condition of Sperry Marine instruments  
23 in the course of your employment?

24 A Yes.

25 Q Would you tell the jury, is that a large

1 percentage of your job or how would you divide that? How  
2 much of your time do you spend doing that?

3 A I would say a good 80 percent of my time is spent  
4 in service.

5 Q Have you had the opportunity to look at the  
6 steering unit that's on board the Exxon Valdez?

7 A Yes; I have.

8 Q How did that occur?

9 A In April of last year, I was called by my managers  
10 in my company and told to go to the Exxon Valdez and  
11 inspect the equipment.

12 Q Would you explain to the jury the type of steering  
13 unit that's aboard the Exxon Valdez or was aboard the Exxon  
14 Valdez in March of 1989?

15 A It's a Sperry SRP-2000 ship control system.

16 Q Would you -- you're looking at an exhibit. Would  
17 you just read the name or the number on the back of that  
18 exhibit?

19 A This one down in the corner?

20 Q Yes.

21 A Exhibit Number 40.

22 Q Right. And is that a photograph of the steering  
23 unit that you're talking about?

24 A Yes, it is.

25 Q Now I'm showing you what's been marked for



1 identification as Plaintiff's Exhibit Number 97. Do you  
2 recognize that diagram?

3 A Yes, this is a diagram out of our operator's  
4 manual.

5 Q And does it accurately -- it has several words  
6 that are written with arrows. Do those words and arrows  
7 accurately represent the different types of things that are  
8 available on this controlled steering unit?

9 A Yes, it is.

10 MR. COLE: I would move for the admission of  
11 what's been identified as Plaintiff's Exhibit Number 97.

12 MR. MADSON: No objection.

13 JUDGE JOHNSTONE: Admitted.

14 (State's Exhibit 97 was  
15 received in evidence.)

16 BY MR. COLE: (Resuming)

17 Q Would you explain for the jury what the alarm mode  
18 is?

19 A Well, the alarm module --

20 Q Module, I'm sorry. Go ahead.

21 A -- is this part and it's located on this part of  
22 the console and --

23 Q Let's have you identify this, first. Plaintiff's  
24 Exhibit Number 99, do you recognize that?

25 A Yes.

1 Q What's that?

2 A That is the alarm module.

3 MR. COLE: I would move for the admission of  
4 what's been identified as Plaintiff's Exhibit Number 99.

5 MR. MADSON: No objection.

6 JUDGE JOHNSTONE: Admitted.

7 (State's Exhibit 99 was  
8 received in evidence.)

9 MR. MADSON: Is that 99?

10 MR. COLE: 99.

11 MR. MADSON: What was the previous one? I may  
12 have missed that.

13 MR. COLE: 97.

14 JUDGE JOHNSTONE: 97.

15 MR. MADSON: Okay.

16 BY MR. COLE: (Resuming)

17 Q Would you explain what that alarm module is?

18 A That's alarm in the heading module and the bottom  
19 portion is the alarm portion of the module. The upper  
20 portion is a heading indicator, what we use in our backup,  
21 as a backup reference.

22 Q The heading display, is that tied into the master  
23 gyro?

24 A Yes, it is.

25 Q And what is that -- what heading does that

1 register?

2 A It registers the heading of the master gyro.

3 Q Which is the way, the direction that the vessel is  
4 pointed

5 A Right.

6 Q And what's this right here, above the heading  
7 display?

8 A On the top portion of the heading display is the  
9 rate of turn indicator. As the ship is turning, the  
10 arrows, which are liquid crystal displays, light up in  
11 correspondence with the rate of turn.

12 Q Now going, then, to the next area, which is the  
13 CRT display, do you recognize what's been marked for  
14 identification as Plaintiff's Exhibit Number 98?

15 A Yes, I do.

16 Q And what is that?

17 A This is a representation of one of the modes, one  
18 of the pages of display on the CRT.

19 MR. COLE: I would move for the admission of  
20 what's previously been identified as Plaintiff's Exhibit  
21 Number 98.

22 MR. MADSON: No objection.

23 JUDGE JOHNSTONE: Admitted.

24 (State's Exhibit 98 was  
25 received in evidence.)

1 BY MR. COLE: (Resuming)

2 Q Now would you explain to the jury with this what  
3 the top heading in degrees indicator tells someone who's  
4 looking at it?

5 A The top is a representation of a portion of a gyro  
6 card and the center of it indicates the heading that the  
7 ship is on. As the ship turns, the numbers move across the  
8 presentation in the direction of the turn.

9 Q How about the heading rate in degrees indicator?

10 A The middle presentation, middle bar is a heading  
11 rate in degrees per second and is labeled here in tenths of  
12 a degree per second. And the indicator on the bottom of it  
13 will move in correspondence with the heading rate, the turn  
14 rate of the ship.

15 Q Of the actual turn rate of the ship.

16 A Yes.

17 Q And what's the top one?

18 A The top one in turn rate mode would indicate the  
19 ordered turn rate.

20 Q Would that be something that you would program in,  
21 for instance?

22 A That would be an operator controlled function.

23 Q If you wanted to have a ship turn at a certain  
24 rate when it's on gyro.

25 A In one of the auto pilot modes, the turn rate

1 mode. You would set this for the particular turn rate that  
2 you want.

3 Q And the final one, the rudder angle and degrees?

4 A That's rudder angle and degrees and it is a rudder  
5 angle indicator. The bottom one, the bottom indicator  
6 indicates what the position of the rudder is and follows  
7 the rudder as it moves. The top one indicates what has  
8 been ordered, either by the auto pilot or the helm.

9 Q Now you talk about the top one and the bottom.  
10 Those are markers on the screen, is that correct?

11 A Yes.

12 Q Now why would -- and what you ordered, the top  
13 one, that would be what you turn on the wheel.

14 A Yes.

15 Q Why would these not always be the same, one right  
16 on top of the other?

17 A The top one moves -- if you're in the helm mode of  
18 steering, the top one moves with the helm.

19 Q With the steering wheel.

20 A With the steering wheel. The bottom one moves  
21 with the rudder. The steering wheel, depending on how fast  
22 it's turned, determines how fast this top one moves and it  
23 can move much faster than the rudder.

24 Q So the steering wheel moves first and then --

25 A Then the rudder follows.

1 Q And it takes a certain amount of time for the  
2 rudder to actually catch up with where the steering --

3 A Yes.

4 Q Okay. Now I'd like you to look at what's been  
5 noted here as the status module. I'm showing you  
6 Plaintiff's Exhibit Number 101. Do you recognize that?

7 A Yes, I do.

8 Q And what's that?

9 A It's the status module.

10 MR. COLE: I'd move for the admission of  
11 Plaintiff's Exhibit Number 101.

12 MR. MADSON: No objection.

13 JUDGE JOHNSTONE: Admitted.

14 (State's Exhibit 101 was  
15 received in evidence.)

16 BY MR. COLE: (Resuming)

17 Q Would you explain to the jury what is in this  
18 exhibit, what is on this exhibit?

19 A Well, the top portion of the status module  
20 contains status indicators for the system operation,  
21 control power, pump on, auto pilot, helm, emergency, remote  
22 enable and remote on. And the rows of circles here are  
23 indicator lights that correspond to rudder control units in  
24 the steering gear room. And four are shown here for a  
25 possibility of four systems. Typically, only two are used,

1 so only two sets of lights would be used on the system.

2 Q On the Exxon Valdez, were there only two systems?

3 A Yes, there's only two.

4 Q When you turned on the power to this unit, would  
5 lights light up on the control power?

6 A Yes, control power, if it's available, would be  
7 lit up here and here.

8 Q And how about the pump on, would that always be  
9 on, also?

10 A It only comes on for the pump that's selected.

11 Q So you have an -- you have two different systems  
12 that you could use, is that correct --

13 A Yes.

14 Q -- for steering?

15 A Yes.

16 Q And one of them would be the backup to the other  
17 one.

18 A Right.

19 Q Okay. Now what are these two buttons here?

20 A This button is the helm button. You push this  
21 button to put control on the wheel, on the steering wheel.

22 Q "Control on the wheel," tell the jury what that  
23 means.

24 A The steering wheel, right here, we call it the  
25 helm module, and pushing that helm button puts control of

1 the rudder on this wheel. As this wheel is turned, the  
2 rudder follows the wheel.

3 Q Let's talk about that for a minute. How does the  
4 wheel, turning the wheel, actually turn the rudder of that  
5 vessel?

6 A Connected to this wheel on the inside of the helm  
7 module is a transmitter. That transmits an electronic  
8 signal back to the rudder control unit.

9 Q Where is the rudder control unit?

10 A In the steering gear room.

11 Q Which is at the bottom of the vessel?

12 A In the steering gear room, on the back end.

13 Q Okay.

14 A The rudder control unit develops electronic  
15 signals that go to another box which converts those signals  
16 to drive a pump control on the main steering gear  
17 hydraulics and that pump controls oil flow to the rams  
18 which position the rudder.

19 Q Now if you turned ten degrees, what happens then,  
20 let's say ten degrees starboard if you're in helm?

21 A If you turn in the helm mode, you turn the wheel  
22 to ten degrees, the marker on the display here would move  
23 over to ten degrees. The electronics take over, make the  
24 pump go on stroke, positioning the rudder to ten degrees.  
25 The rudder would follow up and move to ten degrees.



1 Q Would you tell the jury what it means to have a  
2 rudder at ten degrees? Where is the rudder -- how --  
3 what's the measure there?

4 A The actual position angle of the rudder off of  
5 amidships to either port or starboard, right or left.

6 Q So zero would be pointing directly back, aft.

7 A Yes, yes.

8 Q And ten degrees right rudder would be one way, ten  
9 degrees --

10 A To the right.

11 Q Well, what happens when you -- if you turn ten  
12 degrees and you let go of the wheel, will it drift back?

13 A No. Once you position the wheel to ten degrees  
14 and let go of it, it stays there until it's physically  
15 moved to another position.

16 Q So it's not the same as a car making a -- when you  
17 make a turn at a corner.

18 A No.

19 Q And if you set ten degrees right rudder,  
20 starboard, and walk away from the vessel, what will happen?

21 A Well, the rudder assembly would go to ten degrees  
22 and stay there until another order was given.

23 Q Now, finally -- oh, would you explain what the --  
24 we were at the last part of this. Would you explain what  
25 the emergency steering is there?

1           A     The emergency steering is a toggle switch which  
2 overrides the helm and takes direct control of the pump, so  
3 to speak, driving the --

4           Q     These are the port or the starboard pumps?

5           A     Either the port or starboard, whichever one is in  
6 control -- and bypasses the rudder control unit electronics  
7 and takes direct control. As long as you push the button,  
8 it puts the pump on stroke and moves the pump in a certain  
9 direction labeled left here, right here. When you let go  
10 of the toggle switch, it springs back to zero and then the  
11 rudder stops.

12          Q     So would it be fair to say that that is like a  
13 third -- a second backup system then steering?

14          A     Yes.

15          Q     You've got whatever pump is on, your starboard,  
16 and if the starboard's on, then you have your port pump as  
17 a backup, but you also have an emergency system steering.

18          A     Yes. Well, this is available on both pumps.

19          Q     Now showing you what's been marked for  
20 identification as Plaintiff's Exhibit Number 100, do you  
21 recognize that?

22          A     Yes, this is the key pad.

23          Q     And would you point for the jury where the key pad  
24 is?

25          A     The key pad is located directly underneath the

1 CRT.

2 Q And what is this for?

3 A This is for operator controlled functions. This  
4 side of it selects the three different auto pilot  
5 functions. This side over here controls the cursor on the  
6 CRT to change functions and values of operator selectable  
7 functions.

8 Q So it's fair to say most of that stuff is just  
9 designed for the automatic pilot mode or the gyro mode.

10 A Yes.

11 Q How much would you have to turn the wheel to turn  
12 it to a heading, to the rudder of 20 degrees?

13 A To put the rudder on 20 degrees takes about one  
14 full turn of the wheel.

15 Q And how much would you have to turn it to turn it  
16 to ten degrees?

17 A About a half a turn.

18 Q And five degrees?

19 A A quarter of a turn.

20 Q When an order from the helm is given to turn the  
21 vessel, how long does it take for the rudder to respond?

22 A The initial movement in about one second, and then  
23 the rate of rudder movement after that is roughly 2.8  
24 degrees per second.

25 Q Did you -- do you have a way that you test that?

1           A     Well, there's a -- the typical method of testing  
2 is to run it from hard over one direction, 35 degrees in  
3 one direction, to passing 30 in the other direction and we  
4 time that.

5           Q     You time it. What happens when you get to a hard  
6 right rudder or a hard right or a hard left? Well, first  
7 of all, how many degrees does that allow the vessel to  
8 turn?

9           A     You mean how many degrees does a rudder turn?

10          Q     Yes.

11          A     It turns to 35 degrees.

12          Q     And what happens when you get to 35 degrees?

13          A     The rudder stops.

14          Q     How about the wheel?

15          A     The wheel stops physically at about 35.

16          Q     Now I'd like to ask you some questions about the  
17 helm mode. What does the helm mode allow the operator to  
18 do?

19          A     To use the wheel to position the rudder.

20          Q     Is there an alarm that signals that the rudder is  
21 not following the order given when you're in helm mode?

22          A     In the helm mode, if the rudder does not follow  
23 the order, there's an alarm -- on the Exxon Valdez, there's  
24 an alarm on the bulkhead behind the steering -- behind the  
25 helmsman that will ring if the rudder does not agree with

1 the order.

2 Q How long does it -- I mean when does that happen?  
3 Does it happen 15 seconds if not in agreement or 20  
4 seconds?

5 A No, no, it's much quicker than that. It's --  
6 depending on the error, it's almost instantaneous.

7 Q How do you place the tanker in helm mode when you  
8 start it up? You might turn that a little bit more so  
9 people can see that.

10 A If the operator has selected a pump, the motion to  
11 put it into the helm mode is just by pushing that button.

12 Q How can you tell from what information is in front  
13 of you that it's in helm mode?

14 A On the status indicators, you would have your  
15 control power on, a pump on indicator, and then a helm  
16 indicator on the --

17 Q Would it be on both sides or just one side?

18 A It would be on both sides. The helm indication  
19 would be on both sides. The pump on indication would be on  
20 the -- or the pump -- the control power would be on both  
21 sides. Pump on would be on the side that's selected.

22 Q But the fact that it's in helm would be on each  
23 side?

24 A That would be shown on both sides.

25 Q And where else would it be shown that this was on

1 helm?

2 A On the CRT display, when you push the helm button,  
3 it automatically puts up an instruction page, has an  
4 indication here that would say helm mode and present  
5 steering mode shown here would say helm and there would be  
6 instructions telling them how to use the helm.

7 Q Now is there a way to dim the lights so that you  
8 can't see that?

9 A You have dimmers available to dim the status, the  
10 CRT and the general illumination on the control unit and  
11 you could dim -- I suppose you could dim them all the way  
12 out.

13 Q How about -- how do you place -- if you're in  
14 helm, how would you place the tanker in gyro?

15 A To go into gyro mode, you would press one of the  
16 three auto pilot modes, press the button here, select the  
17 course that you want by using the arrows. The course would  
18 be displayed up here. When you achieve the course that you  
19 want with the arrows, you press the accept button.

20 Q What if you had steadied up on a position and you  
21 wanted to place it in gyro, how would you do that?

22 A You'd simply press gyro and accept.

23 Q How would you be able to tell the tanker is using  
24 the gyro mode then?

25 A When you press the gyro button, there's a little

1 status indicator on that button that lights up. The gyro  
2 mode would be displayed here with instructions on how to  
3 use it. The present steering mode would indicate gyro. On  
4 the status panel, you would have your control power, your  
5 pump on indicator and the auto pilot would be lit on both  
6 sides.

7 Q What happens when you try and steer the vessel,  
8 using the steering wheel, while in gyro?

9 A Nothing. The wheel has no effect.

10 Q Why is that?

11 A The helm mode of steering is completely isolated  
12 from the system when you're in gyro mode.

13 Q So the wheel is just disconnected.

14 A Electrically, it's disconnected.

15 Q Would there be any indication to someone trying to  
16 steer that nothing was happening?

17 A You'd turn the wheel and the rudder would not  
18 follow the wheel.

19 Q How would you place the tanker back into helm?

20 A Simply pressing the helm button.

21 Q Would you tell the jury where, on this steering  
22 unit, there are rate of turn indicators?

23 A There are two rate of turn indicators, the one in  
24 the center of the CRT display and also on your heading  
25 display on the alarm and heading module along the top of

1 the display.

2 Q And how many heading indicators do you have in  
3 that console?

4 A Two, the top bar of the CRT and also the heading  
5 display on the alarm and heading unit.

6 Q I want to go back for a minute. When you were on  
7 gyro, you talked about the different areas that could be --  
8 that you would notice that you were on gyro and you pointed  
9 out the gyro button there, on the function panel.

10 A Yes.

11 Q And you also pointed out several places on the CRT  
12 board, the television screen type area.

13 A Right.

14 Q Could those be dimmed down, also?

15 A The status lights on the gyro panel can be dimmed  
16 down and the CRT can be dimmed down separately.

17 Q And could you completely take off or remove from  
18 the CRT the bottom language down there that talks about the  
19 gyro mode and the rest of that information?

20 A By pressing the page button twice, the  
21 instructions down here disappear to clean up the screen.

22 Q And then you -- how would you be able to tell that  
23 the vessel was on gyro if you did that?

24 A It tells you the gyro mode of steering and also  
25 the order indication up here.



1 Q Now when you came aboard, did you come aboard on  
2 April 14th, 1989, the Exxon Valdez?

3 A Yes, I did.

4 Q Why did you come aboard that day?

5 A To inspect the operation of the SRP-2000.

6 Q What did you inspect while you were aboard that  
7 day?

8 A We tested the SRP-2000 in all modes, all control  
9 modes of steering.

10 Q Were there any problems with the SRP-2000 when you  
11 checked it that day?

12 A None.

13 MR. COLE: I have nothing further. Oh, can I just  
14 ask one question, I'm sorry?

15 MR. MADSON: Well, I'll let you do it this time.

16 BY MR. COLE: (Resuming)

17 Q I'm showing you what's been marked for  
18 identification as Plaintiff's Exhibit Number 96. Do you  
19 recognize that?

20 A Yes, it's part of the operating manual.

21 Q For what?

22 A For the SRP-2000.

23 Q And does that accompany the SRP-2000 when it's  
24 installed?

25 A Normally, yes.

1 MR. COLE: I would move for the admission of  
2 Plaintiff's Exhibit Number 96.

3 MR. MADSON: Your Honor, I guess I'd object  
4 because we've got a big, huge manual here and I have no  
5 idea what possible relevance this thing has to why we're  
6 here. I just don't see the relevance of the whole  
7 operating manual.

8 JUDGE JOHNSTONE: Objection overruled.

9 (State's Exhibit 96 was  
10 received in evidence.)

11 JUDGE JOHNSTONE: Mr. Purden indicated  
12 Number 100. Did you --

13 MR. COLE: Oh, I thought it was Number 96.

14 JUDGE JOHNSTONE: Well, is Number 100 on the  
15 table?

16 MR. COLE: Number 100?

17 MR. MADSON: I have something -- oh, that one,  
18 okay, yes, that's 100.

19 MR. COLE: Oh, that would be the function  
20 indicator.

21 BY MR. COLE: (Resuming)

22 Q Is that a true and accurate representation --

23 JUDGE JOHNSTONE: I didn't mean to give you a  
24 clue. I thought you had already identified it and just  
25 hadn't --

1 MR. COLE: I just wanted to move its admittance.

2 JUDGE JOHNSTONE: Any objection to 100?

3 MR. MADSON: No.

4 JUDGE JOHNSTONE: 100 is admitted.

5 (State's Exhibit 100 was  
6 received in evidence.)

7 CROSS EXAMINATION

8 BY MR. MADSON:

9 Q Mr. Andresen, you explained to the jury a number  
10 of details about the steering console on the Exxon Valdez.  
11 Is that whole unit which you called or described as the  
12 SRP-2000?

13 A Yes.

14 Q What is that?

15 A SRP-2000, that's the whole steering console.

16 Q Your company manufacturers these for tankers other  
17 than for Exxon Company, I presume.

18 A Yes.

19 Q How many of them are in existence, would you say?

20 A Oh, roughly 150, 200.

21 Q And your job is to install and repair, if  
22 necessary, these units?

23 A Yes.

24 Q Does that take you around the country or around  
25 the world, anything like that?

1 A Yes.

2 Q So you are very familiar with them, right?

3 A Yes, I am.

4 Q Now it appears that -- did you have anything to do  
5 with the design of these units?

6 A No, I have nothing to do with the design.

7 Q Would you say, sir, though, that from your  
8 experience with them, they are designed for an operator  
9 that -- in other words, they're simple enough for an  
10 operator to use them?

11 A Yes, they are.

12 Q You don't need an advanced college degree or  
13 something to push a button on the panel there, right?

14 A I would expect not, no.

15 Q Now you talked a lot about the different -- the  
16 two systems, the helm mode and the gyro mode. Those are  
17 the two systems that you're talking about, other than the  
18 four that you said the unit is capable of?

19 A Yes.

20 Q What are the other two that --

21 A Well, there's the emergency mode, the emergency  
22 mode, and also the remote mode. The emergency mode is a  
23 simple toggle switch that when you push it, the rudder  
24 moves.

25 Q What situations would arise where somebody would

1 want to use that emergency mode?

2 A If the auto pilot failed or if the helm, itself,  
3 failed for any reason, they would always go to the  
4 emergency steering. They would always have that available  
5 to them.

6 Q I presume the helmsman or the ship's officer would  
7 know that something was wrong? How would you know the helm  
8 mode failed, for instance?

9 A Well, if you -- on the Exxon Valdez with the  
10 steering failure alarm, if they position the wheel and the  
11 rudder does not follow up, the steering failure alarm will  
12 go off and let them know. There's also various indicators  
13 on the alarm and heading module that may alarm for any  
14 given failures.

15 Q All these alarms and all this information is  
16 designed, is it not, to give the operator some feedback as  
17 to more or less what is going on, tell him what function he  
18 is doing and what the ship is doing, this sort of thing?

19 A Yes.

20 Q You mentioned the gyro rate of turn indicator.  
21 What exactly is that? Let's assume -- again, let me back  
22 up. When you talk about the gyro mode, that's automatic  
23 pilot, is it not?

24 A Yes, it is.

25 Q Let's be as simple as we can. When it's on

1 automatic pilot, that means that the ship will stay on a  
2 certain course without the helmsman having to turn the  
3 wheel, is that correct?

4 A Yes, the computer controls the course.

5 Q If a tide is coming in, let's say abeam of the  
6 ship, it will still correct for that?

7 A Yes, it will.

8 Q Currents?

9 A Yes, depending on the operator selectable  
10 functions of the auto pilot controls.

11 Q What do you have to -- what do you mean by that?

12 A There is -- in the gyro mode, there's a weather  
13 adjust function on the bottom of the page that the operator  
14 can select different values to control a tighter course or  
15 control a little bit looser course to minimize wear on the  
16 steering gear.

17 Q But this requires some advance information, does  
18 it not, about tides and winds and currents, things like  
19 that --

20 A Yes.

21 Q -- all kinds of weather conditions?

22 A Yes, it does.

23 Q And you more or less program it into this \_\_\_\_\_?

24 A Yes.

25 Q Now you said regardless if it's on the helm mode

1 or the gyro or automatic pilot mode, if the wheel is  
2 turned, there's some indication on the console that tells  
3 you the rudder is turning?

4 A Yes.

5 Q What, again, is that, sir?

6 A On the rudder angle indicator, the bottom  
7 display --

8 Q Now that -- when you say display, that's --

9 A The bottom bar graph.

10 Q That's on the screen.

11 A On the screen, yes.

12 Q What you called a CT --

13 A CRT.

14 Q CRT, correct. It's like a computer screen, right?

15 A Yes. It has a marker on the bottom of the graph  
16 that moves with the rudder.

17 Q Now you have other rudder indicators available  
18 that would still show the rudder angle if it's on auto  
19 pilot, as opposed to the helm mode, that are separate and  
20 apart from that, I mean on the vessel?

21 A Yes, there are.

22 Q What are those?

23 A There's a three-faced rudder angle indicator on a  
24 console directly above or directly above and slightly to  
25 the right of the steering console and on a console above

1 the windows, there's another rudder angle indicator.

2 Q Well, let's see, I can't find what I'm looking  
3 for, but I guess I won't need it. Is that kind of a round  
4 unit that's right overhead?

5 A Yes.

6 Q Easily visible from the bridge of the ship?

7 A Yes.

8 Q How about down the bridge wings, themselves, are  
9 there other indicators out there?

10 A There are two indicators on the bridge wings  
11 outside the doors.

12 Q And just so we understand from your testimony,  
13 sir, regardless if it was on auto pilot or helm, the rudder  
14 indicators should reflect what the rudder is doing.

15 A Yes.

16 Q Now on the -- so the two different modes, the helm  
17 and auto or gyro mode, you indicated it's quite simple to  
18 go from to another, right?

19 A Yes, it is.

20 Q If you're on auto pilot and you want to go to  
21 helm, you push a button.

22 A Yes.

23 Q Does the display that's down below go away from  
24 the screen?

25 A No, the display on the screen just changes to



1 reflect the change in modes. It changes from -- if you're  
2 in auto pilot, it changes to the helm mode.

3 Q Okay, now I can see it from here, but maybe the  
4 jury can't. What does that top line say there?

5 A Well, for this representation, this top line here  
6 says gyro mode.

7 Q Okay, you push the button assuming it's in gyro  
8 mode. Somebody else comes along and pushes the button and  
9 says, "I want to go to helm mode." What changes there?

10 A This display changes and this says helm mode.  
11 Then there are some instructions for the use of the helm  
12 mode that tell you to steer by the wheel and then present  
13 steering mode says helm below that.

14 Q And if you turn the wheel, then, the wheel will  
15 stay in that position. In other words, if you turn it half  
16 a turn, take your hands off -- we're in helm mode -- and it  
17 stays there.

18 A Yes.

19 Q It doesn't center itself.

20 A No, it doesn't.

21 Q On the other hand, if you're in the gyro or auto  
22 mode, you turn the wheel, nothing happens.

23 A You turn the wheel, the rudder does not follow the  
24 wheel.

25 Q Does the feel of the wheel remain the same in

1 both?

2 A Yes, it does.

3 Q In other words, you can't tell when you're in gyro  
4 because it spins easier or something like that.

5 A No.

6 Q Again, this system is designed to be let's say as  
7 simple as possible, in other words, to give you the  
8 information in a very simple manner.

9 A Yes, it is.

10 Q And you should go from one to the other in a very  
11 simple manner by pushing the button.

12 A Yes.

13 Q You testified about the response that the rudder  
14 would have in response to a wheel turn. I think you said  
15 if you turned the wheel let's say ten degrees right, it  
16 takes about a second for the rudder to actually get to ten  
17 degrees?

18 A No, no, it starts to move -- the initial movement  
19 starts in the first second and then it moves at a rate of  
20 about 2.8 degrees per second. So the time to get to ten  
21 degrees would be roughly three seconds or a little bit  
22 more.

23 Q Say a minimum of three seconds, a maximum of four  
24 seconds, something like that?

25 A Yes, something like that.

1 Q But it's a very rapid response, right?

2 A Yes.

3 Q Are you familiar, sir, with the characteristics of  
4 the Exxon Valdez and how it does turn under different  
5 conditions, the load, things like this?

6 A Somewhat.

7 Q Let me ask you a more or less hypothetical  
8 question. Assuming it's the Exxon Valdez and you were at  
9 11.75 knots and about a 57-foot draft, it's laden, and you  
10 put a ten-degree right rudder turn on there, do you know  
11 what the angle of turn would take, in other words, say how  
12 many degrees per minute would the ship turn?

13 A I can't answer that.

14 Q Now another thing you said which confused me a  
15 little bit and that's when you said if the -- you're in  
16 helm mode now -- if the wheel is turned and the rudder then  
17 does not respond, an alarm goes off.

18 A Yes.

19 Q But that's only -- let's say you turn five  
20 degrees, the rudder goes five degrees, okay, no alarm will  
21 go off.

22 A No.

23 Q If you go ten degrees, no alarm will go off, as  
24 long as the rudder goes ten degrees.

25 A As long as the rudder is following normally.

1 Q That's simply a way, is it not, to indicate to  
2 somebody that your rudder -- there's something wrong with  
3 your steering because the rudder is not working right?

4 A Yes.

5 Q What about if you let's say went to ten degrees  
6 and came back again, in other words put a counter rudder on  
7 it, that would make any effect, would it?

8 A As long as the rudder is following normally, it  
9 won't alarm.

10 Q It's only to make sure the rudder is following?

11 A Yes.

12 Q In other words, it has nothing to do with an order  
13 that's given. In other words, if somebody says, "Turn ten  
14 degrees right rudder," no alarm goes off if the helmsman  
15 doesn't move the wheel to ten degrees right rudder.

16 A No.

17 Q I believe that's all I have, thank you.

18 MR. COLE: No questions.

19 JUDGE JOHNSTONE: You're excused, sir. You may  
20 call your next witness.

21 THE WITNESS: Thank you.

22 MR. COLE: The next witness will be Karl Groth.

23 Whereupon,

24 KARL W. GROTH  
25 having been called as a witness by Counsel for the State,

1 and having been duly sworn by the Clerk, was examined and  
2 testified as follows:

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

5 THE WITNESS: My name is Karl William Groth,  
6 G-r-o-t-h.

7 THE CLERK: Carl with a C?

8 THE WITNESS: With a K.

9 THE CLERK: Your current mailing address?

10 THE WITNESS: 4723 132d Place, Southeast,  
11 Snohomish, Washington.

12 THE CLERK: And your current occupation?

13 THE WITNESS: Marine service engineer.

14 DIRECT EXAMINATION

15 BY MR. COLE:

16 Q Mr. Groth, who do you work for?

17 A I work for Sperry Marine.

18 Q How long have you worked for them?

19 A Almost 12 years now.

20 Q What are your responsibilities for them?

21 A Repair, service and installation of equipments  
22 that we manufacture.

23 Q Were you asked on June 21st, 1989, to go out and  
24 check the steering console on the Exxon Valdez?

25 A Yes, I was.

1 Q What did you test while you were out on the Exxon  
2 Valdez that day?

3 A I'm sorry?

4 Q What did you test when you were out on the Exxon  
5 Valdez?

6 A I tested the steering gear, steering controls and  
7 all modes of operation.

8 Q Did you test to see how long it took to go from a  
9 hard right to a hard left?

10 A Yes, I did.

11 Q Would you describe for the jury what that test  
12 entailed and what the results were?

13 A The test entails bringing the rudder hard in one  
14 direction or to the stop in one direction, which is 35  
15 degrees, spinning the wheel rapidly and starting a stop  
16 watch and stopping the stop watch when it crosses the  
17 30-degree mark on the other side of zero.

18 Q So that would be a total of a 65-degree shift.

19 A Yes.

20 Q And did you do that on this particular occasion?

21 A Yes, I did.

22 Q And what was the time that it took?

23 A As I remember, the starboard was about 27-1/2  
24 seconds, 27 seconds, and the port system I believe was  
25 around 26 seconds.

1 Q And these consoles, is there a way to change the  
2 tension of the wheel at all?

3 A Yes, there is.

4 Q Would you be able to describe, was this an easy, a  
5 normal or a heavy tension on the steering wheel?

6 A My recollection was that it was very easy.

7 Q Did you find anything wrong with the steering  
8 mechanism of the Exxon Valdez that day?

9 A No, nothing at all.

10 MR. COLE: I have no further questions.

11 CROSS EXAMINATION

12 BY MR. CHALOS:

13 Q Just a few questions, Mr. Groth. When you went  
14 out to the vessel, where was she?

15 A She was at Naked Island.

16 Q Was she in a light condition?

17 A I don't know. She had been there for some time,  
18 but I can't say that she was necessarily in a light  
19 condition.

20 Q In any event, she wasn't loaded by the time you  
21 got out there.

22 A She did not appear to be, no.

23 Q And when you tested the rudder and the steering  
24 gear, the vessel was not moving, was it?

25 A No, sir, it was not.

1 MR. CHALOS: No further questions, Your Honor.

2 JUDGE JOHNSTONE: Mr. Cole?

3 REDIRECT EXAMINATION

4 BY MR. COLE: (Resuming)

5 Q Do you have to be running the vessel to be able to  
6 test the steering mechanism?

7 A It would depend on what tests, but no, not  
8 necessarily.

9 MR. COLE: I have nothing further, Your Honor.

10 JUDGE JOHNSTONE: All right, you may step down.  
11 May the witness be excused?

12 MR. CHALOS: Yes, Your Honor.

13 MR. COLE: This witness may. My understanding is  
14 the next one, they would like to remain under subpoena, but  
15 he may go home.

16 MR. CHALOS: You mean Mr. \_\_\_\_\_?

17 JUDGE JOHNSTONE: You mean the preceding one?

18 MR. CHALOS: No, we --

19 MR. COLE: Yes.

20 MR. CHALOS: No, the preceding one, Mr. Andresen,  
21 but we no longer need him. We just wanted him to stand by  
22 when this witness testified.

23 JUDGE JOHNSTONE: So he's excused from further  
24 participation.

25 MR. CHALOS: Yes, Your Honor.



1 JUDGE JOHNSTONE: Okay, he's ready to go. Call  
2 your next witness.

3 MR. COLE: At this time, we would call Captain  
4 Stalzer.  
5 Whereupon,

6 MICHAEL A. STALZER  
7 having been called as a witness by Counsel for the State,  
8 and having been duly sworn by the Clerk, was examined and  
9 testified as follows:

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

12 THE WITNESS: Michael Anthony Stalzer,  
13 S-t-a-l-z-e-r.

14 THE CLERK: And your current mailing address?

15 THE WITNESS: 3 Garden Court, Conroe, Texas 77304.

16 THE CLERK: What was the name of the town?

17 THE WITNESS: Conroe, C-o-n-r-o-e.

18 THE CLERK: And your current occupation, sir?

19 THE WITNESS: I'm a captain with the Exxon  
20 Shipping Company.

21 THE CLERK: Thank you.

22 JUDGE JOHNSTONE: Will you try to speak up? You  
23 seem like you have a soft voice. We'd like to be able to  
24 hear you a little better. You may inquire, Mr. Cole.

25 DIRECT EXAMINATION

1 BY MR. COLE:

2 Q Captain Stalzer, would you like some water?

3 A Yes, please.

4 Q Captain Stalzer, how long have you been in the  
5 maritime industry?

6 A I entered the United States Merchant Marine  
7 Academy in 1969.

8 Q And where is that located?

9 A That's located in New York.

10 Q And what positions -- what licenses have you  
11 acquired since -- you graduated, I assume, from that  
12 academy.

13 A Yes, I did. Upon graduation, I received a third  
14 mate's license, ocean, any tonnage, a third assistant  
15 engineer's license, steam and diesel, any horsepower, and a  
16 third class radio operator's license. In 1975, I received  
17 my second mate's ocean license, upon oceans, any tonnage;  
18 in 1977, my chief mate's license upon oceans, any tonnage;  
19 in 1979, my master's license upon oceans and any tonnage.  
20 In 1980, I received my Prince William Sound pilotage from  
21 Cape Hinchinbrook to Rocky Point, 60,000 gross tons, and in  
22 1981, Prince William Sound pilotage from Cape Hinchinbrook  
23 to Rocky Point, unlimited tonnage. In 1988, I received a  
24 general radio telephone operator's license. I think that's  
25 all of the licenses that have to do with the maritime

1 industry.

2 Q Did you go through any special training while you  
3 were acquiring each of those licenses?

4 A Other than the formal training received at the  
5 United States Merchant Marine Academy, I trained on my  
6 own. I believe I used the Seaman's Church Institute study  
7 material and other publications that were available. For  
8 the upgrade for my Prince William Sound pilotage from  
9 60,000 gross tons to unlimited, I attended Marine Safety  
10 Nationals Simulator training.

11 Q What's that, Marine Nationals Simulator training?

12 A That's a company that's in New York that provides  
13 simulator training to computer simulation.

14 Q When did you begin working for Exxon Shipping  
15 Company?

16 A In July of 1973.

17 Q And have you worked with them continuously since  
18 then?

19 A Yes, I have.

20 Q You indicated that you got your master's license  
21 in 1979, is that correct?

22 A That's correct.

23 Q Did you sail immediately as a master on tanker  
24 ships with this license?

25 A No, I was promoted to master and sailed for the

1 first time as master in 1981.

2 Q What was it about becoming a master that made it  
3 attractive for you to seek out this license?

4 A Well, after going through the United States  
5 Merchant Marine Academy, jobs were somewhat limited in  
6 1973, when I graduated, and I had a few options. One of  
7 the options was third mate with Exxon Company and I  
8 selected that option. So I worked my way through the ranks  
9 to achieve the master.

10 Q What is -- why did you pick oil tankers, a tanker  
11 like the Exxon Shipping Company? You could have picked  
12 other --

13 A Well, not really. In 1973, the maritime industry  
14 was tight. Jobs were somewhat scarce. I had an offer from  
15 Exxon Shipping Company as third mate, an offer from the  
16 Army Corps of Engineers as third engineer and an offer from  
17 the University of Michigan for graduate study work and I  
18 selected Exxon Shipping Company.

19 Q Well, why did you -- what was it about you  
20 becoming a master that made you get that license? You  
21 could have stopped at third mate or second mate or chief  
22 mate's license. Is there anything about that particular  
23 position?

24 A No, I was trying to achieve all that I could  
25 achieve and that is the chain of command in the career path

1 for an ocean going licensed deck officer.

2 Q Would you give the jury an idea of how many  
3 different tankers you've been a master on while working for  
4 Exxon Shipping Company?

5 A In 1981, I was master of the Exxon Baton Rouge for  
6 approximately one month, two trips. I was then transferred  
7 to the Exxon Benecia and remained master of the Exxon  
8 Benecia until 1986, at which time I was assigned to  
9 Hull 438, which was to become the Exxon Valdez down in  
10 NASCO and Hull 439, which was the Exxon Long Beach under  
11 construction. And in March of 1987, I sailed on the Exxon  
12 Valdez as master for the first time and I remain assigned  
13 there.

14 I had two other instances where I've sailed on  
15 other Exxon ships. In December of 1986, there was a need  
16 for a master to take the Exxon Houston for one trip, which  
17 I left San Diego and went up and did that. And following  
18 the grounding -- I was on the Valdez and was taken off the  
19 Valdez -- I did another fill-in job on the Exxon Bay Town  
20 in May of 1989.

21 Q While working with Exxon Shipping Company, did you  
22 receive any special training in the area of navigation or  
23 handling of the vessels?

24 A Yes. Prior to being promoted to master, I was  
25 sent to Port Ravel Marine Research and Training Facility in

1 Grenoble, France, for -- that's a school for ship masters.  
2 The only other training or discussions of navigation took  
3 place through some of the masters' conferences.  
4 Occasionally, a professional topic would come up between  
5 the years of 1981 and 1990.

6 Q Would you explain to the jury what the ship  
7 simulator courses that you've done, what's the purpose of  
8 those?

9 A The purpose is to teach principles concerning ship  
10 handling. In Grenoble, France, these are scale models of  
11 vessels that we ride in, so that their performance is  
12 identical to performance of a normal ship, except that  
13 their response is faster because the size is reduced. So  
14 they taught the principles of ship handling  
15 characteristics. That's what the primary purpose of that  
16 school was.

17 The simulator was similar then, SI simulator, was  
18 a similar type situation. Other than that, at the masters'  
19 conference, those were just discussions of corporate policy  
20 and how they intended us to carry those out.

21 Q What were these masters' conferences that you  
22 talked about?

23 A These are master or officer conferences. They  
24 have been generally held yearly, but not always yearly,  
25 since the early '80s through 1990.

1 Q In any of these conferences, was the topic of  
2 alcohol use or possession or detection discussed?

3 A I believe it was, yes.

4 Q Did you receive any formal training in alcohol  
5 detection as a master?

6 A I recently received some formal training.

7 Q Prior to 1989?

8 A In October of '89, yes.

9 Q But it was after -- prior to March of 1989?

10 A As I recall, in 1985, at one of these masters'  
11 conferences, they had a drug and alcohol discussion,  
12 presentation of about a half an hour or so, and that was  
13 primarily how to detect the use of drugs and alcohol in  
14 individuals.

15 Q These master conferences, were they required  
16 attendance by Exxon Shipping Company for all masters?

17 A Some of them were, yes.

18 Q Do you remember the particular one where you were  
19 given the drug and alcohol course, whether that was one of  
20 those that was required and compelled?

21 A I don't recall.

22 Q At some point prior to March of 1989, toxicology  
23 kits were placed on the Exxon Valdez, do you remember that?

24 A I don't believe I was there when they were placed  
25 on board, no, but yes, they were on board.

1 Q Were you made aware that they had been placed on  
2 board?

3 A Yes, I was.

4 Q What was your understanding of the reason for  
5 that?

6 A My understanding was that in late 1988, the  
7 regulations were changing and employers were required to be  
8 able to have test kits available for for-cause testing.

9 Q Would you tell the jury what responsibilities the  
10 tanker captain has when he is in command of a vessel? What  
11 are his general responsibilities?

12 A His general responsibilities are that he's  
13 responsible for the safety of the crew, the ship, the cargo  
14 and for protection of the environment.

15 Q What risks are involved with being a tanker  
16 captain?

17 A I'm not exactly sure I understand your question.

18 Q Are there any risks to the crew, the ship and the  
19 cargo that are inherent in the job of being a tanker  
20 captain?

21 A I don't know if they're inherent in the job. You  
22 have the same risks as any other ship master operating a  
23 vessel.

24 Q I'm showing you what's been marked for  
25 identification as Plaintiff's Exhibit Number 13. Would you



1 take a look and page through that and see if you recognize  
2 that?

3 A Yes, I think I recognize it.

4 Q What is that?

5 A Well, there are several documents here. One is  
6 the sea carry initiative guidelines. There's a copy of the  
7 drug and alcohol policy of Exxon Shipping Company. It  
8 appears to be one that was in effect in March of 1989.  
9 There are some guidelines by Exxon Shipping Company for  
10 masters.

11 Q Does that appear -- do you recognize that as being  
12 present on your ship, that document, a copy of that  
13 document being aboard your ship?

14 A As I recall, copies of this document are on the  
15 ship or were on the ship the last time I was there.

16 MR. COLE: I would move for the admission of  
17 what's been identified as Plaintiff's Exhibit Number 13.

18 MR. MADSON: I object, Your Honor. I don't know  
19 about all of it, but at least the first page here seems to  
20 refer to ships that are sailing to and from the United  
21 States to foreign ports and it has to do with Custom's  
22 initiative agreements. I don't think that's relevant to  
23 anything we're doing here today. It's all attached as one  
24 document here, Your Honor, but there seem to be two  
25 separate things, Exxon Shipping policy regarding alcohol

1 and the other one on search guidelines to and from foreign  
2 ships -- or ports, rather. So maybe one I don't have an  
3 objection to and the other I do, separately.

4 JUDGE JOHNSTONE: Mr. Cole, what about the first  
5 one?

6 MR. COLE: The first one just goes to the policy  
7 of searching rooms for drugs and alcohol and illegal  
8 substances.

9 MR. MADSON: Well, again, Your Honor, this thing  
10 seems to say, ". . . with relation to the United States  
11 Custom's Sea Carrier Initiative Agreement, regularly  
12 searched vessels for illegal drugs prior to departure to  
13 and en route to the United States." I think we were in the  
14 United States at all times here. I don't think there's any  
15 relevance to foreign travel here whatsoever.

16 JUDGE JOHNSTONE: Objection overruled. It's  
17 admitted.

18 (State's Exhibit 13 was  
19 received in evidence.)

20 BY MR. COLE: (Resuming)

21 Q Captain Stalzer, I've placed in front of you a  
22 document. Do you recognize that document?

23 A It appears to be a copy of the bridge and  
24 organization manual.

25 Q I'd like to ask you a few questions about that

1 bridge manual.

2 JUDGE JOHNSTONE: Is there an exhibit number on  
3 that?

4 MR. COLE: I'm sorry, Your Honor.

5 BY MR. COLE: (Resuming)

6 Q Would you repeat the exhibit number on the back of  
7 that?

8 A Exhibit Number 14.

9 Q That bridge manual or a copy thereof, was that  
10 required to be kept on the bridge of the Exxon Valdez?

11 A I believe there was a copy located on the bridge  
12 of the Exxon Valdez.

13 Q What is the purpose of having a bridge manual  
14 aboard the Exxon -- an oil tanker, or in this case the  
15 Exxon Valdez?

16 A Do you want specifically what it states in here,  
17 the purpose, or generally?

18 Q Or your understanding, if it's different.

19 A Well, the purpose is to assist the master and deck  
20 officers in planning for safe passage of their vessel.

21 Q And is that what you understood the purpose of it,  
22 your own personal opinion as to the purpose of that bridge  
23 manual?

24 A Yes, it is.

25 Q On page 1, it talks about the navigational

1 policy. Would you explain to the jury what it means, what  
2 is meant by the first paragraph there?

3 MR. MADSON: Well, just a minute here. I think  
4 I'll object as to his interpretation of what it means. I  
5 think what it means speaks for itself, the document.

6 MR. COLE: I can have him read it.

7 JUDGE JOHNSTONE: All right.

8 BY MR. COLE: (Resuming)

9 Q Would you read what the first sentence says as to  
10 what is the navigational policy for Exxon Shipping Company?

11 A The first sentence of that policy as stated in  
12 this manual says, "The prime objective, when navigating  
13 company vessels, is the safety of personnel, vessel and  
14 cargo."

15 Q And what does it go on to say, then, after that?

16 A The second sentence, "Speed and economy, while  
17 important, are secondary to safety considerations."

18 Q Was that your understanding, that safety was  
19 first, when you were the captain of the Exxon Valdez?

20 A My understanding of the policy is yes, that's  
21 correct, safety was first.

22 Q Who is responsible for the safe navigation of an  
23 Exxon tanker ship?

24 A The master is responsible. Each watch officer  
25 will share in that responsibility when they're assigned on

1 watch.

2 Q What navigational responsibilities does a master  
3 have toward making sure that watch officers are aware of  
4 their duties and responsibilities?

5 A As stated in the manual? I'll have to find it.

6 Q I direct your attention to page 5, the first  
7 sentence, 2.1.4.

8 A That states that, "The master should establish the  
9 bridge organization as prescribed in Section 8 of this  
10 manual and insure that all watch officers are aware of  
11 their duties and responsibilities."

12 Q Section 8 deals with the different types of watch  
13 commands that are set out in this bridge manual.

14 A Section 8 is the bridge organization, yes.

15 Q Are there any times when a master is required to  
16 be on the bridge?

17 A I believe the manual states there is.

18 Q Would you read for the jury when those times are?

19 A Section 2.1.5 states, "Within the limitations  
20 outlined in paragraph 2.1.5(H) below, the master must be on  
21 the bridge whenever conditions present to the vessel such  
22 as: (a) passing in the vicinity of shoals, rocks or other  
23 hazards which represent any threat to navigation; (b)  
24 restricted visibility; (c) high traffic density; (d) heavy  
25 weather; (e) entering/leaving port; (f) docking/undocking;

1 (g) shifting the ship with any harbor area, including  
2 drydock shifting; and (h) while the master remains  
3 responsible at all times, conditions will arise which  
4 require the master to spend prolonged periods on the  
5 bridge, possibly reducing his alertness and efficiency. In  
6 such circumstances, the master should consider delegating  
7 navigational conning responsibilities to the senior officer  
8 to allow sufficient time for adequate rest."

9 Q Okay. Could ice be considered a hazard which  
10 represents a threat to the safety of a vessel the size of  
11 the Exxon Valdez?

12 A If it's in sufficient quantity and size and around  
13 in the vicinity of the vessel, it could.

14 Q Are there times when a master should require that  
15 a vessel's position should be plotted more often to insure  
16 the exact location of that vessel?

17 A I'm not sure what you mean. More often than what,  
18 than out at sea?

19 Q Yes, if you're out at sea.

20 A Different situations require different frequency  
21 for plotting fixes, yes.

22 Q Why is that?

23 A Because you would like to know, depending on the  
24 circumstance and where the vessel is, an accurate position  
25 to determine where your going to proceed to, you know,

1 you're DRing positions as they go along.

2 Q Why is additional -- I'll retract that.

3 (Tape changed to C-3629)

4 BY MR. COLE: (Resuming)

5 Q What is the required procedure in the Exxon manual  
6 as far as what the manning requirements with a pilot on  
7 board -- manning requirements on the bridge with a pilot on  
8 board?

9 A I'd have to look them up.

10 Q I can direct your attention to page 3741 of the  
11 manual.

12 A 6.2.1 is the manning requirements with a pilot on  
13 board, which states, "Environmental and traffic condition  
14 anticipated during pilotage should be identified as early  
15 as possible to assist the master in determining the  
16 appropriate watch type to be set. In all circumstances, a  
17 careful check of the vessel's position, course and speed  
18 must be maintained. Additionally, plotting of targets on  
19 the radar should be considered to satisfy a legal  
20 precedent. The officer of the watch must not hesitate to  
21 inform the master or the pilot whenever he has any doubts  
22 about the safe navigation of the vessel."

23 Q If the vessel had a pilot on board and was  
24 traveling through an area designated as Watch B, which we  
25 will get to, would the pilot be considered one of the

1 people?

2 MR. MADSON: Your Honor, I'll object. That's a  
3 leading question.

4 MR. COLE: I'll rephrase it.

5 BY MR. COLE: (Resuming)

6 Q Would you explain to the jury what the four  
7 different types of watch conditions are that are set out in  
8 the bridge manual?

9 A Generally or specifically?

10 Q Generally.

11 A Generally, there are four types of watch  
12 conditions that we use with Exxon Shipping Company which we  
13 use as guidelines for determining how many people to have  
14 on the bridge and other locations about the vessel.

15 Q Would you set out just briefly what each one  
16 entails, the distinction between A, B, C and D?

17 A Watch Condition A is to be used in situations such  
18 as open water with clear visibility or in restricted waters  
19 with clear visibility, little or no traffic. Watch  
20 Condition A requires that the watch officer be present on  
21 the bridge and that there's a seaman readily available in  
22 the close vicinity of the navigation bridge.

23 Q "Seaman" meaning an able bodied seaman?

24 A Yes, that's correct.

25 Q And the "watch officer" meaning any mate.



1           A     That's correct, either a third mate or a second, a  
2 licensed deck officer.

3           Q     And it only has to have one person available, one  
4 mate on the bridge.

5           A     As stated by Watch Condition A, correct.

6           Q     What type of areas are we talking about for  
7 Watch A? Give the jury an example of what a Watch A system  
8 would be.

9           A     Well, as stated in the manual, open waters with  
10 clear visibility and that would be, for example, out at  
11 sea.

12          Q     How about Watch B?

13          A     Watch Type B is used in situations such as open  
14 water with restricted visibility or when or entering or  
15 leaving port with reduced visibility or in restricted  
16 waters with restricted visibility with little or no  
17 traffic. The personnel that are required there are two  
18 persons on the bridge with a lookout posted and that a  
19 helmsman needs to be stationed in the bridge at the wheel,  
20 ready to take over.

21          Q     Two persons on the bridge, two licensed persons.

22          A     That's correct, two officers.

23          Q     Does it indicated whether one of them should be a  
24 senior deck officer or the master?

25          A     Normally, the officer complement is the master and

1 one watch officer.

2 Q Now how about Watch C?

3 A Watch Type C is used in situations such as  
4 restricted waters with clear visibility or high density, in  
5 high density traffic, or when entering or leaving port with  
6 clear visibility, regardless of traffic.

7 Q Would you give the bridge manning requirements for  
8 that?

9 A The personnel required are two officers on the  
10 bridge with a lookout posted and a helmsman needs to be  
11 stationed where he can engage manual control.

12 Q What are the master's responsibilities on that  
13 watch?

14 A He's -- the master and the senior deck officer  
15 would be in charge of the watch and coordinate and  
16 supervise navigation on the vessel.

17 Q What would the watch officer's responsibilities  
18 be?

19 A Generally, he would be in charge of the navigation  
20 and communication.

21 Q When you say navigation, that would mean plotting?

22 A That's correct. In that situation, the way I use  
23 him is he will plot positions and that will help me  
24 navigate the vessel and confirm my own assessment of the  
25 vessel's position. The watch officer is generally the one

1 who plots the position.

2 Q During a maneuver in a Watch Type C situation, who  
3 watches over the rudder direction or the heading of the  
4 tanker?

5 A In Watch Type C, it is the responsibility of the  
6 helmsman to watch over that and it's the responsibility of  
7 the watch officer to check that the commands are carried  
8 out properly and the heading is being maintained. And the  
9 master will also check on that. If there's a pilot on  
10 board, he would check to make sure that the heading is  
11 maintained and that the rudder angle commands are followed.

12 Q If a pilot was on board and you entered a Watch  
13 Type C situation, would the pilot be considered one of the  
14 two people that are required, one of the two licensed  
15 people that were required under the bridge manual, or would  
16 he be a separate person?

17 A I would not consider him as part of this Watch  
18 Type C, no.

19 Q I'd like to ask you some questions about the Exxon  
20 Valdez. When was the Exxon Valdez completed? When was it  
21 built? When was it done being built?

22 A Well, it was delivered in December of 1986 and it  
23 was built in the years prior to that.

24 Q Do you have any idea how much it cost to build  
25 that vessel?

1 A I think it cost about \$150 million.

2 Q What was your involvement in the construction of  
3 the vessel, any?

4 A Yes, I was assigned out in San Diego for the first  
5 time in October of 1986 for sea trials of Hull 438, to  
6 become the Exxon Valdez, so I participated in the final  
7 checkout of the equipment and structural checks on both the  
8 Exxon Valdez and some of the equipment on the Exxon Long  
9 Beach.

10 Q How did the Exxon Valdez compare with other tanker  
11 vessels that you had been the master on previously?

12 A Pardon me?

13 Q How did it compare with other tanker vessels that  
14 you had been the master on previously?

15 A The design was similar to the design of the Exxon  
16 Benecia. However, the construction was done a little  
17 differently. NASCO built it in a module type construction,  
18 as I understand it.

19 Q How about the navigational equipment, was it  
20 superior or inferior to equipment you had on other vessels?

21 A I don't know that it was superior or inferior. It  
22 was our standard amount of equipment that we supply with  
23 all of our Exxon vessels, as far as I'm aware.

24 Q Would you give the jury an idea of the length of  
25 this vessel?

1 A It's approximately 987 feet long.

2 Q And the width or the breadth?

3 A It's about 166 feet wide.

4 Q What is the common draft marks when it's laden,  
5 fully laden?

6 A Fully loaded down to the marks, she'll draw about  
7 64-1/2 feet.

8 Q And unladen?

9 A Well, the ballast condition will vary, depending  
10 on circumstances and the weather that you're in, but the  
11 mean draft would be about 35 feet.

12 Q How much oil, in terms of barrels, could the Exxon  
13 Valdez transport?

14 A 98 percent of tank capacity is approximately  
15 1,485,000 barrels.

16 Q The cargo tanks -- there were five cargo tanks on  
17 the Exxon Valdez, is that correct?

18 A Five tanks across, correct.

19 (Whereupon, Mr. Cole draws a picture.)

20 BY MR. COLE: (Resuming)

21 Q And if the -- could you give the jury an idea of  
22 where the oil would have been loaded, fully laden? Do you  
23 recognize that picture there?

24 A Well, there appears to be six tanks across there,  
25 not five.

1 Q Is there a tank behind the fifth cargo tank, the  
2 slop tank?

3 A It's separate from five wings, however, but in the  
4 space of where five wings would normally be, in the tanks  
5 of five across.

6 Q Okay. Well, just disregard the sixth one there.  
7 The other five cargo -- are those similar to the structure  
8 of the cargo carrying capacity of the Exxon Valdez?

9 A Well, generally, yes.

10 Q And those are port and center and starboard tanks.

11 A Correct, they're designated.

12 Q Would you identify for the jury which ones, if it  
13 was fully laden, would be ballast tanks?

14 A Do you want me to draw it?

15 (The witness approaches the drawing.)

16 BY MR. COLE: (Resuming)

17 Q Just put a B down there.

18 (Witness marks on the drawing.)

19 THE WITNESS: The fore peak would be a ballast  
20 tank. This is the five tanks across; the slop tank's back  
21 here. The two wings and four wings are ballast tanks if  
22 you're looking at the four body section of the ship.

23 BY MR. COLE: (Resuming)

24 Q And the rear, the aft section, is there a ballast  
25 tank in the aft section?

1           A     Yes, there's \_\_\_\_\_ tanks off the engine  
2 room. This is the engine room, below the house, and the  
3 after peak. That's a ballast tank.

4           Q     Thank you. What's the purpose of ballast tanks?

5           A     When the vessel has no cargo in her, she would  
6 ride very high, and without ballast in her tanks, the  
7 propeller would not be properly carried. There are some  
8 international regulations that the U.S. is a party to, so  
9 we carry ballast to keep her loaded and trimmed and stable.

10          Q     I'm going to show you a diagram and ask you to  
11 explain the -- can you see that?

12          A     No.

13          Q     How about that?

14          A     Yes, I can see that.

15                 JUDGE JOHNSTONE: There's a pointer next to the  
16 wall over there.

17                 BY MR. COLE: (Resuming)

18          Q     Just setting aside this area in the gyro room, can  
19 you explain to the jury -- do you recognize this diagram,  
20 first?

21          A     It looks like the diagram of the Exxon Valdez.

22          Q     The instruments that are in front of you on the  
23 front bulkhead, would you explain what each one of those  
24 are, how it works?

25          A     Starting on the right, you have the wind speed and

1 wind direction and it's linked electrically up to a weather  
2 vane with a little propeller on it that gives you the  
3 speed. This is the rate of turn indicator and it's linked  
4 to the gyros and will indicate a rate of turn in degrees  
5 per minute. This is a depth sounder. It has scales for  
6 feet or fathoms and will show you the depth beneath the  
7 hull. This is the doppler speed log which gives you speed  
8 through the water. You have an engine tachometer which  
9 will display the number of rpms that the engine is  
10 operating at. You have a rudder angle indicator which will  
11 indicate to the helmsman, the watch officer, the master,  
12 pilot, anybody else there, the angle that the rudder is  
13 actually at.

14           These two pieces, this piece and this piece, go  
15 together. They're part of the undocking doppler.

16           Q     What's a doppler?

17           A     Well, it sends out a pulse and there's a return  
18 from that pulse and, from that, they determine the speed.  
19 Now that particular instrument can lock on either through  
20 the water, similar to the Sperry unit here -- this is an  
21 AMADEK unit -- or it can receive the pulse from the bottom,  
22 in which case it's a bottom lock, and this gives you speed  
23 over ground, as opposed to speed through the water. And  
24 the last one here is a gyro repeater.

25           Q     And that gyro repeater, it tells you the heading



1 of the vessel.

2 A It tells you the heading that the vessel is on,  
3 correct.

4 Q And does it have a rate of turn indicator on it,  
5 also?

6 A Yes, it does. These little dots here are rate of  
7 turn and if you're turning to the right, they rotate to the  
8 right, and if you're turning to the left, the dots appear  
9 to rotate to the left.

10 Q Would you explain -- the two radars that are  
11 there, what type are those?

12 A Well, they're Raytheon radars. This one is a  
13 ten-centimeter and this one is a three-centimeter.

14 Q And what's the difference between a ten-centimeter  
15 radar and a three-centimeter radar?

16 A Well, it has to do with the pulse linked.

17 Q And the ten-centimeter radar that you have pointed  
18 to, is there something that's attached to that?

19 A Yes, the collision avoidance is attached to the  
20 ten-centimeter radar.

21 Q And how does that work?

22 A Well, there's a lot of buttons on it that you can  
23 lock in. You can acquire targets and it will give you  
24 information about those targets.

25 Q Does it have an alarm on it?

1 A It has several alarms on it.

2 Q Do any of the rudder angle indicators -- are any  
3 of them digital?

4 A I don't -- I'd have to go through each piece of  
5 it, so I don't recall if there's a digital rudder angle  
6 indicator.

7 Q There's a rudder angle indicator on the front  
8 bulkhead, right, correct?

9 A Correct, right there.

10 Q And there's one up on the ceiling.

11 A There's one mounted on the ceiling.

12 Q Say in the area of --

13 A Right there, in fact, yes. That's in the area of  
14 22, yes.

15 Q And then there was a rudder angle indicator in the  
16 steering console.

17 A That's correct, on the SRP-2000, on the video  
18 display unit, there's a rudder angle indicator.

19 Q Did any -- none of those were gyro -- none of  
20 those were digital.

21 A No, I don't believe so.

22 Q Now in the chart room -- would you explain how the  
23 Loran and NAPSAV units were used to help the -- aid you in  
24 navigation?

25 A Well, this represents the Exxon Valdez bridge.

1 They were located here, next to or on the chart table. And  
2 they are electronic means of navigation and they provide  
3 latitude and longitude readouts, based on the electronic  
4 radio waves they receive.

5 Q Would you use those in Prince William Sound?

6 A I like to use all the information that's available  
7 to me whenever I navigate and those could be used in Prince  
8 William Sound, yes.

9 Q Where is the -- I'd like to turn to the engine  
10 control. When you were the captain of the Exxon Valdez,  
11 where was the throttle controlled from, the bridge or the  
12 engine room?

13 A Normally it would be controlled from the bridge.

14 Q And would you tell the jury what settings you had  
15 available on the throttle for -- at your disposal when you  
16 were going ahead?

17 A On the telegraph, you have a stop position, a dead  
18 slow ahead position, a slow ahead, a half ahead and a full  
19 ahead.

20 Q And the -- you also had a sea speed available to  
21 you through a load up program, a computer loading up  
22 process?

23 A Yes, those were the maneuvering ahead speeds and  
24 then you can load up the program to sea speed, yes.

25 Q How do you do that?

1           A     Well, there's a preselector -- I think this is it  
2 here on this diagram -- that you would turn. It's a dial  
3 that represents percent, from about 70 percent up to 100  
4 percent, 100 percent being full sea speed, 70 percent being  
5 full ahead maneuvering. And you would rotate that to what  
6 speed you want and select and, on this panel, push that  
7 load program up and it would take the load from full ahead  
8 maneuvering to full sea speed, approximately 45 minutes.

9           Q     And if you had to come down from full ahead sea  
10 speed load up program back to full maneuvering speed, how  
11 long would that take?

12          A     Well, there are several ways of controlling the  
13 engine and reducing speed. One would be to load program  
14 down and that would also take 45 minutes. However, you  
15 could what we call fine set down. There are two other  
16 buttons here, fine set up and fine set down, on this panel  
17 here that does in about 120 seconds what the load program  
18 does in 45 minutes. That is change the fuel rack on the  
19 engine, either increase or decrease it. Or when reducing  
20 speed, if you move the telegraph -- that's this instrument  
21 here -- the engine will immediately reduce to whatever you  
22 are calling for on the telegraph.

23          Q     Now that would be an emergency type procedure if  
24 you had to turn it off in a hurry, is that correct?

25

1           A       We prefer -- my personal preference, because I  
2       have an engineering background and that's the way I prefer  
3       to operate, would be to use load program whenever time  
4       permits. At any time it doesn't permit, your next choice  
5       would be to use the telegraph.

6           JUDGE JOHNSTONE: Mr. Cole, I can't see the clock  
7       in here. Are we about 1:30?

8           MR. COLE: 1:30.

9           JUDGE JOHNSTONE: Okay, that means we're going to  
10      be finished for the day. We'll see you back tomorrow  
11      morning at 8:15 in the jury room and we'll resume this  
12      trial at 8:30 a.m. Don't discuss the case among yourselves  
13      or with any other persons. Don't form or express any  
14      opinions. Remember my cautionary instruction on media  
15      exposure. We'll see you tomorrow. Be safe. Anything we  
16      need to take up?

17          MR. COLE: One thing, very quickly.

18          JUDGE JOHNSTONE: Okay, I'll let the jury go and  
19      we'll take it up.

20          (Whereupon, the jury leaves the courtroom.)

21          JUDGE JOHNSTONE: Close the door, please. Yes,  
22      sir?

23          MR. COLE: One quick matter, Your Honor. We have  
24      agreed on this to stipulate to the admittance of  
25      Plaintiff's Exhibit Number 32. I wanted to bring it up

1 outside the presence of the jury and make sure there were  
2 no problems.

3 JUDGE JOHNSTONE: Okay, is that correct, Mr.  
4 Madson?

5 MR. MADSON: That is correct, Your Honor, we did  
6 so stipulate.

7 JUDGE JOHNSTONE: You can offer it for stipulation  
8 in front of the jury whenever you get around to it.

9 MR. COLE: Thank you, then, I have nothing else.

10 JUDGE JOHNSTONE: Anything for counsel before we  
11 go? If you have anything to take up tomorrow, let's take  
12 it up at 8:15. I'll be here early. We'll stand recessed.

13 THE CLERK: Please rise. This Court stands at  
14 recess.

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1 SUPERIOR COURT  
2 STATE OF ALASKA

)  
) Case No. 3ANS89-7217  
) Case No. 3ANS89-7218

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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.

*Doris A. Cutler*

DORIS A. CUTLER

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

In the Matter of:

STATE OF ALASKA

versus

JOSEPH J. HAZELWOOD

Case No. 3ANS89-7217

Case No. 3ANS89-7218

Anchorage, Alaska

February 21, 1990

The above-entitled matter came on for trial by jury before the Honorable Karl S. Johnstone, commencing at 8:35 a.m. on February 21, 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.

MICHAEL CHALOS, Esq.



C O N T E N T SWITNESSES

<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Michael S Stalzer	4	30	111	123
John R Hilsinger	129	143		
Mark J Thorson	152	156	160	
Paul B Myers	161	173		

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E X H I B I T S

<u>STATE'S</u>	<u>IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Number 47	--	5
Number 44		6
Number 41		7
Number 39		11
Number 56		12
Number 18		18
Number 70		29
Number 71		30
Number 104		172

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P R O C E E D I N G S

1  
2 (Tape No. C-3629)

3 THE CLERK: -- Honorable Karl S. Johnstone,  
4 presiding, is now in session.

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

6 You may resume, Mr. Cole; and you're still under  
7 oath, sir.

8 Whereupon,

9 MICHAEL S. STALZER

10 recalled as a witness by counsel for the State of Alaska.  
11 and having been previously duly sworn by the Clerk, was  
12 examined and testified further as follows:

13 DIRECT EXAMINATION -- Resumed

14 BY MR. COLE:

15 Q Captain Stalzer, when we left off, we were  
16 discussing a little bit about the operation of the bridge.  
17 I have a couple of photographs here I'd like you to take a  
18 look at.

19 (Pause)

20 I'm showing you what's been marked for  
21 identification as Plaintiff's Exhibit Number 46. Do you  
22 recognize that photograph?

23 A That looks like the chart room on the bridge of  
24 the Exxon Valdez.

25 Q Is it a fair and accurate representation of that

1 portion of the chart room that it shows?

2 (Pause)

3 A I believe it is.

4 MR. COLE: I would move for the admission of  
5 what's been previously identified as Plaintiff's Exhibit  
6 Number 46.

7 MR. MADSON: I thought that one was admitted. It  
8 wasn't?

9 THE COURT: Any objection, Mr. Madson?

10 MR. MADSON: No objection, no.

11 THE COURT: It's admitted.

12 (State's Exhibit 47 was  
13 received in evidence.)

14 BY MR. COLE: (Resuming)

15 Q I'm also showing you a copy of what's been  
16 identified as as Plaintiff's Exhibit Number 44. Do you  
17 recognize that photograph?

18 A That appears to be a portion of the wheelhouse of  
19 the Exxon Valdez.

20 Q And is that a fair and accurate representation of  
21 the wheelhouse there on the Exxon Valdez?

22 A Up where it shows -- it appears so, yes.

23 MR. COLE: I would move for the admission of  
24 what's been identified as Plaintiff's Exhibit Number 44.

25 MR. MADSON: No objection.

1 THE COURT: All right. Admitted.

2 (State's Exhibit 44 was  
3 received in evidence.)

4 BY MR. COLE: (Resuming)

5 Q All right. When you say "wheelhouse," Captain  
6 Stalzer, is that also a chart room? Or, what's the  
7 difference between the wheelhouse and the chart room?

8 A Well, the bridge is a term that would encompass  
9 both the wheelhouse and the chart room.

10 Q Okay.

11 A Maybe if you showed the people with that diagram.

12 (Pause)

13 The chart room would be in this portion of the  
14 bridge and the wheelhouse would be this portion of the  
15 bridge.

16 Q Now, showing you what's been marked for  
17 identification as Plaintiff's Exhibit Number 41, do you  
18 recognize that diagram, or that photograph?

19 A That appears to be a photograph of the right  
20 starboard hand side radar console, and a portion of the  
21 engine console, in the wheelhouse.

22 Q And, as to what this picture actually depicts, is  
23 that a fair and accurate depiction of that particular  
24 instrument?

25 A I would say so.

1 MR. COLE: I would move for the admission of  
2 what's previously been identified as Plaintiff's Exhibit  
3 Number 41.

4 MR. MADSON: No objection.

5 THE COURT: Admitted.

6 (State's Exhibit 41 was  
7 received in evidence.)

8 BY MR. COLE: (Resuming)

9 Q While we're here looking at the radar, would you  
10 tell the jury what this is right here?

11 A That's a removable hood that goes over the  
12 display, the CRT, so that in daylight you can block out the  
13 surrounding sunlight, and you can get a better view of the  
14 CRT. It's not necessarily used at night.

15 Q Would you describe for the jury -- let's say that  
16 you were in the Port of Valdez. What would it look like if  
17 you looked at a radar, into the radar screen? How would  
18 the land show up?

19 A Well, depending on the scale you were on, it  
20 would show up as a return, continuous return in the case of  
21 Port of Valdez, if you had the proper scale on.

22 Q When you say a continuous return, would you  
23 describe for the jury -- is it a color? Is it a mass,  
24 or --

25 A It's -- yeah. A return from the CRT, it's a

1 continuous line if it's -- if it's land, and the return is  
2 continuous. It would show the outline of the surrounding  
3 land, similar to what you would see on a chart for -- if  
4 you just had the land presentation.

5 Q Now, what about ice? How does ice show up on a  
6 radar?

7 A Ice is a polar radar target. It would -- if the  
8 return was strong enough, it will show up on the display as  
9 any other target.

10 Q Why do you say it's a poor target?

11 A The -- how the radar instrument works, it sends  
12 out a radio wave, and when the radio wave strikes an  
13 object, some of that radio wave is bounced back on whatever  
14 direction, whatever angle, it happens to hit that object.

15 Now, ice is not -- not considered a reliable  
16 target, because you never know what shape of that ice mass  
17 might be, whether it's going to send the return back to the  
18 radar. So typically you would -- you would get a return  
19 from ice in the two- to three-mile range. If it had a lot  
20 of mud in the ice, you might pick it up a little bit  
21 further than that, but --

22 Q So it's within the two- to three-mile range that  
23 you start picking up ice. Can you pick it up further  
24 -- \_\_\_\_\_ three miles?

25 A You possibly could, yeah.

1 Q How can you tell how big the ice is by what shows  
2 up on your radar?

3 A I don't believe you can determine the size of the  
4 ice from looking at the radar.

5 Q How can you tell whether it's continuous or just  
6 one or two pieces, or -- is there any problems with how  
7 much ice is in a given area? Problems with telling how  
8 much ice is in a given area by looking at the radar?

9 A Well, again, ice is not a good target return, so  
10 you cannot be assured that every piece is being indicated  
11 on the radar scope. The pieces that the radio wave comes  
12 back from is strong enough to activate the CRT screen, the  
13 PPI. You'll get a target indication on there, and if the  
14 pieces are widely dispersed, if they're far enough apart,  
15 they will show up as individual specs.

16 Q And if they are not widely dispersed, could they  
17 show up as one solid mass almost, sort of clumps?

18 A That's correct. If they are very close together,  
19 they might show up as one target.

20 Q Does it make a difference as far as the accuracy  
21 of your radar and being able to pick up ice in front of  
22 you, how far away, and which particular radar you're using?

23 A Would you repeat that question, please?

24 Q Does it make a difference in being able to  
25 ascertain the accuracy of where the ice, and how much it



1 is, depending on how far away you are from the ice --  
2 (inaudible)?

3 A Okay. Yes, distance away from the ice will  
4 affect what is returned. The closer you are -- if the  
5 radio wave only has to, say, travel one mile out and one  
6 mile back, the return would be a given set strength, for  
7 example. If it had, if the radio wave had to go out ten  
8 miles and return ten miles, a set -- a set return pulse is  
9 what activates the scope.

10 So it has to be a much stronger return, or much  
11 stronger sig -- return from a ten-mile target than from a  
12 one-mile target in order to travel the whole distance, to  
13 come back and reach the threshold of the equipment to  
14 activate the pulse.

15 Q So, in essence, it would be -- you would get a  
16 better chance of seeing ice closer up to --

17 A That's correct. However, please remember that  
18 ice is not a reliable target.

19 Q Well, if it's not a reliable target on radar, how  
20 do you avoid it when you're navigating a ship? I mean,  
21 what -- if you can't -- do you depend on your radar, or  
22 what other fac -- what other things do you use to avoid  
23 ice?

24 A You use all the information that's available,  
25 which would include the observations of the lookout, your

1 own observations, those of the watch officer. There might  
2 be some outside sources. If other ships have passed in the  
3 area, they might report ice that would alert you to its  
4 presence over the VTS.

5 Q Okay.

6 Now, I'm showing you what's been marked for  
7 identification as Plaintiff's Exhibit Number 39. Do you  
8 recognize that photograph at all?

9 A It appears to be the port bridge wing of the  
10 Exxon Valdez.

11 Q Is it a fair and accurate representation of that  
12 part of the Exxon Valdez?

13 A I believe so.

14 MR. COLE: I would move for the admission of what  
15 has been identified as Plaintiff's Exhibit Number 41.

16 MR. MADSON: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit 39 was  
19 received in evidence.)

20 BY MR. COLE: (Resuming)

21 Q Finally, in the -- on the bridge, do you keep  
22 manuals and references and books available that could aid  
23 in navigation?

24 A Yes, we do.

25 Q I'm showing you what has been identified as

1 Plaintiff's Exhibit Number 56. Do you recognize that?

2 A It appears to be a bookshelf on the back wall of  
3 the Exxon Valdez.

4 Q Is it an accurate representation of that  
5 bookshelf, as you remember it?

6 A Yes, I would say so.

7 MR. COLE: I would move for the admission of  
8 what's been identified as Plaintiff's Exhibit Number 56.

9 MR. MADSON: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit 56 was  
12 received in evidence.)

13 BY MR. COLE: (Resuming)

14 Q I'd like to talk just a minute about the charts  
15 that you use in and out of Valdez. Are these charts -- are  
16 they like a regular map that people uses, or are they -- do  
17 they take into account magnetic or true north? How do they  
18 take into account that, these charts?

19 A Well, that appears to be a mercator chart, so  
20 true north would be indicated straight up on the  
21 longitudinal lines. There's a compass rose that will  
22 indicate the magnetic north.

23 Q And could you explain to the jury what all the  
24 numbers are in the water areas?

25 A Well, some of the numbers in the water areas are

1 soundings. On this particular chart, they are in fathoms,  
2 I believe, soundings in fathoms. So there are maybe other  
3 numbers in the water area that would indicate the buoys and  
4 the light characteristics of the buoys in the distance, the  
5 light to be seen.

6 There's other numbers locating notices that refer  
7 to other notices that are present on the body of the chart.

8 There are some numbers for Loran (PH) lines on  
9 this particular chart. I might be able to pick out some  
10 more little numbers somewhere around in there.

11 Q Would you explain to the jury -- how do tides  
12 going in and out affect the bathometer marks? I mean, if  
13 you have a rising tide, does that make a difference, or a  
14 low tide?

15 A Well, the chart is set up for soundings that are  
16 at main level of water, so tides are -- are water in  
17 addition to what you would find according to the  
18 soundings. Of course, the soundings are dated, you know.  
19 They're not done yearly, or anything like that. They're  
20 done whenever the -- NOAA gets around to it, or however --  
21 whatever system they have set up, mechanism they have set  
22 up, for surveying. But the charts are dated, so you need  
23 to refer to the dates on soundings.

24 Q How many feet is a fathom?

25 A Six feet to a fathom.

1 Q And would you -- if you were in eight feet of --  
2 if a chart registered eight fathoms, would it make a --  
3 would it -- how would a low tide or a high tide affect that  
4 measurement?

5 A Well, you'd have to get the tide tables out and  
6 compute the difference from -- eight fathoms, would, say,  
7 48 feet to the main lower -- this chart is in mean lower  
8 level water, which is the water. You would then have to  
9 compute the difference between mean lower level water and  
10 the low tide or the high tide and adjust the sounding  
11 according to get the actual depth of the water, at any  
12 given time.

13 Q Now, when you were operating the Exxon Valdez,  
14 would you explain to the jury how the radar can be set up  
15 to either point to north or how it can be set up to point  
16 toward the direction that the tanker is travelling?

17 A Well, you have a switch on the radar that permits  
18 you to have what we call a heads-up display where, if  
19 you're facing forward the display will display exactly what  
20 you see forward. There's another option on the radar that  
21 permits the radar to be oriented towards north, so that up  
22 on the radar, as you look down at it, is -- is north.

23 Q When you're travelling into Prince William Sound,  
24 what do you keep it on?

25 A Generally, I use north up.

1 Q Why is that?

2 A It's my personal preference.

3 Q Is it any particular reason, or is it just that  
4 you feel more comfortable, or --

5 Q Well, with a heads-up display, as the ship's  
6 heading changes, the picture on the scope changes then.  
7 With a north-up display, as the heading changes, the  
8 picture stays the same, so it's a little easier to plot and  
9 use some navigation techniques that I use, so I prefer  
10 north up.

11 Q Would you describe for the jury what type of  
12 system turns the Exxon Valdez, steers it?

13 A It's an SRP-2000 is the steering console on the  
14 bridge, and there's steering gear in the steering gear room  
15 that actually moves the rudder.

16 Q Could you give the jury an idea of how easy it is  
17 to turn the wheel on the steering gear, the steering  
18 console?

19 A It's very easy to turn the wheel on the  
20 SRP-2000. It's a small wheel. It doesn't take a lot of  
21 force. It's very easy.

22 Q I'd like to talk for a minute about the throttle,  
23 or the telegraph mechanism. Where -- you indicated that  
24 you -- your general practice was to control it from the  
25 bridge?

1 A That's correct.

2 Q And can you give the jury an idea of the  
3 approximate speeds -- well, let's see. What are the  
4 settings that someone can set the telegraph at, for the  
5 head mode?

6 A Just for the head mode?

7 Q Uh-huh.

8 A You have dead slow ahead, which is 24 RPM; slow  
9 ahead, which is 32 RPM; half ahead, which is 40 RPM; and  
10 full ahead, which is 55 RPM.

11 Q Can you give the jury an idea of how fast the  
12 tanker would be proceeding at each one of those RPMs?

13 A Well, it varies --

14 Q Depending on whether it's laden or unladen,  
15 correct?

16 A That's correct. It would depend on whether it's  
17 laden or unladen and the wind and sea conditions, the  
18 amount of grass, if you have anything growing on the hull,  
19 you know -- but generally --

20 Q Grass? What did you -- did you say grass?

21 A The hulls are coated with a paint that prohibits  
22 marine growth, because the more marine growth you have on  
23 the hull, that tends to retard your speed through the  
24 water. So a lot of conditions enter into how fast the  
25 vessel actually goes.

1 Q Let's say in calm waters with fully laden tanks.  
2 Can you give the jury an idea of the various speeds?

3 A Yeah, I can give you a general idea. Those  
4 characteristics are posted on the bridge.

5 For a dead slow ahead at fully laded traffic,  
6 you'll have about -- oh, about 5.5 knots. For slow ahead,  
7 you'll have about 6.2, 6.3 knots. For half ahead, you'll  
8 have about 8.5 to 8.7 knots, depending on the conditions.  
9 And full ahead, you'll have full ahead maneuvering at 55  
10 RPM. You'll have about 11.4 knots, fully loaded.

11 Q And would the amount of oil -- you say that the  
12 amount of oil that the tanker is carrying would affect  
13 that, those speeds?

14 A That's correct.

15 Q Okay.

16 A With less oil, when you're in ballast, your  
17 speeds would be a little greater than that.

18 Q Now, you indicated earlier yesterday that you had  
19 been involved in some of the tests designed to test the  
20 maneuvering characteristics of the Exxon Valdez. Is that  
21 correct?

22 A I don't know that I indicated that yesterday, but  
23 I have bene involved with maneuvering characteristics.

24 Q And are those characteristics, the maneuvering  
25 characteristics, are they -- have there been some done when



1 the tanker is full ladened, fully -- or unladened, making  
2 hard starboard turns, hard port turns, things like that?

3 A On sea trials, we did do -- did do maneuvering  
4 characteristics tests, yes.

5 Q And is that -- the results of those particular  
6 tests posted up on the bridge?

7 A The -- in February, when I left the vessel, the  
8 posted characteristics, I believe, were computer-generated  
9 from Exxon or National Corporation. They -- prior to them  
10 being issued, they were compared to a set of maneuvering  
11 characteristics that NASCO, I believe, constructed, and  
12 also an empirical test which we did on the vessel to try to  
13 confirm the actual characteristic of the ship to the  
14 computer characteristics.

15 I believe the EIC, or those characteristics that  
16 were posted, were the most accurate that were available,  
17 yes.

18 Q When you say, "We did some trials," who -- who is  
19 we? You personally did some maneuvering characteristics?

20 A Yes. Let me explain.

21 After the vessel left Portland in 1988, we -- we  
22 were checking out the maneuvering characteristics of the  
23 vessel. We, I mean in that I personally did some tests and  
24 Captain Hazelwood conducted some tests and left that  
25 information with me, and I forwarded it -- I combined the

1 two tests, or the number of tests that we both did together  
2 in a letter to the office at the time we were trying to  
3 confirm those characteristics.

4 (Pause)

5 Q Now, I'm showing you what's been marked for  
6 identification -- which has previously been admitted as  
7 Plaintiff's Exhibit Number 7. Do you recognize that?

8 (Pause)

9 A It appears to be -- let me look at the second  
10 page here. Are these the same?

11 They appear to be the maneuvering characteristics  
12 of the Exxon Valdez.

13 Q Okay. Now, I'm showing you what's been marked  
14 for identification as Plaintiff's Exhibit Number 18. Does  
15 that appear to be a blow up of those characteristics, an  
16 accurate blow up of those characteristics?

17 A Oh, I'd have to check every number on there.

18 Q Take your time.

19 (Pause)

20 A Yes, it appears an enlarge copy of this.

21 MR. COLE: I would move for the admission of  
22 what's been previously identified as Plaintiff's Exhibit  
23 Number 18.

24 MR. MADSON: No objection.

25 THE COURT: Admitted.

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

3 BY MR. COLE: (Resuming)

4 Q Now, Captain Stalzer, can you -- would you mind  
5 taking the pointer there and explain to the jury what  
6 happens -- how -- give them an idea of how you would read a  
7 chart like this to understand it? Maybe you could start  
8 with the -- a deep water turning circle of a full sea  
9 speed --

10 THE COURT: That will come with you, captain.  
11 Just grab the amplifier at the base of it. The pointer is  
12 right next to your left elbow, behind you.

13 MR. COLE: \_\_\_\_\_ hold that, or --

14 THE WITNESS: No, let's just leave that there.  
15 How do you reads this?

16 BY MR. COLE: (Resuming)

17 Q Yeah. Let's start with --

18 A What portion?

19 Q -- full sea speed, unladen -- or a ladened turn  
20 to the starboard side.

21 A You're referring to this --

22 Q Yes. Okay. That -- how you would interpret  
23 that, it's for a hard over command, when the vessel is  
24 fully ladened, the drafts are indicated 64 -- about  
25 64-and-a-half feet fore and aft. You would put the wheel

1 hard over --

2 Q Hard over meaning what?

3 A Thirty-five degrees. Hard right, in this case.

4 THE COURT: Captain, so we won't have that  
5 problem continuously, just take that and snap it to your  
6 belt, or stick it in your pocket, or something.

7 (Pause)

8 THE WITNESS: You would -- hard right is 35  
9 degrees right rudder. The vessel will -- and this is at  
10 full sea speed.

11 BY MR. COLE: (Resuming)

12 Q And how fast would that be, in terms of knots?

13 A Well, if you're referring to this diagram, fully  
14 loaded, full sea speed, on a loaded condition would be  
15 15.96. Again, it would vary depending on the wind and  
16 weather conditions and the other conditions about the  
17 vessel.

18 Q Let me slide this to the right so that -- make  
19 sure that the other -- all the jury (inaudible).

20 A So the vessel will go approximately point --  
21 according to this chart, .59 nautical miles advance. At  
22 the time that it's 90 degrees from the time that you begin  
23 your turn, it will have traversed .30 nautical miles to the  
24 right.

25 The turn -- at that point, you'll have a speed of

1 about 10.8 knots, and it took 2.8 minutes to reach that  
2 position.

3 Q So these tankers don't turn immediately when you  
4 turn them? In other words, when you turn the wheel, it  
5 takes a little while for them to actually turn (inaudible)?

6 A That's correct. In this case, about six-tenths  
7 of a mile.

8 Q And is that something that you would want to take  
9 into consideration before executing a maneuver?

10 A Yes. I take that into consideration.

11 Q Why does it take so long for these tankers to  
12 turn to a 90 degree angle going at a hard right?

13 A Well, I think you're getting into the dynamics of  
14 the ship's motion to the water, and friction on the vessel,  
15 and the size of the rudder, the speed, the force on the  
16 propeller. So it's not like -- it's not exactly like  
17 driving an automobile, where you have very good friction  
18 between your tires and the concrete.

19 Q Well, does it make a difference, the fact that  
20 it's so heavy? I mean, let's compare the full sea speed,  
21 fully loaded, when it's in ballast condition making a hard  
22 right turn. How does that affect it?

23 A Okay. We can look at those two, full sea speed  
24 in a ballast condition. We can compare those two numbers.

25 The advance is slightly more in ballast, .61

1 nautical miles. The transfer is slightly greater; .36  
2 nautical miles. The speed is slightly greater at the 90  
3 degree turn, 2.1 knots. And the time to reach that turn,  
4 though, is a little bit less. 2.5 minutes compared to 2.8  
5 minutes.

6 Q So it just does everything just a little bit  
7 quicker?

8 A Well, the vessel is travelling at a greater rate  
9 of speed. I mean, you referred to the fully loaded  
10 ballast. It's doing 17.8 knots, so it is turning quicker.  
11 It started with more speed. There's more force on the  
12 rudder and it turns a little quicker, yes.

13 Q Now, if you were travelling in full maneuvering  
14 speed, you would -- would you be in one of these categories  
15 that is set up here?

16 A No. These categories are specifically set up for  
17 the speeds indicated. Full sea speed, half speed -- which  
18 is half ahead maneuvering -- loaded, and same speeds for in  
19 ballast. So there is no chart for maneuvering speed.

20 Q How would you determine how far, I guess they  
21 call that you would advance if you were going to make a  
22 hard right turn at full maneuvers?

23 A Well you -- that's gained through experience on  
24 how far you think the vessel is going to go under given  
25 conditions, the tides and currents, when you're in full

1 ahead, or anything that's not posted.

2 Even these speeds are not -- these distances and  
3 speeds and times are not necessarily exact. Every  
4 situation is different. The wind and current affects them,  
5 and the actual trim -- you have to be actually in that  
6 loaded condition and trimmed, according to what those are.

7 Q So it's more of a feeling that you acquire over  
8 time? Is that pretty much what you're telling us her?

9 A Yes. Yes, that's exactly so. You -- everyone  
10 picks their own standards as far as if the vessel's turning  
11 quick enough in a different situation. They have the  
12 seaman's eye. You have to examine that, and if it's not  
13 turning fast enough, if you only have five degrees rudder  
14 on you'll put on ten on, or fifteen, or whatever. If it's  
15 turning too fast, you'll take -- you might take counter  
16 rudder to stop it.

17 Q What about when you turn, not 35 degrees, but,  
18 say, 10 degrees. How does that affect your rate of turn --

19 A Well I --

20 Q Or your advance (inaudible)?

21 A Well, I would expect your advance would be --  
22 would be longer. You're not going to make that sharp a  
23 turn with less than 35 degrees rudder.

24 Q Okay. That's all the questions I have on that.  
25 Thank you.

1 (Pause)

2 Q Now, Captain Stalzer, can you -- now I'd like you  
3 to talk just a bit about communications equipment that you  
4 had on board the Exxon Valdez. What type of radios did you  
5 have at your disposal aboard the Exxon Valdez, to talk with  
6 people off the vessel?

7 A We had VHF radios.

8 Q How many of those would you have had, do you  
9 remember?

10 A I believe we had three fixed and one portable on  
11 the bridge, and there was one fixed in the radio room.

12 Q The three fixed, would they be up on this chart  
13 at all?

14 A I don't -- I don't -- I don't see them indicated  
15 on this chart, no.

16 Q Where were the radios normally kept on the  
17 bridge?

18 A Well, normally there would be -- there would be a  
19 VHF radio on the port bridge wing -- excuse me. On the  
20 port side of the bridge at the front of the wheelhouse.  
21 There is one located on the starboard side, and there was  
22 one hung from the overhead, just about over the telegraph.

23 The portable VHF radio had a -- had a charger back in  
24 this area.

25 Q And the numerals 37, 38, 39, do you remember what



1 those -- what was kept in that area?

2 A Yep. That's your -- that's a single side van,  
3 and there's an encoder/decoder, and whatever -- the single  
4 side van, the lorian ringer and the encoder/decoder.

5 Q Did you have a teletype machine on this?

6 A Yes, there was a teletype machine located down in  
7 the radio room.

8 Q Who ran that? Did you send messages off the  
9 teletype?

10 A At the -- last February when I was on the vessel,  
11 at that time we had a radio operator assigned to the  
12 vessel, and he -- it was his responsibility generally to  
13 send messages and receive those.

14 Q How would you do that? Would you call them up if  
15 you had something, or just walk down and talk to them?

16 A Typically, I brought -- I wrote the messages by  
17 hand, and if he was not available, I'd leave him on his --  
18 in the radio shack and he would find them and send them.

19 Q Finally, the depth sounder, what is that? Where  
20 is it? Is there a depth sounder, or bathometer, on the  
21 Exxon Valdez?

22 A Yes, there were. There were two. One was  
23 located up on the fiddle board here -- maybe I can pick out  
24 exactly what -- number seven, that's about where it is.  
25 That's to the right of the center line. That transducer is

1 located forward, and there was another bathometer located  
2 on the bulkhead, right here. They're showing it located  
3 here, but it was actually attached to the side of the  
4 bulkhead here, and that's operated off an after  
5 transducer. That was a recording fodometer there.

6 Q I didn't hear that last part. It's operated off  
7 what?

8 A The after transducer.

9 Q What's that?

10 A That's a recording fodometer.

11 Q What's that?

12 A Transducer is where the pulse is put out from the  
13 unit into the water to determine -- again, these are done  
14 by sending out a pulse and a return comes back, and the  
15 machine times how long it takes the pulse to go down there  
16 and come back, and knowing that device, \_\_\_\_\_ can  
17 figure out the depth for you.

18 Q Where are those located, those transducers?

19 A Well, I don't know exactly. They are about on  
20 the center line, in the area of frame 5 up forward. And  
21 aft -- I don't recall what particular frame they are, but  
22 they were under the engine room. We could get it through  
23 the engine room compartment.

24 Q Frame 5, what's -- what do you mean by when you  
25 say frame 5?

1           A     Frame 5 was the bulkhead before the forepeak and  
2 the number one cargo tanks. The transducers were located  
3 in the forepeak.

4           Q     Transducers for both of those? For both of  
5 those --

6           A     No, the transducer for the fathometer on the  
7 fiddle board was located forward, in addition to one of the  
8 transducers for the Amatec speed log and the transducer for  
9 the Speery (PH) doppler speed log was also located forward  
10 of frame 5 in the forepeak.

11          Q     Did you happen to -- you went on the Exxon Valdez  
12 after it was grounded?

13          A     That's correct. I did.

14          Q     Do you know what the position of the depth  
15 sounder, the depth sounders was, after the grounding?

16          A     The forward units did not function.

17          Q     And the aft units?

18          A     I believe the recording fathometer still  
19 functioned.

20          Q     I'd like to talk for a minute about the -- where  
21 are your quarters located on the Exxon Valdez?

22          A     They're located on deck below the bridge deck, on  
23 the starboard side.

24          Q     Do you have any navigational instruments or  
25 equipment in your quarters?

1           A     In January and February, I believe there were  
2 some navigating instruments there. There was -- I think a  
3 pair of dividers in the desk drawer and maybe some  
4 navigating triangles.

5           Q     Were there any rudder indicators, or gyro  
6 repeaters, or heading indicators?

7           A     No, sir. Not that I recall.

8                     (Pause)

9           Q     I'm showing you what's been marked for  
10 identification as Plaintiff's Exhibit Number 70. Do you  
11 recognize that photograph?

12          A     That appears to be looking forward in the  
13 master's quarters.

14          Q     And is that a fair and accurate representation  
15 generally, of the way you remember the master's chambers?

16          A     Well, not with that number of magazines or  
17 necessarily books in the rack, but as far as furniture,  
18 yes, sir.

19                     MR. COLE: I would move for the admission of  
20 what's been identified as Plaintiff's Exhibit Number 70.

21                     MR. MADSON: No objection.

22                     THE COURT: Admitted.

23                                     (State's Exhibit 70 was  
24                                     received in evidence.)

25                     BY MR. COLE: (Resuming)

1 Q And Number 71?

2 A This appears to be a view looking in the master's  
3 quarters again, looking toward the starboard side.

4 Q And is that a fair and accurate representation of  
5 that area?

6 A I believe so.

7 MR. COLE: I would move for the admission of what  
8 has been identified as Plaintiff's Exhibit Number 71.

9 MR. MADSON: No objection.

10 THE COURT: Admitted.

11 (State's Exhibit 71 was  
12 received in evidence.)

13 BY MR. COLE: (Resuming)

14 Q Now, I see that there's a couple of windows that  
15 are in the master's quarters. Can you open those windows?

16 A Not without great difficulty, no.

17 Q Why do you say that?

18 A Well, there's a number of bolts around the edge  
19 that holds them shut.

20 Q So you'd have to unbolt it to open up the window?

21 A That's correct.

22 Q Now, would you explain to the jury, on a typical  
23 trip to Prince William Sound and back, what kind of  
24 paperwork do you have that you are required by Exxon  
25 Shipping Company to fill out?

1 A The entire trip?

2 Q Well, let's say from -- let's narrow it down a  
3 little bit more. How about from Valdez to -- out to San  
4 Francisco, or Long Beach?

5 A Well, it depends on the particular trip and  
6 what's going on on the ship at the time and the time of  
7 year, but generally we have paperwork dealing with ordering  
8 of stores, messages on the vessel's movements. And we  
9 might receive, or need to send orders for bunkering.

10 Q Bunkering? What do you mean by that?

11 A Taking on fuel for the vessel.

12 Q Anything else?

13 A Oh, a whole host of paperwork. The  
14 administrative duties are spelled out somewhat in the  
15 bridge organizational manual, but they have evaluations to  
16 do of the crew, communications concerning status of  
17 equipment, or upcoming shipyards, or work that might be  
18 planned on the vessel. So yes, there's paperwork to be  
19 done.

20 Q Where do you generally -- you, yourself -- do  
21 that paperwork? What part of the vessel?

22 A Usually in the master's office.

23 Q And can you tell the jury when during the trip  
24 you do it?

25 A Well, it varies from situation to situation, but

1 generally I do it in port or out at sea.

2 Q How about -- can you give the jury an idea --  
3 let's say you were on a trip from San Francisco to Valdez  
4 to -- back to Long Beach. Would you tell the jury a little  
5 bit about the number of hours you would personally be  
6 working during this time?

7 A Well, again, it varies from trip to trip and  
8 situation to situation. If we encounter fog off the coast,  
9 my work hours might increase somewhat. Generally I worked  
10 a ten- to twelve-hour day on the vessel.

11 Q Is fatigue a factor in the performance of your  
12 duties as master?

13 A We have to be mindful of fatigue and -- as  
14 indicated in the bridge organizational manual, in certain  
15 watch conditions -- such as I just described, fog off the  
16 coast, where you might be up on the bridge for long hours,  
17 you have to be aware of that and perhaps have a senior  
18 officer relieve you so you can get some rest.

19 Q But you can take steps to minimize the effects of  
20 fatigue? Is that correct?

21 A Yes, we can.

22 Q I'd like to switch our focus, now, to the cargo  
23 control room. What is the -- what goes on in that room?

24 A Generally we control the loading and discharge of  
25 cargo, or the loading and discharge of ballast for the

1 vessel.

2 Q And is that done electronically there in the room  
3 itself?

4 A Yes, it is. There are switches which are  
5 electronically connected to the valves out on deck so that  
6 we can control their movement from the cargo control room.  
7 In addition, there are switches which connect to the pumps,  
8 and we can adjust the speeds on the pumps.

9 Q Who is generally responsible for the unloading  
10 and loading process that goes on in port?

11 A Generally, the chief mate is responsible for  
12 constructing the loading or discharge plan that all the  
13 other watch officers are to follow, and they are  
14 responsible, when they are on watch, for their activities.

15 Q And are you consulted at all in that process?

16 A Yes, I am, and generally, the chief mate will  
17 provide to me, prior to loading or discharge, a preliminary  
18 plan, and we'll discuss any unusual activities that might  
19 need to be taking place. Following a loading or discharge,  
20 he will provide me copies of the actual load, including  
21 stress calculations.

22 Q Stress calculations. How do you -- how do you --  
23 do you have a computer that helps you in this process?

24 A On this -- on the Exxon Valdez there was an IBM  
25 computer designated the loading computer that operated from



1 a program written by Ocean Motions.

2 Q How did that computer help you to determine  
3 whether or not you were stable -- you were meeting the  
4 requirements of stability and stress?

5 A The program was approved by the American Bureau  
6 of Shipping for that purpose, and we would enter the  
7 amounts and quantities or tonnage in the tanks in  
8 different, various compartments including the engine  
9 room and fuel tanks, and it would provide on screen, on a  
10 CRT screen, or a paper printout of the -- of the stresses,  
11 longitudinal stress and stability of the vessel.

12 Q What do you mean by longitudinal stress?

13 A Well, the vessel is very long, so we look at  
14 bending moment stress is over the length of the vessel.

15 Q Would it help to draw that on a chart? Could you  
16 demonstrate it on a chart?

17 A I could perhaps clarify that a little bit.

18 (Pause)

19 All right. Well, for the benefit of the jury, if  
20 you consider the ship as a beam, it's 987 feet long.  
21 Depending on how you load it up, stresses will vary along  
22 that length. For example, if you put all the weight --  
23 weight on one end, or on both ends, the ship would bend in  
24 a hogging motion. That beam -- if you loaded weight on  
25 each end here, if you consider it just as one long piece of

1 steel, it would bend like this. If you put all the weight  
2 in the middle, it would bend like what we would consider a  
3 sagging condition.

4 So the computer would, after we put in the  
5 various weights along this length, it will run and  
6 determine the bending moment stresses for various points  
7 along the length of the vessel, so we could make sure that  
8 we were within the guidelines of the \_\_\_\_\_ booklet,  
9 that we were in a safe bending moment stress.

10 (Pause)

11 Q Now, this program, there was a part of the  
12 program that dealt with grounding, in the event of  
13 grounding. Is that correct?

14 A There was -- to my knowledge there was part of  
15 the program that indicated a grounding condition. However,  
16 that part of the program did not work.

17 Q On the Exxon Valdez?

18 A As far as I'm aware, on the Exxon Valdez, it did  
19 not function properly, no.

20 Q How did you know that?

21 A Well, I ran several tests through the computer  
22 and, based on my knowledge of the LCCs --

23 Q The LCCs? What do you mean?

24 A Very large group carriers, vessels of this size.

25 -- the information that the computer was

1 providing, or it didn't run, I don't recall, was -- I  
2 didn't consider accurate, and I was in correspondence and  
3 discussions with a naval architect ashore, that Ocean  
4 Motions would need to fix that part of the program because  
5 it didn't operate.

6 Q When did you find this out?

7 A I think -- I don't recall specifically. Soon  
8 after making the first trip actually as master in 1987 and  
9 these discussions were ongoing up until the time of the  
10 accident.

11 Q Did you ever have any discussions about that with  
12 Captain Hazelwood?

13 A No, I don't -- don't believe I did have  
14 discussions with Captain Hazelwood about that feature of  
15 the program. However, there was correspondence in the  
16 files concerning that topic.

17 Q In files? What do you mean, in files?

18 A In files on the vessel, where we keep -- we kept  
19 files, correspondence, of letters that we sent to the  
20 office, so I believe that it was correspondence in the  
21 files.

22 Q And is it the normal course of business for the  
23 master who comes on to check these files before accepting  
24 the responsibility of the vessel? How would somebody know  
25 about this?

1           A     He would have to either run the test cases and  
2 have some knowledge of the LCCs himself, or peruse the  
3 files and see comments concerning that -- concerning that  
4 particular function of the computer was in the files.

5           Q     Where exactly was -- were these correspondence  
6 kept? Were they kept in the cargo control room, or in the  
7 master --

8           A     No, I believe they are in the master's filing  
9 system.

10          Q     And that would have been right in his chambers?

11          A     It would have been in the master's office.

12          Q     The master's office.

13                    Would you give the -- let's switch here for a  
14 second. Would you give the jury an idea of how many trips  
15 that you took while on the Exxon Valdez while it was in  
16 service?

17          A     I have -- I don't know exactly trips, I know my  
18 trips through Prince William Sound, I had about 24, 25  
19 trips on the Exxon Valdez there.

20          Q     How -- what -- what was your general destination  
21 during those times?

22          A     From '87 and through '88, the general destination  
23 was Port \_\_\_\_\_ Panama. In late '88 and '89, we  
24 stopped trade down in Panama, and we were bringing the  
25 cargo into the West Coast of the United States, primarily

1 San Francisco and the Long Beach area.

2 (TAPE CHANGED TO C-3630)

3 Q How long would it generally take to make a round  
4 trip ticket -- round trip (inaudible) -- a round trip  
5 voyage from Valdez to Panama and back?

6 A And back to Valdez?

7 Q Yes.

8 A About thirty days.

9 Q Now, can you give the jury an idea of how long it  
10 would take to make a round trip ticket from Valdez -- round  
11 trip from Valdez to Long Beach, to San Francisco, and back  
12 to Valdez?

13 A I've never made that particular voyage on the  
14 Exxon Valdez, but it would be -- actual sailing passage,  
15 about two weeks. It depends on if you're delayed with  
16 docking, or how many liters they would have to take off the  
17 vessel in San Francisco, the actual time that that round  
18 trip would take.

19 Q The times in late '88 and '89 when you were the  
20 captain of the vessel, what trips were you making during  
21 that --

22 A In late '88, I made a trip to Panama, and in  
23 early '89, I made, I believe, two trips into Valdez down to  
24 San Francisco.

25 Q Down to San Francisco and then back?

1           A       That's correct. As I recall, early January,  
2 returned into Long Beach from Panama, and sailed from Long  
3 Beach to Valdez for a trip down to San Francisco, and then  
4 that was toward the middle or the end of January, and then  
5 made another trip into Valdez and back down to San  
6 Francisco in early February.

7           Q       Now, when you were sailing from Valdez to Panama,  
8 would you be considered sailing on the register at that  
9 time?

10          A       The registry is a -- is a document -- another  
11 term for it is called a certificate of documentation. The  
12 registry is issued by the government and it denotes the  
13 ownership of the vessel, and the nationality of the  
14 vessel. On this document, there is an indication if the  
15 vessel is what we term under registry. Registry would mean  
16 the vessel that could be restricted to only sailing  
17 foreign, or under enrollment, or coastwise, where a vessel  
18 may only be restricted to sailing coastwise. In the  
19 case --

20          Q       Sailing foreign. What do you mean?

21          A       Sailing to a foreign port, leaving a U.S. port  
22 and going to a foreign port.

23          Q       You said "sailing coastwise." When you say  
24 sailing coastwise, what do you mean?

25          A       Sailing from a U.S. port and going to a U.S.

1 port. Now, when sailing foreign, certain documentation must  
2 be delivered and issued from the Customs Office. One of  
3 those things is a clearance to a foreign port. So when you  
4 sail foreign, you have a clearance to a foreign port.

5 Q What would sailing from San Francisco to Valdez  
6 to Long Beach be? If the Exxon Valdez was -- would that be  
7 a coastwise or an on-the-register type trip?

8 A If you do not file the required documentation  
9 with the Customs Office, then that would be considered a --  
10 I would -- my understanding is, I would consider it under  
11 enrollment, or a coastwise voyage.

12 Q Now, is the Exxon Valdez a U.S. -- you talked  
13 about who owns it and where it's nationality is. Who owns  
14 the -- who owned the Exxon Valdez?

15 A I believe it's Exxon Shipping Company.

16 Q And where was it's home port -- or was it a U.S.  
17 ship?

18 A It is a U.S. flag vessel, yes.

19 Q Now, I'd like to talk about the procedure that  
20 you would use when you were coming into the Prince William  
21 Sound area. When was the first time that you would contact  
22 the VT -- the Vessel Traffic System in Valdez?

23 A My first contact would probably through my agent  
24 24 hours before the vessel arrived. I'd contact the agent  
25 through Telex and let them know of our ETA, and he would

1 notify the Captain of the Port of our intended trip into  
2 the area.

3 Q Then when would be your next contact?

4 A That would typically be, in a normal situation,  
5 three hours out from Cape Hinchinbrook.

6 Q And that would be three hours prior to  
7 reaching --

8 A Three hours prior to arrival off of Cape  
9 Hinchinbrook.

10 Q At that time, what information would you provide  
11 to the Coast Guard?

12 A Well, normally we did this through a small form  
13 we kept on the vessel, so I might miss one of the items,  
14 but basically we told them the name of the vessel, the type  
15 of vessel and the drafts; the ETA at Cape Hinchinbrook, the  
16 speed through the sound, the ETA where we think we're  
17 going, which berth, and the destination, or if we were  
18 going to anchor.

19 We would indicate if we had any dangerous cargo  
20 on board. We would indicate if we were in compliance, and  
21 we would indicate usually that the master had pilot -- when  
22 I was there, we would indicate that the master had  
23 pilotage.

24 Q When would be the -- did you indicate at that  
25 time whether all your equipment was working?



1 A Yes, that's whether or not we were in compliance.

2 Q When would be the next conversation that you  
3 would have with the Coast Guard?

4 A That would typically be one hour prior to arrival  
5 off of Cape Hinchinbrook.

6 Q And what information would be exchanged then?

7 A Normally, we would, again, give the vessel's  
8 name, it's position and speed, ETA at Hinchinbrook, and we  
9 would generally ask for an ice report.

10 Q Where was the next time that you would report to  
11 the Coast Guard?

12 A Normal passage, that would be at arrival off of  
13 Hinchinbrook prior to entering the traffic separation  
14 scheme.

15 Q What information would you provide them then?

16 A Generally, we would give them the vessel name,  
17 indicate that we open -- our arrival time off of Cape  
18 Hinchinbrook and give him an ETA for Naked Island.

19 (Pause)

20 Q Maybe you could just take the pointer and  
21 indicate where you would -- where you would call and give  
22 your ETA of being abeam of Naked Island?

23 A Being abeam of Naked Island would be in this  
24 area, an area about where.

25 Q Okay. And where would you call when you were out

1 abeam of Cape Hinchinbrook?

2 A I typically would call in this area here.

3 Q Now, where would be the next place that you would  
4 report in to the Coast Guard?

5 A On a -- on a typical voyage, we would report in  
6 after the pilot exchange, and when we picked up the pilot  
7 off of Rocky Point. That would be in this -- about in this  
8 area, here.

9 Q How long would it take to get from -- generally  
10 from the Cape Hinchinbrook into Valdez?

11 A Well, that typically used to take from six to  
12 eight hours, depending on weather and conditions.

13 Q Do you send any messages to the agent or back to  
14 the shipping company during this time? Was it your  
15 practice?

16 A I don't personally send -- go down to the Telex  
17 machine and send them, no. I may -- at arrival, I will  
18 have the arrival information off of Hinchinbrook written  
19 out and the radio operator will come to the bridge and get  
20 it, and he would -- he might send that information in the  
21 Sound.

22 Q Would you tell the jury what your personal  
23 procedure was, then, during the docking process at Alyeska  
24 Terminal?

25 A Well, I was on the bridge closely observing the

1 navigation and the approach of the vessel to the dock.

2 Q What about during the time from Cape Hinchinbrook  
3 into the port of -- or to Rocky Point? What was your  
4 personal operating procedure as far as being on or off the  
5 bridge.

6 MR. MADSON: Your Honor, excuse me. I'll object  
7 at this point. I don't believe it's relevant at all to  
8 what this gentleman would do as his personal preference as  
9 opposed to anybody else.

10 THE COURT: Mr. Cole?

11 MR. COLE: I believe that what the captain did in  
12 this particular area is relevant to this issue.

13 THE COURT: Objection sustained.

14 BY MR. COLE: (Resuming)

15 Q What was the custom in the industry as far as  
16 where the captain, with pilotage, remained on the bridge?

17 MR. MADSON: Your Honor, I'd object. First of  
18 all, there's no foundation that he knows what the custom  
19 is, if there is one. And secondly, the custom is not  
20 relevant.

21 THE COURT: As to the form of the question,  
22 sustained, and as to foundation, sustained.

23 BY MR. COLE: (Resuming)

24 Q On the last trip that you made into the Prince  
25 William Sound area, where were you on the vessel during the

1. voyage from Cape Hinchinbrook to Rocky Point?

2           A     I'm generally on the bridge during the entire  
3 time. It is, however, a trip which takes six -- about four  
4 hours into Rocky Point, and I'm up on the bridge before our  
5 entrance -- usually an hour before our arrival at  
6 Hinchinbrook.

7                     So I may, during that time, step away to the  
8 bridge to go to the bathroom for a few minutes, but  
9 generally I am on the bridge during that time.

10           Q     Now --

11           A     Again, I normally -- if I do step away from the  
12 bridge, it is only -- it's not during any critical area  
13 where there would be any course change required. It's when  
14 the vessel is in the lane and it's safe to do so.

15           Q     So it would depend on what the circumstances were  
16 surrounding the navigation of the ship? Well, let me  
17 withdraw that.

18                     What happens during the docking process?

19           A     Well, during the docking process, we're making  
20 the approach to the dock. The -- there is a pilot on  
21 board, on the bridge. Generally, we relinquish the conn to  
22 the pilot. He is issuing orders. I am overseeing those  
23 orders.

24           Q     Are you involved in the transfer from the -- of  
25 the orders from the pilot to the other people on board?

1 A Sometimes I am, yes.

2 Q If your vessel were to come into the Valdez  
3 harbor and dock around 11:00 o'clock at night, what would  
4 you do, then after the vessel docked?

5 A Generally, I would meet with the agent. I would  
6 meet the vessel following the docking, discuss any business  
7 that had to take -- transpire there in the port; receive  
8 the mail and sort it and get it delivered to the crew.

9 I would -- generally, I would go down and check  
10 -- check in the cargo control room how things are going  
11 there.

12 I may, at times -- each situation -- each  
13 situation is different. I may, at times, open some of the  
14 mail that -- addressed to the master to see if there's  
15 anything critical or important.

16 Q The next day, what were your responsibilities  
17 during the day that's used -- the next day, for loading?

18 A Well, I think I'm, as master of the ship, I'm  
19 responsible for the safety of the crew, the ship, the  
20 cargo, and protecting the environment. So I don't think  
21 those responsibilities change, either at night or at day.

22 Q When you were -- when you were in Valdez, would  
23 you go into town at all?

24 A Normally, my -- I do not go into town normally,  
25 no.

1 Q When the loading process was finished, what then  
2 would you do?

3 A Well, the -- I would check with the chief mate  
4 generally, or the mate on watch, in the cargo control room,  
5 to see the status of the cargo, \_\_\_\_\_ amount of the  
6 load, the drafts. I would go to the bridge and make sure  
7 that the gear was properly tested. I have my own checklist  
8 for -- I kind of run around and check the equipment myself,  
9 for the most part.

10 I might speak with the agent who would come on  
11 board, deliver to him any mail that needed to be mailed  
12 back to the company, or personal letters from the crew off  
13 to their -- to their relatives and friends.

14 I think that about sums up --

15 Q About what time would you come up to the bridge  
16 prior to departing?

17 A Generally, for a normal trip, anywhere from  
18 thirty or forty minutes -- I may not be up on the bridge  
19 the entire time before getting underway. I might go up to  
20 the bridge and talk to the pilot and check the gear and  
21 talk to the mate, and go down and talk to the radio  
22 operator and tell him what time I expected to be out for  
23 departure, if he was going to send a message, or if the  
24 chief mate called and wanted to discuss something, I might  
25 go down to the cargo control room and talk to him for a

1 minute or two.

2 But generally, within 40 minutes of sailing, I  
3 was up and about on the bridge or elsewhere in the decks.

4 Q Now during the undocking process, how do you use  
5 the pilot?

6 MR. MADSON: Your Honor, excuse me, but I'm going  
7 to object again. I just don't see the relevance of what  
8 this captain personally does, or does not do, or normally  
9 does, or does not do, when there's no rule, there's no  
10 regulation, there's no anything. It's personal preference  
11 of each individual master, as I understand it.

12 MR. COLE: It goes -- following just the bridge  
13 manual, Your Honor, and just charting out what is  
14 ordinarily expected of them during the course of their  
15 employment.

16 THE COURT: That may be, but that's not what you  
17 establish. You're asking to what he personally does, and  
18 the form of the question is objectionable. I'm going to  
19 sustain the objection.

20 If you want to lay a foundation for this to  
21 establish what you say you're doing it for, you may try,  
22 but his personal preference is not relevant in this  
23 proceeding.

24 BY MR. COLE: (Resuming)

25 Q Now, what did the -- does the Exxon bridge manual

1 discuss the master's responsibilities as far as what goes  
2 on when the pilot is on board?

3 A I believe it does, yes.

4 Q Did you, in an attempt to fulfill this manual,  
5 design -- did you generally try and follow the requirements  
6 of the bridge manual when the pilot came up on board?

7 A I generally tried to follow the policy all the  
8 time.

9 Q What are your responsibilities, according to the  
10 bridge manual, during the period of time that the pilot is  
11 navigating the Exxon Valdez from the dock out to the  
12 narrows, to the beginning of the narrows?

13 A I'm not sure. We may have covered exactly what  
14 the policy says on that yesterday, but generally, I am  
15 still responsible for the safety of the crew, the ship, the  
16 cargo, and for safeguarding the environment. That  
17 responsibility remains mine. Each individual on the vessel  
18 that's employed in their own position shares in some of  
19 that responsibility for fulfilling their obligations for  
20 their own duties.

21 Q When you approached the narrows, what type of  
22 watch situation was required there?

23 A My understanding of the manual is that we were  
24 entering and leaving port, and that would be either watch  
25 conditions B, C or D.



1 Q And that would be in the area of the Port of  
2 Valdez and the narrows, or just the narrows, or just the  
3 Port of Valdez?

4 A In my understanding of the manual, that would  
5 include the Port of Valdez and the narrows.

6 Q If -- according to the manual, if you felt that  
7 the pilot was taking such action that was detrimental to  
8 the safety of your vessel, what were your obligations?

9 A Well, my responsibility still exists. It would  
10 depend on the particular situation and circumstances. If  
11 there was an opportunity to discuss it with the pilot, were  
12 just something I didn't particularly like, for example, we  
13 might pull away from the dock at slow ahead, and he'll  
14 immediately go to the full ahead.

15 Well, I prefer not to do that. I prefer to go to  
16 half ahead for five minutes and then to full ahead, to give  
17 the engine time to warm up. So I would check that coming  
18 in and discuss it with the pilot, and say I would prefer to  
19 do it this way.

20 If it is an emergency situation, then I issue my  
21 own commands, and they're followed on the vessel.

22 Q Does the bridge manual discuss whether or not  
23 automatic pilot should be used in an area like the Port of  
24 Valdez or the narrows?

25 A I believe the bridge manual does discuss the use

1 of auto pilot in all the watch type conditions, A, B, C and  
2 D.

3 Q What would be the policy as far as using auto  
4 pilot in the area of the Port of Valdez and the narrows.

5 A The manual was changed in 19 -- it was modified,  
6 some sections of it, in 1987. My general understanding of  
7 it is that, because I believe we're entering and leaving  
8 port, I would set conditions B, C or D, and that requires  
9 the presence of a helmsman and a lookout and the master, or  
10 senior -- the senior officer and the watch officer on the  
11 bridge.

12 Q How about the use of automatic pilot?

13 A It -- in 1987, they modified the manual such that  
14 they would give the master a little more ability to set and  
15 use manual or automatic steering.

16 Q Is there any time when the steering is required  
17 to be changed from automatic pilot to manual?

18 A I believe we covered some of those yesterday,  
19 specifically in the manual, and I believe there are some  
20 cases where manual steering is required.

21 Q Would those include navigating close to shore, or  
22 shallow banks?

23 A I believe the manual so states that, yes.

24 Q Would you consider that navigating through the  
25 narrows, for instance, would be navigating close to shore

1 or shallow banks?

2 A By narrows, do you mean the one-way zone? Yes, I  
3 would agree that that is navigating close to shoal banks --  
4 close to shallow water and banks.

5 Q Now, I'd like to talk for a minute about ice  
6 conditions and ice in front of the Exxon Valdez. Could ice  
7 across the TSS system present a dangerous circumstance, or  
8 a hazardous circumstance, to the Exxon Valdez?

9 A Yes. Ice could present a danger.

10 Q Why is that?

11 A Depending on the size or quantity, and if it  
12 struck the vessel, it could damage the hull, it could  
13 damage the propeller, it could damage the rudder.

14 Q When you say damage the hull, what do you mean?

15 A Well, it could dent it, or it could actually  
16 puncture a hole in it.

17 Q And is there any policies as to what you should  
18 do in the Exxon bridge manual as to what the masters do  
19 when encountering potentially hazardous ice conditions?

20 A I think it cautions him to safely navigate --  
21 navigate the vessel.

22 Q What does that mean?

23 A Well, it means that he has basically three  
24 options, as I see it, when departing Valdez, if there is  
25 ice out there and the Coast Guard has not closed the port

1 for wind or ice conditions. That is, he can remain at the  
2 berth, or he can proceed out and maneuver through the ice,  
3 or he can proceed out and maneuver around the ice. In all  
4 cases, he has to proceed with caution.

5 Q Would encountering -- if you were -- the vessel  
6 was travelling out of Valdez in the northbound lanes --  
7 southbound lanes -- and encountered ice as is depicted in  
8 that diagram that is in front of you, what type of watch  
9 would be required under the bridge manual?

10 A I believe my interpretation of the manual is we  
11 were departing port, and we would set watch conditions B, C  
12 or D, depending upon the condition.

13 Q And that would be from where to where? Where?  
14 Departing port and --

15 A In my understanding of the manual, that would be  
16 from the dock to Cape Hinchinbrook. That would -- the ice  
17 at one of those conditions in that stretch of -- body of  
18 water.

19 Q What about if you encountered ice, this situation  
20 right here? Would this call for -- if you had ice coming,  
21 leading edge all the way out to here, to within .9 miles of  
22 Bligh Reef, and you were in that, coming down in this area,  
23 which condition, watch condition, would the bridge manual  
24 call for in that situation?

25 A I'm not exactly sure what you mean by coming down

1 in this area, but I believe from leaving the dock to go out  
2 to Cape Hinchinbrook, we would -- I would set watch  
3 condition B, C or D depending on the situation. Watch  
4 condition B is generally for fog; C would be for a good  
5 visibility; and D would be tremendous hazards and lots of  
6 traffic and reduced visibility.

7 Q Does it make a difference whether it was at night  
8 or at day, during the day?

9 A It could, but I don't believe that's specified in  
10 the manual.

11 Q Well, would this be -- if you had a situation  
12 where you were avoiding ice and detouring around it, and  
13 you had Busby Island a mile off, Bligh Reef straight in  
14 front of you -- if you were coming at a heading of 180  
15 straight in front of you, and the leading edge of the ice  
16 between .9 miles, is that the type of situation that the  
17 use of watch D would be appropriate?

18 MR. MADSON: I object to the form of the  
19 question. It's leading.

20 THE COURT: Mr. Cole?

21 MR. COLE: Well, some needs -- I have tried to  
22 get it out of him twice, and I'm just trying to establish a  
23 foundation.

24 THE COURT: Objection sustained.

25 MR. MADSON: (Inaudible).

1 THE COURT: Objection sustained.

2 BY MR. COLE: (Resuming)

3 Q If you were travelling at 180 degrees, your track  
4 was to take you off Busby Island one mile, you were  
5 travelling directly toward Bligh Reef, Bligh Island, the  
6 leading edge of the ice came down to within one mile, .9  
7 miles of Bligh Reef and it was night time, what watch would  
8 the bridge manual call for?

9 MR. MADSON: Your Honor, I'd object. I don't  
10 believe there's sufficient foundation. We don't know the  
11 visibility conditions. We don't know traffic density,  
12 things like this that are also involved in setting  
13 different watch conditions.

14 THE COURT: Objection overruled. You may give  
15 your opinion.

16 THE WITNESS: I'm not sure that I have enough  
17 information to pick what particular watch -- watch  
18 condition B, I normally set watch condition C in a normal  
19 situation, leaving Valdez. I do not believe that I would  
20 navigate in the area of one mile off of Busby. That's my  
21 own personal preference. I'd have my own --

22 MR. MADSON: Your Honor, I'd object to that.  
23 It's not responsive, and it's also just personal opinion.  
24 I'd ask that it be stricken.

25 THE COURT: Mr. Cole?

1 MR. COLE: He's just giving the basis for his --  
2 the opinion that I asked him to say as to watch. I mean --

3 THE COURT: Well, the opinion didn't call for an  
4 answer "I wouldn't personally operate within a mile off  
5 Busby." The opinion asked for whether B, C or D would be  
6 called for under the circumstances you described, and he  
7 said he was unable to give his opinion because he didn't  
8 have enough information, so I'm going to strike that  
9 answer. It was not responsive, and it wasn't supported by  
10 a foundation.

11 Normally a nonresponsiveness objection is an  
12 objection made by the person who's asking the question, but  
13 this answer was totally unforeseen and was not \_\_\_\_\_,  
14 so disregard that answer, ladies and gentlemen, of what his  
15 personal preference would have been under those  
16 circumstances.

17 BY MR. COLE:

18 Q What information do you need in terms of --

19 A I would need to know the visibility, the amount,  
20 the exact amount of the ice and if there is any other  
21 traffic in the area.

22 Q Okay. What if the visibility was poor enough, or  
23 so poor, that you decided to not put a lookout out on the  
24 box, but placed a lookout out on the bridge wing; there was  
25 no other traffic in the area; and the third one?

1 A The exact amount of ice.

2 Q Let's say that it was more ice than you had ever  
3 seen in Prince William Sound.

4 MR. MADSON: Your Honor, I would object to the  
5 form of the question, and I don't believe -- Mr. Cole is  
6 misstating prior evidence about visibility. Visibility was  
7 eight to ten miles, as I recall, not so poor he had to move  
8 somebody back to the Prince William --

9 THE COURT: You can answer that. (Inaudible)  
10 Objection overruled. If you can answer it.

11 THE WITNESS: With reduced visibility and  
12 encountering more ice than I've ever seen in Prince William  
13 Sound -- which is a lot of ice, completely covering the  
14 lanes, I would be in probably watch condition either B or  
15 D.

16 BY MR. COLE: (Resuming)

17 Q Now, when you're in this area, are there any  
18 messages that need to be sent back to the agent?

19 A Under normal -- a normal situation, we call the  
20 agent after we come off the dock by VHF radio, and that's  
21 -- that's normally the only communication I might have with  
22 the agent after departing the dock.

23 Q And are there any communications that need to be  
24 made with Exxon Shipping Company in that -- in the area of  
25 Rocky Point on your way out?



1 A I'm not aware of any in a normal situation, no.

2 Q Does the bridge manual -- if you were presented  
3 with that situation as we've outlined it, does the bridge  
4 manual say whether or not the captain is required to remain  
5 on the bridge during those times?

6 A I believe the manual says that the master must be  
7 on the bridge when -- when the safety of the vessel  
8 requires it, and so under those conditions, I would be  
9 normally on the bridge, yes.

10 Q Does the bridge manual talk about the  
11 requirements for masters knowing the abilities of their  
12 crew members?

13 A I believe it may -- may mention something to that  
14 effect.

15 THE COURT: Mr. Cole, we're getting close to our  
16 break time. Would this be all right if we take a break?

17 MR. COLE: Sure.

18 THE COURT: We'll take our first break, ladies  
19 and gentlemen. Remember not to discuss this matter among  
20 yourselves or with any other person and not to form or  
21 express any opinions concerning the facts.

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

24 (Whereupon, the jury leaves the courtroom.)

25 (A recess was taken from 10:01 a.m. to 10:21

1 a.m.)

2 (Whereupon, the jury enters the courtroom.)

3 THE CLERK: The Court now is in session.

4 BY MR. COLE: (Resuming)

5 Q Captain Stalzer, was James Kunkel a mate under  
6 you while you were captain of the Exxon Valdez?

7 A Yes, he was.

8 Q Did you ever discuss with him the fact of the  
9 grounding mode of the Ocean Motions program did not operate  
10 correctly?

11 A I don't recall sailing with him -- Mr. Kunkel,  
12 except for maybe a day when he joined and I left the  
13 vessel, other than after the grounding. So there was no  
14 opportunity to discuss until after the grounding, and we  
15 may have discussed it, but I don't recall.

16 Q Do you know an able-bodied seaman by the name of  
17 Robert Kagan?

18 A Yes, I do.

19 Q How do you know him?

20 A He signed on aboard the Exxon Valdez in January  
21 of 1989.

22 Q How did you treat him as an able-bodied seaman  
23 while he was under your supervision?

24 MR. MADSON: Objection, Your Honor. I don't know  
25 what the relevance is of how he treated him. It's like

1 he's keeping a pet or something.

2 (Laughter)

3 THE COURT: Maybe you could rephrase your  
4 question, Mr. Cole. And Mr. Madson, that's unnecessary,  
5 that kind of comment.

6 MR. MADSON: I apologize, Your Honor, but I  
7 didn't understand what the question meant.

8 BY MR. COLE: (Resuming)

9 Q Were you asked to make any special evaluations of  
10 Mr. Kagan's performance?

11 A Yes, I was.

12 Q Would you explain what that was?

13 A The Telex assigning Mr. Kagan to the vessel  
14 indicated that he had not sailed as AB for a long time, and  
15 that I was to develop and help him and evaluate him at 30  
16 and 60-day intervals.

17 Q And did you do that?

18 A I believe I did, yes. Or have -- I did not  
19 personally evaluate him. I had a chief mate evaluate him.  
20 I had that done.

21 Q Were you aware of any problems that Mr. Kagan had  
22 in steering the Exxon Valdez while you were the captain?

23 A When Mr. Kagan joined the vessel, he indicated  
24 that he had not sailed as an AB for a long time, and was  
25 concerned about his steering ability, and after observing

1 him, I provided for training for him to improve his ability  
2 of steering.

3 Q How did you do that?

4 A I ordered that he practice steering every day out  
5 at sea in the evening watch for at least 30 minutes under  
6 the guidance of his watch officer.

7 Q Was he allowed to steer without the guidance of a  
8 watch officer?

9 A A watch officer, I believe, was always on the  
10 bridge while Mr. Kagan was steering.

11 Q And when you were relieved by Captain Hazelwood,  
12 did you have any discussions with him about Mr. Kagan?

13 A Yes, I did.

14 Q Would you tell the jury what those were?

15 A I provided to Captain Hazelwood a copy of the  
16 Telex assigning Mr. Kagan to the vessel, which we read  
17 together. I indicated to him that we had just done the  
18 30-day evaluation of Mr. Kagan and that he needed  
19 improvement in steering and required close supervision.

20 MR. COLE: I have nothing further, Your Honor.

21 CROSS EXAMINATION

22 BY MR. MADSON:

23 Q Captain Stalzer, how long have you been with  
24 Exxon now?

25 A Since July of 1973.

1 Q Have you worked for any other maritime employer  
2 except Exxon?

3 A I believe I did a two- or three-day consulting  
4 job for another employer in the mid-seven -- mid-'80s.

5 Q So except for two or three days, you've been  
6 continuously employed by Exxon Shipping Company. Is that  
7 correct?

8 A That's correct.

9 Q And you are now at what level in the company?  
10 What's your position?

11 A I'm the Master of the Ocean Going Fleet.

12 Q What does that mean?

13 A That's a captain of one of their vessels,  
14 currently assigned to the Exxon Valdez.

15 Q Are you currently the master of the Exxon Valdez?

16 A I am not aware that there are any other masters  
17 currently assigned to the Valdez.

18 Q So you're the only one right now?

19 A As far as I know, yes, sir.

20 Q And you talked a little bit yesterday about how  
21 you get to be a master or a captain -- the same term. It's  
22 synonymous, is it not? Master, captain, mean the same  
23 thing?

24 A You could take it so. Master -- the license is  
25 the master of oceangoing vessel. So --

1 Q But you're called a captain?

2 A Yes, we are called a captain.

3 Q In other words, you don't have any kind of a  
4 different license as a captain as opposed to a master?  
5 There's no such thing as a captain's license?

6 A I'm not aware that there's a captain's license,  
7 no.

8 Q In other words, you go to an academy and you get  
9 some formal training in seamanship and navigation,  
10 engineering, things like this?

11 A Yes sir, I did do that.

12 Q And after graduation then you get a third mate's  
13 -- you apply for and take a test and get a third mate's  
14 license correct?

15 A That's correct. I received a third mate's  
16 license.

17 Q In other words, when you graduate from the  
18 academy, they don't automatically hand you a third mate's  
19 certificate?

20 A No, sir. One of the requirements for graduation  
21 from the United States Merchant Marine Academy is to  
22 successfully pass that examination for third mate or third  
23 engineer.

24 Q Who gives that examination, then?

25 A I believe the United States Coast Guard does

1 that.

2 Q And it's totally separate and apart from the  
3 school, right?

4 A Yes, sir, it is.

5 Q And if you gain experience or competence as a  
6 third mate you can apply for and take the examination for  
7 second mate, right?

8 A Yes, sir. There's a service requirement, but --  
9 that's correct.

10 Q You have to serve so long and have so much  
11 experience before you can apply for the next level up?

12 A Yes, sir.

13 Q And the same is true, then, for, say, first mate,  
14 or chief mate?

15 A Yes, sir.

16 Q And then the master's license. That's the top  
17 license you can get in the Coast Guard, is it not?

18 A I believe so, yes.

19 Q And to get that, you have to have additional  
20 experience, time on board ships, and things of this nature?

21 A Yes.

22 Q Are you also examined on your competence, your  
23 ability to recharge and navigate vessels, and things like  
24 this?

25 A Yes.

1 Q You also said you got a -- I believe a radio  
2 license and engineers license. What exactly are those?

3 A I have a -- currently hold a third assistant  
4 engineer's license, steam and diesel. That's also a Coast  
5 Guard license that would allow me to sail in the position  
6 of third assistant engineer; and a general radio operator  
7 license that permits -- permits me to send Telexes and  
8 messages.

9 Q And you also said that you've got your Prince  
10 William Sound pilotage endorsement; correct?

11 A Yes, sir. I have a Prince William Sound  
12 endorsement.

13 Q That requires that you just be on board a vessel  
14 and make so many trips in and out of Prince William Sound  
15 to begin with, right? You have to have so many trips?

16 A There is a trip requirement, and then a test.

17 Q And it's a written test? It isn't a driver's  
18 test, right?

19 A No, sir. It is a written test.

20 Q And that test essentially tests your knowledge of  
21 Prince William Sound, navigation aids, hazards, things like  
22 this?

23 A Yes, sir, it does.

24 Q Basically you have -- correct me if I'm wrong,  
25 but basically don't you have to just kind of memorize the



1 chart?

2 A That's part of the test.

3 Q And you were subpoenaed to be here today by the  
4 state of Alaska, were you not?

5 A I am here because of a subpoena, yes, sir.

6 Q Did you discuss your testimony prior to coming  
7 here with the official -- any of the officials at Exxon?

8 A I -- I've discussed -- I've discussed many things  
9 with Exxon attorneys and officials. They've asked me a lot  
10 of questions since the grounding, and I've also discussed  
11 it with my own attorney.

12 Q You had discussions with Mr. Cole, right -- or  
13 representatives of the state?

14 A I had a phone conversation discussion with Mr.  
15 Cole and another individual in his office when I went to  
16 the courthouse to pick up the subpoena. There was a  
17 conflict of the dates, and so the courthouse clerk that was  
18 dealing with it called up here to get some explanation of  
19 that.

20 Q But in this conversation, did it relate only to  
21 when you were supposed to be here, or did Mr. Cole, or any  
22 other representative of the state, ask you questions  
23 pertaining to your testimony here in this case?

24 A As I recall, that conversation was very general,  
25 and I asked him what sort of questions he might ask me.

1 Q Now, without --

2 A But I did not supply any answers to those  
3 questions.

4 Q Why not?

5 A Exxon officials and Exxon attorneys had asked me  
6 that -- they would prefer that I not discuss the case with  
7 anyone.

8 Q Did you meet with any state representatives, Mr.  
9 Cole or anybody else, over this past weekend, personally?

10 A Other than yesterday when I came to the  
11 courthouse, no, I don't believe I did.

12 Q So you're saying they asked -- they wanted you to  
13 testify in certain areas, or asked you about it, but you  
14 wouldn't give them any information, right?

15 A I did not give Mr. Cole -- I do not believe I  
16 gave Mr. Cole any indication of my answers to the questions  
17 on the telephone.

18 Q Okay and you have a lawyer with you today, right?

19 A Yes, sir, I do.

20 Q An Exxon lawyer?

21 A No, I have my own attorney.

22 Q Your own attorney. One you hired personally?

23 A I hired the individual personally. However,  
24 Exxon is going to pay the bill for that.

25 Q Oh, I see. You had the selection, but they're

1 going to pay the bill. Correct?

2 A That's correct. I was free to choose any  
3 attorney to my liking.

4 Q Well, were you informed that you were going to be  
5 possibly charged or targeted with any kind of an offense  
6 here?

7 A No, I have not been informed of that.

8 Q I guess -- why do you need a lawyer? I know  
9 we're all very important guys, but why do you need one?

10 MR. COLE: Objection. Relevance.

11 THE COURT: You may answer the question.

12 THE WITNESS: I have not found myself in a  
13 courtroom very often, and I desired to have some counsel to  
14 discuss the matters.

15 BY MR. MADSON: (Resuming)

16 Q And you've discussed this with Exxon? They're  
17 aware of it, right? Of your preference to have your  
18 attorney here?

19 A Yes, sir.

20 Q Did Exxon ever tell you -- any official from  
21 Exxon ever tell you -- what to basically volunteer, or try  
22 to tell or not tell, or any -- did they guide you at all in  
23 your testimony in this case?

24 A Exxon officials did tell me to tell the truth, as  
25 my attorney did.

1 Q And that's all?

2 A I'm not sure I understand your question.

3 Q Well, generally, you had a lot of discussions  
4 with them, but all they said to you was basically to tell  
5 the truth, right?

6 A That's correct.

7 Q Did Exxon have an interest -- did they express an  
8 interest to you of the outcome of this case, one way or the  
9 other? I don't care what -- I'm not asking what was said,  
10 but from your understanding, did Exxon express an interest  
11 in the outcome of this case, as far as they were concerned?

12 A I believe Exxon does have an interest in the  
13 outcome of this case.

14 Q Now, let me go back a little bit to your training  
15 you said you had, after -- perhaps before you got your  
16 pilotage endorsement for Prince William Sound. I think you  
17 said that you went to a simulator course in about -- I may  
18 have this wrong -- '81, or thereabouts?

19 A I believe it was 1980. Yes, sir.

20 Q And that was in Grenoble, France?

21 A Oh --

22 Q That's a different one.

23 A That's a different simulator than what I thought  
24 you were referring to in the Prince William Sound.

25 Q Okay. I think -- I apologize. The one in 1980,

1 where was that? What was that?

2 A I believe it was in 1980. I might be mistaken on  
3 the date, but that was at LaGuardia, New York. Marine  
4 safety international had a simulator training program  
5 available there which specifically dealt with VOCC handling  
6 characteristics in Prince William Sound.

7 Q And -- I mean, would Prince William Sound have a  
8 program just for Prince William Sound? Is that correct?

9 A I believe they did, yes, sir.

10 Q Maybe you could explain to this just how this  
11 works. I mean, some of us aren't familiar with what's  
12 called a computer simulated -- simulator. What exactly is  
13 that?

14 A Well, this is ten years ago. The simulator set  
15 up is that they have a mock bridge with equipment, a helm,  
16 a gyro, and a VHF radio and a radar, as I recall. Some  
17 other instrumentation around. And there is screens --  
18 they're not exactly television screens; I don't know how  
19 they're constructed -- that give a view of about 130 or 40  
20 degrees, and the -- as I recall, their simulator worked.

21 They had miniature scale models of the areas with  
22 a camera that reacted to whatever changes in speed or helm  
23 that you might give. The cam would \_\_\_\_\_ along this  
24 -- this scale model, and that image off that camera would  
25 be displayed on the screen, so you would see what their

1 scale model is up on the screen, so it would -- if the  
2 vessel was reacting to the commands and rudder order  
3 changes that you were giving.

4 Q Does it really represent true to life conditions?

5 A Well, your visibility is restricted to those  
6 areas, and their model is for a particular ship, and it may  
7 not be the particular ship that I sail on.

8 Q Well, this is similar to the course you took, I  
9 think, in 1987, when you said Exxon sent you to Grenoble,  
10 France, right?

11 A No, that was not in 1987. That was before I  
12 became -- before I was promoted to master.

13 Q Oh, okay.

14 A I don't recall -- that is a different type of  
15 course. Their scale models are built that you actually  
16 physically sit in them and maneuver a vessel around a small  
17 lake under various conditions.

18 Q Grenoble, France, is not on the ocean, is it?

19 A No, it's not. I don't believe so.

20 Q But you actually sit in a little scaled-down  
21 vessel and --

22 A Yes, yes. This is a worldwide renowned schools  
23 for ship masters for ship handling, and the scale models --  
24 I believe they're one -- one-fifth scale. I don't remember  
25 exactly what size they are, or one-sixteenth. But the time

1 factor, and the one difference I do remember is that they  
2 -- they react exactly to the design of that ship, whatever  
3 size it might be, except that things respond five times  
4 faster because of the scale is reduced.

5 So we maneuver these vessels around -- around a  
6 small lake.

7 Q Okay. I guess the point I'm making here, you  
8 said that this was prior to getting your master's license,  
9 you were employed by Exxon at that time?

10 A This was --

11 Q They sent you there --

12 A Yes, sir. Yes, sir. Exxon sent me there. I was  
13 prior to being promoted to master.

14 Q Is it fair to say that Exxon was encouraging  
15 progress of its employees to, let's say, establish and  
16 acquire greater personal incentive, training, experience,  
17 to kind of upgrade themselves?

18 A Yes, sir. I think that's fair to say that.

19 Q And of course, to do that, you acquire more  
20 experience as you go along, right?

21 A Yes, sir.

22 Q I mean, you've been serving as a third mate, for  
23 instance, you'd want to basically get all the experience  
24 you could?

25 A Yes, sir. Depending on the vessel, you gain

1 experience. You've gained different experiences on  
2 different vessels.

3 Q And naturally you would hope that your superiors,  
4 your second mate, third mate -- I mean the first mate and  
5 captain, would give you more and more responsibility as you  
6 go along, right?

7 A Yes, sir. You -- an individual might hope for  
8 that.

9 Q And after you became Captain -- this is kind of  
10 the -- I guess the ultimate as far as being on the vessel  
11 is concerned -- a master is the highest level you can  
12 obtain at Exxon Shipping. Is that correct?

13 A On the vessel, yes, sir.

14 Q On the vessel. After that, it's some type of  
15 ashore management position, right?

16 A If you go ashore, yes, sir.

17 Q Have you had any shore management positions in  
18 your career?

19 A Yes, I have.

20 Q When was that --

21 A No, no. Pardon me. Shore management positions?

22 Q Yeah.

23 A No, I don't believe I have.

24 Q Are you anticipating, or trying to get a higher  
25 position at Exxon at the present time?



1           A     No, sir. I intend to continue sailing in the  
2 fleet.

3           Q     If a better position were offered to you, would  
4 you take it?

5           A     I might. I don't know that I would or wouldn't.

6           Q     You indicated also that Exxon Shipping Company  
7 had oh, different, maybe yearly conferences, I think, where  
8 you said that masters would all get together, right?

9           A     Masters or other fleet officers, and they're not  
10 every year, but generally yearly, yes, sir.

11          Q     Generally every year. Once a year?

12          A     Yes, sir.

13          Q     And you say masters and other fleet officers.  
14 What does other fleet officers mean?

15          A     That would be chief engineers and it -- and  
16 during some of these years, it included all of the junior  
17 officers, deck and engine.

18          Q     How many masters are there with Exxon Shipping  
19 Company?

20          A     Today?

21          Q     Yeah.

22          A     I don't know, exactly. About thirty, I think.

23          Q     And how many Exxon vessels go regularly to and  
24 from Valdez, to \_\_\_\_\_ crude oil?

25          A     Today?

1 Q Yeah. Well, let's go back. Let's say in March  
2 of 1989. Close to a year ago.

3 A Well, you have the Valdez and the Long Beach.  
4 The Venetian North Slope. The Houston and New Orleans, the  
5 San Francisco, the Baton Rouge and the Philadelphia.  
6 Occasionally, maybe I think the \_\_\_\_\_ might have been  
7 out there at that time.

8 Q In your experiences -- you served as mate on  
9 various vessels going in and out of Prince William Sound,  
10 correct? Other than master?

11 A Yes.

12 Q I think you said you were on the Baton Rouge at  
13 one time.

14 A As master, I was on the Baton Rouge, yes, sir.

15 Q Okay, you were master on that.

16 A That was my first command as master, for two  
17 months -- or one month, and then I was switched to the  
18 Exxon Venetia.

19 Q Was it fair to say there's a number of Exxon  
20 vessels that are going back and forth, and were going back  
21 and forth, loading crude oil to Valdez, taking it to the  
22 various ports, in 1989, March -- other than the Exxon  
23 Valdez?

24 A Oh, yes, sir.

25 Q Is it also true, sir, that Exxon is not the only

1 company that's going to the terminal at Valdez to load  
2 crude oil?

3 A Yes, sir.

4 Q How about Arco? How many vessels do they have.  
5 do you know?

6 A I don't know that, but I believe they do sail in  
7 there.

8 Q Chevron?

9 A I don't know how many vessels they have.

10 Q Bridge Petroleum?

11 A I don't know how many vessels they have.

12 Q How many other countries are you aware of that  
13 own, lease, charter or otherwise utilize the terminal at  
14 Valdez to obtain cargo or transport it to other ports?

15 A Probably three or four other companies.

16 Q So it's fair to say there's a number of companies  
17 that have vessels that utilize the terminal there at Valdez  
18 -- other than Exxon?

19 A Yes.

20 Q Do you know if they have bridge manuals for their  
21 companies and organizations?

22 A I don't know if they do or don't.

23 Q Nothing -- there's no requirement by the Coast  
24 Guard or anyone else you're aware of that requires a  
25 particular bridge manual. Is that correct?

1           A     I'm not aware of any regulation that requires a  
2 bridge manual.

3           Q     So you don't know if Arco has one, or if -- or  
4 even if they do, it's the same as Exxon's?

5           A     I don't know if they have one or not.

6           Q     The bridge manual is simply a guideline for  
7 masters and watch officers, is it not?

8           A     It contains -- our manual contains the policy for  
9 Exxon Shipping Company and provides guidelines how we are  
10 to conduct the navigation \_\_\_\_\_.

11          Q     Well, sir, what's the penalty for violating one  
12 of their guidelines? Is there any?

13          A     The penalty would vary, I think, depending on the  
14 circumstances.

15          Q     There is no policy that sets out in that manual  
16 that you described here yesterday and today that says, "If  
17 you violate section 2.4(c), there is a certain penalty," or  
18 anything like that? Correct?

19          A     I'm not aware of any specific penalty set up for  
20 a specific failure to comply with the manual, no.

21          Q     You don't get a trial or something, right, to  
22 determine whether or not you did or did not violate it?

23          A     No, sir.

24          Q     Is it fair to say that the policy is a guide to  
25 assist masters and watch officers in what the company would

1 normally expect in the course -- to perform their duties in  
2 the normal course of, say, their watch? It's a little  
3 confusing sentence, but -- maybe I can try it again.

4 A Okay. Thank you.

5 Q Is it fair to say that it is just the guideline  
6 for watch officers and masters to assist them in performing  
7 their duties?

8 A It's the policy of Exxon Shipping Company that  
9 we're to follow the manual. I think within the manual  
10 provides some room for the master to use the manual as  
11 guidelines. Certain circumstances, situations may change,  
12 and he has to be governed accordingly.

13 Q In fact, the master has considerable latitude to  
14 interpret the guidelines, does he not? Depending on his  
15 personal experience at the time, and what he considers the  
16 danger, hazard, or lack of it?

17 A I think he has some latitude, yes, sir.

18 Q Well, let's -- as an example, you testified about  
19 -- well, let's take an example. The auto pilot. I think  
20 you said that there was a policy in use in the -- in part  
21 of the policy bridge manual regarding auto pilot, but that  
22 was modified or changed in 1987. Is that correct?

23 A Yes, sir.

24 Q And that was June 16, 1987?

25 A It may have been. I don't recall a specific

1 date.

2 Q Let me ask you this, sir. Did you happen to  
3 notice yesterday, when you reviewed the manual that Mr.  
4 Cole gave you to look at, identify, did you happen to  
5 notice if the June 16, 1987 modification was included in  
6 there?

7 A I believe the modification was included in that  
8 manual, yes, sir.

9 Q Let me just double check. I don't want to  
10 (inaudible).

11 (Pause)

12 Exhibit 14. was it?

13 (Inaudible).

14 THE COURT: Mr. Cole, maybe you can come up and  
15 help --

16 MR. COLE: Right under his right hand.

17 MR. MADSON: Right under my right hand. Ah.

18 (Pause)

19 Is it page 49, Mr. Cole?

20 MR. COLE: It's page 49.

21 MR. MADSON: Okay.

22 BY MR. MADSON: (Resuming)

23 Q Sir, let me hand you what's previously been  
24 admitted as Plaintiff's Exhibit Number 14, and I'll ask you  
25 if that is the June 16, 1987 modification?

1 A It appears so. It's dated June 16, 1987.

2 Q Captain Stalzer, would you agree that this 1987  
3 letter changes the use of the auto pilot to basically give  
4 the master a lot of discretion as to when and where he will  
5 use it, under what conditions?

6 A It was changed to give the master more  
7 flexibility in the use of auto pilot. That's my  
8 understanding.

9 Q And by more flexibility, that means that it  
10 doesn't really restrict the use of the autopilot  
11 substantially, does it?

12 A My understanding is it doesn't -- that it permits  
13 the master to the use of autopilot in watch conditions B, C  
14 and D. This was a change from the earlier version of the  
15 manual.

16 Q What about A? Watch condition A?

17 A Watch condition A was already covered, and it  
18 does permit the use of auto pilot in watch condition a.

19 Q So this basically allows the use of auto pilot  
20 under all watch conditions?

21 A It provided -- yes, sir. It provided more  
22 flexibility in the use of auto pilot.

23 Q And watch conditions depend on -- would you  
24 agree? -- the circumstances at the time. Obviously, when  
25 you're leaving port, entering port, visibility, a number of

1 factors determine what a watch condition is. Is that fair  
2 to say?

3 A Yes, sir. A number of factors enter into the  
4 setting of the watch condition.

5 Q In other words, watch condition A that you  
6 referred to -- and this is on page 46, I believe, of the  
7 manual I'm looking at -- by the way, you haven't memorized  
8 this manual, have you?

9 A No, sir, it's over a hundred pages long.

10 Q Yeah.

11 A But I am familiar with it.

12 Q If -- let me just ask you kind of a  
13 hypothetical. If you're in a situation, let's say, going  
14 into Prince William Sound, do you normally take this manual  
15 out and look at it and say, "Well, I believe the manual  
16 says we're in watch condition B, but I think it might be C,  
17 or it might be A," and then use this on every trip more or  
18 less to guide your decision on whether it's A, B or C?

19 A I use this as a guideline. I believe when I was  
20 on board the vessel, some of -- either page 46 or 47 was  
21 posted and available on the bridge.

22 Q And it's still open to interpretation by the  
23 individual master, is it not?

24 A These were -- these were examples of how -- what  
25 condition the company felt that we should have that watch



1 set, and I followed them.

2 THE COURT: The question was is it up to the  
3 individual interpretation of the master. That was the  
4 question, whether it was A, B, C or D.

5 THE WITNESS: The master is the one who decides,  
6 yes, sir -- who sets the condition.

7 BY MR. MADSON: (Resuming)

8 Q In fact, that's exactly what the manual says,  
9 does it not? The watch condition is to be set by the  
10 master?

11 A Yes, sir.

12 Q In open waters, where there's clear visibility,  
13 regardless of traffic, watch condition A. Now, that means  
14 -- I guess maybe I'd better ask you. Clear visibility  
15 means, in your mind and your opinion, at that time, you  
16 have clear visibility. Right?

17 A Yes, sir.

18 Q And regardless of traffic, means it could be  
19 congested, a lot of different vessels around, or it could  
20 be no other vessels.

21 A Yes, sir.

22 Q Watch condition B would be with restricted  
23 visibility regardless of traffic. Now, this is in open  
24 waters, right?

25 A Yes, sir.

1 Q Now, it doesn't define open waters, does it?

2 A I don't believe the manual defines open waters,  
3 no.

4 Q It doesn't define clear visibility or traffic?

5 A I don't believe it does, no.

6 Q It doesn't define restricted visibility?

7 A No, I don't believe it does define restricted  
8 visibility.

9 Q Then, in restricted waters -- now, I imagine you  
10 would consider Prince William Sound to be restricted waters  
11 as opposed to open waters?

12 A Yes, sir. I would.

13 Q If there's clear visibility and little or no  
14 traffic in restricted waters, that could be watch condition  
15 A, could it not?

16 (Pause)

17 Have you answered the question? I'm sorry --

18 A No, I haven't. Are you asking for a specific  
19 location, or just in restricted waters is it possible to  
20 have watch condition A --

21 Q I'm going by --

22 A -- with clear visibility and no traffic.

23 Q Whatever restricted waters means, and clear  
24 visibility, and little or no traffic.

25 A The manual states that you can set captain A,

1 yes, sir.

2 Q Okay. Watch condition A means what?

3 A That means -- do you want exactly --

4 Q Yeah. What is watch condition -- what's required  
5 for watch condition A?

6 A Do you want me to read from the manual, or --

7 Q Let's put it this way. Do you know from your own  
8 personal experience and memory what it means?

9 A Yes, sir. I believe I do.

10 Q And what's that?

11 A It means one officer on the bridge with an able  
12 seaman readily available.

13 Q Okay. So only one watch officer is necessary  
14 under watch condition A?

15 A Yes, sir.

16 Q And that's wherever a master decides that he is  
17 in restricted waters, clear visibility, and little or no  
18 traffic?

19 A He has the option of setting watch condition A.

20 Q Now, if I understand your testimony correctly,  
21 you said that you considered this to be watch condition C?

22 A My normal --

23 Q Prince William Sound?

24 A Yes. I normally pass through Prince William  
25 Sound in watch condition C.

1 Q That's because you consider it leaving or  
2 entering port, right?

3 A Yes, sir.

4 Q And you consider port to be Cape Hinchinbrook all  
5 the way to the terminal there at Valdez, right?

6 A Yes, sir.

7 Q Otherwise, according to the guidelines -- I'm  
8 referring to page 46 again -- the master should be on the  
9 bridge whenever there is a potential threat, such as  
10 passing in the vicinity of shoals, rocks, or other hazards  
11 which represent a threat to safe navigation?

12 A What page?

13 Q It's -- I can't tell. I can see a six, but it  
14 isn't 46. Must be -- must be \_\_\_\_\_. 2.1.5(a).

15 (Pause)

16 A What was the question, sir?

17 Q Is it not correct, then, sir, that according to  
18 the guidelines the master should be on the bridge whenever  
19 his ship, or vessel, is passing in the vicinity of shoals,  
20 rocks, or other hazards presenting a threat --

21 MR. COLE: Your Honor, I object to Mr. Madson's  
22 reading. It's not "should," it's "must" be on the bridge.

23 MR. MADSON: Must. Must be on the bridge.

24 BY MR. MADSON: (Resuming)

25 Q That's subject to interpretation to, is it not?

1 A Yes, sir.

2 Q All right. Now, what does vicinity mean? Does  
3 that give you some latitude as to whether you think you are  
4 close enough or far enough away from a rock or a shoal to  
5 determine whether you should or should not be on the  
6 bridge, right?

7 A Yes, sir.

8 Q Again, without belaboring the point, captain, the  
9 guidelines that you testified here to, and the ones I've  
10 just mentioned, are not clearly defined? In other words,  
11 there seems to be no attempt on the part of Exxon to get  
12 these right down to as close as possible. Do you see what  
13 I mean?

14 MR. COLE: Objection. Compound question.

15 THE COURT: Don't answer the question. It's a  
16 kind of complicated answer. Rephrase the question.

17 BY MR. MADSON: (Resuming)

18 Q Captain Stalzer, these guidelines are not very  
19 definitive in defining a lot of terms, are they?

20 A No, sir.

21 Q Wouldn't you agree, sir, it would be very  
22 difficult to try to do that?

23 A To define every term in the --

24 Q Yeah.

25 A -- in the manual.

1 Q To define all these terms.

2 A Yes, sir.

3 Q So while they try to set policy or guidelines,  
4 it's up to you, or Captain Hazelwood, or any other Exxon  
5 master to try to follow them, but interpret them the way  
6 they feel the situation warrants?

7 A Yes, sir.

8 Q Are you aware of these guidelines ever being  
9 included in any Alaska state statute, or law, or  
10 regulation? Part of any Alaska law?

11 A No, sir, I don't believe --

12 Q Part of any -- excuse me. I didn't mean to  
13 interrupt.

14 A I'm not aware of any Alaska law.

15 Q Have they been encompassed or included in any  
16 Coast Guard regulation or federal standard?

17 A These specific guidelines?

18 Q Yeah.

19 A Policies?

20 Q Yeah.

21 A No. No, sir, I don't believe so.

22 Q There's no requirement by anybody, to your  
23 knowledge, is there, that the shipping company even has to  
24 promulgate, or, you know, to make up these policy  
25 guidelines?

1           A     I'm not aware of any regulation that requires  
2 them, no, sir.

3           Q     Going on to another subject, you said that you  
4 received some alcohol training, detection of alcohol, about  
5 1985. Is that correct?

6           A     Yes, sir.

7           Q     I think you said it was about a half-hour  
8 presentation on how to detect alcohol.

9           A     Alcohol and drugs, yes, sir.

10          Q     And that was what? A half-hour presentation at  
11 one of the master's conferences you attended?

12          A     Yes, sir. It might have been a little bit longer  
13 than that, 45 minutes.

14          Q     It wasn't fairly extensive, though, was it?

15          A     Well, it -- they discussed different drugs and  
16 how you might detect them, and -- you know, I think we  
17 watched a film, it might have been a ten-minute film, that  
18 showed some examples.

19          Q     And the tox kits that you referred to, toxicology  
20 kits for the drawing of blood for testing, I think you said  
21 they are required to be on board the vessels because of  
22 Coast Guard regulations. Is that correct?

23          A     I think the Coast Guard regulations requires that  
24 an employer provide kits within 24 hours, and they have the  
25 option to have them located on board.

1 Q Do you recall, sir, whether or not that  
2 regulation that requires that did not become -- go into  
3 effect until December of 1989?

4 A No. I thought it went into effect in December of  
5 -- yes, it was in late '88.

6 Q Late '88?

7 A I believe -- yeah, late '88, sir.

8 Q In any event, the course you took, or the tox  
9 kits -- didn't teach you how to draw blood samples, right?

10 A The course in 1985?

11 Q Yes.

12 A It required the employer -- regardless of the  
13 time, there was a regulation that required the employer, in  
14 this case Exxon Shipping -- to have these on board, right?  
15 Tox kits?

16 A Would you repeat the --

17 Q Toxicology kits?

18 A Yes, would you repeat the question?

19 Q Whether it was in '88 or '89, there was a  
20 regulation that required the owner, the employer, to have  
21 on board certain toxicology kits.

22 A Or to supply them within 24 hours, I believe.

23 Q That means, I presume, you could fly them out, or  
24 from a helicopter, ashore, or something like that, if you  
25 had to?



1 A I suppose so.

2 Q Was there anybody on board the vessel that was --  
3 let me ask, from your knowledge, anybody trained that was  
4 on board the vessel to take blood samples as part of their  
5 duties?

6 A No, sir.

7 Q So the responsibility was to have them available  
8 in case the Coast Guard or somebody wanted to do a blood  
9 test?

10 A Uh --

11 Q The kits?

12 A I believe so, yeah.

13 Q You also testified -- well, to a great extent  
14 yesterday about all the different pieces of equipment on  
15 the bridge. Was it fair to say that the Exxon Valdez was  
16 kind of a flagship of the Exxon Shipping Company?

17 A I don't know if it was the flag ship, but it was  
18 well outfitted, yes, sir.

19 Q It was one of the newest vessels, was it not?

20 A Yes, sir, it was.

21 Q And being new, it had the latest innovations and  
22 design and features, such as electronic equipment,  
23 navigational equipment?

24 A I believe it did, sir.

25 Q In other words, it didn't have anything outmoded

1 put on it when it was built, right?

2 A No, it -- I don't think so, no.

3 Q And would you say that it was a good, you know,  
4 kind of a star in your cap, if you will, to get assigned to  
5 the Exxon Valdez as captain or master?

6 A I thought it was, sir.

7 Q Now, the -- I think Mr. Cole covered this, and  
8 I'm not going to go into great detail, but with regard to  
9 rudder indicators, the purpose of a rudder angle indicator  
10 is to tell the watch officer what the angle of a rudder is  
11 at a given time, correct?

12 A And also the helmsman, yes, sir.

13 Q And the helmsman. And that's --

14 A And anyone else on -- the pilot or the master.

15 Q So if it's at zero, you know the vessel's going  
16 straight ahead, regardless of what its course is, you're  
17 going straight ahead? Assuming there's no current or  
18 something that's moving it sideways?

19 A Okay.

20 Q I'm learning a lot about this, too.

21 Well, if you want, say, 10 degrees right rudder,  
22 there is a number of ways the helmsman can tell if the  
23 rudder is at 10 degrees, right?

24 A There are a number of rudder angle indicators,  
25 yes, sir.

1 Q And the watch officer can also tell?

2 A Yes, sir.

3 Q He can even tell if he's on the bridge, right,  
4 because there's indicators out of both port wing and the  
5 starboard wing?

6 A Yes, sir. There are indicators out there.

7 Q When the rudder is turned -- let's say at 10  
8 degrees -- let me ask you a few questions about this  
9 first.

10 I'm referring now to Exhibit Number 18. You  
11 testified earlier today about the turning characteristics  
12 of the Exxon Valdez, right?

13 A Yes, sir.

14 Q Now, it's a little difficult to describe in  
15 words, but it appears that -- let's say you -- let's just  
16 take an example. When you have a full load and you want to  
17 make a hard turn to the right, okay? That's up here in the  
18 upper left corner --

19 A Yes, sir.

20 Q -- (inaudible). It looks, from looking at the  
21 diagram, that the vessel goes straight ahead and makes a  
22 very, very tight, sharp turn, you know, from looking at the  
23 diagram.

24 A Well, that's about six-tenths of a mile.

25 Q Yeah. Isn't it true, sir, that that doesn't

1 truly represent the course of the ship at full right  
2 rudder? In other words, it starts turning and makes more  
3 of a gradual turn to the right?

4 A That's correct. It -- under -- you're speaking  
5 about a hard right turn now.

6 Q Yeah, right.

7 A Yes. It will -- it does not instantaneously turn  
8 90 degrees. It -- it slowly comes around and takes around  
9 2.8 minutes and six-tenths of a mile.

10 Q Let me ask you this -- and answer it if you can,  
11 please -- if you had the Exxon Valdez loaded to, say, a  
12 draft of 56, 57 feet, and you were at 11.74 knots, the seas  
13 are calm, there's no current, the tide is just about high  
14 tide within an hour or so, if you have a right degree right  
15 turn -- in other words, ten degrees right rudder -- do you  
16 know how many degrees per minute the vessel would actually  
17 turn? Do you have an approximation of that?

18 A No, I don't know exactly how many degrees per  
19 minute the vessel would turn. With a right ten, it would  
20 depend to a certain on the wind and sea conditions, and how  
21 long you left that right rudder on, but it would probably  
22 slowly build up to about 20 degrees per minute.

23 Q Twenty degrees per minute. When you say that --  
24 when you say that, excuse me, that means the vessel's  
25 heading actually turns 20 degrees per minute. By heading,

1 it means a change in position, or course?

2 A Yes, sir. It would also depend on how long you  
3 left that rudder on.

4 Q Correct, but if you just turn it to ten, it's  
5 going to stay there --

6 A Right.

7 Q Until you move it physically back?

8 A That's correct. The rudder will stay, yeah.

9 Q Okay.

10 I think you answered this question yesterday, but  
11 as far as the fathometer is concerned, I think you said  
12 there were two of them on the Exxon Valdez, correct?

13 A Yes, sir.

14 Q One is located on the bridge somewhere in a  
15 forward position?

16 A Yes, sir, on the fiddle board.

17 MR. MADSON: \_\_\_\_\_ can take that down.

18 BY MR. MADSON: (Resuming)

19 Q By the way, while I'm up here, sir, could you  
20 just explain again what they call transfer, and I believe  
21 this is called advance. Just exactly what does that mean?

22 A Well, advance is the distance the vessel will  
23 travel until it reads in the forward direction, before it  
24 reaches 90 degrees in the course change under those  
25 conditions; and the transfer is the distance, in this case

1 to the starboard, or to the right, of your base line, that  
2 the distance the vessel will travel at the time it reaches  
3 90 degrees.

4 Q So I think you said that in this situation here,  
5 at full sea speed, 15.96 knots, draft 64.57 feet -- and  
6 that's aft and the forward is exactly the same -- the  
7 vessel would advance about six-tenths of a mile.

8 A Yes, sir.

9 Q And that's as far as it would go forward,  
10 correct? In a forward position?

11 A Well --

12 Q What I'm trying to get at is, what does this  
13 mean?

14 A Yes, sir. Each situation is slightly different,  
15 but it might slightly vary a little bit, but yes,  
16 basically, that's what that tells you.

17 Q Yes, these are hypothetical or ideal situations,  
18 are they not?

19 A Correct, yes, sir.

20 Q And then transfer is the distance it would go in  
21 the 90 degree position until it started turning again,  
22 which would be 180 degrees from whence it started?

23 A Yes, sir. At the time it swings through a  
24 90-degree difference from your base courseline.

25 Q So if you started at 180 degrees south -- let's

1 say you're at 180 degrees.

2 A yes, sir.

3 Q Okay. You -- under these conditions, you would  
4 advance about six-tenths of a mile, transfer or go to the  
5 right angle position to the right, or I guess I mean to  
6 the --

7 A Starboard.

8 Q Starboard.

9 A Yes, sir.

10 Q About three-tenths of a mile, and then you would  
11 be back at a course of zero degrees?

12 A No. At that point, at that -- if I'm -- if I'm  
13 reading this right, you would be at just 170 degrees.

14 (TAPE CHANGED TO C-3631)

15 Q Okay.

16 A And then if you come to the next position shown?

17 Q That's .63 miles. It's called the diameter?

18 A Oh, okay. Then you're back to -- to north, at  
19 that point.

20 Q Okay. Then you're actually back on that heading  
21 going straight north again?

22 A Yes, sir.

23 Q Again, getting back to the fathometers, the one  
24 you said is mounted somewhere on the front of the bridge,  
25 where exactly is that again, sir? If you could point

1 here --

2 A Oh, I think in this diagram it's number 7 -- is  
3 that what -- yeah. Right here, on the fiddleboard. Is  
4 that the one you're speaking of?

5 Q And you said there's one in another position  
6 also, over by the chart table there?

7 A Yes, sir. Over -- over here.

8 Q You said one was working and one was not at the  
9 time you --

10 A When I joined the vessel in April.

11 Q In April. And which one was still working, sir?

12 A I believe the after one. The one by the chart  
13 table.

14 Q Is that the recording one?

15 A That is the recording one, yes, sir.

16 Q Where is the transducer for that particular  
17 fathometer? Where is it located on the ship?

18 A I believe that it's aft.

19 Q When you say "aft," do you know how far aft?

20 A No, I don't know the exact frame it's at. We  
21 could get at that transducer by going down in the engine  
22 compartment.

23 Q But if you were aground, let's say, and the  
24 forward part of the ship was aground, and there was deep  
25 water astern, that fathometer could still possibly tell you



1 how much depth you had off your stern, right?

2 A It tells the depth underneath the vessel, yes,  
3 sir.

4 Q Getting back to the one thing I may have  
5 forgotten, on our turning circle there? The situation I  
6 described, that is, the vessel loaded and at full sea  
7 speed, do you recall what I just told you about it?

8 A Yes, sir.

9 Q Do you know how long that entire procedure would  
10 take?

11 A To go -- how far, sir? Just a 90-degree  
12 position?

13 Q Let's say the 90-degree position, okay.

14 A It's about --

15 Q Making a right angle turn.

16 A It's about 2.8 minutes from the -- I believe it's  
17 2.8 minutes is what's posted on the --

18 Q 2.8 minutes, right?

19 A Yes, sir.

20 Q You said the captain's quarters are located right  
21 below the bridge, correct?

22 A On the starboard side, yes.

23 Q On the starboard side. You are within 15 seconds  
24 of the bridge, if you wanted to hurry?

25 A Yes, sir, I believe so.

1 Q Do you have a telephone there? Telephone  
2 communication to the bridge?

3 A Yes, sir.

4 Q How does that work? Do you just pick up the  
5 phone, or do you have to dial a number, extension or  
6 something?

7 A From the quarters or the office?

8 Q Let's try the bridge to the quarters.

9 A Bridge to the quarters. There are two phones.  
10 One is a dial telephone, similar to any other telephone  
11 that you would use in your house, push button, three digits  
12 to call the captain's office; and there is a sound-powered  
13 phone from the bridge down to the captain's quarters.

14 Q That's a what kind of phone?

15 A Sound powered phone.

16 Q How does that work?

17 A That -- you place this electric switch on the  
18 station you want to call. There's a crank that you -- that  
19 the caller will crank, which rings a bell, then, at the  
20 location he's selected, and you pick it up, and you push a  
21 button, and talk and listen.

22 Q Is one of those systems used more frequently than  
23 the other?

24 A I usually use the dial telephone, yes, sir.

25 Q Is it -- is that just personal preference, I take

1 it?

2 A Yes, sir.

3 Q In any event, when you -- if you were in your  
4 quarters and there's a watch officer on deck, you normally  
5 tell him, if there's any problem, or you don't feel  
6 comfortable in the situation, call me, right?

7 A Watch officer on the bridge, sir?

8 Q Yeah.

9 A Yes, sir.

10 Q I mean, that's a pretty logical instruction to  
11 give to somebody who's on the bridge, isn't it?

12 A Yes, sir. Whenever they're in doubt, they're to  
13 call the master.

14 Q Are you acquainted with Greg Cousins, sir?

15 A Yes, sir. I have sailed with Mr. Cousins.

16 Q You've sailed with him before?

17 A Yes, sir.

18 Q Have you evaluated his performance?

19 MR. COLE: Objection. Relevance.

20 THE COURT: Objection overruled.

21 THE WITNESS: I don't recall if I formally  
22 evaluated him on an evaluation sheet. I have discussed his  
23 performance with him.

24 BY MR. MADSON: (Resuming)

25 Q Would you consider him to be a competent third

1 mate?

2 A yes, sir, I would.

3 Q Capable of carrying out pretty simple,  
4 straightforward instructions?

5 A Yes, sir, I would.

6 Q If you were to give him -- tell him to turn a  
7 vessel, make a turn, or maneuver a vessel when you were 90  
8 degrees off a particular light, that's pretty simple, isn't  
9 it?

10 A In some situations it could be, yes, sir.

11 Q Getting back to the fathometer, you don't use  
12 that as a navigation aid, do you, to plot a course, do  
13 you? Fathometer?

14 A Yes, sir. A fathometer could be used as a  
15 navigation aid for plotting a course.

16 Q Do you use it in Prince William Sound to plot a  
17 course?

18 A Generally, we don't. It is available for use, to  
19 check the sounding. When you plot a position, you can  
20 confirm it by checking the sounding.

21 Q If you were -- say you were going to make a turn  
22 or a maneuver at a particular fathom mark, that's a little  
23 bit difficult to do. You have other navigational aids that  
24 are much easier to use.

25 A I'm not sure I understand your question, sir.

1 Q Well, let me clear this up a little bit, if I  
2 can.

3 I am referring now to the chart of Prince William  
4 Sound. For instance, off of Busby Island -- there's a  
5 light right off Busby Island, is there not?

6 A Yes, sir.

7 Q You can see that for -- with clear visibility,  
8 you can see it for quite a distance, correct?

9 A Yes, sir.

10 Q Assuming there's a particular fathom mark in the  
11 vicinity of Busby Island, that reads 38, if you were -- let  
12 me put that back where it belongs.

13 Let's say it's a mile, mile-and-a-half off Busby  
14 and it's somewhat south of Busby Island, and there's a  
15 chart that has a 38 fathom mark on it.

16 A Yes, sir.

17 Q Would you agree, sir, it would not be very  
18 prudent as a navigator to make a turn when you're looking  
19 for a particular fathom reading as opposed to using the  
20 navigational aid, such as the light on Busby Island?

21 A In that case, I don't believe that would -- it  
22 would be more prudent to use other navigational aids, and  
23 not rely solely on a sounding.

24 Q In other words, something to the effect of start  
25 a turn when you're abeam of Busby Island, or 90 degrees off

1 Busby Island and you're on a course of 180 would be pretty  
2 simple, would it not?

3 A It could be.

4 Q A lot simpler than looking at a fathometer to see  
5 whether it's going to read 38 or not?

6 A Well the fathometer on the fiddle board, if he  
7 just watched that until the number 38 came up, but that --

8 Q Wouldn't it also be dependent on what the tide  
9 condition is?

10 A Yes, it would, sir.

11 Q Because the fathom marks on the chart are, I  
12 think you said, at mean low tide?

13 A At mean low or low water, yes, sir.

14 Q What does that mean? Would you describe for the  
15 jury the --

16 A That's generally the lowest tide that's -- that's  
17 encountered.

18 Q The lowest --

19 A The lowest of the low, yes, sir.

20 Q Over a long period of time?

21 A Yes, sir.

22 Q Okay.

23 So the tide in Prince William Sound is roughly,  
24 would you say, 12 feet? Is that a fair estimate?

25 A That would be a fair estimate.

1 Q And so, if you're looking for a fathom mark on a  
2 chart, trying to course correlate back with your position,  
3 you'd have to take into account the tide too, right?

4 A Yes, or in the draft of the vessel.

5 Q So you have to do all these calculations, and  
6 then, if you're a little bit off, you're not going to read  
7 38 unless your bottom is pretty smooth, right?

8 A Yes, sir.

9 Q In other words, if it's, say, pretty bumpy,  
10 you're going to get a lot of variation in your fathom  
11 readings?

12 A That's correct.

13 Q Now, a trip into Prince William Sound as a master  
14 of the Exxon Valdez, you indicated that there was paperwork  
15 to do. There's no requirement, is there, as to when the  
16 master is supposed to do the paperwork?

17 A No. I'm not aware of requirements generally when  
18 paperwork has to be done.

19 Q Basically, it means it has to be done, but the  
20 when is up to you, or (inaudible), right?

21 A Yes, sir.

22 Q When you're in port, loading, taking on cargo,  
23 the chief mate is generally responsible, is he not, for the  
24 loading of the cargo?

25 A Yes, sir.

1 Q As captain, you oversee the operation, and you  
2 are certainly aware of it, right?

3 A Yes, sir.

4 Q But the function of carrying it out would be the  
5 chief mate and, in turn, he would delegate certain duties  
6 to other ship officers or seamen?

7 A Yes, sir.

8 Q And if the chief mate is up, let's say, for a  
9 long period of time, would it be unusual at all for, say,  
10 the master to stand his next watch to allow him to get some  
11 more sleep?

12 A I don't know if it would be unusual --

13 Q Has it been done, to your knowledge?

14 A Oh, yes, sir, it has been done.

15 Q And then if the master is going to stand an extra  
16 watch, he has other duties to perform -- or he still has  
17 the same duties to perform, but in addition, he would have  
18 an extra watch to cover for the chief mate, if he chose to  
19 do that, right?

20 A Yes, sir.

21 Q You also discussed the grounding program on the  
22 computer. You said the Ocean Motions program -- maybe  
23 that's what it's called?

24 A Yes, sir.

25 Q The grounding portion of that didn't seem to



1 work?

2 A No, sir, I don't believe it did.

3 Q Were you the only one that was aware of this?

4 A No, sir. I was not.

5 Q Who else was?

6 A I think the chief mates that had been on the  
7 vessel previous -- previously, and the naval architect  
8 ashore, on the shore staff.

9 Q Well, did you discuss this with your superiors in  
10 Exxon?

11 A Yes, I did, sir.

12 Q To your knowledge, did they call in all the  
13 captains or anybody who was going to be involved -- let's  
14 back up a little bit. I'm getting ahead of myself.

15 This particular program, was it unique, or --  
16 only on the Exxon Valdez, or do other Exxon vessels have a  
17 similar computer and program?

18 A No, I believe the Ocean Motions was only on the  
19 Exxon Valdez and Exxon Long Beach.

20 Q Which is a sister ship, right?

21 A Yes, sir.

22 Q By telling Exxon officials or your superiors  
23 about this particular problem, did you believe, then, that  
24 they, in turn, would alert, or address the issue, with  
25 other captains and other chief mates who might be on the

1 Exxon Valdez?

2 A Well, they might do that.

3 Q I take it you thought your responsibility, once  
4 you discovered this, was to tell, right?

5 A Yes, sir.

6 Q Let Exxon know.

7 A Yes, sir.

8 Q What they do, or what they didn't do, of course.  
9 would be up to them. You have no control over that, right?

10 A Correct. I don't have any control over it.

11 Q And I believe you said you did not know whether  
12 Mr. Kunkel knew, or didn't know, of the problems on this  
13 particular computer program? I think you said you weren't  
14 sure?

15 A Yes, sir.

16 Q Well, what exactly were the problems? I mean,  
17 what did it -- didn't it do?

18 A I don't recall exactly what it did or didn't do.  
19 I don't recall if it didn't give you any data, or if it  
20 just gave you bad data. I know I did examine it, and I had  
21 correspondence with the office to go back to Ocean Motions  
22 and have it -- have it fixed.

23 Q Do you know if that was ever done?

24 A I believe they were having discussions with Ocean  
25 Motions, but no, I do not believe that the program has been

1 fixed.

2 Q You also discussed the difference between sailing  
3 on register and coastal -- coastwise sailing. I'm sorry,  
4 but I was quite confused.

5 When you say a vessel sailing on register, this  
6 mean it's -- register denotes ownership of the vessel, does  
7 it not?

8 A The certificate of documentation is called the  
9 register, and it tells, on that document -- it's issued by  
10 the government, and it tells the nationality of the vessel  
11 and the ownership, yes, sir.

12 Q When you say government, that's the federal  
13 government, not the state government, correct?

14 A That's correct. The federal government.

15 Q As far as you know, does the state have any  
16 register, or controls, or requirements at all? The state  
17 of Alaska, that is? Any documentation requirements?

18 A No, sir.

19 Q Then even though it's sailing, let's say, on  
20 register, does that mean it could still be restricted to  
21 only coast line sailing, or foreign -- or going to and from  
22 foreign ports? What difference does it make?

23 A Well, registry is normally foreign. The vessel  
24 is on coastwise. He could be restricted to the coast. He  
25 -- if you're not cleared for foreign, you're not permitted

1 to proceed foreign.

2 Q And if you're -- well, is it true that the  
3 so-called official log is the document that's used when  
4 you're sailing under register? Do you have to have this  
5 official law besides the -- this deck log?

6 A Yes, sir.

7 Q In Prince William Sound, you -- I think you said  
8 a number of times that you use all the information you have  
9 available to determine your course of action in a given  
10 situation as to whether you would or would not do  
11 something, right?

12 A I try to use all the information, yes, sir.

13 Q That information would include the VCC in Valdez,  
14 would it not? Vessel Control Center?

15 A It could, yes, sir.

16 Q In other words, you would call in and ask for ice  
17 reports?

18 A Yes, sir. I have done that.

19 Q You would know that they were only passing on  
20 what some other ship would tell you, right?

21 A Yes, sir.

22 Q But you would still rely on that?

23 A I would use that information, yes, sir.

24 Q In other words, it goes into your personal  
25 computer, if you will, and you will give it a lot of

1 weight, or not much weight, depending on what you  
2 personally might observe?

3 A Yes, sir.

4 Q In other words, more time. Let's say the last  
5 ice report was five hours previously, and the tide is going  
6 out. In your experience, you might say, "Well, I think  
7 it's going to be better, because the tide's going out and  
8 it's an old report," right?

9 A I could expect different conditions than what the  
10 Coast Guard is telling me under those conditions, yeah.

11 Q You're also aware, are you not, that there's  
12 radar coverage in Valdez arm?

13 A Yes, sir.

14 Q Do you rely on that as far as any of your  
15 responsibilities are concerned? Do you believe the Coast  
16 Guard is watching you, so to speak?

17 A I was under the impression that the Coast Guard  
18 was watching us, yes, sir.

19 Q By the way, regarding the steering again, if the  
20 rudder does not follow the helmsman's turning of the wheel,  
21 in other words, there's some kind of a breakdown in the  
22 steering system, and the helmsman turns, let's say, a full  
23 turn and the rudder does not, there's an alarm that goes  
24 off, or is supposed to go off?

25 A If -- if manual helm is engaged, yes, sir.

1 Q One last question on the sailing under register,  
2 or on register. Can you sail, as a coastwise vessel,  
3 between two U.S. ports, even though you are so-called  
4 underregistered?

5 A I believe you can, with approval of customs.

6 Q Thank you.

7 MR. MADSON: I don't have any other questions at  
8 this time, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. COLE:

11 Q Captain Stalzer, when is the first time that you  
12 met a representative from the state of Alaska -- the  
13 District Attorney's office -- prior to taking the stand?

14 A I'm not sure if a member of the District  
15 Attorney's office came out to the vessel after the  
16 grounding when I was there between April 8th and April 24th  
17 of 1989, but -- so maybe I met somebody there, I don't  
18 know. But just yesterday.

19 Q That's when you got here?

20 A Yes, sir.

21 Q Now, you indicated that you were told that Exxon  
22 has an interest in this matter? What interest was Exxon  
23 has in this matter?

24 MR. MADSON: Well, I'd object, unless he knows  
25 what the president of Exxon or any other officials really

1 know. Otherwise, he's simply speculating.

2 THE COURT: If you can lay a foundation for that,  
3 I'll let the question come in, though, if you can lay a  
4 foundation, since you opened that avenue up, Mr. Madson.

5 BY MR. COLE: (Resuming)

6 Q You indicated, as a response to Mr. Madson's  
7 questions, that you believed that there was an interest,  
8 Exxon had an interest in this matter. Do you remember  
9 that?

10 A Yes, sir.

11 Q Why do you think that Exxon has an interest in  
12 this matter?

13 A Because at the time of the incident, Captain  
14 Hazelwood was employed with Exxon.

15 Q And what was your understanding? What is your  
16 belief that Exxon's interest is in this particular case, in  
17 the outcome of this case?

18 A I believe that perhaps the outcome of this case  
19 will have some effect on some of the -- the other pending  
20 litigation.

21 Q Now, are you aware of other people, crew members,  
22 that obtained attorneys?

23 A Yes, sir.

24 Q Who? Other crew members on the Exxon Valdez?

25 A Yes sir.

1 Q Who is that?

2 A I believe Maureen Jones, when I was on the  
3 Valdez, requested and obtained an attorney. I'm aware, I  
4 believe, that Mr. Kunkel has his own attorney. I believe  
5 Mr. Cousins has his own attorney. And, of course, Captain  
6 Hazelwood. Mr. Kagan also has his own attorney, I believe.

7 Q And were they given, under your -- when did you  
8 learn that Exxon would pay for your attorney?

9 A Well, two to three weeks ago.

10 Q And were you told whether or not this was  
11 different from the arrangements that they made with any of  
12 the other crew members?

13 A No. They said that precedent has been set for  
14 them to provide attorneys for individuals involved in the  
15 case, and that I could obtain my own.

16 Q You talked about, with Mr. Madson, about the  
17 situation where it's important to give crew members that  
18 work under you additional responsibilities to help in their  
19 advancement, their career advancement. Do you remember  
20 that?

21 A Yes, sir.

22 Q Are there certain situations where it would not  
23 -- you do not place people in situations that are -- or  
24 give them more responsibility than they should have?

25 A There may be some, yes, sir.



1 Q Would that be in the area of hazardous conditions  
2 to the ship?

3 A I take my responsibilities as master seriously,  
4 and I generally prefer to handle pilotage situations for  
5 myself and rely on my own ability, and they can learn from  
6 observing, and we discuss situations so that they can learn  
7 in that manner.

8 Q Now, you indicated that -- that the -- in setting  
9 the conditions, it's your responsibility as captain to set  
10 the watch condition?

11 A Yes, sir.

12 Q And Mr. Madson asked you about the ways -- how  
13 vague some of the language is in the watch conditions. Do  
14 you remember him asking you about that?

15 A I think he said those terms weren't defined.

16 Q Weren't defined.

17 How did you define watch A? Was that the type of  
18 watch that you would use in Prince William Sound?

19 A No, sir. I -- my normal procedure is to set  
20 watch condition C in Prince William Sound, if the  
21 visibility is good.

22 Q And Mr. Madson asked you about the fact that  
23 vicinity -- when he was discussing 2.1.5, which says the  
24 master must be on the bridge whenever conditions present a  
25 potential threat to the vessel, such as passing in the

1 vicinity of shoals, watch and other hazards which represent  
2 any threat to safe navigation -- he asked you if there was  
3 a definition of passing in the vicinity of that, and you  
4 answered, indicated what?

5 A I don't believe there is an actual definition in  
6 the manual for that.

7 Q How do you interpret that?

8 MR. MADSON: Well, Your Honor, once again, let me  
9 object. There's no definition. It's subject to  
10 interpretation by every individual who reads it, and I  
11 think it's relevant as to what he may or may not interpret  
12 it at this particular --

13 THE COURT: I think this is an opinion that this  
14 witness is giving based on his experience. I'll let the  
15 question stand.

16 BY MR. COLE: (Resuming)

17 Q What did you consider passing in the vicinity of  
18 shoals, rocks or other hazards which represent any threat  
19 to safe navigation?

20 A About two miles.

21 (Pause)

22 Q If you instructed -- are you aware of what the  
23 course -- what a course recorder is?

24 A Yes, sir.

25 Q Was there a course recorder on the Exxon Valdez?

1 A Yes, sir.

2 Q What would it do?

3 A It records the heading of the vessel at a given  
4 time.

5 Q Was it an accurate instrument?

6 A It was fairly accurate, yes, sir.

7 Q Did you, at any time while you were master, rely  
8 on the course recorder on the headings that it gave you?

9 A I don't know within what regard you mean.

10 Q Well, once you check it with the gyro to see what  
11 heading the vessel was.

12 A Normally, I would -- would look at the gyro  
13 repeaters.

14 Q Well, let me ask you this. If you were to make a  
15 10 degree turn to the right, would that show up on a course  
16 recorder, if you went from 180 to, say, 200? Or, let's say  
17 -- no, let me see. Yes. If you were to make a 10 degree  
18 turn to the right, would that show up on a course recorder?

19 A Yes, sir.

20 Q Heading change? A 10 degree heading change?

21 A Yes, it should.

22 Q If you were to give an instruction of 10 degrees  
23 right rudder, how long would you anticipate before the  
24 heading of the ship actually changed enough so that it  
25 would be picked up on the course recorder?

1           A       Each situation is different, but -- based on  
2 currents and wind -- but within 15 to 30 seconds, and  
3 they're different based on whether the ship's in ballast,  
4 or fully loaded.

5           Q       Let's say that it's drafts of 56 feet. Is that  
6 about -- what is that, 80, 90 percent capacity? 56, with  
7 ballast?

8           A       Well, fully loaded is 64 -- about 64-and-a-half  
9 foot. I don't know exactly what percentage that would be,  
10 56 foot.

11          Q       Would it -- would it change -- the number that  
12 you gave us, 15 to 30 seconds if it was -- what are you  
13 assuming, that it's fully laden?

14          A       That would be fully laden. It would -- the  
15 vessel responds more quickly to the rudder order when  
16 you're in the ballast condition. It's also dependent on  
17 the speed.

18          Q       Well, if the rudder -- would the rudder had  
19 turned -- let's -- if you had asked for a 10 degree right  
20 rudder turn, would the right rudder have gone over to the  
21 10 degree turn, prior to the 15 to 30 second course change?

22          A       Yes, sir. The rudder would respond more  
23 quickly. I thought you were asking me the time it took  
24 before the heading changed.

25          Q       Right. What accounts for the difference between

1 the time the rudder gets over to 10 degree starboard and  
2 the time that the vessel actually starts changing heading?

3 A Well, forces on the vessel.

4 Q Does the vessel -- well, what does the vessel do  
5 during that period?

6 A I'm not exactly sure I understand your question.

7 Q Well, let me --

8 A It takes a little bit of time for the momentum  
9 and the forces on the vessel to turn the vessel. The  
10 rudder responds quickly.

11 Q Let's say that you're -- and at this point right  
12 here, let's say right -- zero -- let's make this 30. Let's  
13 just say that this is when the heading changes.

14 What does the vessel do between this point and  
15 this point? Does it go straight before the heading --  
16 while the heading changes? I mean during this period?

17 A More or less, yeah. It proceeds along -- the --

18 Q Does it slide at all?

19 A Yes, it will. It will slide as it progresses  
20 along the track, and as the vessel turns.

21 Q Why does it slide?

22 A Because of the friction in the water and the size  
23 and momentum of the vessel.

24 Q So if the vessel was going at 11.75 knots with a  
25 56 foot draft, and the order was given to go 10 degrees

1 right rudder, you would expect that to show up on the  
2 course recorder within 15 to 30 seconds after the command  
3 was given?

4 A Yes, sir.

5 Q What about if the vessel was only turned to six  
6 degrees? Would you expect, at some point, the course to  
7 change -- would the course heading change (inaudible).

8 A I'm not sure what you mean. 6 degree heading  
9 change?

10 Q No, let's -- let me rephrase it.

11 What if the rudder angle was only put to 6  
12 degrees. Would you expect to see that, at some point,  
13 cause the heading of the vessel to change?

14 A Yes, sir, I would.

15 Q And would that also, at some point, be recorded  
16 on the course recorder?

17 A Yes, sir, it should be.

18 Q About how much longer -- do you have any idea how  
19 long that would take?

20 A Compared to the 10 degree?

21 Q Yes.

22 A It would be -- it would be very, very similar,  
23 just a little -- few seconds longer, perhaps.

24 (Pause)

25 Q In this hard right turn, fully laden, what is the

1 advance measured from? Is the advance measured from the  
2 top of the vessel, or from the back of the vessel?

3 A I think that -- that shows that it's measured  
4 from the bridge wing.

5 Q From the bridge wing?

6 A Yes, sir.

7 Q So it advances .59 miles, or nautical miles?

8 A Nautical miles.

9 Q .59 nautical miles forward before -- when it --  
10 by the time it gets to a right -- right angle?

11 A By the time you are 90 degrees off of the  
12 original course, yes, sir.

13 Q Now, Mr. Madson asked you, wouldn't -- he asked  
14 you about the command turning when you were abeam of Busby,  
15 or abeam of some light. You indicated that, in some  
16 situations that would be a fairly easy command. Are there  
17 other situations where it might be difficult?

18 A It is -- it is more difficult with more traffic.

19 Q Is it more difficult in hazardous areas?

20 MR. MADSON: I would object to the form of the  
21 question. It's leading. He gave the answer.

22 THE COURT: Objection overruled.

23 MR. COLE: You can answer the question.

24 BY MR. COLE: (Resuming)

25 Q Is it more difficult in hazardous areas?

1 A It could be.

2 Q Now, you talked about your -- the chief mate  
3 being -- he's up most of the day when you're in port,  
4 loading and unloading. Is that correct?

5 A I believe he is up quite a bit of the time.

6 Q And it's not uncommon for you to set up a  
7 situation where his -- he is relieved from his -- his watch  
8 when the vessel begins to sail again for its destination?  
9 Is that correct?

10 A Yes, sir, that -- that has occurred.

11 Q Are there other ways that he can be relieved from  
12 his duties besides you filling in for him?

13 A One of the other watch officers could fill in for  
14 him -- the deck license.

15 Q And is that an uncommon or common occurrence?

16 A It has occurred.

17 THE COURT: Mr. Cole, \_\_\_\_\_ normal time for  
18 our next break --

19 MR. COLE: I've just got maybe one or two  
20 questions. I think we can --

21 THE COURT: Sure. We'll finish your part off,  
22 then.

23 BY MR. COLE: (Resuming)

24 Q To what extent did you rely on the VTC radar  
25 system?



1           A       I relied primarily on my own ability to navigate,  
2 but I would use any information provided by the crew or the  
3 officers or external sources, including the VTS.

4                   MR. COLE: I have nothing further, Your Honor.

5                   THE COURT: We'll take our break, ladies and  
6 gentlemen. Don't discuss the matter among yourselves or  
7 with any other person. Don't form or express any opinions  
8 concerning the facts.

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

11                   (A luncheon recess was taken from 11:46 a.m. to  
12 12:05 a.m.)

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## 1 AFTERNOON SESSION

2 (12:05 p.m.)

3 THE CLERK: This court now resumes its session.

4 THE COURT: Mr. Madson?

## 5 RECROSS EXAMINATION

6 BY MR. MADSON:

7 Q Just a few questions, Captain Stalzer.

8 You indicated in response to one of Mr. Cole's  
9 recent questions that, as the master of the Exxon Valdez,  
10 you took it upon yourself to assign responsibility to  
11 others and help them learn their job, so to speak. Right?

12 A Yes, sir. We helped to train others on the ship.

13 Q That's a noble goal, is it not? To assist  
14 younger officers to progress and learn and become more  
15 confident in their job?

16 A You can consider that, yes, sir.

17 Q And able seamen, too, right? Train them to  
18 become better?

19 A Yes, sir.

20 Q And there are certain ways you can do this, is  
21 there not? In other words, you can stand and watch -- in  
22 other words, I could watch you do something and learn from  
23 that, or I could actually do it myself, maybe with you  
24 watching.

25 A Yes, sir.

1 Q And later on, maybe I can do it myself with  
2 nobody watching? In other words, I assume the  
3 responsibility and I assure you I can do it, and I have  
4 shown that I can be competent and you can trust me to do  
5 that, you might give me that responsibility?

6 A I might.

7 Q Depending on the situation, right?

8 A Yes, sir.

9 Q In fact, with regard to Mr. Kagan, you said that  
10 you did, in fact, give him additional training.

11 A Yes, sir.

12 Q I think you said he had trouble -- he told you  
13 had trouble steering. He hadn't been an AB very long.

14 A He was concerned about his steering. He hadn't  
15 sailed as AB for quite awhile.

16 Q When was this, sir?

17 A When he told me that?

18 Q Yeah.

19 A When he signed on.

20 Q Pardon me?

21 A When he signed on the vessel.

22 Q And that was in when?

23 A That was in January 18th, perhaps, 1989.

24 Q And you had a -- someone -- well, when you said  
25 "trouble steering," did you know exactly what he meant by

1 that?

2 A I --

3 MR. COLE: Judge, I'm going to object. That's  
4 beyond the scope of cross-examination and redirect.

5 MR. MADSON: Your Honor, he went into the  
6 responsibility of teaching others, and I think I can go  
7 into that. He certainly opened that door.

8 THE COURT: Objection overruled.

9 BY MR. MADSON: (Resuming)

10 Q When you say steering, does that mean -- let me  
11 withdraw that.

12 Correct me if I'm wrong, sir. By steering, would  
13 that imply, or mean, giving a course to a helmsman, like  
14 assuming you're on a course of straight north, zero  
15 degrees, and you say come to a course of 45 degrees, the  
16 helmsman would steer to that course?

17 A Yes, sir.

18 Q So he would physically have to turn the wheel  
19 until the compass reading was at 45 degrees?

20 A Yes, sir. He would be turning the wheel -- he  
21 would turn the wheel back before it actually got to 45  
22 degrees, or the vessel would swing pass that, but yeah, he  
23 turns the wheel.

24 Q When you say "he," you mean --

25 A The helmsman.

1 Q Huh?

2 A The helmsman.

3 Q The helmsman would have to stop before it  
4 actually got to that point, 45 degrees. Otherwise the  
5 vessel would go too far and you would have to bring it  
6 back?

7 A You would have to take the rudder off, yes, sir.

8 Q So that's something that you acquire with time,  
9 right? The skill, or the ability, to do that, know when to  
10 catch the wheel and stop it?

11 A Yes, sir.

12 Q That would also depend on the degree of -- or the  
13 heading you're taking? In other words, from -- you said it  
14 was 45 degrees, say you're going to -- all the way around  
15 to 90 degrees. You have to swing it some more. Would that  
16 be any less or more difficult, I guess my question is?

17 A It would be different. I don't know if it is  
18 less or more difficult, but if you're -- if the heading is  
19 changing a larger amount, it's a different amount, so he  
20 has to know when to ease the rudder, or take it off, or  
21 counterrudder, to stop on the -- on the heading that was so  
22 ordered.

23 Q And you assigned someone to assist Mr. Kagan in  
24 doing this, right?

25 A Yes, sir, I did.

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1 Q Otherwise, if -- without training, he might,  
2 let's say, chase the compass? Is that a term that's  
3 commonly used?

4 A That's a term I've heard before, yes, sir.

5 Q Yeah. In other words, you can't kind of keep it  
6 right on the course you want, after you make your turn?

7 A I believe that refers to -- to having the -- the  
8 vessel coming off course, and the helmsman correcting with  
9 the wrong rudder. In other words, he will come off to the  
10 right, and he puts more right rudder on, and he doesn't  
11 realize that he's adding to the problem, so he's chasing it  
12 around, as opposed to putting left rudder on and stopping.

13 Q If you're putting rudder on the ship and it goes  
14 too far, if you turn it back the other way, is that called  
15 counterrudder?

16 A You could call it that, yes, sir.

17 Q Would you agree, sir, in your experience, that a  
18 -- rather than giving the helmsman a course change to say  
19 "Take the heading and go to 45 degrees," or 180, or 240, or  
20 anything like that, that, as opposed to that, giving the  
21 helmsman an order 10 degrees right rudder is a very simple  
22 order.

23 A That's a very -- a very simple order, yes, sir.

24 Q In other words, you don't have -- the helmsman  
25 doesn't have to turn until there's a certain compass

1 reading. He simply turns the wheel until the rudder angle  
2 indicator says 10?

3 A Yes, sir.

4 Q And he has to turn it the direction that you  
5 instructed, right or left.

6 A Correct, yes, sir.

7 Q And in your opinion in 1989, early when Mr. Kagan  
8 came on board the ship, is it true that he was capable of  
9 carrying out a simple rudder command, such as 10 degrees  
10 right rudder?

11 A I believe -- yes, sir, he could.

12 MR. MADSON: Thank you. I have no other  
13 questions -- I do have one other, if I could.

14 BY MR. MADSON: (Resuming)

15 Q Lastly, Mr. Cole asked you about what you'd  
16 expect from the VTC system, and you said that that's one  
17 more piece of information that he was relying on, right?

18 A I said I would use that information if it was  
19 supplied, yes, sir.

20 Q Okay. Would that mean that -- let's say that if  
21 you were - you strayed off course in the vessel traffic  
22 separation system, that you would expect the Coast Guard to  
23 let you know you were off course, or out of the lanes?

24 A I was under the impression that they were  
25 monitoring us by radar from Potato Point down through the

1 narrows, but down to the area of Naked Island.

2 Q Down to Naked Island.

3 A Yes, sir.

4 MR. MADSON: Thank you, sir. I don't have any  
5 other questions.

6 THE COURT: Mr. Cole?

7 MR. COLE: No, I have no questions, Your Honor.

8 THE COURT: May this witness be excused from  
9 further participation?

10 MR. COLE: Yes, sir.

11 MR. MADSON: Yes, sir.

12 THE COURT: You are free to go.

13 THE WITNESS: Thank you.

14 (The witness was excused.)

15 MR. COLE: At this time, the State would call Mr.  
16 Hilsinger to the stand.

17 Whereupon,

18 JOHN ROBERT HILSINGER

19 called as a witness by counsel for the State of Alaska, and  
20 having been duly sworn by the Clerk, was examined and  
21 testified as follows:

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

24 THE WITNESS: John Robert Hilsinger,  
25 H-i-l-s-i-n-g-e-r.



1 THE CLERK: And your current mailing address?

2 THE WITNESS: 1783 Morningtide Court, Anchorage,  
3 Alaska, 99501.

4 THE CLERK: And your current occupation?

5 THE WITNESS: I'm a fishery biologist with the  
6 state of Alaska Department of Fish and Game.

7 DIRECT EXAMINATION

8 BY MS. HENRY:

9 Q Thank you. Mr. Hilsinger, how long have you  
10 worked with the Department of Fish and Game?

11 A Approximately eleven-and-a-half years.

12 Q And you are a state biologist with them, is that  
13 correct?

14 A Yes, I am.

15 Q So what education do you have, as a state  
16 biologist?

17 A I have a bachelor's degree in fishery science and  
18 a master's degree in fisheries biology.

19 Q What are your responsibilities, your current  
20 responsibilities, with the Department of Fish and Game?

21 A I supervise the management of commercial  
22 fisheries in both the Cook Inlet and the Prince William  
23 Sound areas, primarily Cook Inlet fin fish and shellfish  
24 and Prince William Sound shellfish.

25 Q All right. When you say, supervise the

1 management of these areas, what -- can you be more  
2 specific, what do you do?

3 A Each individual management area has a local area  
4 biologist who's located in one of the communities in the  
5 area, and I'm the supervisor of those local area  
6 biologists.

7 Q All right. Now, were you requested by the  
8 District Attorney's office to compile some estimates of the  
9 loss of income to fishermen in the 1989 season due to the  
10 closure of certain fisheries ordered as a result of the  
11 Exxon Valdez oil spill in Prince William Sound?

12 A Yes. I was.

13 Q And where did you go to -- what sources did you  
14 use to compile this information?

15 A All of our basic fishery information is recorded  
16 on fish tickets. A fish ticket is made out at the time of  
17 each delivery of fish by a fisherman and contains the  
18 information about the fisherman, the amount of fish or  
19 shellfish that was caught, and often contains the price  
20 information.

21 We enter those all into a computerized fish  
22 ticket system which we use, then, to compile catch records,  
23 and we annually publish those catch records in various  
24 departmental documents.

25 Q Now, are the fish tickets required to be filled

1 out by the fisherman and turned in to the biologist?

2 A Yes, they are.

3 Q And then are you required to compile the stats,  
4 or the statistics, into the annual report?

5 A Yes, we are.

6 Q Are the fish tickets in -- once they're turned  
7 into the biologists, and the annual reports, once they are  
8 completed, kept in your ordinary course of business at the  
9 Department?

10 A Yes, they are.

11 Q And what other sources of information did you use  
12 to obtain the estimates?

13 A We have -- some of the price information, we have  
14 direct information from processors about the price that  
15 they're paying at the time, and sometimes if they'd make  
16 retroactive payments, then the price would change, and we  
17 would know that, but it might not be reflected directly on  
18 an individual fish ticket.

19 Q All right. And are the processors also required  
20 to provide information to you?

21 A Yes, they are.

22 Q And that's in the form of, what, reports as to  
23 what they've purchased?

24 A Yes. Besides -- normally, the processor actually  
25 provides us with the fish ticket, and then they're also

1 required to do annual processor reports, where they report  
2 once a year to the state on how much they've bought.

3 Q All right. Now, did you also use information  
4 from emergency orders in order to compile the estimates?

5 A Yes, I did.

6 Q Why don't you explain what emergency orders are?

7 A Emergency orders are documents that the  
8 Department uses to make emergency changes in the fishing  
9 regulations because the fisheries are so variable from year  
10 to year, depending on run strength, or stock level of  
11 animals. We use the emergency order to allow us to look at  
12 in-season data and analyze that data and then make a change  
13 in the regulations to fit the current stock conditions.

14 These emergency orders are written by one of the  
15 local area biologists under a direct delegation from the  
16 Commissioner of Fish and Game, and contain basically a  
17 plain language explanation of what the order does, then the  
18 amended regulatory language, and a full justification for  
19 the -- a need for the emergency order.

20 Q All right. So there are regulation books that  
21 give generally when openings and closures are going to be  
22 in certain fisheries, is that correct?

23 A That's correct. It depends on the fishery. Some  
24 fisheries, the regulation states that the fishery will be  
25 opened and closed by emergency order, and in other

1 fisheries, the regulations will have set fishing periods,  
2 or set opening dates, and we have the authority to change  
3 time of fishing and area of fishing by emergency order.

4 Q All right. So the regulations give the  
5 Commissioner, who then can delegate it to one of the  
6 biologists, the authority to change closures, is that  
7 correct?

8 A That's correct.

9 Q And openings, I guess, too.

10 All right. These emergency orders, you said that  
11 they're put in basic, or simple, language. Where are they  
12 sent?

13 A The emergency orders are distributed to all the  
14 newspapers, radio stations in the area. We send them to  
15 all the fisherman's organizations, the local Fish and Game  
16 Advisory Committee. We post copies in the Fish and Game  
17 offices, and have copies available, usually for people who  
18 want to have a copy for themselves. I believe that's about  
19 it.

20 Q Do you ever publish them in newspapers?

21 A We often will have a news release that  
22 accompanies an emergency order which will be published in  
23 the newspaper, but normally the emergency order itself  
24 would not be published in a newspaper.

25 Q All right. Going specifically, now, to the  
season

1 in 1989, were there closures of certain fisheries ordered  
2 as a result of the Exxon Valdez oil spill?

3 A Yes, there were.

4 Q And eventually, were some of those fisheries  
5 reopened?

6 A Yes.

7 Q And what would decide whether or not a fishery  
8 would be reopened?

9 A We reopened fisheries at the time when we felt  
10 that the fishery could take place in an orderly manner with  
11 no appreciable likelihood of harvesting oil contaminated  
12 fish or of fishermen contaminating their gear.

13 Q Okay. Were there some fisheries that remained  
14 closed for the entire season?

15 A Yes.

16 Q Now, the estimates of loss of income that you  
17 have provided to the State, were those basically the  
18 estimates of the income for the 1988 season in each given  
19 fishery?

20 A Yes, that's correct.

21 Q So if there had not been an oil spill in 1989,  
22 it's possible that the fishermen could have obtained more  
23 income in 1988, or less income in 1988, is that correct?

24 A That's correct.

25 Q So the information that you're about to provide

1 is really an estimate, is that correct?

2 A That's correct, and I would point out that it's  
3 an estimate of just the ex-vessel value, which is only the  
4 money directly paid to a fisherman, does not include any of  
5 the other processors, brokers, any of the other money that  
6 would be made.

7 Q Right. So you're only taking into consideration  
8 the income to the fishermen directly as opposed to income  
9 to processors, or other people involved in the industry?

10 A That's correct.

11 Q All right. Going first, now, to the Prince  
12 William Sound sable fishery, was that closed in 1989 as a  
13 result of the oil spill?

14 A Yes, it was.

15 Q Was it also reopened?

16 A Yes, that fishery was reopened.

17 Q So the fishermen were able to recoup some of  
18 their losses as the result of the closure when --

19 MR. MADSON: Your Honor, I object to the form of  
20 the question. It says "some of the losses." We don't know  
21 if there's been any, yet.

22 THE COURT: The objection to the form of the  
23 question is sustained. It's also leading.

24 BY MS. HENRY: (Resuming)

25 Q Do you know whether or not the fishermen who

1 fished the sable fish fishery in Prince William Sound were  
2 able to recoup any losses as a result of it being closed  
3 originally?

4 A Yes.

5 Q Do you know how much?

6 A No.

7 Q All right. So again, the loss figure is a gross  
8 estimate. Is that correct?

9 A That's correct.

10 Q And in fact, it's probably more of a risk of loss  
11 than actual loss?

12 A That's correct.

13 Q What was the amount for the Prince William Sound  
14 sable fish fishery?

15 A In 1988, the ex-vessel value of that fishery was  
16 \$193,023.00.

17 Q Going to the Prince William Sound pot shrimp  
18 fishery. Was that fishery closed?

19 A Yes, it was.

20 MR. MADSON: Excuse me. What fishery?

21 MS. HENRY: Pot shrimp.

22 MR. MADSON: Pot shrimp. Okay.

23 BY MS. HENRY: (Resuming)

24 Q Was that ever opened in '88-'89?

25 A No, the pot shrimp fishery was not.



1 Q What was the value of that fishery?

2 A The 1988 value was approximately \$520,344.00.

3 Q Going to the Prince William Sound herring pursein  
4 sack roe fishery, was that closed in 1989?

5 A Yes, it was.

6 Q Was it reopened?

7 A No.

8 Q What was the value there?

9 A The approximate value of that in 1988 was  
10 \$6,600,000.00.

11 Q And that was not opened at all in 1989?

12 A No, it was not.

13 Q Going to the Prince William Sound herring gill  
14 net sack roe fishery, was that closed in 1989?

15 A Yes, it was.

16 Q And was that reopened?

17 A No.

18 Q What was the value there?

19 A \$537,000.00.

20 Q Going to the Prince William Sound herring kelp  
21 pound fishery, was that fishery closed in 1989?

22 A Yes, it was.

23 Q And was that reopened?

24 A No.

25 Q What was the value there?

1 A \$4,500,000.00.

2 Q Going to the Prince William Sound herring wild  
3 kelp fishery, was that closed in '89?

4 A Yes.

5 Q And was it reopened?

6 A No.

7 Q What was the value there?

8 A The 1988 value was \$232,000.00.

9 Q All right. The Prince William Sound troll shrimp  
10 fishery. Was that closed in 1989?

11 A Yes, it was.

12 Q Was it reopened

13 A It was reopened in a portion of the area.

14 Q And what was the risk value, then, I guess?

15 A Teh 1988 value was approximately \$150,000.00.

16 Q All right. Going to the Prince William Sound  
17 bottom fish and smelt fishery, that does not include sable  
18 fish, is that correct?

19 A That's correct.

20 Q All right. Was that closed in 1989?

21 A Yes, it was.

22 Q Was it reopened?

23 A Yes.

24 Q And what was the value there?

25 A The 1988 ex-vessel value was \$151,784.00.

1 Q Going to the Prince William Sound salmon fishery,  
2 was that closed in 1989?

3 A Portions of that fishery were closed, and  
4 portions of it were not closed.

5 Q All right. And if some of the portions that were  
6 closed, were they reopened?

7 A Yes.

8 Q And what was the dependency on whether something  
9 was closed or opened in this fishery?

10 A Those areas that we made the determination  
11 because of the amount of oil and the distribution of the  
12 oil that it would not be possible to fish throughout the  
13 course of the season without having an appreciable  
14 likelihood of harvesting contaminated fish were closed, and  
15 remained closed, throughout the season.

16 We had other areas which periodically through the  
17 season, due to wind and weather and movement of oil at the  
18 time, were, at one time perhaps, could be opened, and at  
19 another time during the season, because oil had moved into  
20 the area, could not be opened.

21 Q All right. And what was the value of that  
22 fishery?

23 A In 1988, that fishery was worth about \$76  
24 million.

25 Q Going to the Prince William Sound ground King

1 Crab fishery, was that closed in 1989?

2 A Yes, it was.

3 Q And was it reopened?

4 A No, it was not.

5 Q What was the value there?

6 A \$193,768.00.

7 Q Okay. Going -- moving now into Cook Inlet, were  
8 there any fisheries in Cook Inlet that were closed as a  
9 result of the Exxon Valdez oil spill?

10 A Yes, there were.

11 Q Specifically, the Cook Inlet outer and eastern  
12 districts, herring pursein sack roe fishery. Was that  
13 closed in '89 as a result of the oil spill?

14 A Yes, it was.

15 Q Was it reopened?

16 A No, it was not.

17 Q And what was the value there?

18 A In 1988, the ex-vessel value was \$85,000.00.

19 Q Going to the Cook Inlet outer and eastern  
20 district bottom fish, and sable fish, and smelt fishery,  
21 was that opened -- or closed in '89?

22 A Yes, it was.

23 Q And was it reopened?

24 A The bottom fish and sable fish portion of that  
25 was reopened in 1989.

1 Q The smelt was not?

2 A The smelt was not reopened.

3 Q Okay. What was the value of that one?

4 A Approximately \$189,456.00

5 Q Going to the Cook Inlet outer and eastern  
6 districts pot shrimp fishery, was that closed in '89?

7 A Yes, it was.

8 Q And was it reopened?

9 A Yes, it was.

10 Q What was the amount of that one?

11 A In 1988, that fishery was worth about \$33,000.00.

12 Q And the lower Cook Inlet salmon fishery, was that  
13 closed in 1989?

14 A A portion of the area was closed.

15 Q And a portion remained open?

16 A Yes.

17 Q Was that for the same reasons that you've just  
18 explained for the Prince William Sound salmon fishery?

19 A That's correct.

20 Q What was the value of that?

21 A In 1988, the ex-vessel value was \$8,247,000.00.

22 Q And the upper Cook Inlet salmon fishery, was that  
23 closed?

24 A A portion of that fishery was closed, and a  
25 portion remained open.

1 Q All right. For the same reasons?

2 A Yes.

3 Q What was the value there?

4 A In 1988, the ex-vessel value was \$121,800,000.00.

5 Q Okay. Thank you, sir. I have no other  
6 questions.

7 CROSS EXAMINATION

8 BY MR. MADSON:

9 Q Well, sir, that went by me pretty quick. Let me  
10 see if I can kind of gather up some of this stuff and  
11 understand it a little bit better.

12 When you talked about the 1988 fisheries harvest,  
13 you actually used fish tickets, right?

14 A That's correct.

15 Q As certainly part of it. Not necessarily all,  
16 but when salmon, for instance, are caught, the fishermen  
17 have to make out a record of how many fish?

18 A That's correct.

19 Q We're talking commercial fishermen, not  
20 recreational, right?

21 A That's correct.

22 Q So -- and these tickets have to be turned into  
23 the state?

24 A Correct.

25 Q I would assume that this information is used by

1 your Department to determine what the salmon harvest was,  
2 how good it was, were there some problems, needs to be  
3 closed next year, or things like this?

4 A Correct.

5 Q In other words, to be sure you're not depleting  
6 the resource?

7 A That's correct.

8 Q Now the state of Alaska doesn't own these salmon,  
9 does it? The ones that are swimming around in Prince  
10 William Sound, for instance?

11 A I believe that the state of Alaska does own those  
12 salmon.

13 Q Do they have little tags on them that say, "Owned  
14 by" -- little numbers?

15 A No, they don't.

16 Q No. You just believe that they're owned by the  
17 state, even though they're loose?

18 A That's correct.

19 Q And have to be caught?

20 A That's correct.

21 Q You agree that the state certainly has some  
22 interest in fisheries in the -- within the territorial  
23 interest of Alaska?

24 A That's correct.

25 Q When I talk ownership, maybe we're talking about

1 it in a little difference sense, okay? In other words, you  
2 can't go out there and between the number of salmon say,  
3 well, I know that salmon is one of ours and that one came  
4 from California, or something?

5 A No. That's correct.

6 Q And when you started estimating, or made your  
7 estimates -- well, let me back up just a second.

8 The combined commercial salmon harvest from 1989  
9 in Prince William Sound actually was \$24.4 million fish,  
10 was it not?

11 A That's correct.

12 Q That's greater than the average ten-year harvest?

13 A That's correct.

14 Q Now, when you said that these fisheries can be  
15 closed by emergency order -- I think you described how  
16 that's done -- but it really comes down to some biologist  
17 working for the state deciding that a fishery should be  
18 closed, right?

19 A Correct.

20 Q And if the state of Alaska wanted to increase the  
21 damages as a result of the oil spill, there would be a  
22 tendency to increase the amount of closures, thereby  
23 increasing the potential damage, right?

24 A I don't believe that happened.

25 Q Is there a possibility of that occurring?



1 A I don't believe so.

2 Q That biologist has the power to do it, doesn't  
3 he?

4 A Yes.

5 Q And if the state of Alaska was looking for -- to  
6 somewhere else to recoup their losses, and exceed those  
7 perhaps, even, make the loss as big as possible, it  
8 certainly would be possible, would it not, for a fishery to  
9 be closed, even if it's questionable as to whether or not  
10 it may be contaminated or not?

11 A The emergency orders are governed by a series of  
12 regulations that basically limits our authority to close  
13 fisheries for certain reasons, and -- so we could not  
14 legally close a fishery if we did not follow those  
15 requirements, and that emergency order would be opened to  
16 challenge. There's a process within the regulations that  
17 allows any individual to challenge an emergency order  
18 within so many days of its issuance.

19 Q An individual, but who decides ultimately whether  
20 it was lawful or not? The state of Alaska?

21 A That would ultimately -- it would go to the  
22 Commissioner, who would review the emergency order, would  
23 fully review the actions of the local area biologist, and  
24 if the Commissioner upheld the actions of the area  
25 biologist, then that emergency order could be taken to

1 court.

2 Q You say could be. That sounds like kind of a  
3 long, drawn-out process, though, to challenge an order.

4 A Well, it does happen fairly often.

5 Q You have to go to the person who, in effect,  
6 oversees the Department, the Commissioner, to -- and have  
7 him decide first whether or not it's a valid order?

8 A That's correct.

9 Q The orders that were -- fish emergency orders,  
10 they were based on the risk of contamination by oil, were  
11 they not?

12 A That's correct.

13 Q Pot shrimp, for instance. What depths are pot  
14 shrimp normally harvested?

15 A Most of the harvest of pot shrimp comes at depths  
16 from 40 to 80 fathoms.

17 Q In terms of feet, that's how many feet?

18 A Two hundred and forty to four hundred and eighty  
19 feet.

20 Q Were any tests or studies done to determine  
21 whether or not shrimp, at that depth, were actually  
22 affected by the oil that spilled?

23 A There were -- there have been samples taken, yes.

24 Q What was the result of that, if you know?

25 A I don't know.

1 Q But in any event, all the fisheries you described  
2 that were closed were closed because of the risk of  
3 contamination, right?

4 A That's correct.

5 Q I presume -- correct me if I'm wrong -- but the  
6 decision was made prior to some testing, any testing done,  
7 but just because the risk was there, a biologist decided,  
8 "It isn't worth the risk. Let's go ahead and close it, and  
9 then look and see later, we might reopen it."

10 A Those situations where we closed the fisheries  
11 early on were due to large quantities of oil in known  
12 fishing areas. In some cases, we actually witnesses  
13 fishermen pulling their gear in areas with heavy  
14 concentrations of oil. So it was a well-documented risk.  
15 It was a very real risk.

16 Q What fisheries were reopened? After you  
17 mentioned that, I didn't catch it -- closed and reopened?  
18 Is that the salmon fishery in Prince William Sound?

19 A There were a number of fisheries that we closed  
20 and then later in the season we were able to reopen. The  
21 Prince William Sound sable fish fishery was reopened on  
22 June 12th.

23 Q Is it fair to say, sir, that the biologist  
24 deciding to issue an emergency order closing a fishery,  
25 would -- if he was going to err in his judgment, he'd tend

1 to want to err on the side of the risk of contamination, as  
2 opposed to the opposite, and say, "Well, I think it's going  
3 to be okay," and then determine later it wasn't?

4 A We were extremely careful at the time we issued  
5 those emergency orders, to --

6 Q Well, excuse me. I didn't mean to interrupt, but  
7 you said "we." Did you have any part in issuing these  
8 orders?

9 A Yes. I issued some of these orders --

10 Q Which ones have you issued?

11 A -- myself. I believe that I issued the sable  
12 fish emergency order, the -- and the pot shrimp, and the  
13 bottom fish, some of the bottom fish emergency orders.

14 Q Did you do these all at the same time?

15 A No, they were not.

16 Q Can you tell us when you did them?

17 A The -- the first two were -- for the sable fish,  
18 and pot shrimp, which were done -- oh, I would have to look  
19 at my -- in my records, to see the exact date that we  
20 issued them. The sable fish emergency order was actually  
21 issued on March 28th. It was effective April 1st.

22 The pot shrimp emergency order was issued on  
23 March 28th and was effective April 3rd.

24 Q I guess I'm just curious, but why would there be  
25 a two-day difference between one and the other?

1           A     It -- it's -- because of the difference in the  
2 fishery, the sable fish fishery uses a long line type of  
3 gear, where a boat can carry all of its gear on board at  
4 one time. We gave them, then, basically a two- or  
5 three-day notice to allow people to get out to the fishing  
6 grounds and pull their gear.

7                     The pot shrimp fishery uses a trap, or we call it  
8 a pot, which is large enough that the boats cannot carry  
9 all of their gear on board at one time. It may take them  
10 three or four trips to pick up all their gear. So we have  
11 to give them -- normally, we try to give them a five- to  
12 seven-day notice in order that they have opportunity to get  
13 their gear out of the water before the closure.

14           Q     Okay. Then lastly, did you -- or were you part  
15 of any process to handle any claims made by fishermen to  
16 get repaid for their losses?

17           A     No, I wasn't.

18           Q     Do you know if, in fact, any fishermen were  
19 repaid -- paid for their claims?

20           A     Yes, I do.

21           Q     Do you know that they were or were not?

22           A     I have had fishermen tell me that there were  
23 payments made on their claims.

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

1 MS. HENRY: I have no other questions, Your  
2 Honor.

3 THE COURT: May the witness be excused?

4 MR. MADSON: Yes, Your Honor.

5 THE COURT: You are excused.

6 (The witness was excused.)

7 THE COURT: You may call your next witness.

8 MS. HENRY: We call Mark Thorson.

9 Whereupon,

10 MARK J. THORSON,

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

16 THE WITNESS: Mark Jeffrey Thorson,  
17 T-h-o-r-s-o-n.

18 THE CLERK: And your current mailing address?

19 THE WITNESS: Post Office box 806. Douglas.

20 THE CLERK: Douglas, Alaska?

21 THE WITNESS: Yes.

22 THE CLERK: And your current occupation, sir?

23 THE WITNESS: I'm the Director of Administrative  
24 Services of the Department of Environmental Conservation.

25 MS. HENRY: Thank you, Your Honor.

## 1 DIRECT EXAMINATION

2 BY MS. HENRY:

3 Q Sir, how long have you worked for the Department  
4 of Environmental Conservation?

5 A Since September of 1986.

6 Q And what positions have you had with the agency?

7 A Just the director.

8 Q Okay. What are your responsibilities as  
9 director?10 A I supervise all the centralized administrative  
11 functions within the Department.12 Q Is part of your responsibility supervising  
13 expenditure of money?

14 A Yes, it is.

15 Q All right. What is the 470 fund?

16 A The 470 fund is the Oil and Hazardous Substance  
17 Spill Response Fund.

18 Q And how is that funded?

19 A The legislature annually appropriates money to  
20 the fund.21 Q Were there any special appropriations over the  
22 last couple of years?23 A Yes, there were. Last session, there was a \$32  
24 million appropriation and there was a \$10 million  
25 appropriation, and a \$10 million in program receipts.

1 Q All right. Now, were you requested to provide  
2 the state with some information regarding the amount of  
3 money spent by the Department on oil spill clean up as a  
4 result of the oil spill on the Exxon Valdez?

5 A Yes, I was.

6 Q And the money that was spent, would that have  
7 come out of the 470 fund?

8 A Yes, it was.

9 Q All right. And the money for the information  
10 that you provided, is this information that has been --  
11 that the DEC has been reimbursed from Exxon for?

12 A Some of it has been reimbursed to date.

13 Q Okay. Going specifically to the amount that has  
14 not been reimbursed, as of January 15, 1990, how much money  
15 has DEC spent on oil spill clean up?

16 MR. MADSON: Your Honor, before he answers, may  
17 we approach the bench, please, just for one second?

18 (The following was had at the bench:)

19 MR. MADSON: Your Honor, I'd like to object to  
20 that on the grounds of relevancy, because I don't believe  
21 it's relevant what the risk of damage is, which is  
22 (inaudible) cost of the clean up (inaudible).

23 THE COURT: The cost of cure of the damage, and  
24 that's what this is. Cost of cure (inaudible).

25 MR. MADSON: (Inaudible).



1 THE COURT: Okay. Your objection is overruled.  
2 Do don't need to approach the bench to make a relevancy  
3 objection like that.

4 MR. MADSON: All right.

5 (The following was had in open court:)

6 THE COURT: The objection was --

7 MR. MADSON: (Inaudible).

8 THE COURT: Thank you, but it's not necessary in  
9 the future.

10 The objection was relevance, and that's  
11 overruled.

12 BY MS. HENRY: (Resuming)

13 Q Going specifically, then, sir, to the amount of  
14 money DEC has spent as of January 19, 19 -- or January 15,  
15 1990 on the oil spill cleanup, what is the amount -- that  
16 has not been reimbursed by Exxon?

17 A As of that date, the amount not reimbursed, is a  
18 little over \$23 million.

19 Q Now, there have been amounts that have been  
20 reimbursed, is that correct?

21 A That's correct.

22 Q Before we get to that, are you anticipating  
23 billing Exxon for this amount that has not been reimbursed?

24 A We have billed them for everything. Now, let me  
25 -- could you repeat that?

1 Q All right. The figure that you just gave us, the  
2 \$24 million figure?

3 A Uh-huh.

4 Q Do you anticipate billing Exxon for any of that?

5 A Yes.

6 Q For all of it, or just part of it?

7 A Yes.

8 Q All right. Now, going to the amount that Exxon  
9 has in fact reimbursed, how much have they reimbursed?

10 A To date, we've got approximately \$7.8 million.

11 Q From Exxon?

12 A Yes.

13 Q All right. Are there certain expenditures that  
14 DEC made that Exxon will not reimburse?

15 A Yes.

16 Q And what sort of expenditures are those?

17 A They have been those expenses that were not  
18 directly related to the clean up.

19 Q All right.

20 A In other words, assessment, monitoring. They  
21 have chose not to pay those costs.

22 Q When you say assessment or monitoring, what do  
23 you mean?

24 A Monitoring of oil in the water column, assessment  
25 of oil on the beach, that type of thing.

1 Q Were those expenditures considered important by  
2 DEC?

3 A Yes.

4 Q Why?

5 A Water quality determined the state of the water,  
6 subsistence food resource in the area.

7 Q Okay. Thank you, sir. I have no other  
8 questions.

9 CROSS EXAMINATION

10 BY MR. MADSON:

11 Q If I understand it correctly, you said, sir, that  
12 Exxon has not reimbursed \$23 million so far, that you claim  
13 should be paid by them?

14 A To DEC.

15 Q To DEC.

16 A Yes.

17 Q DEC is a department of the state of Alaska, is it  
18 not?

19 A Yes, sir.

20 Q Yet, if I understand you correctly, you spent  
21 this money, which was state-funded money, and you did it  
22 for certain things, as far as the cleanup is concerned.  
23 For instance, where did it go? Can you just tell us where  
24 -- what was it spent for --

25 A Sure.

1 Q -- besides assessment, monitoring and whatever?

2 A Sure.

3 Our personnel costs have been \$8 million. Our  
4 travel costs \$1.6 million. Professional services  
5 contracts, a little over \$3 million. Transportation,  
6 \$69,000.00. Motor pool vehicles from DOT, \$41,000.00. The  
7 utilities, \$72,000.00. Space rental, \$486,000.00.  
8 Janitorial for \$81,000.00.

9 Aircraft and vessel charters for \$7.8 million.  
10 Printing for \$44,000.00. Rental equipment for  
11 \$167,000.00. Operating supplies for \$277,000.00. Data  
12 processing supplies for \$49,000.00. Field supplies for  
13 \$134,000.00.

14 Scientific equipment for \$251,000.00. Safety and  
15 fuel clothing for \$462,000.00. Equipment purchases for  
16 \$892,000.00. Postage and telephone, \$195,000.00. And  
17 other, \$81,000.00.

18 Q What about the cost of prosecuting this case. Is  
19 that included in your figures?

20 A No, it's not.

21 Q Are you sure?

22 A Yes.

23 Q Did you check on that?

24 A That's the Department of Law.

25 Q Do you know if the Department of Law is going to

1 claim that as part of the overall --

2 MS. HENRY: Objection. Speculation and  
3 irrelevant.

4 MR. MADSON: I'll withdraw the question.

5 BY MR. MADSON: (Resuming)

6 Q The money you just described, though, you expect  
7 -- when I say expect, you expect to make a claim against  
8 Exxon for all these expenditures, do you not? If you  
9 haven't already?

10 A DEC make a claim?

11 Q Yeah. When I say "you," I mean DEC or the state  
12 of Alaska, to be more general.

13 A Uh --

14 Q Or do you know?

15 A I -- no. I don't. As far as I know, we're just  
16 going to keep putting the bills on their table.

17 Q You're going to keep laying the bills on them --

18 A Right.

19 Q -- and hope they pay them?

20 A Right.

21 Q And they've paid some of them already?

22 A Yep.

23 Q Some are in dispute?

24 A That's correct.

25 Q That dispute centers on how clean is clean, for

1 instance? How -- when is a beach clean?

2 A No, I don't think any of those have been disputed  
3 yet. It's assessment and monitoring costs that are being  
4 disputed.

5 Q I'm afraid I don't understand that. You mean,  
6 for the state of Alaska's expenses to monitor whether the  
7 beach is clean, or to their standards?

8 A Well, that's taking monitors -- that's defining  
9 monitoring in a different way, yes. I mean, obviously,  
10 when we were cleaning the beach, we had people on the beach  
11 monitoring the Exxon cleanup effort. They paid those  
12 costs.

13 Q Can you explain that -- what is in dispute? I  
14 really don't understand.

15 A For example, the fish inspection program that we  
16 funded last year. They haven't reimbursed any of those  
17 costs.

18 Q What's the fish inspection program?

19 A During the fishing season in Prince William  
20 Sound, there were fish inspection stations established to  
21 inspect fish that were being delivered here that have been  
22 in the water. We monitored those to see if there was any  
23 contamination.

24 Q Regardless of what is considered assessment or  
25 monitoring, as far as you know, DEC will expect, or does

1 expect, to at least bill Exxon and hope that they get  
2 reimbursed?

3 A Yes.

4 Q And if they are wholly reimbursed, then DEC is,  
5 in fact, out no money -- if they're reimbursed for all  
6 their expenses.

7 A For 100 percent?

8 Q Yeah, 100 percent.

9 A Yes.

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

12 REDIRECT EXAMINATION

13 BY MS. HENRY:

14 Q Would any of the money that you talked about been  
15 expended if there had been not been an oil spill?

16 A No.

17 Q And your figures include the -- Exxon's cost of  
18 their own clean up?

19 A No.

20 MS. HENRY: Thank you, sir.

21 MR. MADSON: No other questions.

22 THE COURT: May the witness be excused.

23 MR. MADSON: Yes, sir.

24 THE COURT: You may go.

25 (The witness was excused.)

1 MR. COLE: Your Honor, at this time, the State  
2 will call Paul Myers.  
3 Whereupon,

4 PAUL MYERS

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: Paul Baxter Myers. M-y-e-r-s.

11 THE CLERK: And your current mailing address?

12 THE WITNESS: 817 Contada -- C-o-n-t-a-d-a Circle  
13 -- Danville, California 94526.

14 (TAPE CHANGED TO C-3632)

15 THE CLERK: And your current occupation, sir?

16 THE WITNESS: I work for Exxon Shipping Company.

17 DIRECT EXAMINATION

18 BY MR. COLE:

19 Q Mr. Myers, what do you do for Exxon Shipping  
20 Company?

21 A At the moment, I'm the project manager for the  
22 repair of the Exxon Valdez.

23 Q Would you tell the jury what your background is  
24 in the maritime industry? How long have you been involved  
25 with the maritime industry?



1           A     I'm a graduate of the United States Merchant  
2 Marine Academy. I went to sea for three years, and from  
3 1970 to the present, I've worked for various affiliates of  
4 Exxon.

5           Q     What have you done for Exxon?

6           A     The positions I've held have been technical  
7 assistance, which is a training position, entry-level  
8 position; repair superintendent, dealing with repairs, as  
9 well as operating matters with vessels; operations  
10 superintendent; marine superintendent, which are more -- go  
11 more toward the administrative aspects of marine  
12 operations; as a repair planner -- that's like an  
13 analytical position dealing with repairs and the like.

14                     I was superintendent engineer and a senior  
15 superintendent engineer on two new building programs, one  
16 in Louisiana and one in San Diego, when these vessels were  
17 built. And I was a ship group coordinator in the -- or,  
18 excuse me, a port engineer in the West Coast fleet office,  
19 having to -- dealing with the vessels on the engineering  
20 side that operated on the West Coast, and then a ship group  
21 coordinator in that same office, up until the time of this  
22 incident, and then I was the salvage coordinator, and now  
23 the project manager for the repair of the Exxon Valdez.

24           Q     Would you tell the jury what kind of an  
25 educational background, as far as degrees?

1           A     I have a B.S. in marine engineering and a  
2 master's degree in business administration from Fairleigh  
3 Dickinson University.

4           Q     What was -- would you explain again your position  
5 just prior to the grounding of the Exxon Valdez?

6           A     I was a ship group coordinator, and had  
7 responsibilities -- I guess you would call them primarily  
8 stewardship -- dealing with the vessels, the officers on  
9 the vessels, and the dollars and cents involved with  
10 operating the vessels.

11          Q     What vessels did you have under your -- that you  
12 were responsible for?

13          A     Exxon Valdez, Exxon Long Beach, Exxon Venetia,  
14 Exxon North Slope.

15          Q     After the grounding, what have you been involved  
16 in?

17          A     Once the vessel was -- or actually was before the  
18 vessel was lifted, I was working closely with our contract  
19 and salvage master, and from that time until the vessel --  
20 until the 5th of May, I was on board the vessel  
21 coordinating all the activities.

22          Q     Do you remember when the vessel got lifted off  
23 the reef?

24          A     I think it was the 5th of April.

25          Q     And when was it taken to San Diego?

1 A It left here the 23rd of June, I believe.

2 Q And arrived at San Diego --

3 A Off San Diego, around the 11th of July, 10th or  
4 11th of July.

5 Q Would you describe for the jury how -- it's --  
6 what position is -- how is it sitting right now?

7 A It's in the dry dock.

8 Q How do you get a damaged vessel like the Exxon  
9 Valdez into a dry dock? Maybe you could start with  
10 explaining what a dry dock is?

11 MR. CHALOS: Your Honor, I object. Relevancy.

12 MR. COLE: The relevance is there are going to be  
13 some photographs showing some damage to the Exxon Valdez at  
14 the dry dock, Your Honor, and I think the jury should  
15 understand how those photographs were taken.

16 MR. CHALOS: I withdraw my objection.

17 BY MR. COLE: (Resuming)

18 Q A dry dock is -- you might call it a big hole in  
19 the ground, and there's a door. The door opens, and the  
20 vessel comes in. The door is closed and water is pumped  
21 out. There are blocks underneath the vessel, so as water  
22 is pumped out, the vessel -- the water level comes down,  
23 and eventually the vessel rests on the blocks.

24 Q Is it important to know where to place those  
25 particular blocks?

1 A Yes, sir.

2 Q Why is that?

3 A Because a ship weighs a certain amount, and if  
4 you put one block here and say another block over there,  
5 the distribution of weight might cause damage to the ship,  
6 if it's not supported properly.

7 Q And what are those blocks made of?

8 A Concrete with wood, as well as the sand.

9 Q Can you give the jury about -- approximately how  
10 high those blocks were under the Exxon Valdez -- or are?

11 A On this particular ship, they're about 43 inches  
12 high.

13 Q And does it make a difference whether or not a  
14 ship is -- has been damaged in determining where to put  
15 those blocks?

16 A I would think it would.

17 Q Were you involved in that at all, in the placing  
18 of where the blocks were?

19 A No. The naval architects and engineers from the  
20 ship yard are the ones that placed the blocks based upon  
21 calculations.

22 Q Now, going back to March 24, 1989, did you  
23 receive a call that the Exxon Valdez had been grounded at  
24 that point?

25 A Yes, sir.

1 Q And where were at that time?

2 A I was home in bed.

3 Q And where would that have been?

4 A At my address.

5 Q Which is in --

6 A In Danville, California.

7 Q What time did you receive a phonecall?

8 A It was roughly 2:30 local time.

9 Q And do you know the difference between California  
10 time and Alaska --

11 A It would be roughly 1:30 the time, local time  
12 here.

13 Q And after receiving that phone call -- who did  
14 you receive it from?

15 A Mr. Harvey Borden.

16 Q Who is that?

17 A The west -- at the time, he was the west coast  
18 fleet manager.

19 Q And After receiving that phonecall from him, what  
20 did you do?

21 A I called the ship, Exxon Valdez.

22 Q How can you do that? How could you do that?

23 A Marisat system. There's a marisat system on the  
24 vessel, satellite communications.

25 Q Where did you call from?

1           A     My home.

2           Q     And what was the purpose of you calling the Exxon  
3 Valdez?

4           A     To find out what had happened, that, if indeed  
5 the ship had gone aground, or was leaking oil, or --

6           Q     What time did you call the Exxon Valdez that  
7 morning?

8           A     I believe it was around 2:40 in the morning.

9           Q     Do you know whether marisat telephone  
10 conversations, there's a log that states at what time those  
11 phonecalls occurred?

12          A     Aboard the ship?

13          Q     Yes.

14          A     I believe on most ships there is a log.

15          Q     Okay. And do you remember how long you talked  
16 with -- well, how long you were on the phone that morning?

17          A     Actually, I was quite surprised when I got my  
18 telephone bill that it was 53 minutes. I thought the total  
19 length was much less, but --

20               MR. MADSON: Your Honor, I think the script isn't  
21 going the right way here. Mr. Cole asked one question, and  
22 the witness is replying to a different question.

23               THE COURT: I think he said 53 minutes was how  
24 long he was on the phone.

25               BY MR. COLE: (Resuming)

1 Q Is that how long you were on the phone?

2 THE COURT: Was that the question, how long you  
3 were on the phone?

4 MR. COLE: Yes.

5 THE COURT: I think you were just surprised it  
6 was that long, 53 minutes. That answered the question, I  
7 think.

8 BY MR. COLE: (Resuming)

9 Q Now, who did you talk with when you called up the  
10 Exxon Valdez that morning?

11 A The radio operator and Captain Hazelwood.

12 Q Who did you talk to first?

13 A The radio operator.

14 Q What did you ask him to do?

15 A I asked him, could I speak to the captain.

16 Q Did you know Captain Hazelwood prior to this?

17 A Yes.

18 Q How well did you know him?

19 A I think I'd seen him maybe ten or twelve times.

20 We had a professional relationship. He was the captain of

21 -- one of the captains of one of the vessels I dealt with.

22 Q When he came aboard -- when he began to talk, did  
23 you recognize his voice?

24 A I believe so.

25 Q What did he tell you about the condition of the

1 ship at that time?

2 A He indicated that there was water in the  
3 forepeak, water in two starboard, some water in four  
4 starboard; the port side was intact; there was oil in the  
5 water because he could smell it; there was no danger now.  
6 He did have some concerns about stability of the vessel.

7 Q What about the center tanks?

8 A There was no specific mention that I can recall  
9 of the center tanks.

10 Q How about the cargo, the starboard cargo tanks?

11 A There was no mention, to my recollection,  
12 specifically of those tanks.

13 Q Did he indicate to you --

14 A One other thing he mentioned was that he could  
15 not tell the extent of the damage without a thorough  
16 survey.

17 Q What's a survey?

18 A I imagine you'd -- the simplest terms, looking  
19 specifically at what your concerns are. Say, if there was  
20 damage on the bottom, would be by diver or other means,  
21 looking at it.

22 Q Okay, go ahead. I couldn't hear over the  
23 rustling.

24 A Oh, I'm sorry.

25 Q Could you say that again?



1           A     Basically, looking at what you were trying to  
2 survey. Maybe it means taking measurements, maybe it must  
3 means looking, maybe it means taking pictures.

4           Q     What did he tell you had happened? Why was it  
5 sitting on the reef?

6           A     He indicated that the third mate zigged for ice  
7 and the ship went aground.

8           Q     Did he indicate whether or not he was on the  
9 bridge at the time?

10          A     Yes, he did.

11          Q     What did he say?

12          A     He said that he wasn't on the bridge.

13          Q     Did he indicate to you whether or not he was  
14 responsible?

15               MR. MADSON: Objection, Your Honor. No  
16 foundation. And leading.

17               MR. COLE: I'll rephrase it.

18               BY MR. COLE: (Resuming)

19          Q     What else did he indicate to you?

20          A     He indicated that this had happened and that it  
21 was his fault. He was to blame. He had just run down to  
22 do some paperwork when this had happened, and that he  
23 should have been on the bridge.

24          Q     Did he indicate -- did he talk to you at all  
25 about the Coast Guard in this conversation?

1 A Yes.

2 Q What did he tell you?

3 A He indicated that the Coast Guard would -- was on  
4 their way. They had not yet arrived.

5 (Pause)

6 Q Did he indicate to you what actions he had taken  
7 at all up to that point since the grounding?

8 A No, sir.

9 Q What did he say his intentions were as far as  
10 getting the ship off the reef?

11 A I had asked him specifically what the tide  
12 situation was, and he indicated that it was an hour to high  
13 tide, and there was a thirteen-foot swing in the tide.  
14 There was no specific discussion about getting the ship off  
15 other than, after our conversation, I spoke to Harvey  
16 Borgen, my boss, and relayed everything while Captain  
17 Hazelwood stood by.

18 Mr. Borgen indicated that in the event that tugs  
19 are necessary, that -- do not worry about salvage, because  
20 there is a fixed rate for the tugs. And after I had  
21 indicated that to Captain Hazelwood he indicated -- I think  
22 it was the last thing that we said -- that we'll be able to  
23 get her off.

24 Q This salvage agreement, is that -- do you know --  
25 are you familiar with that?

1 A No, I am not, and I imagine Mr. Borgen knew I was  
2 not, because he had not previously told me. Had told me.

3 Q Mr. Myers, you have an attorney, is that correct?

4 A Yes, sir.

5 Q And you hired that at Exxon's expense?

6 A Yes, sir.

7 Q And before agreeing to testify, what did you,  
8 through your attorney, ask for?

9 A Immunity.

10 Q I am showing you a copy of what has been  
11 previously identified as Plaintiff's Exhibit Number 104.  
12 Do you recognize that document?

13 (Pause)

14 A Yes, sir.

15 Q What is that?

16 A It's a letter to Mr. Greenberg from the District  
17 Attorney granting me immunity.

18 Q Is that an accurate copy of the agreement?

19 A Yes. To the best of my knowledge.

20 MR. COLE: I would move for the admission of what  
21 has previously been identified as Plaintiff's Exhibit  
22 Number 104.

23 MR. MADSON: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (State's Exhibit 104 was

received in evidence.)

1  
2 BY MR. COLE: (Resuming)

3 Q Could you just -- were you shown this by your  
4 attorney, Mr. Myers?

5 A Yes sir.

6 Q And did he discuss with you the consequences that  
7 were involved in immunity, receiving immunity?

8 A I believe so.

9 Q And you understand that you do not get immunity  
10 for perjured testimony?

11 A That's correct.

12 Q And this immunity was done with the advice of  
13 your attorney?

14 A Yes, sir.

15 MR. COLE: I have nothing further.

16 CROSS EXAMINATION

17 BY MR. CHALOS:

18 Q Mr. Myers, you say that you're a graduate of  
19 King's Point?

20 A Yes, sir.

21 Q When did you graduate?

22 A 1967.

23 Q And you've sailed for three years?

24 A Yes, sir.

25 Q What licenses do you hold?

1 A At the moment I don't hold any. I let it expire.  
2 Q What license did you let expire?  
3 A Second assistant engineer.  
4 Q Second assistant engineer?  
5 A Yes, sir.  
6 Q Did you sail as a second assistant?  
7 A Yes, sir.  
8 Q For how many years?  
9 A About a year-and-a-half.  
10 Q And the previous year-and-a-half you sailed as  
11 a --  
12 A Third --  
13 Q -- third assistant?  
14 A Yes, sir.  
15 Q You don't hold any mates licenses, I take it?  
16 A No, sir.  
17 Q And you never sailed as a master?  
18 A No, sir.  
19 Q As a chief mate?  
20 A No, sir.  
21 Q As a second mate?  
22 A No, sir.  
23 Q Or a third mate?  
24 A No, sir.  
25 Q So you really don't know about shipboard

1 operations from the deck standpoint, do you? Other than  
2 what you might have observed when you were sailing as an  
3 engineer?

4 A I've been on a number of foreign flag ships as  
5 well as Exxon ships, and I've been involved with the --  
6 with repairs, as well as -- like I said, riding ships.

7 Q Yes, but you don't know anything about  
8 navigation, for instance?

9 A I wouldn't say I don't know anything, but I am  
10 certainly not an expert, and I would not attempt to take --  
11 do -- to serve in that capacity as a mate.

12 Q I take it that you've never sailed as a licensed  
13 officer on a ship the size of the Exxon Valdez?

14 A That's correct.

15 Q What's the biggest ship you ever sailed on as a  
16 licensed officer?

17 A Gosh, I don't know. Maybe 20,000 tons.

18 Q 20,000.

19 A Maybe.

20 Q The Exxon Valdez is about 200,000 tons bigger,  
21 isn't it?

22 A That's correct.

23 Q As a ship group coordinator, who was your  
24 immediate boss?

25 A Harvey Borgen.

1 Q And who is his immediate boss?

2 A Frank Ross.

3 Q He's the President of Exxon Shipping?

4 A That's correct.

5 Q And he's the man that fired Captain Hazelwood?

6 MR. COLE: Objection, Your Honor.

7 THE COURT: (Inaudible).

8 MR. COLE: Relevancy.

9 THE COURT: Approach the bench.

10 (The following was had at the bench.)

11 MR. : (Inaudible).

12 THE COURT: But you opened this door, and it may  
13 be opened wider (inaudible).

14 (The following was had in open court.)

15 MR. CHALOS: Your Honor, I'm going to withdraw  
16 the last question.

17 THE COURT: Ladies and gentlemen, disregard that  
18 question. Questions of counsel are not evidence. They're  
19 only evidence insofar as they supply meaning to the answer.  
20 There was no answer here, and any inference that may have  
21 arisen as a result of that question is improper and you  
22 don't have to consider that.

23 BY MR. CHALOS: (Resuming)

24 Q Mr. Myers, you said that you made the call from  
25 your home to the ship at about 1 -- 2:40 local time,

1 California time?

2 A Yes, sir.

3 Q And that would be about 1:40 ship's time?

4 A Approximately, yes.

5 Q Now, you said you were surprised, when you looked  
6 at the log, that the call took 53 minutes. Is that  
7 correct?

8 A That's correct.

9 Q It's true, is it not, that you didn't speak to  
10 Captain Hazelwood for 53 minutes?

11 A That's correct.

12 Q As a matter of fact, you were on the telephone  
13 for a long period of time where there was just silence, and  
14 no one was on the other end, is that correct?

15 A That's correct.

16 Q The radio operator testified here that the  
17 conversation with Captain Hazelwood took about two to three  
18 minutes. Does that comport with your recollection of your  
19 discussion with --

20 A I think it would -

21 Q -- Captain Hazelwood?

22 A I think it would have to have been a bit longer  
23 than that.

24 Q A couple more minutes than that?

25 A I -- I'd say it would have had to have been --



1 the conversation with Captain Hazelwood, I would say, the  
2 absolute minimum would have been about ten minutes.

3 Q Now, were you talking continuously, or was this  
4 call interrupted from time to time with other calls you  
5 were making?

6 A The call to the ship -- I called the ship. I  
7 spoke to Captain Hazelwood. He spoke; I spoke. I asked  
8 Captain Hazelwood to hang on. I relayed all the  
9 information that I had received from Captain Hazelwood to  
10 Mr. Borgen, and then Mr. Borgen mentioned the business  
11 about the salvage and the tugs, and I relayed that to  
12 Captain Hazelwood, and then Captain Hazelwood went back to  
13 the bridge and I kept the line open for awhile in case I  
14 thought of anything else, or anything else had come up.  
15 And at one point I said, if I want, I can call back. This  
16 is ten dollars a minute, and it doesn't make sense.

17 Q Who did you tell that to?

18 A I was talking to myself. And then I finally --  
19 (Laughter)

20 A -- mentioned that, mentioned it to the radio  
21 officer who was going to hang up.

22 Q All right. Do you have two telephones at home?

23 A Yes, sir.

24 Q Oh, so you were talking on one phone and talking  
25 on the other, both ears?

1 A Right.

2 Q Now you mentioned that Captain Hazelwood gave you  
3 some information about the damage that he perceived as  
4 having been sustained?

5 A That's correct.

6 Q And you said that he told you that the vessel was  
7 in no danger at that particular time?

8 A That's correct.

9 Q And you said he indicated something about  
10 stability?

11 A He said he had --

12 Q He said that he was stable at that time?

13 A No. He said there was no danger at the present.  
14 However, he was concerned about the ship's stability.

15 Q But he didn't elaborate any further?

16 A No, sir.

17 Q Did you understand him to say that the vessel was  
18 on the reef hard aground at that point?

19 A The words he used were "hung up on Bligh Reef."  
20 My perception was that the ship was hard aground.

21 Q Now, you said that the captain told you that he  
22 felt responsible. Did you take that to mean that he felt  
23 responsible as the captain of the vessel?

24 A Yes, sir.

25 Q Did you take that to mean that he felt

responsibly criminally -- or responsible criminally?

MR. COLE: Objection. Speculation.

THE COURT: I don't see how this answer can assist the finder of fact. I'm going to sustain the objection.

BY MR. CHALOS: (Resuming)

Q Now, when Captain Hazelwood told you that he felt responsible and he was going to take the blame, did you understand that, as the senior officer, he was taking the blame for something one of his crew members did, the third mate?

MR. COLE: Objection. Speculation.

MR. CHALOS: Your Honor, I'm asking for his state of mind. He said that certain things were said, now I would like to know how he interpreted it.

THE COURT: The objection is sustained. On speculation, on relevance, also. You can inquire as to what Captain Hazelwood told him. But as far as what his interpretation of that, I don't think that's going to be admissible.

BY MR. CHALOS: (Resuming)

Q Now, I'd like to turn to the conversation that you had with Mr. Borgen about the tug boats and the open salvage. You spoke to him and then you came back to Captain Hazelwood. And that's when you told Captain

1 Hazelwood that Mr. Borgen says we have an open salvage  
2 agreement?

3 A Yes.

4 Q And if you need to get tugs, you can go ahead and  
5 get them?

6 A And not worry about salvage.

7 Q Uh-huh. And then I think you said that's when  
8 Captain Hazelwood said that we can get the tugs off?

9 A Yes, I --

10 Q We can get the ship off?

11 A There was no question in my mind that this was  
12 not a statement of, "We're going to get the ship off," but  
13 it was, you know, this has happened. It was a positive  
14 type statement, like keep your chin up type thing, and  
15 certainly not one of intent that, come hell or high water,  
16 the ship was going to be taken off.

17 Q Did you understand that getting off meant getting  
18 off the tugs, since you had just spoken about hiring tugs?

19 MR. COLE: Objection. Speculation, relevancy.

20 MR. CHALOS: I'll withdraw the question, Your  
21 Honor, and rephrase it.

22 BY MR. CHALOS: (Resuming)

23 Q Was there any mention about getting off with the  
24 use of tugs?

25 A The only thing I can say, there might have been

1 an inference, because the captain said tugs were on their  
2 way, and so were the Coast Guard.

3 Q Just one last thing. Is there any particular  
4 reason why you asked for immunity in this case?

5 A Yes. Advice of counsel. My counsel is a --  
6 previously was a prosecutor, and he suggested, as being a  
7 prosecutor, not to come in without protection.

8 Q You don't believe that you've done anything wrong  
9 in this particular case, do you?

10 A No, sir.

11 MR. CHALOS: May I just have one second, Your  
12 Honor?

13 (Pause)

14 Your Honor, we have no further questions at this  
15 time.

16 THE COURT: Mr. Cole?

17 MR. COLE: Your Honor, I have nothing further.

18 THE COURT: May the witness be excused from  
19 further participation?

20 MR. CHALOS: Yes.

21 MR. COLE: Yes.

22 (The witness was excused.)

23 MR. COLE: Can we approach the bench?

24 (The following was had at the bench:)

25 MR. COLE: I just wanted to say that the next

1 witness is going to be a long one.

2 THE COURT: (Inaudible).

3 MR. COLE: Yeah.

4 THE COURT: Well, why don't we go ahead and break  
5 for the day (inaudible).

6 MR. COLE: Okay.

7 (The following was had in open court:)

8 THE COURT: We're going to recess for the day.  
9 We have a matter to take up in your absence (inaudible).  
10 We'll see you back at 8:15 tomorrow morning in the jury  
11 room, with the instruction not to discuss the matter among  
12 yourselves or with any other person, nor form or express  
13 any opinions pertaining to the case, and please remember my  
14 media admonition. You're doing real well on that, and I  
15 appreciate that. See you back tomorrow at 8:30.

16 (Whereupon, the jury leaves the courtroom.)

17 MR. MADSON: Your Honor, a little update, if I  
18 can call it that, on the notes of expert that the State  
19 filed the other day with regard to the psychologist that  
20 purports to be able to tell whether somebody's intoxicated  
21 by reviewing tapes.

22 I believe the State is still intent on doing  
23 that. I haven't received much more information other than,  
24 I believe a research paper that was done by this, another  
25 individual and a memorandum from Mr. Adams that I got

1 yesterday. So I can only assume the State is still intent  
2 on proceeding with trying to call this particular person or  
3 persons.

4 I might note that across the hall, in Judge  
5 Katz's trial, the Defendant is trying to use a voice print  
6 expert just to show identification, or lack of it, and the  
7 State is taking the position that this is not admissible,  
8 that it's some kind of voodoo, and here across the hall,  
9 the State's taken a position they not only can show  
10 identification, but the subtle differences that exists in a  
11 person's voice to show that he's intoxicated.

12 THE COURT: I don't consider what Judge Katz does  
13 in the case across the hall to have any bearing on this  
14 case, Mr. Madson.

15 MR. MADSON: Your Honor, I'm talking about the  
16 State's --

17 THE COURT: It's not precedent. Let's just deal  
18 with the issue here.

19 MR. MADSON: I just find the position to be kind  
20 of contrary. But anyway --

21 THE COURT: It often happens that way, but we'll  
22 deal with this case today.

23 MR. MADSON: Anyway, with regards to this case,  
24 our -- we've done some checking around and we know of no  
25 court, nowhere in the United States, where this has ever

1 been admitted.

2           So if it's going to happen, we have to have a Fry  
3 hearing first, to determine whether or not it meets the  
4 scientific reliability test. That's going to involve  
5 experts from around the country to even get over that  
6 threshold question.

7           And then I might mention, Your Honor, with regard  
8 to the -- the other problem with something like this is, if  
9 it's to show intoxication, which is one of the charges  
10 here, and intoxication to show recklessness, the statute  
11 involving operating a motor vehicle, or a vessel -- the  
12 jury instruction that's given under the definition of being  
13 impaired, it is noticeably impaired. That's the term the  
14 jury has to decide.

15           Now, that means that the perception by an average  
16 person looking at someone can tell whether or not he's  
17 under the influence from the way he speaks, the way he  
18 walks, the actions, his judgment -- all these things have  
19 to be noticeable.

20           It seems to me rather strange if that  
21 noticeability, or a notice is required by some means of  
22 experts looking at a particular chart deciding whether or  
23 not this little blip indicates he's intoxicated or not.  
24 That isn't noticeable.

25           But again, I guess we just want to alert the



1 Court to what the problems are here. We would have a real  
2 difficulty with a Fry hearing in getting witnesses here in  
3 a short period of time to get over that question, and then,  
4 of course, if the Court decided that it was scientifically  
5 reliable and could be used in court like a polygraph test,  
6 or a stress analysis test, or something like that, then we  
7 have to have the tapes that these individuals used to send  
8 to an expert to have them re-evaluate it.

9 On this topic, there's another potential problem,  
10 and that is the original tape, one of them that was used,  
11 no longer exists. The inbound tape for the Exxon Valdez  
12 taken by the Coast Guard was erased.

13 It's my understanding from looking at what was  
14 furnished to me, was that these experts were given a  
15 cassette tape, which was a copy of a little mini-cassette  
16 Lanier tape which -- that recorder was held up to a speaker  
17 when the original tape was played.

18 And so we've got a copy of a copy of probably  
19 what is a very bad copy on a little tiny recorder. We have  
20 no way of knowing how that compared to the original.

21 THE COURT: How do you know that the original has  
22 been erased? Is that something that's undisputed?

23 MR. MADSON: The Coast Guard told us that, Your  
24 Honor.

25 THE COURT: The original has been erased?

1 MR. MADSON: The original inbound transmission.  
2 Now, that was on the 20 --

3 THE COURT: Oh, the inbound.

4 MR. MADSON: Inbound. Yes.

5 See, these experts use that --

6 THE COURT: But the outbound transmission is  
7 still in existence?

8 MR. MADSON: That's still there.

9 THE COURT: Okay.

10 MR. MADSON: So I guess, I'm only telling the  
11 Court --

12 THE COURT: Have you asked Mr. Cole, or Mr. Cole,  
13 have you advised Mr. Madson if you still intend on this  
14 course of action?

15 MR. COLE: Well, Judge, I understand the position  
16 that both Mr. Madson is in. I don't intend on using this  
17 unless I can confirm, in my own mind, the validity of these  
18 tests, and I'm doing that right now, and that depends on  
19 knowing exactly what tapes he used.

20 What this gentleman does is he takes tapes, and  
21 he runs them through a computer, and he measures the length  
22 of time it takes to say certain words, and he's doing  
23 nothing more than confirming what Troopers testify all the  
24 time, that people with -- that are impaired have trouble  
25 pronouncing words. They slur their voices. "S"s become

1 "SH"s; "L"s become "R"s and "R"s become "L"s.

2           It's a scientific method, and they do it by three  
3 ways. They look at errors in the speech that you can just  
4 notice, just from errors like misnaming things, and things  
5 like that. He looks at the pronunciation itself, and then  
6 the third area that they look at is the length of time that  
7 it takes to say certain words, and the pitches.

8           His research has showed that people that are  
9 impaired take longer to say certain words, and there's  
10 words that are consistently used by Captain Hazelwood  
11 through the transmissions, both prior to the grounding --  
12 or prior to the coming into Valdez, prior to -- right at  
13 the time the pilot got off, right after the grounding, and  
14 the time after that.

15           THE COURT: What do you have to support this, to  
16 pass a Fry test?

17           MR. COLE: Well, I have the following. The  
18 instrument that he used is -- and the computer that they  
19 use has been used in voice automation for the last twenty  
20 to thirty years. The --

21           THE COURT: What do you mean by voice  
22 automation? What does that mean?

23           MR. COLE: Well, this science was designed when  
24 they were studying voice replication through the use of  
25 instruments. In other words, talking cars. You know, you

1 hear people -- the cars talk, and make voices, this  
2 scientific instrumentation was evolved through that type of  
3 stuff.

4           This particular doctor has done a controlled  
5 study where he took people, he brought them up over a .10.  
6 He took reading samples both before they were intoxicated  
7 and during the course of their intoxication, and he did  
8 studies that show that people -- they confirm just what we  
9 think. People have trouble speaking when they're impaired,  
10 and the reason is because their fine motor skills, the  
11 muscles that you use to speak -- it's actually a very  
12 complicated way that you pronounce, say for instance, the  
13 letter "S". It's a very difficult thing to do, and it  
14 takes very fine motor skills to do that.

15           His study confirms that people have difficulty  
16 doing that, and he did it through the computer, taking  
17 voice, pitch analysis, length of time in which to say  
18 certain words. I think that we can pass a Fry test, if  
19 presented.

20           THE COURT: Well, my question was what was the  
21 basis. Do you have other experts that are prepared to  
22 testify that this is something that's readily accepted in  
23 the scientific community, that would validate it --

24           MR. COLE: Well, yes --

25           THE COURT: And show it's reliability?

1 MR. COLE: Yes. We believe that we will be able  
2 to present that evidence. Now, Mr. Madson is right. This  
3 has never been accepted, but it's never been tried.

4 THE COURT: Well, why are you trying it at this  
5 late date?

6 MR. COLE: I'm --

7 THE COURT: This tape -- excuse me, Mr. Cole.  
8 Let me finish my question.

9 You've had this tape since the accident. You've  
10 had access to it since the accident. The position has been  
11 since the information, and since the original charging  
12 document, that Captain Hazelwood was operating a watercraft  
13 under the influence.

14 Now, can you explain why you would wait until the  
15 middle of the State's case to notify, or close to that, to  
16 notify the defense counsel, when you know it has not been  
17 accepted in any court in this United States, you say, and  
18 Mr. Madson say, knowing full well we'd have to have a  
19 full-blown hearing to determine its validity and its  
20 reliability. Why did you wait so long?

21 MR. COLE: Judge, I had no tapes after the  
22 grounding of the Exxon Valdez until January 22nd of this  
23 year.

24 THE COURT: Well, you're not the only person in  
25 the District Attorney's office that's had information. Mr.

1 Linton has had information. I believe Ms. Henry has had  
2 information. Mr. Adams had information. When I say "you,"  
3 I'm not referring to you personally. I'm referring to the  
4 State.

5 MR. COLE: Only Mr. Linton did. Miss Henry, Mr.  
6 Adams and myself were kept from all the information until  
7 January 22nd. We got it that weekend. As to the report  
8 itself, we weren't made -- we weren't even aware that it  
9 was out there until we found out about it.

10 I'm willing to say -- look, we won't put it on in  
11 our case in chief. I would like to reserve the right to  
12 put it on for rebuttal, if Mr. Madson puts on a forensic  
13 toxicologist who opens up the door to it.

14 THE COURT: No. Before you're going to put it  
15 on, Mr. Cole, you'll have to present some sort of a  
16 document to this court of points in authority that would  
17 support its admissibility, and you'll have to provide a  
18 summary, a written summary, to the Defendant's attorneys so  
19 they can gear up to meet this if we have to have a Fry  
20 test. I'm very reluctant at this time to open up this  
21 trial to a Fry test for information that could have been  
22 sought long before today.

23 So, without making a final ruling on this, if you  
24 do intend on using this, the longer you wait to provide  
25 information to the Defendant in this Court to assist the

1 Court in a Fry determination, the farther away you get to  
2 its admissibility. I think Mr. Madson has brought up very  
3 legitimate points, at this late date, to have to consider  
4 this.

5 So far, you haven't given us any kind of idea.  
6 You don't know what the Defendant is going to put on, and  
7 you want to wait until the last minute, and I'm not going  
8 to let you wait until the last minute for something like  
9 this, Mr. Cole.

10 MR. COLE: All right.

11 THE COURT: Is there anything else we can take  
12 up?

13 MR. MADSON: I don't believe so, Your Honor.

14 THE CLERK: Please rise. This court stands in  
15 recess.

16 (Whereupon, at 1:30 p.m., the hearing recessed.)  
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SUPERIOR COURT                     )  
  ) Case No. 3ANS89-7217  
STATE OF ALASKA                    ) 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.

*Alexandra Tomalonis*  
\_\_\_\_\_  
ALEXANDRA TOMALONIS



VOLUME 16

STATE OF ALASKA

IN THE SUPERIOR COURT AT ANCHORAGE

----- X  
 :  
 In the Matter of: :  
 :  
 STATE OF ALASKA :  
 :  
 versus :  
 :  
 JOSEPH J. HAZELWOOD :  
 :  
 ----- X

Case No. 3ANS89-7217

Case No. 3ANS89-7218

Anchorage, Alaska

February 22, 1990

The above-entitled matter came on for trial by jury before th Honorable Karl S. Johnstone, commencing at 8:35 o'clock a.m., on February 22, 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.

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C O N T E N T S

WITNESSES

<u>STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas G. Falkenstein	5	36	92	97
Franklin H. Shepherd	107	109		
Bruce Suzumoto	113	121	128	
Thomas G. Kron	130	136		
Michael J. Fox	139			

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STATE'S

FOR IDENTIFICATION

IN EVIDENCE

102		157
105	13	
106	15	
107	24	25
108	24	
109	106	117
110	106	118
111	106	
112	106	
113	106	
114	106	
115	106	
116	106	
117	106	
118	106	
119	158	159

DEFENDANT'S

Q	9	48
R	9	48
S	61	63
T	105	
U	105	

P R O C E E D I N G S

1  
2 (Start Tape C-3634)

3 THE COURT: You may be seated.

4 MR. CHALOS: You Honor, may I hand these to Scott to  
5 mark?

6 THE COURT: Mr. Purden? Yes, just as soon as he is  
7 finished with this.

8 All right, Mr. Cole, you may call you next witness.

9 MR. COLE: Your Honor, at this time the State would  
10 call Lieutenant Commander Tom Falkenstein to the witness  
11 stand.

12 Whereupon,

13 THOMAS G. FALKENSTEIN

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

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

19 THE WITNESS: Thomas G. Falkenstein, F-A-L-K-E-N-S-  
20 T-E-I-N.

21 THE CLERK: And your current mailing address?

22 THE WITNESS: P. O. Box 486, Valdez, Alaska.

23 THE CLERK: And your current occupation?

24 THE WITNESS: I am a Lieutenant Commander in the  
25 United States Coast Guard.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. COLE:

4 Q Lieutenant Commander Falkenstein, how long have you  
5 lived in -- where do you -- you're living right now in Valdez,  
6 is that correct?

7 A Yes, sir.

8 Q How long have you lived there?

9 Q Would you describe what your present position is?

10 A I'm the Executive Officer at the Marine Safety  
11 Office.

12 Q Is that located in Anchorage?

13 A It's located in Valdez.

14 Q How long have you been in the Coast Guard?

15 A I have been in the Coast Guard about thirteen and a  
16 half years.

17 Q Would you briefly describe your career in the Coast  
18 Guard before being assigned to Valdez?

19 A After graduation I attended -- I was assigned to the  
20 Coast Guard Comanche in Eureka, California. From there I was  
21 transferred to the Marine Inspection Office in New Orleans,  
22 Louisiana. From there to the Marine Safety Office in San  
23 Francisco, California, and then here.

24 Q What did your duties entail in the Marine Inspection  
25 Office?

1           A     In the Marine Inspection Office I was an  
2 investigator, a licensing examiner, and a inspector.

3           Q     And in the Marine Safety Office?

4           A     I was assigned to inspections in the Port Operations  
5 Department, and then briefly in the Military Readiness Branch.

6           Q     Would you describe for the Jury what your present  
7 responsibilities are as Lieutenant Commander in Valdez?

8           A     As the Executive Officer in the Marine Safety  
9 Office, I am the second in command to the Commanding Officer.

10          MR. COLE: Judge, do you hear this noise?

11          THE COURT: I do, I hear a squeaking -- a high  
12 squeaking noise. I don't hear any more.

13                 (Pause.)

14                 Go ahead.

15          BY MR. COLE: (Resuming)

16          Q     How many people do you oversee in Valdez?

17          A     Approximately thirty-six.

18          Q     And have you been in that position since you've been  
19 in Valdez?

20          A     Yes, sir.

21          Q     What is the purpose of the Marine Safety Office in  
22 Valdez?

23          A     The Marine Safety Office in Valdez has several  
24 purposes. One is pollution prevention and port safety for the  
25 Prince William Sound area. We are involved in vessel

1 inspections, casualty investigations, and vessel traffic  
2 services. We also provide radio coordination for search and  
3 rescue within Prince William Sound.

4 Q What department is the Vessel Traffic System part  
5 of?

6 A The Vessel Traffic System is a part of what we call  
7 our operations department.

8 Q When was this -- the Vessel Traffic System created?

9 A The Vessel Traffic System for Prince William Sound  
10 was created in 1977.

11 Q What was the purpose in creating the system?

12 A It was to help tankers in their transit of Prince  
13 William Sound, provide them assistance in the safe navigation  
14 through the Sound and Narrows in Valdez Arm.

15 THE COURT: You may just have to live with it, Mr.  
16 Cole.

17 MR. COLE: That's fine. I just wanted to make sure  
18 you were --

19 (Pause.)

20 BY MR. COLE: (Resuming)

21 Q What type of equipment was available in March of  
22 1989 in Valdez for carrying out this purpose that you just  
23 described?

24 A Vessel traffic?

25 Q Yes.

1           A       The vessel traffic had radio communications network  
2 covering Prince William Sound and then had two radar sites,  
3 one located at Potato Point in Valdez Arm, and the second  
4 located at the Valdez Spit, to monitor tanker traffic, both in  
5 the port of Valdez and the upper end of Valdez Arm.

6           Q       What was the communication network that you had in  
7 Prince William Sound?

8           A       It consisted of a series of communications, VHF  
9 communications sites, which is the marine frequency, located  
10 at various areas in the Sound. to communicate with vessels  
11 transiting the Sound.

12          Q       The center of this whole system is that what is  
13 known as the VTS Center?

14          A       The Vessel Traffic Center is the physical location  
15 of the watch standers.

16          Q       Where is that located?

17          A       That is located in the Marine Safety Office building  
18 in Valdez.

19          Q       How many people work in the Vessel Traffic Center?

20          A       There's two people stationed in the Vessel Traffic  
21 Center twenty-four hours a day.

22          Q       How many radar screens are located in the Vessel  
23 Traffic Center?

24          A       There's three radar repeaters in the Center itself.

25



1 Q Would you describe for the jury what the tracking  
2 board is that is used to keep track of the vessels as they  
3 enter and leave Prince William Sound?

4 A The vessels are generally -- very generally kept  
5 track of as far as their current position on a large chart  
6 which covers a wall, and the vessel has a magnetic marker and  
7 that is placed on the chart as it moves through the sound  
8 until it gets into radar range.

9 Q Would you describe the monitoring procedures of  
10 tankers within the port of Valdez?

11 A Tankers within the port of Valdez, once they come  
12 into radar range in the Valdez Arm, are monitored the entire  
13 time that they are in radar range.

14 Q Now is there a point where they are plotted  
15 automatically, their positions are plotted and kept track of  
16 automatically?

17 A Yes, sir.

18 Q Would you explain that to the jury?

19 A The vessels, when they come into what is called a  
20 one way zone, which is approximately Tongue Point --

21 Q Maybe I have a little bit better diagram than the  
22 one that is up there, the chart.

23 (Pause.)

24 (Defendant's Exhibit Numbers Q and R  
25 are marked for identification.)

1           A     The vessels as they come into the one-way zone,  
2 inbound, which is approximately Tongue Point, will  
3 automatically be plotted at three minute intervals until they  
4 come approximately abeam of Entrance Island. And for the  
5 outbound leg, the reverse is also done.

6           Q     Are there any speed limits in that particular area,  
7 the one-way zone?

8           A     Within the one-way zone, outbound tankers are  
9 restricted to a six knot speed, and inbound tankers may  
10 proceed at twelve knots. Provided the inbound tanker is not  
11 laden.

12          Q     Would you tell the jury how wide the Narrows are at  
13 its narrowest point?

14          A     At its narrowest point, which is approximately right  
15 here at Middle Rock, they are roughly eight hundred yards  
16 wide.

17          Q     Now, are there -- why is Prince William Sound area --  
18 -- is there something about the Prince William Sound area that  
19 is -- let me retry -- start this.

20                   Are there certain bridge manuals that are required  
21 to be kept on tankers that are involved in traveling through  
22 the Prince William Sound area? Coast Guard manuals?

23          A     There's several regulations manuals which are  
24 required to be --

25

1 MR. CHALOS: Your Honor, I would like to object to  
2 the form of that question. We've had testimony about bridge  
3 manuals such as the kind that Exxon has on their ships. I  
4 think Mr. Cole is talking about Coast Guard manuals. I don't  
5 -- I think he is confusing the two. It's not clear to me  
6 which he is referring to.

7 THE COURT: You started out with bridge manuals,  
8 then you changed it to Coast Guard. I assume you are  
9 referring to Coast Guard manuals.

10 BY MR. COLE: (Resuming)

11 Q Do you recognize what has previously been admitted  
12 as Plaintiff's Exhibit Number 75?

13 A Yes, sir.

14 Q What is that?

15 A That's the Coast Guard Prince William Sound's Vessel  
16 Traffic System user's manual.

17 Q Is that required to be kept -- to be kept on tankers  
18 that use your system?

19 A Yes, sir.

20 Q I would like to talk about the reporting  
21 requirements for a tanker entering Prince William Sound. When  
22 is the initial reporting time?

23 A For a tanker entering Prince William Sound from  
24 outside -- outside of the Sound, there's two reports required.  
25 One's required at three hours prior to entry into the Sound,

1 and the second is required one hour prior to entry.

2 Q What information is provided in the three hour  
3 report?

4 A A variety of information is provided, including the  
5 status of the propulsion machinery, the status of the steering  
6 gear, the electronic navigation equipment, the crew -- whether  
7 they have anyone sick or injured or whether they are short any  
8 personnel, they are all reported at that three hour pre-call.

9 Q The destinations? Where they've been?

10 A The last port of call is also reported.

11 Q At some time are they asked whether they have  
12 pilotage on board?

13 A Yes, sir, that's one of the questions that they are  
14 asked.

15 Q When is the next reporting time? Required reporting  
16 time?

17 A The next one is at one hour.

18 Q One hour what?

19 A Prior to entry into Prince William Sound.

20 Q What information is passed along at that?

21 A Roughly the same information or anything that may  
22 have changed in the two hours.

23 Q And would that include ETA's?

24 A Yes, sir.

25 Q What does the term, pilotage, mean?

1           A     Pilotage refers to a vessel that has a master or a  
2 mate with a pilotage endorsement on their license for the  
3 Prince William Sound area. At least that is how it is applied  
4 here.

5           Q     We're talking about when they are asked if they have  
6 pilotage on board in the three hour?

7           A     Yes, sir, that's what we're referring to.

8           Q     And if they were to be a nonpilotage vessel, what  
9 would that mean?

10          A     That would mean that they have no one on board with  
11 a master or mate's -- no master or mate with a pilotage  
12 endorsement for Prince William Sound, and they didn't intend  
13 to pick up a pilot at Hinchinbrook Entrance.

14          Q     What is meant by coastwise trade?

15          A     Coastwise trade is interstate trade, trade between  
16 one state and another.

17          Q     What law governs the regulation of coastwise trade?

18          A     I am confused by the question, sir.

19          Q     What law, Federal, state?

20          A     Federal law, sir.

21                                 (State's Exhibit Number 105  
22                                 was marked for identification.)

23          Q     If a tanker is a nonpilotage vessel engaged in  
24 coastwise trade, under what circumstances could it proceed  
25 into Prince William Sound?

1           A     If a tanker declares himself to be nonpilotage then  
2 a series of restrictions would be placed on the vessel and the  
3 vessel would have to meet certain conditions to enter the  
4 Sound.

5           Q     What would those be?

6           A     There are several --

7           Q     Back in 1989 what were those?

8           A     The conditions that are required to be met is the  
9 propulsion machinery, the steering gear all have to be in good  
10 working order. They have to be fully crewed and the crew has  
11 to be fully fit for duty. There has to be two miles of  
12 visibility expected for the duration of their transit in the  
13 Sound. Their bridge navigation equipment, radars, radio  
14 equipment, all has to be in good working order. And they will  
15 have to provide a bridge navigation team under the direction  
16 or supervision of a licensed mate other than the mate who is  
17 on watch.

18          Q     And how far would they be allowed to proceed?

19          A     They would have to pick up a pilot off of Bligh Reef  
20 buoy number six.

21          Q     Now, if a vessel declares itself a pilotage vessel  
22 engaged in coastwise trade, under what conditions can the  
23 tanker proceed into Prince William Sound?

24          A     Without weather restrictions, if there were no  
25 restrictions due to weather or some other condition that may

1 preclude the tankers entry in the Sound, they could probably  
2 proceed into the Sound under any conditions.

3 Q Where would they be able to proceed to?

4 A Again, precluding weather or some other problem,  
5 they could proceed to Rocky Point where they would pick up a  
6 local pilot.

7 (State's Exhibit Number 106  
8 was marked for identification.)

9 BY MR. COLE: (Resuming)

10 Q Now, were you asked to make a chart? Design a chart  
11 for explaining the pilotage practice for Prince William Sound  
12 tankers?

13 A Yes, sir.

14 Q And I am showing you what has been marked for  
15 identification as Plaintiff's Exhibit Number 106. Do you  
16 recognize that?

17 A Yes, sir.

18 Q And did that accurately represent the testimony  
19 you've just given?

20 A Yes, sir.

21 MR. COLE: Your Honor, I would move for the  
22 admission of Plaintiff's Exhibit 106.

23 MR. CHALOS: Judge, I would object. If this is just  
24 a recap of his testimony, we have his testimony. We have  
25 never seen this before, we were never provided with a copy.

1 THE COURT: Mr. Cole, this is exactly what he just  
2 said, isn't it?

3 MR. COLE: It's just for illustrative purposes, your  
4 Honor.

5 THE COURT: I'll let you use it for illustrative  
6 purposes, I'll let you use it in final argument. It won't go  
7 to the jury as a piece of evidence, then.

8 BY MR. COLE: (Resuming)

9 Q Now, when a pilotage vessel proceeds into -- a  
10 pilotage vessel in coastwise trade proceeds into Prince  
11 William Sound, who must be -- what other requirements are  
12 there besides weather?

13 A The vessel must be under the direction and control  
14 of a licensed officer, licensed deck officer holding an  
15 endorsement for Prince William Sound pilotage.

16 Q And --

17 MR. COLE: Your Honor, can we approach the Bench?

18 THE COURT: Yes, sir.

19 (An off the record bench conference was had.)

20 THE COURT: We need to take a matter up outside your  
21 presence, ladies and gentlemen. Don't speculate on what we're  
22 doing in your absence. Don't discuss the matter in any  
23 fashion, and please don't form or express any opinions. We'll  
24 call you back as soon as we are completed with this.

25 (Whereupon, the jury leaves the Courtroom.)



1 THE COURT: I know you are unaware of this, and I  
2 have been cautioning you, but your conversations are so loud  
3 between the two of you I even notice jurors looking at you  
4 lots of times, and I can hear you and Mr. Cole has been  
5 looking at you when you have been rustling paper. I really  
6 wish you would keep it down to a minimum, please.

7 MR. MADSON: I'm sorry, your Honor, I thought we  
8 were doing better. I appreciate your calling our attention to  
9 it, because we --

10 THE COURT: I won't call your attention to it in  
11 front of the jury, but --

12 MR. MADSON: Well, even now I appreciate it.

13 THE COURT: All right, Mr. Cole, your application?

14 MR. COLE: Your Honor, my application at this time  
15 is to ask Lieutenant Falkenstein where the authority for his  
16 statement just now that a pilotage vessel must be under the  
17 direction and control of a master or a mate holding  
18 endorsement of transiting Prince William Sound, and my belief  
19 is that he will respond that it is under U.S. law, 46 USC  
20 8502, which I have supplied the Court with a copy. That says  
21 that the vessels -- engaged in a coastwise trade must have a  
22 pilot -- must be under -- the pilotage vessel must be under  
23 direction and control of the pilot.

24 We filed a motion on this for coastwise vessels.  
25 The evidence in this case has been that the Exxon Valdez was

1 going in a coastwise -- it was involved in coastwise trade.  
2 It was going from -- it had left -- come from San Francisco to  
3 Valdez, was going on to Long Beach. There is no evidence that  
4 is it on the register -- well, it may be on the register but  
5 in this particular voyage it was engaged in interstate travel.  
6 Therefore it comes under the Federal pilotage laws as a  
7 coastwise vessel. It declared that it was pilotage and that's  
8 in the evidence through the business document and the  
9 testimony of Mr. Taylor. It picked up the pilot at Rocky  
10 Point. It went into the port of Valdez. It didn't change  
11 it's intentions which it is required to do if it is going to  
12 go from a vessel being engaged in coastwise trade to a vessel  
13 engaged in something on the register, foreign trade. It  
14 dropped the pilot off at Rocky Point on the way out. Captain  
15 Hazelwood had Federal pilotage for this particular area.

16 The only issue here is whether or not -- well, there  
17 isn't any issue about whether this is involved in anything  
18 other than coastwise trade. And the law is on coastwise  
19 trade. They are either a pilotage vessel or they are a  
20 nonpilotage vessel.

21 MR. CHALOS: Your Honor, I think Mr. Cole is  
22 confused as far as coastwise and register is concerned. The  
23 law says that a vessel under the new documentation, the vessel  
24 can sail either under enrollment or under register. It is the  
25 master's choice. In this case, this vessel was sailing under

1 register. Notwithstanding the fact that it was going between  
2 two U.S. ports. You can have a situation where you are going  
3 between two U.S. ports and still sailing on register.

4 Now, if you are a registered vessel, you are exempt  
5 from pilotage. Pilotage does not apply to a registered  
6 vessel. That's one of the arguments that we make. The second  
7 argument that we would make is that as a result of the  
8 September 19th, 1986, letter, pilotage was waived. Now, Mr.  
9 Cole hired an expert in this case, a Mr. Griner, who contacted  
10 the Coast Guard asking about this waiver, and they wrote back  
11 to him on October 18th, 1989, and told him that at the time  
12 the Exxon Valdez casualty, a policy waiver was in effect, and  
13 they give him an enclosure, which he hasn't supplied to us.

14 But the point that we are making is that the waiver  
15 of the pilotage is an issue. The application of the pilotage  
16 regulations is an issue. The regulations that we're talking  
17 about here, that a pilotage vessel has to be under the control  
18 and -- the direction and control of the master, we're not  
19 disputing. There is such a regulation. What we're talking  
20 about is this vessel, the Exxon Valdez, at the time of the  
21 casualty, was operating under a waiver, as were all other  
22 vessels after 1986. This regulation that we are referring to  
23 was instituted prior to 1986 by a Coast Guard order, Captain  
24 of the Port order, that went in a funny way, through the  
25 agent, which is another issue that we are going to raise here

1 is that that is not the proper way of issuing Coast Guard  
2 orders. The pilotage was waived, and anyone reading that  
3 could reasonably conclude that pilotage was waived. And  
4 that's the operation of mind -- of Captain Hazelwood in this  
5 particular case. And other captains will come and testify.

6 So our point is that the issue of pilotage, the  
7 application of pilotage, is an issue that has been raised  
8 early on. Mr. Cole knows about it. He himself has done  
9 research on this. He's had an expert check it out, and he  
10 knows that it is an issue. I think his attempt now is to try  
11 and ramrod this whole issue into one motion, saying that this  
12 vessel was on coastwise trade, coastwise vessels have to have  
13 pilotage, Captain Hazelwood had pilotage, and that's it.  
14 Well, it's not that simple.

15 THE COURT: Mr. Chalos, Mr. Cole just simply asked  
16 me to take judicial notice of a Federal statute, and whether  
17 or not it is applicable or not is a disputed question here.

18 MR. CHALOS: That's our point.

19 THE COURT: Is a disputed question. That doesn't  
20 mean that the Court should not take judicial notice of it.  
21 That means that it is a question of fact of whether or not it  
22 is applicable or not that can be argued to the jury, but not  
23 whether I should admit it or not.

24 MR. CHALOS: Your Honor, we don't have a problem  
25 with the introduction of a statute, as I said, but if the

1 statute is introduced for the proposition that that lays to  
2 rest the pilotage issue once and for all, then of course we  
3 objection. If it is just for the purpose that there was  
4 statute existing that says X, Y and Z, we don't have an  
5 objection to that.

6 THE COURT: Well, that is what the purpose of  
7 judicial notice of law is. Sometimes it is not applicable,  
8 but sometimes it is. It depends on what the jury concludes.  
9 I see no reason, based on your argument, that the Court should  
10 not take judicial under evidence rule 202 of section 8502 at  
11 this time. Whether or not it is in effect or not remains to  
12 be seen.

13 MR. CHALOS: Okay.

14 THE COURT: Whether or not it was something that  
15 applied to Captain Hazelwood remains to be seen.

16 MR. CHALOS: Well, that's fine, with that kind of, I  
17 suppose, an instruction to the jury, that would satisfy our  
18 concerns.

19 THE COURT: Well, the Court doesn't instruct the  
20 jury on judicial notice of law, to the best of my knowledge.  
21 If it was judicial notice of fact, then the Court would have  
22 an instruction responsibility. But at this time it would be  
23 my intention, upon request, after having given you notice,  
24 this Court will take judicial notice of Section 8502 of Title  
25 46 of USC. And that section can be introduced in evidence as

1 an exhibit.

2 Now, what about the Captain of the Port Order Number  
3 1-80, and the September 3rd, 1986, memorandum? Do we need to  
4 deal with that at this time also?

5 MR. COLE: Well, I think yes, that that would be the  
6 easiest way.

7 THE COURT: I mean, are we going to have to  
8 interrupt this testimony again if we don't deal with it now?

9 MR. COLE: Well, I don't plan on going into it, but  
10 I assume from listening to Mr. Chalos, that he does.

11 MR. CHALOS: Your Honor, my only objection to that  
12 portion of Mr. Cole's motion is that the September 3rd, 1986,  
13 order that he's referring to was not a Captain of the Port  
14 Order. What it was was an internal document between Commander  
15 McCall and the various Coast Guard personnel at Valdez. That  
16 document was never seen by the public. That came out in the  
17 FOIA request. So unless there is going to be some connection  
18 made by Mr. Cole that Captain Hazelwood was aware of an  
19 internal memo exchanged between the Coast Guard, we would  
20 object to its introduction.

21 The Captain of the Port Order 1-80 may have gone to  
22 the public, so I don't have a problem with that. But the  
23 September 3rd, 1986, memo did not.

24 THE COURT: What is the effect of the September 3rd,  
25 1986, memorandum. Does that have the effect of a regulation

1 adopted by an agency, Mr. Cole?

2 MR. CHALOS: I can show you --

3 MR. COLE: I got lost there, Judge.

4 THE COURT: Mr. Cole, you have asked me to take  
5 judicial notice of 46 USC 8502, together with the procedures  
6 in Captain of the Port Order Number 1-80, which there is no  
7 dispute over, and Commander McCall's September 3rd, 1986,  
8 memorandum. My question to you is, is that memorandum  
9 considered by you to be a regulation adopted by an agency of  
10 the government or anything that comes under 202(c) and if so,  
11 which one does it come under?

12 MR. CHALOS: While Mr. Cole is looking that up, your  
13 Honor, may I show you the memo that I am referring to?

14 THE COURT: Yes.

15 MR. CHALOS: You'll notice, it is from the  
16 commanding officer to people within the Coast Guard.

17 MR. COLE: Judge, I would agree with you that that  
18 memo shouldn't come in under judicial notice, the September  
19 3rd, 1986. I apologize.

20 THE COURT: You're agreeing with Mr. Chalos, you're  
21 not agreeing with me.

22 MR. COLE: Right.

23 THE COURT: I am just asking if there is any  
24 authority for it. Okay, if you're withdrawing it at this time  
25 then it won't be given judicial notice.

1 So the Court will take judicial notice of 46 USC  
2 8502, and Captain of the Port Order Number 1-80.

3 Are we ready for the jury now?

4 MR. COLE: Yes.

5 THE COURT: Okay. Now how you propose I take  
6 judicial notice of this? Do you expect to have an exhibit of  
7 the order 1-80.

8 MR. COLE: Just mark it as an exhibit would be fine  
9 with me, your Honor.

10 THE COURT: Okay. I don't have 1-80. I have the  
11 Federal statute, 8502. So we'll mark that at this time as an  
12 exhibit.

13 (State's Exhibit Numbers 107 and  
14 108 were marked for  
15 identification.)

16 THE COURT: The statute is Exhibit 107, Mr. Chalos,  
17 and Captain of the Port Order Number 1-80 will be 108.

18 Is there anything we should take up before we bring  
19 the jury back in?

20 MR. COLE: No.

21 THE COURT: Okay.

22 Do you want a glass of water?

23 THE WITNESS: No, thank you, sir.

24 (Pause.)

25 (Whereupon, the jury enters the Courtroom.)



1 BY MR. COLE: (Resuming)

2 Q Lieutenant Commander Falkenstein, you indicated that  
3 a pilotage vessel must be under the direction and control of.  
4 Under what law is that required?

5 A The -- a pilotage vessel on a coastwise voyage must  
6 be under direction and control of a master or mate under  
7 Section 8502 of Title 46, United States Code.

8 MR. COLE: Your Honor, we would ask the Court to  
9 take judicial notice of 46 US 8502, and that is set out in  
10 Plaintiff's Exhibit Number 107.

11 THE COURT: Okay, it's admitted. The Court will  
12 take judicial notice of law of that statute.

13 (State's Exhibit Number 107  
14 was admitted in evidence.)

15 BY MR. COLE: (Resuming)

16 Q What does that phrase, vessel must be under the  
17 direction and control mean?

18 MR. CHALOS: Objection, your Honor. It's irrelevant  
19 in this particular case and there's no foundation.

20 THE COURT: I'll let the witness give his opinion.  
21 Objection overruled.

22 THE WITNESS: Basically being under the direction  
23 and control means that the individual directing the vessels  
24 movement through the water, the individual who has the conn  
25 must have the pilotage endorsement.

1 BY MF. COLE: (Resuming)

2 Q Now, when a vessel gets into Valdez and loads up,  
3 does it have a reporting time then prior to leaving?

4 A Yes, sir. Thirty minutes prior to getting underway,  
5 the vessel is to report in to the Vessel Traffic Center.

6 Q What time -- what information is passed at that  
7 time?

8 A The status of the propulsion machinery, steering  
9 gear again, electronics equipment, radio, navigation  
10 equipment, and next port of call. And again, whether or not  
11 the vessel has pilotage.

12 Q Now, on March 24th, 1989, were part of your  
13 responsibilities responding to and investigating oil spills?

14 A Yes, sir.

15 Q Were you required to go to the Exxon Valdez on that  
16 day?

17 A Yes, sir.

18 Q Would you explain to the jury -- what time were you  
19 called that morning?

20 A I was called at about 12:30 in the morning.

21 Q Who called you?

22 A Mr. Blandford.

23 Q What did you do after being called?

24 A Contacted Commander McCall, met him outside my house  
25 and proceeded to the station.

1 Q When did you get to the -- the Traffic Center?

2 A At approximately 12:40.

3 Q What is an OD?

4 A He's the Officer of the Day and is the Commanding  
5 Officer's direct representative after hours.

6 Q After hours meaning after --

7 A After the normal work day and on weekends.

8 Q Who was the OD on duty on March 23rd, 1989?

9 A Petty Officer Gonzales.

10 Q Was he required to be on duty all evening?

11 A Yes, sir, he was on duty all evening.

12 Q Would that -- would being on duty mean that he was  
13 at the station or could he have been away from there?

14 A No, sir, he could have been away from the station.

15 Q What happened after you got to the station at 12:40?

16 A I believe Commander McCall contacted the Exxon  
17 Valdez on the radio, spoke briefly with someone on the Exxon  
18 Valdez, and then I contacted our district office to inform  
19 them of the casualty.

20 Q District office where?

21 A In Juneau.

22 Q And after doing that, did you arrange to go out to  
23 the Exxon Valdez?

24 A Yes, sir. It was decided and I and Mr. DeLozier  
25 would go out to the Exxon Valdez to investigate and assess the

1 dam -- the situation.

2 Q How did you arrange to be taken out there?

3 A Someone arranged for the pilot water taxi to take us  
4 out to the ship.

5 Q And who was to go on that -- that ship out to the  
6 Exxon Valdez?

7 A Myself, Mr. DeLozier, and someone from the  
8 Department of Environmental Conservation.

9 Q What time did you leave Valdez?

10 A Sometime between 0200 and 0230.

11 Q Can you give the jury an idea of approximately what  
12 time you reached the Exxon Valdez?

13 A We arrived at the Exxon Valdez sometime around 0330.

14 Q Were you able to get on immediately, or what  
15 happened when you arrived?

16 A We changed -- we changed boats and went to another  
17 pilot boat and he brought us alongside the ship and we climbed  
18 up the ladder and boarded the ship then.

19 Q Did anyone meet you at the ladder?

20 A Yes, sir, personnel from the ship met us at the  
21 ladder.

22 Q What was the purpose of you going out to the vessel?

23 A To investigate -- initiate an investigation into the  
24 casualty and to assess the situation as far as pollution  
25 response and salvage if necessary.

1 Q Were you concerned with the crew, the safety of the  
2 crew?

3 A Yes, sir, that's part of it.

4 Q When you arrived at the scene, could you see oil?

5 A Yes, sir, in the lights we could see oil in the  
6 water.

7 Q How was it -- would you describe what you saw?

8 A There was a boiling motion or action along the side  
9 of the ship on the starboard side of the ship as we  
10 approached. The ship was surrounded by oil except for the  
11 starboard quarter, the after starboard side of the ship.  
12 There was a strong smell of oil in the air and in the lights  
13 we could see oil on the water.

14 Q Was there any concern about the danger of explosion  
15 during this?

16 A Yes, sir.

17 Q Why is that?

18 A Well, any time you have crude oil, petroleum  
19 products in the water, fresh, there is going to be strong  
20 vapors, and the vapors always have a potential for explosion.

21 Q What happened after you got up on the deck?

22 A We were escorted to the bridge.

23 Q And when you got to the bridge, what did you do?

24 A I approached one of the individuals on the bridge  
25 and asked him if he was the master.

1 Q What happened then?

2 A He indicated he wasn't and he pointed to Captain  
3 Hazelwood who was in the port bridge corner -- port corner of  
4 the bridge.

5 Q What was Captain Hazelwood doing there?

6 A At the time, he was looking out across the forward  
7 decks of the Valdez.

8 Q Was he standing or sitting or --

9 A I don't recall, sir.

10 Q When -- did you go over and meet Captain Hazelwood  
11 then?

12 A Yes, sir.

13 Q What did he describe to you was the damage done to  
14 the Exxon Valdez?

15 A He indicated some of the tanks had been holed, that  
16 he had stopped the engines -- engines were all stopped, rudder  
17 was amidships, I believe -- and the general motion on the  
18 vessel before it got onto the reef.

19 Q Would you explain that last sentence, the general  
20 motion of the vessel?

21 A He described how the vessel felt as it initially  
22 grounded.

23 Q What did he say, how that it felt?

24 A He said something to the effect that it kind of  
25 bumped and rolled a little bit.

1 Q What were your concerns while you were talking --  
2 well, let me rephrase that. How far away from Captain  
3 Hazelwood were you when you were speaking with him?

4 A Approximately two and a half feet.

5 Q Did you notice any signs that Captain Hazelwood had  
6 been drinking?

7 A There was the smell of alcohol on his breath, sir.

8 Q Would you describe, was it a strong smell or --

9 MR. CHALOS: Objection, your Honor. Mr. Cole is  
10 leading the witness.

11 BY MR. COLE: (Resuming)

12 Q Would you describe the type of smell -- the degree?

13 A It was an obvious smell.

14 Q Did that concern you?

15 A I was focused --

16 MR. CHALOS: Objection, your Honor. Leading the  
17 witness again.

18 THE COURT: Objection overruled.

19 THE WITNESS: At the time I was initially focusing  
20 on the damage to the vessel.

21 BY MR. COLE: (Resuming)

22 Q What happened after you made this observation of  
23 Captain Hazelwood?

24 A After I had discussed with Captain Hazelwood his --  
25 the condition of his vessel, how we were sitting, and the

1 damage, I left his company and I believe I spoke with Mr. Lawn  
2 who had accompanied us out to the ship, and I believe Mr.  
3 DeLozier spoke with Captain Hazelwood. After that Mr.  
4 DeLozier indicated he wanted to have a conference with me  
5 outside the bridge, on the bridge wing.

6 Q Where did you go then?

7 A We went out to the port side bridge wing, and Mr.  
8 DeLozier and I had a brief discussion.

9 Q What did you say?

10 A I was asked if I had noticed the Captain's breath,  
11 and Mr. DeLozier -- by Mr. DeLozier, and I indicated yes, and  
12 we discussed it briefly, what our next course of action should  
13 be.

14 Q What did you decide to do then?

15 A We decided to contact the Commanding Officer via the  
16 satellite telephone, and described to him the problem and  
17 request that a testing officer or a law enforcement officer  
18 who had equipment to take an alcohol blood test or breath test  
19 of some type come out to the ship.

20 Q Who did you talk to?

21 A I spoke directly with Commander McCall.

22 Q That's Lieutenant Commander Steve McCall?

23 A It's Commander Steve McCall.

24 Q Commander.

25



1           What did you exactly -- who did you tell him was the  
2 captain of the Exxon Valdez?

3           A     I didn't tell him who the captain of the Exxon  
4 Valdez. I assumed he knew.

5           Q     And who was -- was he -- you told him what?

6           A     I indicated to him that the master had the smell of  
7 alcohol on his breath and that we needed to have someone come  
8 out who could test for blood alcohol content.

9           Q     Did you indicate that you felt that it was something  
10 that needed to be done immediately, or it could wait for a  
11 while?

12          A     It needed to be done as soon as possible.

13          Q     Why did you feel that? Why did you say that?

14          A     Because with time, blood alcohol levels diminishes  
15 and you do not get as accurate test.

16          Q     And you made your concerns known to Commander  
17 McCall?

18          A     Yes, sir.

19          Q     What time was that phone call?

20          A     Very shortly after I got on board the vessel, sir.  
21 I am not exactly sure what time. Maybe around 4:00 o'clock.

22          Q     What -- did you -- what number did you call to call  
23 up Commander McCall?

24          A     I believe that call was on the primary number, 835-  
25 4791

1 Q Did you make other calls that morning?

2 A Yes, sir.

3 Q And would you have been calling other numbers at the  
4 Coast Guard?

5 A There would have been one other number I may have  
6 called, and that would have been the number directly to the  
7 Commander on his private line.

8 Q Which was?

9 A 835-2827.

10 Q After -- you smelled alcohol on the Captain's bridge  
11 when you came aboard. Why didn't you ask -- did you have the  
12 authority to relieve him at that time?

13 A Yes, sir, we could have.

14 Q Why didn't you?

15 A Because Captain Hazelwood is more aware of the  
16 condition of his vessel and his vessel's abilities and the  
17 damage than anyone in the Coast Guard would be.

18 Q After this initial phone call, did you divide up the  
19 responsibilities that day with Mr. DeLozier?

20 A Mr. DeLozier and I divided the responsibilities  
21 almost immediately. We divided them during that conversation  
22 on the bridge wing.

23 Q And what were your responsibilities to be?

24 A I instructed Mr. DeLozier to focus on investigation,  
25 and I concentrated on salvage and pollution response.

1 Q Who did you deal with then during the course of the  
2 day, that morning?

3 A Oh, I dealt with the second and chief mates,  
4 primarily.

5 Q What did you do that morning? Can you give the jury  
6 an idea of what went on after that?

7 A We made arrangements for couplings and connections  
8 and hoses to be delivered to the Valdez to initiate lightering  
9 operations. Made arrangements with the Exxon Baton Rouge --  
10 Baton Rouge to come alongside, moor along side to take cargo  
11 from the Valdez. And monitored the progress of the pollution  
12 response.

13 Q How did you know it would be safe for the Exxon  
14 Baton Rouge to come alongside the Exxon Valdez?

15 A We had one of the pilot boats take and run across an  
16 area on both sides of the Valdez, noting bottom depths at  
17 various positions relative to the ship.

18 Q When did that occur?

19 A I'm not exactly sure. I occurred before the arrival  
20 of the Baton Rouge which arrived on scene at about 1000.

21 Q 10:00 o'clock in the morning?

22 A Yes, sir.

23 Q Did it happen after you arrived on there?

24 A Yes, sir.

25

1 Q Was there any information available to you when you  
2 arrived as to what the -- the soundings were around the  
3 vessel?

4 A I'm not sure whether it was available when we  
5 arrived or shortly after when we started having the pilot  
6 vessel take soundings.

7 Q Did you have any concern for the stability of this  
8 vessel while you were on it that morning?

9 A Yes, sir. I worked with the chief mate and talked  
10 with him concerning the vessels stability and structural  
11 integrity.

12 Q Did that cause you concern?

13 A Yes, sir, we were mostly concerned with the  
14 structural integrity of the vessel as the tide went out.

15 Q Why is that?

16 A We didn't know how much damage the vessel had  
17 suffered, and as the tide went out, would the rock that it was  
18 sitting on have a tendency to break the vessel in half, to  
19 bend it too far, and it would basically break in half due to  
20 its own weight.

21 Q And did you have any discussions with Captain  
22 Hazelwood about this?

23 A Not that I recall, sir.

24 MR. COLE: Just one minute.

25 I have nothing further. Thank you.

## CROSS EXAMINATION

1  
2 BY MR. CHALOS:

3 Q Good morning, Mr. Falkenstein.

4 When did you first come to Valdez?

5 A July of 1987.

6 Q And you came on board as the EXO?

7 A Yes, sir.

8 Q Now, you said that in your job in the Marine Safety  
9 Office in San Francisco and New Orleans, you were in charge of  
10 licensing?

11 A No, sir, I was an examiner in New Orleans.

12 Q Just in New Orleans?

13 A Yes, sir.

14 Q Who did you examine?

15 A We examined deck officers, engineering officers,  
16 small passenger vessel operators, tow boat operators, all  
17 categories of licenses.

18 Q As part of the examination, did you administer radar  
19 observer tests?

20 A Yes, sir.

21 Q Now, a radar observer endorsement is required by the  
22 Coast Guard for every deck officer, is it not?

23 A I believe so, yes, sir.

24 Q Would you tell the jury what someone has to do to  
25 get the radar observer endorsement?

1           A     The radar observer endorsement, in order to obtain  
2 it, you have to attend a certified school to get the radar  
3 observer certificate from that school before the Coast Guard  
4 will give you the endorsement.

5           Q     And as part of the examination, does the person have  
6 to look at a radar and plot targets on the radar?

7           A     I don't know, sir, I have never attended the school.

8           Q     I take it you don't hold a radar observers  
9 endorsement?

10          A     No, sir.

11          Q     Now, I would like to ask you a little bit about the  
12 VTS. Am I correct that the mission of the VTS in Prince  
13 william Sound is to prevent collisions and groundings?

14          A     The VTS in Prince William Sound is to assist the  
15 mariner with information that he may not ordinarily have.

16          Q     Have you read the vessel traffic service manual?

17          A     Yes, sir.

18          Q     Do you recall reading in there that the primary  
19 objective of the VTS system is to prevent collisions and  
20 groundings?

21          A     No, sir.

22                MR. CHALOS: Your Honor, may I approach the witness?

23                THE COURT: Yes, sir.

24                (Pause.)

25                BY MR. CHALOS: (Resuming)

1 Q Are you familiar with --

2 MR. COLE: Could I see the cite please, first?

3 MR. CHALOS: Exhibit G.

4 MR. COLE: Your Honor, I am going to object to  
5 Exhibit G. It has not been admitted into evidence and it is  
6 not current policy, it's the 1977 one. Mr. Blandford  
7 indicated that's not the manual that was in effect at this  
8 time, it was superceded.

9 MR. CHALOS: Mr. Cole is right. I was looking for  
10 Exhibit H.

11 I'm sorry, it's Exhibit I.

12 THE COURT: It's Exhibit I. You have those?

13 THE CLERK: Yes, sir.

14 BY MR. CHALOS: (Resuming)

15 Q Mr. Falkenstein, I refer your attention to Exhibit  
16 I, paragraph 1.2.1, and ask you if you would read it to  
17 yourself and I will ask you the question again.

18 Well, why don't you read it out loud to the jury?

19 MR. COLE: I am going to object. Mr. Chalos's  
20 question was in the VTC manual. What he is reading is the  
21 operators manual, and I believe Commander Falkenstein was  
22 referring to that document that he has to the right of him,  
23 which is the manual which is required to be kept by tanker

24 \_\_\_\_\_.

25

1 MR. CHALOS: And I am referring to the manual that  
2 states the obligations and the procedure that the Coast Guard  
3 has to follow. This is their manual. This is what states the  
4 purpose of the whole VTS system.

5 THE COURT: Your question went to whether he was  
6 aware of that being one of the purposes.

7 MR. CHALOS: Yes.

8 THE COURT: And this manual, I, is the manual, the  
9 Coast Guard manual.

10 MR. CHALOS: Yes, sir.

11 THE COURT: Anything further, Mr. Cole?

12 MR. COLE: Just wanted to make sure that that was  
13 clear.

14 BY MR. CHALOS: (Resuming)

15 Q Would you please read 1.2.1.

16 A Concept of operations. Background. The Port and  
17 Waterway Safety Act of 1972 authorizes the Coast Guard to  
18 establish and operate Vessel Traffic Systems in order to  
19 prevent damage to or destruction or loss of any vessel,  
20 bridge, or other structure, on or in the navigable waters of  
21 the United States, or any land structure of shore area -- of  
22 shore area immediately adjacent to those waters, and to  
23 protect the navigable waters and the resources therein from  
24 environmental harm resulting from vessel or structural damage  
25 -- vessel or structure damage, destruction, or loss. The



1 TransAlaska Pipeline Authorization Act, passed in November of  
2 1973, amended the Ports and Waterways Safety Act to  
3 specifically require the Coast Guard to establish and operate  
4 a Vessel Traffic Service in Prince William Sound.

5 Q And in fact, the VTS is that traffic service, is it  
6 not?

7 A Yes, sir.

8 Q Now, you in response to Mr. Cole's question, said  
9 the Vessel Traffic System extends from the port of Valdez  
10 through the Narrows and down the Valdez Arm, do you recall  
11 that?

12 A The Vessel Traffic System extends throughout the  
13 entire Prince William Sound area.

14 Q When you speak about the Valdez Arm -- strike that;  
15 let me go back.

16 In the -- with respect to the VTS system, the Coast  
17 Guard requires mandatory reporting starting from three hours  
18 out of Cape Hinchinbrook right on through to the port of  
19 Valdez, does it not?

20 A Requires mandatory reporting at specific points.

21 Q Starting three hours before you get to Hinchinbrook?

22 A Yes, sir, that is the initial report in.

23 Q Now, when you speak about the Valdez Arm, what are  
24 you referring to? And let me, if I may, have you point out on  
25 Exhibit 25, where the Valdez Arm extends to. Let me get out

1 of the way.

2 Would you point to it, please?

3 A Roughly the Valdez Arm will extend from this area  
4 here down through here.

5 Q To Bligh Reef?

6 A Roughly, yes, sir.

7 Q Okay.

8 Now that is the area that your radar is supposed to  
9 cover, is it not?

10 A The radar was intended to cover primarily the  
11 Narrows area.

12 Q I thought that you said that the radar covers down  
13 in the Valdez Arm as well?

14 A It covers into the Arm, yes, sir.

15 Q And as a matter of fact, the procedures manual says  
16 there will be radar coverage in the Valdez Arm, does it not?

17 A Yes, sir.

18 Q So someone who knows that the Valdez Arm extends  
19 down to Bligh Reef can reasonably assume that he is being  
20 watched on radar all the way down to Bligh Reef?

21 MR. COLE: Objection; speculation.

22 MR. CHALOS: I am asking for his opinion, your  
23 Honor.

24 THE COURT: He can give his opinion if it is based  
25 on experience.

1 THE WITNESS: Anyone who is familiar with radar  
2 operations knows that in certain conditions, certain weather  
3 conditions, coverage is not going to be as extensive as in  
4 others. So the assumption that you are going to be watched  
5 the entire time is not necessarily a valid one.

6 BY MR. CHALOS: (Resuming)

7 Q Sir, you're not very familiar with radar operations,  
8 are you?

9 A Somewhat familiar, but not a technical expert, no,  
10 sir.

11 Q As a matter of fact, when you were interviewed by  
12 the State, you told them that you are not very familiar with  
13 radar operations?

14 A Yes, sir.

15 Q Now, we have some testimony here by Mr. Blandford  
16 who was the VTC watch stander, civilian watch stander.

17 A Yes, sir.

18 Q He stated that he had been told by Mr. Taylor, who  
19 was the previous civilian on watch, that they had lost the  
20 Exxon Valdez on the radar and he may want to attempt to see  
21 the ship and he couldn't see it on the radar. Thereafter he  
22 got a call from Captain Hazelwood telling him that the vessel  
23 was aground, he turned on his radar and there was the ship.

24 Do you recall giving an interview to Connie Chung?

25

1 MR. COLE: Your Honor, I object to this line of  
2 questioning. First he asks a question about what -- he makes  
3 a speech about what Mr. Blandford said and then he goes on to  
4 another area.

5 MR. CHALOS: Your Honor, I was just laying the  
6 foundation for the question

7 THE COURT: Okay. You can answer that question if  
8 you gave an interview, but don't answer the next question  
9 until there is a chance to discuss it. Go ahead.

10 BY MR. CHALOS: (Resuming)

11 Q Do you remember giving an interview to Connie Chung?

12 A Yes, sir.

13 Q Do you remember being asked why, in your opinion,  
14 the ship was off the radar when Mr. Blandford said he looked  
15 for it, and why it was then seen after the grounding?

16 A If you are asking why I thought the vessel was off  
17 the radar initially and then on the radar secondarily --

18 Q Yes.

19 A I believe I answered I don't know.

20 Q You said you couldn't explain it.

21 A Yes, sir.

22 Q You had no explanation for it?

23 A Right, sir.

24 Q Now, you spoke about two people being stationed at  
25 the Vessel Traffic Control center at all times, twenty-four

1 hours a day.

2 A Two people are assigned to the Center, yes, sir,  
3 twenty-four hours a day.

4 Q Fine. One is the radar watch stander and the other  
5 is the radio watch stander, is that the way the watches are  
6 set?

7 A Yes, sir.

8 Q The radio guy doesn't have anything to do with the  
9 radar and the radar guy doesn't really have anything to do  
10 with the radio, is that the way it works?

11 A Not entirely. The radio operator will sometimes  
12 answer calls from vessels, but he does not assume the radar  
13 watch, nor does the radar operator assume the radio watch.

14 Q And the radio watch stander wouldn't necessarily be  
15 plotting vessels on the radar?

16 A No, sir.

17 Q Now, the watch that is set at the VTC center is set  
18 much like a bridge watch on a ship, is that correct?

19 A Not entirely, sir.

20 Q The manual states that though, does it not?

21 A That -- that statement is in there to explain  
22 relatively speaking how the Vessel Traffic Operations Center  
23 is to be run.

24 Q Now, the OD, the Officer of the Deck, is the senior  
25 man on that particular watch, is he not?

1           A     The Officer of the Day is the Commanding Officer's  
2 direct representative, sir, not necessarily the senior man.

3           Q     If in fact the bridge watch or something akin to a  
4 bridge watch was set, the OD would be the man with the conn,  
5 would he not?

6           A     In this case, sir, because this is not a ship, the  
7 OD has other responsibilities besides just the Vessel Traffic  
8 Center.

9           Q     So what the OD would do when carrying out his other  
10 responsibilities is delegate to the watch stander whatever  
11 duties he might have with respect to the radar or the radio,  
12 is that correct?

13          A     Yes, sir.

14          Q     And then he leaves the area?

15          A     Yes, sir.

16          Q     And in fact in this case went home?

17          A     Yes, sir.

18          Q     So if an emergency came up, he would have to be  
19 tracked down, not in the station, but somewhere at home?

20          A     Wouldn't have to be tracked down very hard, sir. He  
21 carries a beeper with him or a radio at all times, or if he is  
22 at home he is able to be contacted by phone.

23          Q     And then he could get back to the station within  
24 five to ten minutes if he had to?

25

1           A     Yes, sir. After he could initiate a response at the  
2 station by his orders over the phone or radio.

3           Q     But in fact, if he was needed, all they would have  
4 to do was call him on the phone and say, X, Y, and Z occurred,  
5 what's your advice?

6           A     Yes, sir.

7           Q     You spoke in response to Mr. Cole's question about  
8 some automatic radar plots that the Coast Guard does?

9           A     Yes, sir.

10          Q     Let me show you two documents, if I may. I will  
11 show you what has been marked for identification as  
12 Defendant's Exhibit Q and Defendant's Exhibit R. Could you  
13 tell the jury what these two documents are?

14                   (Pause.)

15          A     These appear to be -- these appear to be copies -- Q  
16 appears to be a copy of the data logger plot of the Exxon  
17 Valdez transit outbound, and R appears to be a copy of the  
18 physical plotting on a chart or chartlette, of the data  
19 provided by that data logger printout.

20          Q     Could you explain to the jury what the automatic  
21 data logger is?

22          A     The computer -- there is a computer interface in the  
23 radar which at set time intervals, which can be set by the  
24 operator -- in this case, they are three minute intervals,  
25 will note the bearing and range of a target from the radar at

1 a particular site.

2 Q Now this is the Coast Guard radar in the VTC Center?

3 A This is the radar repeater in the VTC Center, yes,  
4 sir.

5 Q And you are plotting the vessel automatically every  
6 three minutes?

7 A Yes, sir.

8 I can't tell where this -- which one this is from,  
9 whether this is from the spit site radar or from the Potato  
10 Point radar.

11 Q In any event, there is a printout that comes off  
12 your radar and this exhibit Q is that printout?

13 A Yes, sir, there is a printout that is taken from a  
14 printer, data logger, that gets its information from the  
15 radar.

16 Q And Exhibit R is an actual plot of the three minute  
17 positions that the data logger is plotting?

18 A Yes, sir, it appears to be.

19 Q Both of these documents have come from the Coast  
20 Guard?

21 A Yes, sir, they appear to come from the Coast Guard.

22 MR. CHALOS: Your Honor, I offer Exhibit Q and  
23 Exhibit R into evidence.

24 MR. COLE: I have no objection.

25 THE COURT: They are both admitted.



1 (Defendant's Exhibits Numbers Q  
2 and R are received in evidence.)

3 (Pause.)

4 BY MR. CHALOS: (Resuming)

5 Q Mr. Falkenstein, you're not aware of any Coast Guard  
6 regulations that require vessels to have company bridge  
7 organization manuals on board, are you?

8 A No, sir.

9 Q And if there is a bridge organization manual on  
10 board, that wouldn't be considered to be Coast Guard  
11 regulations, am I correct?

12 A No, sir.

13 Q You spoke about a question that is asked of ships  
14 incoming or outgoing from Prince William Sound. And you said  
15 one of the questions asked is whether there is pilotage on  
16 board, am I correct?

17 A Yes, sir.

18 Q Now, the question is, is there pilotage on board, is  
19 it not?

20 A I don't know how the watch standers each phrase it.

21 Q Well, you are aware of the fact that there is no  
22 question saying, is the man that has the pilotage endorsement  
23 going to navigate this vessel through the Sound, that's not a  
24 question that is asked?

25 A That's an assumption; that's correct, sir.

1           Q     There is no definition that you are aware of, is  
2 there, that says when you ask the question, do you have  
3 pilotage on board, that means that the pilot is obligated to  
4 be on the bridge at all times? You are not aware of any such  
5 definition, are you?

6           A     Yes, sir, I believe the law defines that.

7           Q     Where does the law define that?

8           A     I believe section 8502 of 45 U.S. Code specifies  
9 that a vessel not sailing under registry -- in other words, on  
10 a coastwise voyage, must be under the direction and control of  
11 a licensed pilot.

12          Q     Now, it's true, is it not, that there is no  
13 definition in those regulations that you just referred to,  
14 that defines what direction and control means?

15          A     I do not know, sir; I do not recall.

16          Q     In any event, if there was such a definition, it  
17 would be right in those regulations, would it not?

18          A     It could be in another section of the -- of Title  
19 46.

20          Q     Are you aware of any Alaska regulations that require  
21 someone with a pilotage endorsement to be on a ship while it  
22 transits Prince William Sound?

23          A     I am aware that the State of Alaska has pilotage  
24 laws and regulations.

25          Q     Do you know what those regulations say?

1 A Not entirely, sir. I don't enforce State law.

2 Q And are you aware that the Alaska pilot regulations  
3 only extend to Rocky Point?

4 MR. COLE: Objection; relevance.

5 MR. CHALOS: Well, your Honor, I am just following  
6 up an answer that this witness gave, that he is aware of  
7 pilotage regulations under Alaska law.

8 THE COURT: You can answer the question.

9 THE WITNESS: I am not exactly sure where the  
10 pilotage regulations begin for the State of Alaska.

11 BY MR. CHALOS: (Resuming)

12 Q I would like to ask you a little bit about the  
13 pilotage regulations. You said that a vessel that is not  
14 sailing on register requires a Federal licensed pilot to be on  
15 board while transiting Prince William Sound, is that correct?

16 A No, sir. I said that a vessel not sailing under  
17 registry requires -- it required to be under the direction and  
18 control of a Federally licensed pilot while transiting Prince  
19 William Sound.

20 Q And you -- I take it you interpret direction and  
21 control to mean what?

22 A Direction and control means the individual has  
23 control of the vessels movement through the water.

24 Q Would you agree that someone who is directing and  
25 controlling a vessel can do it from various places on the

1 bridge?

2 A Yes, sir.

3 Q Can do it from various places off the bridge?

4 A No, sir.

5 Q You don't think a captain can say to a mate on  
6 watch, I want you to make the following maneuver and I am  
7 going to step down to go to the bathroom for a second?

8 A No, sir, because there is a head on the bridge, for  
9 one thing, and for two, he would no longer be directing the  
10 vessels movement through the water as it moved.

11 Q Well, what if he told the mate, this is the turn I  
12 want you to make and I don't want you to make anything else.  
13 Would you consider that to be direction and control?

14 A No, sir, I don't think so.

15 Q You think the mate could countermand what the  
16 captain just told him, or the man with the pilotage?

17 A Yes, sir, given a certain set of conditions, I  
18 believe the mate would and probably should, if something came  
19 up to force him to change that order.

20 Q Now, Mr. Falkenstein, if Commander McCall told you,  
21 I want you to do X, Y, and Z, and then walked away for a  
22 second, you think that you would be in a position to  
23 countermand that order?

24 A Under certain --

25 MR. COLE: Objection; relevance.

1 THE COURT: Yeah, you're getting a little off the  
2 track. Objection sustained.

3 BY MR. CHALOS: (Resuming)

4 Q All right, let me -- let's get back to the pilotage.  
5 You are aware, are you not, that a vessel can sail on register  
6 between two U.S. ports?

7 A No, sir, I am not aware of that.

8 Q You're not aware of the dual documentation  
9 requirements?

10 A Yes, sir, I am aware the documentation requirements  
11 have changed recently, but my interpretation, my understanding  
12 of the documentation is the vessel sailing under registry, if  
13 it is sailing to a foreign port, and if it's not, it is on a  
14 coastwise voyage.

15 Q My question was more specific. Under this dual  
16 documentation, isn't it true that a vessel could sail  
17 coastwise but go from San Francisco to Long Beach under  
18 register?

19 A I am not aware of that, no, sir.

20 Q You're not?

21 A No, sir.

22 Q I take it you are not an expert in documentation?

23 A No, sir.

24 Q Were you aware that in 1986 the -- a letter was sent  
25 out by Alamar to various shipping companies explaining what

1 was termed as new pilotage regulations?

2 A I have been made aware of that letter since the  
3 Exxon Valdez grounding.

4 Q When did you first become aware of it?

5 A May, June, sometime, sir.

6 Q Of this year?

7 A Of 1989, sir.

8 Q Have you read that letter?

9 A Some time ago.

10 MR. CHALOS: Your Honor, may I approach the witness?

11 THE COURT: This will be a good time for us to take  
12 our break. Don't discuss the matter among yourselves or with  
13 any other person, and don't form or express any opinions.  
14 We'll be back in ten or fifteen minutes.

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

17 (Whereupon, from 10:01 o'clock a.m. until 10:18  
18 o'clock a.m., the Court stood in recess.)

19 THE CLERK: This Court now resumes its session.

20 THE COURT: Thank you. You may resume.

21 BY MR. CHALOS: (Resuming)

22 Q Mr. Falkenstein, you have Exhibit 107 in front of  
23 you?

24 A Yes, sir.

25

1 Q That is that Coast Guard regulation that speaks  
2 about direction and control, is it not?

3 A This is the law, yes, sir.

4 Q Now, have you had a chance to read through that  
5 particular section?

6 A Yes, sir, most of it.

7 Q There is nothing in that section that defines  
8 directions and control, is there?

9 A Not that I could see, no, sir.

10 Q I would like to speak to you a little bit about  
11 pilotage now. When the pipeline first opened up in 1977,  
12 Federal pilotage was required for all of Prince William Sound,  
13 was it not?

14 A Yes, sir.

15 Q Sometime thereafter, around 1980, there was an  
16 easement -- an easing of that restriction, was there not?

17 A In certain conditions, yes, sir.

18 Q The easing was to the effect that vessels could  
19 transit Prince William Sound in the daylight without pilotage,  
20 up to Bligh Reef?

21 A If they declared that they did not have the  
22 pilotage, yes, sir. And they met other certain conditions.

23 Q The overall statute requiring pilotage in Prince  
24 William Sound was still in effect, was it not?

25 A Yes, sir.

1 Q And that easing came about because of a Captain of  
2 the Port order?

3 A Through a Captain of the Port order, yes, sir.

4 Q Now, what that mean then, once the easing of the  
5 regulation came about, was that a ship could travel up to  
6 Bligh Reef, with no pilotage, if they met certain  
7 requirements.

8 A And they declared that they did not have a pilot  
9 aboard, yes, sir.

10 Q Now, are you familiar that in 1985, the Coast Guard  
11 proposed new rules that would have done away completely with  
12 the pilotage in Prince William Sound?

13 MR. COLE: Objection; relevance.

14 MR. CHALOS: Your Honor, this all goes to the issue  
15 of what the pilotage regulations were and what the basis for  
16 the pilotage regulations.

17 MR. COLE: Rules that were proposed and never  
18 enacted have no relevance to this case. There's a lot of  
19 rules that have been proposed for Prince William Sound.

20 MR. CHALOS: What I am getting at your Honor, is the  
21 thinking behind the proposed rule making. Why did the Coast  
22 Guard propose rules that would have eliminated pilotage?

23 THE COURT: Objection sustained.

24 MR. CHALOS: Your Honor, can I make an offer of  
25 proof at the Bench?



1 THE COURT: You can at a break, but not at this  
2 time. I sustained the objection. You just made the offer.  
3 That's why I let you speak.

4 BY MR. CHALOS: (Resuming)

5 Q Mr. Falkenstein, were you ever involved with any  
6 decisions to eliminate pilotage in Prince William Sound?

7 MR. COLE: Objection.

8 BY MR. CHALOS: (Resuming)

9 Q Prior to the grounding; prior to the grounding?

10 MR. COLE: Objection; relevance.

11 MR. CHALOS: Your Honor, again this goes to the  
12 issue of pilotage and what was in effect and what the basis  
13 was for this particular of September 19th, which waived, in  
14 our argument, pilotage for that area.

15 THE COURT: Objection sustained.

16 BY MR. CHALOS: (Resuming)

17 Q Mr. Falkenstein, were you aware that in 1986 the  
18 pilotage requirement was further eased to permit transit of  
19 vessels at night without pilotage?

20 A the --

21 Q So long as the visibility was two miles?

22 A Yes, sir. The primary requirement for transits of  
23 vessels being daylight was changed to being two miles  
24 visibility.

25

1 Q Now, with respect to those vessels that did not have  
2 pilotage, that operated under these eased regulations, there  
3 was no requirement that the master be on the bridge, was  
4 there?

5 A Not specifically, no, sir.

6 Q What you have testified to was that only two  
7 officers were required to be up there.

8 A Yes, sir.

9 Q You are aware of the fact, are you not, that foreign  
10 vessels call at the port of Valdez?

11 A Yes, sir.

12 Q And you are aware that sometimes these vessels are  
13 coming up for the first time?

14 A Yes, sir.

15 Q But the Coast Guard does permit those vessels to  
16 come up into Prince William Sound --

17 MR. COLE: Judge, I object as to going into foreign  
18 vessels. We are not dealing with that at all.

19 MR. CHALOS: Your Honor, again, this all goes to the  
20 -- Mr. Cole opened the door on pilotage requirement and what  
21 is the difference between pilotage and nonpilotage and the  
22 various regulations that apply, and that is what I am  
23 exploring here.

24 MR. COLE: Judge, my questions were directed  
25 specifically towards coastwise vessels, and that is what

1 Commander Falkenstein --

2 THE COURT: Are you asserting this is a foreign  
3 vessel?

4 MR. CHALOS: No, your Honor, I am just asserting --  
5 I would assume that the risk for a foreign vessel or a  
6 coastwise vessel, navigational risks, are the same. I am just  
7 trying to explore this nonpilotage versus pilotage issue.

8 THE COURT: You are trying to explore the reasons  
9 behind it and why it applies to one and maybe not others?

10 MR. CHALOS: Yes.

11 THE COURT: Objection sustained.

12 (Start Tape C-3635)

13 BY MR. CHALOS: (Resuming)

14 Q Now Mr. Falkenstein, I think you said that the  
15 easing of the regulations in 1986 continued the requirement  
16 that there be two officers on the bridge when transiting  
17 Prince William Sound with no pilotage, do you recall that?

18 A Yes, sir, that is the requirement.

19 Q Do you have Exhibit B in front of you, the  
20 letter of September 19th, 1986?

21 A Yes, sir.

22 Q Would you read item number three in the second to  
23 the last paragraph?

24 A A bridge navigation team consisting of an extra  
25 watch stander under the direction of a deck officer other than

1 the one on watch must report the vessels position every ten  
2 minutes while navigating from Cape Hinchinbrook to Montague  
3 Point.

4 Q Now, where is Montague Point? Would you point that  
5 out on the chart?

6 A It would be approximately right there.

7 Q Would you agree that reading that paragraph, it  
8 appears to imply that the two man navigation team only be in  
9 effect between Hinchinbrook and Montague Point?

10 A Yes, sir, it seems to imply that.

11 Q And this letter refers to a pilot station, does it  
12 not? If you read the first paragraph.

13 A Yes, sir, it does.

14 Q There is no mention of Bligh Reef there or Bligh  
15 Reef Buoy?

16 A No, sir, there does not appear to be.

17 Q And you are familiar that the Coast Guard  
18 regulations state that the pilot station is at Rocky Point?

19 A No, sir, they do not.

20 Q The Coast Guard regulations do not?

21 A No, sir. Coast Guard regulations do not specify  
22 where the pilot station is.

23 Q Well, you are familiar that the pilot station as  
24 designated is the one at Rocky Point?

25

1           A     Yes, sir, there is a pilot station designated to be  
2 at Rocky Point.

3           Q     Now, you spoke in this chart that you made up, you  
4 say that the State pilot for nonpilotage vessels boards and  
5 disembarks at Bligh Reef Buoy, is that correct?

6           A     Yes, sir.

7           Q     Is that abeam of Bligh Reef buoy?

8           A     I believe that the requirement on our check sheet  
9 said that the pilot will board off of Bligh Reef buoy number  
10 6.

11          Q     And that's the one, would you point out what we're  
12 talking about?

13          A     That would be that buoy right there.

14          Q     I take it in the traffic lanes is where you want the  
15 pilot to get on and off?

16          A     Hopefully, yes, sir.

17          Q     Are you aware of a practice of pilots at getting on  
18 or off north of Bligh Reef, on vessels without pilotage?

19          A     No, sir, I am not.

20                   (Pause.)

21          Q     Okay, I would like to turn our attention for the  
22 moment to the evening of the 23rd. Before I do that, I ask  
23 you if you are familiar with the Alaska State pilot -- Alaska  
24 State statute regarding pilotage?

25          A     Not really, no, sir.

1 Q Let me show you -- let me have --  
2 (Defendant's Exhibit Number S  
3 was marked for identification.)

4 BY MR. CHALOS: (Resuming)

5 Q Let me show you what has been marked as Defendant's  
6 Exhibit S, which is the Alaska statutes, section -- I believe  
7 it is Chapter 63, Section 08.62.185 and ask you, have you ever  
8 read that statute?

9 A No, sir.

10 Q Could you tell me -- could you read for the jury --

11

12 MR. COLE: Judge, I objection. What is the purpose  
13 of this? Is he trying to put it in. I mean --

14 MR. COLE: I will ask the Court to take --

15 THE COURT: He's never seen the statute and you're -  
16 - well, go ahead and make your application.

17 MR. CHALOS: Yes. I would like to ask the Court,  
18 your Honor, to take judicial notice of this Alaska statute  
19 regarding the Alaska laws with respect to pilotage.

20 MR. COLE: May I see it?

21 (Pause.)

22 THE COURT: Any objection?

23 MR. COLE: No.

24 MR. CHALOS: I offer the Exhibit as --

25 THE COURT: May I see it, please?

1 MR. CHALOS: I'm sorry.

2 THE COURT: You're offering 8.62.185, the top one?

3 MR. CHALOS: Yes, your Honor.

4 (Pause.)

5 THE COURT: All right. What we'll do then is we'll  
6 without objection take judicial notice -- the Court will take  
7 judicial notice of Alaska Statute Title 8, Chapter 62, Section  
8 185, Certain Licensed Pilots Required for all Tankers, which  
9 is Exhibit S. Before the jury is given this document though,  
10 we'll cover up the other statutes that you didn't ask for.

11 MR. CHALOS: Your Honor, may I just have one minute  
12 with Mr. Madson?

13 That'll be fine, your Honor.

14 THE COURT: Make sure that does get covered up, and  
15 Mr. Purden, you can coordinate with that.

16 (Defendant's Exhibit Number S  
17 was received in evidence.)

18 BY MR. CHALOS: (Resuming)

19 Q Mr. Falkenstein, would you read subsection B of that  
20 statute?

21 A The pilot required in A of this section shall  
22 control the vessel during all docking operations.

23 Q There is nothing in there that speaks about having a  
24 pilot on board through the transit of Prince William Sound, is  
25 there?

1 A Not in the Alaska statute, no, sir.

2 Q All right, let's go to the events of the morning of  
3 the 24th of March. Now, you have testified in response to Mr.  
4 Cole's question that the Captain of the Port, Commander  
5 McCall, gave you certain instructions?

6 A At what time, sir?

7 Q When you got to the -- when you got to the VTC  
8 Center.

9 A Yes, sir, he did.

10 Q What instructions did you receive?

11 MR. COLE: Objection --

12 MR. CHALOS: Your Honor, I am not offering it for  
13 its truth, only that he acted in conformity with the  
14 instructions that he received.

15 THE COURT: Mr. Cole?

16 MR. COLE: If that is the purpose, I have no  
17 problem.

18 THE COURT: Go ahead.

19 BY MR. CHALOS: (Resuming)

20 Q Would you tell us what you were told to do?

21 A I was directed to contact the district office and to  
22 notify our people in the operations center at the Juneau  
23 office, and to also notify the responsible people in the  
24 Marine Safety Division, that we had had a casualty.



1 Q Were there any other instructions given to you by  
2 Captain McCall -- Commander McCall?

3 A Yes, sir, there were several of them. One of them  
4 was that I was to get some equipment -- gear together and go  
5 out to the vessel.

6 Q And I take it you followed Commander McCall's  
7 instructions?

8 A Yes, sir.

9 Q On your way out to the vessel -- you said you left  
10 sometime around 2:30?

11 A Sometime between 2:00 and 2:30, yes, sir.

12 Q And you got to the vessel around 3:30?

13 A Yes, sir.

14 Q Did you see any ice on the way out?

15 A No, sir.

16 Q You saw no ice at all?

17 A No, sir.

18 Q Do you remember being interviewed by the State?

19 A Yes, sir.

20 Q And do you remember telling them that on the way out  
21 you saw some ice?

22 A I don't recall, sir.

23 Q When you got on board the vessel, did you see ice  
24 sometime thereafter?

25 A Yes, sir.

1 Q When did you see the ice for the first time?

2 A I don't recall exactly when. It was starting to get  
3 a little more daylight, though.

4 Q Would you describe the ice that you saw?

5 A Nearest the vessel there were several chunks that  
6 were five to eight feet across. Farther away there were some  
7 much larger pieces of ice. I don't recall exact size, but  
8 they were significantly large pieces of ice.

9 Q Now, you stated in response to Mr. Cole's question  
10 that when you came alongside the vessel, you were concerned  
11 about the threat of an explosion?

12 A Yes, sir.

13 Q Do you remember testifying before the NTSB?

14 A Yes, sir.

15 Q Do you remember --

16 MR. COLE: Judge, I am going to object at this  
17 point. This is the second time that I haven't gotten a  
18 reference, and I am trying to find the first reference that  
19 Mr. Chalos made, and I still can't find that one.

20 MR. CHALOS: Well, you Honor, Mr. Cole had promised  
21 to give us copies of the NTSB testimony, the official  
22 transcript, and we still don't have that. So I have to rely  
23 on my copies. I will show --

24 MR. COLE: They were provided last Friday --

25

1 THE COURT: Mr. Cole -- Mr. Cole, the rule says upon  
2 request you can be shown this, and you can make a polite  
3 request for it and he will show it to you.

4 BY MR. CHALOS: (Resuming)

5 Q Do you remember being asked these questions and  
6 giving these answers.

7 Question: Commander Falkenstein, when you went out  
8 to the ship that first day, you said there were a lot of  
9 vapors around. Were you ever worried about explosions or the  
10 boat having an explosion problem when you came alongside?

11 Answer: As we were coming alongside, sir?

12 Question: Yes.

13 Answer: Not particularly.

14 Do you remember giving that answer?

15 A No, sir, I don't remember it, but if that is part of  
16 the transcript, I must have.

17 Q Now, at the time that you came on board the ship,  
18 did you notice any oil leaking over the side?

19 A I didn't see any oil running down the side. I saw  
20 some stains, I believe, sir.

21 Q I think you described the stains as being relatively  
22 small streaks, is that right?

23 A Yes, sir, two, four foot across, something like  
24 that.

25

1 Q Now, when you went -- you went directly from, I take  
2 it, the foredeck of the vessel right up to the bridge?

3 A We boarded, I believe, just aft of midships on the  
4 starboard side, and proceeded from there directly to the  
5 bridge, yes, sir.

6 Q And that is where you saw the captain for the first  
7 time?

8 A Yes, sir.

9 Q And the captain was standing forward on the bridge  
10 on the port side?

11 A Yes, sir, he was standing in the port forward corner  
12 of the bridge.

13 Q Who went up to the bridge with you?

14 A Myself, Dan Lawn and Mr. DeLozier.

15 Q And did you all approach the captain, all three of  
16 you?

17 A I don't recall, sir. I know I was the first one to  
18 speak with the Captain, though.

19 Q Were you the only one that spoke with the Captain at  
20 that time?

21 A I spoke with him first alone, and then I believe Mr.  
22 DeLozier spoke with him. And maybe Mr. Lawn, I'm not sure of  
23 that though.

24 Q Right about the same period of time?

25 A No, sir, it was one after the other.

1 Q Within five minutes of each other?

2 A Yes.

3 Q How close were you standing?

4 A About two and a half feet, sir.

5 Q And how close was Mr. Lawn standing?

6 A At the time I was talking to him, I am not aware of  
7 where Mr. Lawn was standing. I don't recall he or Mr.  
8 DeLozier being in the immediate vicinity.

9 Q Do you have a recollection of seeing Mr. Lawn  
10 talking with the Captain close-up?

11 A No, sir I do not.

12 Q But you are aware that Mr. Lawn was talking with the  
13 Captain at some point?

14 A He may have, I'm not sure, sir.

15 Q Now, when you were going out to the vessel, were you  
16 aware of the fact that Mr. DeLozier had been in the Pipeline  
17 Club the evening before?

18 A No, sir.

19 Q You were not aware of it?

20 A No, sir.

21 Q You say that when you got within about two, two and  
22 a half feet of the Captain, you smelled what you perceived to  
23 be a smell of alcohol, is that correct?

24 A Yes, sir, I had been talking to him for a couple of  
25 minutes.

1 Q Where was Mr. DeLozier at the time?

2 A I do not recall, sir. I don't recall him being in  
3 the --

4 Q Was he standing close by?

5 A I don't recall him being close by, no, sir.

6 Q You recall this interview that you gave to Connie  
7 Chung, do you not?

8 A Yes, sir.

9 Q And you recall her asking you --

10 MR. COLE: Judge, I would like to see this  
11 statement.

12 MR. CHALOS: Well, I am going to ask the witness.  
13 If he doesn't deny what I am asking him, there's no point in  
14 showing it.

15 MR. CHALOS: You have to have a good faith basis for  
16 this, Mr. Chalos, before you can ask the question, and if you  
17 do, why don't you give Mr. Cole -- he has asked for a copy of  
18 the interview, or tell him what you expect that witness would  
19 say.

20 MR. CHALOS: Shall I whisper it to him?

21 THE COURT: Uh-huh.

22 You may proceed.

23 BY MR. CHALOS: (Resuming)

24 Q Mr. Falkenstein, do you remember the interview with  
25 Connie Chung?

1           A     Yes, sir.

2           Q     And do you remember being asked by her if you  
3 smelled alcohol on the Captain's breath?

4           A     I don't recall exactly, no, sir.

5           Q     Do you remember giving the answer, I smelled alcohol  
6 in the area?

7           A     I don't recall exactly what I answered.

8           MR. CHALOS: Your Honor, may we approach the Bench?

9           (An off the record Bench conference was had.)

10          THE COURT: We are going to need to set up a  
11 procedure outside of your presence and review it first before  
12 you are shown it, ladies and gentlemen, so we'll let you go  
13 back to the jury room for a few minutes. Remember not to  
14 discuss the matter or form or express any opinions. We'll  
15 call you back when we can.

16          (Whereupon, the jury exited the Courtroom.)

17          THE COURT: Now what we can do is we can go ahead  
18 and show it to Mr. Cole, you can turn it on, the jury's not  
19 here. And then if you are going to be using it to refresh the  
20 witnesses recollection, it doesn't get shown to the jury. Mr.  
21 Cole can look at it. If you use it to impeach the witnesses  
22 testimony, it can be shown to the jury, if you can lay a  
23 foundation for the voice being and the picture being the  
24 witness, which I assume you can.

25

1           As I understand, the witness has said first under  
2 oath that he smelled alcohol on the breath of Captain  
3 Hazelwood and your theory is now that he at an earlier date  
4 said he just smelled alcohol in the general vicinity --

5           MR. CHALOS: Yes.

6           THE COURT: -- which is inconsistent.

7           So it is up to you how you do this. Those are the  
8 ground rules to do it, though?

9           (A videotaped interview was shown.)

10          THE COURT: Are you ready with the jury now?

11          MR. CHALOS: Yes, your Honor.

12          THE COURT: How do you plan on proceeding?

13          MR. CHALOS: I am going to use it to impeach this  
14 witness, your Honor.

15          THE COURT: All right. Bring the jury in.

16          (Whereupon, the jury entered the Courtroom.)

17          MR. COLE: Judge, I want to make sure that Mr.  
18 Chalos is there to stop this.

19          MR. CHALOS: I'll stop it.

20          THE COURT: Thank you for your patience. Mr.  
21 Chalos?

22          BY MR. CHALOS: (Resuming)

23           Q     Mr. Falkenstein, do you recall giving an interview  
24 to Connie Chung?

25           A     Yes, sir.



1 Q We just played a portion of that interview. Was  
2 that you on the television?

3 A It appeared to be, yes, sir.

4 (A videotaped interview was shown.)

5 BY MR. CHALOS: (Resuming)

6 Q Commander Falkenstein, you say you were not aware  
7 that Mr. DeLozier had been drinking the night before, is that  
8 correct?

9 A No, sir.

10 Q Was it Mr. DeLozier that called you out on the  
11 bridge wing?

12 A Yes, sir.

13 Q And was it Mr. DeLozier that said to you I think I  
14 smell alcohol on the Captain's breath?

15 A No, sir, he didn't say that.

16 Q What did Mr. DeLozier say?

17 A He asked me if I smelled the Captain's breath. If I  
18 noticed it. And I said yes, I did.

19 Q Now, I take it that you are not trained in alcohol  
20 detection, are you?

21 A Not formally, no, sir.

22 Q You spoke a little bit about that you were concerned  
23 that with the passage of time, the alcohol would dissipate in  
24 the blood, do you recall that?

25 A Yes, sir.

1 Q You don't have any formal training in that either,  
2 do you, as far as dissipation rates?

3 A No, sir.

4 Q Mr. Cole asked you a series of questions about  
5 Commander McCall and whether Commander McCall knew Captain  
6 Hazelwood. Was it ever your impression that morning that  
7 Commander McCall was stalling sending someone out to the  
8 vessel to -- with the blood alcohol kit?

9 A No, sir.

10 Q Commander McCall was pretty busy that morning,  
11 wasn't he?

12 MR. COLE: Objection; speculation.

13 THE COURT: Objection overruled.

14 THE WITNESS: Yes, sir, I presume he was.

15 BY MR. CHALOS: (Resuming)

16 Q I take it there hasn't been any transcription or any  
17 record kept of the actual phone calls made to Commander  
18 McCall, has there?

19 A Yes, sir, there are copies of the phone calls made  
20 to Commander McCall.

21 Q What I am talking about is the actual what was said.

22 A Yes, sir.

23 Q There are?

24 A Yes, sir.

25 Q Have you made those available to anyone?

1 A No, sir.

2 Q Is there a particular reason?

3 MR. COLE: Objection; relevance.

4 THE COURT: Is there a particular reason; the  
5 objection is sustained.

6 BY MR. CHALOS: (Resuming)

7 Q Do you know why those transcripts have not been made  
8 available.

9 MR. COLE: Objection; speculation, relevance.

10 THE COURT: He's asking him if he knows, has  
11 personal knowledge.

12 THE WITNESS: No, sir, I do not.

13 BY MR. CHALOS: (Resuming)

14 Q Now, you have the authority, if you felt that  
15 Captain Hazelwood was in any way impaired or intoxicated on  
16 that particular morning, to relieve him as captain, do you  
17 not?

18 A Coast Guard can remove the captain of a vessel, yes,  
19 sir.

20 Q And you as the on scene investigator had that  
21 authority?

22 A Yes, sir.

23 Q You said the reason you didn't remove Captain  
24 Hazelwood, I believe, was because he was the one most familiar  
25 with the ship and its condition.

1 A He is far more familiar than I would be, yes, sir.

2 Q If you felt that the captain was impaired or  
3 intoxicated, you could have replaced him with the chief mate,  
4 could you not?

5 A Yes, sir, I believe we could have.

6 Q Did you see any signs of impairment or intoxication  
7 when you met with Captain Hazelwood?

8 A That was the first time I had met Captain Hazelwood.  
9 I saw no physical signs of impairment.

10 Q And he wasn't slurring his speech, he wasn't --

11 A I have got nothing to base that judgement of Captain  
12 Hazelwood's speech.

13 Q His movements were steady?

14 A They appeared to me, yes, sir.

15 Q You said he appeared to be lucid?

16 A Yes, sir.

17 Q Appeared to be in command of his vessel?

18 A As much as one can be in command under those  
19 conditions, yes, sir.

20 Q Now, did you at any time tell Captain Hazelwood,  
21 Captain, I believe you have been drinking, I want to do a  
22 blood test on you?

23 A No, sir, I did not.

24 Q Was there a particular reason why not?

25

1           A     Because immediately after speaking with Captain  
2 Hazelwood on the bridge, Mr. DeLozier and I split the  
3 responsibilities. I concentrated on salvage and pollution  
4 response. Mr. DeLozier concentrated on investigations. At  
5 that point I took myself out of direct involvement in the  
6 investigations.

7           Q     When you came on board the vessel that morning, was  
8 she hard aground by then?

9           A     Yes, sir, I had been told she was hard aground by  
10 Captain Hazelwood.

11          Q     And there was no movement of the vessel that you  
12 could discern was there?

13          A     Not particularly, no, sir.

14          Q     And you mentioned that you and Captain Hazelwood  
15 spoke about the movement of the vessel prior to the grounding,  
16 do you recall that?

17          A     Yes, sir.

18          Q     Did Captain Hazelwood tell you what he had wanted  
19 the third mate to do?

20               MR. COLE: Objection; agony, hearsay.

21               MR. CHALOS: Your Honor, this goes to admissions. I  
22 think Mr. Cole opened the door for that. It goes to  
23 declarations against interest.

24               THE COURT: You're offering this against your own  
25 client? No, I'm sorry, Mr. Chalos. That's not permitted. It

1 can only be offered by a party opponent.

2 MR. CHALOS: Then I would rely on the door that Mr.  
3 Cole opened as to what was discussed with the captain.

4 THE COURT: Opening door is not an exception.  
5 Sustained.

6 BY MR. CHALOS: (Resuming)

7 Q Mr. Falkenstein, did you and the captain look at the  
8 chart that day?

9 A Yes, sir, later on.

10 Q Was there any discussion as to the maneuvers of this  
11 vessel prior to the grounding?

12 MR. COLE: Objection; hearsay.

13 MR. CHALOS: Your Honor, may we approach the Bench?

14 THE COURT: No, it's not necessary, unless you can  
15 cite me an exception to the hearsay rule, Mr. Chalos. This is  
16 strictly covered by agony, and it is strictly hearsay. The  
17 objection is sustained.

18 MR. CHALOS: Your Honor, I would again raise the  
19 point that what Captain Hazelwood might have said to this  
20 witness would be an admission, it could be a declaration  
21 against interest. I don't know what his answer is going to  
22 be.

23 THE COURT: Okay, we will excuse the jury to take  
24 this up so we can resolve this, and we won't have this problem  
25 again. Don't discuss this matter among yourselves, form or

1 express an opinions or speculate on what we're doing.

2 (Whereupon, the jury exited the Courtroom.)

3 MR. CHALOS: Your Honor, may we also have the  
4 witness excused?

5 THE COURT: All right, if you would just step out.

6 (The witness stands aside.)

7 MR. CHALOS: Judge, if you will recall, Mr. DeLozier  
8 testified that the master told him that he had told the mate  
9 to come down to the 38 fathom mark and start his turn. Mr.  
10 Falkenstein has already testified in the NTSB and told the  
11 State investigators that he met with the captain, the captain  
12 told him that he wanted the third mate to start his turn at  
13 beam of Busby, and that is what I am driving at here. This  
14 goes to the impeachment of the testimony given already by Mr.  
15 DeLozier, at least a contradiction. Because he met with him  
16 at the same time.

17 MR. COLE: My position remains the same, that was  
18 just hearsay.

19 THE COURT: It's hearsay. Now, can you cite me some  
20 rule that it would come under. It still remains hearsay.  
21 What Captain Hazelwood said that you're offering is hearsay.  
22 Now, unless it comes as a nonhearsay admission under 801 or an  
23 exception of 803, then it's not covered by a declaration  
24 against interest. And if it was a party, it would come in as  
25 an admission, by a party opponent.

1           Agony versus State covers that kind of thing, Mr.  
2 Chalos.

3           MR. CHALOS: Yes, sir.

4           THE COURT: Normally you have to put your client on  
5 the stand in order for him to say what happened and what he  
6 said and what he did. And Agony points out you can't avoid  
7 that by hearsay.

8           And Mr. Chalos, 801, I think it's 2, it 801(d)(2)  
9 talks about admissions by party opponent. The statement is  
10 offered against a party.

11           MR. CHALOS: Your Honor, I'm looking at 803, an  
12 admission being an out of Court statement demonstrating an  
13 intent to act in a particular manner is admissible to show the  
14 declarant subsequently acted in accord with such plan.

15           Mr. DeLozier stated that the captain told him that  
16 he had wanted the mate to turn at the 38 fathom mark. What  
17 we're trying to introduce here is that his plan had always  
18 been to turn at Busby, and we have evidence from Mr. Cousins  
19 saying that he was told that. We have evidence that he told  
20 the helmsman at that point to start his turn. But that was  
21 the plan, that's what I'm trying to introduce here. And I  
22 think under 803 that is admissible.

23           MR. COLE: 803 says, Judge, a statement of declarant  
24 when the existing state of mind, emotion, sensation or  
25 physical condition, offered to prove his present condition or



1 future action, but not including a statement of memory or  
2 belief to prove the fact remembered or believed, unless it is  
3 -- relates to the execution, revocation, identification or  
4 terms of the declarant's will. I don't think that that  
5 applies in this case.

6 THE COURT: It doesn't apply, Mr. Chalos.

7 MR. CHALOS: The other thing, your Honor, is this,  
8 that Mr. DeLozier testified that Mr. Falkenstein was present  
9 when this statement was made and that's -- that's the reason I  
10 am introducing that as well.

11 THE COURT: It still doesn't apply, Mr. Chalos. It  
12 is still hearsay and if you want to get these kinds of  
13 statements in, you will have to put Captain Hazelwood on the  
14 stand to do it. You can't do it through the back door,  
15 through hearsay. This is something that is always attempted  
16 by all defense attorneys, and we have this same argument each  
17 time, that Agony covers it and 801 doesn't apply to  
18 defendants. You can't get in an admission of your own client.

19 MR. CHALOS: What I am talking about here, your  
20 Honor, is Mr. DeLozier made a certain statement that he says  
21 took place in the presence of Commander Falkenstein and the  
22 Captain. What I am trying to do now is refute that statement  
23 by this witness who was present. I mean, I can lay the  
24 groundwork and ask him if he was present at this meeting and  
25 whether there was any discussion of a 38 fathom mark, but I

1 suppose we will have the same objection.

2 THE COURT: Objection sustained.

3 Now, I have ruled. I want to make sure that we  
4 don't have this crop up many more times. Do you have any  
5 other expectation of this witness of statements by Captain  
6 Hazelwood that you would like to introduce?

7 MR. CHALOS: I can't think of any now.

8 THE COURT: Okay.

9 Are we ready for the jury, then?

10 MR. CHALOS: Yes.

11 THE COURT: Okay.

12 (Whereupon, the jury and the witness entered the  
13 Courtroom.)

14 THE COURT: Mr. Chalos, you may resume.

15 BY MR. CHALOS: (Resuming)

16 Q Sir, you stated that at some point you and the  
17 captain went to the chart room?

18 A Yes, sir.

19 Q Who else was present when you were in the chart room  
20 with the captain?

21 A No one that I can recall.

22 Q Just you and the captain?

23 A Yes, sir.

24 Q As a result of that particular meeting at the chart  
25 room, did you have an understanding of what maneuvers --

1 MR. COLE: Objection; hearsay.

2 MR. CHALOS: Your Honor, I only want to know if he  
3 had an understanding. I am not going to ask the next  
4 question.

5 MR. COLE: It would be based -- the only way he  
6 could have it would be based on the statements of Captain  
7 Hazelwood. We have already gone into that.

8 THE COURT: Well, if you are not going to ask the  
9 next question, then what probative value does this witness's  
10 understanding have to the elements of this case?

11 MR. CHALOS: What he may have done as a result of  
12 that.

13 THE COURT: Okay, I'll let you ask that question to  
14 see what he did as a result of it. I don't want the witness  
15 to indicate what his understanding was, or what Captain  
16 Hazelwood told him that he had done.

17 MR. CHALOS: At the conclusion of this meeting in  
18 the chart room, did you have an understanding of what  
19 maneuvers were to be performed?

20 A Generally, yes, sir.

21 Q And was that understanding on the basis of what  
22 Captain Hazelwood told you?

23 MR. COLE: Objection; hearsay.

24 MR. CHALOS: I am exploring the basis for his  
25 understanding, your Honor.

1 THE COURT: As long as it doesn't come in. But the  
2 next question is going to be the one that is going to have to  
3 have some probative value. And this question of what did you  
4 do as a result of that might or might not. It was on the  
5 basis of what Captain Hazelwood told you? Don't tell us what  
6 he said, but was it -- what was the basis of that  
7 understanding?

8 THE WITNESS: My understanding of what the vessel  
9 was supposed to have -- how the vessel was supposed to have  
10 been maneuvered was based on what Captain Hazelwood explained  
11 to me.

12 BY MR. CHALOS: (Resuming)

13 Q Did you do anything after you received the  
14 information from Captain Hazelwood?

15 A I believe I discussed it with Mr. DeLozier.

16 Q What did you say to Mr. DeLozier?

17 A I relayed to him what the captain had told me.

18 Q What did you say to Mr. DeLozier?

19 MR. COLE: Objection; hearsay.

20 THE COURT: Mr. Chalos, you're doing indirectly --  
21 you're trying to do indirectly what I specifically outside the  
22 presence of the jury said you could not do.

23 MR. CHALOS: I'll withdraw the question, your Honor.

24 BY MR. CHALOS: (Resuming)

25

1 Q At the time that you were standing at the table with  
2 Captain Hazelwood, did he make any markings on the chart?

3 A No, sir.

4 MR. COLE: Objection; hearsay.

5 THE COURT: You're just a little late on it, but the  
6 answer was no, so no harm done.

7 BY MR. CHALOS: (Resuming)

8 Q Mr. Falkenstein, I would like to ask you some  
9 questions about the ice conditions in Prince William Sound.  
10 You are familiar, are you not that the ice conditions in and  
11 around the Bligh Reef area as a result of the calving from  
12 Columbia Glacier have been getting worse in the recent years?

13 A Yes, sir.

14 Q And as a result of this calving, more and more ice  
15 comes into the traffic lanes?

16 A Yes, sir.

17 Q And because of that, vessels have to divert outside  
18 the lanes to avoid the ice?

19 A Occasionally, yes, sir.

20 Q And when the Coast Guard is asked for permission to  
21 deviate, that is always granted, in and around the Bligh Reef  
22 area?

23 A Technically the vessels are not required to request  
24 permission to deviate. They are required to inform the Vessel  
25 Traffic Service of their intentions to deviate outside of the

1 designated traffic lane into the traffic separation scheme or  
2 outside of the scheme itself, in the zone or outside of the  
3 traffic scheme itself.

4 They advise the Vessel Traffic Service of their  
5 intentions to deviate and if there are no underlying reasons  
6 to prevent that deviation that the vessel may not be aware of,  
7 the Traffic Service grants that permission.

8 Q Are you aware of any situation where the Vessel  
9 Traffic Center has told a vessel desiring to leave the lanes  
10 as a result of ice, no, you can't do that?

11 A No, sir, I am not personally aware of any.

12 Q Would you agree that diverting for ice, to avoid  
13 ice, is not a per se dangerous maneuver?

14 MR. COLE: Objection; lack of foundation.

15 THE COURT: Overruled.

16 THE WITNESS: Not the maneuver in itself, per se.

17 BY MR. CHALOS: (Resuming)

18 Q Now, could you tell the jury what the notice -- what  
19 the information called Notice to Mariners is?

20 A The Notice to Mariners publishes the latest  
21 navigational information available to merchant mariners. It  
22 is published by the Coast Guard Office of Navigation in the  
23 Juneau office, but a local notice and the General Notice to  
24 Mariners is published by the Washington, D.C., offices.

25

1 Q Could you explain what the local notice to mariners  
2 is?

3 A The local notice to mariners disseminates  
4 information on light conditions, is the light operating, is  
5 the light not operating. If there is log -- log rafting  
6 operations or any other seasonal information, such as ice, for  
7 the mariner to be aware of in transiting certain waters.

8 Q Now, Mr. Falkenstein, do you recall receiving a  
9 telephone call from an Exxon Captain about seven to ten days  
10 before the grounding, advising you of ice?

11 MR. COLE: Objection; hearsay.

12 MR. CHALOS: Your Honor, I am not offering it for  
13 it's truth; only that he got the call and what he did about  
14 it.

15 THE COURT: Seven or ten days before the grounding?

16 MR. CHALOS: Around seven to ten days.

17 MR. COLE: Relevance.

18 THE COURT: I'll overrule the hearsay objection, but  
19 are you going to tie this up somehow with the day of --

20 MR. CHALOS: Yes, I'll tie it together.

21 BY MR. CHALOS: (Resuming)

22 Q Do you recall that?

23 A I don't recall getting a telephone call, no, sir.

24 Q Do you recall a Captain Martineau calling you?  
25

1           A     There was some communications with Captain  
2 Martineau, yes, sir.

3           Q     Do you recall what those communications were?

4           A     That was about the time the Exxon North Slope, which  
5 Captain Martineau was the master of, had experienced a hull  
6 fracture. And I recall working with Captain Martineau in  
7 repairing that fracture.

8           Q     Do you recall receiving a call from Captain  
9 Martineau reporting to you the ice conditions he experienced  
10 coming in and out of Prince William Sound?

11          A     Not coming in, no, sir. I believe he may have  
12 called on the ice conditions outbound.

13          Q     Do you recall what he said to you?

14               MR. COLE: Objection; relevance.

15               THE COURT: I am going to give Mr. Chalos a little  
16 latitude to see if he can tie it up here. You'll have to do  
17 it with the next series of questions.

18               THE WITNESS: That may have been -- he may have been  
19 recommending -- making recommendations about the ice. I don't  
20 recall, though.

21          Q     Would you agree, sir, on the basis of the  
22 information you received, that March of 1989, was a heavy ice  
23 month?

24          A     Yes, sir.

25



1 Q And do you remember Captain Martineau telling you  
2 that this was possibly the worst ice he had ever seen?

3 MR. COLE: Objection; hearsay.

4 MR. CHALOS: Your Honor, again it is not offered for  
5 its truth, only what he did.

6 THE COURT: Well, objection sustained. It is  
7 offered for its truth; that's the effect it is going to have.  
8 So the objection is sustained.

9 BY MR. CHALOS: (Resuming)

10 Q After you received this phone call from Captain  
11 Martineau, did you do anything?

12 A Not personally, no, sir.

13 Q Did you discuss it with Commander McCall?

14 A I don't recall.

15 Q When you say not personally, what was done?

16 A I don't recall taking the call from Captain  
17 Martineau personally. And I don't recall anything being done.

18 Q Had the Coast Guard sent out any notice -- local  
19 notice to mariners regarding the heavy ice conditions that you  
20 just testified to?

21 A I do not recall.

22 Q If a notice to mariners was sent out, that would be  
23 in the files, would it not? In the Coast Guard files?

24 A Possibly.

25 Q You stayed on the vessel until when?

1 A Approximately 3:00 or 3:30 Sunday afternoon.

2 Q During that particular time was the -- from Friday  
3 when you got on until Sunday, was the weather fairly calm?

4 A Yes, sir.

5 Q Did most of the oil that had come out of the vessel  
6 remain in the vicinity of the vessel?

7 A No, sir, most of it drifted to the southwest.

8 Q For what distance?

9 A I can't tell that, sir.

10 Q Were you aware that a storm came up Sunday evening?

11 A Yes, sir.

12 Q Were you on board for that storm?

13 A No, sir.

14 Q Do you have a recollection of when the first piece  
15 of Alyeska equipment arrived on the scene?

16 MR. COLE: Objection; relevance.

17 MR. CHALOS: Your Honor, may we approach the Bench?

18 (An off the record bench conference was had.)

19 THE COURT: I am going to sustain the objection  
20 under Cosmeiter, based on your offer of proof, Mr. Chalos.

21 BY MR. CHALOS: (Resuming)

22 Q Finally, Mr. Falkenstein, did you discuss your  
23 testimony that you were about to give today with anyone before  
24 coming here?

25 A Yes, sir.

1 Q With whom did you discuss your testimony?

2 A An attorney from the Department of Justice, a Coast  
3 Guard attorney, and Mr. Cole and one or two of his assistants.

4 Q Was there a particular reason why you met with  
5 attorneys from the Department of Justice or the Coast Guard?

6 MR. COLE: Objection; relevance.

7 MR. CHALOS: Your Honor, it goes to possible bias,  
8 possible credibility.

9 THE COURT: I'll let the question in. You can  
10 answer it.

11 THE WITNESS: Could you repeat it, please?

12 BY MR. CHALOS: (Resuming)

13 Q Yes. Was there any particular reason why you met  
14 with attorneys from the Department of Justice and the Coast  
15 Guard?

16 A The attorneys from the Coast Guard and the  
17 Department of Justice told me to.

18 Q Was there any suggestion made to you as to how you  
19 should testify today?

20 A Yes, sir.

21 Q What did they tell you?

22 A Tell the truth.

23 Q Was there any suggestion that the Coast Guard may  
24 have liability in this matter?

25 A No, sir.

1 Q Do you understand or has anyone told you that the  
2 Coast Guard may have liability in this matter?

3 A Not that I recall, sir.

4 Q Now, Mr. Falkenstein, did you test any Moussy beer  
5 while you were on board the vessel?

6 A In what way do you mean test?

7 Q Were you given some Moussy beer to smell?

8 A Yes, sir.

9 Q Who gave you the Moussy beer?

10 A Trooper Fox.

11 Q Did you drink any of it?

12 A No, sir.

13 Q What did the Moussy beer smell like, can you tell  
14 us?

15 A Moussy beer. I can't describe it. That's the first  
16 time I had ever smelled it.

17 Q Does it smell like regular beer?

18 A I don't think so.

19 Q Was the smell that you smelled on Captain  
20 Hazelwood's breath similar to the smell of the Moussy beer  
21 that you smelled?

22 A I can't recall.

23 Q Now, to the best of your knowledge, has the Coast  
24 Guard ever closed the port of Valdez due to ice?

25 A No, sir.

1 Q Were you ever told by the Department of Energy that  
2 you must maintain the port open at all costs?

3 A No, sir.

4 Q And you are not familiar with any such direction to  
5 anyone?

6 A Not at all, sir.

7 MR. CHALOS: No further questions, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. COLE:

10 Q Lieutenant Commander Falkenstein, has the port of  
11 Valdez been closed in the past?

12 A Yes, sir.

13 Q What kind of -- what reasons?

14 A We closed it in, I believe, January of 1989 due to  
15 high winds.

16 Q And it obviously was closed after March 1989?

17 A It was closed for a period of time after the Valdez  
18 grounding. And it has been closed -- I believe we closed it a  
19 couple of times this year, for high winds as well.

20 Q What is the reason for asking for ice reports from  
21 incoming and outgoing tankers as they go through Prince  
22 William Sound?

23 A So that we can get updated ice conditions in the  
24 area to pass on to other ships that will be transiting that  
25 area.

1 Q Why is that helpful for other ships?

2 A So that other ships would know the extent of the ice  
3 and the master can plan a course or attempt to anticipate a  
4 course of action he may need to take to transit the ice. Or  
5 an alternative, if there is no ice, that he doesn't need to  
6 worry about it.

7 Q You indicated that there was some conversations that  
8 you had had between yourself and Commander Mccall and that  
9 those had been transcribed in some manner?

10 A They've been recorded, sir.

11 Q Okay. Are you aware of whether those have been  
12 given to the State of Alaska?

13 A Not to my knowledge, sir.

14 Q Now, when did you first see Mr. DeLozier on the  
15 morning on the 24th?

16 A I am not exactly sure. It was sometime before we  
17 boarded the pilot launch to go out to the Valdez.

18 Q How close were you to him? Did you ever -- how  
19 close was the closest you got to him prior to leaving on the  
20 pilot boat out to the Exxon Valdez?

21 A A couple of feet.

22 Q Did you ever smell any alcohol on his breath at that  
23 time?

24 A No, sir.

25

1 Q Did you smell any alcohol on anyone's breath from  
2 the time you reported to the VTC Center until you got out to  
3 the Exxon Valdez?

4 A No, sir.

5 Q Now, when you were up at the bridge speaking to the  
6 Captain, was there anyone else around this area that you said  
7 you smelled alcohol?

8 A Not that I'm aware of, sir.

9 Q And did you have any discussions -- the discussions  
10 that you had down in the radio room, was Mr. DeLozier there  
11 for those?

12 A The telephone conversations, sir?

13 Q The telephone conversations?

14 A Yes, sir, I believe he was.

15 Q How far away from him were you then?

16 A Within five feet typically, sometimes closer.

17 Q Did you ever smell any alcohol on his breath during  
18 that time?

19 A No, sir.

20 Q I'd like you -- you were shown a letter, I think it  
21 has been marked for identification as Plaintiff's Exhibit  
22 Number B. Does the Alaska Maritime Agency make regulations  
23 for the Prince William Sound area?

24 A No, sir.

25

1 Q Do they make law on how vessels are to travel in and  
2 out of Prince William Sound?

3 A No, sir.

4 Q What is Alaska Maritime Agency?

5 A They are a shipping agency. Basically they  
6 coordinate logistics, paperwork, cargo manifests, details, for  
7 the ship. They do the shore work as much as possible for the  
8 ship prior to, during and after its arrival at port.

9 Q And if a person wanted to find out the most reliable  
10 information on pilotage laws in Prince William Sound, where  
11 would he look?

12 A To the Coast Guard Marine Safety Office.

13 Q Now, the requirements that came into effect on  
14 September 1st, 1986, did those affect pilotage vessels or  
15 nonpilotage vessels?

16 A Those affected pilot -- nonpilotage vessels.

17 Q And that is only vessels that did not have a  
18 Federally licensed pilot aboard?

19 A Yes.

20 MR. CHALOS: Objection, your Honor. Leading the  
21 witness.

22 THE COURT: Technically he's correct, but the answer  
23 is in and he can get it anyway, so we'll go on.

24 BY MR. COLE: (Resuming)  
25



1           Q     What changes in the regulations have occurred for  
2 pilotage regulations since 1980?

3           A     None.

4           Q     Can a captain change from a pilotage to nonpilotage  
5 vessel by going below the bridge?

6           A     No, sir.

7           Q     What steps would a captain have to take in order to  
8 change from a pilotage to nonpilotage situation? Let's say he  
9 was in the port of Valdez and he had come in under pilotage.  
10 What would he do to make that a nonpilotage vessel?

11          A     Assuming that he decided to sail out as a  
12 nonpilotage vessel, prior to his departure he would have to  
13 declare that he was going to sail out nonpilotage. He'd have  
14 to answer the questions of the VTC pertaining to the  
15 equipment, the crew. He'd have to provide for a bridge  
16 navigation watch, and the pilot would remain on board the  
17 vessel until the vessel became abeam of Bligh Reef buoy number  
18 6.

19          Q     Would it be possible for a tanker captain to drop  
20 the pilot off at Rocky Point and then declare himself  
21 nonpilotage from that point on?

22          A     The situation has never come up, but my professional  
23 opinion is no, sir.

24          Q     Now, how does -- how rapidly does the ice that  
25 floats though the TSS system appear and disappear?



1 A From Alaska Maritime Agency?

2 Q Yes.

3 A No, sir, I do not.

4 Q You weren't at the Coast Guard at -- in Valdez at  
5 that time?

6 A No, sir, I was not.

7 Q So you don't know if Captain -- or if Commander  
8 McCall called Alaska Maritime and said these are the new  
9 regulations?

10 A No, sir, I do not.

11 Q And there hasn't been a Captain of the Port order  
12 issued with respect to the changes that we are talking about  
13 here, was there?

14 A The Captain of the Port orders with respect to  
15 pilotage had been rescinded. There are no Captain of the Port  
16 orders in effect with respect to pilotage.

17 Q They were all rescinded after the grounding?

18 A They were rescinded by the memo of September 3rd,  
19 1986.

20 Q Now, just getting back to this pilotage and  
21 nonpilotage issue again, as I understand it, a nonpilotage  
22 vessel, that is, one who doesn't have the pilotage  
23 endorsement, the captain could be below the whole transit of  
24 Prince William Sound and never come up on the bridge, is that  
25 correct?

1           A     Yes, sir, provided that the deck officers that were  
2 required were on the bridge doing their jobs.

3           Q     And if one were to read that letter of September  
4 19th, one could say a nonpilotage vessel north of Montague  
5 Point would only need one officer on the bridge?

6           A     The letter of September 19th has -- doesn't agree at  
7 all with Commander McCall's memorandum. How -- I believe it  
8 was Mr. Arts who signed that, interpreted that, you'd have to  
9 ask Mr. Arts. I don't know what he based that letter on.

10          Q     Now, in contrast though, if a captain has the  
11 pilotage endorsement, which means that he has a certain  
12 knowledge of the area, he has a certain knowledge of the  
13 navigational hazards, if you will, he has to remain on the  
14 bridge the entire passage, is that right?

15          A     The licensed officer with the pilotage endorsement  
16 must remain on the bridge during the passage in those waters.

17          Q     Can you explain to us the logic behind that?

18               MR. COLE: Objection; relevance.

19               MR. CHALOS: Your Honor, he expressed his opinion on  
20 pilotage. I am just exploring it.

21               THE COURT: You can answer the question.

22               BY MR. CHALOS: (Resuming)

23          Q     Can you explain the logic of a situation where a  
24 nonpilotage vessel, that is, you have no one on there that  
25 might know the local area, permits the captain to be below,

1 but one that a vessel that has pilotage requires that  
2 particular person to be on the bridge the entire time?

3 A The vessel with pilotage means that there is a  
4 licensed deck officer with a pilotage endorsement on their  
5 license for those waters. They have demonstrated a higher  
6 degree of navigational competence and care to operate a vessel  
7 in those waters. It doesn't necessarily have to be the  
8 master. It can be the third mate, second mate, chief mate, as  
9 long as the person who has that endorsement is providing  
10 direction and control to the vessel's movement.

11 Q But aren't the navigational risks and hazards the  
12 same?

13 MR. COLE: Judge, I would -- I object and ask him to  
14 allow -- if he -- I won't -- he was cut off in his question.  
15 I want to make sure he got a chance to respond.

16 BY MR. CHALOS: (Resuming)

17 Q I'm sorry. Were you finished?

18 A The vessel that doesn't have pilotage is under the  
19 control of an individual monitoring the vessel's movement by  
20 plotting its position as well as a second person who is  
21 providing direction to ensure the vessel's movement is in a  
22 safe manner.

23 Q Would you agree that the navigational risk that one  
24 would face in Prince William Sound are the same whether you're  
25 a pilotage vessel or a nonpilotage vessel?

1 A Yes, sir.

2 Q Would you also agree that a ships officer without  
3 the endorsement could have the same degree of knowledge of  
4 navigational hazards and aids as one with an endorsement?

5 MR. COLE: Objection; speculation.

6 THE COURT: I don't know how the answer is going to  
7 assist anybody on that. I am going to sustain the objection.

8 BY MR. CHALOS: (Resuming)

9 Q Let me rephrase it and ask you this. Would you  
10 agree that as part of a mate's duties, whether he's a third  
11 mate, second mate, or first mate, standing a bridge watch in  
12 Prince William Sound, part of his duties are to know the area  
13 and know the charts and know the navigational hazards?

14 A Yes, sir.

15 Q Now, Mr. Cole asked you a hypothetical to the effect  
16 that a vessel declares itself to be a pilotage vessel, drops  
17 the pilot off at Rocky Point, and then calls up and says I  
18 want to be a nonpilotage vessel. And you said in your  
19 personal opinion that that wouldn't happen.

20 A Yes, sir.

21 Q That's your personal opinion?

22 A Yes, sir.

23 Q That's not the Coast Guard's opinion, is it?

24 A As the Executive Officer for the Marine Safety  
25 Office, that could be the Coast Guard's opinion as well, sir.

1 Q Are there any Coast Guard regulations that address  
2 that point?

3 A No, sir.

4 Q Now, if a particular berth, pier, is required to be  
5 used, is it your understanding that the vessel then occupying  
6 the berth has to leave, once it has completed its loading?

7 A If the master decided he didn't want to leave, we  
8 would support the master, if he requested it.

9 Q If the master was asked to leave either by his  
10 company or by Alyeska, where would the captain have to go if  
11 he wanted to anchor?

12 A He would have to proceed to Knowles Head.

13 Q And to proceed to Knowles Head, you have to go past  
14 Bligh Reef, do you not?

15 Q Yes, sir.

16 Q And if there were ice in the vicinity, you'd have to  
17 go -- you'd have to avoid the ice somehow?

18 A Yes, sir.

19 MR. CHALOS: I have no -- excuse me.

20 BY MR. CHALOS: (Resuming)

21 Q Now, in response again to Mr. Cole's question, you  
22 said that the ice conditions change, sometimes rapidly,  
23 sometimes over a period of time?

24 A Yes, sir.

25

1 Q But seasonal ice conditions are generally the same.  
2 What might vary is the time of day, is that what we're talking  
3 about?

4 A Generally, yes, sir.

5 Q Now, assuming that a captain received an ice report  
6 that was four hours or six hours old, in order for him to  
7 determine what the then existing ice conditions were, he would  
8 basically have to go out and take a look, would he not?

9 A Yes, sir.

10 MR. CHALOS: I have no further questions, your  
11 Honor.

12 THE COURT: Mr. Cole, anything further?

13 REDIRECT EXAMINATION

14 BY MR. COLE:

15 Q A tanker captain could always turn around and go  
16 back to the port, couldn't he?

17 A Depending on where he was at the time, yes, sir.

18 MR. COLE: I have nothing further.

19 THE COURT: May this witness be excused from further  
20 participation?

21 MR. CHALOS: Yes, your Honor, I have no further  
22 questions.

23 THE COURT: Okay, you are excused; you are free to  
24 go.

25 (The witness was excused.)



1 THE COURT: We'll take a recess, ladies and  
2 gentlemen, until about noon, we'll come back then. Don't  
3 discuss the matter among yourselves or anybody else, don't  
4 form or express any opinions.

5 (Whereupon, the jury exited the Courtroom.)

6 THE COURT: Is there anything we can take up,  
7 counsel?

8 MR. CHALOS: Your Honor, I was going to make an  
9 offer of proof as to the Coast Guard regulations.

10 THE COURT: All right, let the jury go and we'll --

11 (Pause.)

12 THE COURT: All right. At a side bench conference  
13 Mr. Chalos made an offer of proof as to the reason behind  
14 asking if Alyeska got there late or if they were late in  
15 getting there, and in response to my question, it appeared to  
16 me that Mr. Chalos was trying to show that some of the damage  
17 caused to the shoreline, some of the expenses incurred by the  
18 State, were caused as a result of Alyeska's lack of a prompt  
19 response. The objection was Cousmeiter, and the Court would  
20 sustain that objection. Now, if you want to elaborate?

21 MR. CHALOS: No, your Honor. What I wanted to make  
22 an offer of proof on is the proposed rule making in 1985 and  
23 1988.

24 THE COURT: All right.

25 (Defendant's Exhibits Number T and U



1 performed was a very dangerous maneuver.

2           What I am trying to show by these two proposed rule  
3 making and the basis for the two proposed rule making, was  
4 that the Coast Guard had come to an independent conclusion as  
5 early as 1985, that these waters were not dangerous and  
6 pilotage was not required. And but for this grounding these  
7 two rules -- or the proposed rule making would have taken  
8 effect. And that is the basis of my attempt to introduce the  
9 proposed rule making into evidence.

10           THE COURT: Mr. Cole, anything further?

11           MR. COLE: No.

12           THE COURT: The offer of proof has been made. The  
13 ruling remains the same.

14           We'll take our break now.

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

17           (The Court stood in recess from 11:45 o'clock a.m.  
18 until 12:11 o'clock p.m.)

19           (Start Tape C-3636)

20   (State's Exhibits Numbers 109  
21 through 118 were marked for  
22 identification.)

23           THE COURT: Mr. Cole?

24           MS. HENRY: Your Honor, the State's next witness is  
25 Frank Shepherd. Sir, would you step forward to the witness

1 stand.

2 Whereupon,

3 FRANKLIN H. SHEPHERD

4 called as a witness by counsel for the State of Alaska, and  
5 having been duly sworn by the Clerk, was examined and  
6 testified as follows:

7 THE CLERK: Sir, would you please state your full  
8 name and then spell your last name?

9 THE WITNESS: Franklin Henry Shepherd, S-H-E-P-H-E-  
10 R-D.

11 THE CLERK: And your current mailing address, sir?

12 THE WITNESS: 920 Court Street, Sue Ste. Marie,  
13 Michigan.

14 THE CLERK: And your current occupation?

15 THE WITNESS: I just got out of the Coast Guard two  
16 days ago, so unemployed.

17 DIRECT EXAMINATION

18 BY MS. HENRY:

19 Q Going back to March the 22nd, 1989, were you  
20 employed in Valdez?

21 A Yes, I was.

22 Q And what was your job in Valdez?

23 A Vessel traffic controller.

24 Q And was that as a civilian or as a Coast Guard?

25 A Coast Guard enlisted.

1 Q And going specifically to the afternoon of March the  
2 22nd, 1989, were you working as a watch stander that day?

3 A Yes, I was.

4 Q And were you requested this morning to listen to a  
5 portion of a tape of some Coast Guard communications that  
6 occurred that morning?

7 A That's correct.

8 Q Did you recognize that series of communications?

9 A Certainly.

10 Q And did you recognize your voice on the tape?

11 A Yes.

12 Q Sir, I will show you what has been marked  
13 Plaintiff's Exhibit Number 117 for identification. Is that  
14 the tape that you were requested to listen to this morning?

15 A Yes, I believe it is.

16 Q And the conversations on that tape, was that a  
17 conversation between you and another vessel?

18 A Yes, it was I and the Exxon Valdez, I believe as  
19 their three hour pre-call.

20 Q And what is the three hour pre-call?

21 A Three hours prior to the time the tanker will arrive  
22 at Cape Hinchinbrook, they give a pre-call. That is one of  
23 the established times, if you will, that they check in, and  
24 they provide you with certain information which you fill out  
25 our form and retain.

1 MS. HENRY: Okay, thank you, sir. I have no other  
2 questions.

3 THE COURT: Any questions?

4 CROSS EXAMINATION

5 BY MR. MADSON:

6 Q Well, Mr. Shepherd, if I understand your testimony  
7 correctly, you've listened to the copy. Now, when we say that  
8 tape, we're referring to Exhibit Number 117 in front of you?

9 A The tape I listened to this morning was a copy of my  
10 conversation with the Exxon Valdez on the 22nd.

11 Q Okay.

12 My question is, was it that tape that you have in  
13 front of you right there?

14 A I didn't look at an exhibit number or anything.

15 Q Does it appear to be the same? I mean, was it a  
16 cassette tape?

17 A Yes, it was.

18 Q Okay.

19 And you recognized your voice on it?

20 A That is correct.

21 Q But there is a master, is there not? A tape  
22 recording machine at the VTC?

23 A Yes, there is a 20 channel \_\_\_\_\_ thing.

24 Q And how long did you work there at Valdez at the  
25 VTC?

1 A From February of 87 until just a month ago.

2 Q Now, when you would speak to a vessel, this was  
3 recorded on that tape machine you have there?

4 A That's correct.

5 Q That's a 40 channel reel to reel?

6 A I believe it's 20 channel.

7 Q 20 channels?

8 A Yes.

9 Q And after a reel is used up -- let me ask you this.  
10 How long are recordings kept?

11 A Well, I certainly couldn't state what their current  
12 procedure is, but at the time the procedure was to retain the  
13 tapes for a period of one month unless there was some  
14 occurrence which would lead you to believe you should save it  
15 for a longer period.

16 Q Do you know if the original tape, that is, the  
17 original 20 channel tape recording on the VTC, between  
18 yourself and the Exxon Valdez on the afternoon of March 22, is  
19 still in existence, or has been destroyed?

20 A I really couldn't tell you at this point.

21 MR. MADSON: I don't have any other questions, your  
22 Honor.

23 MS. HENRY: No questions.

24 THE COURT: Sir, when you listened to your voice on  
25 that tape, was there any difference in your voice in that tape

1 and that would have occurred at the time that you talked?  
2 Difference in the tone or any difference in the speed at which  
3 you talked?

4 THE WITNESS: Between then and now? Only --

5 THE COURT: No, I mean when you listened to that  
6 tape --

7 THE WITNESS: No, no, no. No question it was me.

8 THE COURT: Speaking in your normal voice that you -

9 -

10 THE WITNESS: That's correct.

11 THE COURT: Anything further?

12 MS. HENRY: No, your Honor.

13 THE COURT: Anything?

14 MR. MADSON: Well, I will follow up on that, your  
15 Honor.

16 BY MR. MADSON: (Resuming)

17 Q Mr. Shepherd, did you compare them side by side by  
18 any chance, the original tape and this one, to see if there  
19 are in fact any differences?

20 A No, I did not.

21 Q I mean, you hear yourself on tape recordings and you  
22 have heard that before, have you not?

23 A Yes, I have.

24 Q What, home machines type things, cassettes, home  
25 recorders?





1 THE WITNESS: It's P.O. Box 285, Cordova, Alaska.

2 THE CLERK: And your current occupation, sir?

3 THE WITNESS: I am president of Prince William Sound  
4 Aquaculture Corporation.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MS. HENRY:

8 Q Sir, would you please explain what the Prince  
9 William Sound Aquaculture Association is?

10 A Yes. We are a private, non-profit, regional  
11 aquaculture association. We have a board of directors made up  
12 of commercial fishermen, processors, local municipalities,  
13 sport fishing groups, and professionals -- biologists with  
14 Fish and Game --

15 Q How long has this association been in existence?

16 A Since 1975.

17 Q And how long have you been president?

18 A I have been president three years now.

19 Q Now, a part of the responsibility of the Prince  
20 William Sound Aquaculture Association is to run hatcheries in  
21 Prince William Sound, is that correct?

22 A That's correct.

23 Q Does the association actually own the hatcheries or  
24 lease them?

25

1           A     We own two hatcheries, the \_\_\_\_\_ Hatchery and the  
2 Wally Nurnberg Hatchery, which was the Ester Lake Hatchery.  
3 We both own those. And we lease a hatchery, Cannery Creek  
4 Hatchery in Unaquik Inlet from the State of Alaska.

5           Q     All right, if you would, referring to the chart  
6 behind you -- and I think there should be a pointer there --

7           A     Oh, yeah.

8           Q     And again if you could indicate on the chart where  
9 each one of these hatcheries is and also tell us again the  
10 names.

11          A     Okay. The RMNF Kornig Hatchery is down here in the  
12 southwest district of the Prince William Sound. It is in  
13 Somino Bay. The Wally Nurnberg Hatchery is on Esther Island,  
14 right there, Lake Bay. And the Cannery Creek Hatchery is in  
15 Unakquik Inlet, right there.

16          Q     Okay, thank you.

17                     The last one that you indicated, the Cannery Creek  
18 hatchery, is that the one that is owned by the State?

19          A     Yes.

20          Q     And what sort of agreement do you have with the  
21 State with respect to that hatchery?

22          A     We have a 20 year lease to run the facility for the  
23 State of Alaska.

24          Q     Sir, after you learned of the oil spill caused by  
25 the grounding of the Exxon Valdez, did you have some concerns

1 about you hatcheries?

2 A Yes, we did.

3 Q And what were those concerns?

4 A Well, we had a large number of fish that were ready  
5 to be released from the facilities. We have about 500 million  
6 fish that we release a year from our hatcheries.

7 Q And so would be the concern with respect to the oil?

8 A Mortality of the fry which we hold in the net pens,  
9 and when they go out to sea.

10 Q What steps did you and the association take to  
11 protect the three hatcheries?

12 A We -- we immediately -- we had some oil booms at our  
13 facilities and we immediately put them around our net pens and  
14 then we began the process of purchasing more oil boom material  
15 to boom off the lakes, I mean the bays around the hatcheries.

16 Q And where did you purchase these booms?

17 A At first we purchased them from domestic suppliers  
18 here in Alaska and in the lower 48, and then we went outside  
19 the country. We bought some booms from Norway.

20 Q From where?

21 A Norway.

22 Q Can you describe what these booms look like, how big  
23 they are and what they really are?

24 A Well, we use two types primarily. One is a  
25 flotation type boom with a skirt on it. It has a type of

1 vinyl or rubberized flotation unit, and then there is a vinyl  
2 skirt that goes down below that flotation portion.

3 Q How big are these?

4 A It depends. Sometimes the floats were about 8  
5 inches in diameter with a 12 inch skirt. Those were generally  
6 called harbor booms. And we had some ocean going booms that  
7 had a 24 in float in diameter and about 36 inch skirts.

8 Q What is the purpose of the skirts?

9 A It is to prevent the oil from flowing underneath the  
10 booming material. The other type of boom we had was absorbent  
11 boom.

12 Q All right, why don't you tell us what that is.

13 A It just is a type of boom which absorbs oil and  
14 other material.

15 Q Thank you.

16 A Sure.

17 Q Sir, showing you what has been marked for  
18 identification as Plaintiff's Exhibit Number 109, do you  
19 recognize what is in that photograph?

20 A Yes.

21 Q And what is in that photograph?

22 A It's an aerial photograph of the RMNF Kornig  
23 Hatchery with the boom material placed out in front.

24 Q All right. Now is that the hatchery that is also  
25 called the Sawmill Bay hatchery?

1 A Yes.

2 Q And you said that that reflects the booms that had  
3 been put up?

4 A It looks like in the early stages, right. We had  
5 more booms later on, but this is -- that's correct.

6 Q That would have been the early stages?

7 A Yes.

8 Q Do you see any oil in that photograph?

9 A Yes.

10 Q And does that photograph accurately depict the  
11 Sawmill Bay area and the booms that were up in the early  
12 stages?

13 A Yes, it does.

14 MS. HENRY: At this time the State would move into  
15 evidence Exhibit 109.

16 MR. MADSON: No objection.

17 THE COURT: It's admitted.

18 (State's Exhibit Number 109  
19 was admitted in evidence.)

20 BY MS. HENRY: (Resuming)

21 Q I am showing you what has been marked for  
22 identification as State's Exhibit 110. Do you recognize what  
23 is in that photograph?

24 A Yes, it is another photograph of the same area.  
25

1 Q And can you tell whether or not that photograph was  
2 taken before or after the photograph 109?

3 A From this I have difficulty telling. It looks like  
4 it is after -- no -- yes, it is after -- I mean, it is before,  
5 I am sorry, because we have some other booming material out in  
6 front here.

7 Q All right. So which one is first in time?

8 A This is first and this is second.

9 Q Okay.

10 So State's Exhibit 110 is first in time, and 109 is  
11 second?

12 A Yes, that's correct.

13 Q And does 110 also reflect the booms that were placed  
14 to protect Sawmill Bay?

15 A Yes.

16 Q And does it also show some oil?

17 A Yes, it does.

18 Q Does that accurately reflect the area prior to the  
19 area that is depicted in 109?

20 A Yes, it does.

21 MS. HENRY: At this time the State would move into  
22 evidence exhibit 110.

23 MR. MADSON: No objection.

24 THE COURT: It is admitted.

25 (State's Exhibit Number 110)

1 was admitted in evidence.)

2 BY MS. HENRY: (Resuming)

3 Q How long did you keep the booms in place once you  
4 put them in, late March, early April?

5 A Until the end of September.

6 Q Of 1989?

7 A Yes.

8 Q Now, the photographs were only of Sawmill Bay, but  
9 did you boom the other two hatcheries also?

10 A The Wally Nurnberg hatchery we did. We boomed off  
11 the bay there. At the Cannery Creek hatchery, it is such a  
12 wide inlet, we weren't able to boom off the bay. We had to  
13 put booms around the net pens.

14 Q So there all you did was boom the net pens?

15 A Yes.

16 Q Did you in fact release any fish from any of these  
17 hatcheries last summer?

18 A Yes, we did.

19 Q When did you release the fish?

20 A In April and May.

21 Q As far as you are concerned, was the booming  
22 procedure successful in protecting the hatcheries?

23 A Yes, it was.

24 Q Now the fish that you released last summer, when  
25 will they be returning?



1           A     The majority of them will be returning this year,  
2 pink salmon will be coming back this year.

3           Q     But at this point you don't know what may have  
4 happened to them after you released them?

5           A     No, we don't.

6           Q     Now, switching gears for just a moment, where does  
7 the money come from for your budget for the Prince William  
8 Sound Aquaculture Association?

9           A     Basically from two sources. One is an enhancement  
10 tax, a two percent tax which the fishermen -- the commercial  
11 fishermen pay, off their gross revenues. And the other is  
12 from fish sales which we sell fish at our facilities when they  
13 return.

14          Q     Now the two percent tax, that comes from the  
15 fishermen?

16          A     Yes, it does. They pay two percent on their gross  
17 revenue.

18          Q     Of the fish they \_\_\_\_\_?

19          A     Right. And that is collected by the State of  
20 Alaska.

21          Q     Now assuming that the oil had impacted the  
22 hatcheries so that you could not release the fish or assuming  
23 that the mortality rate was very high after you did release  
24 the fish, how would that affect your budget?

25

1 MR. MADSON: Well, you Honor, I'll object. It is  
2 based on assumptions and speculation. It's not even relevant.

3 MS. HENRY: Your Honor, the State must prove risk of  
4 damage, and I am attempting to prove risk of damage, assuming  
5 the oil had in fact impacted the hatcheries.

6 MR. MADSON: Well, your Honor, they have to prove a  
7 substantial and justifiable risk, and I think by making these  
8 assumptions it goes way beyond, we're into the area of  
9 speculation and conjecture, and not real substantial risk.

10 THE COURT: Overruled.

11 BY MS. HENRY: (Resuming)

12 Q Assuming that -- do you remember the question?

13 A Yes. We would be in trouble, basically, because if  
14 the fishermen didn't catch the fish we wouldn't get the tax  
15 revenue, and if we weren't -- if the fish didn't show up or we  
16 weren't able to harvest them, we wouldn't have any revenue  
17 from fish sales either.

18 Q And what is approximately your annual operating  
19 budget?

20 A Our operational budget is 6.6 million. We have a  
21 capital construction budget of about another 3 or 3 and a half  
22 million. So it is about 10 million overall.

23 MS. HENRY: Okay, thank you, sir. I have no other  
24 questions.

25 CROSS EXAMINATION

1 BY MR. MADSON:

2 Q Sir, I believe you said Exhibit Number 110 was taken  
3 -- you believe was taken before Exhibit 109, is that correct?

4 A Yes, I think so, because I --

5 Q It goes this way?

6 A Yeah, it goes like that.

7 And I thought that because I see the booming  
8 material here.

9 Q When you say booming -- well, perhaps you -- I know  
10 it might be difficult for the jury to see, but could you just  
11 hold them up and try to illustrate.

12 A Certainly.

13 Q I would rather you'd tell them than me.

14 A Okay. I don't know whether you can see from there,  
15 but this is an aerial of the area --

16 MR. MADSON: Your Honor, I wonder if he could step  
17 forward as far as the cord could reach.

18 THE WITNESS: Do you want me to go over there?

19 THE COURT: Pick up the amplifier at the end of this  
20 thin cord and carry that with you.

21 THE WITNESS: This is where the hatchery is located  
22 right there, and what we did is we put up oil booms in those  
23 locations. The reason why I thought that this is -- I don't  
24 know for sure, but the reason why I thought this was a later  
25 photograph, because there is some booming material out here

1 which i didn't see on this photograph here.

2 BY MR. MADSON: (Resuming)

3 Q Sir, would you also show the jury where the oil is  
4 that you referred to?

5 A In this area here. You can see the patterns of oil  
6 around the Latouche Island there.

7 Q Which exhibit are you referring to there, sir?

8 A This is exhibit 110.

9 Q And when you say there, how close is it to the booms  
10 if you know?

11 A It's probably about a half a mile or so.

12 Q And then how about the other exhibit. Can you refer  
13 to that and show the oil on that one?

14 A Certainly.

15 Q And I will ask if there are any substantial changes  
16 or differences in the oil in that one as opposed to the other  
17 exhibit you just looked at.

18 A Not substantial. You can see some oil through this  
19 area here. It is hard to tell on -- well, actually you can  
20 see it up here, too. So it is less than a half a mile if you  
21 consider that oil right there. But the majority of the oil is  
22 there.

23 Q Thank you, very much.

24 If I understand correctly then, after the spill  
25 occurred, you naturally wanted to take very possible

1 precaution to protect the hatchery?

2 A Yes.

3 Q And then the decision was made to put these booms  
4 out in case the oil did in fact come into Sawmill -- is it  
5 Sawmill Bay, is that what --

6 A Yes, uh-huh.

7 Q In case for instance the oil did come into Sawmill  
8 Bay, right?

9 A That's correct.

10 Q But in fact the oil did not go in there, right?

11 A That's correct, because we had the booms out.

12 Q Uh-huh.

13 Q Was there oil at -- ever reached the booms?

14 A Yes.

15 Q Do you know if it would have ever reached the  
16 hatcheries if the booms weren't there?

17 A I assume so. I don't know for sure.

18 Q You can't say whether it would or wouldn't.

19 A All I know is the boom -- the oil was held back by  
20 the booms there.

21 Q Those photographs don't illustrate the oil in the  
22 vicinity of the boom. You said it was a half a mile away, is  
23 that right?

24 A It looked like it was closer. I saw some other  
25 streaks there. But probably in that range, quarter mile.

1 Q So you'd be having to make an assumption that if the  
2 boom was not there the oil in fact would come in there and  
3 would in fact impact somewhat on the hatchery.

4 A That was the risk, yes.

5 Q Now once the fish were released, as you indicated --  
6 and they were released in September, right?

7 A No, they were released in April and May.

8 Q Oh, I'm sorry. I may have misunderstood you.

9 Q Of what year?

10 A Of 1989.

11 Q So they were released while there was still oil out  
12 in the Sound?

13 A That is correct. We couldn't hold on to the fish.  
14 We had, like I mentioned, 500 million fish going out, and we  
15 just don't have a capability of holding on to them.

16 Q Were you trying to keep them there and feed them for  
17 a time, is that right?

18 A Yes, that's exactly right.

19 Q If you had to keep them longer, would that involve  
20 what, more feeding or were they just getting too big?

21 A Well, both. What we do is we time our release with  
22 this plankton bloom which occurs out in the Sound there.  
23 There is a bloom of zooplankton that occurs in April and May,  
24 and what we find is that the fish or the fry feed on this  
25 plankton. So we try and take advantage of that food source.

1 Q And once you release the fish, they are not tagged?  
2 Each fish doesn't have a little State of Alaska tag on it,  
3 does it?

4 A Not each one, but actually some of them do.

5 Q How many are tagged?

6 A I think last year we tagged approximately 700,000.

7 Q And is that for the purpose of seeing if those fish  
8 actually live, survive and come back again?

9 A That's part of the reason, that's correct. There is  
10 also, we do it to differentiate them -- well, to understand  
11 how many hatchery fish are caught in the commercial fishery.

12 Q You expect those fish to return when, sir?

13 A The majority of the fish, the pink salmon -- all the  
14 pink salmon will be returning next year -- or this year, I'm  
15 sorry.

16 Q What about other varieties? Other varieties of  
17 salmon?

18 A Yes, we raise all five species of Pacific salmon.

19 Q Do some come back later than others?

20 A Yes, they do.

21 Q Well, what's the next one to return?

22 A Actually the coho at the Wally Nurnberg hatchery,  
23 the Esther hatchery, they'll return next year also. We have  
24 chum salmon which will return two, three and four years from  
25 now. We have chinook salmon that will return two, three, four

1 and five years from now. And we have sockeye salmon that will  
2 return two, three and four years from now.

3 Q All right, now, when they return, they don't go  
4 right back into your little pens up there, do they? I mean,  
5 when you say return, they return for the purpose of being  
6 caught?

7 A That's right. Actually they could return right back  
8 to those pens.

9 Q Makes it kind of easy, wouldn't it?

10 A It's a pretty slick operation that way.

11 Q But in spite of that, they return to Prince William  
12 Sound and the area where there is fishing allowed, I presume?

13 A That's correct.

14 Q That would include foreign fishers, Japanese,  
15 Koreans?

16 A If they are caught outside the fishing zone, the 200  
17 mile limit, yes.

18 Q Once they are released, you kind of lose control  
19 over those fish, isn't that fair to say?

20 A Yes, that's right.

21 Q And you hope that they are going to survive, be  
22 caught, and you won't know for some time whether or not --  
23 well, I guess you won't know what's going to happen to those  
24 fish until they actually -- you get some returns back from  
25 commercial fishermen, right?



1           A     That's right. The commercial fleet catch the fish  
2 before they return to the hatchery and --

3           Q     And that can actually be affected by a number of  
4 factors such as natural predators or disease or something,  
5 right?

6           A     It can, that's correct.

7           Q     Sea lions eat salmon, do they?

8           A     The adults, yeah. I don't think they bother with  
9 the little guys.

10          Q     But anyway, there's a number of factors that are  
11 involved in the overall release and catching again, right?

12          A     Yes.

13               MR. MADSON: Thank you, sir, I don't have any other  
14 questions.

15                               REDIRECT EXAMINATION

16               BY MS. HENRY:

17          Q     Mr. Madson asked you that whether or not the oil  
18 actually impacted the hatcheries, and it did not, is that  
19 correct? As far as the hatcheries themselves?

20          A     We were able to keep it out of the hatchery area  
21 there.

22          Q     Do you have some concern that the oil affected the  
23 fish after they were released.

24          A     Yes, we do.

25          Q     What sort of concerns?



1 THE WITNESS: Thomas Michael Kron, spelling on the  
2 last name is K-R-O-N.

3 THE CLERK: And your current mailing address, sir?

4 THE WITNESS: Current mailing address is 333  
5 Raspberry Road, Anchorage, 99518.

6 THE CLERK: And your current occupation?

7 THE WITNESS: Current occupation is regional  
8 supervisor for the Alaska Department of Fish and Game,  
9 Division of Fisheries Rehabilitation Enhancement and  
10 Development.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. HENRY:

14 Q Sir, how long have you been with the Department of  
15 Fish and Game?

16 A Fifteen years.

17 Q And how long have you been in this particular  
18 section that you are currently in?

19 A Fifteen years.

20 Q Now as part of your responsibilities in that  
21 section, do you monitor fish hatcheries in the State of  
22 Alaska?

23 A Yes.

24 Q And are you aware of which hatcheries were put at  
25 risk as a result of the oil spill of the Exxon Valdez?

1 A Yes.

2 Q How is it that you are aware of that?

3 A Within the region for which I am responsible for  
4 within the Alaska Department of Fish and Game, we operate  
5 facilities in Prince William Sound, Cook Inlet, and Kodiak  
6 area. And were involved this past spring and summer with  
7 activities to protect those facilities in cooperation with the  
8 Coast Guard, Exxon support BEC, and putting oil booms in those  
9 areas to keep the oil from encroaching upon the areas directly  
10 in front of the hatchery where we rear fish. And again, in a  
11 number of cases when the fish come back the harvest occurs.

12 Q Now, we've heard about one hatchery called the  
13 Cannery Creek hatchery. Is that owned by the State of Alaska?

14 A That facility is owned by the State of Alaska. It  
15 is operated under contract with the Prince William Sound  
16 Aquaculture Corporation.

17 Q Okay. And we also heard about the two hatcheries  
18 that are owned by Prince William Sound Aquaculture  
19 Association. Going beyond those, can you tell us some of the  
20 other hatcheries that were put at risk by the oil spill?

21 A The one which received a lot of oil out front in the  
22 Sound was the Main Bay hatchery. It is located approximately  
23 midway between the Esther Lake facility or Wally -- Wallace  
24 Nurnberg facility. And the Wally Nurnberg facility. It is  
25 midway between those two. That is operated by the State.

1 It's a developmental facility for sockeye salmon. There is  
2 another private, non-profit --

3 Q Okay, before we go any farther, can you referring to  
4 that chart behind you and perhaps using the pointer behind you  
5 on the other side there, can you indicate on the chart where  
6 that hatchery is that you just described?

7 A Okay. Get my orientation here. Night Island.  
8 Okay, we -- okay, Main Bay facility is in this area here.

9 Q Okay, why don't you continue with --

10 A Okay. There is another facility, another operator  
11 in the Sound. There are two private, non-profit hatchery  
12 operators in the Sound. Prince William Sound Aquaculture  
13 Corporation is the largest. Another operator is located in  
14 Valdez Arm, Valdez Fisheries Development Association. So  
15 those facilities constitute the hatchery operations in the  
16 Sound.

17 Q Is there actually a hatchery in the port of Valdez  
18 area?

19 A Yes.

20 Q Do you know where it is approximately on the chart?

21 A Approximately right here.

22 Q All right, you can continue.

23 A There were facilities outside the Sound as well that  
24 were impacted. A facility which was operated cooperatively by  
25 the Department of Fish and Game and the Kodiak Regional

1 Aquaculture Association at Katoy Bay, Katoy Bay hatchery,  
2 several hundred miles from the location here, was also  
3 impacted last summer by the oil, you know, in late April and  
4 May and all the way through most of the summer, we were hit by  
5 tar balls and oil, as it was washing ashore there in that  
6 area. So that area was boomed off with oil boom as well.

7 Q And were there any other hatcheries that were  
8 affected?

9 A A facility in lower Cook Inlet, across from Homer,  
10 Kakachimak Bay, the Tetka hatchery, the State operated  
11 hatchery. We had oil that was within three or four miles of  
12 that facility during a period in May, and then the oil moved  
13 back out. But there was a period where we thought we were  
14 going to get hit there as well.

15 Q Sir, if you would now explain how the operating  
16 budget works for these hatcheries?

17 A Several of the facilities I mentioned are State  
18 operated facilities. The Main Bay hatchery, the budget there  
19 is 100 percent State general funds. The Tetka hatchery, the  
20 one across from Homer, is 100 percent State general funds.  
21 The Katoy hatchery, the one in Kodiak, that was impacted, the  
22 budget there is about half State general fund, about half  
23 funds from the Kodiak Regional Aquaculture Association.

24 Prince William Sound Aquaculture Corporation  
25 provides operational funds for the RMNF Kornig hatchery, the

1 Wally Nurnberg facility and the Cannery Creek hatchery.  
2 Again, the Cannery Creek hatchery is own by the State, but  
3 operated under contract by PWSAC. The Valdez Fisheries  
4 Development Association, again the other PNP in the Sound,  
5 supports the operations of that facility there.

6 Q The two facilities then that are partially or mostly  
7 funded by the local aquacultural associations, that would be  
8 Katoy and the one in the port of Valdez?

9 A Katoy is fifty percent, about fifty percent funded  
10 by the local aquaculture association in Kodiak. Valdez, the  
11 facility there is funded by the Valdez Fisheries Development  
12 Association, a private, non-profit entity. And then again,  
13 the three Prince William Sound Aquaculture Corporation  
14 facilities in the Sound.

15 Q And they receive their money from fish returning, is  
16 that correct?

17 A They receive their money form a number of different  
18 sources. The primary sources are a tax on the commercial  
19 catch. Let's say in Prince William Sound, for example, there  
20 is a tax, percentage tax on the commercial catch. That money  
21 goes through the legislature, back to Prince William Sound  
22 Aquaculture Corporation. That is a major chunk of their  
23 revenues. Also under state statutes, they have authorization  
24 to harvest a portion of the fish that return to their  
25 facilities to sell them to pay operational costs as well.

1                   So Prince William Sound Aquacultural Corporation,  
2 Valdez Fisheries Development Association, Kodiak Regional  
3 Aquaculture Association, those three private, non-profit  
4 entities have the capability of harvesting a portion of the  
5 fish that come back to help pay the cost of operating the  
6 facilities. Kodiak Regional Aquaculture Association and  
7 Prince William Sound Regional Aquaculture Association receive  
8 a -- you know, the tax from the commercial tax and the salmon  
9 those areas.

10           Q       And what is the operating budget for the hatchery at  
11 Katoy?

12           A       The operating budget for the hatchery at Katoy is  
13 about a half million dollars, of which the State provides half  
14 and the Kodiak Regional Aquaculture Association provides half.

15           Q       And what is the operating budget for the hatchery in  
16 the port of Valdez?

17           A       Approximately \$900,000. And again that is a  
18 private, non-profit facility.

19           Q       All right, sir, what concerns would you have about  
20 fish being released through the oil or returning through the  
21 oil?

22           A       The -- a large share of the production in the areas  
23 that I have mentioned, Prince William Sound, Lower Cook Inlet,  
24 and Kodiak, a large share of the production from those areas  
25 is pink salmon. Chum salmon are also important. There is



1 also production of king and coho and sockeye. Pink and chum  
2 salmon, in particular, their natural behavior is to migrate  
3 very close to shore, you know, within several feet, in very  
4 shallow water. And there has been concern because in fact the  
5 natural behavior of these fish puts them right up in many of  
6 the areas that were impacted by the oil.

7 MS. HENRY: Okay, thank you, sir. That's all the  
8 questions I have.

9 CROSS EXAMINATION

10 BY MR. MADSON:

11 Q When are the pinks and the chums expected to be  
12 returned once they were released from the State operated  
13 hatcheries?

14 A The pink salmon return basically in a two year  
15 cycle. The chum salmon return in three to five years from the  
16 time that they spawn.

17 Q I take it the fish were released from these  
18 hatcheries as far as you know, in a normal manner?

19 A Yes. We don't really have an awful lot of  
20 alternatives.

21 Q You can't keep them there, right?

22 A Right.

23 Q And so you release them, but you don't know what's  
24 going to happen to them, is that fair to say?

25

1           A     They released them. There are tagging program under  
2 way, so there will be an assessment of what the returns are.

3           Q     Well, when will that assessment be made?

4           A     The assessment for pink salmon, for those that were  
5 released and migrated last spring, will be this fall, when the  
6 adults come back, the adult pink salmon come back. In the  
7 case of chum salmon, it will be -- you know, we will have a  
8 very small number that will return this year, but again being  
9 a fish that returns at an older age, the full assessment will  
10 not be possible for a number of years.

11          Q     So until then it is just kind of anybody's guess as  
12 to what happened to them, right?

13          A     There's a -- there's an impact assessment program  
14 under way. And again, when the results are in, that'll --  
15 we'll be able to analyze that.

16          Q     You said the pinks and the chums normally swim close  
17 to shore in shallow water. What depth of water are we talking  
18 about here?

19          A     It depends on the gradient of the beach. If you've  
20 got a beach that does not have a very steep gradient they will  
21 be sometimes in six inches to a foot of water. If you have  
22 got it along -- you know, if the area is very steep gradient,  
23 a rocky shoreline, sometimes there will be over ten or maybe  
24 even a hundred feet of water if you've got a steep drop off.  
25 But they will be close to shore feeding in that area.

1 Q So they may or may not feed in an area that is --  
2  
3 let's say has a lot of oil on the surface, contaminated,  
4 right?

5 A Correct.

6 Q Lastly, any expenses incurred by your department,  
7 and when I say your, I guess it is the Department of Fish and  
8 Game, right?

9 A Yes.

10 Q Were -- was -- are you keeping track of that with  
11 the expectation that Exxon will pay for that, any  
12 expenditures?

13 A We are keeping track of that. You know, the actual  
14 payments are being handled by I think coordination in the  
15 governors office.

16 Q Well, my question was do you expect that this  
17 ultimately will be paid for by Exxon?

18 A That's the hope.

19 MR. MADSON: Thank you, I have no other questions.

20 MS. HENRY: No other questions, your Honor

21 THE COURT: You are excused.

22 (The witness was excused.)

23 MS. HENRY:

24 THE CLERK: The State would call Trooper Mike Fox.

25 Whereupon,

1 MICHAEL J. FOX

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

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

7 THE WITNESS: My name is Michael J. Fox, F-O-X.

8 THE CLERK: And your current mailing address, sir?

9 THE WITNESS: Post Office Box 2286, Valdez, 99686.

10 THE CLERK: And your current occupation?

11 THE WITNESS: I am a Fish and Wildlife Trooper.

12 DIRECT EXAMINATION

13 BY MS. HENRY:

14 Q Trooper Fox, how long have you been a Fish and  
15 Wildlife Trooper?

16 A I have been commissioned year round since 1979,  
17 January.

18 Q And what is the difference between an Alaska State  
19 Trooper and a Fish and Wildlife Trooper?

20 A The Department of Public Safety has State Troopers.  
21 Some are assigned to the blue shirt division, which is the  
22 Alaska State Troopers, and some are assigned to the brown  
23 division, the Fish and Wildlife Protection Division, and I am  
24 assigned to the Fish and Wildlife Protection Division.

25 Q So you wear a brown uniform, is that correct?

1           A     Yes, and I would be more -- my job involves  
2 enforcement of State regulations and laws in regards to the  
3 State's resources, wildlife resources.

4           Q     Did you attend the Alaska State Trooper academy?

5           A     Yes.

6           Q     And when did you attend the Academy?

7           A     I started on January 15th, 1979.

8           Q     How long is that academy?

9           A     Three months.

10          Q     During that academy, did you receive any special  
11 training regarding the detection and apprehension of persons  
12 who have been suspected of driving while impaired?

13          A     It's a basic police academy and you receive basic  
14 training on traffic and drunk driving, yes.

15          Q     So you did receive some training in that area?

16          A     Yes.

17          Q     And that was back in 79?

18          A     Yes.

19          Q     Since receiving that training, how many times have  
20 you had an opportunity to request that a suspected impaired  
21 driver to do a field sobriety test?

22          A     Twice.

23          Q     Now, going specifically to Valdez, how long have you  
24 been stationed in Valdez?

25          A     Since February of 1981.

1 Q And have you been stationed anywhere else before  
2 that?

3 A I was in Cordova prior to that. I went to Cordova in  
4 July of 79, and I was in Juneau for the three months preceding  
5 that and then the three months preceding that I was in Sitka.

6 Q Is there an Alaska State Trooper, I guess blue  
7 shirt, also stationed in Valdez?

8 A Yes.

9 Q And who is that?

10 A That's Jim Alexander.

11 Q Now going specifically to March the 23rd and 24th of  
12 last year, was that Trooper there?

13 A No, he was vacationing out of the State.

14 Q And in fact on March 23rd, were you in Valdez?

15 A I arrived at 11:00 o'clock at night on the ferry  
16 from Cordova on the 23rd.

17 Q Going to the early morning of March the 24th of last  
18 year, did you receive a phone call that morning?

19 A Yes, I did.

20 Q Approximately what time was that?

21 A The first call was about 2:20 a.m.

22 Q And what was the purpose of that call?

23 A The Coast Guard officer, Chief Peterson, I believe  
24 it was, notified me --

25

1 MR. MADSON: Well, your Honor, I am not going to  
2 object to the hearsay as long as it is just for the purpose of  
3 showing what this witness did, but not for the truth of it. I  
4 assume that is what \_\_\_\_\_.

5 MS. HENRY: Actually it is to show what the witness  
6 did not do.

7 MR. MADSON: Okay, even better. Okay, no objection.

8 BY MS. HENRY: (Resuming)

9 Q Okay, go ahead.

10 A Chief Peterson of the Coast Guard called me and  
11 advised me that the tanker Exxon Valdez was aground and  
12 spilling oil.

13 Q Was there any reason that he called you?

14 A I asked him if there was a particular request, and  
15 he said, no, you are on the notification list for this type of  
16 incident and we are just notifying your agency that this  
17 occurred. And then I hung up the phone and -- well, actually  
18 I talked to him for a little while, like asking him, are you  
19 sure, you know, this sounds kind of wild. And I made him  
20 repeat it a few times, particularly the location, because I  
21 had a hard time believing that an outbound tanker hit Bligh  
22 Reef, and then he said, yeah, that's it and I've got to make  
23 some more calls. And so then I hung up. And I called him  
24 right back, like just seconds later and asked him was there  
25 any risk of fire, was the tanker about to tip over, is there

1 any public safety issue that I should be aware of to initiate  
2 sort of a rescue type or public safety mission. And he said  
3 no, it's just sitting there, hard aground.

4 Q So I take it you didn't do anything?

5 A No, I called the dispatch office in Anchorage and  
6 left a message there to notify my boss when he checked in in  
7 the morning.

8 Q And who's your boss?

9 A That would be Lieutenant Mills of Palmer.

10 Q Did you receive another call that night?

11 A Yes, at about 4:30 they called me back again, the  
12 Coast Guard did.

13 Q And what was the purpose of this call?

14 A This time they said -- I believe that Chief Peterson  
15 made the call, and then Commander McCall got on the line and  
16 he told me that they were requesting my attention and they  
17 wanted me to go out to the tanker because the captain was  
18 drunk and they needed a trooper to come take care of him.

19 Q Is that what Commander McCall said to you?

20 A Well, I can't remember if he said drunk or  
21 intoxicated, but what I remember thinking was, aha, this is  
22 how it happened, you know, I need to go take care of this  
23 drunk call.

24 Q And so he was requesting your assistance?

25 A Yes.



1 Q Did he mention any names of persons that were  
2 actually requesting your assistance?

3 A Yeah. He said, Tom says the captain is drunk. He  
4 said Tom. And I took it to believe that it was Tom McCarty.  
5 Tom McCarty is a DEC employee in Valdez. When DEC has a  
6 problem that they can't handle in regards to an unhappy  
7 landowner or restaurant person or in this case a drunk  
8 captain, and they need a more qualified law enforcement person  
9 to help them out of a jam, they will call the troopers. And  
10 I thought that he was telling me that Tom McCarty needed help,  
11 essentially wresting this drunk off the tanker, is what I  
12 thought the call was.

13 So I said, okay, you know, and I called up to  
14 dispatch --

15 Q Before you go on, was there any request or comments  
16 about a breathalyzer or blood test or portable breath test?

17 A No.

18 Q As a result of that call, what did you do?

19 A Well, then I called Anchorage dispatch again and  
20 because I have little experience with drunk drivers, I said,  
21 quick, tell me what the elements are that I have to prove here  
22 for this drunk driving, and I am on my way out there. And  
23 they said, well, just prove control of the vessel and the  
24 person that was in control was impaired and just gather  
25 evidence for that. So I said okay, and the Coast Guard had

1 told me they were holding a boat for me. So I just put on my  
2 uniform and ran down to the dock.

3 Q And I take it you took a pilot boat out to the Exxon  
4 Valdez?

5 A I rode on a Coast Guard boat with Coast Guard people  
6 driving it.

7 Q All right. Now, do you know approximately what time  
8 it was that you reached the area of the Exxon Valdez?

9 A Yes. 6:45.

10 Q And from what you could observe, did it appear to be  
11 hard aground on something?

12 A Yeah, it was not moving.

13 Q And the area where it was, that was in the Third  
14 Judicial District?

15 A Yes, it is.

16 Q Now, did you have any particular problems in trying  
17 to board the Exxon Valdez?

18 A Yes, the chief petty -- or the petty officer, John  
19 Brown, was driving the boat, and I had gone out with him  
20 before and he was a competent boat driver, and he was  
21 approaching the starboard side of the boat, the tanker, and  
22 there was a ladder coming down the side of the ship there.  
23 And he headed in for the ladder and as we approached the boat,  
24 we were driving through oil, and you could tell we were  
25 driving through oil, because it wasn't water, it was oil. And

1 he pulled up alongside of the boat, the ship, and the oil was  
2 coming up the side of the ship, up above the level of --  
3 actually it was oil, I was going to say the water -- it was  
4 coming up about that high all along the side of the ship --

5 Q How much is that high?

6 A Oh, about this far. A foot and a half or so, and it  
7 was kind of sticking out maybe that far, kind of like a  
8 rolling -- a rolling mass of this hot oil -- was coming out  
9 and then there was a little bit of wave action but the oil was  
10 so heavy that the waves really weren't like you would expect.  
11 it was sort of like this thick gooey kind of wave action. And  
12 with the oil coming out and these waves and stuff, he was  
13 having a real hard time staying by the ladder. And also the  
14 guys on the ship had a hard time getting the ladder down low  
15 enough. So we're kind of yelling back and forth and the deck  
16 was kind of snowy and icy, we're having a hard time staying  
17 there, and finally I am standing there looking at the stuff  
18 and I didn't want to fall in it, of course, so we decided to  
19 regroup and the guys on the tanker said, well, go around the  
20 other side of the tanker, we'll put another ladder down.

21 So then we left the starboard side, went around the  
22 stern of the tanker, and on the other side they were able to  
23 lower the ladder a little bit lower and there was not near as  
24 much oil where the ladder was there. It was going around both  
25 ends of the ship and kind of coming together and heading off

1 towards the Naked Island area. Seemed liked a river type of  
2 deal. So where we were there wasn't as much oil by the  
3 ladder.

4 Q Did you smell any particular odors when --

5 A Oh, yeah, it was -- you could feel it, too. It was  
6 kind of warm, like hot air coming off of this, hot gasses  
7 coming off of this oil, and you could smell it and kind of  
8 taste it and the John Brown, the Coast Guard guy, told  
9 everybody --

10 MR. MADSON: Well, I would object to any hearsay as  
11 to what Mr. Brown said.

12 THE WITNESS: I was told no light --

13 MS. HENRY: No, no.

14 MR. MADSON: Again, I'll object.

15 THE WITNESS: What do you want me --

16 MS. HENRY: Let me ask the question, that'll help.

17 THE WITNESS: Okay.

18 BY MS. HENRY: (Resuming)

19 Q Okay.

20 Now you said you put your uniform on. So you did  
21 have your brown uniform on?

22 A Yes.

23 Q And when you actually finally got on board, where  
24 did you go?

25

1           A     In was met at the top of the ladder by two crew men,  
2 they were dressed in hard hats and coveralls, and they showed  
3 me the way to the bridge.

4           Q     Now, when you went up to the bridge, who did you  
5 make contact with?

6           A     On the bridge, there was -- I first talked to  
7 Lieutenant Commander Falkenstein.

8           Q     Did you see Mark DeLozier on the bridge at all?

9           A     Yes, he was there, too.

10          Q     At some point did you discover that your impression  
11 of the purpose of your boarding the Exxon Valdez was  
12 incorrect?

13          A     Yes.

14          Q     And how did that occur?

15          A     Well, when I got there, I was expecting a problem,  
16 you know, that's why I was there. And there wasn't any  
17 problem. I mean there was quiet, and kind of dark, and  
18 everybody just kind of sitting there gazing out of the  
19 windows, and there was nothing going on, and there was just  
20 quiet. The second mate, Mr. LeCain I believe his name is, was  
21 standing there looking out the windows, and the two Coast  
22 Guard guys were standing there kind of looking out the  
23 windows, and --

24          Q     Okay. Did anybody ask you if you had brought any --  
25

1           A       Yes, Lieutenant Falkenstein asked me if I had  
2 brought any blood sampling equipment.

3           Q       And what did you respond?

4           A       I said no, I don't take blood out of people. That's

5 --

6           Q       Are you qualified to do that?

7           A       No.

8           Q       And did he ask you for any other kind of equipment,  
9 breath testing equipment?

10          A       No, he just mentioned taking blood samples, and I  
11 said well, if we want to take blood samples we have to get a  
12 nurse or a doctor or somebody, or we have to take these people  
13 to where there is a nurse or a doctor or somebody that can do  
14 that. I am a policeman, I'm not a medical person.

15          Q       Now, at the time that you boarded the Exxon Valdez  
16 and spoke to the members of the Coast Guard that were on the  
17 bridge, were you advised where the captain was?

18          A       Yeah, they said he was in bed.

19          Q       All right. Now, as long as you are on board, did  
20 you decide to assist the Coast Guard in any way?

21          A       Well, I asked him what we were going to do, and of  
22 course everybody was wondering how this happened and I knew  
23 that the State, of course, would be interested in how this  
24 happened, and see if any crimes were committed. So I asked  
25 the Coast Guard whether the alcohol issue was still at the

1 front of conversation, because they thought I was bringing  
2 some sort of blood sampling equipment, and this is the first I  
3 ever heard of that. And I assume that there was some problem  
4 of communication between the -- what they asked for and what I  
5 was told.

6           So we talked about that and right away they decided  
7 that, well, how about if we send the people that we want to be  
8 sampled to town with you. And I said, sure, I'll take these  
9 guys to town, that's no problem. So that was kind of decided  
10 right in the beginning and then they kind of changed their  
11 mind and said, well, maybe it's better to leave these guys on  
12 the boat because the boat's obviously in distress, and it  
13 might not be very smart to take the people in control of the  
14 boat to town. So then they kind of changed their mind there  
15 and eventually they decided that, well, we'll go ahead and try  
16 to get the samples, the blood and urine samples, whatnot,  
17 taken on the ship rather than remove the people from the boat.

18           Q     Were you also interesting in seeing that persons  
19 that may know something be interviewed ?

20           A     Sure.

21           Q     And did you volunteer to assist in that?

22           A     Yes. I was told that Mr. DeLozier would be in  
23 charge of the investigation as to the cause, Mr. Falkenstein  
24 would worry about salvage and oil clean up. So I told Mr.  
25 DeLozier that I would be happy to help him do the interviews

1 and conduct the investigation, because I have quite a bit of  
2 experience with boats and I'd be happy to help him out. And  
3 he said okay. And at the same time I would be representing  
4 the State in their interests.

5 Q Are you aware of whether or not Mr. Kagan was  
6 interviewed?

7 A Yes, I was there.

8 Q And after the interview with Mr. Kagan, did you ever  
9 see Captain Hazelwood?

10 A Yes.

11 Q And where was that?

12 A I saw him between the interview with Mr. Kagan and  
13 Mr. Cousins. We were doing the interviews in the spare  
14 officers quarters and I was going from the spare officers  
15 quarters to the bridge -- we were going to find Mr. Cousins --  
16 and I don't remember if I actually talked to him on the  
17 bridge or in the companionway just right outside of the  
18 bridge.

19 Q Talked to who?

20 A The Captain.

21 Q Why don't you tell us what the conversation was?

22 A Well, I hadn't seen him yet -- this was the first  
23 time I had seen him, and he obviously didn't know who I was.  
24 So I introduced myself to him and one of the people around me  
25 said that's the Captain. That's how I knew who he was. And I



1 told him who I was and I was representing the State, and that  
2 I was helping into the investigation into cause, why it  
3 happened, and I said, well, what the heck is the problem, and  
4 he said, you're looking at it.

5 Q How did Captain Hazelwood appear physically at that  
6 time?

7 A Fine. He had bloodshot eyes, he was smoking  
8 cigarettes. I didn't smell any alcohol, I just smelled  
9 morning breath, bad breath.

10 Q What about his ability to move around? Did you  
11 notice anything --

12 A He seemed fine.

13 Q Pardon me?

14 A He seemed fine.

15 Q Now --

16 A And that was at 8:30.

17 Q Oh, 8:30 in the morning?

18 A Yes.

19 Q Of the 24th?

20 A Yeah.

21 Q Now were you also present during the interview of  
22 Mr. Cousins?

23 A Yes.

24 Q Okay, backing up for just a moment, after you had  
25 introduced yourself to Captain Hazelwood, during the next

1 several minutes or hours, did you happen to observe any  
2 interreaction -- interaction, excuse me, between Captain  
3 Hazelwood and Mr. Cousins?

4 A Not between those two, but I saw Captain Hazelwood  
5 going about the business of running the ship.

6 Q And he was permitted to do that?

7 A Oh, yes.

8 Q Where was Mr. Cousins during this time?

9 A He would kind of disappear and reappear. Sometimes  
10 he'd be standing on the bridge smoking, and other times he'd  
11 disappear. I assume he'd go to other areas of the ship.

12 Q Did you have any concern about the fact that Mr.  
13 Cousins and Captain Hazelwood were smoking?

14 MR. MADSON: I would object, your Honor. It is  
15 totally irrelevant and there is no foundation

16 THE COURT: Objection overruled.

17 THE WITNESS: Well, I was told by the Coast Guard  
18 not to smoke.

19 MR. MADSON: Then I'll object on the grounds of  
20 hearsay.

21 THE COURT: The question is did you have any  
22 concerns, not what somebody told you.

23 THE WITNESS: Well, i could smell hydrocarbons,  
24 whatever the -- whatever that stuff is that comes off -- that  
25 gas that comes off the oil. And I didn't want to get -- start

1 a fire or anything. So yes, I was wondering a little bit why  
2 these guys were smoking.

3 BY MS. HENRY: (Resuming)

4 Q Was the odor stronger in some places and weaker in  
5 other places?

6 A On the deck it was the strongest and in the cabins  
7 and the house of the boat it was less.

8 Q Now, at some point that morning did you attempt to  
9 begin an interview, you or Mr. DeLozier attempt to begin an  
10 interview with Captain Hazelwood?

11 A There was quite a bit of organization and we  
12 certainly discussed it and said well, we'd like to talk to  
13 you, when can you do it. And he'd say well, I have to make  
14 some phone calls. And there was a lot of discussion, he said,  
15 okay, we'll do Mr. Cousins now and then when you're done, we  
16 can take care of you and that sort of thing.

17 Q So there were other things that Captain Hazelwood  
18 had to do?

19 A Sure. He was on the phone a lot and --

20 Q Did you eventually interview Captain Hazelwood?

21 A Yes, we did.

22 Q And where did that interview take place?

23 A In his office suite.

24 Q Who all was present?

25 A There was myself, Mark DeLozier and the Captain.

1 Q And did you tape record that interview?

2 A Yes, I did.

3 Q Have you had an opportunity to listen to the tape of  
4 that interview?

5 A Yes, I did.

6 Q And have you also had an opportunity to compare it  
7 with a transcript that was prepared of that interview?

8 A Yes, I did.

9 Q Sir, showing you what has been marked as  
10 Plaintiff's Exhibit Number 102 for identification, do you  
11 recognize that tape?

12 A Yes.

13 Q Is that the tape that you listened to?

14 A Yes.

15 Q And does that tape accurately reflect the interview  
16 conducted of Captain Hazelwood by you and Mr. DeLozier?

17 A Yes, it does.

18 Q Now, going to the transcript that you were able to  
19 look at -- I haven't given you a copy of it -- going to the  
20 transcript that you were able to look at, does the transcript  
21 accurately reflect the conversation with a couple of errors?

22 A Yes.

23 Q And what were those errors?

24 A On one page, I don't remember what page it was, a  
25 crew member came in and told the Captain the fenders were

1 delivered to start -- they were bringing another ship  
2 alongside to lighter oil from the crippled ship to the empty  
3 ship, and they have these big inflatable fenders that they put  
4 down between the two ships, and the fellow said that they had  
5 these fenders and that they were going to be blowing one up,  
6 and the word that they used in the transcript said rolling it  
7 up and it should have been blowing it up.

8           And the other error was the last conversation on the  
9 tape was identified as myself and it was Mark DeLozier.

10       Q     Asking questions?

11       A     Yes.

12       Q     Now, when listening to the tape, it appears to stop  
13 rather suddenly, or end rather suddenly. Why is that?

14       A     They ran out -- it was a two sided cassette tape and  
15 one side ran out.

16       Q     And didn't flip it over?

17       A     And I didn't -- well, I was going to, but the  
18 interview ended and I never got it turned over.

19       Q     So after the tape stops, was there any more of an  
20 interview?

21       A     Not really an interview. We were still talking but  
22 it wasn't about what happened, you know.

23 \_\_\_\_\_  
24           MS. HENRY: Your Honor, at this time the State would  
25 move into evidence Plaintiff's Exhibit Number 102.

1 MR. MADSON: Well, without hearing it, obviously,  
2 you know, I would assume that it is the same one, but I  
3 haven't heard that particular tape. So if that is the one, I  
4 have no objection.

5 THE COURT: It is admitted.

6 (State's Exhibit Number 102  
7 was admitted in evidence.)

8 MS. HENRY: Thank you, your Honor.

9 At this time I would like to be able to play it,  
10 however it is about 30 minutes. What I can do is do some  
11 other questions which will be rather brief, or would you want  
12 me to start playing it?

13 THE COURT: if you can get some other questions in,  
14 we might as well, then when we come back tomorrow we'll start  
15 with the tape.

16 MS. HENRY: All right, thank you.

17 THE COURT: Mr. Madson, I'll give you the  
18 opportunity to verify --

19 MR. MADSON: Oh, I'm sure, your Honor. I'm just --  
20 I have no doubt that it is a copy of the same interview.

21 BY MS. HENRY: (Resuming)

22 Q Now the interview took place where, again?

23 A It was in the Captain's room.

24 Q Had you been in the Captain's room sometime prior to  
25 the interview?

1 A Yes.

2 Q Why were you in there then?

3 A I don't really remember. The places that I were  
4 were the bridge, the spare officers quarters, the radio room,  
5 and the Captain's suite. The Captain's suite is kind of like  
6 an office and a lounge and a bedroom, and the lounge area was  
7 where we spent quite a bit of time.

8 Q During the interview with Captain Hazelwood, was  
9 there mention made of Moussy beer?

10 A Yes.

11 Q And did you see any Moussy Beer in the Captain's  
12 officer or quarters?

13 A In his refrigerator.

14 Q When did you see that? Was it before or after the  
15 interview?

16 A During the interview and right before the interview.  
17 When we first got in there the Captain offered us a soft drink  
18 or something and he himself got, I believe it was a Pepsi or  
19 something out of the fridge, and when he opened it, it was in  
20 there.

21 Q Did you seize any of the Moussy beer that was in the  
22 refrigerator?

23 A I seized two out of the officer's cooler, the  
24 officer's mess.

25

1 Q All right. Let's back up a minute, then. You found  
2 Moussy beer in other areas of the ship?

3 A Officer's mess.

4 Q And did you seize any of that Moussy beer then?

5 A Two; two bottles.

6 (State's Exhibit Number 119  
7 was marked for identification.)

8 Q Sir, showing you what has been marked Plaintiff's  
9 Exhibit Number 119 for identification, do you recognize that?

10 A Yes.

11 Q And what is that?

12 A It's a bottle of Moussy light malt beverage.

13 Q And is that one of the bottles that you seized?

14 A Yes, it is.

15 Q What's the red tag that is attached to the bottle?

16 A Well, this is an evidence tag and this is my last  
17 name that I wrote on the label.

18 Q And the evidence tag is basically a chain of custody  
19 form?

20 A Correct.

21 MS. HENRY: The State would move into evidence  
22 Plaintiff's Exhibit Number 119.

23 MR. MADSON: No objection.

24 THE COURT: It's admitted.

25 (State's Exhibit Number 119



was admitted in evidence.)

BY MS. HENRY: (Resuming)

Q Sir, do you know what the percentage of alcohol is in Moussy beer?

A The label says zero point five percent.

Q Okay, thank you.

Sir, did you either that day or at a later time search portions of the Exxon Valdez to see if you could find any hard liquor bottles?

A April 2nd. Yes.

Q All right. And where did you search?

A My assigned area was the Captain's quarters and the ships garbage.

Q Are we talking about a lot of garbage here?

A Yes.

Q Okay. Did you find any hard liquor bottles?

A No.

MS. HENRY: You Honor, except for playing the tape, that is all the questions I have of this witness.

THE COURT: Okay, we'll recess for the day. See you folks back at 8:15 tomorrow morning. We'll try to get started promptly at 8:30. Counsel will come in at 8:15 to take up matters that we can do then.

Remember my instructions about media and not discussing this case and please don't form or express any

1 opinions. \_\_\_\_\_ and let you  
2 folks know tomorrow morning. We'll go until 1:30 again  
3 tomorrow morning, and then I think you can plan on the 8:30 to  
4 1:30 schedule for next week, too, because I have got a lot of  
5 things in the afternoon. So that's how we'll do next week,  
6 too. See you folks tomorrow, and be safe.

7 (Whereupon, the jury exited the Courtroom.)

8 THE COURT: You may step down.

9 (The witness stands aside.)

10 THE COURT: Two things. That 0.5 percent, is that  
11 one half of one percent, is that what that means?

12 MR. COLE: That will be explained by the  
13 toxicologist. It's five percent alcohol by volume. Point  
14 five percent alcohol.

15 THE COURT: One half of one percent alcohol by  
16 volume, okay.

17 Okay, and I asked you last week about your  
18 scheduling and I am wondering if you're still on schedule.

19 MR. COLE: Judge, I think I predicted in the  
20 beginning about three weeks and we're going to be three weeks  
21 tomorrow and I expect our case to be done by Tuesday.

22 THE COURT: Okay, I just wanted to make sure.  
23 Without committing yourself in any way, can you give me a  
24 ballpark figure of how much your case is going to take? And  
25 the reason I am asking is I have got, I think, three homicide

1 cases now that are stacking up on me and I am just trying to  
2 be able to tell counsel when to expect it.

3 MR. MADSON: Well, I would say we are looking at at  
4 least two weeks. Depends on cross examination, really.

5 THE COURT: I'm not going to hold you to it, but you  
6 think two weeks is a reasonable amount of --

7 MR. MADSON: Well, I'd say on the outside, okay.  
8 We'd like to do it in a week if we could. But I think it's  
9 the farthest extreme, probably two weeks.

10 THE COURT: I don't mean to be pushing you in any  
11 way by asking this question. I am just trying to get --

12 MR. MADSON: That's of course assuming that we have  
13 to put on our case, your Honor.

14 THE COURT: Yes, that's with that assumption in  
15 mind.

16 We'll stand in recess.

17 THE CLERK: Please rise. This Court stands in  
18 recess subject to call.

19 (Whereupon, at 1:23 o'clock p.m., the trial was  
20 recessed.)

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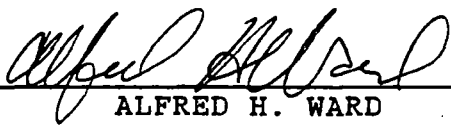
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SUPERIOR COURT ) Case No. 3ANS89-7217  
STATE OF ALASKA ) Case No. 3ANS89-7218

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